



FIRE AND POLICE DISABILITY AND RETIREMENT City of Portland, Oregon



1800 SW First Ave., Suite 250, Portland, OR 97201 · (503) 823-6823 · Fax: (503) 823-5166
Samuel Hutchison, Director fpdr@portlandoregon.gov

EXHIBIT "A" Proposed Rule Amendments March 19, 2024

5.3.01 – DEFINITIONS

For purposes of the various sections of the Administrative Rules, capitalized terms shall have the meanings described in the Definitions of each section. Capitalized terms not otherwise defined shall have the meanings prescribed under Chapter 5 of the City Charter.

"Active Member." The term "Active Member" means a Member who is actively employed as a Member in the Bureau of Police or Bureau of Fire and Rescue and does not include a Member receiving disability or retirement benefits under Chapter 5.

"Alternate Payee." The term "Alternate Payee" means a spouse, former spouse or dependent minor child of a Member.

"Board." The term "Board" or "Board of Trustees" shall mean the Board of Trustees of the Fire and Police Disability and Retirement Fund.

"Dependent Minor Child." The term "Dependent Minor Child" means a child, natural or adopted, of a FPDR Two or FPDR Three Member who is substantially supported by the FPDR Two or FPDR Three Member, the FPDR Two or FPDR Three Member's Surviving Spouse or the FPDR Two or FPDR Three Member's estate and is under 18 years of age and unmarried.

"Director." The term "Director" where used in these Administrative Rules shall mean the Fund Director and/or Fund Administrator or their designee.

"FPDR One." The term "FPDR One" shall refer to Members who are sworn employees of the Bureau of Fire and Rescue, and Bureau of Police and who receive benefits under Article 5 of Chapter 5 of the Charter of the City of Portland, Oregon.

"FPDR Two." The term "FPDR Two" shall refer to Members who are sworn employees of the Bureau of Fire and Rescue, and Bureau of Police who are not FPDR One Members and were sworn before January 1, 2007 and who receive benefits under Article 3 of Chapter 5 of the Charter of the City of Portland, Oregon.

"FPDR Three." The term "FPDR Three" shall refer to Members who are sworn employees of the Bureau of Fire and Rescue, and Bureau of Police first sworn on or after January 1, 2007 and who receive retirement benefits under the Public Employees Retirement System of the State of Oregon and disability benefits under Article 3 of Chapter 5 of the Charter of the City of Portland, Oregon.

"Fund." The term "Fund" shall mean the Fire and Police Disability and Retirement Fund established under Section 5-101 of the Plan.

"Medically Stationary." The term "Medically Stationary" means that no further material improvement can reasonably be expected from medical treatment or the passage of time.

"Member." The term "Member" means

(A) Those sworn permanent employees of the Bureau of Fire and Rescue having the job classifications of Fire Fighter, Fire Fighter Specialist, Fire Fighter Communications, Fire Lieutenant, Fire Training Officer, Staff Fire Lieutenant, Fire Captain, Fire Training Captain, Fire Battalion Chief, Deputy Fire Chief, Division Fire Chief, City Fire Chief, Fire Inspector I, Fire Inspector II, Fire Inspector I Specialist, Staff Fire Captain, Fire Lieutenant Communications, Harbor Pilot, Assistant Fire Marshal, Assistant Public Education Officer and EMS Coordinator;

(B) Those permanent sworn employees of the Bureau of Police having the job classifications of Police Officer, Police Sergeant, Police Detective, Criminalist, Police Lieutenant, Police Captain, Police Commander, Deputy Police Chief, Assistant Police Chief, and Police Chief.

(C) Persons first sworn on or after January 1, 2013 shall be a Member of this plan, and eligible for benefits under these Administrative Rules, upon completion of six (6) consecutive months of employment as a permanently appointed sworn employee in the Bureau of Fire or Police.

Membership shall continue until the Member's employment with the Bureau of Fire and Rescue or Bureau of Police terminates for any reason, other than retirement pursuant to Section 5-304 of the Plan or disability under Section 5-306 or 5-307 of the Plan.

Exceptions

(A) Persons other than FPDR Three Members who are currently employed by the Bureau of Fire and Rescue or the Bureau of Police who participate in the Public Employees Retirement System of the State of Oregon, or will so participate after a waiting period, shall not be Members.

(B) The chief of the Bureau of Police or the Bureau of Fire and Rescue shall be a Member unless the terms of employment of such chief provide otherwise.

An Active Member (except those Members covered under Article 5 of the Plan) whose employment is terminated after completing five Years of Service shall be ineligible for any Plan

benefits after such termination except the vested termination benefits described in Section 5-305 of the Plan. A Member (except those members covered under Article 5 of the Plan) whose employment is terminated after completing one-half Year of Service and before completing five Years of Service shall be ineligible for any Plan benefits after such termination except the unvested termination benefits described in Section 5-305 of the Plan.

A Member who is receiving benefits under Article 5, Prior Benefits, of the Plan or who has voluntarily elected to be covered under Article 5 of the Plan shall be ineligible to receive benefits under Article 3 of the Plan. Notwithstanding the preceding sentence, a Member who was receiving disability benefits on January 1, 1990 but subsequently returns to full duty, without limitation, and earns two more Years of Service may irrevocably elect to be covered under Article 3 rather than Article 5. A member who returns to duty, in a regularly budgeted sworn job classification, in the bureau of which they are a member on a full time basis (either 40 hours per week, 42 hours per week or 53 hours per week in the Bureau of Fire and Rescue or 40 hours per week in the Bureau of Police) will be deemed to have returned to full duty without limitation.

"Plan." The term "Plan" shall mean the Fire and Police Disability, Retirement and Death Benefit Plan which appears as Chapter 5 of the Charter of the City of Portland, Oregon.

"Significant Factor." The term a "Significant Factor" means an important, proximate cause.

"Substantial Gainful Activity." A Member will be considered to be capable of "Substantial Gainful Activity" if they are qualified, physically, and by education and experience, to pursue activities or employment which will produce earnings, profits or remuneration equal to or exceeding one-third of the Member's rate of Base Pay while on disability. In determining whether a Member has sufficient education and experience to pursue other activities or employment, the following factors shall be considered:

- (A) Previous employment experience;
- (B) Formal and informal education;
- (C) Formal and informal training;
- (D) Knowledge and general abilities;
- (E) Transferable skills;
- (F) Residual functional mental and physical abilities.

"Spouse." The term "Spouse" shall, on and after June 26, 2013, mean an individual to whom a Member is lawfully married under state law, and shall be defined consistent with Rev. Rul. 2013-17 and Notice 2014-19, under which the terms "Spouse," "husband and wife,"

“husband,” and “wife” include an individual married to another individual of the same sex if the individuals are lawfully married under state law, and the term “marriage” includes such a marriage between individuals of the same sex, provided that the marriage was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages.

~~“Surviving Spouse.” The term “Surviving Spouse” shall mean the person to whom the Member was legally married throughout the twelve-month period preceding death, and from whom the Member was not judicially separated or divorced by interlocutory or final court decree at the time of death. In accordance with Ordinance No. 176258, benefits provided to Fund Members’ surviving spouses are extended on equal terms to gay and lesbian Members same-sex domestic partners. All references in Chapter 5 of the Charter of the City of Portland, and/or in the Administrative Rules to “surviving spouse” shall be understood to apply on equal terms to the same-sex domestic partner of the Member.~~

“Surviving Spouse.” The term “Surviving Spouse” means the individual who, at the time of the Member’s death, was the Spouse of the Member, had been the Member’s Spouse throughout the 12-month period immediately preceding the Member’s death and had not been judicially separated or divorced by interlocutory or final court decree at the time of death, unless otherwise provided in a domestic relations order that is enforceable with respect to the Member’s Plan benefit. A same-sex domestic partner of a Member who filed an affidavit of domestic partner status form in accordance with Ordinance No. 176258 or a registered domestic partnership certificate with FPDR prior to June 26, 2013, is also considered a Surviving Spouse.



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Proposed Rule Amendments

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5.4.01 – DEFINITIONS

“Accrued Benefit.” The term “Accrued Benefit” shall mean the amount of FPDR pension benefits a Member has earned under the Plan, generally based on the Member’s Years of Service and Final Pay and the 2.8 percent accrual rate. An Accrued Benefit is only calculated for a Member who has completed the service requirement for vesting under Chapter 5 of the City Charter.

“Actuarial Equivalent.” The term “Actuarial Equivalent” shall mean the adjustment necessary to convert a Member’s FPDR pension benefit into different payment forms or payment periods so that the total value of the Member’s benefit (and the cost to FPDR to provide the benefit) remains equal regardless of the form of benefit or commencement date the Member may elect.

“Alternate Payee.” The term “Alternate Payee” shall mean any spouse, former spouse, legally recognized domestic partner, former legally recognized domestic partner, child or other dependent of a Member who is recognized by a Domestic Relations Order as having a right to receive all or a portion of a Member’s retirement benefits.

“Annuity.” The term “Annuity” shall mean a contract or promise that provides an income for a specified period of time such as a certain number of years or a lifetime.

- A Joint and Survivor Annuity is the form of a Member’s FPDR retirement benefit in which benefit payments continue after the Member’s death to the Member’s Surviving Spouse or, if none, the Member’s Dependent Minor Children. The amount of benefit that continues to the beneficiary of an FPDR Two Member is 25%, 50%, 75% or 100% of the benefit the Member was receiving before death, depending on the Member’s irrevocable election at retirement, and of an FPDR One Member as shown in the Survivor Annuity Table in Charter Section 5-118. Death benefits payable to a Surviving Spouse are paid for the Surviving Spouse’s life. Death benefits payable to a Dependent Minor Child are payable until the date the child reaches 18 or marries, whichever occurs first.

- A Single Life Annuity is the form of benefit payment that provides a monthly income which is paid for the life of one person, the Alternate Payee.

“Beneficiary.” The term “Beneficiary” shall mean a person, other than a Member, who receives benefits under this program.

“Base Pay.” The term “Base Pay” shall mean the pay of the FPDR Two or FPDR Three Member’s position in the Bureau of Fire or Police, including premium pay but excluding overtime and payments for unused vacation, sick or other leave. When a Member is paid overtime for part of their regular work schedule as required by Fair Labor Standards Act provisions, the straight-time portion of the overtime hours in the Member’s regular work schedule shall be included in Base Pay.

“Claim.” The term “Claim” means, for the purposes of this section of the Administrative Rules, a dispute by a Member or Beneficiary of a decision by the FPDR staff with regard to a retirement or death benefit under Chapter 5 of the City Charter. A Claim may also be filed by an authorized representative of the Member or Beneficiary who is the claimant.

“Claimant.” The term “Claimant” means, for the purposes of this section of the Administrative Rules, a Member or Beneficiary with a Claim or an authorized representative of the Member or Beneficiary with a Claim.

“Discovery.” The term “Discovery” means Claim documents, including chart notes, medical records, medical and vocational reports, correspondence between the Member and the Fund, recorded statement of the Member and any witness, and correspondence related to the Member’s Claim(s) to and from the Office of Administrative Hearings. Discovery does not include Claim documents that are 1) materials protected under the lawyer-client privilege as defined in Oregon Rules of Evidence 40.225 Rule 503; 2) attorney work products; and 3) material reflecting the mental impressions, case values or merits, plans or thought processes of the Member, Member’s attorney or Member’s representative or the Fund, Fund’s attorney or Fund’s representative.

“Domestic Relations Order.” A "Domestic Relations Order," or “DRO,” is any judgment, decree or order (including approval of a property settlement agreement) which is made pursuant to a state domestic relations law (including a community property law) and which relates to the payment of marital property rights to an Alternate Payee and which has been entered by a court of competent jurisdiction and has been accepted by the Director. A DRO may divide a Member’s FPDR retirement benefits using one of two different approaches:

- A “separate interest” DRO takes a portion of the financial value of the Member’s retirement benefit as of a particular division date and assigns it to the Alternate Payee as a separate legal interest, with the Alternate Payee’s portion of the benefit being paid to the Alternate Payee based on the Alternate Payee’s life expectancy. In all cases, the financial value of benefits divided under a separate interest DRO is determined using the Plan’s definition of Actuarial Equivalent. This is the most common type of DRO and generally applies where the DRO is entered prior to the date the Member’s benefits are in pay status.

- A “shared interest” DRO is a division of the Member’s annuity payment in a specific amount or percentage between the Member and the Alternate Payee. The Member’s benefit is “shared” with the Alternate Payee; no legal separate interest is created for the Alternate Payee. The sum of total monthly benefits paid to both the Member and the Alternate Payee under a shared interest DRO is equal to the sum of monthly benefits that would have been paid to the Member in the absence of the DRO. If the Alternate Payee predeceases the Member, then the Alternate Payee’s share of the monthly benefit reverts prospectively to the Member. If the Member dies before the Alternate Payee, the Alternate Payee could be treated as a Surviving Spouse in the event the Member has a Surviving Spouse for purposes of death benefits and the DRO treats the Alternate Payee as the Surviving Spouse. Typically, this type of DRO is only used when a Member’s pension payments have commenced prior to issuance of the DRO.

“Final Pay.” The term “Final Pay” is defined in Ordinance No. 190092 as passed by the Portland City Council on August 12, 2020. Ordinance No. 190092 can be found on the City of Portland website

at: <https://efiles.portlandoregon.gov/Record/13932014/> <https://efiles.portlandoregon.gov/Record/13932015/>

“Office of Administrative Hearings.” The term “Office of Administrative Hearings” or “OAH” shall mean an independent body that has been authorized by the Board of Trustees to review the decision of the Director that is concerning retirement or death benefits. The review may take into account all comments, documents, records, and other information the Member or Beneficiary submits, without regard to whether that information was submitted or considered in the initial benefit determination.

“Spouse.” The term “Spouse” shall, on and after June 26, 2013, mean an individual to whom a Member is lawfully married under state law, and shall be defined consistent with Rev. Rul. 2013-17 and Notice 2014-19, under which the terms “Spouse,” “husband and wife,” “husband,” and “wife” include an individual married to another individual of the same sex if the individuals are lawfully married under state law, and the term “marriage” includes such a marriage between individuals of the same sex, provided that the marriage was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages.

~~“Surviving Spouse.” The term “Surviving Spouse” means the individual who, at the time of the Member’s death, was the Spouse of the Member, had been the Member’s Spouse throughout the 12-month period immediately preceding the Member’s death and had not been judicially separated or divorced by interlocutory or final court decree at the time of death, unless otherwise provided in a domestic relations order that is enforceable with respect to the Member’s Plan benefit. The term “Spouse” shall, on and after June 26, 2013, mean an individual to whom a Member is lawfully married under state law, and shall be defined consistent with Rev. Rul. 2013-17 and Notice 2014-19, under which the terms “Spouse,” “husband and wife,”~~

~~“husband,” and “wife” include an individual married to another individual of the same sex if the individuals are lawfully married under state law, and the term “marriage” includes such a marriage between individuals of the same sex, provided that the marriage was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages. A same-sex domestic partner of a Member who filed an affidavit of domestic partner status form in accordance with Ordinance No. 176258 or a registered domestic partnership certificate with FPDR prior to June 26, 2013, is also considered a Surviving Spouse.~~

“Surviving Spouse.” The term “Surviving Spouse” means the individual who, at the time of the Member’s death, was the Spouse of the Member, had been the Member’s Spouse throughout the 12-month period immediately preceding the Member’s death and had not been judicially separated or divorced by interlocutory or final court decree at the time of death, unless otherwise provided in a domestic relations order that is enforceable with respect to the Member’s Plan benefit. A same-sex domestic partner of a Member who filed an affidavit of domestic partner status form in accordance with Ordinance No. 176258 or a registered domestic partnership certificate with FPDR prior to June 26, 2013, is also considered a Surviving Spouse.

“Years of Service.” The term “Years of Service” of a FPDR Two or FPDR Three Member shall mean the service credit for FPDR Two retirement benefits as defined in Charter Section 5-302 and these Administrative Rules.



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5.5.01 – DEFINITIONS

“Alternate Payee.” The term “Alternate Payee” shall mean any spouse, former spouse, legally recognized domestic partner, former legally recognized domestic partner, child or other dependent of a Member who is recognized by a Domestic Relations Order as having a right to receive all or a portion of the death benefits due a Member’s Surviving Spouse.

“Base Pay.” The term “Base Pay” means the base pay of the FPDR Two or FPDR Three Member’s position in the Bureau of Fire or Police, including premium pay but excluding overtime and payments for unused vacation, sick or other leave. When a Member is paid overtime for part of their regular work schedule as required by Fair Labor Standards Act provisions, the straight-time portion of the overtime hours in the Member’s regular work schedule shall be included in Base Pay.

“Conservatorship.” The term “Conservatorship” means the court appointment of a person or entity to manage the interests of an estate, a minor child or incompetent person pursuant to ORS 125.400.

“Dependent Minor Child.” The term “Dependent Minor Child” of a Member shall mean a child, natural (including posthumous) or adopted, of a Member, who is in fact substantially supported by said Member, or such member’s Surviving Spouse or estate, while said child remains under eighteen (18) years of age and unmarried.

“Domestic Relations Order.” A "Domestic Relations Order," or “DRO,” is any judgment, decree or order (including approval of a property settlement agreement) which is made pursuant to a state domestic relations law (including a community property law) and which relates to the payment of marital property rights to an Alternate Payee and which has been entered by a court of competent jurisdiction and has been accepted by the Director. A DRO accepted after June 19, 2015, may require that an Alternate Payee be treated as the Surviving Spouse for FPDR preretirement death benefits if the Alternate Payee is not already in pay status, except that any Dependent Minor Children of the Member who are not supported by the Alternate Payee shall share in the benefit.

“Final Pay.” The term “Final Pay” shall mean the highest Base Pay received by the FPDR Two or FPDR Three Member for any of the three consecutive 365-day or, in a leap year, 366-day periods where the most recent day is the last day for which pay was received in the calendar month preceding the calendar month in which the Member retires, dies, or otherwise terminates employment with the Bureau of Fire or Police. Final Pay for any such period does not include any retroactive payments received by the Member for days preceding such 365-day or 366-day period but does include adjustments to the Base Pay of the Member’s position in the Bureau of Fire or Police that would have been received had the Member’s applicable collective bargaining agreement been in effect during such 365-day or 366-day period.

Final Pay for any FPDR Two or FPDR Three Member who retires, dies or otherwise terminates employment with the Bureau of Fire or Police and has either received FPDR disability benefits or who was employed in a part-time status by the Bureau of Fire or Police during any such 365-day or 366-day period shall be based on the Base Pay for a full-time employee in the Member’s position in the Bureau of Fire or Police at the time of retirement, death or termination from employment.

“PERS.” The Public Employees Retirement System of the State of Oregon.

“Power of Attorney.” The term “Power of Attorney” means an instrument in writing by which the Member or beneficiary appoints another person as their agent with the authority to perform certain specified acts on their behalf.

“Spouse.” The term “Spouse” shall, on and after June 26, 2013, mean an individual to whom a Member is lawfully married under state law, and shall be defined consistent with Rev. Rul. 2013-17 and Notice 2014-19, under which the terms “Spouse,” “husband and wife,” “husband,” and “wife” include an individual married to another individual of the same sex if the individuals are lawfully married under state law, and the term “marriage” includes such a marriage between individuals of the same sex, provided that the marriage was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages.

~~“Surviving Spouse.” The term “Surviving Spouse” means the individual who, at the time of the Member’s death, was the Spouse of the Member and had not been judicially separated or divorced by interlocutory or final court decree at the time of death, unless otherwise provided in a domestic relations order that is enforceable with respect to the Member’s Plan benefit. In addition, the Surviving Spouse of a Member means the individual who had been the Member’s Spouse throughout the 12-month period immediately preceding the Member’s death, except as provided in Charter Section 5-117 and 5-126. The term “Spouse” shall, on and after June 26, 2013, mean an individual to whom a Member is lawfully married under state law, and shall be defined consistent with Rev. Rul. 2013-17 and Notice 2014-19, under which the terms “Spouse,” “husband and wife,” “husband,” and “wife” include an individual married to another individual of the same sex if the individuals are lawfully married under state law, and the term~~

~~“marriage” includes such a marriage between individuals of the same sex, provided that the marriage was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages. A same-sex domestic partner of a Member who filed an affidavit of domestic partner status form or a registered domestic partnership certificate with FPDR in accordance with Ordinance No. 176258 prior to June 26, 2013, is also considered a Surviving Spouse.~~

“Surviving Spouse.” The term “Surviving Spouse” means the individual who, at the time of the Member’s death, was the Spouse of the Member and had not been judicially separated or divorced by interlocutory or final court decree at the time of death, unless otherwise provided in a domestic relations order that is enforceable with respect to the Member’s Plan benefit. In addition, the Surviving Spouse of a Member means the individual who had been the Member’s Spouse throughout the 12-month period immediately preceding the Member’s death, except as provided in Charter Section 5-117 and 5-126. A same-sex domestic partner of a Member who filed an affidavit of domestic partner status form or a registered domestic partnership certificate with FPDR in accordance with Ordinance No. 176258 prior to June 26, 2013, is also considered a Surviving Spouse.

“Years of Service.” The term “Years of Service” of a FPDR Two or FPDR Three Member shall mean the service credit for FPDR Two retirement benefits as defined in Charter Section 5-302 and these Administrative Rules.



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5.6.01 – DEFINITIONS

“Board of Trustees.” As used in these rules relating to hearings procedures, the term “the Board of Trustees” or “the Board” shall mean the Board of Trustees of the Fire and Police Disability and Retirement Fund or a hearings officer appointed by the Board of Trustees pursuant to Charter Section 5-202(b).

“Discovery.” The term “Discovery” means claim documents, including chart notes, medical records, medical and vocational reports, correspondence between the Member and the Fund, recorded statement of the Member and any witness, and correspondence related to the Member’s claim(s) to and from the Office of Administrative Hearings. Discovery does not include claim documents that are 1) materials protected under the lawyer-client privilege as defined in Oregon Rules of Evidence 40.225 Rule 503; 2) attorney work products; and 3) material reflecting the mental impressions, case values or merits, plans or thought processes of the Member, Member’s attorney or Member’s representative or the Fund, Fund’s attorney or Fund’s representative.

“Good Cause.” The term “Good Cause” means any reason why a hearing officer’s impartiality might reasonably be questioned. It includes, but is not limited to, personal bias or prejudice, personal knowledge of disputed facts, conflict of interest, or any other interest that could be substantially affected by the outcome of the proceeding.

"Member." The term "Member" means

(A) Those sworn permanent employees of the Bureau of Fire and Rescue having the job classifications of Fire Fighter, Fire Fighter Specialist, Fire Fighter Communications, Fire Lieutenant, Fire Training Officer, Staff Fire Lieutenant, Fire Captain, Fire Training Captain, Fire Battalion Chief, Deputy Fire Chief, Division Fire Chief, City Fire Chief, Fire Inspector I, Fire Inspector II, Fire Inspector I Specialist, Staff Fire Captain, Fire Lieutenant Communications, Harbor Pilot, Assistant Fire Marshal, Assistant Public Education Officer and EMS Coordinator;

(B) Those permanent sworn employees of the Bureau of Police having the job classifications of Police Officer, Police Sergeant, Police Detective, Criminalist, Police Lieutenant, Police Captain, Police Commander, Deputy Police Chief, Assistant Police Chief, and Police Chief.

(C) Persons first sworn on or after January 1, 2013 shall be a Member of this plan, and eligible for benefits under these Administrative Rules, upon completion of six (6) consecutive months of employment as a permanently appointed sworn employee in the Bureau of Fire or Police.

Membership shall commence at the time a sworn employee effectively receives their initial appointment to either the Bureau of Fire and Rescue or the Bureau of Police and shall continue until the Member's employment with the Bureau of Fire and Rescue or Bureau of Police terminates for any reason, other than retirement pursuant to Section 5-304 of the Plan or disability under Section 5-306 or 5-307 of the Plan.

Exceptions

(A) Persons other than FPDR Three Members who are currently employed by the Bureau of Fire and Rescue or the Bureau of Police who participate in the Public Employee Retirement System of the State of Oregon, or will so participate after a waiting period, shall not be Members.

(B) The chief of the Bureau of Police or the Bureau of Fire and Rescue shall be a Member unless the terms of employment of such chief provide otherwise.

An Active Member (except those Members covered under Article 5 of the Plan) whose employment is terminated after completing five Years of Service shall be ineligible for any Plan benefits after such termination except the vested termination benefits described in Section 5-305 of the Plan. A Member (except those members covered under Article 5 of the Plan) whose employment is terminated after completing one-half Year of Service and before completing five Years of Service shall be ineligible for any Plan benefits after such termination except the unvested termination benefits described in Section 5-305 of the Plan.

A Member who is receiving benefits under Article 5, FPDR One Benefits, of the Plan or who has voluntarily elected to be covered under Article 5 of the Plan shall be ineligible to receive benefits under Article 3 of the Plan. Notwithstanding the preceding sentence, a Member who was receiving disability benefits on January 1, 1990 but subsequently returns to full duty, without limitation, and earns two more Years of Service may irrevocably elect to be covered under Article 3 rather than Article 5. A Member who returns to duty, in a regularly budgeted sworn job classification, in the bureau of which they are a member on a full time basis (either 40 hours per week, 42 hours per week or 53 hours per week in the Bureau of Fire and Rescue or 40 hours per week in the Bureau of Police) will be deemed to have returned to full duty without limitation.

“Office of Administrative Hearings.” The term “Office of Administrative Hearings” or “OAH” shall mean an independent body that has been authorized by the Board of Trustees to conduct an evidentiary hearing under these rules on disputed issues concerning a Member’s benefits under the Plan.

~~“Surviving Spouse.” The term “Surviving Spouse” shall mean the person to whom the Member was legally married throughout the twelve-month period preceding death, and from whom the Member was not judicially separated or divorced by interlocutory or final court decree at the time of death. In accordance with Ordinance No. 176258, benefits provided to Fund Members’ surviving spouses are extended on equal terms to gay and lesbian Members same sex domestic partners. All references in Chapter 5 of the Charter of the City of Portland, and/or in the Administrative Rules to “Surviving Spouse” shall be understood to apply on equal terms to the same sex domestic partner of the Member.~~



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5.7.01 – Definitions

“Aggravation.” The term “Aggravation” means a Worsening of an approved service-connected injury/illness or occupational disability that occurs after the Member’s condition has been deemed Medically Stationary.

“Attending Physician.” The term “Attending Physician” means:

(A) a medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the Oregon Medical Board, or a podiatric physician or surgeon licensed under ORS 677.805 to 677.840 by the Oregon Medical Board, an oral and maxillofacial surgeon licensed by the Oregon Board of Dentistry or a similarly licensed doctor in any country or in any state, territory or possession of the United States, or

(B) for a period of thirty (30) days from the first visit on the initial Claim or for twelve (12) visits, whichever first occurs, a doctor or physician licensed by the State Board of Chiropractic Examiners for the State of Oregon or a similarly licensed doctor or physician in any country or in any state, territory, or possession of the United States. All Members drawing disability benefits shall be examined at least once during each twelve-month period by the Member’s identified physician or a physician appointed by the Director, unless otherwise determined by the Director.

“Base Pay.” The term “Base Pay” means the Base Pay of the FPDR Two or FPDR Three Member’s position in the Bureau of Fire or Police, including premium pay but excluding overtime and payments for unused vacation, sick or other leave. When a Member is paid overtime for part of their regular work schedule as required by Fair Labor Standards Act provisions, the straight-time portion of the overtime hours in the Member’s regular work schedule shall be included in Base Pay.

“Base Pay in Effect at Disability.” The term “Base Pay in Effect at Disability” means the Member’s Base Pay amount at the time the disability payment is due.

“Bi-weekly Disability Benefits.” The term “Bi-weekly Disability Benefits” means disability benefits payable on the same schedule as the Member’s regular payroll on approved service-

connected and occupational disability Claims during a member's first year of receiving disability benefits.

"Claim." The term "Claim" means a written request to FPDR for a retirement, disability or death benefit and may be filed by an Active Member, their representative or legal beneficiary, or Surviving Spouse or other legal representative of a deceased Member. This term may be used synonymously with the term "application."

"Date of Disability." The term "Date of Disability" means the date that the Member's Attending Physician establishes that the Member is first unable to perform the Member's required duties as a result of a service-connected injury/illness or occupational disability that has been determined to arise out of and in the course of the Member's employment in the Bureau of Police or Fire.

"Director." The term "Director" where used in these Administrative Rules shall mean the Fund Director and/or Fund Administrator or their designee.

"Documented Absence." The term "Documented Absence" means documentation of the time missed from a scheduled work shift submitted to the Director demonstrating that the Member was not paid by the Bureau of Fire or Police for that time.

"Full-Time Work." For the purpose of Other Employment, the term "Full-Time Work" means working an average of at least 36 hours per week or the maximum work hours documented in the permanent restriction(s) placed by the Attending Physician.

"Independent Medical Examination (IME)." The term "Independent Medical Examination" means an examination by one or more licensed medical providers in order to provide an opinion of findings in connection with a service-connected injury/illness or an occupational disability Claim. A Physical Capacity Evaluation (PCE) or a Work Capacities Evaluation (WCE) is considered an "IME" under these rules.

"Interim Disability Benefits." The term "Interim Disability Benefits" means an amount that may be payable to a Member for lost time from work prior to the compensability determination or withdrawal of their application for service-connected injury/illness or occupational disability benefits.

"Medically Stationary." The term "Medically Stationary" means that no further material improvement can reasonably be expected from medical treatment or the passage of time.

"Monthly Disability Benefits." The term "Monthly Disability Benefits" means benefits payable once per month on approved service-connected and occupational disability claims after a Member's first year of receiving disability benefits.

“Original Injury.” The term “Original Injury” means the period from the first occasion of medical treatment or disability resulting from a service-connected injury/illness or occupational disability through the date the member first reaches a medically stationary status.

“Other Employment.” The term “Other Employment” means employment with any person, firm, company, corporation, government agency, municipality or Self-Employment, and does not include employment as an Active Member of the Bureau of Fire or Bureau of Police, or work performed as part of an approved Transitional Duty Return to Work Program in accordance with Administrative Rule 5.10.03.

“Pended.” The term “Pended” means the 60-90 day period following FPDR’s receipt of a complete application for benefits on an original Claim or for a Recurrence Claim during which FPDR is evaluating the Claim to determine if the injury or illness arose out of and in the course of the Member’s employment with the Bureau of Fire or Police.

“Preponderance of the Evidence.” The term “Preponderance of the Evidence” means the greater weight of the evidence.

“Primary Physician.” See “Attending Physician.”

“Proximate Cause.” The term “Proximate Cause” means a cause that directly produces an event and without which the event would not have occurred.

“Recurrence.” An Aggravation of a service-connected injury/illness or occupational disability that requires Claim re-opening for additional disability benefits and/or medical benefits.

“Self-Employment.” The term “Self-Employment” means the Member is working as:

- a sole proprietor who conducts a trade or business;
- an independent contractor;
- a member of a partnership that conducts a trade or business; or
- otherwise is in business for themself

Self-Employment is considered Full-Time Work only when the Member is working an average of at least 36 hours per week or the maximum work hours documented in the permanent restriction(s) placed by the Attending Physician.

“Significant Factor.” The term “Significant Factor” means an important Proximate Cause.

“Specialty Physician.” The term “Specialty Physician” means a licensed physician who qualifies as an Attending Physician who provides evaluation, diagnosis or temporary specialized treatment at the request of the Member’s Attending Physician on an approved Claim.

“Spouse.” The term **“Spouse”** shall, on and after June 26, 2013, mean an individual to whom a Member is lawfully married under state law, and shall be defined consistent with Rev. Rul. 2013-17 and Notice 2014-19, under which the terms **“Spouse,” “husband and wife,” “husband,”** and **“wife”** include an individual married to another individual of the same sex if the individuals are lawfully married under state law, and the term **“marriage”** includes such a marriage between individuals of the same sex, provided that the marriage was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages.

“Substantial Gainful Activity.” The term **“Substantial Gainful Activity”** means the Member is qualified, physically and by education and experience, to pursue employment with earnings equal to or exceeding one-third of the Member’s rate of Base Pay in Effect at Disability.

“Surviving Spouse.” The term **“Surviving Spouse”** means the individual who, at the time of the Member’s death, was the Spouse of the Member and had not been judicially separated or divorced by interlocutory or final court decree at the time of death, unless otherwise provided in a domestic relations order that is enforceable with respect to the Member’s Plan benefit. In addition, the Surviving Spouse of a Member means the individual who had been the Member’s Spouse throughout the 12-month period immediately preceding the Member’s death, except as provided in Charter Section 5-117 and 5-126. A same-sex domestic partner of a Member who filed an affidavit of domestic partner status form or a registered domestic partnership certificate with FPDR in accordance with Ordinance No. 176258 prior to June 26, 2013, is also considered a Surviving Spouse.

“Suspension of Benefits.” The term **“Suspension of Benefits”** means the payment of disability benefits are stopped by the Director for the period of suspension when the Member has failed to comply with the provisions of Chapter 5 of the City Charter or Administrative Rules.

“Wages Earned in Other Employment.” The term **“Wages Earned in Other Employment”** includes:

- (A) the gross salary, overtime pay, fees, commissions, and other remuneration received by a Member for services rendered as an employee to an employer in Other Employment other than the Bureau of Fire or Bureau of Police;
- (B) any salary, fees, commissions, profits and other remuneration that the Member receives from their Self-Employment in a profession, trade or business; and
- (C) any rental income that the IRS requires to be reported as Self-Employment income.

The term **“Wages Earned in Other Employment”** does not include income from investments such as interest, dividends and capital gains.

“Worsening.” The term “Worsening” means objective findings indicating a deterioration of the approved service-connected injury/illness or occupational disability based on expert medical opinion or an expert medical opinion explaining why the Member’s symptoms indicate a worsening of the approved service-connected injury/illness or occupational disability.

“Years of Service.” The term “Years of Service” of a FPDR Two or FPDR Three Member shall mean the service credit for FPDR Two retirement benefits as defined in Charter Section 5-302 and these Administrative Rules.



FIRE AND POLICE DISABILITY AND RETIREMENT City of Portland, Oregon



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Samuel Hutchison, Director

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Proposed Rule Amendments

March 19, 2024

5.8.01 – DEFINITIONS

“Attending Physician.” The term “Attending Physician” means:

(A) a medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the Oregon Medical Board, or a podiatric physician or surgeon licensed under ORS 677.805 to 677.840 by the Oregon Medical Board, an oral and maxillofacial surgeon licensed by the Oregon Board of Dentistry or a similarly licensed doctor in any country or in any state, territory or possession of the United States, or

(B) for a period of thirty (30) days from the first visit on the initial Claim or for twelve (12) visits, whichever first occurs, a doctor or physician licensed by the State Board of Chiropractic Examiners for the State of Oregon or a similarly licensed doctor or physician in any country or in any state, territory or possession of the United States.

“Base Pay.” The term “Base Pay” means the Base Pay of the FPDR Two or FPDR Three Member’s position in the Bureau of Fire or Police, including premium pay but excluding overtime and payments for unused vacation, sick or other leave. When a Member is paid overtime for part of their regular work schedule as required by Fair Labor Standards Act provisions, the straight-time portion of the overtime hours in the Member’s regular work schedule shall be included in Base Pay.

“Base Pay in Effect at Disability.” The term “Base Pay in Effect at Disability” means the Member’s Base Pay amount at the time the disability payment is due.

“Claim.” The term “Claim” means a written request to FPDR for a retirement, disability or death benefit and may be filed by an Active Member, their representative or legal beneficiary, or ~~s~~Surviving ~~s~~Spouse or other legal beneficiary of a deceased Member. This term may be used synonymously with the term “application.”

“Date of Disability.” The term “Date of Disability” means the date that the Member’s Attending Physician establishes that the Member is first unable to perform the Member’s required duties as a result of a nonservice-connected injury/illness.

“Director.” The term “Director” where used in these Administrative Rules shall mean the Fund Director and/or Fund Administrator or their designee.

“Documented Absence.” The term “Documented Absence” means documentation of the time missed from a scheduled work shift submitted to the Director demonstrating that the Member was not paid by the Bureau of Fire or Police for that time.

“Full-Time Work.” For the purpose of Other Employment, the term “Full-Time Work” means working an average of at least thirty-six (36) hours per week or the maximum work hours documented in the permanent restriction(s) placed by the Attending Physician.

“Independent Medical Examination (IME).” The term “Independent Medical Examination” means an examination by one or more licensed medical providers in order to provide an opinion of findings in connection with a service-connected injury/illness or an occupational disability Claim. A Physical Capacity Evaluation (PCE) or a Work Capacities Evaluation (WCE) is considered an “IME” under these rules.

“Monthly Disability Benefits.” The term “Monthly Disability Benefits” means benefits payable once per month on approved nonservice-connected disability Claims.

“Other Employment.” The term “Other Employment” means employment with any person, firm, company, corporation, government agency, municipality or Self-Employment, and does not include employment as an Active Member of the Bureau of Fire or Bureau of Police, or work performed as part of an approved Transitional Duty Return to Work Program in accordance with Administrative Rule 5.10.03.

“Pended.” The term “Pended” means the 60-90 day period following FPDR’s receipt of a complete application for benefits on an original Claim or for a Recurrence Claim during which FPDR is evaluating the Claim to determine if the injury or illness arose out of and in the course of the Member’s employment with the Bureau of Fire or Police.

“Self-Employment.” The term “Self-Employment” means the Member is working as:

- a sole proprietor who conducts a trade or business;
- an independent contractor;
- a member of a partnership that conducts a trade or business; or
- otherwise is in business for themselves

Self-Employment is considered Full-Time Work only when the Member is working an average of at least thirty-six (36) hours per week or the maximum work hours documented in the permanent restriction(s) placed by the Attending Physician.

“Specialty Physician.” The term “Specialty Physician” means a licensed physician who qualifies as an Attending Physician who provides evaluation, diagnosis or temporary specialized treatment at the request of the Member’s “Attending Physician” on an approved Claim.

“Spouse.” The term “Spouse” shall, on and after June 26, 2013, mean an individual to whom a Member is lawfully married under state law, and shall be defined consistent with Rev. Rul. 2013-17 and Notice 2014-19, under which the terms “Spouse,” “husband and wife,” “husband,” and “wife” include an individual married to another individual of the same sex if the individuals are lawfully married under state law, and the term “marriage” includes such a marriage between individuals of the same sex, provided that the marriage was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages.

“Substantial Gainful Activity.” The term “Substantial Gainful Activity” means the Member is qualified, physically and by education and experience, to pursue employment with earnings equal to or exceeding one-third of the Member’s rate of Base Pay in Effect at Disability.

“Surviving Spouse.” The term “Surviving Spouse” means the individual who, at the time of the Member’s death, was the Spouse of the Member and had not been judicially separated or divorced by interlocutory or final court decree at the time of death, unless otherwise provided in a domestic relations order that is enforceable with respect to the Member’s Plan benefit. In addition, the Surviving Spouse of a Member means the individual who had been the Member’s Spouse throughout the 12-month period immediately preceding the Member’s death, except as provided in Charter Section 5-117 and 5-126. A same-sex domestic partner of a Member who filed an affidavit of domestic partner status form or a registered domestic partnership certificate with FPDR in accordance with Ordinance No. 176258 prior to June 26, 2013, is also considered a Surviving Spouse.

“Suspension of Benefits.” The term “Suspension of Benefits” means the payment of disability benefits are stopped by the Director for the period of suspension when the Member has failed to comply with the provisions of Chapter 5 of the City Charter or Administrative Rules.

“Wages Earned in Other Employment.” The term “Wages Earned in Other Employment” includes:

(A) the gross salary, overtime pay, fees, commissions and other remuneration received by a Member for services rendered as an employee to an employer in Other Employment other than the Bureau of Fire or Bureau of Police;

(B) any salary, fees, commissions, profits and other remuneration that the Member receives from their Self-Employment in a profession, trade or business; and

(C) any rental income that the IRS requires to be reported as Self-Employment income.

The term “Wages Earned in Other Employment” does not include income from investments such as interest, dividends and capital gains.

“Years of Service.” The term “Years of Service” of a FPDR Two or FPDR Three Member shall mean the service credit for FPDR Two retirement benefits as defined in Charter Section 5-302 and these Administrative Rules.



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Proposed Rule Amendments

March 19, 2024

5.9.01 – DEFINITIONS

“Aggravation.” The term “Aggravation” means a Worsening of an approved service-connected injury/illness or occupational disability that occurs after the Member’s condition has been deemed Medically Stationary.

“Ancillary Services.” The term “Ancillary Services” means services that supplement the care provided by the Member’s physician or other authorized healthcare provider (e.g., physical therapy, occupational therapy, etc.).

“Attending Physician.” The term “Attending Physician” means:

(A) a medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the Oregon Medical Board, or a podiatric physician or surgeon licensed under ORS 677.805 to 677.840 by the Oregon Medical Board, an oral and maxillofacial surgeon licensed by the Oregon Board of Dentistry or a similarly licensed doctor in any country or in any state, territory or possession of the United States; or

(B) for a period of thirty (30) days from the first visit on the initial Claim or for twelve (12) visits, whichever first occurs, a doctor or physician licensed by the State Board of Chiropractic Examiners for the State of Oregon or a similarly licensed doctor or physician in any country or in any state, territory or possession of the United States. All Members drawing disability benefits shall be examined at least once during each twelve-month period by the Member’s identified physician or a physician appointed by the Director, unless otherwise determined by the Director.

“Chart Note.” The term “Chart Note” means a chronological documentation in a Member’s medical record and includes subjective and objective findings, diagnosis, treatment rendered and proposed, status, and recovery and return-to-work objectives.

“Claim.” The term “Claim” means a written request to FPDR for a retirement, disability or death benefit and may be filed by an Active Member, their representative or legal beneficiary, or **s**Surviving **s**Spouse or other legal beneficiary of a deceased Member. This term may be used synonymously with the term “application.”

“CPT.” The term “CPT” means Current Procedural Terminology published by the American Medical Association.

“Curative Care.” The term “Curative Care” means Medical Services required to diagnose, heal or permanently relieve or eliminate a medical condition.

“Customary Fee.” The term “Customary Fee” means a fee that falls within the range of fees normally charged in Oregon for a given service.

“Date of Disability.” The term “Date of Disability” means the date that the Member’s Attending Physician establishes that the Member is first unable to perform the Member’s required duties as a result of a service-connected injury/illness or occupational disability that has been determined to arise out of and in the course of the Member’s employment in the Bureau of Fire or Police.

“Director.” The term “Director” where used in these Administrative Rules shall mean the Fund Director and/or Fund Administrator or their designee.

“Elective Surgery.” The term “Elective Surgery” is surgery which may be necessary in the process of recovery from an injury or illness but need not be done as an emergency to preserve life, function or health.

“Independent Medical Examination” (IME). The term “Independent Medical Examination” means an examination by one or more licensed medical providers in order to provide an opinion of findings in connection with a service-connected injury/illness or an occupational disability Claim. A Physical Capacity Evaluation (PCE) or a Work Capacities Evaluation (WCE) is considered an “IME” under these rules.

“Medical Service.” The term “Medical Service” means any medical treatment, including:

- (A) surgery
- (B) diagnostic procedures
- (C) chiropractic
- (D) dental
- (E) in-patient and out-patient hospitalization
- (F) professional nursing
- (G) ambulance transport

(H) prescription drugs

(I) medicine

(J) durable medical equipment

(K) crutches

(L) braces and supports

(M) prosthetic appliances

(N) physical Restorative Services

“Medical Treatment.” The term “Medical Treatment” means the management and care of a Member by a licensed medical provider for the purpose of combating disease, injury or disorder.

"Medically Stationary." The term "Medically Stationary" means that no further material improvement can reasonably be expected from medical treatment or the passage of time.

“Nurse Case Manager.” A licensed nurse assigned by the Director to follow and monitor the progress of recovery of an injury/illness or occupational Claim.

“Original Injury.” The term “Original Injury” means the period from the first occasion of medical treatment or disability resulting from a service-connected injury/illness or occupational disability through the date the Member reaches a Medically Stationary status.

“Palliative Care.” The term “Palliative Care” means post-Medically Stationary Medical Services required to reduce or temporarily moderate the intensity of an otherwise stable condition. It does not include those Medical Services needed to diagnose, heal or permanently alleviate a medical condition.

“Physical Capacity Evaluation.” The term “Physical Capacity Evaluation” means an objective, directly observed measurement of a Member’s ability to perform a variety of physical tasks combined with subjective analyses of abilities by Member and evaluator. Physical tolerance screening, Blankenship’s Functional Evaluation and Functional Capacity Assessment will be considered to have the same meaning as Physical Capacity Evaluation.

“Physical Restorative Services.” The term “Physical Restorative Services” means services prescribed by the Member’s physician that are designed to restore and maintain the Member to the highest functional ability consistent with the Member’s condition.

“Preponderance of the Evidence.” The term “Preponderance of the Evidence” means the greater weight of the evidence.

“Proximate Cause.” The term “Proximate Cause” means a cause that directly produces an event and without which the event would not have occurred.

“Recurrence.” The term “Recurrence” means an Aggravation of a service-connected injury/illness or occupational disability that requires Claim reopening for additional disability benefits and/or medical benefits after the Member has reached Medically Stationary status with respect to the approved service-connected injury/illness or occupational disability.

“Significant Factor.” The term a “Significant Factor” means an important Proximate Cause.

“Specialty Physician.” The term “Specialty Physician” means a licensed physician who qualifies as an “Attending Physician” who provides evaluation, diagnosis or temporary specialized treatment at the request of the Member’s Attending Physician on an approved Claim.

“Spouse.” The term “Spouse” shall, on and after June 26, 2013, mean an individual to whom a Member is lawfully married under state law, and shall be defined consistent with Rev. Rul. 2013-17 and Notice 2014-19, under which the terms “Spouse,” “husband and wife,” “husband,” and “wife” include an individual married to another individual of the same sex if the individuals are lawfully married under state law, and the term “marriage” includes such a marriage between individuals of the same sex, provided that the marriage was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages.

“Surviving Spouse.” The term “Surviving Spouse” means the individual who, at the time of the Member’s death, was the Spouse of the Member and had not been judicially separated or divorced by interlocutory or final court decree at the time of death, unless otherwise provided in a domestic relations order that is enforceable with respect to the Member’s Plan benefit. In addition, the Surviving Spouse of a Member means the individual who had been the Member’s Spouse throughout the 12-month period immediately preceding the Member’s death, except as provided in Charter Section 5-117 and 5-126. A same-sex domestic partner of a Member who filed an affidavit of domestic partner status form or a registered domestic partnership certificate with FPDR in accordance with Ordinance No. 176258 prior to June 26, 2013, is also considered a Surviving Spouse.

“Usual and Customary Fee.” The term “Usual and Customary Fee” means a treatment service fee that falls within the range of fees normally charged for treatment of occupational injuries and illnesses in Oregon.

“Work Capacity Evaluation.” The term “Work Capacity Evaluation” means a physical capacity evaluation with special emphasis on the ability to perform a variety of vocationally oriented

tasks based on specific job demands. Work Tolerance Screening will be considered to have the same meaning as Work Capacity Evaluations.

“Worsening.” The term “Worsening” means objective findings indicating a deterioration of the approved service-connected injury/illness or occupational disability based on expert medical opinion or an expert medical opinion explaining why the Member’s symptoms indicate a deterioration of the approved service-connected injury/illness or occupational disability.