

**ORANGE COUNTY EMPLOYEES
RETIREMENT SYSTEM**

BOARD OF RETIREMENT POLICY

FOR

ADMINISTRATIVE HEARINGS

Adopted on August 30, 2004

Amended on June 18, 2007

ended on May 19, 2008

POLICY FOR ADMINISTRATIVE HEARINGS

INTENT: The Board of Retirement of the Orange County Employees Retirement System specifically intends that this Policy For Administrative Hearings shall apply to and shall govern in each administrative appeal taken from a decision made by the Board of Retirement pursuant to the County Employees Retirement Law of 1937, as amended. (“CERL”).

DEFINITIONS: The following terms shall have the meanings set out in this section. All other words shall have their common meanings. All days are calendar days.

Applicant: Any member or other party on behalf of a member who files an application with the Orange County Employees Retirement System to request or modify a benefit that the Board of Retirement may grant pursuant to its authority set forth in the CERL.

Application: The paper(s) initially filed with the Orange County Employees Retirement System by or for an applicant, and/or any amended paper(s) filed with this Retirement System by or for an applicant after the initial filing, to request or modify a benefit from the Orange County Employees Retirement System.

Board: The Board of Retirement of the Orange County Employees Retirement System.

Effective Date: The effective date of any disability retirement benefits shall be governed by Government Code §31724.

Hearing: Presentation of sworn testimony, other evidence, and legal argument before a Hearing Officer on the merits of an application or benefit determination.

Hearing de novo: A new hearing of a matter, conducted as if the original hearing or Board determination had not taken place. This means the court or other fact finding body will consider anew all of the evidence submitted without relying upon the past findings of a court, the Board or other fact finding body.

Hearing Officer: A current member of the California State Bar whose name is contained on the approved Hearing Officer panel or a member of the Board of Retirement, pursuant to Government Code §31533. “Hearing Officer” also means “Referee”.

Hearing Rules, Rules: The “Orange County Employees Retirement System Policy for Administrative Hearings”.

Medical Witness: A person who by profession is a physician or surgeon, holding an M.D. or D.O. degree, psychologist, optometrist, dentist, podiatrist, or chiropractic practitioner licensed by the State of California or by such other jurisdiction in which such person maintains his or her regular practice in good standing.

Member Services Manager: The Administrative Manager in charge of the Member Services Department of the Orange County Employees Retirement System or his/her designee.

Pre-hearing Conference: A Pre-hearing Conference is a conference between the Applicant and OCERS conducted by the assigned Hearing Officer to discuss preliminary matters related to the hearing process.

Referee: Same as Hearing Officer.

Respondent: The Orange County Employees Retirement System ("OCERS").

Rule: A Hearing Rule including all subparagraphs or subdivisions as contained in this policy.

ADMINISTRATIVE HEARING RULES

1. **HEARING DE NOVO ON APPEAL:** A written request for Hearing must be received by the Board, or its designee, within ninety (90) days after the initial Board determination of the initial application. A Hearing de novo, either by appeal or by Board referral, shall be scheduled before a Hearing Officer. For disability retirement Hearings, the Board on its own referral may limit the issues to be presented to disability, service connection or effective date only. If not so limited, the disability retirement Hearing will address the issues of disability, service-connection, and effective date. Except as set forth in these Rules, for disability retirement Hearings and all other administrative Hearings, the Hearing Officer shall not make a finding or recommendation on any issue that was not raised before the Board. These Hearing Rules will apply to disability retirement Hearings and all other administrative Hearings.
2. **NOTIFICATION OF REFERRAL TO OR REQUEST FOR HEARING:** Within fourteen (14) days after OCERS receives a request for Hearing or referral to a Hearing, OCERS will notify the Applicant in writing of the name and address of the Hearing Officer to whom the matter has been assigned.

Assignment of Hearing Officer: Hearing Officers are selected and placed on the panel pursuant to the Hearing Officer Selection Policy. As Hearings are requested, the Member Services Manager assigns the next Hearing Officer on the list in alphabetical order, subject to the procedures for challenge under Rule 3, below.

3. **PETITION FOR REASSIGNMENT OF HEARING OFFICER:** Each party shall be entitled to reassignment of the Hearing to another Hearing Officer in accordance with the provisions of this section.

(a) **Peremptory:** Each party is entitled to one automatic challenge to the assignment of the Hearing Officer in accordance with the provisions of this section. That challenge must be submitted in writing, directed to the Member Services Manager, within

fourteen (14) days after the date of the letter assigning the Hearing Officer. Thereafter, any challenge to the assigned Hearing Officer shall only be for cause.

At any time before the date of the Hearing if an Applicant obtains new counsel of record, or if OCERS replaces its counsel of record, each new counsel shall be entitled to a peremptory challenge. The challenge must be submitted in writing, directed to the Member Services Manager, within fourteen (14) days after the date counsel commences representation.

(b) Removal for Cause: Each party is entitled to challenge a Hearing Officer for cause by submitting a written request, with supporting declarations made under penalty of perjury under the laws of the State of California and any other evidence the party is relying upon, to the Member Services Manager, who shall then place the matter on the agenda for the next regularly scheduled Board meeting.

(c) Removal Due to Unforeseen Circumstances: If the service of a Hearing Officer is discontinued due to unforeseen circumstances, including but not limited to death, termination for cause or medical constrictions, each party is entitled to a peremptory challenge to the new Hearing Officer in accordance with this section.

4. **APPOINTMENT OF THE HEARING OFFICER**: Upon expiration of the time period in 3(a), the Member Services Manager shall contact the Hearing Officer by letter notifying the Hearing Officer of his/her assignment, providing the name, address and phone number of the Applicant, Applicant's counsel, if any, and counsel representing Respondent.

5. **PREPARATION OF ADMINISTRATIVE RECORD**: The Disability Section shall assemble the administrative record and provide it to the Applicant or his or her attorney, if any, Respondent's counsel and the Hearing Officer within forty-five (45) days following receipt of the request for a Hearing.

6. **APPLICANT'S PRE-HEARING STATEMENT**: The Applicant shall serve a Pre-hearing Statement upon the Hearing Officer and Respondent's counsel no later than sixty (60) days before the date on which the Hearing is to be held.

(a) The Pre-hearing Statement shall include the following:

- (1) A statement of the issues and contentions of the Applicant, and a brief summary of the evidence to be presented;
- (2) A list and copies of any expert's reports and depositions of any witnesses on which the Applicant will rely, if not already in the administrative record;
- (3) The names, addresses and telephone numbers of any non-expert witnesses whose testimony the Applicant intends to present at the Hearing and a brief description of the content of that testimony.

(4) The names, addresses and phone numbers of any expert witnesses whom the Applicant intends to call for oral testimony at the Hearing and a synopsis of the expected testimony.

(b) If at any time during the Hearing process, the Applicant alleges an injury or disease not listed on the disability retirement application, or raises an issue that was not previously presented to the Board, the Hearing process shall be suspended and the application shall be treated as an amended application. The amended application is referred back to the Member Services Manager to be processed. If the amended application is denied by the Board, or referred for Hearing, the Hearing Officer will hear all allegations at the same time. A new Hearing date will be set in accordance with Rule 9 and the Pre-hearing Statements will be due in accordance with the new Hearing date, if not already served.

(c) If the Applicant disputes the Effective Date established by the Board or, the Board in its initial decision found that the Applicant asserts that the proper Effective Date for the pension is a date other than the date of the application, the Applicant shall raise the Effective Date as an issue and shall state the Applicant's contention in the Pre-hearing Statement.

7. **RESPONDENT'S PRE-HEARING STATEMENT:** The Respondent shall serve a Pre-hearing Statement upon the Hearing Officer and the Applicant no later than thirty (30) days before the date on which the Hearing is to be held. The Pre-hearing Statement shall include the following:

(a) A statement of the issues and the contentions of the Respondent, and a brief description of the content of that testimony.

(b) A list and copies of any experts' reports and depositions of any witnesses on which the Respondent will rely, if not already in the administrative record.

(c) The names, addresses and telephone numbers of any non-expert witnesses whose testimony the Respondent intends to present at the Hearing, and a brief description of the content of that testimony.

(d) The names, addresses and phone numbers of any expert witnesses whom the Respondent intends to call for oral testimony at the Hearing and a synopsis of the expected testimony.

8. **SUPPLEMENTAL PRE-HEARING STATEMENTS:** Any party may submit supplemental Pre-hearing Statements no later than fourteen (14) days prior to the Hearing date.

9. **APPLICANT'S NON-COMPLIANCE IN SUBMITTING PRE-HEARING STATEMENT:** If Applicant does not comply with the requirements of Rule 6, the Hearing shall be taken off calendar and the matter placed in suspension until the Pre-hearing Statement has been filed. Subject to Rule 23, "Dismissal," once the Pre-hearing Statement has been filed the hearing will be reset in the same way as set out in Rule 10, below.

Respondent's Pre-hearing Statement will be due thirty (30) days before the new Hearing date.

10. ESTABLISHMENT OF A HEARING DATE: The Hearing Officer will confer with the parties to set a mutually agreeable Hearing date. The Hearing will be held within the time frame provided by Rule 23. Respondent, at its expense, shall arrange for a court reporter and a Hearing room.

- (a) In all cases, the Hearing Officer may continue any Hearing upon stipulation of both parties involved, or for good cause shown, upon receipt of a written request by either party.
- (b) With the exception of an emergency continuance request, all requests for a continuance as set forth herein shall be made at least thirty (30) days in advance of the Hearing date. If not made thirty (30) days before the Hearing, the Hearing Officer or the Board shall not be obligated to honor the request. Notwithstanding, the Hearing Officer is authorized to grant an emergency continuance to the next agreeable Hearing date because of the illness or disability of any party, witness, or attorney, or the Hearing Officer himself or herself, or their family emergency or matters of a similar nature.
- (c) If the Applicant is granted a continuance or cancels the Hearing less than thirty (30) days prior to the scheduled Hearing date, the Board is authorized to order the Applicant to reimburse Respondent for actual costs incurred as a result of the continuance or cancellation.
- (d) The Applicant or Respondent may request, or the Hearing Officer upon his/her own motion may schedule a Pre-hearing Conference; and in all cases the Hearing Officer shall do so when the applicant is pro per.

11. TIME AND PLACE OF HEARINGS: All Hearings and Pre-hearing Conferences shall be held at the OCERS offices or telephonically upon agreement of the parties and the Hearing Officer. Hearings that are not concluded within the original time set shall be continued to the next agreeable Hearing date.

12. WRITTEN MEDICAL REPORTS AS EVIDENCE:

(a) Statement of Policy:

Production of medical evidence shall be in the form of written medical reports attached to the parties Pre-hearing Statements or included in the administrative record. A written medical report bearing the signature of the Medical Witness shall be admissible in evidence as the author's direct testimony.

(b) Late Submission of Medical Reports:

Submission of a medical report subsequent to the filing of the party's Pre-hearing Statement shall be allowed only upon a showing of good cause. "Good cause" for purposes of the late submission of medical reports shall mean relevant evidence that, in the exercise of reasonable diligence, could not have been previously produced. The party requesting submission of such a medical report shall address the written request to the Hearing Officer assigned the case. The written request shall state the reason the medical report was not timely produced. The Hearing Officer shall rule on such a request. However, if the medical report is allowed to be submitted into evidence, the other party shall have the right to a continuance to engage in further discovery, obtain rebuttal medical evidence or to cross-examine the medical witness.

13. ORAL TESTIMONY OF EXPERT AND NON-EXPERT WITNESSES:

- (a) Hearings: Oral testimony shall be taken as prescribed under Rule 15(a).
- (b) Depositions: Witness depositions may be taken by either party before a certified court reporter and shall be taken under oath or affirmation. The party taking the deposition shall pay all associated costs. If any party offers any portion of the deposition testimony into evidence at the Hearing, that party shall provide a full copy of the deposition transcript to the adverse party and the Hearing Officer free of charge.
- (c) Subpoenas and Related Fees/Costs:
- (1) Any party may request a subpoena for the personal appearance of a witness at the time of Hearing or deposition. The request must be in writing and addressed to the Member Services Manager. The Respondent will prepare the subpoena, but the requesting party shall be obligated to serve the subpoena and pay all associated witness fees and costs of service. The party requesting oral testimony of an expert witness shall in all cases be responsible for any expert witness fees.
 - (2) Any fee disputes between a witness and the requesting party is independent from any proceeding between the Applicant and the Respondent. Those fee disputes shall be resolved by the requesting party and the witness in the California courts, not in this forum. The Hearing Officer has no authority or jurisdiction to hear evidence or decide any such dispute.

14. RESOLUTION OF DISPUTES IN REGARD TO DEPOSITIONS AND CONDUCT OF HEARING:

The Hearing Officer shall resolve disputes in regard to depositions and conduct at the Hearing. If not made at a Hearing, a request for resolution of a dispute shall be made in writing and may be supported by declarations, a copy of the deposition or Hearing transcript if appropriate, a memorandum of points and authorities and a proposed resolution. The adverse party involved shall have ten (10) days after service of such a request in which to respond. Declarations, a copy of the deposition or Hearing transcript if appropriate, a memorandum of points and authorities and a proposed resolution may also

accompany the response. The Hearing Officer shall notify the parties and the witness involved of the Hearing Officer's resolution of the dispute within thirty (30) days of receipt of the request for resolution.

15. CONDUCT OF HEARINGS:

- (a) Oral evidence shall be taken only on oath or affirmation administered by the Hearing Officer or the court reporter.
- (b) Each party shall have these rights: (1) to call and examine witnesses; (2) to introduce exhibits, including reports and depositions of medical witnesses; (3) to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; (4) to impeach any witness regardless of which party first called the witness to testify; and (5) to rebut adverse evidence. If the Applicant does not testify by direct testimony, Respondent may call and examine him/her under cross-examination.
- (c) The Hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the Hearing. Irrelevant and unduly repetitious evidence shall be excluded.
- (d) Hearsay evidence may be used for the express purpose of supplementing or explaining other evidence but shall not be sufficient by itself to support a finding unless it would be admissible over objection in civil actions. Every Hearing shall proceed as though each party had made a standing objection to all inadmissible hearsay at the commencement of the Hearing. This section shall not be applicable to written medical reports received into evidence pursuant to Rule 12.
- (e) Each party shall have the right to submit oral or written argument, as determined by the Hearing Officer. A waiver of argument at the administrative Hearing shall not constitute a waiver of argument on appeal before the Board.
- (f) The record shall be closed to new evidence at the conclusion of the final day of Hearing unless the parties stipulate to leave the record open.

16. FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED DECISION OF THE HEARING OFFICER: The Proposed Findings of Fact, Conclusions of Law and Recommended Decision of the Hearing Officer, shall be served on all parties or their counsel by the Hearing Officer. Said findings shall be served within sixty (60) calendar days of the date the last brief is received, or within sixty (60) calendar days of the date the Hearing Officer deems the matter closed.

17. OBJECTIONS AND RESPONSE TO OBJECTIONS TO THE FINDINGS OF FACT AND CONCLUSIONS OF LAW AND RECOMMENDED DECISION OF THE HEARING OFFICER:

An unsuccessful party shall have thirty (30) days after service of the Proposed Findings of Fact, Conclusions of Law and Recommended Decision to submit written objections or requests for clarification to the Hearing Officer and to serve the objections or requests for clarification on the adverse party. The adverse party shall then have fifteen (15) calendar days in which to respond to those objections or requests for clarification. The objections or requests for clarification and any response shall be incorporated into the record to be considered by the Board. Within thirty (30) calendar days after the Hearing Officer has received the objections or requests for clarification, the Hearing Officer may:

- (a) Adopt the findings, conclusions and recommendations originally submitted, or
- (b) Make such changes the Hearing Officer deems appropriate in light of the evidence, the objections or requests for clarification submitted by the unsuccessful party, and the response.

18. FILING OF PROPOSED FINDINGS OF FACT AND RECOMMENDED DECISION AND RECORD ON APPEAL:

The Hearing Officer's Proposed Findings of Fact, Conclusions of Law and Recommended Decision shall include a summary of the following: (1) issues raised by the parties; (2) the testimony; (3) the exhibits offered by the parties, both those received into evidence and those not received; (4) a factual discussion of matters on which the Hearing Officer relied; (5) conclusions of law with citations to legal authority; and (6) recommended action.

19. ACTION BY THE BOARD: The Board's staff shall refer to the Board for its consideration the Hearing Officer's Proposed Findings of Fact, Conclusions of Law and Recommended Decision, the objections and any replies to those objections. After reviewing the documents, pursuant to Government Code §31534, the Board may:

- (a) Approve and adopt the proposed findings, conclusions and recommendation of the Hearing Officer; or
- (b) Require a transcript or summary of all the testimony, plus all other evidence received by the Hearing Officer. Upon receipt thereof, the Board shall take such action as in its opinion is indicated by such evidence; or
- (c) Refer the matter back, with or without instructions, to the Hearing Officer for further proceedings; or
- (d) Set the matter for hearing before itself. At such hearing, the Board shall hear and decide the matter de novo.

20. ORAL ARGUMENT BEFORE THE BOARD, IN SUPPORT OF OBJECTIONS TO HEARING OFFICER'S RECOMMENDED DECISION: The Applicant and Respondent

shall be provided with notice of the time and date of the regular meeting where the matter will be placed on the Board's agenda for action. The parties will have the opportunity to be heard at the Board meeting subject to appropriate time limitations.

21. **BOARD'S DECISION AFTER REVIEW OF THE RECORD:** In any case where the Board makes a decision based upon a transcript or summary of all the testimony, plus other evidence received by the Hearing Officer, or where the Board sets the matter for Hearing before itself, the Board may approve and adopt the Proposed Findings, Conclusions of Law and Recommended Decision of the Hearing Officer; otherwise, the Board shall direct the prevailing party to prepare Proposed Findings of Fact, Conclusions of Law and Recommended Decision consistent with its tentative decision. The Proposed Findings shall then be served on the unsuccessful party who shall have ten (10) days after such service to serve and file written objections to the Board. The Board shall then consider such written objections, if any, and then adopt its final decision as it deems appropriate.
22. **ALTERATION OF TIME REQUIREMENTS:** Nothing in these Rules is to be construed as preventing the parties from stipulating to different intervals than those prescribed in these Rules. The Hearing Officer may for good cause shown, after giving both parties an opportunity to be heard, shorten or lengthen the times specified above as he/she deems necessary.
23. **DISMISSAL WITHOUT PREJUDICE FOR FAILURE TO PURSUE THE HEARING:** Except as otherwise provided, if, as a result of the Applicant's failure to comply with these Rules, the matter is not heard within one year after an Applicant's request for Hearing, or the Board's referral of a case to a Hearing Officer, the case shall be dismissed without prejudice by the Board.
24. **SERVICE OF DOCUMENTS:** Unless otherwise provided, service of documents provided for in these Rules may be made by first class mail, postage pre-paid, or by personal delivery. If sent by first-class mail, the postmark date shall be deemed the date of service.
25. **PERIODIC REVIEW OF POLICY FOR ADMINISTRATIVE HEARINGS:** The Board will review the Policy for Administrative Hearings at least every three (3) years to ensure that it remains relevant and appropriate.

POLICY HISTORY:

This policy was adopted by the Board of Retirement on February 19, 2002. It was amended on August 30, 2004. It was amended on June 18, 2007. It was further amended on May 19, 2008.



Steve Delaney, Secretary to the Board



Date