



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

Friday, August 6, 2010

MEMORANDUM FOR: Human Resources Directors

FROM: Nancy H. Kichak, Associate Director, Employee Services

Subject: OPM Adjudication of Medical Disqualifications of Preference Eligibles

This serves to replace and expand the information outlined in the U.S. Office of Personnel Management (OPM) memorandum on this subject matter dated December 7, 2006. In accordance with 5 U.S.C. 3312 and 3318 and 5 CFR 339 *Medical Qualification Determinations*, any disqualification, non-selection or passover of a veterans' preference eligible for medical reasons must be adjudicated by OPM before the position can be filled.

As a reminder, the OPM Director's memorandum of March 12, 2009, titled "*Clarification of Procedures for Passover of Compensably-Disabled Preference Eligibles in the Excepted Service*" states a passover of a preference eligible with a compensable service-connected disability (SCD) of 30 percent or more for an excepted service position is subject to the appointment procedures in 5 CFR part 302, and agencies must send a passover request to OPM for adjudication in these cases until further notice.

Additionally, in a reduction-in-force (RIF), if an agency determines a preference eligible employee with a 30 percent or more SCD is unable to fulfill the physical requirements of a position to which he or she would otherwise be assigned, the agency must notify OPM of the proposed disqualification. OPM must make a determination before the agency may select any other person to the position (5 U.S.C. 3504, 5 CFR 351.702(d), and 5 CFR 339.306).

An agency must waive a medical standard or physical requirement when there is sufficient evidence that an individual, with or without reasonable accommodation, can perform the essential duties of the position without endangering the health and safety of the individual and others (5 CFR 339.204). At a minimum, a decision to waive a medical standard or physical requirement should involve the following: analysis of relevant employment history; assessment of an individual's success in performing similar functions; and examination of the risks associated with waiving the standard to the agency, the individual, and/or others.

A decision to disqualify, not select, or passover an individual for medical reasons or for failing to meet physical/functional requirements must be based on an individual's ability to meet the performance requirements of the position and reviewed as a case-by-case, fact-based, individualized assessment. It is not sufficient to simply cite the existence of a medical (including mental health) or physical condition(s) or service-connected disability as the basis for a medical objection. An individual also may not be disqualified for any position solely on the basis of medical history (5 CFR 339.206). An agency must determine whether a medical (including

mental health) or physical condition(s) will have an impact on an individual's capacity to perform the full range of essential duties and responsibilities of the position safely and efficiently. The agency is required to assess whether reasonable accommodation can be provided to permit performance of the job despite the condition(s). Thorough documentation is necessary to: 1) establish that there are tasks or duties which cannot be performed, with or without reasonable accommodation, and/or 2) establish the extent to which the medical or physical condition(s) presents an unacceptable risk of harm to the individual or to others.

An agency must submit any disqualification, non-selection, or passover of a preference eligible for medical reasons, with supporting documentation to: U.S. Office of Personnel Management, Employee Services, Recruitment and Diversity, Hiring Policy, 1900 E Street NW, Room 6500, Washington, DC 20415.

To expedite processing the medical passover request, please include the following:

- Standard Form (SF) 62 – Part B (*Medical Reasons for Passing Over a Preference Eligible or Rejecting a CPS Eligible*). The form can be located at www.opm.gov.
- A written statement identifying the medical condition(s) or clinical diagnosis, safety reasons, and related restrictions (i.e., lifting, bending) that precludes the individual from safely and efficiently performing the essential duties of the position.
- Applicant's resume and application for Federal employment or the qualifications update that the employee provided to the agency for consideration in determining the employee's possible assignment rights to other positions in a RIF.
- Supporting medical documentation, such as the Optional Form 178, *Certificate of Medical Examination* (formerly the SF-78), signed by a licensed physician or State licensed and certified practitioner. A nurse or physician's assistant may assist in performing a medical examination, however, the licensed physician or practitioner must certify the results of that medical examination.
- A copy of the applicable agency medical standards and the position description.
- A copy of the agency disqualification letter to veteran preference eligibles with a SCD of 30 percent or more, advising of their appeal rights to OPM within 15 days of notification. To appeal to OPM, the preference eligible must submit additional or relevant evidence, including medical documentation from their private physician(s), that he or she can perform the position duties in spite of the identified medical or physical condition(s). (*See attached example template letter which can be modified for agency use*).

An agency has authority to medically disqualify non-preference eligibles. Such individuals have a right to a higher level of review of the medical disqualifications within the agency (5 CFR 339.306(a)). Passover procedures are outlined in OPM's *Delegated Examining Operations Handbook, 2007, Chapter 6, Section D, Object to Eligibles*.

If you have questions please contact phil.spottswood@opm.gov or susan.spannbauer@opm.gov of Hiring Policy, Recruitment and Hiring, Employee Services.

Attachment

ATTACHMENT

**TEMPLATE LETTER FOR AGENCIES TO SEND TO PREFERENCE ELIGIBLES
WITH A SERVICE-CONNECTED DISABILITY OF 30 PERCENT OR MORE**

IN LINE WITH AN AGENCY REQUEST FOR A MEDICALLY-BASED PASSOVER

[NOTE: Agencies should amend this template letter and insert the specifics for each individual case in the bolded areas below. The medical conditions and other case specifics noted below are provided for example purposes only.]

Date

Applicant Name

Address

Dear Mr./Ms. _____ :

You were recently selected for the **position of _____, GS/WG-__ with the Department of _____**. In connection with this selection, you underwent a medical assessment, which is a requirement of this position. A review of your medical records and evaluation by the Agency Medical Review Officer/Occupational Health Services reveals that you have the following medical condition, **severe residual arthritis of the knee, with reported symptoms as recently as April 2010, and the following restrictions: no squatting; no climbing; no prolonged standing or walking.**

These restrictions appear to be in conflict with the activities and functional requirements of this position, **including long periods of walking and standing and climbing stairs and ladders.** As a veteran preference eligible with a service-connected disability rating of 30 percent or more, your case will be reviewed by the U.S. Office of Personnel Management (OPM). This review is provided for by Public Law 995-454, Civil Reform Act. OPM will either uphold our decision or reverse it. You are entitled to submit to OPM any additional or relevant information to support your review. You would need to submit your own medical documentation (i.e., private physician's written and dated statement) to OPM within 15 days of the date of this letter directly to the: U.S. Office of Personnel Management, Employee Services, Recruitment and Diversity, Hiring Policy, Attn: Spottswood/Spannbauer, 1900 E Street NW – Room 6500, Washington, DC 20415. OPM will notify you directly of their decision.

Sincerely,

HR Manager/HR Specialist