

TURN A REMOVAL ACTION TO YOUR ADVANTAGE:
HOW TO USE GETTING TERMINATED TO HELP WIN A DISABILITY
RETIREMENT

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Is your Agency threatening to terminate you from your job because of performance or attendance problems related to a medical condition? If so, your situation may not be as bad as you think it is. Removal from your job may actually be a good thing.

If your inability to perform your job is the result of a medical condition(s), and you want to receive a disability retirement under FERS or CSRS, being terminated may help you. If you are removed from federal service by your Agency due to your medical condition, such a removal increases your chances of getting an application for disability retirement approved by OPM.

No one likes the idea of being terminated from their job. However, being removed from federal service due to “medical inability to perform useful and efficient service” creates a “Bruner Presumption”, which helps you win your disability retirement annuity.

A removal due to medical inability to perform essential functions of your job, establishes procedural rights for the individual applying for disability retirement. Those rights were first established in 1993 in the court decision of Bruner v. Office of Personnel Management, 996 F.2d 290 (Fed.Cir. 1993). These rights are often referred to as the Bruner Presumption.

Federal employees applying for disability retirement have the burden of proving that they qualify for disability retirement benefits. However, when the Agency removes an employee from federal service due to medical inability to perform their job duties, a “prima facie” case of disability is established for disability retirement applications. That means the applicant is entitled to a presumption of disability, (the Bruner Presumption) and the burden shifts to OPM to produce evidence that the applicant is not disabled.

However, the Bruner presumption does not assure victory. First of all, OPM may ignore the presumption. Secondly, the applicant still has to meet the other requirements for a disability retirement.

The bottom line is: If you have been issued a written notice of proposed removal by your Agency, you should consult with an attorney. You must act quickly because there are extremely short deadlines (such as 7, 10 or 15 days) to respond to a proposed removal. Of course an attorney can assist you in fighting the removal for cause. Just as important, in an appropriate case, an attorney can seek to obtain or negotiate a removal for medical inability to perform instead of a removal for cause.

If you are contemplating applying for disability retirement and/or if you are facing removal from federal service for any reason, we recommend that you consult an experienced attorney before you apply for benefits or take action.

If our experienced attorneys and staff at Andalman & Flynn can be of assistance to you, please call us at (301) 563-6685. You can also visit our website at www.andalmanflynn.com and complete one of our website contact forms so we can contact you for consultation concerning your situation.

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