

COWLITZ COUNTY  
LAW ENFORCEMENT OFFICERS AND  
FIRE FIGHTERS RETIREMENT SYSTEM  
DISABILITY BOARD

RULES AND REGULATIONS

ADOPTED  
NOVEMBER 1988

## PREAMBLE

The purpose of these Rules and Regulations is to establish a set of written guidelines and administrative policies of the Cowlitz County Disability Board.

## SCOPE

The provisions of these rules and regulations apply to members of the Law Enforcement Officers and Fire Fighters Retirement System covered under R.C.W. 41.26.

## JURISDICTION

The Cowlitz County Disability Board shall serve the following agencies:

Cowlitz County Sheriff's Office  
Kelso Police Department  
Kelso Fire Department (now defunct)  
Castle Rock Police Department  
Kalama Police Department  
Woodland Police Department  
Rural Fire District #2

## MEETINGS

The Disability Board shall meet on the last Tuesday of each month. Meeting time shall be 4:00 P.M. At the option of the Board, a meeting may be cancelled or re-scheduled. If a meeting is cancelled, the medical bills for the month shall be subject to the approval of the Board Chairman and a member of the Finance Committee

A special meeting may be called by the Chairman at any time.

Minutes of each meeting shall be taken and will be presented for approval to the Board members at the next scheduled Board meeting.

A quorum shall consist of three of the five members of the Board to handle items of business at the Board meetings.

## BOARD MEMBERSHIP

The Disability Board shall consist of five members, as follows:

One member from the county legislative body (Board of County Commissioners) selected by the county legislative body.

One member of a city or town legislative body located within the county which does not contain a city disability board. Said member to be chosen by a majority of the mayors of such cities and towns within the county which does not contain a city disability board.

One firefighter to be elected by the fire fighters subject to the jurisdiction of the county disability board.

One law enforcement officer to be elected by the law enforcement officers subject to the jurisdiction of the county disability board.

One member from the public at large who resides within the county but does not reside within a city in which a city disability board is established, to be appointed by the other four appointed members listed above.

## ELECTIONS

Elections for the Law Enforcement member, the Fire Fighter member, and the member at large shall be held every two years.

## BOARD OFFICERS

The members of the Board shall select one of their number to serve as Board Chairman.

In the absence of the Chairman, a Chairman Pro-tem is elected to serve.

The members of the Board shall select a Secretary to assist the Board in matters of correspondence, related documents, minutes of meetings, meeting notifications, handling of requests for disability leave and/or retirement and the necessary paperwork related to each, voucher preparation, and other duties as necessary to maintain efficient response by the Board to the needs of the LEOFF Retirement System and members thereof.

## LEGAL COUNSEL

The Cowlitz County Prosecuting Attorney shall serve as the legal counsel for the Cowlitz County Disability Board.

## MEDICAL SERVICES

Whenever any active member, or any member hereafter retired, on account of service, sickness, or disability, not caused or brought on by dissipation or abuse, of which the disability board shall be judge, is confined in any hospital or in his home, and whether or not so confined, requires medical services, the employer shall pay for such active or retired member the necessary medical services. The cost of such services shall be reduced by any amount received by, but not limited to:

- Workmen's compensation
- Social Security
- Insurance

That the Disability Board in all cases may have the active or retired member suffering from such sickness or disability examined at any time by a licensed physician or physicians, to be appointed by the Disability Board, for the purpose of ascertaining the nature and extent of the sickness or disability, the physician or physicians report to the Disability Board the result of the examination within three days thereafter. Any active or retired member who refused to submit to such examination or examinations shall forfeit all his rights to benefits under this section for the period of such refusal.

## BOARD APPOINTED PHYSICIAN

A duly licensed and practicing physician or physicians shall be appointed by the Board. 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. The Board doctor shall render such other medical service as may be requested by the Board.

In order to carry out the duties of this position, each physician appointed or approved by the Board is required to be knowledgeable concerning the duties, functions, and general demands required of the employee being examined. The Disability Board shall furnish to the examining physician the job and/or position description of the applicant.

Re-examination of any member on disability retirement shall be conducted by a Board appointed or approved physician.

#### ALLOWABLE MEDICAL SERVICES

Medical services shall include the following as minimum services to be provided:

Hospital expenses made in the hospital's behalf for:

Board and room not to exceed semi-private room rate unless private room is required by the attending physician due to the condition of the patient.

Necessary hospital services, other than board and room, furnished by the hospital.

Other medical expenses, not included as hospital services:

The fees of the following:

A physician or surgeon licensed under the provisions of Chapter 18.71 RCW.

An osteopath licensed under the provisions of Chapter 18.25 RCW.

A chiropractor licensed under the provisions of Chapter 18.25 RCW.

An optometrist licensed under the provisions of Chapter 18.53 RCW.

Charges of registered graduate nurse other than a nurse who ordinarily resides in the members home, or is a member of the family of either the member or the member's spouse.

Charges for the following medical services and supplies:

Drugs and medicines upon a physician's prescription.

Diagnostic x-ray and laboratory examinations

X-ray, radium, and radioactive isotopes therapy

Anesthesia and oxygen

Rental of iron lung and other durable medical and surgical equipment

Artificial limbs and eyes and casts, splints, and trusses,

Professional ambulance service when used to transport the member to or from a hospital when he is injured by an accident or stricken by a disease

Dental charges incurred by a member who sustains an accidental injury to his teeth and who commences treatment by a legally licensed dentist within ninety days after the accident

Nursing home confinement or hospital extended care facility

Physical therapy by a registered physical therapist

Blood transfusions, including the cost of blood and blood plasma not replaced by voluntary donors.

Hearing aids prescribed by a physician

#### MEDICAL SERVICES, GUIDELINES

Medical claims shall be turned in to the Disability Board for approval and processing.

The Board reserves the right to place restrictions upon medical services.

Claims for payment of eye examinations shall be authorized in full. Payment for lenses shall be authorized, with the exception of photogray, which shall be authorized only upon the recommendation of the physician for the patient. Eyeglass frames shall be authorized up to \$95.00. Any additional amount shall be the responsibility of the patient. Contact lenses shall be authorized instead of eyeglasses at the option of the member.

Payment for alcohol treatment programs shall be authorized. If the patient seeks treatment again at a later date for a re-occurrence, the Board will evaluate that instance.

MEDICAL SERVICES PAYMENTS  
REDUCED BY OTHER SOURCES

As provided for in RCW 41.26.150, the cost of medical services payable under this section will be reduced by any amount received or eligible to be received under insurance provided by, but not limited to the following: worker's compensation; social security; insurance provided by other employers; other pension plans; or any other similar source.

DISABILITY LEAVE AND/OR  
DISABILITY RETIREMENT

A member of the LEOFF, Plan 1, Retirement System may file an application for disability leave and/or retirement. The applications are available through the Board Secretary.

Upon completion of the application form, the member files the application, employers statement, and physicians report substantiating the nature of illness or injury with the Board Secretary. The Board will consider the request at the next regularly scheduled meeting. At the discretion of the Board, the member may be required to obtain additional medical reports prior to the Board making a determination of the disability of the applicant.

If there is insufficient information available to make a determination, the Board may continue the matter to the next regularly scheduled meeting or to a special meeting. It is the obligation of the applicant to provide the additional information requested by the Board.

In the event the medical and other evidence is inconclusive, the Board may specify in written order a reasonable trial work 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-month period of disability leave for the same disability if, based upon this trial period of service, the member is found to be disabled.

The minimum medical and health standards previously promulgated by the State retirement board for entry or re-entry into the LEOFF System were provided only to safeguard the fiscal integrity of the pension system and are not the applicable standards for any other purpose.

Disability leave shall begin on the day following the date the applicant is separated from active duty. The applicant and his employer shall be notified by letter of the granting of disability leave.

Disability leave is not granted for a specific amount of time. Such leave may encompass a period of time from one hour to a maximum of six months. During this time the member is to receive an allowance equal to their full monthly salary.

In the case of temporary disability, the Board will establish a date for a follow up examination and review of the application.

If the re-examination shows the disability no longer exists, the Board shall cancel the disability leave and order the member to return to active service on a specified date.

If the Board denies disability leave (or denies continuation of disability leave), the applicant has the right to appeal to the Director of the Department of Retirement Systems. (In accordance with RCW 41.26.200). If the matter is appealed, the Board must, within 90 days, submit the following to the Director for review:

1. The Board's certified decision and order, which shall include findings of fact and conclusion of law; and
2. A transcribed copy of the record of all proceedings in the matter; and
3. All other relevant documentation.

Applicants for disability retirement shall be re-examined during the fifth or sixth month of disability leave in order to determine their eligibility for disability retirement, with the following exceptions: 1) if the Board doctor assures the Board that the applicant's condition has not and will not be corrected before the end of the sixth month; or,

2) if the applicant establishes that the disability condition will be existence for a period of at least six month and he/she voluntarily waives disability leave. No applicant will be granted a disability retirement allowance unless the conditions imposed by this subsection are met.

WAC 415-105-030(1) anticipates and provides for those situations where the applicant's alleged disabling condition will be more appropriately evaluated by a medical doctor certified as a specialist in that particular field of medicine. The Board shall not approve disability retirement without this examination of the applicant by the Board doctor or Board approved specialist.

In order to perform an appropriate examination and provide a valid and useful report to the Board, the Board doctor or selected specialist must be knowledgeable about the duties, functions, and general demands of the applicant's job. Therefore, the Board must furnish the examining physician with the job and/or position description of the applicant.

#### OBLIGATIONS OF MEMBER WHILE ON DISABILITY LEAVE

1. TREATMENTS: During the period of disability leave, the Board shall have the authority to inquire of any examining physician as to what physical, medical, or therapeutic treatments might be employed to rehabilitate the applicant and, based upon such evaluation, to direct the applicant to participate in rehabilitation. If the applicant fails or refuses to submit to such treatments, the Board shall terminate the applicant's disability leave benefits.
2. MEMBER TO SEEK AUTHORIZATION TO RETURN TO DUTY: It shall be the responsibility of each member granted disability leave to seek authorization to return to active service at the earliest possible time he believes he is fit for duty. In the event the Board finds that a member has not actively sought authorization to return to active service immediately upon cessation of disability, the Board shall have the authority to require the report of the Board physician to determine his ability to return to duty and therefore to determine whether or not the member's disability leave allowance shall be continued.

3. Any member who is on disability leave is under the jurisdiction of the Board for all matters pertaining to his disability, and shall not engage in any activity which is contrary to the directives of the member's or the Board's physician or which might be detrimental to his return to active service. The Board has authority to, and it may at any time in any case, cause an investigation to be made of the activities of any active member or any member retired for disability to determine whether his disability continues to exist, and may request such investigation as may be appropriate.

#### DETERMINATION OF DISABILITY

Whether an applicant may or may not be granted a disability retirement allowance is mandated by RCW 41.26.120 and .125 which both provide, in relevant part, as follows:

"Any member...may be retired...for any disability...which has been continuous since (the member's) discontinuance of service and which renders (the member) unable to continue...service..."

The phrase "unable to continue...service" does not mean that the applicant be unable to perform full duty, all duties, or every conceivable duty; rather, the phrase means that the applicant is incapacitated to such extent that he/she is not reasonably able to perform, with average efficiency, the normal routine duties of his/her position or rank.

In unmistakable terms, the statute speaks to a current disability, not one that might occur or recur in the future. There is a critical distinction between "unable to continue...service", which is the condition stated in the act, and "shouldn't continue" or "shouldn't return to service". The former is existing and certain, whereas a possibility or probability of future injury or illness is inherently speculative and is a status which, to a greater or lesser degree, is undoubtedly applicable to a great many members.

The applicant is not entitled to a disability retirement allowance if:

1. There is an available position for which the applicant is qualified and to which a person of his/her grade or rank is normally assigned.

2. The Board determines that the applicant is capable of discharging, with average efficiency, the duties of such available position. (WAC 415-105-060(2))

In order to qualify to receive a disability retirement allowance, the applicant must prove that he/she is physically or mentally disabled to such extent that he/she is unable to discharge, with average efficiency, the duties of the position held at the time of discontinuance of service.

#### DECISION AND ORDER

If the evidence shows to the satisfaction of the Board that the applicant is physically or mentally disabled for further performance of duty and that the disability has been continuous from the time of discontinuance of service, the Board shall grant a disability retirement allowance. The Board shall enter a written decision and order accompanied by appropriate findings of fact and conclusions of law.

Every order of the Board granting or denying a disability retirement allowance shall contain the following, presented in clear and concise terms:

1. Findings of Fact supported by evidence in the record supporting the granting or denying of the disability retirement allowance. When a disability retirement is granted, Findings of Fact shall include:

- a. A determination of whether or not the disability for which the member is retired was incurred in the line of duty.

- b. Whether or not the disability was incurred in other employment.

c. Dates encompassing disability leave and/or dates relating to authorized trial basis return to duty; in the case of return to duty on a trial basis, the factual basis for such decision.

d. Dates encompassing waiver of disability leave, if applicable; and that the applicant established that such disability will be in existence for a period of six months.

e. Conclusions of law in accordance with law on the basis of the facts in the case.

f. Decision and order.

The written decision and order, with findings of fact and conclusions of law and the supporting documentation on which the decision was based is sent to the Director of the Department of Retirement Systems for review. The Director or his designee reviews the record and either issues an order of affirmance granting disability retirement or reverses the Board's decision. An order reserving the Board's decision is a final decision; however, the applicant has a right to file notice for hearing, and is informed of that right by the LEOFF Administrator.

Notification is sent to the applicant and his employer of the action taken by the Board in the matter of the applicant's request for a disability retirement.

#### RE-EXAMINATION OF RETIREES

In the event a member is placed on disability 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. Further, the Board may at any point subsequent to retirement make such a determination. A copy of all such determinations shall be sent to the Department of Retirement Systems. Unless the Board has made such a finding, the Board shall order a re-examination of any member who has not reached the age of 49.5 years of age. Said re-examination shall occur at six-month

intervals, with a copy of the findings sent to Department of Retirement Systems. 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 first approved by the Board and prior to such evaluation the examining physician shall be apprised of the basis upon which the examination is to be conducted and the issues to be addressed in the physician's evaluative report.

The retirement allowance of any member who fails to submit to a medical examination as provided herein shall be discontinued and in the event such refusal continues for one year, his retirement allowance shall be cancelled. Failure of the member to affirmatively respond to the request for re-examination shall be deemed a continuing refusal.

The Board may allow, or require, a member retired for disability to be returned to active service on a trial basis, when medical evidence would so indicate.

A member allowed, or required, to return to active service on a trial basis and found to be unable to perform their duties at a reasonable average level shall be returned to disability retirement status.

A member receiving disability retirement, or leave, who is returned to active service on a trial basis, then returned to disability retirement or leave, shall not be granted an additional six month disability leave, for retirement or leave. The member who was on disability leave status will be returned for the balance of the original six month's disability leave. The member who was previously on disability retirement shall be returned to that status.

## APPEALS

### APPEALS INVOLVING MEDICAL SERVICE CLAIMS:

Any person feeling aggrieved by any denial of payment of a claim for medical services by the Board shall have the right to request the Board to reconsider its decision and the Board may grant or deny such request for reconsideration, at

its discretion. Request for reconsideration must be filed with the Secretary of the Board within thirty (30) days following the denial of claim by the Board. The Board will set a time at the next regular monthly Board meeting for hearing at which time the member may present evidence deemed relevant. If the denial of claim is sustained by the Board, the member has the right to judicial review.

#### APPEALS INVOLVING DISABILITY LEAVE OR RETIREMENT:

If the Board denied disability leave or disability retirement or cancels a previously granted disability leave or retirement, the applicant shall be immediately notified and advised of the right to appeal such decision or order to the Director of the Department of Retirement Systems, pursuant to R.C.W. 41.26.200. Such notification shall be in writing and served by personal service or mail. Provided, that written notice need not be given if applicant or his/her duly authorized representative is in attendance at the meeting or hearing and is advised of the decision and of the right of appeal.

#### HEARINGS

Hearings by the Board shall be open to the public and may be conducted by a quorum of the Board. All parties to the hearing shall be notified in advance of such hearing and may, at their own expense, select representatives of their choosing. The Board may, and shall at the request of any party, issue subpoenas and subpoenas duces tecum. Any fee or expense of any kind for the appearance of a witness shall be assumed by the party requesting the issuance of the subpoena.

The testimony of any witness shall be under oath administered by the Chairperson or any member of the Board.

The Board shall prepare and keep an official record of the hearing which shall include testimony recorded manually or by mechanical device, and all other evidence including but not limited to the pleadings, documents, exhibits, and other records and documents and made a part of the record by the Board. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. No factual information or evidence other than the official records shall be considered by the Board in the determination of the case.

All hearings shall be informal and the Board may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. The Board shall give effect to the rules of privilege recognized by law and it may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.

Every party shall have the right of cross-examination of witnesses who testify.

The Board may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge. Parties shall be notified of the material so noticed and they shall be afforded an opportunity to contest the facts so noticed.

Three affirmative votes by the Board are required to render a decision and decisions of the Board on hearings shall be final and finding unless otherwise provided by R.C.W. 41.26 pursuant to which the hearing is being conducted. Board members who are to participate in the making of a decision, but who were not present at the reception of evidence shall review, consider, and familiarize themselves with the record of the hearings. Decisions and orders arising from hearings shall be in writing and shall be accompanied by Findings of Fact and Conclusions of Law, which shall also be in writing.

These rules and regulations may be amended, replaced, or altered in whole or in part by a majority vote of the total membership of the Board.