

**CINCINNATI RETIRMENT SYSTEM  
BENEFITS COMMITTEE  
PROCEDURES FOR DISABILITY HEARINGS**

**I. Procedures for Petition.**

**(a) *Petition for Special Hearing.***

- (1) A person receiving a notice of denial of a request for disability benefits, who wishes to appeal the decision, must file a Petition for a Special Hearing with the Pension Fund Manager of the Cincinnati Retirement System within thirty (30) days of post mark of notice.
- (2) All Petitions must be accompanied by the following materials:
  - (i) A statement of the issues and the contentions of the petitioner, and a summary of the evidence to be presented;
  - (ii) A list and copies of any medical reports and depositions of medical witnesses on which the petitioner will rely;
  - (iii) The names, business addresses and telephone numbers of any lay witnesses whose testimony the petitioner intends to present at the hearing, and a synopsis of each witness's expected testimony; and
  - (iv) The names of any medical witnesses petitioner intends to call for oral testimony at a hearing or hearings set for that purpose and a synopsis of the expected testimony.

If in the Petition, or at any time during the administrative appeal process, the petitioner both alleges and offers medical proof that incapacity is the result of an injury or disease not listed on the application submitted to the Board, or, if listed, on which the applicant submitted no medical evidence for the Board's review when it considered the application, the administrative appeal shall be suspended, the allegation shall be treated as an amendment to the application and the matter shall be referred back to the Board for its original determination on the application.

**(b) *Setting of Hearing Date and Statement of Board.*** Within thirty (30) days of receipt of the Petition, the petitioner shall be contacted and notified in writing of the proposed hearing date. If petitioner is unavailable for the proposed hearing date, a mutually agreeable hearing date shall be selected. Arrangements for hearings for the presentation of medical testimony after the close of testimony of lay witnesses may be made at any time prior to the submission of the matter for decision.

**(c) *Hearing.*** At the hearing the petitioner has the right to:

- (1) Be represented by counsel.
- (2) Present his or her positions, arguments and contentions.
- (3) Offer and examine witnesses and present evidence in support of positions, arguments and contentions.
- (4) Cross-examine witnesses purporting to refute petitioner's position, arguments and contentions.
- (5) Offer evidence to refute evidence and testimony offered in opposition to their position, arguments and contentions.

**(d) *Decision.*** The Committee may find that the initial decision made related to the issues presented was unreasonable or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record. Consistent with its findings, the Committee may recommend that the Board affirm, reverse, vacate, or modify the decision.

## **II. Procedures for Hearing.**

### **(a) *Conduct of Hearings.***

(i) Oral evidence shall be taken only on oath or affirmation, and the hearing shall be transcribed to ensure a proper record.

(ii) Each party shall have the right to call and examine witnesses; to introduce exhibits; to include 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 the petitioner does not testify, the petitioner may be called and examined as if under cross-examination.

(iii) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule. Irrelevant and unduly repetitious evidence shall be excluded.

(iv) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. This section shall not be applicable to written medical reports received into evidence pursuant to these rules.

**(b) *Written Medical Reports as Evidence.***

**(i) *Statement of Policy.*** It is policy of the Board that production of medical evidence shall be in the form of written medical reports attached to the petitioners Petition. A written medical report bearing the signature of the medical witness shall be admissible in evidence as the author's direct testimony. Such medical reports shall not be inadmissible on the basis that they constitute hearsay, but each party shall have the right to cross-examine the authors of medical reports at a hearing or hearings held subsequent to the hearing of lay testimony.

**(ii) *"Medical Witness" Defined.*** A medical witness is a person who by profession is a physician, surgeon, holding an M.D. or D.O. degree, psychologist, optometrist, dentist, podiatrist, or chiropractic practitioner, licensed by the State of Ohio or by such other jurisdiction in which such person maintains his or her regular practice.

**(iii) *Late Submission of Medical Reports.*** Submission of a medical report subsequent to the filing of the Petition shall be allowed only upon a showing of good cause. The petitioner shall address the request to the chair of the Committee hearing the appeal. The request shall state the reason the medical report was not timely produced. The chair of the Committee shall have the power to rule on such a request. "Good Cause" shall include an opportunity to have a medical witness comment in a written report on testimony produced at a hearing.

**(c) *Testimony of Witnesses Without Notice.***

Upon request made to the Committee chair, a witness not listed in the Petition may be called to testify provided the party making the request presents a synopsis of the expected testimony and a showing of good cause as to why such witness was not originally listed in the Petition. The Committee chair shall have the power to rule on the request. If the witness is allowed to testify, the adverse party shall have the right to a continuance to obtain rebuttal evidence and/or to cross-examine the witness. The party originally calling the witness to testify shall bear the responsibility of insuring the witness's attendance at a further hearing set for the witness's cross-examination.

**(d) *Depositions of Lay and Expert Witnesses.***

Any party to the proceeding may cause the depositions of lay or expert witnesses, including the applicant, to be taken in the manner prescribed by law for depositions in civil actions in the superior courts of this state. Attendance of lay or expert witnesses and the production of records in regard to depositions may be required and appropriate subpoenas will be issued by the party calling the witness. The parties shall bear their own costs for such depositions. When

testimony is taken by deposition, the transcript of the testimony and exhibits shall be made up and filed with the Committee.

**(e) Resolution of Disputes in Regard to Discovery and Hearing Procedures.**

Disputes in regard to depositions and other discovery and hearing procedures shall be resolved by the Committee chair during the hearing. Disputes will not be allowed to be offered subsequent to the hearing.

**(f) Agreed Medical Examiner.**

Upon review of the medical evidence presented, the Committee chair may at his discretion refer either the applicant, all of the medical reports submitted, or both, to a physician acceptable to both the Board and the petitioner for a medical evaluation by an Agreed Medical Examiner. A copy of the report of the Agreed Medical Examiner shall be furnished to each party. Each party shall have ten (10) days after service of the report to examine said report and demand in writing an opportunity to cross-examine the Agreed Medical Examiner who shall be deemed to be the Committee chair's witness and may be examined by either party as if under cross-examination. Nothing in this section is intended to preclude any party from producing his or her own medical reports at the time of the hearing. Any physician selected under this section shall be compensated by the Board for the examination and report.

**(g) Further Medical and Lay Evidence.**

(i) The Board may obtain independent medical examinations and/or investigations of the petitioner to the extent determined necessary in evaluating the case. The fees for these medical examinations and/or investigations shall be paid by the Board.

(ii) The petitioner shall submit to examinations by physicians appointed by the Board where reasonably necessary in the Board's discovery of the claim. Such examinations shall be scheduled with due consideration to the petitioner's convenience and ability to attend.

(iii) The Committee chair may, at his or her discretion, refer the applicant or medical records submitted, or both, to a physician appointed by the Board, for further medical evaluation. The physician will provide a written medical report to the referee with copies to counsel for the parties. The applicant shall submit to medical examinations pursuant to this rule.

**(h) Affidavits.**

The petitioner may include as part of the Petition, a copy of any affidavit which the party proposes to introduce in evidence, together with a notice of the intent to introduce such affidavit. Unless the opposing party, within fifteen (15) days after such mailing or delivery, mails or delivers to the proponent a request to cross-examine an affiant, his right to cross-examine such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not afforded after request therefore is made as herein provided, the affidavit may be introduced in evidence, but shall be given only the same effect as other hearsay evidence. When testimony is taken by affidavit, the transcript of the testimony and exhibits shall be made up and filed with the Committee.

### **III. Filing of Proposed Findings of Fact and Recommended Decision and Record on Appeal; Action by the Board.**

(i) ***Submission of Proposed Decision to the Board.*** Once the Committee has reached a recommendation on the Petition, the Committee chair shall submit to the Board its written Proposed Findings of Fact and Recommended Decision.

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

### **(ii) Board's Decision After Review of the Record; Issuance of Findings of Fact and Conclusions of Law.**

In any case where the Board makes a decision based upon a transcript or summary of all the testimony, plus all other evidence received by the Committee, or where the Board sets the matter for hearing before itself, the Board may approve or modify the proposed findings and recommendations of the Committee. Consistent with its findings and conclusions, the Board shall allow or disallow, in whole or in part, the benefits claimed. The decision of the Board is final.

### **VIII. Dismissal for Lack of Prosecution; Judicial Review.**

(i) If, as a result of the petitioner's failure to comply with the procedures specified above, the matter is not heard within two (2) years after a

request for hearing is granted by the Committee, the case shall be dismissed with prejudice.

(ii) Notwithstanding the above, no case shall be dismissed without three-months prior written notice to the petitioner and the petitioner's attorney that failure to commence a hearing within three months from the date of the notice will result in dismissal of the case with prejudice.

(iii) Any party wishing to appeal a final decision of the Board and the Committee arising from a Notice to Appeal filed with the Board, may do so as allowed by law.