

(3) The disabling medical condition must be expected to continue for at least 1 year from the date the application for disability retirement is filed;

(4) Accommodation of the disabling medical condition in the position held must be unreasonable; and

(5) The individual must not have declined an offer of reassignment to a vacant position.

(b) The employing agency must consider a disability applicant for reassignment to any vacant position. The agency must certify to the Office of Personnel Management (OPM) either that there is no vacant position or that, although it made no offer of reassignment, it considered the individual for a vacant position. If an agency offers a reassignment and the individual declines the offer, the individual may appeal the agency's determination that the individual is not disabled for the position in question to the Merit Systems Protection Board under 5 U.S.C. 7701.

(c)(1) Paragraphs (a)(2) through (a)(4) of this section do not apply to a military reserve technician who retires under 5 U.S.C. 8456.

(2) An individual who separates from employment as a military reserve technician under circumstances set forth in 5 U.S.C. 8456(a)(1) after reaching age 50 and completing 25 years of service is not entitled to a disability annuity under this part, but is entitled to an annuity under § 842.210 of this chapter.

(3) A former military reserve technician is not entitled to an annuity under 5 U.S.C. 8456 based on service as a technician if the technician is subsequently appointed to another position in the Federal Government.

**§ 844.104 Administrative review of OPM decisions.**

Any individual whose rights or interests under FERS are affected by an initial decision of OPM may request OPM to review its decision under § 841.306.

**§ 844.105 Relationship to workers' compensation.**

(a) Except as provided in paragraph (b) of this section, an individual who is eligible for both an annuity under part 842 or 844 of this chapter and compensation for injury or disability under sub-

chapter I of chapter 81 of title 5, United States Code (other than a scheduled award under 5 U.S.C. 8107(c)), covering the same period of time must elect to receive either the annuity or compensation.

(b) Notwithstanding the provisions of paragraph (a) of this section, an individual may concurrently receive an annuity based on the individual's service under part 842 or 844 of this chapter and a benefit under subchapter I of chapter 81 of title 5, United States Code, on account of the death of another individual. An individual may also receive an annuity under part 843 of this chapter and compensation for injury or disability to himself or herself under such subchapter I covering the same period of time.

(c) An individual who elects to receive compensation payments under paragraph (a) of this section and who has not received a refund of contributions under § 843.202 retains the right to elect to receive an annuity under part 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 5 CFR part 847, subpart D, is computed under 5 CFR part 847, subpart F.

[68 FR 2178, Jan. 16, 2003]

**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