

842 or 844, as the case may be, in the event that the individual's compensation payments cease or are reduced.

§ 844.106 Disability annuities which include credit for service with a non-appropriated fund instrumentality.

A disability annuity that includes credit for service with a non-appropriated fund instrumentality performed after December 31, 1965, based on an election under subpart D of part 847 of this chapter is computed under part 847 of this chapter.

[61 FR 41721, Aug. 9, 1996]

Subpart B—Applications for Disability Retirement

§ 844.201 General requirements.

(a)(1) Except as provided in paragraphs (a)(3) and (a)(4) of this section, an application for disability retirement is timely only if it is filed with the employing agency before the employee or Member separates from service, or with the former employing agency or OPM within 1 year thereafter.

(2) An application for disability retirement that is filed with OPM, an employing agency or former employing agency by personal delivery is considered filed on the date on which OPM, the employing agency or former employing agency receives it. The date of filing by facsimile is the date of the facsimile. The date of filing by mail is determined by the postmark date; if no legible postmark date appears on the mailing, the application is presumed to have been mailed 5 days before its receipt, excluding days on which OPM, the employing agency or former employing agency, as appropriate, is closed for business. The date of filing by commercial overnight delivery is the date the application is given to the overnight delivery service.

(3) An application for disability retirement that is filed with OPM or the applicant's former employing agency within 1 year after the employee's separation, and that is incompletely executed or submitted in a letter or other form not prescribed by OPM, is deemed timely filed. OPM will not adjudicate the application or make payment until

the application is filed on a form prescribed by OPM.

(4) OPM may waive the 1-year time limit if the employee or Member is mentally incompetent on the date of separation or within 1 year thereafter, in which case the individual or his or her representative must file the application with the former employing agency or OPM within 1 year after the date the individual regains competency or a court appoints a fiduciary, whichever is earlier.

(b)(1) Before payment of a disability annuity under this part can be authorized, the applicant must provide OPM with:

(i) Satisfactory evidence that the applicant has filed an application for disability insurance benefits under section 223 of the Social Security Act; or

(ii) An official statement from the Social Security Administration that the individual is not insured for disability insurance benefits as defined in section 223(c)(1) of the Social Security Act.

(2) A disability retirement application under this part will be dismissed when OPM is notified by the Social Security Administration that the application referred to in paragraph (b)(1)(i) of this section has been withdrawn. All rights to an annuity under this part terminate upon withdrawal of an application for social security disability benefits.

(c) An agency may consider the existence of a pending disability retirement application when deciding whether and when to take other personnel actions. An employee's filing for disability retirement does not require the agency to delay any appropriate personnel action.

[55 FR 6598, Feb. 26, 1990, as amended at 63 FR 17050, Apr. 8, 1998]

§ 844.202 Agency-filed disability retirement applications.

(a) *Basis for filing an application for an employee.* An agency must file an application for disability retirement of an employee who has 18 months of Federal civilian service when all of the following conditions are met:

(1) The agency has issued a decision to remove the employee;