

# BHR-15.02 - Fire & Police Disability, Retirement & Death Benefit Plan Administrative Rules

## FIRE AND POLICE DISABILITY, RETIREMENT AND DEATH BENEFIT PLAN ADMINISTRATIVE RULES

*Administrative Rules Adopted by FPD&R Board Pursuant to Rule-Making Authority*  
ARB-BHR-15.02

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## I. DEFINITIONS

**"Active Member."** The term "Active Member" means a Member who is serving and is paid from the payroll of the Bureau of Police or Bureau of Fire, Rescue and Emergency Services.

**"Board."** The term "Board" or "Board of Trustees" shall mean the Board of Trustees of the Fire and Police Disability and Retirement Fund.

**"Fund."** The term "Fund" shall mean the Fire and Police Disability and Retirement Fund established under Section 5-101 of the Plan.

**"Medically Stationary."** The term "Medically Stationary" means that no further material improvement can reasonably be expected from medical treatment or the passage of time. It does not mean that a Member's condition has stopped deteriorating or has stabilized. It means that in terms of reasonable medical probability, the condition is not going to improve.

**"Member."** The term "Member" means those sworn permanent employees of the Bureau of Fire, Rescue and Emergency Services having the job classifications of Fire Fighter, Fire Fighter Specialist, Fire Fighter Communications, Fire Lieutenant, Fire Training Officer, Staff Fire Lieutenant, Fire Captain, Fire Training Captain, Fire Battalion Chief, Deputy Fire Chief, Division Fire Chief, City Fire Chief, Fire Inspector I, Fire Inspector II, Fire Inspector I Specialist, Staff Fire Captain, Fire Lieutenant Communications, Harbor Pilot, Assistant Fire Marshal, Assistant Public Education Officer and EMS Coordinator, and those permanent sworn employees of the Bureau of Police having the job classifications of Police Officer, Police Sergeant, Police Detective, Criminalist, Police Lieutenant, Police Captain, Police Commander, Deputy Police Chief, Assistant Police Chief, and Police Chief.

The term "Member" does not include the Fire Chief or Police Chief if their terms of employment provide that they shall participate in another retirement plan. The term "Member" also does not include those employees of the Bureau of Fire, Rescue and Emergency Services or the Bureau of Police who are members of the Oregon Public Employee Retirement System (OPERS) or who will become OPERS Members after the initial waiting period required under that system.

Membership shall commence at the time an employee effectively receives his or her initial appointment to either the Bureau of Fire, Rescue and Emergency Services or the Bureau of Police and shall continue until the Member's employment with the Bureau of Fire, Rescue and Emergency Services or Bureau of Police terminates for any reason, other than retirement pursuant to Section 5-304 of the Plan or disability under Section 5-306 or 5-307 of the Plan.

An Active Member (except those Members covered under Article 5 of the Plan) whose employment is terminated after completing five Years of Service shall be ineligible for any Plan benefits after such termination except the vested termination benefits described in Section 5-305 of the Plan. A Member (except those members covered under Article 5 of the Plan) whose employment is terminated after completing one-half year of service and before completing five Years of Service shall be ineligible for any Plan benefits after such termination except the unvested termination benefits described in Section 5-305 of the Plan.

A Member who is receiving benefits under Article 5, Prior Benefits, of the Plan or who has voluntarily elected to be covered under Article 5 of the Plan shall be ineligible to receive benefits under Article 3 of the Plan. Notwithstanding the preceding sentence, a Member who was receiving disability benefits on January 1, 1990 but subsequently returns to full duty, without limitation, and earns two more Years of Service may irrevocably elect to be covered under Article 3 rather than Article 5. A member who returns to duty, in a regularly budgeted sworn job classification, in the Bureau of which he or she is a member on a full time basis (either 40 hours per week, 42 hours per week or 53 hours per week in the Bureau of Fire, Rescue and Emergency Services or 40 hours per week in the Bureau of Police) will be deemed to have returned to full duty without limitation.

**"Plan."** The term "Plan" shall mean the Fire and Police Disability, Retirement and Death Benefit Plan which appears as Chapter 5 of the Charter of the City of Portland, Oregon.

**"Substantial Gainful Activity."** A Member will be considered to be capable of "Substantial Gainful Activity" if he or she is qualified, physically, and by education and experience, to pursue activities or employment which will produce earnings, profits or remuneration equal to or exceeding one-third of the Member's rate of Base Pay while on disability. In determining whether a Member has sufficient education and experience to pursue other activities or employment, the following factors shall be considered:

- (1) Previous employment experience;
- (2) Formal and informal education;
- (3) Formal and informal training;
- (4) Knowledge and general abilities;
- (5) Transferable skills;
- (6) Residual functional mental and physical abilities.

For a period of time not to exceed four months, a Member who has otherwise been determined to be capable of Substantial Gainful Activity will not be considered to be capable of Substantial Gainful Activity if he or she is actively working with a vocational counselor to develop a Vocational Rehabilitation Training Plan until such time as the training plan has been considered by the Vocational Rehabilitation Subcommittee.

**"Surviving Spouse."** The term "Surviving Spouse" shall mean the person to whom the Member was legally married throughout the twelve-month period preceding death, and from whom the Member was not judicially separated or divorced by interlocutory or final court decree at the time of death. In accordance with Ordinance No. 176258, benefits provided to Fund Members' surviving spouses are extended on equal terms to gay and lesbian Members same-sex domestic partners. All references in Chapter 5 of the Charter of the City of Portland, and/or in the Administrative Rules to "surviving spouse" shall be understood to apply on equal terms to the same sex domestic partner of the Member.

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## **II. BOARD PROCEDURES**

### **A. Regular and Special Meetings**

Regular meetings of the Board are normally held on the second Tuesday of every month and commence at 8:30 a.m. Unless otherwise stated, all meetings will be in the conference room of the Board of Trustees. Special meetings may be called by the Chairperson, or by three or more members of the Board. All meetings are governed by the provisions of ORS 192.610 to 192.690 in effect at the time of the meeting. Except when in executive session pursuant to ORS 192.660, all meetings are open to the public. All meetings shall be recorded by tape or a court reporter.

### **B. Agenda**

(1) Notice of the date and time of meetings shall be included in the agenda prepared by the Fund Administrator. The place where the meeting will be held shall also appear if the meeting is to be held somewhere other than the Board's conference room.

(2) All business of the Board shall be transacted at regular or special meetings. Except in the case of an actual emergency, no matter will be considered by the Board unless it is included on a Board agenda. To be included on a Board agenda, a request for inclusion on the agenda must be received by the Fund Administrator not less than 7 calendar days before the date of the meeting.

### C. Conduct of Meetings

(1) The Chairperson or Chairperson Pro Tempore shall preside over all meetings unless the Chairperson or Chairperson Pro Tempore directs otherwise. In the absence of the Chairperson or Chairperson Pro Tempore, the presiding officer of any Board meeting shall be a trustee chosen by a majority of the Board of Trustees. In the event that a meeting is being chaired by someone other than the Chairperson or Chairperson Pro Tempore, such presiding officer shall retain his or her right to vote and to participate in discussion of matters before the Board.

(2) Roberts' "Rules of Order, Newly Revised" (1990 Ed.) shall be controlling in governing Board procedure in the absence of any direction appearing in these rules.

### D. Committees

#### (1) Budget and Finance Committee and Rules Committee

The Chairperson each fiscal year, shall appoint the following committees: Budget and Finance Committee and Rules Committee. The Rules Committee shall consist of six members as follows: one elected member of the Bureau of Fire, Rescue and Emergency Services, one elected member of the Bureau of Police, two Board members who are not Plan members, and two citizen trustees, one of whom is the trustee appointed by the elected members of the Bureau of Fire, Rescue and Emergency Services and the elected members of the Police Bureau and one of whom is the trustee appointed by the Mayor. The Budget and Finance Committee shall consist of four members as follows: one elected member of the Bureau of Fire, Rescue and Emergency Services, one elected member of the Bureau of Police and two Board members who are not Plan members. Appointment to the Committees mentioned in this section shall be effective on July 1 of each year and expire on June 30 of the following year, unless a vote of the Board of Trustees alters this schedule. The Rehabilitation Subcommittee shall consist of those members described in Section 5-201(c) of the Plan. The Chair may appoint ad hoc committees as necessary.

#### (2) Expediting Committee:

(a) Effective July 1 each year, the Chairperson shall appoint an Expediting Committee which shall consist of four elected trustees and one other Board member: 2 trustees from the Bureau of Fire, Rescue and Emergency Services, 2 trustees from the Bureau of Police and, either the City Auditor or the City Treasurer. The terms of Expediting Committee members shall expire on June 30 each year. Any of the Expediting Committee members may designate any other Board member to serve in his or her capacity in the event of the regular member's absence. The City Auditor and the City Treasurer may substitute whoever is designated from such offices to serve regularly on the Board in such officer's place. The City Auditor or the City Treasurer may designate the other to serve in his or her capacity in the event of his or her absence.

(b) The Expediting Committee shall meet on the Friday following each payday to consider continuing claims against the Fund, to accept notices of recovery from injury or illness and to consider new

applications for service-connected disability benefits and occupational disability benefits.

(c) Quorum. Two members of the Expediting Committee, or designated alternates, constitute a quorum.

(d) Disposition of New Claims. If the Expediting Committee unanimously approves the claim, it may be paid subject to ratification by the Board at its next regular meeting. In the event that there is not unanimous consent to approve the claim, the claim shall be referred for the consideration of the Board at its next regular meeting. The member or members of the Expediting Committee, who cause the claim to be referred to the full Board, shall be prepared to render a report on their concerns or lack of evidence in support of the claim. At the time the full Board considers a claim, it shall either direct that the claim be paid or continued for further proceedings.

(e) Investigation of Claims. The Expediting Committee shall have the authority to direct the Fund Administrator to investigate or cause to be investigated any new or continuing claim for benefits. Should the Fund Administrator obtain evidence that: (i) the Member is not cooperating in treatment; (ii) the Member is not cooperating in a designated examination under Charter Section 5-202(a); (iii) the Member is not cooperating in the administration of the claim and/or fulfilling the Member's duties and obligations under the Charter and the administrative rules; (iv) the Member is no longer disabled or otherwise eligible; (v) the Member has engaged in fraud or a material misrepresentation; or (vi) the Member's claimed condition no longer arises out of and in the course and scope of the Member's employment, the Fund Administrator and the Expediting Committee shall proceed as provided for in Section III(G). Determinations regarding actual, reasonable and necessary medical and other expenses shall be made as provided for in Section III(I).

(f) Continuing Disability Reports. The Expediting Committee may waive the filing of continued disability reports for such time as it deems appropriate under the circumstances.

(g) All claims arising from new injuries or illnesses which occur at a time other than the applicant's regular tour of duty shall be referred by the Expediting Committee to the Board for determination. Recurrences of a previous service-connected injury which are supported by medical evidence may be paid by the Expediting Committee.

(h) Staff will present to the Expediting Committee any claims identified as appropriate for settlement. The presentation will include a summary of the claim, the reasons for settlement, and an economic analysis of the claim. The Expediting Committee may direct staff to begin negotiations to settle the claim. All claims in the process of settlement negotiations shall be listed as an information item on the Board's monthly agenda. If a settlement agreement is successfully negotiated, the agreement shall be presented to the full Board for approval.

(3) In the event that the Chairperson fails or refuses to make the committee appointments referred to in subparagraphs (1) and (2) by the August meeting of the Board of Trustees, the Board of Trustees shall make the appointments required by subparagraphs (1) and (2). In the interim period between July 1 and the time the Board of Trustees makes the committee appointments referred to in the previous sentence, the previously appointed committee members whose terms of office would ordinarily expire on June 30 shall retain their positions on the respective committees of which they were members until such time as the Board of Trustees replaces or reappoints them. In those cases where a previously appointed committee member does not retain his or her position as a member of the Board of Trustees, his or her replacement on the Board of Trustees shall occupy the committee seat(s) held by the Board member being replaced, until such time as that person is replaced or reappointed by the Board of Trustees. If the Chairperson makes committee appointments on or after July 1 and prior to the August Board meeting, the persons receiving such appointments shall replace any interim committee members serving by virtue of this subparagraph who are not retained by the Chairperson. Any such appointments shall be effective on the third day following the date on which the written appointments are received by the Fund Administrator.

## E. Adoption of Rules

Any proposed change or addition to these rules must be referred to the Rules Committee. The Rules Committee will then consider the proposed change or addition and make a recommendation to the Board concerning the proposed change or addition.

## F. Administration

- (1) The Board and the City Auditor shall jointly select a Fund Administrator who shall administer the Plan under the supervision and direction of the Board. The Fund Administrator, with the approval of the City Auditor, shall perform those functions delegated to the City Auditor or the Secretary by the terms and provisions of the Plan and those functions delegated to the Secretary by these rules.
- (2) All absences without pay shall be reported to the Fund Administrator by the Chief of the Bureau affected.
- (3) All Active Members and all Members receiving disability benefits or a pension shall immediately notify the Fund Administrator, in writing, of changes in their home address.
- (4) Members receiving disability benefits under Article 5 of the Plan shall notify the Fund Administrator if the Member wishes to engage in outside employment and complete the application process described in Section III G(4) of these rules. Members receiving disability benefits under Article 3 of the Plan who wish to engage in outside employment activities shall comply with the notice and disclosure requirements of Section III C or D.
- (5) All requests for legal opinions concerning the Plan shall be requested by the Board, or the members thereof, and shall be transmitted to the City Attorney through the Fund Administrator. All opinions issued in response to such requests shall be filed with the Fund Administrator.
- (6) If a Member was an active member of either the Fire or Police Bureau subsequent to 1 July 1969 and medical insurance benefits are available to one hundred percent of the employees of the respective bureaus while said Member is in active service, deductions may be made from the pensions or benefits of retired or disabled Members for the purpose of continuing the Member's medical insurance, if requested by the Member. The Fund Administrator shall, upon proper application and the signing of waivers, cause to be deducted, the necessary amounts from the said Member's check for the purpose of continuing the Member's Plan of group medical insurance.
- (7) All present Active Members of the Bureau of Fire, Rescue and Emergency Services and Bureau of Police, and those who have retired since July 1, 1947, and all persons, upon becoming Active Members of either Bureau shall immediately file for permanent record with the Fund Administrator, copies of their birth certificates or delayed birth certificates. All Members shall also file copies of their marriage certificates and/or divorce, annulment or separation decrees and of their spouses' birth certificates. Single Members shall, upon their marriage, immediately comply with provisions applying to married Members. Claims against the Fund will not be allowed until certificates necessary to said claim are filed.
- (8) All forms necessary to carry out the provisions of the Plan shall be provided by the Board.
- (9) Subpoenas. The Board may compel the attendance of witnesses and the production of documents by the issuance of subpoenas. The Board's authority to issue subpoenas is delegated to the Fund Administrator who may issue subpoenas upon his or her own motion or upon the application of a claimant. Applications for subpoenas must be in writing and must set forth the name of the witness and the general relevance and reasonable scope of the evidence sought. If the request is for a subpoena duces tecum, it also must specify the particular books, papers, records or documents to be produced.

(10) Whenever the Fund Administrator has medical evidence that a Member who is receiving disability benefits is capable of performing limited duty the Fund Administrator shall notify the Member's Bureau Chief of that fact. Included in the notification will be a report of the member's limitations and a request that the Bureau Chief provide the Member with a job that is compatible with the Member's limitations.

#### G.Election of Trustees

(1) Two Active Members of the Bureau of Fire, Rescue and Emergency Services and Two Active Members of the Bureau of Police shall be elected to the Board by the Active Members of their respective Bureau. Elections will be held in the year of the respective Trustees' expiring term.

(2) Three citizens of the City of Portland who are not active or past members of the Fire and Police Disability and Retirement Fund and who have not been employed as a City of Portland firefighter or police officer shall be appointed to the Board. One citizen who shall not be a member of any public pension fund shall be nominated by the Mayor and appointed by the Council, one citizen shall be appointed by the elected Board members of the Bureau of Police and Bureau of Fire, and one citizen shall be appointed by a majority of the members of the Board. Council-appointed citizen-trustee and elected trustees-appointed citizen-trustee shall be appointed by July 1. A special meeting shall be held prior to the July Board meeting, at which time the Board will appoint the third citizen-trustee. The Board may appoint a subcommittee to review applications for the third citizen-trustee if more than five applications are received for that position. The subcommittee shall recommend three applicants to the full Board.

(3) Elected members of the Board shall have a three-year term of office. Any citizen-trustees who misses four or more meetings in the fiscal year may be removed by the Board unless the Board determines there was good cause for the absences.

(4) Regular elections, to fill expired terms on the Board of Trustees, shall be conducted as follows:

(a) Elections shall be held annually during the month of June. Balloting will be held within the first three business days of June.

(b) Notice of elections shall be given in writing and posted in each fire station and police building on or before the first Monday in May.

(c) Any Active Member may nominate himself or herself by filing such nomination in writing with the Secretary on or before the second Monday in May.

(d) Notice of nominations shall be given in writing and by posting in each fire station and police building on or before the third Monday in May. If only one Active Member is nominated in any election, the election shall not be held. The Secretary shall determine and certify to the Board that the nominee was unopposed. The nominee so certified shall be declared elected in accordance with the procedures set out in Rule II.G(5)(m) below.

(e) The Secretary shall prepare printed ballots, listing the nominees in the order in which they file. The required number of ballots shall be forwarded to the Chief of the Bureau of Fire, Rescue and Emergency Services.

(f) The Secretary shall mail individual ballots to Active Members of the Bureau of Police along with a self-addressed, stamped, return envelope. These ballots will be mailed to Active Members on the third Friday of May and must be postmarked as return mail on or before the 3<sup>rd</sup> day of June.

(g) The Chief of the Bureau of Fire, Rescue and Emergency Services shall designate a custodian, for

each ballot box, who shall supervise the voting by secret ballot.

(h) The Secretary shall provide to the Chief of the Bureau of Fire, Rescue and Emergency Services a typewritten list of those eligible to vote. It shall be the duty of each custodian to check off each voter's name, after his or her ballot has been cast.

(i) A ballot box shall be circulated in each fire station by the designated custodian or custodians.

(j) Balloting by Active Members of the Bureau of Fire, Rescue and Emergency Services shall be allowed for a period of time necessary to cover all shifts but not to exceed 72 hours. At the end of such period, the custodians shall seal and forward the ballots to the Counting Board.

(k) The Counting Board shall consist of three members; the two holdover elected members of the Board of Trustees and the Secretary of the Board. The Secretary of the Board shall serve as Chairperson of the Counting Board and as Judge. The counting shall take place after the June Board meeting, if possible, or by special meeting.

(l) An abstract of votes cast by the Active Members of each Bureau, signed by each member of the Counting Board, together with the tally sheets, signed by each member of the Counting Board, shall be forwarded to the Board of Trustees for its next regular meeting.

(m) In the event no candidate receives a majority of the votes cast (equivalent to 50 percent plus 1 vote), the Counting Board shall notify the Fund Administrator of the need for a runoff election. The notification shall be made on the same day as the counting of the ballots. The runoff election shall be held between the two candidates receiving the most votes. The Fund Administrator shall, within three (3) days of the Counting Board notification, announce to the Members of the respective Bureau that a runoff election is needed.

(n) In the event of a runoff election, ballots will be distributed within five (5) days of the Counting Board's notification of the need for a runoff election. The runoff election shall be held for three days during the last week of June. The counting of the ballots will be conducted in the same manner as regular elections and will be scheduled on or before the last working day of June.

(o) At the first regular meeting of the Board following the election, the names of the nominees and votes received shall be entered in the minutes. The nominees, from each Bureau, receiving the highest number of votes cast shall be declared elected. No contest of any election shall be had after said declaration. Tie votes shall be decided by the drawing of lots, under Board supervision.

(p) The Secretary may delegate any duties or responsibilities he or she may have with respect to the election process to the Fund Administrator.

(5) Any Board member who ceases to be an Active Member may complete the remainder of his or her term. Notwithstanding the previous sentence, a Board member who is discharged for cause shall cease to be a member of the Board on the effective date of his or her discharge.

(6) Special elections, for unexpired terms, shall be held within 30 days after a vacancy occurs and such elections shall be conducted in the same manner as regular elections.

#### H. Rotation of Chiefs.

Beginning July 1, 2001, and in accordance with Section 5-201 of Chapter 5 of the Charter of the City of Portland, the Chief of Police will serve a three month term ending September 30, 2001. Beginning October 1, 2001, the position shall be occupied by the Chief of the Bureau of Fire and shall be rotated every three months



thereafter. If a hearing before the Board of Trustees is occurring the Chief who holds the voting position at the commencement of the hearing shall continue to hold the voting position for purposes of that hearing until its conclusion and the subsequent adoption of the Findings of Fact and Conclusion of Law.

All trustees shall be required to review minutes, transcripts, evidence or any other information of a presentation of evidence or discussion of an agenda item that they will be voting on which they were not present to hear.

#### I. Travel Policy .

It is the desire and intention of the Board to ensure that all Trustees receive educational opportunities afforded by attendance at conferences and seminars relevant to their duties on the Board.

Trustees shall be reimbursed for expenses related to the conference or seminar attendance based on the City of Portland's Rules for Travel, Miscellaneous Expenses and Receipt of Related Benefits. The Board shall file an Addendum to use the per diem method for meal reimbursement.

Trustees are authorized to attend up to two conferences per fiscal year as long as the total number of conferences attended by the trustees does not exceed 13. Trustees will coordinate with other Trustees and the Administrator to stay within the number of limited spots for each fiscal year. Prior to registering, Trustees shall notify the Administrator who will coordinate travel and assure that the budgeted total travel allocation is not exceeded. Trustee's attendance at more than two each or total of 13 conferences in a fiscal year requires pre-approval by the Board of Trustees.

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### III. **BENEFITS**

#### A. Disability Benefits Generally

Disability benefits will be paid to a Member only during such time as the Member is unable to perform his or her required duties in the Bureau of Fire, Rescue and Emergency Services or Bureau of Police. Thus, the disability benefits being paid to a Member shall cease when the Member is capable of performing the duties required of him or her. A Member who is unable to perform his or her usual job but is able to do other work to which the Member may be assigned in his or her respective Bureau, is ineligible for disability benefits if such a job is available to the Member. For example, a police officer whose injury prevents him or her from performing police duties in the field will be ineligible for disability benefits if the officer is capable of performing more sedentary duties and such sedentary position is available to the officer.

#### B. Applications for Disability Benefits

- (1) No disability benefits shall be paid to a Member unless the Member files with the Fund Administrator a complete and timely application requesting such benefits.
- (2) Applications shall be made on forms prescribed by the Board. The Board may require the Member to provide any information that it deems necessary to carry out its duties.
- (3) Application for disability benefits may be made by the Member, or the Member's authorized representative. A representative shall submit to the Board written proof of the representative's authority.
- (4) Applications for disability benefits must be submitted to the Fund Administrator no later than 30 days after the Member is injured or experiences an illness unless the Member establishes that he or she had good cause for failing to do so. Failure to file an application within the time specified bars a claim for disability benefits.

(5) By making application for disability benefits, each applicant thereby authorizes the Board to request and obtain from any physician, health practitioner, hospital, clinic, pharmacy, employer, employment agency, government agency, institution or any other person or organization, any information within any of their records or knowledge regarding the applicant's health, income and employment which in any way relates to the applicant's claim of disability and/or capacity to engage in Substantial Gainful Activity. The applicant thereby also authorizes all such physicians, practitioners, hospitals, clinics, pharmacies, employers, employment agencies, governmental agencies, institutions, persons, and organizations to furnish such medical, health, employment and income information to the Board upon request therefor. The applicant recognizes that the information disclosed may contain information that is protected by federal and state law, and by filing an application for disability benefits, specifically consents to the disclosure of such information. All applications for disability benefits shall contain a form to be signed by the applicant authorizing the release of the foregoing information to the Board or its authorized representatives.

(6) All applications for service-connected disability benefits, shall contain a report of a superior officer, the signature of the Chief of the Bureau affected and a report of the Member's attending physician.

(7) All applications for occupational disability benefits shall contain a report of a superior officer, the signature of the Chief of the Bureau affected, together with a report of the applicant's personal physician and verification by a Board physician.

(8) All applications for nonservice-connected disability benefits shall contain a signature of the Chief of the Bureau affected, together with a report of the applicant's personal physician and a verification by a Board physician.

(9) Although information comes from many sources, claim assessment is frequently based in part on information provided by the Fire and Police Bureaus. If the Bureau designates a process for requesting documents, then the Fund staff will comply with that process. With the exception of attorney-client privileged documents, all information gathered and made part of the claim file will be accessible to the claimant, upon the claimant's request. If a Bureau deems some records as privileged, it is that Bureau's responsibility to identify what information is privileged and withhold the information.

#### C. Offsets to Service - Connected and Occupational Disability Benefits Payable Under Article 3 of the Plan

(1) During the first year a Member is eligible for service-connected or occupational disability benefits under Article 3 of the Plan, the Member shall receive a benefit equal to 75 percent of the Member's Base Pay reduced by 50 percent of any wages earned in other employment.

(2) If the service-connected or occupational disability continues after one year, a disabled Member shall continue to receive a benefit equal to 75 percent of the Member's Base Pay reduced by 50 percent of any wages earned in other employment until the Member is Medically Stationary and capable of Substantial Gainful Activity. A disabled Member who is Medically Stationary and capable of Substantial Gainful Activity shall receive a benefit equal to 50 percent of the Member's Base Pay reduced by 25 percent of any wages earned in other employment. Notwithstanding the foregoing, the minimum benefit shall be 25 percent of the Member's rate of Base Pay, regardless of the amount earned in other employment.

(3) Members receiving service-connected or occupational disability benefits under Article 3 of the Plan who intend to enter the employ of any person, firm or corporation, or engage in any activity which will result in the Member receiving "wages earned in other employment" shall notify the Fund Administrator, in writing, of the Member's intention. The Notice shall be accompanied by a written statement reflecting an estimate of the Member's earnings from such activities. Thereafter, the Member shall furnish the Fund Administrator with such information and at such intervals as the Fund Administrator deems necessary to implement the wage offset provisions of this rule.

(4) The term wages earned in other employment includes the gross salary, fees, commissions, or other remuneration received by a Member for services rendered as an employee to an employer other than the Bureau of Fire or Bureau of Police. The term wages earned in other employment also includes any salary, fees, commissions, profits or other remuneration that the Member receives from his or her self-employment in a profession, trade or business. The term wages does not include income from investments such as interest, dividends, rentals and capital gains.

(5) A Member receiving service connected disability benefits, under Article 3 of the plan, who is released to modified duty and capable of substantial gainful activity, but who is unable to return to the Bureau, shall pursue other employment within the Member's restrictions. "Pursue other employment" means: an active, serious, and continuing effort to seek full-time work each week that the Member claims benefits. The concept of an active work search includes consideration of the customary methods of obtaining work for which the Member is suited by experience, education, and/or training. A Member who is seeking employment will develop verifiable documentation of the reasonable efforts to find work without placing restrictions. Telephone inquiries are considered preliminary exploration of the job market and should be accompanied by appropriate follow-up contacts; personal visits; and submission of applications or résumés.

(6) A Member's failure to seek other employment may result in suspension or reduction of benefits.

#### D. Offsets to Nonservice-Connected Disability Benefits Payable Under Article 3

(1) A Member eligible for nonservice-connected disability benefits under Article 3 of the Plan shall receive a benefit equal to 50 percent of the Member's Base Pay reduced by 50 percent of the wages earned by the Member in other employment. Wages earned by the Member in other employment has the same meaning as the term "wages earned in other employment" as defined in Section C.4, above. The notification procedure described in Section C.3 above shall also apply to Members covered by this section who intend to engage in activities which will result in the receipt of "wages earned in other employment."

(2) A Member receiving nonservice-connected disability benefits under Article 3 of the Plan, who is released to modified duty and capable of substantial gainful activity, but who is unable to return to the Bureau, shall pursue other employment within the Member's restrictions. "Pursue other employment" means: "an active, serious, and continuing effort to seek full-time work each week that the Member claims benefits. The concept of an active work search includes consideration of the customary methods of obtaining work for which the Member is suited by experience, education, and/or training. A Member who is seeking employment will develop verifiable documentation of the reasonable efforts to find work without placing restrictions. Telephone inquiries are considered preliminary exploration of the job market and should be accompanied by appropriate follow-up contacts; personal visits; and submission of applications or resumes.

(3) A Member's failure to pursue other employment may result in a reduction or termination of benefits.

#### E. Disability Retirement Age

(1) Service-connected, occupational and nonservice-connected disability benefits payable under Article 3 of the Plan shall cease upon attaining Disability Retirement Age except as provided in Section 2 hereof. A Member receiving service-connected or occupational disability benefits shall be eligible to receive a retirement benefit at Disability Retirement Age, which shall be the earlier of the dates the Member is (1) credited with 30 Years of Service for retirement benefit purposes or (2) the date the Member attains social security retirement age. Since a Member who receives a disability benefit which is less than 75 percent of the Member's Base Pay in any given year will not be credited with a full Year of Service for any such year (refer to § 5-302(c) of the Plan), there will be more than 30 years between the time a Member was hired and the time he or she will be deemed to have reached Disability Retirement Age based on 30 Years of Service. For example, assume that a Member who has 19 Years of Service becomes disabled. Assuming that the Member receives service-connected disability benefits equal to 75 percent of Base Pay during the first year of disability and 50 percent

of Base Pay thereafter, the Member would have to be disabled for 16 years before he or she would be considered to have attained Disability Retirement Age based upon 30 Years of Service. For purposes of this rule, social security retirement age means the retirement age provided in 42 USC § 416(l)(1).

(2) A disabled Member who is receiving service-connected, occupational, or nonservice-connected disability benefits pursuant to Article 3 of the Plan at the time he or she attains Disability Retirement Age shall only be eligible to receive disability benefits up to the date he or she attains Disability Retirement Age, at which time the disabled Member shall be entitled to receive only a retirement benefit.

A Member covered under Article 3 of the Plan, who is actively employed and suffers a service-connected, occupational, or nonservice-connected disability after attaining Disability Retirement Age, shall be eligible to receive disability benefits for a period of one (1) year from the date of such disability, at which time the disabled Member shall be entitled to receive only a retirement benefit.

#### F. Applications for Pensions and Death Benefits

(1) All persons presenting claims for death benefits shall file for permanent record with the Fund Administrator, copies of the death certificates of the deceased Members.

(2) All surviving spouses presenting claims against the Fund shall file for permanent record, with the Fund Administrator, copies of their birth certificates or delayed birth certificates and of their marriage certificates unless such are on file with the Fund Administrator. All same-sex domestic partners presenting claims against the Fund shall file for permanent record, with the Fund Administrator, copies of their birth certificates or delayed birth certificates and an affidavit of the member and of the domestic partner, on a form prescribed by the Fund, attesting to their domestic partnership. They shall also file for permanent record, with the Fund Administrator, copies of the birth certificates of all dependent minor children entitled to participate in any benefits of the Fund. Claims against the Fund will not be allowed until such certificates and/or affidavits are filed.

(3) All persons presenting claims for pensions or benefits, for minor children, shall file for permanent record, with the Fund Administrator, copies of the birth certificates or records of adoption of said minor children.

Claims against the Fund will not be allowed until such certificates and papers are filed.

No application for benefits from the Fund for said dependent minor child or children shall be allowed until there has been filed with the Board an affidavit of dependency.

(4) A baptismal record showing date of birth shall be satisfactory evidence of birth.

(5) Whenever a variation of names occurs in the name of a Member, his or her spouse, or dependent minor children, an affidavit shall be furnished to the Fund Administrator to substantiate that the names relate to one and the same person.

(6) All applications for pensions by Members shall be made at least fourteen days prior to the second Tuesday of the month in which the Member wishes to retire. Pensions shall become effective on the day after the Members' employment terminates.

(7) All applications for death benefits by surviving spouses or minor children, shall be made within thirty days after the death of Members, unless good cause is shown for the failure to do so. Such benefits shall become effective on the day after the Member's death.

#### G. Recipients of Disability Benefits

(1) All Members drawing disability benefits, of whatever nature shall identify a physician, subject to Section III(I)(8), who will be responsible for directing the Member's medical care. As used above, "physician," means:

(a) A Medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the Board of Medical Examiners for the State of Oregon or a similarly licensed doctor in any country or in any state, territory or possession of the United States, or

(b) For a period of 30 days from the first visit on the initial claim or for 12 visits, whichever first occurs, a doctor or physician licensed by the State Board of Chiropractic Examiners for the State of Oregon or a similarly licensed doctor or physician in any country or in any state, territory, or possession of the United States. All Members drawing disability benefits shall be examined at least once during each twelve-month period by the Member's identified physician or a physician appointed by the Board, unless otherwise determined by the Board or the Expediting Committee.

(2) All Members receiving disability benefits under Article 5 of the Plan shall furnish the Fund Administrator proof of their residency in the State of Oregon. Warrants in payment for such benefit, and the delivery of such warrant shall be subject to such proof of residency. Proof of residency shall be in the form of a statement signed by the Member certifying that he was actually living in the State of Oregon, as defined in Section 5-126 (10) of Article 5 of the Plan, during the period for which the warrant was issued unless the residence requirement has been waived. The Board may waive the residence requirement upon a showing of necessity or hardship.

(3) Any Member receiving disability benefits under the Plan shall file with the Fund Administrator a physician's certificate of continued disability for each pay period, unless otherwise waived by the Board or Expediting Committee.

(4) While a Member receives disability benefits under Article 5 of the Plan such Member shall not enter the employ of any person, firm, company or corporation, or be self-employed, or follow any other calling or vocation, or be employed in any other business, without having on file in the office of the Fund Administrator a "Request to Engage in Outside Employment," which has been approved by the Board of Trustees. The "Request to Engage in Outside Employment" shall contain the following information:

(a) Name and address of Member;

(b) The proposed type of work, employment, business calling or vocation;

(c) Name and address of the place where the proposed employment will be done;

(d) The hours of work and the time that would be required of the disabled Member in such proposed work, employment, business, calling or vocation;

(e) The nature of duties contemplated or involved in such proposed work, employment, business, calling or vocation;

(f) Such other information which the Member feels is pertinent to his request.

Any such "Request to Engage in Outside Employment" must be accompanied by a statement from the Member's treating physician, obtained at the Member's sole expense, to the effect that the proposed type of work, employment, business, calling or vocation and the working conditions relative thereto will not tend to hinder, delay or prevent recovery of the Member from the disability for which he or she is receiving benefits from the Fund and his or her return to duty. The Board of Trustees may request and the Member shall supply at his or her sole expense any additional information or supporting data which the Board of Trustees deems appropriate.

Failure of a Member to comply with this rule will be cause for termination or suspension by the Board of Trustees of the right of the Member to receive benefits from the Fund.

(5) For service-connected and occupational disability benefits and for nonservice connected disability benefits under Article 3, if the Fund Administrator obtains evidence that the Member is not cooperating in vocational rehabilitation, or is not pursuing other employment, the Fund Administrator shall present such evidence to the Rehabilitation Subcommittee with a recommendation. A summary of the evidence and the recommendation shall be provided to the Member. By appointment and during regular business hours, the Member shall be entitled to review the non-privileged evidence upon which the recommendation is based. The Member will have 14 days to provide a written response for the Rehabilitation Subcommittee's consideration. The Member shall receive notice regarding when the Rehabilitation Subcommittee will consider the Administrator's recommendation. The Member may appear before the Rehabilitation Subcommittee. Regarding service-connected and occupational disability benefits, the Rehabilitation Subcommittee may, by majority vote of its members, suspend or reduce benefits. Regarding non-service connected disability benefits, the Rehabilitation Subcommittee may, by majority vote of its members, reduce or terminate benefits. A Rehabilitation Subcommittee member may request reconsideration of the majority's decision by the Board at the time of the Subcommittee's determination. The Subcommittee member or members requesting reconsideration shall be prepared to render a report to the Board regarding the reasons for the reconsideration request. If the Rehabilitation Subcommittee or the Board, on reconsideration, reduces, suspends or terminates benefits, the Member shall be notified in writing of the decision along with the reasons for the decision. The Member shall also be notified of the rights under Charter Section 5-203(a) and the right to appeal to the Board for a Hearing as provided for in Section IV of these rules. However, the Board will consider such an appeal only if the Member requests the Board, in writing, review the decision of the Rehabilitation Subcommittee. Any such written request must be filed with the Fund Administrator within 30 days after the date of the decision being appealed.

(6) For nonservice connected disability benefits under Article 3, if the Fund Administrator obtains evidence that: (a) the Member is not cooperating in treatment, (b) the Member is no longer disabled or is no longer eligible, (c) the Member is not cooperating in a designated examination under Charter Section 5-202(a); (d) the Member is not cooperating in the administration of the claim and/or fulfilling the duties and obligations under the Charter and the administrative rules; or (e) the Member has engaged in fraud or a material misrepresentation, the Fund Administrator shall present such evidence to the Expediting Committee with a recommendation. A summary of the evidence and the recommendation shall be provided to the Member. By appointment and during regular business hours, the Member shall be entitled to review the non-privileged evidence upon which the recommendation is based. The Member will have 14 days to provide a written response for the Expediting Committee's consideration. The Member shall receive notice regarding when the Expediting Committee will consider the Administrator's recommendation. The Member may appear before the Expediting Committee. The Expediting Committee may, by majority vote of its members, suspend or terminate the nonservice connected disability benefits. An Expediting Committee member may request reconsideration of the majority's decision by the Board at the time of the Committee's determination. The Committee member or members requesting reconsideration shall be prepared to render a report to the Board regarding the reasons for the reconsideration request. If the Expediting Committee or the Board, on reconsideration, suspends or terminates benefits, the Member shall be notified in writing of the decision along with the reasons for the decision. The Member shall also be notified of the rights under Charter Section 5-203 (a) and the right to appeal to the Board for a Hearing as provided for in Section IV. However, the Board will consider such an appeal only if the Member requests the Board, in writing, review the decision of the Expediting Committee. Any such written request must be filed with the Fund Administrator within 30 days after the date of the decision being appealed.

(5) For service connected and occupational disability benefits under Article 3, if the Fund Administrator obtains evidence that: (a) the Member is not cooperating in treatment; (b) the Member is not cooperating in a

designated examination under Charter Section 5-202(a); (c) the Member is not cooperating in the administration of the claim and/or fulfilling the Member's duties and obligations under the Charter and the administrative rules; (d) the Member is no longer disabled or eligible; (e) the Member has engaged in fraud or a material misrepresentation; or (f) the Member's claimed condition no longer arises out of and in the course and scope of the Member's employment with the Bureau of Fire, Rescue and Emergency Services or the Police Bureau, as provided for in Section IV(C)(7), the Fund Administrator shall present such evidence to the Expediting Committee with a recommendation. A summary of the evidence and the recommendation shall be provided to the Member. By appointment and during regular business hours, the Member shall be entitled to review the non-privileged evidence upon which the recommendation is based. The Member will have 14 days to provide a written response for the Expediting Committee's consideration. The Member shall receive notice regarding when the Expediting Committee will consider the Administrator's recommendation. The Member may appear before the Expediting Committee. The Expediting Committee may, by majority vote of its members, suspend, reduce or terminate service connected and occupational disease benefits. An Expediting Committee member may request reconsideration of the majority's decision by the Board at the time of the Committee's determination. The Committee member or members requesting reconsideration shall be prepared to render a report to the Board regarding the reasons for the reconsideration request. If the Expediting Committee or the Board, on reconsideration, suspends, reduces or terminates benefits, the Member shall be notified in writing of the decision along with the reasons for the decision. The Member shall also be notified of the rights under Charter Section 5-203(a) and the right to appeal to the Board for a Hearing as provided for in Section IV. However, the Board will consider such an appeal only if the Member requests the Board, in writing, review the decision of the Expediting Committee. Any such written request must be filed with the Fund Administrator within 30 days after the date of the decision being appealed.

#### H. Non-Military Leave of Absence

All Members granted a non-military leave of absence without pay by the Council of the City of Portland, Oregon, or the Commissioner in charge of the Bureau in which the Member is employed, shall have preserved under the Plan during such leave the following rights:

- (1) In the case of Members covered under Article 5 of the Plan, a right of return of contributions to the Member in case of resignation or discharge in accordance with Section 5-113 of Article 5 of the Plan.
- (2) In the case of Members covered under Article 3 of the Plan, the right to retire or receive vested or unvested benefits under the applicable provisions of the Plan upon proper application to the Fund Administrator.
- (3) Right of reinstatement to whatever rights the Member had at the commencement of said leave of absence upon return to active duty in the Bureau from which said leave of absence was granted.
- (4) Right of surviving spouse or dependent minor children of the Member, if any, to the benefits and pensions granted by Section 5-309 of Article 3 of the Plan or Section 5-118 of Article 5 of the Plan, whichever is applicable, in those cases where a Member dies before retirement from a cause not in line of duty.
- (5) Right to benefits or pensions for injury, sickness or death occurring during said leave of absence if such disability is directly attributable to a former injury in line of duty or occupational disability for which the Member has received benefits or which the Board may otherwise recognize as pre-existing, provided such injury, sickness or death has not been caused by an aggravation of the pre-existing injury or sickness during said leave of absence.
- (6) For purposes of determining service credit, Members working less than full time shall be designated as on leave without pay for any period less than full time. The amount credited for each Year of Service credit shall be a fractional Year of Service based on the actual number of hours worked each year in which the Member worked part-time, as a percentage of full-time hours.

I. Reimbursement for Expenses Attributable to Service-Connected or Occupational Injury or Illness.

Reimbursement for actual, reasonable and necessary expenses, as determined by the Board, incurred by a Member as a result of a service-connected or occupational injury or illness shall be paid as provided below:

- (1) Members shall be reimbursed for the actual, reasonable and necessary medical expenses they have incurred. Payment by the Board directly to the medical care provider shall be deemed to be reimbursement of the Member.
- (2) Actual, reasonable and necessary costs for travel, prescriptions and other necessary expenses paid by the Member will be reimbursed upon request by the Member.
- (3) All requests for reimbursement shall be made on forms provided by the Board and accompanied by itemized documentation which supports the request. For example, requests for reimbursement for prescriptions must be accompanied by a receipt from the provider identifying the prescription and its price and requests for mileage reimbursement must be accompanied by a statement reflecting the actual mileage traveled.
- (4) Reimbursement for the cost of meals, lodging, public transportation or use of a private vehicle shall be at the rate of reimbursement paid to City employees when incurring such expenses.
- (5) Reimbursement for the cost of meals, lodging, or travel exceeding 50 miles will be paid only if such expenses are pre-approved by the Fund Administrator.
- (6) Expenses incurred for public transportation or the use of a private automobile will be reimbursed based on the most direct route between the Member's home and the facility where the service is to be performed.
- (7) All requests for reimbursement for expenses paid by the Member must be submitted to and received by the Board within 60 days of incurring the expense for which reimbursement is sought.
- (8) Initial determinations regarding actual, reasonable and necessary medical and other expenses shall be made by the Fund Administrator or the Fund Administrator's designee. Members shall be advised, in writing, of the determination. In the event that a member is affected by a determination of the Fund Administrator or the Fund Administrator's designee, the Member may appeal such determination by filing with the Fund Administrator a written notice of appeal requesting reconsideration before the Expediting Committee. However, the reconsideration shall not be granted unless the notice of appeal is received by the Fund Administrator within 60 days after the mailing of the determination, unless the Member can establish good cause why the notice of appeal was not received within the required 60 days. A Member affected by a decision of the Expediting Committee has the right of appeal requesting a hearing to the full Board. However, the Board will consider such an appeal only if the Member requests the Board, in writing, to review the decision of the Expediting Committee. Any such written request must be filed with the Fund Administrator within 30 days after the date of the decision being appealed.
- (9) Medical or hospital service providers that have fee arrangements with the Board.
  - (a) Notwithstanding the provisions of subsection (1) above, Members receiving disability benefits under Article 3 of the Plan must obtain hospital and medical services for service-connected or occupational injuries or illnesses from providers who have fee arrangements with the Board, except in those circumstances described in subparagraph (b) of this paragraph 8. A listing of such providers shall be on file in and available from the Fund Administrator's office.
  - (b) Members may obtain and will be reimbursed for the actual and reasonable costs of necessary medical or hospital services received from providers who do not have fee arrangements with the Board, in the



circumstances described in this subparagraph (b) below. Payment directly to the provider will be considered to be reimbursement to the Member.

(1) The Member has a life-threatening emergency requiring immediate medical care at the nearest emergency facility. Life-threatening emergencies include, but are not limited to, situations such as profuse bleeding, loss of consciousness, breathing difficulty or sudden severe head trauma.

(2) The Member is traveling in an area in which there are no providers who have a fee arrangement with the Board and a service connected or occupational injury or illness requires immediate medical treatment.

(3) The Member is referred by either the Bureau of Police or the Bureau of Fire, Rescue and Emergency Services to a provider with whom the Bureau has made arrangements for vaccinations or evaluation and treatment for on-the-job exposures to blood borne pathogens or hazardous materials.

(4) Other exceptions specifically authorized by the Fund Administrator or his or her designee. The Fund Administrator or his or her designee may waive the requirement that a Member seek hospital or medical services from a provider who has a fee arrangement with the Board upon a showing by the Member that it is a necessity that the Member be treated by another provider or that it would cause an undue hardship on the Member to require that he or she seek treatment only from a provider who has a fee arrangement with the Board.

(c) Initial determinations under this subsection I.(9) shall be made by the Fund Administrator or the Fund Administrator's designee. Members shall be advised, in writing, of any determination. In the event that a member is affected by a determination of the Fund Administrator or the Fund Administrator's designee, the Member may appeal such determination by filing with the Fund Administrator a written notice of appeal requesting a hearing before the Board. However, a hearing shall not be granted unless the notice of appeal is received by the Fund Administrator within 60 days after the mailing of the determination, unless the Member can establish good cause why the notice of appeal was not received within the required 60 days.

#### J. Annual Cost of Living Benefit Adjustments

Benefits payable under Section 5-304 (Retirement Benefits) and Section 5-305 (Termination Benefits) of the Plan will be adjusted on August 1 of each year to reflect changes in the cost of living. Although the percentage rate of change shall not exceed the percentage rate applied to retirement benefits payable to police officers and fire fighters covered under the Public Employees' Retirement System of the State of Oregon (PERS), the percentage rate of change shall be equal to such percentage rate of change under PERS. A Member's benefits will be adjusted on August 1 of any given year only if the Member separates from service on or before June 30 of that year.

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### **IV. HEARING PROCEDURES REGARDING PENSION AND DISABILITY CLAIMS**

#### A. Definition

(1) As used in these rules relating to hearings procedures, the term "the Board of Trustees" or "the Board" shall mean the Board of Trustees of the Fire and Police Disability and Retirement Fund or a hearings officer appointed by the Board of Trustees pursuant to Charter Section 5-202(a).

#### B. Claim Processing; Request for Hearing

(1) The Board of Trustees may approve, deny, set an initial claim over for a hearing, or defer decision and request further information. The Member will be notified of the Board's decision. If the Board denies a claim, the Member will be notified in writing of the decision along with the notice of the right to request a fact-finding hearing. If a Member wishes to proceed with a hearing, a request for hearing signed by or on behalf of the Member must be made, in writing, and received by the Fund Administrator within 60 days of the mailing date of the denial. An untimely request for hearing may be accepted by the Board, upon a finding of good cause for the untimely request. Good cause for an untimely request shall be determined by the Board and may be established as provided for in Oregon Rule of Civil Procedure 71B.

(2) The Fund Administrator shall schedule a hearing within three months after receipt of the request for hearing or the Board's decision to set a claim over for a hearing.

(3) The Member or Fund Administrator may request a delay in setting the claim for hearing for "extraordinary circumstances" as provided for in subsection (4) of this section. The request must be made as soon as practicable. The request must be provided in writing with an explanation of the reason for the request to delay the hearing and the amount of time requested for delay. If the delay is granted, a rescheduled hearing will then be set as soon as the Board's calendar will permit. In any event, a hearing shall not be postponed for more than one year from the date the Member requested a hearing or the Board set the claim over for a hearing, except in extraordinary circumstances beyond the control of the Member or the Fund.

(4) Extraordinary circumstances for delay of hearing may include, but is not limited to, investigation by outside agencies, illness and any other basis deemed an extraordinary circumstance by the Board of Trustees. An extraordinary circumstance for delay of hearing does not include: (a) unavailability of the Member, a lay witness or representative of the Member due to nonemergency occupational, personal or professional business or appointments; (b) unwillingness of the Member, a lay witness or representative of the Member to appear; (c) incomplete case preparation, unless there is a finding that case preparation could not be accomplished with due diligence.

(5) The decision concerning a request for delay shall be made by the chair of the Expediting Committee. The chair of the Expediting Committee shall report to the Board regarding such requests and decisions.

### C. Conduct of the Hearing

(1) Hearings before the Board of Trustees are non-adversarial fact-finding proceedings which are intended to develop an accurate and complete record which will allow the Board to arrive at a fair and equitable determination.

(2) Claimants may elect to represent themselves, or they may be represented by counsel.

(3) All hearings shall be conducted by and under the control of the presiding officer. The presiding officer may be the chairperson, chairperson Pro Tempore, a trustee chosen by the majority of the trustees present at the hearing, or any other person designated by the Board of Trustees.

(4) Testimony in all hearings shall be taken upon oath or affirmation of the witness from whom received. The officer presiding at the hearing, the Fund Administrator or the court reporter (in the event the hearing is being recorded by a court reporter) shall administer the oath or affirmation. For the sake of convenience, oaths or affirmations may be administered at the commencement of the hearing to all witnesses who are to testify. The presiding officer, individual Board members, the Board's attorney, the claimant or the claimant's counsel or representative shall have the right to question or examine any witness.

(5) Any part of the evidence may be received in written form as well as orally.

(6) Exhibits shall be marked and maintained by the Fund Administrator as part of the record of the proceedings.

(7) Hearings on new claims shall be conducted and shall proceed, subject to the discretion of the presiding officer, in the following manner:

(a) Prior to the hearing, an administrative file will be developed relative to the applicant's claim. The administrative file will contain documentary information such as the application for benefits, medical reports, etc. This file will be sent to the applicant approximately a week prior to the hearing. The presiding officer will open the hearing by inquiring whether there is any objection to its admission into evidence. If there is no objection, the file will be received in evidence and made a part of the record.

(b) A statement, if any, by or on behalf of the claimant may be presented. Following such statement, if any, evidence of the claimant in support of his or her claim shall be presented.

(c) Evidence on behalf of the Fund, if any, may be presented.

(d) Rebuttal evidence may be offered.

(e) Closing arguments may be presented.

(8) In disability cases before the Board, if it appears to the Board that further testimony or argument should be received, the Board may, at the pleasure of the Board members present, continue the hearing. In disability cases before a hearing officer, if it appears to the hearing officer that further testimony or argument should be received, said officer may, in his or her discretion, continue the hearing.

(9) In disability cases before the Board the presiding officer shall excuse all persons from the hearing room except staff, the claimant, the claimant's representative, and shall conduct the hearing in executive session pursuant to ORS 192.660(1)(f) of the Public Meetings Law.

(10) The determination or decision on any claim, which is reached after a hearing provided for herein, will be in writing and contain findings of fact, conclusions of law, rulings on admissibility of evidence, if not otherwise appearing in the record, and, if the determination is adverse to the claimant, a citation of the statutes under which the determination may be appealed.

(11) Informal disposition may be made of any claim by stipulation, agreed settlement or consent order.

#### D. Evidentiary Rules

(1) The burden of presenting evidence to support each criterion for entitlement to service-connected disability benefits, nonservice-connected disability benefits, or pension benefits shall be upon the applicant throughout the proceeding and shall not shift to the Board. An applicant shall not receive disability benefits unless his or her claim is supported by medical evidence. A denial of disability benefits need not be based on medical evidence but may be based on the applicant's failure of proof or on the Board's proof.

(2) Evidence will be excluded if it is immaterial, irrelevant or unduly repetitious. Hearsay is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs. However, the probative weight given hearsay will depend upon the circumstances, such as whether the party offering the hearsay could have offered better evidence and whether the hearsay could have been but was not rebutted.

(3) Objections to evidentiary offers may be made and shall be noted in the record.

(4) All offered evidence, not objected to, will be received by the presiding officer subject to the presiding officer's power to exclude irrelevant, immaterial, or unduly repetitious matters.

(5) Evidence objected to may be received by the presiding officer. Rulings on its admissibility or exclusion, if not made at the hearing, shall be made on the record at or before the time a final order is issued.

(6) Notice may be taken of facts of which a court may take notice.

(7) Each applicant for service-connected disability benefits under Article 3 of the Plan, except applicants who claim to have stress or mental disorders, must establish that his or her claimed condition arose out of and in the course of the applicant's employment with the Bureau of Fire, Rescue and Emergency Services or Bureau of Police. This means that it must be proven by medical evidence, supported by objective findings, that the Member's employment is the major contributing cause of the claimed condition, disability, or need for medical treatment. Members who claim to have stress or mental disorders must prove that their employment is the primary cause of the disorder. The term stress or mental disorder includes physical ailments or disorders that cannot be attributed to a physical injury or objectively verified through medical examination, e.g., headaches and non-specific chest pain.

(8) In the case of a Member covered under Article 3 of the Plan who is disabled as a result of hernia of the abdominal cavity or diaphragm, AIDS, AIDS-related complex, tuberculosis, hepatitis B, or pneumonia (except terminal pneumonia) it will be rebuttably presumed that such condition arises out of and in the course of the Member's employment with the Bureau of Fire, Rescue and Emergency Services or Bureau of Police. The same rebuttable presumption exists with respect to a Member suffering from heart disease if the Member has five or more years of service with his or her respective bureau when his or her condition becomes disabling.

The presumptions referred to herein may be rebutted only if it is determined by a preponderance of the evidence that the Member's condition did not result from service as a police officer or fire fighter.

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## **V. VOCATIONAL REHABILITATION**

A. The rules relative to vocational rehabilitation shall be administered by the Rehabilitation Subcommittee, which shall consist of the Chairperson or Chairperson Pro Tempore, the City Treasurer, or the person serving on the Board in place of the City Treasurer, one elected Board member from the Bureau of Fire, Rescue and Emergency Services, one elected Board member from the Bureau of Police and one citizen member chosen by the Board.

### **B. Purpose**

Vocational assessments and rehabilitation services are designed to return a disabled Member to gainful employment and reduce the payment of disability benefits by the Fund.

### **C. Goals**

The Goals of the vocational rehabilitation program are to:

(1) Assess the feasibility and benefit of vocational rehabilitation services to the Fund and the disabled Member.

(2) Return the Member to his or her former job with the Bureau of Fire, Rescue and Emergency Services or the Bureau of Police.

(3) Return the Member to the same (but modified) job with the Bureau of Fire, Rescue and Emergency

Services or the Bureau of Police.

(4) Return the Member to work, performing a different job that capitalizes on transferable skills with the Bureau of Fire, Rescue and Emergency Services or the Bureau of Police.

(5) Return the Member to work, performing a different job that capitalizes on transferable skills with a different employer.

(6) Return the Member to work, performing a different job that requires training with the Bureau of Fire, Rescue and Emergency Services or the Bureau of Police or a different employer.

#### D. Assessments

(1) The purpose of an assessment is to determine if the Member is capable of substantial gainful activity, as defined in these rules; as well as to determine if the Member is eligible for vocational rehabilitation services.

(2) An assessment of the feasibility of vocational rehabilitation will be done regarding a Member who:

(a) Experiences a service connected injury or occupational disease; or a non-service connected injury or occupational disease; and

(b) Has been declared or is reasonably expected to be declared medically stationary by the Member's attending physician; and

(c) Has been determined by the Member's attending physician to have permanent restrictions or a reasonable expectation of permanent restrictions as a consequence of a service connected injury or occupational disease, or a non-service connected injury or disease.

(3) An assessment shall not be done if the cost of the assessment exceeds the anticipated savings to the Fund.

(4) Components of an assessment may include but not be limited to:

(a) Relevant work history for at least the preceding five years;

(b) Level of education, and proficiency in spoken and written English or other languages, where relevant;

(c) Achievement or aptitude test data;

(d) Permanent limitations due to the injury or disease;

(e) An analysis of the Member's transferable skills;

(f) A list of jobs for which the Member has the knowledge, skills and abilities, and for which a reasonable labor market is documented to exist; and

(g) Consideration of the vocational impact of any limitations which existed prior to the injury or disease.

#### E. Eligibility

(1) A Member is eligible for Vocational Rehabilitation Services when:

(a) The Member has fully participated in an assessment as provided in Section D; and

(b) Vocational rehabilitation services are reasonably expected to reduce disability benefits.

(2) A Member shall participate in vocational rehabilitation services if the Member meets the eligibility criteria in this section and the Member is not capable of "substantial gainful activity", as defined in these administrative rules.

(3) A Member may request vocational rehabilitation services if the Member meets the eligibility criteria in this section, even if the Member is capable of "substantial gainful activity", if after analysis, the Fund determines that there is a reasonable likelihood of a reduction in disability benefits with completion of the vocational rehabilitation services.

#### F. Vocational Rehabilitation Plan

(1) A Member who is determined eligible for vocational rehabilitation services, along with a vocational rehabilitation specialist, will develop a specifically achievable vocational rehabilitation plan.

(2) The components of the vocational rehabilitation plan may include but not be limited to:

(a) written vocational goals and objectives.

(b) the actions that must be taken to achieve the goals and objectives,

(c) the services (including any recommended training) needed to fulfill the plan,

(d) the projected start date and completion date of the actions to be taken and services to be provided,

(e) the job-seeking and placement-related activities that will facilitate securing employment,

(f) the way in which progress towards completing the plan will be evaluated, and

(g) the cost of the services and other expenses associated with the plan.

#### G. Cooperation in Vocational Rehabilitation

(1) A Member who meets the criteria for an assessment under Section D, shall cooperate in vocational rehabilitation. "Cooperate in vocational rehabilitation" means:

(a) Fully participate in an assessment of the feasibility of vocational rehabilitation; and

(b) If determined eligible for vocational rehabilitation services, cooperate in the development of a reasonable and specifically achievable vocational rehabilitation plan consistent with the purpose and goals of vocational rehabilitation;

(c) Fully participate in the approved vocational rehabilitation plan; and

(d) Upon completion of an approved vocational rehabilitation services plan, the Member "pursues other employment," as defined in these rules, in the field for which the vocational rehabilitation services were provided.

(2) For service connected disability benefits, a Member's failure to cooperate in vocational rehabilitation may result in suspension or reduction of benefits.

(3) For nonservice-connected disability benefits, a Member's failure to cooperate in vocational rehabilitation may result in reduction or termination of benefits.

#### H. Cessation of Eligibility for Vocational Rehabilitation Services

A Member's eligibility for vocational rehabilitation services will end when any of the following conditions have been met:

(1) The applicable purpose and goals of the vocational rehabilitation program referred to in Section V. have not been attained.

(2) The Member has been employed with the Bureau of which he or she was a Member at the time of becoming disabled for 60 days or has been employed by another employer or been self-employed for 60 days. This provision shall not apply if additional vocational rehabilitation services are required to overcome obstacles to the Member's continued employment.

(3) The Member's employment ends for a reason unrelated to the Member's service-connected, occupational or nonservice-connected disability.

(4) The Member has refused an offer of employment after he or she has been rehabilitated to the extent necessary that he or she possesses the physical capacities, knowledge, skills and abilities for such employment or has failed to fully participate in available light-duty work.

(5) The Member has declined vocational rehabilitation services, has become unavailable for vocational rehabilitation services or has retired.

(6) The Member has failed, after written warning, to fully participate in an assessment of his or her eligibility for vocational rehabilitation services or to provide requested information.

(7) The Member has failed, after written warning, to fully comply with the Member's responsibilities under a vocational rehabilitation plan.

(8) The Member has stopped attending training without notifying either the vocational rehabilitation services provider or the Fund Administrator.

(9) The Member's lack of employment or self-employment for which he or she has the necessary physical capacity, knowledge, or transferable skills and abilities cannot be resolved by vocational rehabilitation services.

(10) The Member has misrepresented a matter which was material to the assessment of eligibility or the provision of vocational rehabilitation services.

(11) Notwithstanding any other provision in these rules, the period of time between plan implementation and plan completion reaches 24 months; or the total expenses associated with the plan reaches \$22,500.00, whichever comes first. The expense limit may be adjusted annually by the Board in keeping with similar annual adjustments made by the Oregon Department of Consumer and Business Services, Workers Compensation Division in OAR 436-120.

#### I. Vocational Rehabilitation Expenses

(1) To receive reimbursement for vocational rehabilitation services, a disabled Member must obtain such services from a provider of vocational rehabilitation services approved by the Rehabilitation Subcommittee.

(2) Reimbursement for vocational rehabilitation services provided to a Member will be authorized only if the services are included in a vocational rehabilitation plan which has been approved in advance by the Rehabilitation Subcommittee, subject to the limits provided in Section H(11) of these rules.

(3) Vocational rehabilitation expenses may include payment to one or both of the Bureaus for up to 75 percent of the base salary of a disabled Member placed in a temporary limited duty position.

#### J. Steps in the Vocational Rehabilitation Process as it Relates to Jointly Funded Temporary Limited Duty

Participation in the vocational rehabilitation process as it relates to jointly funded Temporary Limited Duty (TLD) will typically require the steps described below:

(1) Determine the need for TLD vocational rehabilitation services.

The TLD vocational rehabilitation process begins when a disabled Member is deemed by his or her treating physician to be temporarily unable to return to regular work but fully capable of performing tasks associated with a limited duty position. The treating physician will be asked to provide a medical assessment detailing the Member's physical restrictions and capabilities. These will usually be documented on the Work Status Report, but may require follow-up if insufficient detail is given.

(2) Initiate TLD vocational rehabilitation services.

The TLD vocational rehabilitation process is initiated by the Fund Administrator and the placement process may begin as soon as it appears likely that a disabled Member may be unable to return to his or her regular position, but is capable of performing limited duty. Upon receipt of information from the doctor documenting the Member's restrictions, Fund staff will determine if (or when) a suitable position is (or will be) available.

(3) Advise the Member verbally and in writing of an available TLD assignment.

Fund staff will advise the Member that he or she is eligible to participate in a TLD position. Information conveyed verbally and in writing will include a brief description of the available TLD assignment, the physical and/or mental requirements of the TLD position and how the requirements fit within the Member's restrictions, when the Member shall report for duty, and the expected length of the TLD assignment.

The Member will also be advised verbally and in writing of his/her responsibilities resulting from placement in a jointly funded limited duty position:

1. The Member will abide by the Bureau's limited duty policy, including criteria and requirements for eligibility.
2. The Member will maintain contact at least monthly with Fund staff for the duration of the limited duty assignment.
3. The Member will notify Fund staff of any change in medical condition or work status including release, or anticipated release, to regular work.
4. The Member will notify Fund staff of any request to extend participation in the limited duty position, within the confines of the Bureau's limited duty policy and in no case extending beyond one year.
5. The Member will be subject to the conditions triggering Cessation of Eligibility for Vocational Rehabilitation Services, as detailed in Section V.E.



(4) Monitor Member's participation in TLD position.

Fund staff will maintain monthly contact with the Member throughout the duration of the TLD assignment. Fund staff may extend the term of the TLD assignment based on information from the treating physician indicating a continued need for limited duty, as long as the medical information continues to reflect that the Member is ultimately expected to return to regular work. In no case shall the term of the TLD assignment extend beyond one year in length.

(5) Confer with Vocational Rehabilitation Subcommittee as needed.

Fund staff may confer with the Vocational Rehabilitation Subcommittee if any problems develop concerning TLD placement or participation, or if a situation out of the ordinary arises. Fund staff will confer with the Vocational Rehabilitation Subcommittee in any case in which a Member refused to participate in a suitable and available TLD position.

(6) Report participation in TLD positions to Board of Trustees.

On a quarterly basis, Fund staff will place on the Board's agenda an information item consisting of a report summarizing participation in the TLD positions. This report will include the name and Bureau of Members who have participated in TLD, the length of time each Member held a TLD position, and a general description of the TLD assignment.

Participation in a temporary limited duty position does not preclude a Member from requesting additional vocational rehabilitation services later.

#### K. Right to Request a Different Vocational Rehabilitation Specialist

A Member has the right to request a different vocational rehabilitation specialist within the company providing vocational rehabilitation services. Any such request should be made to the Fund Administrator, who shall review the request, and in the event good cause for the requested change is established, the Fund Administrator shall authorize the Member to work with a different rehabilitation specialist. Any Member adversely affected by a decision of the Fund Administrator may appeal such decision to the Rehabilitation Subcommittee. The Rehabilitation Subcommittee will consider such an appeal only if a written request seeking review of the Fund Administrator's decision is filed with the Fund Administrator within 30 days of the date of the decision being appealed. A vocational rehabilitation specialist is a person certified by the State of Oregon to provide a variety of vocational rehabilitation services (e.g., vocational evaluation, labor market survey, job analysis, job search skill training).

#### L. Training Programs and Vocational Rehabilitation and Optional Services

(1) Training programs shall consist of formal or informal instruction designed to teach a Member job skills which will enable the Member to obtain employment in or outside of the Bureau which employed the Member. Optional services are limited services which may be provided to a Member. Such services are provided at the discretion of the Administrator. The cost associated with such limited services shall not exceed 10 percent of the total expense limit provided in Section H(11).

(2) All training programs reimbursed by the City of Portland Fire and Police Disability and Retirement Fund must be approved by unanimous vote of the Rehabilitation Subcommittee in advance. In the event there is not unanimous consent to approve a training program, the matter shall be referred for the consideration of the Board at its next regular meeting. The Member or Members of the Rehabilitation Subcommittee, who cause the matter to be referred to the full Board, shall be prepared to render a report on their concerns over the program. At the time the full Board considers the matter, it shall direct that the program be approved or continued for further proceedings.

## M. Right of Appeal

Any Member adversely affected by a decision of the Rehabilitation Subcommittee has the right of appeal to the full Board. However, the Board will consider such an appeal only if the Member requests the Board, in writing, to review the decision of the Rehabilitation Subcommittee. Any such written request must be filed with the Fund Administrator within 30 days after the date of the decision being appealed.

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### **HISTORY**

Revision filed in PPD December 28, 2005.

Adopted November 12, 1991

Effective February 1, 1992

As amended by:

Resolution No. 287 on August 8, 1995, Resolution No. 288 on September 12, 1995, Resolution No. 298 on October 14, 1997, Resolution No. 320 on December 14, 1999, Resolution No. 323 on April 11, 2000, Resolution No. 332 on April 17, 2001, Resolution No. 335 on August 14, 2001, Resolution No. 338 on December 11, 2001, Resolution No. 340 on January 15, 2002, Resolution No. 345 on April 9, 2002, Resolution No. 349 on August 13, 2002, Resolution No. 350 on August 13, 2002, Resolution No. 351 on September 10, 2002, Resolution No. 352 on October 8, 2002, Resolution No. 365 on August 12, 2003, Resolution No. 372 on February 10, 2004, Resolution No. 381 on August 10, 2004, Resolution Nos. 388, 389 and 390 on June 14, 2005, Resolution No. 392 on November 8, 2005, Resolution No. 393 on December 13, 2005 and Resolution No. 405 on May 9, 2006.