

OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

1. Introduction

The Board of Retirement (“Board”) of the Orange County Employees Retirement System (“OCERS”) intends that this Administrative Review and Hearing Policy (“Policy”) and the attached appendix will apply to and govern OCERS’ Administrative Review and Administrative Hearing processes for Disability Determinations, Benefit Determinations and other final administrative orders or decisions of the Board. Any person who is entitled to a hearing and who does not request one under this Policy will be deemed to have waived the right to a hearing.

2. Definitions

The following terms will have the meanings set forth below.

Administrative Hearing; Hearing: The proceedings before a Hearing Officer or the Board on the merits of a particular Request for Administrative Hearing and related Application.

Administrative Record: The documents and other records relied upon by Staff or a fact-finding body in an Administrative Review or Hearing conducted pursuant to this Policy.

Administrative Review: The process described in this Policy (including the Rules) by which a Party may seek an administrative review of a Benefit Determination, CEO Determination, or any other final administrative order or decision of the Board.

Applicant; Member: A member of OCERS, or a person or other entity on behalf of a member of OCERS (e.g., member’s surviving spouse), or any person who claims an interest in the pension or allowance of an OCERS member who files an Application or who seeks Administrative Review of a Benefit Determination.

Application: The submittal, including any amendments thereto, filed with OCERS by or on behalf of an Applicant for either a disability retirement or a service retirement.

Authorization for Disclosure and Use of Protected Health Information: The OCERS form that is filed with the Request for Administrative Hearing authorizing Staff to obtain and use Member medical records.

Benefit Determination: A determination made by Staff in connection with a service retirement Application or an Applicant’s benefit (e.g., calculation of the amount of the benefit, non-disability benefit effective date, reciprocity determinations).

CEO Determination: A Benefit Determination made by the CEO or the CEO’s designee.

Clerk, Clerk of the Hearing Officers: Staff member(s) designated by OCERS General Counsel or their designee to fulfill the administrative duties required by this Policy.

Consolidation/Consolidated Review or Hearings: Where two or more Requests for Administrative Review or Hearing that have common issues of fact or law are consolidated for Administrative Review or Hearing pursuant to Section 8 of this Policy or Rule 6 of the Rules.



Applicable to cases filed on or after November 1, 2024

OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

Days: All days are Calendar Days unless otherwise noted. Any deadline falling on a weekend or holiday will be due the next business day. Business Days are Monday through Friday. Holidays are federal and State of California Holidays.

Disability Committee, Committee: A committee of the Board, chartered by the Board to review Applications for disability retirement and make recommendations to the Board with respect to Disability Determinations.

Disability Determination: The following determinations: (1) whether the Applicant is permanently incapacitated for performance of their duties; (2) whether the disability was service connected; (3) the effective date of the disability retirement; (4) timeliness of the Application; and (5) ineligibility due to termination for cause. Any other determinations affecting a disability retirement Application, including applicability of a disability offset, are Benefit Determinations pursuant to this Policy and subject to a CEO Determination.

Employer: The Employer of a member whose benefits are at issue in any given matter. The Employer is a Party to an Administrative Review or Hearing but is not required to participate. If the Employer initiates an Administrative Review or Hearing, it will act in the role of the Applicant.

Hearing Officer: A referee appointed pursuant to Government Code section 31533 who is either a member of the State Bar selected under the OCERS Hearing Officer Selection and Retention Policy, or a member of the Board.

Medical Witness: A person who by profession is a physician, surgeon, psychologist, optometrist, dentist, or podiatrist licensed by the State of California or by such other jurisdiction of the United States in which such person maintains a regular practice in good standing with their licensing board.

Party or Parties: OCERS, an Applicant who seeks an Administrative Review or Hearing under this Policy, the Employer, and any other person who may be affected by the Board's decision and who joins in the Administrative Review or Hearing.

Pre-Hearing Statements: Statements filed with the Clerk by the Parties pursuant to Rule 8 of the Rules.

Proposed Findings of Fact and Recommended Decision: The recommendation of the Hearing Officer to the Board, as set forth in Rule 13 of the Rules.

Request for Administrative Review or Request for Administrative Hearing: The document filed with the Clerk by the Applicant (or in limited cases, the Employer) to initiate the Administrative Review or Administrative Hearing process.

Respondent: OCERS will always be the primary Respondent. The Employer may but is not required to respond to the request for Administrative Review or Hearing. Where the Employer initiates a review or hearing, the Applicant must join as a Respondent. Failure to join may result in a denial without prejudice.

Rules: The "Administrative Hearing Rules," attached as an appendix to and made part of this Policy.

3. Disability Determination Process

For Disability Determinations:

OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

- A. Staff will investigate all disability retirement Applications to determine (i) whether the Applicant is permanently incapacitated from the performance of their usual duties; (ii) whether the incapacity is service-connected; (iii) the effective date of any disability retirement; (iv) whether the Application is timely; and (v) whether the Applicant is not eligible due to termination for cause. Staff will have discretion to require medical examination(s) of the Applicant and obtain expert medical advice to aid its investigation. If the Staff's recommendation is to grant the disability retirement Application in full or deny without prejudice because the member has opted not to join an employer-filed application, Staff will forward the recommendation to the CEO. If the Staff's recommendation is to deny (or grant only in part) the disability retirement Application, the recommendation will be presented to the Committee.
- B. When the Staff recommendation is to grant the disability retirement Application in full, the recommendation will be reviewed by the CEO. If the CEO concurs with the Staff recommendation, the CEO will recommend that the Board grant the Application in full. The CEO's recommendation will be placed on the consent agenda at the next regularly scheduled meeting of the Board for action in accordance with Section 5. Staff will notify the Applicant (and Applicant's attorney, if any) and the Employer of the date and time of the meeting at which the matter will be presented. If the CEO disagrees with the Staff's recommendation, the Application will be forwarded to the Committee for review and determination in accordance with Section 3.D.
- C. When the Staff recommendation is to deny the disability retirement Application without prejudice because the member has opted not to join in an employer-filed application, the recommendation will be reviewed by the CEO. If the CEO concurs with the Staff recommendation, the CEO will recommend that the Board deny the Application without prejudice. The CEO's recommendation will be placed on the consent agenda at the next regularly scheduled meeting of the Board for action in accordance with Section 5. Staff will notify the Employer of the date and time of the meeting at which the matter will be presented. If the CEO disagrees with the Staff's recommendation, the Application will be forwarded to the Committee for review and determination in accordance with Section 3. D.
- D. When the Staff recommendation is to deny (or grant only in part) the disability retirement Application or when the CEO disagrees with Staff's recommendation to grant the disability retirement Application in full, the Application and the Staff recommendation under Section 3.A., will be reviewed by the Committee at a duly noticed meeting. Staff will give Applicant (and their attorney) and the Employer notice of the date and time of the Committee meeting at which they will have the opportunity to be heard by the Committee.
- E. After the Committee reviews the disability retirement Application under Section 3.D., the Committee will determine whether to recommend that the Board grant or deny the Application, in full or in part. Staff will notify the Applicant (and their attorney) and the Employer of the Committee's recommendation. They will also be provided with instructions on how to request an Administrative Hearing to challenge any part of the Committee's recommendation. Alternatively, the Committee may direct Staff to further develop the record and return the matter for consideration at a future meeting.

OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

- F. In the event the Committee recommends that the Application be denied in full or in part, the Applicant will have ninety (90) days from the date of the Committee action to file a Request for Administrative Hearing with the Clerk, as set forth in the Rules. In the event the Committee recommends the Application be granted in full, any other Party including the Employer aggrieved by the recommendation will have ten (10) days from the date of the Committee Action to file a written Request for Administrative Hearing as set forth in the Rules.
- G. A Request for Administrative Review or Hearing must be filed using the form approved by OCERS. That form must be signed and dated by the Applicant (or their Attorney) to be valid. Forms that are not dated and signed will be rejected by the Clerk.
- H. The Applicant may request a Hearing if they dispute the Committee's recommendation regarding (i) permanent incapacity, (ii) service-connection, (iii) the effective date of disability; (iv) timeliness of the Application; or (v) ineligibility due to termination for cause. Undisputed issues will not be considered in the Hearing. Staff will forward those undisputed issues to the Board for final action.
- I. If no Request for Administrative Hearing is filed within the time limit set forth in Section 3.E., the Committee's recommendation will be placed on the consent agenda at the next regularly scheduled Board meeting.

4. Benefit Determination Review Process

For Benefit Determinations:

- A. The Member may request a CEO review of a Benefit Determination within ninety (90) days of the date of the notice of the Benefit Determination made by Staff. The CEO Determination will be completed within ninety (90) days of receipt of the request and served on the Member. The Member will have ninety (90) days from the date of the notice of the CEO Determination to file a Request for Administrative Review with the Clerk and the matter will proceed as set forth in Section 8. If the Request for Administrative Review is untimely, the CEO Determination will be final.

5. Board Action on Disability Determination Upon Recommendation from the CEO or Disability Committee

- A. **Consent Agenda.** The Board will consider on its consent agenda CEO recommendations to grant an Application for disability retirement in full or to deny without prejudice because the Member has opted not to join in an employer-filed application and Committee recommendations for which there has been no timely Request for an Administrative Hearing under Section 3.
- B. **Removing Items from Consent Agenda/Action.** Any member of the Board may remove an item from the consent agenda to be discussed and voted on separately. Such items will be considered by the Board in closed session as set forth in Section 7.
- C. **Action on Recommendations from the CEO.** After consideration by the Board, the Board will either adopt the recommendation of the CEO or refer the matter to the Disability Committee for consideration.

OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

- D. **Action on Recommendations from the Disability Committee.** After consideration by the Board, the Board will either adopt the recommendation of the Disability Committee or refer the matter to a Hearing Officer for a Hearing (unless a Hearing is waived by the Applicant, in which case the Committee recommendation will be adopted).

6. Board Action on Disability Determinations After Hearing.

Following an Administrative Hearing and the Board's receipt of the Hearing Officer's Proposed Findings of Fact and Recommended Decision, the Board will consider the matter at a duly noticed Board meeting and act in accordance with Rule 15.

7. Closed Sessions for Disability Determinations

Except for matters on the Disability Committee's or Board's consent agenda, the Disability Committee or Board will consider a recommended Disability Determination or a Hearing Officer's Proposed Findings of Fact and Recommended Decision in connection with a Disability Determination in closed session, pursuant to Cal. Gov't Code § 54957(b), unless the Applicant requests the matter be heard in open session. Before or after such closed session, the Committee or the Board may meet in closed session with only the CEO and the OCERS General Counsel (or their designee) to provide legal advice to the Committee or the Board in connection with the Board's legal obligations.

8. Board Action on CEO Determinations (i.e., CEO Benefit Determinations).

- A. **Board Review of CEO Determinations.** Upon a timely Request for Administrative Review of a CEO Determination, the Board will consider the matter at a duly noticed regular Board meeting. Staff will make a recommendation to the Board regarding the issues raised in the CEO Determination and the Applicant (or their attorney) will have the opportunity to be heard.
- B. **Board's Options.** The Board may choose to hear and conduct the review at that meeting, continue it to a later meeting, or refer the matter to a Hearing Officer. If the Board chooses to hear and determine the matter, its decision will be final. If the Board chooses to refer the matter to a Hearing, it will identify the factual and legal issues to be considered by the Hearing Officer.

In determining whether to hear and determine the matter or refer the matter to a Hearing Officer, the Board will consider all relevant factors, including the following:

1. whether the disputed issues are legal, not factual, in nature;
2. relevant judicial authority on the disputed legal issue(s);
3. whether the Board and/or a Hearing Officer has previously ruled on substantively similar issue(s);
4. whether the Applicant is represented by an attorney;
5. the efficient use of OCERS resources; and
6. the interests of the Applicant in receiving a timely decision.

OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

- C. **Consolidation of Reviews.** When the Board reviews two or more CEO Determinations involving common questions of law or fact, it may order a Consolidated Review or Consolidated Hearing of the matters. Consolidation may be ordered for limited purposes or for all purposes.

In determining whether to order a Consolidation of the CEO Determinations, the Board will consider all relevant factors, including the following:

1. the complexity of the issues involved;
2. the potential prejudice to any party, including whether a Consolidation would result in undue delay;
3. the avoidance of duplicate or inconsistent orders; and
4. the efficient utilization of OCERS resources.

9. Board Action on CEO Determinations After a Hearing.

If the Board refers a CEO Determination to a Hearing, the Board will consider the Hearing Officer's Proposed Findings of Fact and Recommended Decision at a duly noticed Board meeting in accordance with Rule 15. The Board may adopt the Hearing Officer's recommendations or make its own determination based on the Administrative Record and the Board's decision will be final.

10. Policy Review

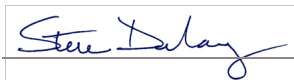
The Board will review this Policy at least every three (3) years to ensure that it remains relevant and appropriate.

11. Policy History

This Policy was adopted by the Board of Retirement on February 19, 2002, amended on August 17, 2020, May 17, 2023, and most recently on October 21, 2024.

Secretary's Certificate

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this Policy.



Steve Delaney
Secretary of the Board

10/21/2024

Date

OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

Appendix - Administrative Hearing Rules

Rule 1. Definitions

All capitalized terms contained within these Rules will have the meaning set forth in Section 2 of the OCERS Administrative Review and Hearing Policy.

Rule 2. Filing of Documents

A. Filing of Documents.

1. All documents required or permitted to be filed by any Party in connection with a Hearing must be filed with the Clerk.
2. Documents will be filed electronically, except that an unrepresented Applicant may opt to file documents in person or by US Mail. Applicants that opt for filing documents in person or by US Mail, must inform the Clerk of this in writing at the time they file their Request for Administrative Hearing. The Clerk will then inform all other Parties and the Hearing Officer that the Applicant has opted to file documents in person or by US Mail.
 - a. Documents filed in person will be deemed filed on the day received by OCERS.
 - b. Documents filed by US Mail will be deemed filed on the date post-marked on the envelope containing the documents.
 - c. Documents filed electronically will be deemed filed on the date electronically received by the Clerk.

B. Service of Documents.

1. The Clerk will serve on all Parties and the Hearing Officer any documents filed by a Party or the Hearing Officer within one (1) business day of receipt of the documents by the Clerk. Service by anyone other than the Clerk will be considered defective.
2. Service by the Clerk will be electronic and the Clerk's file stamp will constitute proof of service, except where the Applicant has opted to file by US Mail pursuant to Section A.2., in which case the Clerk will serve documents on the Applicant by US Mail. In that case, the Applicant will be deemed to have received service three (3) days after the date the Clerk deposits the document in the US Mail. Electronic service will be deemed served upon electronic transmission by the Clerk.

Rule 3. Request for Hearing or Review

- ##### A. Request for Administrative Hearing or Request for Administrative Review.
- A written Request for Administrative Hearing or a Request for Administrative Review must be filed with the Clerk within the time frame set forth in Sections 3 and 4 of the Policy. The Request must include a statement no more than one (1) page in length of the grounds for the request and a signed Authorization for Use and Disclosure of Protected Health Information if filing a disability benefit appeal. An Applicant's

OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

Request for Administrative Hearing that includes new conditions will be treated as an amended Application and will be returned to Staff for reconsideration.

- B. **Referral from the Board.** In the event the Board refers a matter to a Hearing Officer for a Hearing (pursuant to Sections 5.D. or 8.B. of the Policy), the referral from the Board will be considered the Request for Administrative Hearing, but for all procedural purposes under these Rules, the request will be deemed to have been filed by the Applicant.
- C. **Permitted Representatives, Attorneys.** Any Party is entitled, at their expense, to be represented by an attorney at any stage of the proceedings. Such attorney must be an active member of the California State Bar in good standing. A Party must immediately file with the Clerk a written notice of the hiring, changing, or dismissal of an attorney. Absent such written designation, OCERS will not recognize any attorney or other individual claiming to represent a Party, including an attorney in fact (under a power of attorney) or the Applicant's spouse.
- D. **Burden of Proof.** The Applicant will have the burden of proof by a preponderance of the evidence to establish the right to the benefit sought. Where the Employer files the Request for Administrative Hearing, the Employer will have the burden of proof by a preponderance of the evidence to demonstrate that the Committee's recommendation should be overturned, and the Employer will be bound by the procedural rules applicable to the Applicant under these Rules.
- E. **Scope of Hearing.**
1. The Hearing on a Disability Determination will only address the issues of permanent incapacity, service connection, effective date, timeliness of the Application, and ineligibility due to termination for cause.
 2. In accordance with Section 8 of the Policy, the Hearing on a CEO Determination will only address the factual and legal issues that are identified by the Board for consideration by the Hearing Officer.
 3. Except as set forth in these Rules, the Hearing Officer will not make a finding or recommendation on any issue that was not raised in the Applicant's Request for Administrative Hearing or included in the Board's referral of the matter to a Hearing. Likewise, the Hearing Officer will not consider any evidence or make a finding or recommendation on any medical condition not included in the disability retirement Application or that was not previously evaluated by Staff, except as provided in subsection 4.
 4. If at any time during the Hearing process the Applicant either (i) alleges an injury or disease not listed in the disability retirement Application or (ii) raises an issue that was not previously presented to the Committee, the Hearing process will be suspended by the Hearing Officer and the Application will be treated as an amended Application. The amended Application will be referred to Staff to be processed. If the Committee subsequently recommends a denial of the amended Application, the matter will be returned to the Hearing Officer who will consider all the medical conditions (those raised in the Application and the amended Application). A new Hearing Date, Pre-Hearing Conference, and deadlines for Pre-Hearing Statements will be set in accordance with Rule 7.

OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

- F. **Settlement.** If at any time during the Hearing process it becomes apparent to Staff that a different result is appropriate, Staff will suspend the Hearing and refer a settlement to the Board. If the Board approves a settlement with the Applicant, the Hearing will be dismissed.

Rule 4. Assignment of Hearing Officers

- A. **Assignment of Hearing Officer.** Hearing Officers are selected and placed on the panel pursuant to OCERS' Hearing Officer Selection and Retention Policy. The Clerk will assign the Hearing Officer on a rotational basis, to ensure to the extent possible that each Hearing Officer on the panel is assigned an equal number of cases. When the Applicant files a Request for Administrative Hearing, the Clerk will serve notice to all Parties, including the Hearing Officer, indicating the name and address of the Hearing Officer to whom the matter is assigned, and that notice will include information regarding the opportunity to challenge a Hearing Officer as set forth below.
- B. **Challenge/Removal of Hearing Officer.** A Party may object to a Hearing Officer in accordance with the following procedures.
1. **Peremptory Challenge:** Any Party other than OCERS is entitled to one (1) peremptory (without cause) challenge to the Hearing Officer assigned. The challenge must be filed with the Clerk within ten (10) days of the date of the notice assigning the Hearing Officer. If the Applicant opts for service by US Mail, the time period for filing a challenge will be extended by three (3) days. In the event of a peremptory challenge, the Clerk will re-assign the case to another Hearing Officer selected in the same manner as the first Hearing Officer.
 2. **Removal for Cause:** Any Party may challenge a Hearing Officer for cause by filing a request at any time, with supporting declarations made under penalty of perjury and any other evidence upon which the Party is relying. Any opposing Party will have ten (10) days from the Clerk's service of the challenge for cause on all Parties to file a response. The Clerk will then randomly assign the removal request to another Hearing Officer, who will consider all evidence and arguments for and against removal of the Hearing Officer and file a ruling with the Clerk within thirty (30) days from assignment. Cause for removal will be limited to demonstrated bias against a Party or counsel based on a personal or financial relationship (other than the Hearing Officer's contract with OCERS) that would cause a reasonable person to doubt the Hearing Officer's ability to render an impartial decision. If the request for removal is granted, the Clerk will re-assign the case to another Hearing Officer (other than the Hearing Officer who heard the challenge) in the same fashion as selection of the first Hearing Officer.
 3. **Removal Due to Unforeseen Circumstances:** If the service of a Hearing Officer is discontinued due to unforeseen circumstances, such as death, illness, or termination with or without cause, the Parties other than OCERS are entitled to a peremptory challenge to the new Hearing Officer in accordance with subsection B.1 of this Rule.
 4. **Assignment After Removal Due to Unforeseen Circumstances:** If the service of a Hearing Officer is discontinued due to unforeseen circumstances, such as death, illness, or termination with or without cause, any hearing date will be vacated, and the Clerk will assign a new Hearing Officer pursuant to Rule 4.A and schedule a new Pre-Hearing Conference pursuant to Rule 6.

OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

- C. **Recusal of Hearing Officer.** If at any time the Hearing Officer determines that there is cause for their recusal, the Hearing Officer will immediately file with the Clerk a statement of recusal, and the Clerk will reassign the case pursuant to Rule 4.A.
- D. This Rule 4 does not apply to cases where the Board refers the matter back to the Hearing Officer under Section 8.B. or cases that are consolidated under Rule 6.

Rule 5. Supplemental IME Report Requests, Preparation and Service of Administrative Record

The Applicant will have thirty (30) days from the date of filing their Request for Administrative Hearing to submit additional records to be included in the initial Administrative Record.

Within sixty (60) days of the filing of a Request for Administrative Hearing, Staff will assemble, and the Clerk will serve on the Hearing Officer and the Parties the initial Administrative Record. A Party may object to the admission of items into evidence or seek to admit additional information into evidence as set forth in these Rules, and the Hearing Officer will decide the admissibility of all evidence.

The Clerk will serve the Administrative Record pursuant to Rule 2.B.2. If a Party requests a hardcopy of the record, one (1) will be provided to them at no cost.

Pursuant to Rule 10.H., after the Administrative Record has been served, parties are no longer permitted to submit additional medical reports or other documentary evidence except for purposes of impeachment, unless the Party demonstrates good cause to the satisfaction of the Hearing Officer.

Should OCERS staff determine that a supplemental IME report from OCERS' Panel Physician is necessary, the Clerk will notify the Applicant and Hearing Officer of OCERS staff's Request for a Supplemental IME Report by serving it upon them. The Hearing Officer may reschedule the hearing date or amend the time periods set for by the Rules upon the showing of good cause, pursuant to Rule 14.

Rule 6. Consolidation of Hearings

In addition to Consolidation by the Board of two or more CEO Determinations pursuant to Section 8.C. of the Policy, cases may be Consolidated in accordance with this Rule 6, and this Rule 6 will apply to all such Consolidations.

- A. When two or more pending Requests for an Administrative Hearing involve common questions of law or fact, a Hearing Officer, upon request by OCERS or the Applicant, may order the Hearings Consolidated. Consolidation may be ordered for limited purposes or for all purposes.

In determining whether to order Consolidated Hearings, the Hearing Officer will consider all relevant factors, including:

1. the complexity of the issues involved;
2. the potential prejudice to any Party, including whether granting Consolidation would unduly delay the resolution of any of the matters involved;

OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

3. the avoidance of duplicate or inconsistent orders; and
 4. the efficient utilization of OCERS' resources.
- B. Any Party may file a request with the Clerk to Consolidate two or more pending Hearings irrespective of the procedural stages of the affected Hearings, and the request will be served by the Clerk on all Parties and the Hearing Officers.
- C. In all cases, the request for Consolidation will be referred to the Hearing Officer first assigned to any of the Hearings. The Hearing Officer may decide the matter on written submittals, or may convene the Parties, either in-person or by phone, to hear further argument on the request for Consolidation. Failure to timely oppose Consolidation will constitute a waiver of objection to an order of Consolidation.
- D. If the Hearing Officer orders the Consolidation, all affected Hearings will be transferred to that Hearing Officer.
- E. Upon Consolidation, all hearing dates will be vacated, and the Clerk will schedule a new Pre-Hearing Conference for the Consolidated Hearings. Following the Hearing, the Hearing Officer will prepare a single Proposed Findings of Fact and Recommended Decision.
- F. Nothing contained herein will prohibit the Parties from stipulating to Consolidated Hearings. In the event a stipulation is reached, the Parties will file a written stipulation with Clerk, signed by all Parties. The Clerk will then assign the Consolidated Hearings to the first assigned Hearing Officer.

Rule 7. Pre-Hearing Conference

- A. The Clerk will schedule a Pre-Hearing Conference to be held within ten (10) days of the service of the Administrative Record.
- B. The Pre-Hearing Conference will be held telephonically. The Clerk will arrange for a court reporter to transcribe the conference at OCERS' expense. The court reporter will lodge the transcript with the Clerk and serve a copy of the transcript on the Hearing Officer and Parties, no later than thirty (30) day from the date of the conference.
- C. The Hearing Officer will not permit the Parties to argue the merits of their positions at the Pre-Hearing Conference, and the Hearing Officer is authorized to suspend the Pre-Hearing Conference if any Party violates this rule. Suspended Pre-Hearing Conferences will be rescheduled to a date that is no more than five (5) days after the originally scheduled Pre-Hearing Conference. Further attempts by a Party to argue the merits of their position will result in the Clerk immediately filing an Order to Show Cause why the case should not be dismissed.
- D. At the Pre-Hearing Conference, the Hearing Officer will advise the Applicant of the following:
1. The Applicant has the right to be represented by an attorney.
 2. Any financial or personal interest that the Hearing Officer may have in the case, other than the Hearing Officer's contract with OCERS.

OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

3. The scope of the Hearing and the issues to be decided consistent with the constraints of Rule 3.E., above.
4. The Hearing Officer will consider the issues in dispute anew, without relying on the past findings of the Committee, the Board, or the CEO.
5. The Hearing Officer's purpose in the process is to find the facts relevant to the Applicant's request and provide an impartial recommendation to the Board.
6. The Applicant has the burden of proof in establishing by a preponderance of the evidence the right to the benefit sought.
7. The Applicant must identify witnesses and other evidence when filing the Pre-Hearing Statement, and that failure to include in the Pre-Hearing Statement the witnesses and other evidence they intend to rely on could mean that evidence will be excluded unless the Applicant shows that they could not have discovered the information earlier through the exercise of reasonable diligence.
8. The timelines required under these Rules for filing documents and for the Hearing, and the consequences of a failure to meet those deadlines, including that the Applicant's case will be dismissed.

Upon the issuance of the Proposed Findings of Fact and Recommended Decision, the matter will be referred to the Board pursuant to these Rules. Upon action by the Board, the decision will be final for all purposes. There will be no requirement for a further written decision from the Board or opportunity for the Board to reconsider its decision. Any Party aggrieved by the Board's decision may petition the Superior Court for judicial review as provided by law. The time for any Party to seek judicial review will be governed by the California Code of Civil Procedure Section 1094.6.

- E. At the Pre-Hearing Conference, each Party will:
 1. Make a good faith effort to identify the witnesses, both expert and non-expert, that it intends to call.
 2. Identify any witnesses it intends to call who cannot either speak or understand English to permit OCERS to arrange an interpreter for the witnesses in accordance with Rule 9.K.
 3. Indicate whether it will require an opposing Party's Medical Witness to appear in person at the Hearing; and
 4. Identify any witnesses the Party seeks to depose and, if possible, set mutually convenient dates for any depositions.
- F. No later than the Pre-Hearing Conference, OCERS, through its counsel, will identify any issues related to eligibility of the Applicant such as timeliness of the Application or ineligibility due to

OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

termination for cause, if they were not previously raised and considered by the Committee. These issues will then be presented at the Hearing.

- G. At the Pre-Hearing Conference, the Clerk will set the date for the Hearing.
1. The Clerk will confer with the Hearing Officer and Parties to determine a mutually agreeable date for the Hearing (“Hearing Date”), as soon as reasonably practicable, but in all cases the first Hearing Date will be set no later than six (6) months after the date of the Pre-Hearing Conference.
 2. Each Party will provide a good faith estimate of the amount of time it anticipates the Hearing will last. The Hearing will continue from day-to-day until complete, and the Clerk will schedule all Hearing Dates to which the Hearing Officer and Parties anticipate the Hearing will be continued until complete.
 3. The Clerk will confer with the Parties to establish a Pre-Hearing Statement filing schedule in accordance with Rule 8.
- H. Immediately following the Pre-Hearing Conference, the Clerk will issue a Scheduling Order, which will include the Hearing Date(s) and the dates that each Party’s Pre-Hearing Statements are due.
- I. After the Pre-Hearing Conference, the Hearing Officer may continue the Hearing Date only upon a showing of good cause, as set forth in Rule 14.
- J. If neither the Applicant nor the Employer, where the Employer has filed an Application on behalf of the Member, participates in the Pre-Hearing Conference, the Clerk will file and serve on all Parties and the Hearing Officer an Order to Show Cause why the matter should not be dismissed, and give the Applicant (or Employer) five (5) days to respond to the Hearing Officer. Other Parties are permitted, but not required, to submit responses. Unless the Applicant shows good cause why the matter should not be dismissed, the Hearing Officer will dismiss the Hearing, and the matter will proceed as if no Request for Administrative Hearing had been filed in accordance with Section 5 of the Policy. The Application will be referred to the Board at its next regular meeting.

If the Hearing Officer determines that an Applicant has shown good cause, the Hearing Officer will direct the Clerk to reschedule the Pre-Hearing Conference. Applicant’s failure to participate in the rescheduled Pre-Hearing Conference will result in immediate dismissal of their case.

Rule 8. Pre-Hearing Statements

- A. The Applicant will file a Pre-Hearing Statement of up to ten (10) pages, not including exhibits, no later than sixty (60) days prior to the first Hearing Date.
- B. Respondent will file a Pre-Hearing Statement of up to ten (10) pages, not including exhibits, no later than thirty (30) days prior to the first Hearing Date.
- C. Any Party may file a Supplemental Pre-Hearing Statement of up to five (5) pages, not including exhibits, no later than fourteen (14) days prior to the first Hearing Date.
- D. The Pre-Hearing Statements will include the following:

OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

1. A statement of the issues and contentions of the Party and a brief summary of the evidence to be presented.
 2. A list and redacted copies of any expert's reports, transcripts of depositions of any witnesses, and other documentary evidence on which the Party will rely, if not already in the Administrative Record. All documents will be Bates Stamped by the Applicant (or their Attorney) in sequence with the initial Administrative Record. Duplicate documents will be rejected.
 3. The names, addresses, email addresses (if known) and telephone numbers of any non-expert witnesses whose testimony the Party intends to call as a witness at the Hearing and a brief description of the content of their testimony.
 4. The names, addresses, email addresses (if known) and phone numbers of any expert witnesses whom the Party intends to call as a witness at the Hearing and a brief description of the content of their testimony.
- E. If the Applicant disputes the effective date of the disability retirement, the Applicant will raise the effective date as an issue and will state Applicant's contention in the Pre-Hearing Statement.
- F. The Hearing Officer may allow the Parties additional time to file their Pre-Hearing Statement or may re-schedule the Hearing within the time requirements of Rule 14, if good cause is shown. .

Rule 9. Depositions and Subpoenas

- A. **Depositions:** Witness depositions may be taken by either Party in the presence of a certified court reporter and will be taken under oath or affirmation. The Party taking the deposition will pay all associated costs. Any Party introducing deposition testimony into evidence will provide a copy of the full deposition transcript to each Party and the Hearing Officer.
- B. **Subpoenas and Related Fees/Costs:**
1. OCERS will issue a subpoena for the personal appearance of a witness at the Hearing or at a deposition, or for the production of documents (subpoena *duces tecum*), in conformance with California Government Code Section 31535, upon the request of any Party filed at least thirty (30) days before the Hearing Date. Any request for a subpoena submitted less than thirty (30) days of the Hearing Date will not be honored and it will be the responsibility of the Party to subpoena their witness.
 2. Each subpoena request must state the witness's full name, email address (if known), phone number and the complete address of the witness's place of employment, service address, or residence. The requesting Party will be responsible for serving the subpoena, scheduling the witness, and paying all associated witness fees and costs of service and production. The Party requesting oral testimony of an expert witness (including an OCERS Panel Physician) will in all cases be responsible for any expert witness fees. If an employer witness is being subpoenaed, it is the responsibility of the subpoenaing party to coordinate service with that employer.

OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

3. Any fee disputes between a witness and the requesting Party are independent of any proceeding between the Applicant and OCERS. Those fee disputes will be resolved by the requesting Party and the witness in the California courts, not in this forum. The Hearing Officer has no authority to decide any such dispute.

Rule 10. Conduct of Hearings

- A. All Hearings will be held at the OCERS' office located at 2223 East Wellington Avenue, Santa Ana, California 92701.
- B. The Clerk will arrange for a court reporter to be present. Oral evidence will be taken only on oath or affirmation administered by the Hearing Officer or the court reporter.
- C. A written medical report bearing the signature (including a digital signature) of the Medical Witness will be admissible in evidence as the author's direct testimony, on the express condition that the adverse Party has had the opportunity to require the Medical Witness to be present and to cross-examine the witness at the Hearing, or to depose the witness and have the deposition transcript admitted into evidence.
- D. Each Party will have the right to call and examine witnesses; to introduce exhibits, including reports and depositions of medical witnesses; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which Party first called the witness to testify; and to rebut adverse evidence. If an Applicant does not testify by direct examination, OCERS may call and examine the Applicant.
- E. The conduct of the Hearing will not be restricted by the rules of evidence. Any relevant evidence will be admitted if it is the sort of evidence on which reasonable persons may rely. The rules of privilege will be effective to the extent that they are otherwise required by statute. Irrelevant and unduly repetitious evidence will be excluded.
- F. Hearsay evidence may be used for the express purpose of supplementing or explaining other evidence but will not be sufficient by itself to support a finding unless it would be admissible over objection in civil actions. This section will not be applicable to written medical reports received into evidence pursuant to Rule 10.C. Every Hearing will proceed as though each Party had made a standing objection to all inadmissible hearsay.
- G. The court reporter will lodge with the Clerk the transcript of the Hearing and serve a copy on the Hearing Officer and Parties, within thirty (30) days of the final Hearing Date.
- H. The record will be closed to new evidence at the conclusion of the final Hearing Date. No Party may submit a medical report or other documentary evidence not included in the Administrative Record or listed in its Pre-Hearing Statement except for purposes of impeachment, unless the Party demonstrates good cause. Likewise, no Party will be permitted to call a witness not listed in its Pre-Hearing Statement, except for purposes of impeachment, unless the Party demonstrates good cause. For purposes of this Rule, "good cause" means that the relevant evidence or witness could not have been previously produced or identified even with the exercise of reasonable diligence. The Party requesting submission of such evidence or witness will file a written request prior to the

OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

Hearing, or if unable to do so in the exercise of reasonable diligence, will make an oral request at the Hearing. The request will state the reason the evidence or witness was not timely produced or identified. After providing a reasonable opportunity for each adverse Party to be heard, the Hearing Officer will rule on such a request. If the evidence is allowed to be admitted into evidence, or the witness is allowed to testify, the Parties will have the right to a continuance to engage in further discovery, obtain rebuttal medical evidence, or depose or cross-examine the Medical Witness to comply with Rule 10.C. In no event, will good cause permit admission of medical reports or other documentary evidence relating to a new medical condition covered by Rule 3.F.

- I. Each Party will have the right to submit a closing oral argument at the conclusion of the Hearing.
- J. Use of Interpreter Services.
 1. If an Applicant or a witness does not speak or understand English sufficiently to participate in the proceedings or provide testimony, an interpreter certified to provide interpretation services in administrative hearings will be provided to that Applicant or witness at OCERS's expense. Notice that an Applicant or witness requires interpreting services will be given to OCERS at the Pre-Hearing Conference or be included in the Party's Pre-Hearing Statement. If a Party fails to provide such notice, then the witness may not be called unless good cause is shown, as set forth Rule 10.I.
 2. All interpreters must be certified to provide interpreting services in administrative hearings pursuant to Government Code Section 11435.30. The interpreter must not have had any involvement in the issues of the case prior to the Administrative Hearing.
 3. If an Applicant objects to the interpreter provided by OCERS, the Applicant may supply their own interpreter, provided that the interpreter is certified under Government Code Section 11435.30. However, time for an Applicant to find and hire an interpreter will not be considered good cause to continue the Hearing. OCERS will pay the chosen interpreter the same amount OCERS would have paid an interpreter hired directly by OCERS. The Applicant will be responsible for any amounts charged by the interpreter that are over the amount OCERS would have paid to an interpreter hired directly by OCERS. Fee disputes between the interpreter and the Applicant will not be resolved in this forum, and the Hearing Officer will not have authority to resolve any fee disputes between interpreters and the Parties.

Rule 11. Resolution of Disputes about Depositions and Conduct of Hearings

The Hearing Officer will resolve disputes about depositions and the conduct of the Hearing. A request for resolution of a dispute may be made verbally at a Pre-Hearing Conference, at the Hearing, or by written motion filed with the Clerk at any time prior to the Hearing. The Hearing Officer, in the exercise of sound discretion, may permit written argument or briefs.

Rule 12. Closing Briefs

- A. Each Party will have the right to submit a written closing brief. Unless the Parties waive closing briefs, the Parties will adhere to the following schedule with specific filing dates being proposed by the Clerk:

OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

1. The Applicant's closing brief will be filed no more than thirty days (30) from the date the transcript of the Hearing is lodged with the Clerk.
 2. Respondents' closing briefs will be filed no more than thirty days (30) days from the date the Clerk serves the Applicant's closing brief on the Parties.
 3. Applicant may file a reply brief no later than fifteen (15) days from the date the Clerk serves Respondents' closing briefs on the Applicant.
- B. The Applicant may waive their right to file a reply brief. They must notify the Hearing Officer, Clerk, and Parties no more than five (5) days after Respondent's closing brief is filed.
- C. Each Party's closing brief may be supported by facts in the record, the hearing transcript, and citation to law. The submission of additional evidence will not be permitted. The Applicant's and Respondent's closing briefs will be limited to fifteen (15) pages and the reply brief will be limited to ten (10) pages. The Clerk may reject briefs exceeding the foregoing limits. A Party may submit a request in writing to the Hearing Officer to be relieved of the page limitations.

Rule 13. Hearing Officer's Findings of Fact and Recommended Decision

- A. **Time for Filing.** The Hearing Officer will file their Proposed Findings of Fact and Recommended Decision with the Clerk no later than sixty (60) days after the Applicant's reply brief is filed or, if the Parties waived closing briefs, within sixty (60) days of the date the transcript of the Hearing is due (i.e., within 30 days of the final Hearing Date) or actually lodged (if earlier than 30 days after the final Hearing Date).
- B. **Content of Proposed Findings of Fact and Recommended Decision.** The Hearing Officer's Proposed Findings of Fact and Recommended Decision will include a summary of the following: (1) issues raised by the parties; (2) the testimony; (3) all other evidence received by the Hearing Officer; (4) a factual discussion of matters on which the Hearing Officer relied; (5) conclusions of law with citations to legal authority; and (6) recommended decision.
- C. **Objections/Requests for Clarification.** Within ten (10) days from the date that the Hearing Officer files the Proposed Findings of Fact and Recommended Decision with the Clerk, any Party may file with the Clerk objections or written requests for clarification to the Hearing Officer's Proposed Findings of Fact and Recommended Decision. The Clerk will serve such objections or written requests for clarification on the Hearing Officer and the Parties who will then have ten (10) days after service to file a response with the Clerk.

Within thirty (30) days after the later of: (a) the date that Hearing Officer receives the objections or requests for clarification or (b) an adverse party's response to such objections or requests for clarification, the Hearing Officer will:

1. Affirm the Proposed Findings of Fact and Recommended Decision findings, conclusions, and recommendations as originally submitted without change, or

OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

2. Make changes to the Proposed Findings of Fact and Recommended Decision as the Hearing Officer deems appropriate considering the evidence, the objections or requests for clarification submitted by the Parties, and the responses thereto.

The objections and/or requests for clarification and the response thereto and the Hearing Officer's response to any objections or requests for clarification, will be added to the Administrative Record and submitted for consideration by the Board.

Rule 14. Continuances and Relief from Orders

- A. The deadlines and timelines established in these Rules are for the purpose of expediting the Hearing process. Therefore, delays, continuances, or relief should be granted for documented good cause (as defined hereafter) and any delay should be the shortest necessary under the circumstances. If the Hearing Officer believes the request is primarily for the purpose of delay or caused by inattention or lack of preparation of a Party, the request will be denied.
- B. Upon the request of a Party, and until the matter is referred to the Board, the Hearing Officer has authority to amend or continue the time periods set forth in these rules, but only for good cause shown by the Party seeking the delay.
- C. Good cause for purposes of this Rule will be only for the following reasons:
 1. The discovery of relevant evidence that, in the exercise of reasonable diligence, could not have been previously produced (in which case there will only be one continuance permitted for each request);
 2. The need to engage in further discovery, obtain rebuttal medical evidence, or depose or cross-examine a Medical Witness (in which case there will only be one continuance permitted for each request), as set forth under Rule 10.1; or
 3. The illness or disability of the Applicant, witness, attorney, or the Hearing Officer which was unknown to the person at the time of the Pre-Hearing Conference (or other time at which the deadline was set) which makes it impossible for the person to participate in the Administrative Hearing process. Relief in these instances will be granted only if the person raises the request as soon as practicable. The Hearing Officer will consider a failure to timely seek relief a waiver by the person.
- D. If a continuance is sought due to an illness or disability affecting an attorney who will not be able to participate in the process within a reasonably short period of time, then the continuance will be for no more than sixty (60) days to secure substitute counsel, and the Clerk will schedule a Pre-Hearing Conference pursuant to Rule 6.
- E. If a continuance is sought due to an illness or disability affecting the Hearing Officer, and the Hearing Officer cannot proceed within the time-period set forth in Rule 16, the Hearing Officer will be recused, and the Clerk will appoint a new Hearing Officer pursuant to Rule 4 and schedule a new Pre-Hearing Conference pursuant to Rule 7.

OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

- F. If good cause is found to exist to reschedule a Hearing, the Hearing Officer will order the Clerk to propose new hearing dates no more than sixty (60) days from the date of the previously scheduled hearing. The Hearing Officer will order the Clerk to schedule a Pre-Hearing Conference only if it is determined that the Parties are unable to agree upon a new hearing date proposed by the Clerk.
- G. Until such time as the matter has been referred to the Board, the Hearing Officer will maintain jurisdiction over the matter and, upon any terms as may be just, may relieve a party from an order, or other action taken against that Party through mistake, inadvertence, surprise, or excusable neglect on the part of the Party. Application for this relief will be made within a reasonable time. Once the matter has been placed on the Board agenda, the Hearing Officer will no longer have jurisdiction.

Rule 15. Action by the Board

- A. The Clerk will refer the Hearing Officer's Proposed Findings of Fact and Recommended Decision as well as any related objections to the Board for its consideration.
- B. The Clerk will place the matter on the agenda of a regular meeting of the Board within one (1) calendar month after the later of the date the Clerk receives the Hearing Officer's Proposed Findings of Fact and Recommended Decision; or the date the Clerk receives the Hearing Officer's Response to Objections following any objections from the Parties.
- C. The Clerk will provide written notice to the Parties, Hearing Officer, and Employer 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. On matters which are on the Board agenda, the Applicant (or their Attorney) is limited to a ten (10) minute presentation; Respondent is limited to a seven (7) minute response; and the Applicant (or their Attorney) is then limited to a three (3) minute rebuttal. The Board Chair (or their designee) has the discretion to extend any Parties' time.
- D. The Applicant (or their Attorney) may request that their matter be removed from the Board agenda. The Clerk will grant one (1) continuance of the matter to the next regular meeting of the Board. No additional continuances will be granted. If Applicant wishes to delay the referral of their matter to the Board beyond the one-month extension, they will be required to appear before the Board and show cause as to why an additional extension should be granted. If granted, the matter will be referred to the to the next regular meeting of the Board. No additional continuances will be granted.
- E. Good cause for this the purposes of this Rule will be granted for the following:
 - 1. The illness of the Applicant or their Attorney.
 - 2. The illness of an Applicant's immediate family member (i.e., Spouse, child, mother, father.)
- F. Pursuant to Government Code Section 31534, after reviewing the Hearing Officer's Proposed Findings of Fact and Recommended Decision and any related objections/requests for clarification, the Board may:

OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

1. Approve and adopt the Proposed Findings of Fact and Recommended Decision of the Hearing Officer; or
 2. Require a transcript or summary of all testimony, plus all other evidence received by the Hearing Officer; and upon receipt thereof, take such action as the Board in its opinion is indicated by such evidence; or
 3. Refer the matter back with or without instructions to the Hearing Officer for further proceedings; or
 4. Set the matter for hearing before itself. At such hearing, the Board will hear and decide the matter.
- G. In any case where the Board decides to act under Rule 15.F.2. or 15.F.4., the Board may approve and adopt the Proposed Findings of Fact and Recommended Decision of the Hearing Officer or prepare its own Findings of Fact and Decision, either itself or through direction to Staff with its approval.
- H. In any case where the Board decides to act under Rule 15.F.3. the Clerk will notify the Hearing Officer of the Board's action no more than five (5) days from the Board meeting. The Applicant will have thirty (30) days to submit additional evidence. The Hearing Officer will then have sixty (60) days to review the additional evidence and issue their Findings. Any Party will have ten (10) days to file objections, with any opposition due ten (10) days later. The Clerk will place the matter on the Board agenda in accordance with Rule 15.B.
- I. In any case where the Board decides to act under Rule 15.F.4. the Board Chair (or their designee) will act as the Hearing Officer and will establish a hearing date and briefing schedule. Applicant's opening brief will be filed with the Clerk no more than sixty (60) days before the date of the Board hearing. Respondent(s) opening brief will be due no more than thirty (30) before the date of the Board hearing. The Applicant will then have until twenty (20) days before the date of the Board hearing to file a reply brief. Each brief will be no more than five (5) pages in length excluding exhibits. Once the Board hearing date has been set, no continuances will be granted.

At the conclusion of the Board hearing the record will be closed.

A court reporter will be provided at OCERS' expense to transcribe the Hearing. The court reporter will lodge the transcript with the Clerk and serve a copy on the Party(ies), within twenty (20) days from the Hearing.

The Applicant will have thirty (30) days from the date the hearing transcript is lodged to file their closing brief. Respondent will then have thirty (30) days to file its closing brief. Applicant will then have twenty (20) days to file a reply brief. Each brief will be no more than five (5) pages in length.

Following the Hearing before the Board, or consideration of the Hearing Officer's Proposed Findings of Fact and Recommended Decision, a Statement of Decision will be issued and the Clerk will notify the Applicant (or their Attorney), Hearing Officer, and the Employer by email of the Board's final action. Any Party aggrieved by the Board's decision may petition the Superior Court for judicial



Applicable to cases filed on or after November 1, 2024

OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

review as provided by law. The time for any party to seek judicial review will be governed by the California Code of Civil Procedure Section 1094.6.

Rule 16. Dismissal for Non-Compliance.

Except as otherwise provided, if the Applicant fails to comply with any of these Rules after two (2) written warnings from the Clerk, the Hearing Officer will dismiss the Hearing and the matter will proceed as if no Request for Administrative Review or Hearing had been filed. The Application will be referred to the Board at its next regular meeting following dismissal by the Hearing Officer. The Board's decision will be final.