

742-3-05

**Disability benefits procedure.**

(A) For purposes of divisions (C)(2), (C)(3), (C)(4), and (C)(5) of former section 742.37 of the Revised Code and section 742.38 of the Revised Code and this rule, the following terms shall have the meanings set forth herein:

- (1) "Board," shall mean the board of trustees of the Ohio police and fire pension fund ("OP&F").
- (2) "Applicant" shall mean a member of OP&F who has filed any type of application for disability retirement benefits or any person who has filed such application on behalf of an incapacitated member in accordance with division (B) of section 742.38 of the Revised Code and rules 742-3-12 and 742-3-13 of the Administrative Code and who does not have benefits vested under the deferred retirement option plan under section 742.444 of the Revised Code.
- (3) "Disability benefit recipient" shall have the meaning described in division (A) of section 742.40 of the Revised Code.
- (4) "On-duty illness or injury" means an illness or injury that occurred during or resulted from the performance of official duties under the direct supervision of a member's appointing authority, ~~and is not an exacerbation of an existing illness or injury medically diagnosed not later than (a) one minute before twelve p.m. on the day prior to such member's full-time appointment to a police department or a fire department or (b) the date on which a member becomes a "member of the fund" (as such term is defined in division (E) of section 742.01 of the Revised Code), whichever event is the first to occur.~~
- (5) "Off-duty illness or injury" means an illness or injury that did not occur during or result from the performance of official duties under the direct supervision of a member's appointing authority. Unless the illness or injury meets the presumption criteria outlined in division (A) of section 742.38 of the Revised Code or competent and credible evidence is submitted to OP&F, a disability condition is presumed to be the result of an off-duty illness or injury, ~~or is an exacerbation of an existing illness or injury medically diagnosed not later than (a) one minute before twelve p.m. on the day prior to such member's full-time appointment to a police department or fire department or (b) the date on which a member becomes a "member of the fund" (as such term is defined in division (E) of section 742.01 of the Revised Code), whichever event is the first to occur. Except for the conditions described in division (D)(3) of section 742.38 of the Revised Code or former division (C)(4) of section 742.37 of the Revised Code, a disabling condition is presumed to be the result of an off-duty illness or injury unless competent and credible evidence is submitted to the contrary to the board.~~

- (6) "Permanent disability" means a condition of disability with respect to which the board finds that there is no present indication of recovery or those presumptive conditions set forth in division (D)(3) of section 742.38 of the Revised Code, which, ~~for those applicants filing disability retirement applications from and after January 1, 1999,~~ shall be determined through the medical reports filed with OP&F, as required by the terms of division (A)(1) of section 742.38 of the Revised Code and rule 742-1-02 of the Administrative Code. ~~Notwithstanding the foregoing, for those applicants filing disability retirement applications prior to January 1, 1999, the presumptive conditions will apply only if OP&F receives a copy of that member's medical reports for physical examinations of such member prior to (a) one minute before twelve p.m. on the day prior to such member's full-time appointment to a police department or a fire department or (b) the date on which a member becomes a "member of the fund" (as such term is defined in division (E) of section 742.01 of the Revised Code), whichever event is the first to occur, and the member satisfies the criteria established in division (A) of section 742.38 of the Revised Code.~~
- (7) "Total disability" shall have the meaning set forth in division (D)(1)(a) of section 742.38 of the Revised Code.
- (8) "Partial disability" shall mean a condition of disability with respect to which the board finds the applicant is prevented from performing the member's official police or fire duties and member's earnings capacity is impaired.
- (9) "Guides" shall mean the American medical association's "Guides to the Evaluation of Permanent Impairment, ~~fifth~~<sup>fourth</sup> edition," and such other subsequent editions adopted by the board from time to time, whether in whole or in part.
- (10) "Occupational characteristics" shall mean the U.S. department of labor's occupational characteristics for police officer (government service) and fire fighter (any industry) positions as the standards for determining the presence or absence of disability.
- (11) "Medical advisor," as referred to in this rule, shall mean the expert physician appointed by O&F's board of trustees ~~who the chairman of the board to advise the board during its deliberations of appeals of decisions relating to disability applications.~~
- (12) "Disability evaluation panel (DEP)" shall mean that panel established by the board to make written recommendations to the board on pending disability

applications. The DEP shall be comprised of three voting members and at least two non-voting members. The three voting members of the DEP shall be members of the board, who shall be the members of the disability committee, who shall be appointed to such committee by the chairman of the board, and shall be comprised of one active firefighter trustee, one active police officer trustee, and one ~~retiree~~~~ex-officio~~ trustee. The non-voting members of the DEP shall be comprised of expert physicians, including the alternate, all of whom are appointed by the board of trustees~~chairman of the board to the DEP~~ and at least one of the non-voting members shall be an expert in vocational evaluations who shall provide vocational assessments of disability applicants to the DEP. The alternate non-voting member of the DEP shall be a physician appointed by the board of trustees~~chairman~~ who specializes in occupational medicine and shall serve in the place of a non-voting member of the DEP in the absence or incapacity of any other non-voting physician member of the DEP.

- (13) "DEP medical advisor," as referred to in this rule, shall mean the expert physician appointed by the board of trustees to advise the DEP during its deliberations of disability applications, who shall be a different physician than the medical advisor.
- (14) ~~"Submitted," for purposes of filing a disability application on or after November 1, 2002, shall include the notarization of such application while the applicant is a member of the fund (as defined in division (E) of section 742.01 of the Revised Code), provided the application is received by OP&F not later than sixty days after the expiration of the applicant's status as a member.~~

(B) Impairment and disability evaluation criteria:

- (1) OP&F staff shall work with the medical advisor or physicians who are members of the DEP and shall assign a competent and disinterested physician and expert in vocational evaluations to conduct medical examinations for purposes of determining a member's disability, as provided by law, medical impairment and eligibility for disability retirement benefits. Prior to March 1, 1999, the OP&F staff shall work with the medical advisor or physicians who are members of the DEP and shall assign a competent and disinterested physician to conduct medical examinations for purposes of determining a member's disability, as provided by law, medical impairment and eligibility for disability retirement benefits. After March 1, 1999, the OP&F staff shall work with the medical advisor or physicians who are members of the DEP and shall assign a competent and disinterested physician and expert in vocational evaluations to conduct medical examinations for purposes of determining a member's disability, as provided by law, medical impairment

~~and eligibility for disability retirement benefits.~~

- (2) In evaluating a member's disability, as provided by law, medical impairment and eligibility for disability retirement benefits, the DEP and the board will use the official duties provided by the employer, but in the event such information is not provided by the employer or does not clearly define the applicable job duties, the board and the DEP shall use the criteria contained in the "guides", the occupational characteristics adopted by the board and the criteria set forth in division (D) of section 742.38 of the Revised Code.
- (3) In evaluating a member's eligibility for disability retirement benefits, the physicians, the expert in vocational evaluations, the DEP, and the board shall consider the member's potential for retraining and reemployment and the eligibility criteria set forth in division (D) of section 742.38 of the Revised Code so that the person's ability to be retrained and reemployed shall include any positions, not just police or fire positions.
- (4) The consideration of a member's application shall be limited to the disabling condition(s) listed in the application if supporting medical documentation is provided to OP&F or disclosed by the examination of the physician(s) selected by OP&F. The DEP and the board shall consider and base its findings and recommendations on all competent evidence made available to it, including medical testimony, opinions, statements, and medical reports submitted by the member's employer under section 742.38 of the Revised Code and rule 742-1-02 of the Administrative Code.
- (5) One of the physician non-voting members of the DEP and one of the non-voting members of the DEP who is an expert in vocational evaluations shall submit to the board's disability committee or DEP a written recommendation on each application evaluated followed by a report incorporating a summary of findings, as outlined in the DEP operating guidelines, which is approved by the board of trustees, along with their the medical opinion as to , and ~~comments on the basis of the opinion as well as~~ whether or not the disabling condition results from an on-duty illness or injury and is waivable under the DEP operating guidelines for the DEP physicians and the vocational evaluation from the DEP vocational expert.
- (6) In reviewing applications for disability benefits, the DEP and the board shall rely upon the medical opinions of the DEP physicians and OP&F's medical advisor, who have given due consideration of medical and other evidence presented to OP&F.

(C) Initial application.

- (1) Applications for disability benefits shall be made on a form approved by the board and must be in proper form in order to be processed. The member shall provide necessary substantiating documentation, including but not limited to pertinent hospital records, statements from attending physicians, departmental injury reports, the results of any special diagnostic tests, notice of allowed workers' compensation claims, and any pre-employment physicals or records required or requested under section 742.38 of the Revised Code and rule 742-3-01 of the Administrative Code.
- (2) ~~OP&F~~ For those disability retirement applications filed from and after January 1, 1999, ~~the fund~~ shall notify the member's employer that an application has been filed and will send a courtesy copy of such notice to the member within fourteen days after receiving an application for disability benefits from a member or a person acting on behalf of a member, as required by the terms of division (B) of section 742.38 of the Revised Code. The notice shall state only the position or rank, as required by the terms of division (B) of section 742.38 of the Revised Code.
- (3) For those notices sent under paragraph (C)(2) of this rule, the member's employer shall forward to the board a statement certifying the job description for the position or rank and any other information required by the board to process the application and such report or statement shall be filed with the board not later than twenty-eight days after the employer's receipt of the notice referred to in paragraph (C)(2) of this rule or filing an application on behalf of a member, whichever is the first to occur. ~~If the employer fails to timely submit such report or statement with the board from and after January 1, 1999, the board shall assess the fine pursuant to division (B) of section 742.38 of the Revised Code.~~
- (4) ~~The~~ Prior to January 1, 1999, the board may request a copy of the physician's report of the member's physical examination taken on entry into the police or fire department, as more fully provided for in division (B) of section 742.38 of the Revised Code, and if the employer fails to submit the required report or notify ~~OP&F~~ that no records exist no later than twenty-eight days after receiving a request from the board, ~~the board shall assess the fine pursuant to division (B) of section 742.38 of the Revised Code.~~ After January 1, 1999, the member's employer shall forward the physician's report of the member's physical examination taken on entry into the police or fire department, as more fully provided in division (A)(1) of section 742.38 of the Revised Code, and if the employer fails to forward such report to ~~OP&F~~ OP&F the fund more than thirty days after the member becomes an OP&F member of the fund, ~~OP&F~~ OP&F the fund shall assess a fine in the amount of one hundred dollars per day, beginning with the first day after the date the report is due and ending on

the last day prior to the date on which the report is received by OP&F~~the fund~~, as more fully provided in division (A)(2) of section 742.38 of the Revised Code. Even though a member may not have a disabling condition that is presumed, by law, to have been incurred in the member's performance of his/her official duties, that does not foreclose the member from being awarded a service-incurred disability grant.

- (5) ~~Prior to March 1, 1999, OP&F shall schedule a member covered by the pending disability application for examination by at least one medical examiner, unless it is medically inadvisable to do so, and OP&F may also schedule such member for evaluation by the expert in vocational evaluations. After March 1, 1999, OP&F shall schedule the member covered by the pending disability benefit application for examination by at least one medical examiner and one expert in vocational evaluations designated by OP&F~~the fund~~, unless it is medically inadvisable to do so.~~
- (a) Payment of any fees connected with the acquisition of records or the preparation of reports of the attending physicians shall be the responsibility of the member.
- (b) Payment of any fees connected with the preparation of report of the examining physicians or vocational evaluators of OP&F shall be the responsibility of OP&F.
- (6) When all the necessary medical reports and records have been received by OP&F, including those reports required or requested under paragraphs (C)(3) and (C)(4) of this rule, OP&F shall schedule such application for review and consideration by the DEP, who shall make a written recommendation to the board based upon the criteria set forth in paragraph (B) of this rule. The board, based on the written recommendation of the DEP, will then consider the application and make an initial determination of disability. The board may:
- (a) Grant a disability benefit;
- (b) Deny disability benefits; or
- (c) Postpone determination, pending an additional examination, or the submission of additional fact.

The member covered by a pending disability retirement application may withdraw the application through a written authorization filed with OP&F at any time prior to the board's award of the initial determination

of disability. To the extent that a pending disability application is withdrawn by a member, the withdrawn application shall not be presented to the DEP or the board, depending on when it's received by OP&F.

(7) Any disability benefit award determined by the board shall be effective as of the date that the board made its initial determination of disability on such pending disability retirement application. When the DEP physician's findings of fact are sent to the DEP and disability committee for review, the findings may be sent to the member and the member's agent, along with copies of the reports of the independent medical and vocational evaluators. The DEP physician recommendations will not, however, be released until the board has made an initial determination of disability.

(8) The member covered by the pending disability retirement application shall be notified of the board's initial determination of disability within thirty days after the board's final action and such notice shall be sent by certified mail, return receipt requested. The member covered by the pending disability retirement application shall be advised of his or her right to:

- (a) Accept the benefit grant;
- (b) Waive the benefits and continue working; or
- (c) Appeal the initial determination of the board.

(D) Acceptance or waiver of benefits.

(1) Not later than ninety days after receipt of the notice of the board provided for in paragraph (C), (E), or (F) of this rule, the disability benefit recipient shall elect, on a form provided by the board, either to accept or waive the board's determination of disability. For purposes of making the determination whether the disability applicant has accepted or waived the board's determination of disability, the fund may conclusively rely upon the fund's books and records.

(a) If no such election is filed with ~~OP&F~~ ~~the fund~~ within the time period provided in paragraph (D)(1) of this rule, the award shall be rescinded, effective immediately upon the expiration of the ninety-day time period provided for in this paragraph.

(b) Subject to the requirement set forth in paragraph (D)(1)(a) of this rule, if a

member accepts the award and then fails to establish an effective date of retirement by terminating police or fire employment within one hundred eighty days of receipt of notice of the board's determination of disability, as provided under paragraph (C)(8) or (E)(5) of this rule, the disability benefit shall be rescinded, effective immediately upon the expiration of such notice period.

- (c) Notwithstanding the foregoing rescission of disability benefits, such member shall not be foreclosed from later filing another disability benefit application with OP&F and any subsequent applications shall be treated as a new application for disability benefits, except to the extent that such member does not meet the eligibility requirements set forth in division (D) of section 742.38 of the Revised Code.

(E) Appeal of initial determination.

- (1) Any member aggrieved by an action of the board with respect to an application for disability retirement must file a written notice of appeal with OP&F in the form provided by OP&F within ninety days of receipt of the board's initial determination of disability referred to in paragraph (C)(~~6~~7) of this rule. The notice of appeal must contain the member's name, social security number and a brief description of the decision upon which the appeal is based.
- (2) Within ninety days of filing of the notice of appeal, the aggrieved member shall file with OP&F all materials which he or she desires to submit in support of the appeal, including doctors' reports, statements, memoranda, etc. Failure to submit supporting materials or to request an extension of time within which to do so will be sufficient cause for the director of member services to dismiss the appeal provided OP&F gives the member prior written notice of such dismissal and a deadline date by which all materials must be filed with OP&F and the member fails to file the required documentation with OP&F before the designated deadline. Upon application to OP&F before the expiration of the original ninety day period referred to in this paragraph, the director of member services, for good cause shown, may grant the appellant an extension of ninety days within which to file supporting materials. The director of member services may grant the appellant an additional extension based on a recommendation from the DEP medical advisor that there is solid evidence of a medical reason to grant the extension for a period of time recommended by the DEP medical advisor. In no event shall the hearing be postponed more than three times and in no event shall the extensions, in the aggregate, exceed one year.
- (3) Upon receipt of the supporting materials, OP&F shall schedule the member for an appointment with an expert in vocational evaluations if a vocational



evaluation was not done as part of the initial determination of disability. ~~For Prior to March 1, 1999, for those cases where a vocational evaluation and medical examination was done as part of the initial determination of disability and after March 1, 1999, for all appeals of the board's initial determination of disability,~~ OP&F shall provide the supporting materials submitted by the member to the expert in vocational evaluations and the physician for consideration and both the vocational evaluator and physical shall submit to the DEP an addendum to their original reports.

Upon receipt of such updated report(s), the board shall schedule a hearing on the appeal and shall give the appellant reasonable notice of the date, time and place thereof in writing. Such hearings shall be held within ~~sixty~~forty-five days of the receipt of the vocational assessment specialist's report by the board; provided, however, that any hearing may be postponed or continued by the board, either upon application of the appellant or on its own motion. The appellant shall be given the opportunity to be present, with counsel or other representation if he or she chooses, at the hearing. A tape recording of the hearing will be made to provide the board and the medical advisor with a record for further review. Such tape recording of the hearing shall be available to the disability applicant and to those individuals who are authorized by the disability applicant to receive such information, with such authorization in the form required by the fund.

- (4) Following the hearing on appeal, the board may choose to:
- (a) Affirm the original determination of disability;
  - (b) Modify the original determination of disability; or
  - (c) Postpone a decision pending additional examinations or documentation.  
The board's decision on appeal shall be the final determination of the initial disability application, subject to the foregoing time limitations on extensions that can be granted.
- (5) The applicant shall be advised of the board's action within thirty days after the board's final determination of disability and such notice shall be sent by certified mail, return receipt requested. The member covered by the disability appeal shall be advised of the member's right to:
- (a) Accept the benefit granted;
  - (b) Waive the benefit and continue working; or

(c) File a mandamus action.

(F) Post-retirement disability reconsideration.

(1) A member who is receiving a less than maximum partial or off-duty disability and who believes that deterioration of the disabling physical or mental condition awarded by the board has increased the amount of disability, may apply for a reconsideration. Such application shall be on a form prepared by OP&F, which shall be dealt with on not less favorable terms than the process used by the DEP for recommendation to the board on initial determinations of disability. The member shall supply substantiating documentation including:

(a) Recent medical reports and physician's statements;

(b) A wage statement including taxable earnings for the last five years of retirement, primary employers and occupations, and rehabilitation and training programs pursued.

(2) The DEP shall review such evidence and shall make a written recommendation to the board. The board shall, based on the written recommendation of the DEP, review the evidence submitted, and may decide to:

(a) Deny the application for reconsideration;

(b) Approve the application and modify the disability benefit effective the first of the month following the decision; or,

(c) Postpone a determination of the application pending further physical examination, or further documentation.

The board's decision shall be the final determination of an application for reconsideration.

(3) The member shall be advised of the board's final determination within thirty days after the board's final action and such notice shall be sent by certified mail, return receipt requested. The letter shall include notice of the member's right to request a new reconsideration, but the board will consider only one application for reconsideration from a member in any calendar year.

(G) Notwithstanding anything herein to the contrary, once a member has deposited, negotiated, or cashed a disability benefit check from OP&F, accepted health care

benefits from OP&F from and after the date of the board's initial determination of disability, or failed to withdraw his/her retirement application, as outlined in rule 742-3-17 of the Administrative Code, that member may not apply for any new, increased, or additional benefit for the disabling condition(s) described in such application, except for a member who is granted an off-duty disability less than the maximum amount permitted under division (D)(4) of section 742.38 or former division (C)(5) of section 742.37 of the Revised Code, or a member who had fewer than twenty-five years of service credit and was granted a partial disability in an amount less than the maximum permitted by division (D)(2) of section 742.38 or former division (C)(3) of section 742.37 of the Revised Code, may apply for an increase in payments to the maximum amount provided by those sections upon evidence of deteriorating earning capacity. Any subsequent request by that member shall be treated as a new application under this rule. In addition, a member may elect to receive interim payments without waiving the member's right to appeal a disability award, as provided for in paragraph (E) of this rule.

(H) Additional medical treatment:

- (1) As a condition to granting an applicant disability benefits or continuing disability benefits under an existing award, as provided in division (B) of section 742.40 of the Revised Code, the member shall agree in writing on a form provided by the board to obtain any medical treatment recommended by the board's physician(s) and submit the required medical reports over the course of the treatment period.
- (2) Such additional medical treatment shall be of common medical acceptance and readily available, and may include, but is not limited to, medicine, alcohol and/or drug rehabilitation, or mechanical devices.
- (3) Such additional medical treatment must be an allowable medical expense under OP&F's medical expense benefits program.

(I) ~~If From and after January 1, 1999, if the member fails to:~~

- (1) Obtain the recommended treatment required under division (B) of section 742.40 of the Revised Code, as referenced in paragraph (H) of this rule,
- (2) File the required medical report or
- (3) Comply with the required treatment regimen, the board may suspend the awarded disability benefits and medical expense benefits upon ninety days prior written notice to the disability benefit recipient.

- (a) If the disability benefit recipient fails to comply within the aforementioned ninety day notice period, the suspension of medical expense benefits and disability benefits shall be effective on the first day of the month immediately following the expiration of such notice period until the treatment is obtained, the required report is received by the board, or the board's physician certifies that the treatment is no longer helpful or advisable.
  - (b) In the event the disability benefit recipient complies within the aforementioned ninety day notice period or the board's physician certified that the treatment is no longer helpful or advisable, the fund will not suspend the disability benefit recipient's medical expense benefits and disability benefits.
- (J) If, after the aforementioned ninety day notice period, referred to in paragraph (I) of the rule, the disability benefit submits to the requested treatment, submits the required reports, or complies with the required treatment regimen or the board's physician certifies that the treatment is no longer helpful or advisable, the fund will reinstate the disability and medical expense benefits of such disability benefit recipient, effective as of the first day of the month immediately following the month in which the past due statement(s) were received in proper form by the fund, subject to the terms of rule 742-7-06 of the Administrative Code. In such event, the disability benefit recipient shall fully cooperate with the fund on the coordination of claims filed for medical expenses incurred during such suspension period. Notwithstanding the reinstatement of disability and medical expense benefits provided for in this paragraph, the fund shall not be obligated to restore the identical benefits previously provided to the disability benefit recipient, if such benefits are not available at the time of such disability benefit recipient's reinstatement of medical expense benefits under the applicable health care plans, and the fund shall not be obligated to pay for certain medical expenses that were incurred after the effective date of the disability benefit recipient's suspension, including, but not limited to dental, vision, and prescription expenses, and in such event, the fund shall not be responsible for any additional out-of-pocket expenses and deductibles incurred by the disability benefit recipient arising out of such replacement benefits.
- (K) If the refusal to submit to the medical examination, as required by the terms of division (C)(2) of section 742.40 of the Revised Code and such failure continues for one year, whether documented by the fund's books or records or as presumed as provided in rule 742-3-10 of the Administrative Code, then the disability benefit recipient's disability and medical expense benefits shall be forfeited, as required by the terms of division (C)(2) of section 742.40 of the Revised Code effective as of the date of the original suspension, as referenced in a writing provided to the

disability benefit recipient from the fund or the board.

- (L) For purposes of determining whether the recipient has refused to comply with the provisions of this division (C)(2) of section 742.40 of the Revised Code and this rule, the fund may conclusively rely upon the fund's books and records.
- (M) Except as expressly provided in this rule or section 742.40 of the Revised Code, all notices to the disability benefit recipient or applicant shall be either delivered personally, sent by express delivery service, certified mail, or first class U.S. mail, postage prepaid and addressed to the disability benefit recipient at the most recent address set forth in such recipient's file with the fund, or to such other address as the disability benefit recipient shall thereafter designate by proper notice in accordance with this paragraph. All notices to the fund or the board shall be addressed at its principal place of business. Except as otherwise specifically provided for in this rule, notices will be deemed given as of the earlier of:
- (1) The date of actual receipt;
  - (2) The next business day when notice is sent via express mail or personal delivery;  
or
  - (3) Three days after mailing in the case of first class or certified U.S. mail.
- (N) If an initial application for disability, an appeal, or a post-retirement application has been filed pursuant to paragraph (C), (E), or (F) of this rule and the supporting documentation has not been filed with OP&F or the applicant has not taken any action to prosecute his/her claims within six months of the filing with OP&F, the director of member services shall have full authority to dismiss the application, appeal, or post-retirement application, as the case may be, for failure to prosecute the claim provided OP&F gives ninety days prior written notice to the member of the need to file certain documentation with OP&F and the member fails to file the necessary documentation with OP&F before the expiration of such ninety day time period.
- (O) In determining whether a member had a physical examination before entry into the department, as required in division (D)(3) of section 742.38 of the Revised Code, OP&F shall use the following criteria:
- (1) For disability benefit applicants who became "members" of OP&F prior to September 16, 1998, OP&F will consider the physical examination requirement set forth in division (D)(3) of section 742.38 of the Revised Code to have been met if OP&F receives the following:

- (a) A writing signed by a licensed physician that documents the examination of the member prior to his/her entry into the police or fire department, as the case may be, and the writing is dated prior to the person becoming a "member" of OP&F, as such term is defined in division (E) of section 742.01 of the Revised Code or the person's entry into the department where the person is employed at the time of the filing of the disability application, provided such date is not more than nine months prior to such date; and
- (b) The writing signed by a licensed physician does not document the existence of any heart disease or any cardiovascular or respiratory disease.

If the foregoing conditions are met, OP&F will then grant the disability applicant a disability that is presumed to be on-duty, as provided for in section 742.38 of the Revised Code.

- (2) For members who became "members" of OP&F after September 16, 1998, OP&F will consider the physical examination requirement set forth in division (D)(3) of section 742.38 of the Revised Code to have been met if OP&F receives the physician's report or copies of one of the tests or diagnostic procedures set forth in rule 742-1-02 of the Administrative Code (but not the medical questionnaire completed by the member) prior to the person becoming a "member" of OP&F or before the person's entry into the department where the person is employed at the time of the filing of the disability application, except that in the case where OP&F sent a notice of deficiency to the employer, a subsequent examination will satisfy these requirements if the employer corrected the noted deficiency(ies) within the time period prescribed by OP&F and in all cases, the physician's report does not diagnose the existence of any heart disease or any cardiovascular or respiratory disease.

If the foregoing conditions are met, OP&F will then grant the disability applicant a disability that is presumed to be on-duty, as provided for in section 742.38 of the Revised Code.

- (3) For members who do not meet the criteria set forth in division (D)(3) of section 742.38 of the Revised Code and this rule, this will not preclude the member from being granted a duty-related disability if the member is able to document that the disability resulted from the performance of the member's official duties as a member of the police or fire department, as the case may be.

Effective:

R.C. 119.032 review dates: 05/09/2008

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Certification

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Date

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