

## **Disability Retirement In the Federal Sector**

Unfortunately, in the course of a career in the federal government, you may encounter medical difficulties that make it very difficult to continue in your federal employment. Federal government employees, in the FERS and CSRS systems are generally eligible, depending on their time in service, for this type of retirement. FERS employees typically must have 18 months in service and CSRS employees should have been employed for approximately 5 years. The Firm specializes in assisting those with disability retirement applications and legal advice in the processing of their application.

Disability retirement applications should be reviewed by an experienced attorney before the process begins. Often times there are crucial differences between filing for this type of retirement on your own, while still in the federal service, instead of being removed from the federal service for the inability to perform the duties of your position. It is important to understand that while many human resources employees at federal agencies may be helpful, you should not rely on their assistance because they may or may not provide the most accurate or helpful advice. Their client is the federal agency that they work for, not employees that work for the agency in question. Many times an agency, for their own reasons, would prefer to see an employee resign or apply early for disability retirement, which can hurt an individual's chances for a successful application.

There are many different problems that federal employees can face when going through this difficult process. Obtaining legal advice at the beginning of the process, before you submit any documentation or file an application, can give you the best chance of succeeding in obtaining disability retirement from the Office of Personnel Management (OPM).

It is crucial that federal employees, when considering whether to apply for disability retirement obtain legal advice on many important issues. Two of the more typical questions that come up (although there are many different types of issues, which should be reviewed on a case by case basis):

1. Whether a federal employee should apply for disability retirement early or wait for their federal employer to take action in removing them from employment based on their inability to perform their duties. Often times it may be an important advantage for a federal employee to be removed, rather than voluntarily apply for disability retirement, depending on the circumstances, in order to give them best opportunity for their application to be accepted by OPM.
2. Whether or not a federal employee's "disability" is one as defined in the United States Code and other applicable regulations. If the medical condition does not qualify a person as disabled, then often times an application can be denied. Usually, an individual can give themselves the best opportunity in succeeding in disability retirement applications by utilizing the services of an attorney to work with your physicians, to

thoroughly articulate your medical difficulties and the reasons why these constitute a covered disability.

Typically, the first step in the OPM disability retirement process is for an employee to come to the realization that they cannot continue in their current position. They seek medical attention and then are told that they have medical limitations. These can be physical or mental, and can be very serious. Sometimes, federal agencies can be compassionate and cooperative in attempting to allow your continued employment at the agency. They may even give accommodate your physical or mental needs to allow you to stay employed with the agency.

However, this is not always the case. Many agencies will attempt to place you on administrative leave, sick leave, leave without pay, or in other unfavorable circumstances to encourage you to resign. If that does not work, and the agency really would like to see you leave, then they may attempt to remove you on the basis of your disability or for non-disability related reasons. Removal, solely on the basis of disability can be a positive development in your case (in the right situation), as the law often presumes that if you are disabled then you should qualify for disability retirement. This sometimes will make it easier to prevail in your application with OPM. However, if the action is misconduct based, then it will not help you in obtaining retirement relief.

There are a number of issues that come up in the processing of disability retirement applications, such as when to file the application, the deadlines for filing, how to obtain helpful medical statements and other issues which is why it is important for an individual to seek legal advice early on in the process. This article is intended for only general information. Disability retirement issues are extremely individual in nature and vary in each case. You should consult an attorney for specific legal advice.