



**The Retirement Board of the
Policemen's Annuity and Benefit Fund of Chicago**
221 North LaSalle Street – Suite 1626
Chicago, Illinois 60601

(312) 744-3891

Hearing Rules & Procedures

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1. AUTHORITY

These Rules and Procedures are applicable to all hearings held before the Retirement Board of the Policemen's Annuity and Benefit Fund of Chicago (the "Board"). The Illinois Pension Code (the "Pension Code"), 40 ILCS 5/5-101 *et seq.*, promulgates the creation of these Rules and Procedures pursuant to section 5/5-195. Nothing in these Rules and Procedures creates any contractual right, either express or implied.

2. SCOPE OF RULES

- 2.1** The Rules and Procedures herein provided for shall apply to all hearings held before the Board, including but not limited to:
- (a) Application for an award or review of a "Duty" (5/5-154), "Occupational Disease" (5/5-154.1), "Total-Permanent" (5/5-154), and/or "Ordinary" (5/5-155) disability benefits;
 - (b) Application for Widow Benefits;
 - (c) Application for Children Benefits;
 - (d) Felony Divestiture Proceedings (5/5-227); or
 - (e) Any other matter the Board determines a hearing is warranted.
- 2.2** These Rules and Procedures shall also apply, where applicable, to any other application for or review of pension and/or retirement benefits provided by the Pension Code the Board deems to be contested, in whole or in part, as a result of which pension and/or retirement benefits may be granted, denied, modified, or terminated.
- 2.2** Failure to adhere to or comply with these Rules and Procedures may result, after notice and an opportunity to be heard, in:
- (a) Dismissal of a pending application for benefits;
 - (b) Termination or suspension of any previous benefit award; or
 - (c) Limitation on the evidence to be presented and considered by the Board.
- 2.3** Any conflict between these Rules and Procedures and the statutory provisions of the Pension Code shall be resolved in favor of the statute.
- 2.4** These Rules and Procedures shall be effective as of the date adopted by the Board and shall, subject to amendments later published by the Board or unless otherwise

noted herein, supersede any and all previous rules and procedures published by the Board.

3. CONSTRUCTION

- 3.1 These Rules and Procedures shall be liberally construed in order to further the authority granted to the Board and the purposes of the Pension Code.
- 3.2 Specifically, but without limiting the generality of the foregoing, these Rules and Procedures shall be construed so as to provide to all applicants a full opportunity to be heard before a fair and impartial tribunal having before it any and all evidence relevant to the issues involved, whether the matter was initiated by the applicant or by the Board.
- 3.3 In the event any provision or term of these Rules and Procedures or subsequent amendments thereto shall be determined by a court of competent jurisdiction to be invalid, such determination shall not affect the remaining provisions which shall continue in full force and effect.

4. APPLICATION FOR BOARD CONSIDERATION

- 4.1 All applications for the Board's consideration, or if necessary, an evidentiary hearing, must be filed within the time period provided for in the Pension Code, if any, pertaining to exhaustion of remedies and benefits before the Chicago Police Department ("CPD"), removal from the payroll of the CPD and the prescribed waiting periods following removal from the payroll of the CPD.
- 4.2 As a condition precedent to any consideration by the Board, any application for or related to disability benefits of any kind or character shall be accompanied by:
 - (a) A written sworn application in a form acceptable to the Board;
 - (b) A written sworn affidavit in a form acceptable to the Board so as to provide specific data as to the time, place, and events supporting or related to the application for benefits to substantially advise the Board as to the nature of the relief or benefit sought;
 - (c) Authorization(s) for release, in a form acceptable to the Board, of all relevant medical, psychological, psychiatric, and related records from all health care providers providing treatment, diagnoses, or evaluation of the applicant for any condition related to his/her request for disability benefits; and
 - (d) Confirmation a request has been made to the CPD medical section to provide the Board with the applicant's medical file as maintained by the CPD in the regular and ordinary course of its business.

- 4.3 As a condition precedent to any consideration by the Board, any request for benefits other than for a disability benefit shall be accompanied by a written sworn application in a form acceptable to the Board, if any, or any writing, sworn to by the person requesting relief, in any form reasonably calculated to advise the Board of the nature of the request and the facts and circumstances supporting the request.
- 4.3 An application with its attachments shall be deemed filed with the Board when fully completed, sworn to, and delivered by the applicant or their attorney to the Board and time-stamped.
- 4.4 No more than one application for an award or modification of disability benefits of any kind or character shall be considered by the Board at the same time.

5. **PRE-HEARING PROCEDURES – DISABILITY APPLICATIONS**

- 5.1 To implement Board procedures, and to facilitate the prompt hearing of the disability benefit application, these steps should be taken by or on behalf of the applicant-officer.
- (a) An officer on a CPD medical leave, not anticipating a return to duty, to facilitate a prompt hearing, should file with the Board prior to exhausting of medical leave, an application seeking disability benefits. To facilitate a prompt hearing, following the officer exhausting their medical leave, it is recommended that sixty (60) days prior to the exhausting of the officer's medical leave:
- (1) The officer should appear at the office of the Board and submit his application for benefits; and
 - (2) The officer should at the same time advise the CPD medical section to forward their medical file to the Board.
- (b) Concurrent with the application filed the officer will be required to sign a medical authorization form. The Board will then obtain CPD medical records if not previously received and other medical records deemed necessary to fully consider the officer's application.
- (c) The officer, at the same time, will be fully advised that an independent medical examination by the Board's appointed physician will be made (5/5-156) and the officer is required to present himself for such examination, or, if necessary, reschedule the examination *no less* than seven (7) days prior to the appointment date.

- (d) In the event the Board's physician or the Board requests that an applicant submit to additional physical examination by a physician engaged in a specialty deemed appropriate by the Board, the applicant shall select such additional physician from a list of physicians prepared by the Board and shall cooperate with the selected physician in submitting to the examination, including, but not limited to a functional capacity evaluation and such other collateral or related non-evasive tests as may be required by the additional physician. (5/5-156).
- (e) If the appointment provided for in (c) or (d) is not kept or rescheduled and the Board is required to pay for any cancelled medical appointments, any cost incurred by the Board must be reimbursed by the officer. The Board may, at its option, deduct from any of the officer's future payments any costs incurred resulting from the officer's failure to keep the appointment made or cancel the same within the time provided.
- (f) An applicant's failure to timely and fully submit to a physical examination shall, after notice and an opportunity to be heard, be grounds for summary denial of the pending application, with prejudice to the right to subsequently submit an application for the same or related disability benefit.
- (g) A disability recipient who refuses to submit to an examination by a Board appointed physician, shall have no right to continue to receive a previously awarded disability benefit, (5/5-157) whether such award is made prior to, or after a full evidentiary hearing.

5.2 Upon receipt of a properly constituted application by the Board, and receipt of the officer's medical file from the CPD, the Board will submit a full and complete copy of the CPD medical records to the officer or their attorney.

5.3 In the event, prior to any evidentiary hearing, the Board grants to a disability applicant an ordinary disability benefit such award shall be without prejudice to the Board's determination following a scheduled evidentiary hearing whether the applicant is entitled to a disability benefit and if so to what benefit they may be entitled.

6. Submission of Evidence

6.1 At any time after the filing of an application, the applicant or their attorney shall notify the Board of its intent to proceed to an evidentiary hearing. The Board cannot guarantee the scheduling of a hearing in the subsequent month immediately thereafter if notice is not made by the 15th day of the preceding month (i.e., notice on or after the 15th day of February cannot guarantee a March hearing date).

- 6.2 From the list of those applications identified as ready to proceed to hearing, the Board will schedule those it intends to proceed and a written Notice of Hearing will be issued pursuant to Section 9 herein.
- 6.3 No later than 21 days prior to the scheduled hearing date, the applicant or their attorney shall provide the Board all documentation related to the applicant's claim and a list of any witnesses the applicant anticipates calling to provide testimony at the hearing.
- 6.4 No later than 14 days prior to the scheduled hearing date, the Board shall provide the applicant or their attorney all documentation related to the applicant's claim and a list of any witnesses the Board anticipates calling to provide testimony at the hearing.
- 6.5 Any supplemental documentation to the applicant's initial submission shall be provided to the Board no later than 7 days prior to the scheduled hearing.
- 6.6 Failure to comply with all of the time periods as specified herein shall constitute good cause for either party to seek a continuance.

7. Subpoenas

- 7.1 The Board has the power to subpoena witnesses or documents. The Board shall issue a check with each subpoena for mileage or witness fees as provided by law when the subpoena is issued on the Board's own behalf.
- 7.2 At the request of any party to a proceeding before the Board, the Board may execute and issue subpoenas. The party requesting the subpoena shall prepare the subpoena in a form acceptable to the Board. The requesting party is responsible for service of the subpoena. The party requesting the subpoena is solely responsible for the payment of any mileage or witness fees as stated in the Illinois Code of Civil Procedure. The party requesting the subpoena of an expert must pay all expert witness fees in advance of the issuance of the subpoena.
- 7.3 Upon the failure of a person to comply with a subpoena issued and duly served, the party requesting the subpoena may, at its discretion and without prior notice, seek judicial relief enforcing the subpoena.

8. Continuance or Postponement of Hearings

A hearing may be continued for good cause shown as determined by the Board. All parties involved in a hearing shall attempt to avoid undue delay caused by repetitive postponement or continuances, so that the matter may be resolved in an expeditious manner. Repeated requests for continuances are disfavored.

9. Notice of Hearing and Service of Notice of Hearing

- 9.1 All administrative hearings conducted by the Board shall be initiated by the Board issuing a written Notice of Hearing, which shall be served upon all parties of record and any attorney who has filed an appearance.
- 9.2 The Notice of Hearing shall inform the party of the purpose for the hearing and state the date, time, and place of the hearing.
- 9.3 Service of the Notice of Hearing shall be complete when the Notice is served in person, when issued electronically, or deposited in the United States Mail, with postage prepaid, by priority mail signature confirmed, addressed to the last known address of the person involved.
- 9.4 A party waives any claim of faulty or untimely Notice of Hearing by participating in the Hearing.

10. Authority of the Hearing Officer

- 10.1 Upon the filing of an application, a Board attorney shall act as the “Hearing Officer” and shall have the authority to take any and all steps necessary to commence the adjudication of applications before the Board.
- 10.2 The Board attorney shall continue to serve as Hearing Officer until such time as the Board meets. The Board president, any Board trustee, or a Board attorney, selected by a majority of the trustees, may then be appointed the Hearing Officer by a majority vote of the trustees at the next regular or special Board meeting.
- 10.3 Absent the Board selecting a Hearing Officer, the Board president shall act as the Hearing Officer.
- 10.4 The Hearing Officer shall have all powers necessary to conduct the hearing. The Hearing Officer may exercise any of the powers necessary to conduct the Hearing. The Hearing Officer’s authority shall include, but not be limited to, the following powers:
 - (a) Regulate the course of hearings, continue hearings, set the time and place for continued hearings, rule on objections, fix time for filing of documents, provide for the taking of testimony by deposition if necessary, and generally conduct the proceeding according to generally recognized administrative law and these Rules and Procedures;
 - (b) Examine witnesses and direct witnesses to testify, limit the number of times any witness may testify, limit repetitious, irrelevant, prejudicial, or cumulative testimony, and set reasonable limits on the amount of time each witness may testify;

- (c) Rule upon offers of proof and receive relevant evidence;
- (d) Limit the participation of an intervenor;
- (e) Direct parties to appear and confer for the simplification of issues, and to otherwise conduct prehearing conferences;
- (f) Dispose of procedural requests or similar matters;
- (g) Set briefing schedules;
- (h) Grant or deny requests for continuance; and
- (i) Enter any order that further carries out the purpose of these Rules and Procedures.

10.5 Any ruling or decision made by the Hearing Officer may be overruled by a simple majority vote of the Board.

10.6 **DISCLAIMER:** The Board attorney, as appointed Hearing Officer, shall not: (i) assume a prosecutorial role; (ii) attempt to unduly influence the Board's decision; and (iii) vote on a matter before the Board.

11. Conduct of the Hearing

11.1 All hearings shall be open to the public, unless otherwise permitted.

11.2 All hearings shall be conducted in a fair, impartial, and orderly manner.

11.3 Unless otherwise limited, generally, a party is afforded the opportunity to present evidence, testimony, and arguments relative to the merits of the case, subject to the discretion of the Hearing Officer.

11.4 The technical and formal rules of evidence and the rules of civil procedure shall not be followed at the hearing, however, rules of fundamental fairness will apply.

11.5 The Hearing Officer will rule on all evidentiary matters or legal determinations.

11.6 The following shall be the order of proceedings on all hearings, subject to modification by the Hearing Officer, for good cause shown:

- (a) Presentation and disposition of all motions or matters preliminary to the hearing;
- (b) The party or counsel may make an opening statement;

- (c) The party may then present any evidence or witnesses to support the claim;
- (d) The Board or the Hearing Officer may then ask questions or cross examine witnesses;
- (e) The Board may then introduce any documentation regarding the matter or call any witnesses (unless already admitted by agreement);
- (f) The party or counsel may then ask questions or make objections;
- (g) The party or counsel may then make a closing statement, or in the alternative and as deemed appropriate by the Board or Hearing Officer, submit a post-hearing brief;
- (h) Evidence may then be closed;
- (i) The Board may then take motions, deliberate in closed session, take the matter under advisement, or request additional evidence; and
- (j) After deciding the matter by majority vote in open-session, a written final administrative decision and order will be voted on and approved during a properly noticed public meeting.

12. Testimony of Experts and Witnesses

- 12.1** At the discretion of the Board or Hearing Officer, the parties may be permitted to present relevant live testimony of experts and other witnesses via in-person, telephonic, and/or electronic means at the time of the scheduled hearing.
- 12.2** The Board, in its sole discretion, will determine the weight and relevancy, if any, to be afforded any documentation offered by or on behalf of applicant not supported by oral testimony by the authors thereof or persons competent to testify as to those documents. Such determination may result in a decision adverse to the applicant.

13. Record of Proceedings

Unless determined otherwise, the Board shall ensure a verbatim record of the hearing is made by a court reporter. The Board shall also ensure all evidence presented at the hearing is marked to indicate the party offering the evidence and is made part of the administrative record. Parties may obtain a copy of the verbatim record of the hearing at their own expense.

14. Written Decisions

14.1 All final administrative decisions of the Board shall be in writing in the form of a decision and order and served on all parties. The decision orally announced by the Board may be subject to revision until such time as the formal written order is published and served.

- (a) No written decision and order is final until it is served, after being approved by a majority of the Board at a properly noticed public meeting.
- (b) All final administrative decisions of the Board shall be accompanied by a certificate of service indicating on whom the order was served, the date, and the manner of service.
- (c) Service may be made by either personal delivery, certified mail, or as otherwise agreed to by the parties.
- (d) Decisions and orders shall be deemed to have been served either when a copy of the decision is personally delivered or when a copy of the decision is deposited in the United States mail, in a sealed envelope or package, with postage prepaid, addressed to the party affected by the decision at his or her last known residence or place of business.

15. Intervention

15.1 An interested party with standing (as determined by the Board), may petition to intervene into a hearing (“Petitioner”).

- (a) The Petitioner bears the burden to prove entitlement to intervene.
- (b) The decision whether to grant or deny a petition to intervene will be made within the sound discretion of the Board.
- (c) A petition to intervene shall be submitted in writing no later than fourteen calendar days prior to the first hearing date.
- (d) A petition to intervene not timely submitted in writing may be denied, absent good cause shown.
- (e) Any decision regarding a petition to intervene will be an interim, non-final, decision by the Board.

16. Filing of Documents

16.1 All documents, applications, briefs, or motions required or permitted to be filed with the Board under these Rules and Procedures or the Pension Code, may be

either mailed or electronically delivered to the Board and/or its attorney.

16.2 Unless ordered otherwise by the Board, the date of filing shall be the date the document is received by the Board or the date of mailing, whichever is earlier.

16.3 All documents filed pursuant to any hearing under these Rules and Procedures shall clearly show the Board hearing number (if any) and the caption of the proceedings;

16.4 All documents shall be signed by the party or their attorney.

17. **Computation of Time**

17.1 Computation of any period of time prescribed herein shall begin with the first business day following the day on which the act, event, or development initiating such period of time occurs, and shall run until the end of the last day, or the next following business day if the last day is a Saturday, Sunday, or legal holiday. Where the period of time is five (5) days or less, Saturdays, Sundays, and legal holidays shall be excluded in the computation of time;

17.2 Notice requirements shall be construed to mean notice received, but proof notice was dispatched by means reasonably calculated to be received by the prescribed date shall be *prima facie* proof notice was timely received, unless otherwise specified by law.

18. **Loss or Revocation of Pension Rights or Benefits**

18.1 If the Board determines that any participant or beneficiary may have his or her pension benefits forfeited, suspended, reduced, rescinded, revoked, or terminated, the participant or beneficiary shall be entitled to a hearing before the Board.

18.2 The hearing procedure to be followed in such cases are those procedures set out in these Rules and Procedures.

19. **Judicial Review**

19.1 Pursuant to the Pension Code, 40 ILCS 5/5-228, and the applicable provisions of the Administrative Review Act, 735 ILCS 5-3 101 *et seq.*, the final written decision of the Board may be subject to administrative review if, in addition to other statutory requirements, said review is commenced within 35 days after service of the Board's written decision.

19.2 No provisions exist for a petition for rehearing before the Board, and accordingly no such petitions or motions shall be received by the Board.