

## CHCO Council Academy Session – Disability Retirement

December 4, 2012

### Death

1. What happens to the retirement application when an employee dies while awaiting approvals and annuities? Is this considered a death-in-service? The approval letter for disability retirement was received after the employee's death.

**CSRS:** If an individual dies after having applied for disability retirement, but before final separation from the agency, the individual is an employee and the information in Chapter 70 applies.

**FERS:** The definition of a FERS retiree for purposes of determining a person's status at the time of death means that the person had been separated from service and had met all of the requirements to receive an annuity, including having filed, or being "deemed" to have filed an application for the annuity prior to his or her death.

2. I have an application in for an employee who is fading fast due to a medical condition. She has not been insured for 5 years and we were told that if disability retirement was granted, that it would be waived. If the person dies before a decision is made and we file as a death in service, what happens to FEHB for the family?

In cases of death in service, as in a Disability case, the 5 year requirement need not be met in order for the family to continue FEHB coverage.

3. I just received a call from Disability regarding a retiree that passed away requesting 2821, FEGLI and FEHB forms. The employee was separated on 10/4/2011. Is the agency still responsible for doing the 2821? One should have already been done at separation; however, some of the forms are not accessible due to the employee separating a year ago.

If the employee had separated, a SF 2821 should have been done and sent in to OPM with the 2817, 2818, etc. Likewise, the FEHB documents should have already been sent. If either or both weren't done, they should be done by the agency.

4. How do we as the agency annotate the preliminary disability packet for "terminal" employees?

Attach a tag notating 'terminal' on the packet so when received in OPM, the case file can be noted as terminal for expedited processing.

## Eligibility

5. If an employee is a 100% service-connected Veteran, and while working for the federal government conditions have become worse while working, can they be eligible for FERS disability approval?

Yes, provided that the requirements at 5 CFR 831.1203 for CSRS applicants and 5 CFR 844.103 for FERS applicants are met. The requirements are that:

- **CSRS** - the applicant must have completed 5 years of creditable civilian service;
  - **FERS** – the applicant must have completed 18 months of creditable civilian service.
  - The applicant became disabled because of a medical condition resulting in a service deficiency in performance, conduct or attendance while employed in a position subject to CSRS/FERS. If there is no service deficiency, the condition must be incompatible with either useful and efficient service or retention in the position.
  - The disabling medical condition must be expected to continue at least 1 year from the date the application is filed.
  - The employing agency must be unable to accommodate the condition in the position held or in an existing vacant position.
  - An application for disability retirement must be filed with the agency before the employee separates from service or with the former agency or OPM within 1 year of separation. This requirement may be waived if the employee is deemed to be incompetent at the time of separation or within 1 year of the separation.
6. If an employee was on SSDI prior to Federal Employment and is now employed with the federal government and disability has been exacerbated, can they still be eligible for FERS disability approval if they need to go back on disability?

Yes, if their pre-existing condition has **significantly worsened** and is not merely exacerbated (waxing and waning) but disabling for at least a year from when they file.

7. If an employee is approved for Social Security benefits, are they automatically deemed eligible for FERS or CSRS benefits?

No, the applicant would have to be approved for disability by OPM.

8. I have an employee who has been in an LWOP status for more than one year and her benefits including FEHB are ending. She now is considering applying for disability retirement. She doesn't want TCC and is looking to convert to an individual contract. If she is approved for disability, will she be able to resume her FEHB coverage? If not, what are her options while waiting for approval?

February 2013

If approved for disability retirement, and HB's were terminated due to 365 days in LWOP, the applicant would have the opportunity to have the HB's reinstated. They could be reinstated retroactive to the annuity commencing date, or prospectively.

9. In reference to annuity being terminated if the employee takes employment receiving at least 80% of their previous pay, does this apply strictly to employment with the federal government?

The 80% earnings limitation would apply to all employment, both private and Federal. It would also include earnings from self-employment.

10. Can an employee with 20 years of creditable service and 61 years of age apply for disability retirement? GRB is not allowing me to do a disability retirement estimate.

This individual could apply for disability retirement. However, their benefit would be computed as an earned benefit since they meet the age and service requirement for a voluntary retirement benefit.

## **Pay & Leave**

11. Is the 80% earnings based on rate of pay they last received or what is listed on the SF 50? Ex: employee's last day of pay was based on GS 09 step 1 but his SF 50 shows disability retirement GS 11 step 1- a promotion was received while he/she was on leave without pay.

The 80% Earnings Limitation is derived from the annual base pay earned at the time of retirement. If the retiree begins LWOP on 9/1/2012, and receives a promotion on 10/15/2012, but he never actually earned the higher pay, we would use 80% of the annual base salary the retiree earned on the day of retirement.

12. If an employee goes on LWOP because of the disability and it is finally approved 6 months later, does the employee get paid all the way back to the date he went on LWOP?

Yes, the disability annuity would commence the day after the last day of pay (LDOP) as long as the disability started prior to the LDOP.

13. What is the significance of the condition being pre-existing when making a determination? It is my understanding the disability annuity is reduced by the amount received from Social Security. If correct, is the reduction permanent?

a) If the person was hired with the condition, they are certifying that they are fully capable of performing the essential duties of that position at the fully successful level. They can't turn around in 18 months and say I have this condition and I'm disabled from doing my duties. They have to show that once hired the condition significantly worsened from what it was when hired to support a disability.

b) Yes, the reduction is permanent.

14. Since sick leave is now credited to the employee's retirement, does this work the same way with disability retirement? Or will it be better for the employee to use up their sick leave before their disability retirement is effective?

Sick leave balance for a disability applicant would be added to their total service. However, the employee would have to decide if it was better for them to use their sick leave or separate with it and have it credited in their retirement. Under FERS, it would only be used if their earned benefit was used or at the recomputation at 62.

15. Is it ever advantageous for an employee to exhaust large amounts of sick leave after receiving an approval?

Exhausting sick leave could increase the retiree's "high-3" average salary, which is a major component in the determination of the annuity benefit.

### **Processes and Procedures**

16. Regarding the topic of an employee who separated and elected TCC and the disability retirement was later approved (annuity commencement was retro and the employee paid TCC premiums), what procedures need to be followed for the employee to get reimbursed for those premiums?

First, the individual would have to elect reinstatement of the FEHB covering the same period they were under TCC. If that is done, OPM would reinstate the FEHB and notify NFC, who handles TCC, to refund the premiums paid to the individual.

17. What is a good contact number for the OPM disability unit? Do you have a good number for agencies to call in Washington, DC when attempting to find out the status of a disability retirement claim? I often have to call numerous times before getting a response or speaking to someone.

The phone numbers for OPM's Disability Branch are 202-606-0280 and 202-606-0290.

18. How does OPM request additional medical information? Do you contact the employee to request additional medical documentation before a claim is denied?

Additional medical evidence is generally requested by phone or mail. If the specialist believes a little more info will allow them to approve a case, they will generally request the additional information and give the person 30 days to provide the additional information. Otherwise, the specialist explains the deficiencies in the denial letter as it is the employee's responsibility to provide sufficient medical evidence. **The burden of proof rests with the applicant. The applicant needs to provide sufficient evidence, including all pertinent medical documentation, to support a disability claim.**

19. We don't always have the full eOPF – especially when employees have worked for several agencies and have many breaks in service. We are often waiting for the archives center to

February 2013

send the OPF. Back to the question originally asked – do we send the application anyway? Even without the estimate?

An application can be submitted without an agency estimate. However, prior to finalization of the retirement benefit (if approved) all service would need to be verified.

20. We receive a lot of calls from employees stating OPM is waiting for the SF 2806 or SF 3100. Are the people set up to answer calls telling them to call the agency? OPM should be contacting payroll, right?

OPM does contact payroll offices when necessary, however, the servicing agency is responsible for letting payroll know they need to process the final payroll record (IRR) upon receiving notice of the disability approval.

21. Is there a specific Disability Retirement Case Assembly to follow? We have the list for non-disability retirement cases. It would be nice to have an assembly list for disability cases as well.

At the present there is no retirement case assembly to follow. This is something OPM hopes to have at a future date.

22. The presenter mentioned that all medical documents that the employee states is listed must be listed and that the reasonable accommodations and supervisory statement must match. Who is responsible for making sure this is done?

It is up to the agency and their Shared Service Center to determine who should ensure a complete disability application package. **The Agency's HR Office is responsible for sending a complete package to OPM.**

23. When an employee has separated for over 31 days, what paperwork should the prior agency do? (I've had two instances where the employee was contacted saying the agency needed to sign the 3112 E Checklist after they mailed it in. One of them doesn't live in the area so I don't know if they mailed in everything or not. The other one was local and I pretty much did it for them so I was comfortable signing.) On separated employees, I would like to know what paperwork we should and shouldn't do.

OPM needs to see the SF 2112-B, SF 3112-D, position description, separation SF-50 and any information such as proposed removals. The SF 3112-E would not be required.

24. During the Academy, the presenter mentioned that applicants for disability retirement are responsible for submitting documentation of SSA application/approval/denial (for FERS applicants). However, he did not mention anything about the use of the FEDMER statement. In those instances where the Agency has a complete application for disability retirement except for social security documentation, isn't the purpose of the FEDMER statement for the applicant to sign it acknowledging their responsibility to apply for SSA benefits and submit documentation of such application to OPM so that the Agency doesn't have to hang on to the application waiting for the SSA documentation? It was advised during the session that the

Agency not hold up an application due to incomplete medical documentation, as such, it makes sense the agency would not hang onto an application for SSA documentation if the applicant has signed the FEDMER statement. We would appreciate further clarification and verification of this.

The agency should not delay the submission of the disability application just for the SSA documentation.

25. When using GRB to do a Retirement estimate, GRB won't let us do a disability retirement estimate if the employee meets the time and service requirement. Any idea why?

GRB is a private vendor who provides annuity estimate software to many Federal agencies. Any questions concerning their software should be addressed to them. OPM uses the Federal Annuity Computation Expert System (FACES) to calculate most annuities, including disability. OPM provides agencies the FACES Retirement Benefits Estimator at no cost. FACES RBE will compute the benefits in these cases and the data entered into RBE is migrated to our official calculator when the employee separates.

26. A question was asked about an employee who resigned and took TCC and then applied for disability retirement. If approved for disability retirement, does he get reimbursed for TCC and then the FEHB is taken out of disability payments, or how does this work?

The individual would have to elect reinstatement of the FEHB covering the same period they were under Temporary Continuation of Coverage (TCC). If that is done OPM would reinstate the FEHB and notify NFC, who handles TCC to refund the premiums paid to the individual. Premiums would be withheld from the annuity payments.

27. What's the purpose of the offset in the annuity for a FERS annuitant because of SSA? What regulation, policy, law, etc. governs this?

The SSA offset is required by retirement law. Information regarding the offset can be found in Title 5, U. S. Code, Section 8452.

28. How does OPM prioritize their process and determination if the applicant was removed from the agency? Documentation of removal was in the preliminary disability package.

Cases are processed in the order they are received. OPM does prioritize terminal cases and National Guard Technician cases.

29. Regarding agency certification of reasonable accommodation, who in the agency is responsible for completing this information?

The SF 3112-D should be completed by the agency's coordinator for employment of individuals with disabilities or other authorized agency official.

30. Who normally completes the Agency certification of accommodation and assignment efforts? EEO? Staffing?

February 2013

The agency determines who would complete the certification.

31. How can we check on the status of a disability claim when it has been over 90 days?

Call: (202) 606-0280 or (202) 606-0290 or (724) 794-2005 or (888) 767-6738

32. I have an employee that is submitting for disability retirement. The employee had previously gone out on a disability retirement back in 2006 and returned to duty in 2008. Since returning to duty, he has been employed with several agencies and I do not have a full service history for him. Can I submit his package/paperwork even without having his full service history (prior to his previous disability retirement approval)?

Yes, you may submit the disability application; however, prior to final adjudication of the annuity benefit (if approved), all service would need to be verified. To determine if this should be an application for disability or supplemental annuity, we would need to know the status of the 2006 disability approval.

33. Regulations state to send all the forms after a decision is made for disability retirement (2821, 2819 etc). If this is treated like a retirement when it comes to sending all documentation, can we send all forms thus limiting the documents that need to be sent after the case has been approved? Basically all that would be needed is the last day of pay emailed to LDOP@gov because all forms would be included in the packet as if it is approved (based on the 80% approval rate).

There are several reasons:

1. The 2821 can't be completed until the separation or end of 12 months non-pay date and final salary are known.
2. If denied, we'd have to return all of the insurance forms.
3. We don't just need the LDOP; we need the final Individual Retirement Record (IRR).

34. What if the employee finds employment in a private sector job after qualifying for disability retirement? How is the Federal government notified? IRS?

Receiving a Federal disability retirement does not bar an individual from seeking employment. However, their earnings would be subject to the 80% earnings limit for continued receipt of the annuity benefit. OPM sends out earnings survey every year up to age 60 asking the disability retiree if he/she had earnings the previous year and how much was earned.

35. Many medical providers do not want to provide a narrative write-up on their letterhead that addresses the items listed on the 3112C. Has OPM considered creating an actual form that the doctor can fill out and sign in lieu of asking them to submit something on their own letterhead?

A form would not provide the detailed information we need to make our determinations. We also accept other forms of medical information such as progress notes. Having it on letterhead/stamped with the doctors name and address also helps ensure that it is coming from a Doctor. The purpose of this is to reduce the possibility of forged or altered documents.

36. We have some veteran employees who are somewhat reluctant to listen to the FERS Disability Rules. One in particular insisted on applying for FERS Disability even though he is age 62 with over 12 years of service and gains no extra \$ benefit for being approved for FERS disability. He wants the disability rating from OPM just to enhance his Veterans Unemployability Application and does not mind the wait. For the record, I had no choice but to allow him to apply. This session led me to believe that his FERS disability application would not be processed or stalled due to being eligible for immediate FERS annuity? Can you please explain?

If the employee wants to apply for both, they should apply for the non-disability retirement first. However; the disability application must be filed within 1 year of their separation.

37. How many times can an employee elect OWCP vs. OPM benefits?

Generally, an employee can't receive both regular workers' compensation benefits for the same period of time. The employee must make their election between workers' compensation and CSRS/FERS annuity benefits with the Office of Workers' Compensation Programs (OWCP). There is no limit to the number of times they may elect to switch from one to the other provided they are still entitled to the benefit they are electing.

### **Reassignments and Reemployed Personnel**

38. Our employee is an electrician and is working full time and getting his regular pay, but in the business office at a lower grade and lower pay position. If this Business Office position is offered as a full-time permanent position and he takes it, does it then disqualify him for Disability Retirement. What qualifies as a valid reassignment offer?

A valid reassignment offer would have to be same grade/same pay/same tenure/same commuting area. If this is not met, the employee can refuse the offer.

However, if the employee voluntarily accepts a lower graded position [see 5 CFR 831.1207(c)] OPM considers voluntary acceptance of a permanent position in which the employee has civil service retirement coverage, including a position at a lower grade or pay level, to be a withdrawal of the employee's disability retirement application.

39. Under Reemployed Disability Annuitants, it states administrative recovery is reemployment at the same grade or pay and tenure of position retired from. What if the position the annuitant accepts is at a lower grade?

The individual would be considered a reemployed annuitant, and subject to regulations covering reemployed annuitants.



40. What if a disability annuitant is determined to be partially recovered for reemployment? How does that affect the annuity?

A disability annuitant cannot be found partially recovered. The only finding OPM renders are fully recovered or not recovered.

41. Does a valid reassignment offer for a Wage Grade, but at a lower grade and pay, negate the Disability Retirement? This would be a physical disability to continue doing the position assigned.

See 5 CFR 831.1207(c). OPM considers voluntary acceptance of a permanent position in which the employee has civil service retirement coverage, including a position at a lower grade or pay level, to be a withdrawal of the employee's disability retirement application.

42. It is my understanding that when accommodating an employee with a disability pursuant to the Rehabilitation Act, the agency can offer the employee a position below the grade the employee currently holds as a way to satisfy its requirement to provide a reasonable accommodation. For disability retirement, the agency seems to only look for same-grade positions to satisfy accommodation efforts. How is the discrepancy handled?

For disability retirement purposes, an accommodation means an adjustment made to an employee's job or work environment that enables the employee to perform the duties of the position. Reasonable accommodation may include modifying the worksite, adjusting the work schedule, and obtaining or modifying equipment.

When looking at reassignment an agency must certify whether they can reassign an individual who is qualified for reassignment (able to meet the minimum requirements for grade and series in question) to a vacant position of the same grade, pay level, tenure and commuting area (see 5 CFR 831.1202).

43. Does refusal to accept a valid reassignment offer also terminate the employee's eligibility for a disability retirement?

Under 5 CFR 831.1207, OPM considers a disability application to be withdrawn when an agency reports to OPM that it has reassigned an applicant or an employee has refused a reassignment to a vacant position, or the agency reports to OPM that it has successfully accommodated the medical condition in the employee's current position. Placement consideration is limited only by agency authority and can occur after OPM's allowance of the application up to the date of separation for disability retirement. The employing agency must notify OPM immediately if any of these events occur.

## **Timelines & Statistics**

44. Why do application packages take as long as 9 months?

Processing time is affected by a number of factors including, but not limited to:

February 2013

1. Incomplete preliminary application and need for additional documentation;
2. Delays in applying for Social Security disability or providing evidence of application or denial of Social Security disability (CSRS Offset and FERS only);
3. Incomplete Final package; and,
4. Evidence of workers' compensation receipt.

45. When do you anticipate an updated CSRS and FERS Handbook will be released?

We are in the process of updating chapters and plan to release updated chapters as they are ready. We had several chapters ready for release before recent law and policy changes required subsequent revision. This is still in process.

46. How long does it generally take to process a disability retirement?

As of January 2013, initial disability applications are being processed on an average of 92 days. Of course, this number can fluctuate based on workloads.

47. We know that disability retirement begins the next day after LDOP and OPM pays monthly, but how long is it currently on average to get the interim check issuance process started? Can you share what the average timelines are currently from OPM's receipt of email LDOP for a current employee and the issuance of the first interim disability check? Does the LDOP email actually speed anything up, or is everything on hold until you receive the additional documentation we send after receiving the notice of approved disability?

Upon receiving the LDOP from the agency, interim pay is issued within average of 7-10 days. Receiving the LDOP allows OPM to place the applicant into interim pay within several days pending receipt of the final records from the agency.

48. What is the approval rate for OPM Disability Claims?

Approval rate is around 80%

### **Type of Retirement - Voluntary vs. Disability**

49. An employee submits two retirement packages. One is voluntary and the other is a disability application. Which application should we submit first?

The non-disability application should be submitted first, and then the disability application can be submitted within 1 year of the separation date. Submission of a non-disability application after a disability application is considered withdrawal of the disability application.

50. If the employee is approved for disability retirement, as well as the voluntary retirement, who decides which type of retirement is processed?

OPM would contact the retiree allowing them to elect which benefit they prefer.

51. What is the benefit of applying for voluntary and disability retirement? Is there a financial benefit between the two?

Depending on the individual's age and amount of service, one benefit may be financially greater than the other.

52. What would be the benefit of a FERS employee applying for regular retirement when the disability retirement annuity is so much larger?

Ultimately that decision would be up to the employee to decide if they wanted one benefit in lieu of the other if eligible for both. An employee who is eligible for a non-disability retirement may also be entitled to the annuity supplement. The annuity supplement would not be payable on the disability retirement.

53. Why would someone benefit for a disability requirement when they qualify for a regular immediate retirement?

They may have disability insurance that may pay additional benefits. Although the sick pay exclusion on Federal tax no longer applies, some states may tax disability benefits differently. In addition, the 5 year health benefits enrollment prior to retirement is waived.

54. If someone is eligible for regular retirement, would they be approved for disability retirement if they applied?

Eligibility for a non-disability retirement does not effect the decision on a disability retirement application.

55. What is the advantage of processing a voluntary retirement before the disability retirement? What are the advantages of filing for a disability retirement when you are already eligible for a voluntary retirement?

It is advantageous to process the voluntary retirement first to ensure receipt of annuity payments. There would be no guarantee the disability retirement would be approved.

56. If a FERS employee files a disability retirement, can this employee file a regular retirement application and retire as MRA+10 while waiting for the disability retirement decision?

Yes, they can. If the disability retirement is approved, OPM would recalculate the annuity under the disability provisions. If the employee wants to apply for both, they should apply for the non-disability retirement first. Receipt of a non-disability application after a disability application is deemed to be a withdrawal of the disability application.