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§842.807 Review of decisions.

(a) The final decision of an agency denying an individual's request for approval of a position as a rigorous, secondary, or air traffic controller position made under §842.804(c) may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

(b) The final decision of an agency denying an individual coverage while serving in an approved secondary position because of failure to meet the conditions in §842.803(b) may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

[57 FR 32690, July 23, 1992]

§842.808 Oversight of coverage determinations.

(a) Upon deciding that a position is a law enforcement officer or firefighter position, each agency head must notify OPM (Attention: Associate Director for Retirement and Insurance) stating the title of each position, the number of incumbents, whether the position is rigorous or secondary, and, if the position is rigorous, the established maximum entry age (or if no maximum entry age has yet been established, the date by which it will be established). The Director of OPM retains the authority to overrule an agency head's determination that a position is a rigorous or secondary position, except such a determination under 5 U.S.C. 8401(17)(B) (concerning certain employees in the Departments of the Interior and the Treasury) or under 5 U.S.C. 8401(17)(D) (concerning certain positions primarily involved in detention activities).

(b) Each agency must establish a file containing all coverage determinations made by an agency head under §842.803, and all background material used in making the determination.

(c) Upon request by OPM, the agency will make available the entire coverage determination file for OPM to audit to ensure compliance with the provisions of this subpart.

(d) Upon request by OPM, an agency must submit to OPM a list of all covered positions and any other pertinent information requested. For rigorous positions, the list must show the specific entry age requirement and physical qualification requirements for each position.

[52 FR 2069, Jan. 16, 1987, as amended at 57 FR 32691, July 23, 1992]

§842.809 Transitional provisions.

(a) Any service as an air traffic controller, within the meaning of this term under 5 U.S.C. 2109 as in effect on or after January 1, 1987—even if performed before that date—is included in determining an employee's length of air traffic controller service under 5 U.S.C. 8412(e) for the purposes of retirement eligibility and for mandatory separation under 5 U.S.C. 8425(a) as long as the annuity is based on a separation from service occurring after 1986.

(b) Any service as a law enforcement officer or firefighter, within the meaning of these terms under 5 U.S.C. 8331 (20) and (21), that was performed before the date on which an employee becomes subject to chapter 84 of title 5, United States Code, is included in determining the employee's length of law enforcement officer and firefighter service under 5 U.S.C. 8412(d) for the purposes of retirement eligibility and mandatory separation under 5 U.S.C. 8425(b). Service performed as a law enforcement officer or firefighter within the meaning of 5 U.S.C. 8331, other than service in a supervisory or administrative position, is considered to be service in a rigorous position for the purpose of the 3-year requirement of §842.803(b)(1)(ii). The FERS definitions of firefighter under 5 U.S.C. 8401(14) and law enforcement officer under 5 U.S.C. 8401(17) are not applicable to service performed—

(1) Before 1987; or

(2) After 1986 and before an employee first becomes subject to chapter 84 (that is, subject to FERS deductions), unless that service was neither subject to CSRS deductions nor creditable in a CSRS component as described in §846.304(b).

(c)(1) An individual who—

(i) Is covered as a law enforcement officer or firefighter under 5 U.S.C. 8336(c) in a supervisory or administrative position, having already met the transfer requirement of subpart I of part 831 of this chapter; and