

CONTRA COSTA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
BOARD OF RETIREMENT

HEARING POLICY FOR NON-DISABILITY MATTERS

Adopted: June 10, 2015

I. INTRODUCTION

This Policy applies to all hearings regarding matters (except disability matters) which the Board of Retirement of the Contra Costa County Employees' Retirement Association ("CCCERA") determines are necessary or appropriate to send to a referee pursuant to Government Code Section 31533. Hearings on disability matters are governed by the separate "Disability Retirement Application and Hearing Policy."

II. PURPOSE

The purpose of this Policy is to set forth procedures to provide the fair, efficient, and equitable consideration of member, survivor and beneficiary benefits matters (except disability matters).

III. DEFINITIONS

"**Applicant**" means a member, survivor or beneficiary of the Contra Costa County Employees' Retirement Association.

"**Board**" means the Board of Retirement of the Contra Costa County Employees' Association ("CCCERA").

"**Day**" means calendar day. When "day" is intended to refer to business day, it is noted in these procedures.

"**Hearing Officer**" means the person who conducts an administrative hearing on issues related to a matter referred to that person, and who provides a Proposed Recommendation including proposed Findings of Law and Fact to the Board. A Hearing Officer must be a qualified member of the State Bar of California appointed by the Board pursuant to the provisions of Government Code Section 31533, and may include an Administrative Law Judge designated by the state Office of Administrative Hearings.

IV. POLICY

A. Communication with Board Members.

The Board is the decision-maker for all matters referred to a Hearing Officer pursuant to Government Code Section 31533. As such, any *ex parte* communications between any Board member and any Applicant or other interested parties or their representatives concerning the merits or substance of the matter referred to the referee are forbidden until all proceedings with respect to the matter have concluded. Violations of this rule may result in the Board member being found ineligible to participate in any discussion and vote regarding the matter.

B. Representation by Counsel.

Any Applicant is entitled, at his or her expense, to be represented by counsel. The Applicant must file with CCCERA written notice designating and authorizing counsel to act on Applicant's behalf, and providing the counsel's name, address, and telephone number. Absent such written notice, CCCERA is not obligated to recognize any counsel claiming to represent an Applicant. After notification of representation, all notices and documents shall be sent to that counsel. No Applicant is required to have counsel at any time.

C. Pre-Hearing Process

1. Service of Documents.

When a provision of these procedures requires that parties be served, service shall be made upon all parties who are participating in the proceedings. If the party to be served has an identified counsel of record, service shall be made upon the counsel of record.

Unless otherwise provided in these procedures, service may be made either personally or by mail in accordance with this section. Service may be made by electronic mail and/or by facsimile, if previously agreed to by the parties. Any document served by electronic mail or facsimile must also be sent by regular U.S. Mail with first-class postage fully prepaid, unless the parties otherwise agree.

Service by mail is completed by depositing the envelope in the U.S. Mail with first-class postage fully prepaid, properly addressed to the party to be served at the address latest on file with the CCCERA. Service by mail shall extend applicable time limitations in the manner prescribed in Code of Civil Procedure § 1013. It is the responsibility of the Applicant to notify CCCERA and all parties of any change of address.

2. Discovery.

Discovery shall be only as provided in Government Code Section 11507.6, except that for good cause shown, the Hearing Officer, on his or her own motion or on the written noticed motion of a party, may make appropriate orders concerning discovery. Whenever possible, informal discovery and exchange of information between the parties is encouraged.

3. Subpoenas.

Each party is responsible for obtaining those subpoenas it deems necessary for the presentation of its evidence at the hearing. Applications for subpoenas may be made to CCCERA. All subpoenas are to be issued in accordance with Government Code Section 31535. Issuance of a subpoena for the attendance of expert witnesses at a hearing or deposition shall be contingent on the requesting party accepting in writing the obligation to pay the expert witness. Before CCCERA issues any subpoena, proof of payment arrangements for the expert witness may be required. Service of the subpoena is the responsibility of the requesting party.

4. Notice of Hearing before Hearing Officer.

After the matter is referred to hearing, CCCERA shall notify Applicant within 30 days that the matter has been referred to a Hearing Officer, and shall provide a copy of this hearing policy and applicable regulations.

5. Scheduling the Hearing.

The Applicant and, if represented, his or her attorney and the counsel for CCCERA shall arrive at a mutually agreeable hearing date. The Retirement Association will arrange for a certified reporter and notify all parties of the date, time, and location of the hearing, and the identity of the Hearing Officer. If an Applicant fails to respond to the Association's reasonable requests to set a hearing date, the Association may either set a hearing date or notify the Applicant that continued failure to respond to requests to set a hearing date may result in dismissal of the application.

6. Submission of Proposed Evidence.

Each party shall submit all proposed evidence to the Hearing Officer and to the other party no later than fourteen (14) days before the scheduled hearing date, unless the parties mutually agree to a different schedule. The parties will exchange information regarding proposed witnesses (if any) no later than seven (7) days before the hearing, unless they mutually agree to a different schedule. All different schedules are subject to approval by the Hearing Officer.

7. Prehearing Conference.

At the request of any party or on his or her motion, the Hearing Officer may order a prehearing conference for the purpose of resolving or clarifying disputed hearing issues or the admissibility of disputed evidence.

8. Hearing Brief.

Either party may submit a hearing brief prior to the hearing.

D. Hearing Process

1. Rules of Evidence.

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 various affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. 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. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant and unduly repetitious evidence shall be excluded.

2. Affidavits.

At any time twenty (20) or more days prior to a hearing or a continued hearing, any party may mail or deliver to the opposing party a copy of any affidavit which he or she proposes to introduce at the hearing. Unless the opposing party, within ten days after such mailing or delivery, mails or delivers to the proponent a request to cross-examine an affiant, his or her 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. The notice referred to above shall be substantially in the following form:

The accompanying affidavit of [insert name of affiant] will be introduced as evidence at the hearing in [insert title of proceeding]. [insert name of affiant] will not be called to testify orally and you will not be entitled to question him or her unless you notify [insert name of proponent or his/her attorney] at [insert address] that you wish to cross-examine him or her. To be effective your request must be mailed or delivered to [insert name of proponent or his/her attorney] on or before [insert a date ten days after the date of mailing or delivering the affidavit to the opposing party].

3. Continuances.

The original hearing date may be continued by the Hearing Officer, at the request of either Party. Any continuance beyond sixty (60) days from the original hearing date must be agreed to by all parties and the Hearing Officer. If the hearing is scheduled before an Administrative Law Judge with the Office of Administrative Hearings, the party seeking the continuance will comply with any procedures required by the Office of Administrative Hearings.

4. Time and Place of Hearing.

The hearing will be set at a time and place determined by CCCERA, and a Notice of Hearing with all pertinent information will be sent to all parties.

The hearing or any proceeding with respect to the application may proceed in the absence of the Applicant who, after due notice, fails to be present or obtain a continuance. A decision on the application shall not be based solely upon the absence of the Applicant.

5. Reporter.

All hearings before a Hearing Officer shall be reported by a stenographic reporter, whose presence will be arranged by CCCERA. The per diem cost of the reporter shall be borne by CCCERA.

6. Issues at Hearing.

The Hearing Officer shall make findings and recommendations on issues as requested by the Board.

7. Order of Business of Hearings.

Unless the Hearing Officer otherwise rules, all hearings shall proceed in the following manner:

The Hearing Officer shall call the case and ask for appearances by all parties.

Relevant documents shall be marked for identification.

The parties may be offered an opportunity to make an oral opening argument or statements.

The Applicant shall present his or her evidence.

CCCERA shall then present its evidence

Rebuttal evidence may then be presented in the same order

The Hearing Officer may allow oral and/or written argument.

8. Close of Record.

The record of the proceedings shall be closed and the matter submitted at the conclusion of the formal hearing, unless further documentary evidence or closing briefs are to be received. If such further evidence or briefing is to be received, the Hearing Officer shall allow such time as deemed necessary for filing and serving copies on all parties. The matter shall be deemed submitted upon such final filing or upon rulings on any objections to the evidence thus filed.

9. Cost of Transcript.

If ordered by CCCERA, the Hearing Officer, or the Board, CCCERA shall pay the cost of a hearing transcript. If ordered by the Applicant or the Applicant's attorney, Applicant shall pay the cost of a transcript. The Applicant or Applicant's attorney and the Retirement Chief Executive Officer may agree in writing to share the cost of a transcript when both parties agree to the preparation of a transcript.

E. Decision.

1. Hearing Officer's Proposed Findings of Fact and Recommended Decision.

After the hearing is concluded and the record closed, the Hearing Officer will send a written report to the Board within 30 days, summarizing the evidence, findings of fact, and making a recommendation to the Board if so requested by the Board. CCCERA shall serve all parties with the Hearing Officer's Proposed Findings of Fact and Recommended Decision.

2. Objections to Hearing Officer's Proposed Findings of Fact and Recommended Decision.

Any party objecting to a Hearing Officer's Findings of Fact and Recommended Decision has ten (10) days after service of the Findings of Fact and Recommended Decision to submit written objections to CCCERA, which will send copies of the objections to all parties and provide a courtesy copy to the Hearing Officer. CCCERA and any other parties may respond in writing to any objections. Any objections and the responses thereto shall be incorporated into the record to be considered by the Board.

F. Board Consideration and Action.

The Board will consider the Proposed Findings of Fact and Recommended Decision on a date noticed to all parties. Any party or his or her counsel may request the opportunity to make an oral presentation to the Board. No new evidence or witness testimony may be heard or received by the Board. Pursuant to Government Code Section 31534, the Board may:

- Approve and adopt the proposed findings and recommendation of the Hearing Officer; or
- Refer the matter back to the Hearing Officer for further proceedings with or without instructions; or
- Require a transcript or summary of all the testimony, plus all other evidence received by the Hearing Officer, and after receipt thereof, the Board shall take such action as it determines is warranted by the evidence; or
- Set the matter for hearing before itself. At such hearing, the Board shall hear and decide the matter as if it had not been referred to the Hearing Officer.

1. Notice of Decision.

The Board shall give written notice of its decision to all parties and their representatives within five (5) days of the date of its decision. Such notice shall be by first class mail and shall include the decision and the date it was rendered.

2. Reconsideration after Board Action on Proposed Decision.

No later than seven (7) calendar days after service of the Notice of Decision, a party may file with the Board a written motion for reconsideration based on one or more of the following reasons:

- Irregularity in the proceedings, or any order, or abuse of discretion, by which the party was prevented from having a fair hearing;
- Accident or surprise; which reasonable diligence and prudence could not have guarded against; and
- The availability of material evidence which, in the exercise of reasonable diligence, could not have been produced at the hearing.

3. Error of Law.

When a party's motion for reconsideration is for a cause mentioned in Section F.2 above, it must be made upon affidavit(s). The Board may on its own motion order reconsideration, but the order must be within seven calendar days of its original decision and on one or more of the causes listed above. If the Board does not rule on a party's motion for reconsideration by its next regular meeting, it shall be deemed denied. When reconsideration is granted, it suspends the original decision, and the Board shall proceed as though the matter was still pending before it for original decision, but the decision on reconsideration becomes final when made. CCCERA shall promptly mail copies to all parties.

4. Finality of Decision.

Except as otherwise provided in Section F.5 below entitled "Judicial Review" or Section F.2 above entitled "Reconsideration after Board Action on Proposed Decision", action by the Board granting or denying in whole or in part any application for disability retirement shall be deemed to be final and conclusive with regard to any and all issues raised by the application which were either presented to the Board or could have, with the exercise of reasonable diligence, been presented.

5. Judicial Review.

Notice of the right to judicial review of the Board's decision pursuant to Code of Civil Procedure Section 1094.6, and the time limits for filing such review, shall accompany the written notice of the Board's decision.

6. Request for Preparation of Administrative Record.

Any request for the preparation of the administrative record pursuant to Code of Civil Procedure Section 1094.6 shall be made in writing and filed with CCCERA, which shall, within ten (10) days of receiving such a request, notify the requesting party of the estimated cost of preparing the record.

The requesting party shall within ten (10) days of receiving such notification, deposit with CCCERA an amount sufficient to cover the estimated cost. If the cost exceeds the amount deposited, the party shall pay the excess. If the amount deposited exceeds the cost, the difference shall be returned to the party. Upon receiving the required deposit, CCCERA shall promptly prepare the record, including the transcript of the proceedings, all pleadings, all notices and orders, the final decision, all admitted exhibits, all rejected exhibits in the possession of the Board, all written evidence, and any other papers in the case.