

GRAYS HARBOR COUNTY

L.E.O.F.F. DISABILITY BOARD

RULES AND REGULATIONS

**Name:** The name of the Board shall be the Grays Harbor County Law Enforcement Officers' and Fire Fighters' Disability Board, hereinafter referred to as "Disability Board" or the "Board."

**Office:** The principal office of the board shall be located at 310 West Spruce, Montesano, Washington 98563.

**Meetings:** The Board shall hold a regular monthly meeting on the third Thursday of each month at 310 W. Spruce St, Montesano. The Chairman of the Board or a majority of the Board members may call special meetings at any time.

**Quorum:** A majority of the total membership of the Board shall constitute a quorum for the transactions of all business. Unless provided to the contrary by state law or these rules and regulations, a majority of the total membership of the Board shall be necessary to take action on any matter coming before the Board. Members of the Board shall be responsible for contacting the Secretary of the Board at least two days prior to any regular or special meeting if unable to attend the same.

**Officers:** The Board shall elect a Chairman and Vice Chair of the Board annually in January. The Chairman of the Board shall preside over all meetings. The Board shall appoint a Secretary. The Secretary shall assist the Board in preparing necessary correspondence and documents related to their official duties and functions. The Secretary shall keep an attendance records of the members of the Board at all regular meetings. The Secretary shall contact and advise members in advance of all special meetings.

**Board Doctor:** A duly licensed and practicing physician shall be appointed by the Board. The Board Doctor shall perform or supervise all re-entry examinations and all examinations on claims for disability after obtaining the report of any necessary specialist. No disability retirement shall be approved by the Board without prior examination of the claimant by the Board Doctor or a specialist of his selection, on or near the expiration of the disability leave period. He shall render such other medical service as may be requested by the Board.

**Legal Opinions:** The County Prosecuting Attorney shall be legal counsel to the Board. Legal opinions requested by and given to the Board fall within the attorney/client privilege. As such, they are confidential to the Board and not subject to public disclosure. This includes both written and oral opinions.

**Execution:** Every order of the Disability Board granting a disability retirement allowance shall contain the following presented in clear and concise form:

- A. Finding of fact supported by substantial evidence in the record supporting the granting of the disability retirement allowance. Findings of fact shall also include:
  - 1. Whether or not the disability was incurred in the line of duty.
  - 2. Whether incurred in other employment, if applicable.
  - 3. Dates encompassing disability leave and/or dates relating to approved or authorized trial basis return to duty. Further, when utilizing return to duty on a trial basis, the factual basis for such decision.
  - 4. Dates encompassing waiver of disability leave, if applicable; and
    - (a) That applicant established that such disability will be in existence for a period of six (6) months.
  
- B: Conclusions of law in accordance with law on the basis of the facts in the case.

**Appeal:** If the Board denies disability leave or disability retirement or cancels a previously granted disability retirement, the applicant shall be immediately notified and advised of the right to appeal such decision or order to the State LEOFF Board, pursuant to RCW 41.26.200. Such notification is to be reflected in the Board records.

- A. Disability leave or retirement claim.
  - 1. Any member feeling aggrieved by any order or determination of the Board denying disability leave or disability retirement, or canceling a previously granted disability retirement allowance shall have the right to appeal to the State Directory of Retirement Systems, as provided for in RCW 41.26.221.
  
- B. Duty Disability, Non-Duty Disability and Medical Claims.
  - 1. Any member feeling aggrieved by any denial of payment of a claim for medical services by the Board or the finding of the Board as to whether the member's disability retirement is duty or non-duty related shall have the right to request the Board to reconsider its decision and the Board may grant or deny such request of reconsidering, at its discretion.

2. Requests for reconsidering must be filed with the Board Secretary within thirty (30) days following the denial of claim by the Board. The Board will set a date and time for reconsideration at which time the member may present such evidence deemed relevant. If the denial of the claim is sustained by the Board, the member has the right of judicial review.
3. Any appeals of a decision of the Board, where allowed, shall be under the Administrative Procedures Act.

**Meeting Procedures:** Regular meetings of the Board will be held on the third Thursday of each month at 310 W. Spruce, Montesano, Washington. Special meetings may be held at the call of the chair or a majority of the Board members at least twenty-four (24) hours prior to such meeting.

The provisions of the Open Public Meeting Act (RCW 42.30) shall apply to all meetings and notices thereof except as may be permitted thereunder. The Board shall go into executive session and close its meeting to the public whenever authorized by law.

Medical evaluation reports relating to specific members shall not be distributed to the public or media. In the event a public records request is made to the Board, the member who is the subject of the request shall be notified and given the opportunity to take action to prevent release of said medical records.

At no time shall the media be authorized to videotape or audio tape record portions of pension board meetings, unless specifically authorized by the Board.

The Secretary of the Board shall keep the official record of the Board meetings.

## **PROCEDURES TO RECEIVE BENEFITS**

### **Obligations of Member While on Disability Leave.**

#### **A. Return to Active Service**

- (1) It shall be incumbent on all members granted disability leave pursuant to chapter 41.26 RCW to seek Board authorization to return to active service if the disability ceases at the earliest possible time. In the event the Disability Board finds that a member's disability ceased and the member does not seek return to active service, the Board shall have the authority to set the date of return to service. If a member does not return to service at that time, the Board may cancel the member's disability leave allowance after

giving the member an opportunity to be heard on the issue.

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- (2) Authorization to return to work may be issued by written order of the Board or a Board approved physician, if such authorization is documented with the representative of the Board and the Board has delegated this authority. In the event the medical evidence is inconclusive, the Board may specify in written order a reasonable trial period to determine the member's fitness for active duty. The reasonable length of such conditional return to service shall be supported by medical evidence. Such a conditional return to service does not entitle the member to a second six (6) month period of disability leave for the same disability if, based upon this trial period of service, he/she is then found to be still disabled.

## **B. Member Cooperation in Board Evaluation**

While on disability leave, the member shall be obligated to comply with directives of the Disability Board. Such directives may include, but are not limited to, requests for medical or psychological evaluation or testing; requests for submittal of other relevant reports; and orders to appear before the Board. If the Board finds compliance with such a request was within the control of the member and he/she failed to comply, it will presume compliance with the request would have shown the member to have recovered. This presumption can be overcome by competent medical evidence.

## **C. Activities of Member While on Disability**

- (1) A member who engages in any employment while on disability leave and incurs any injury or illness as a result thereof may needlessly confound the issue of whether or not his/her disability condition was incurred in the line of duty. No member shall engage in any activity while on disability leave which is contrary to the directives of the Disability Board or which would otherwise be detrimental to his/her return to active service.
- (2) If a member in receipt of disability leave allowance moves, of his own volition, any travel expenses incurred to appear before the Board or its designated physician shall be borne by the member. Such member shall keep the Board advised of his/her current address.

## **D. Obligation to Comply With Rehabilitation Directives**

During the period of disability leave the Board shall have the authority to inquire of any examining physician as to what physical, medicinal or therapeutic treatments might be employed to rehabilitate the applicant and based upon such evaluation may request that the applicant participate in rehabilitation.

## **E. Falsification**

All applications and other documents filed in connection with disability retirement or disability must be accurate and truthful. RCW 41.26.300 provides as follows:

Any employer, member or beneficiary who shall knowingly make false statements or shall falsify or permit to be falsified any record or records of the retirement system in an attempt to defraud the retirement system, shall be guilty of a felony.

## **F. Disability Benefits - Generally**

The burden of proving the existence of a disabling condition, and whether or not the condition was incurred in the line of duty, shall be placed upon the applicant.

Each application for disability retirement shall be accompanied by a list identifying by name any physician who had been contacted within the last six (6) months, and the purpose of that contact.

In order to qualify to receive a disability retirement allowance or to retain the right to receive a disability retirement allowance, in the case of re-examination, the member will be required to prove that he/she is unable to perform the duties of the most strenuous position with his/her rank, nor will he/she be deemed disqualified because he/she is able to perform the duties of the least strenuous. The test will be, simply, whether the member can discharge the duties of those positions with his/her rank, for which the member is qualified by education, training or experience, with average efficiency.

## **FINDINGS OF THE DISABILITY BOARD**

### **A. Procedure - Generally**

At its meeting next following the receipt of an application for disability retirement, the Board shall review all relevant information pertaining to the question of the member's fitness for duty, and if, in the opinion of the majority of the Board, the evidence supports the proposition that the member is unfit for duty, such member shall be granted disability retirement. In considering such application, the Board shall consider the duties of the applicant's position, the evaluation of the Board physician and any other evidence that is relevant.

In the event that the Board finds that insufficient information is available to make a determination, the matter may be continued to the next regular Board meeting or be set for consideration at a special meeting. The Board shall also advise the member of the additional information needed by registered letter and of his/her obligation to provide additional information and the deadline date by which such

information must be provided.

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The Board shall be authorized to demand the appearance of the member and such other persons as it deems appropriate. It shall be incumbent upon each member obtaining medical evaluations to be used in connection with such disability leave and subsequent evaluations, to advise each and every examining physician that such evaluation is being conducted at the direction of the Board; that any reports relating thereto are for the benefit of the Board; that the doctor/patient privilege may not be invoked with the respect thereto; and that the physician may be called upon by the Board to testify as to his/her findings.

### **B. Determination of Fitness**

It is the finding of the Board that the medical standards promulgated by the state retirement board for entry into the LEOFF system have been provided to safeguard the fiscal integrity of the pension system and are not the applicable standard for determining eligibility for disability leave or retirement benefits.

### **GRANTING DISABILITY RETIREMENT**

If the evidence shows to the satisfaction of the Board that the member is physically or mentally disabled from further performance of duty and that the disability has been continuous from the date of commencement of disability leave for a period of six (6) months, the Board shall enter its written decision and order, accompanied by appropriate finding of fact and conclusions of law in compliance with RCW 41.26.120. Such written decision and order with supporting documentation shall thereafter be forwarded to the state retirement board for review. In the event a regular meeting of the Board precedes by no more than forty (40) days, the date at which the full six (6) months will conclude and the evidence is clear that the disability can be expected to continue through the full six (6) month period, the Board may make a finding of six (6) months continuous disability prior to the actual conclusion of the six (6) month period, so as to eliminate unnecessary delay of receipt of retirement benefits.

### **EXAMINATION FOR DISABILITY RETIREMENT**

Applicants for disability retirement will be reexamined during the fifth (5th) or sixth (6th) month of disability leave in order to determine their eligibility for disability retirement, except in conditions where the medical authority assures the Board that the applicant's condition has not and will not be corrected before the end of the sixth (6th) month. No applicant will be granted a disability retirement allowance unless the conditions imposed by this section are met.

### **REEXAMINATION AND RETURN TO DUTY**

In the event a member is placed on retirement, the Board shall determine whether or not the member is so disabled that no possibility exists for return to duty or that there is no possibility that rehabilitation could restore the member to fitness for duty. In making such

determination, the Board shall take into account the proximity of the member's age to fifty (50) years of age. In the event the Board finds that reexamination is needed, it shall be incumbent upon the Board's representative to order such reexamination and advise the Board of the results thereof. In the event the retired member is residing at a location more than 100 miles from his former place of employment, the member may be authorized to be examined by a physician in his immediate area, provided, however, such physician shall be apprised of the basis upon which the examination is to be conducted and the issues to be addressed within his evaluative report.

In the event such evaluation disclosed fitness to perform duties of the rank or position held by the member at the time of disability retirement, the member shall be brought before the Board for hearing and further consideration of the matter. Such member shall receive notice of such hearing and the hearing shall comply with the Administrative Procedures Act, 34.04 RCW.

NOTE: The hearing required by RCW 41.26.140(2) must be held, unless the retiree waives such hearing, prior to actual cancellation of the disability retirement allowance.

The retirement allowance of any member who fails to submit a medical examination as provided above shall be discontinued and in the event such refusal continues for one (1) year, his/her retirement allowance shall be cancelled. Failure of the member to affirmatively respond to the request for reexamination shall be deemed a continuing refusal.

