

**WAC 415-104-478 Am I eligible for a LEOFF Plan 2 disability benefit?** This section applies to you if you are a LEOFF Plan 2 member who becomes disabled.

**Definitions.** As used in this section:

**Disabled** - Totally incapacitated to perform the essential functions of his or her LEOFF Plan 2 eligible position.

(1) **Who is entitled to disability benefits?** Any member of LEOFF Plan 2 is entitled to disability benefits if the department determines the member has:

(a) Become disabled; and

(b) Separated from all LEOFF-eligible employment due to the disability.

(2) **Is there a time limit for filing an application for disability benefits?** There is no time limit for applying for benefits. However, your eligibility for a benefit will be based on your condition at the time of separation.

(3) **What happens if I become disabled after I retire?** Your medical condition at the time of separation will determine whether you qualify for a disability retirement.

(4) **What evidence will the department use to determine whether I am entitled to benefits under this section?**

(a) To determine if you are entitled to disability benefits, the department will consider any relevant information submitted by you or your employer, or otherwise available to the department, including:

(i) Information and determinations by the department of labor and industries (L&I), a self-insurer or the Social Security Administration;

(ii) Medical, vocational, and other information about your disability;

(iii) Your job description;

(iv) Your membership records, maintained by the department;

(v) Independent medical reviews made by DRS contracted vendors;

and

(vi) Any other relevant evidence.

(b) The department reserves the right to consult with a contracted vendor for the purpose of providing an independent medical review of any LEOFF member who applies for disability benefits.

(5) **What would disqualify me for disability benefits?** You are not eligible for disability benefits if any of the following apply:

(a) Your application does not provide adequate proof that you are disabled;

(b) Your disability is the result of your criminal conduct committed after April 21, 1997 (RCW 41.26.061). Criminal conduct means:

(i) If a member is a defendant in a civil proceeding or has been formally charged in court with a crime, and the member is applying for or receiving a disability retirement benefit for a disability that is the result of the alleged criminal conduct, the department shall withhold payment of any disability benefits until:

(A) The case or charges, or both if both are pending, are dismissed; or

(B) The member is found not guilty in the criminal case or prevails in the civil proceeding, or both if both are pending; or

(C) The member is convicted or found to have engaged in criminal conduct in the civil proceeding.

(ii) If the case or charges, or both if both are pending, are dismissed or if a member is found not guilty or prevails in the civil

proceeding, or both if both are pending, the department shall pay the member a disability benefit if he or she otherwise qualifies.

(iii) If the member is convicted or found to be liable for criminal conduct in a civil proceeding, and the member's disability is the result of the criminal conduct, the department shall not pay the member a disability benefit.

(iv) In the absence of a criminal conviction, a superior court may determine by a preponderance of the evidence whether the person participated in criminal conduct.

(6) **Who decides if I meet the requirements for benefits under this section?** The director of the department of retirement systems (DRS) or their designee will decide if you meet the requirements for benefits under this section.

(7) **What if I disagree with a decision made by the director or their designee?** If you disagree with the decision of the director of DRS or their designee, you may petition for review under chapter 415-04 WAC.

[Statutory Authority: RCW 41.50.050. WSR 18-13-078, § 415-104-478, filed 6/15/18, effective 7/16/18.]