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Subpart C—Computation of Disability Annuity

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Subpart A—General Provisions

§ 844.101 Purpose.

This part establishes the requirements under the Federal Employees' Retirement System (FERS) for eligibility to receive a disability annuity, application procedures for disability annuities, rules for computing a disability annuity, and the conditions and procedures under which a disability annuity is terminated and reinstated.

§ 844.102 Definitions.

In this part:

Accommodation means a reasonable adjustment made to an employee's job or work environment that enables the employee to perform the duties of the position. Accommodation may include modifying the worksite; adjusting the work schedule; restructuring the job; obtaining or modifying equipment or devices; providing interpreters, readers, or personal assistants; and retraining the employee.

Basic pay means the pay an employee receives that is subject to deductions under FERS.

Commuting area has the meaning given the term ''local commuting area'' in § 351.203 of this chapter.

Disabled and *disability* means unable or inability, because of disease or injury, to render useful and efficient service in the employee's current position.

FERS means the Federal Employees' Retirement System established under chapter 84 of title 5, United States Code.

Medical condition means a health impairment resulting from a disease or injury, including a psychiatric disease. This is the same definition of ''medical condition'' that is found in § 339.104 of this chapter.

Medical documentation means a statement from a licensed physician, which may be supplemented by a statement from another appropriate practitioner, that provides information OPM considers necessary to determine an individual's entitlement to benefits under this part. Such a statement must meet the criteria set forth in § 339.104 of this chapter.

Military reserve technician has the same meaning given this term in 5 U.S.C. 8401(30).

OPM means the Office of Personnel Management.

Permanent position means an appointment without time limitation.

Physician and *practitioner* have the same meaning given these terms in § 339.104 of this chapter.

Qualified for reassignment means able to meet the minimum requirements for the grade and series of the vacant position in question.

Same grade or pay level means, in regard to a vacant position within the same pay as the position the employee currently occupies, the same grade and an equivalent amount of basic pay. A position under a different pay system or schedule is at the same pay level if the representative rate, as defined in § 532.401 of this chapter, equals the representative rate of the employee's current position.

Useful and efficient service means acceptable performance of the critical or essential elements of the position; and satisfactory conduct and attendance.

Vacant position means an unoccupied position of the same grade or pay level and tenure for which the employee is qualified for reassignment that is located in the same commuting area and, except in the case of a military reserve technician, is serviced by the same appointing authority of the employing

agency. The vacant position must be full time, unless the employee's current position is less than full time, in which case the vacant position must have a work schedule of no less time than that of the current position. In the case of an employee of the United States Postal Service, a vacant position does not include a position in a different craft or a position to which reassignment would be inconsistent with the terms of a collective bargaining agreement covering the employee.

§844.103 Eligibility.

(a) Except as provided in paragraph (c) of this section, an individual must meet the following requirements in order to receive a disability annuity:

(1) The individual must have completed at least 18 months of civilian service that is creditable under FERS, as defined in §842.304 of this chapter;

(2) The individual must, while employed in a position subject to FERS, have become disabled because of a medical condition, resulting in a deficiency in performance, conduct, or attendance, or if there is no such deficiency, the disabling medical condition must be incompatible with either useful and efficient service or retention in the position;

(3) The disabing medical condition must be expected to continue for at least 1 year from the date the application for disability retirement is filed;

(4) Accommodation of the disabling medical condition in the position held must be unreasonable; and

(5) The individual must not have declined an offer of reassignment to a vacant position.

(b) The employing agency must consider a disability applicant for reassignment to any vacant position. The agency must certify to the Office of Personnel Management (OPM) either that there is no vacant position or that, although it made no offer of reassignment, it considered the individual for a vacant position. If an agency offers a reassignment and the individual declines the offer, the individual may appeal the agency's determination that the individual is not disabled for the position in question to the Merit Systems Protection Board under 5 U.S.C. 7701.

(c)(1) Paragraphs (a)(2) through (a)(4) of this section do not apply to a military reserve technician who retires under 5 U.S.C. 8456.

(2) An individual who separates from employment as a military reserve technician under circumstances set forth in 5 U.S.C. 8456(a)(1) after reaching age 50 and completing 25 years of service is not entitled to a disability annuity under this part, but is entitled to an annuity under §842.210 of this chapter.

(3) A former military reserve technician is not entitled to an annuity under 5 U.S.C. 8456 based on service as a technician if the technician is subsequently appointed to another position in the Federal Government.

§844.104 Administrative review of OPM decisions.

Any individual whose rights or interests under FERS are affected by an initial decision of OPM may request OPM to review its decision under §841.306.

§844.105 Relationship to workers' compensation.

(a) Except as provided in paragraph (b) of this section, an individual who is eligible for both an annuity under part 842 or 844 of this chapter and compensation for injury or disability under subchapter I of chapter 81 of title 5, United States Code (other than a scheduled award under 5 U.S.C. 8107(c)), covering the same period of time must elect to receive either the annuity or compensation.

(b) Notwithstanding the provisions of paragraph (a) of this section, an individual may concurrently receive an annuity based on the individual's service under part 842 or 844 of this chapter and a benefit under subchapter I of chapter 81 of title 5, United States Code, on account of the death of another individual. An individual may also receive an annuity under part 843 of this chapter and compensation for injury or disability to himself or herself under such subchapter I covering the same period of time.

(c) An individual who elects to receive compensation payments under paragraph (a) of this section and who has not received a refund of contributions under §843.202 retains the right to elect to receive an annuity under part