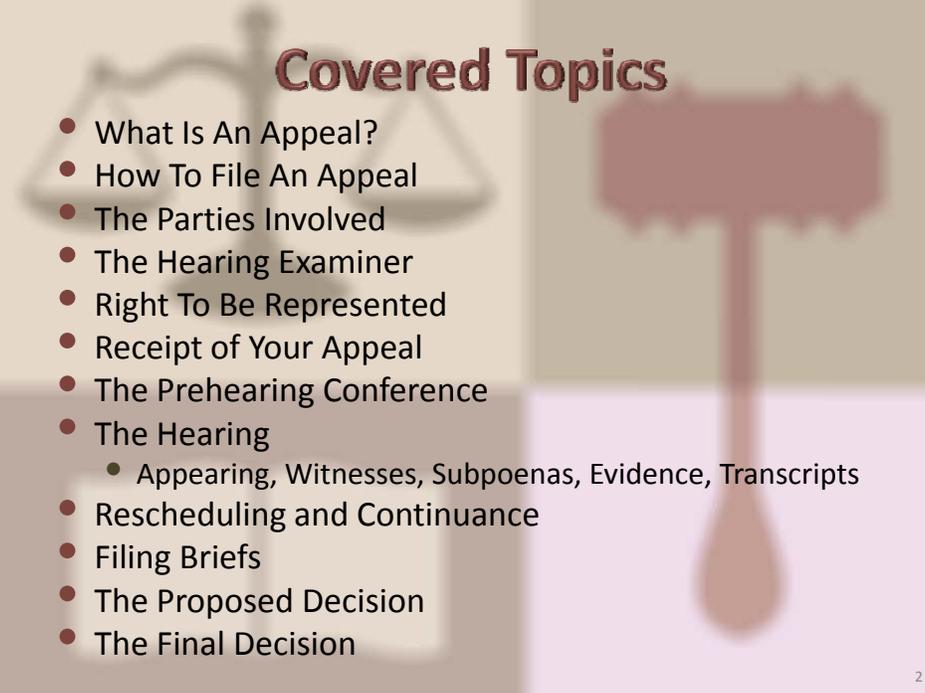




Wisconsin Retirement System

Administrative Appeal Process

By David Nispel – General Counsel
Department of Employee Trust Funds
July 2010



Covered Topics

- What Is An Appeal?
- How To File An Appeal
- The Parties Involved
- The Hearing Examiner
- Right To Be Represented
- Receipt of Your Appeal
- The Prehearing Conference
- The Hearing
 - Appearing, Witnesses, Subpoenas, Evidence, Transcripts
- Rescheduling and Continuance
- Filing Briefs
- The Proposed Decision
- The Final Decision

2

First Things First Departmental Determination

If a WRS member is unable to informally resolve a WRS program issue or complaint, he/she must first request a **Departmental Determination (DD)** with *The Department of Employee Trust Funds (ETF)*

- First step in the WRS *Administrative Appeal Process*
- Must receive a DD before an Appeal can be filed

3

What is an Appeal?

A formal written request for the review of a Departmental Determination made by ETF

- Appeal is made to one of the five WRS governing boards
 - Employee Trust Funds Board
 - Teachers Retirement Board
 - Wisconsin Retirement Board
 - Group Insurance Board
 - Deferred Compensation Board

The nature of your appeal determines which board hears your case

4

What is a *Direct Appeal*?

An appeal *directly related* to an employer's determination regarding two specific issues:

The employer's decision regarding:

- 1) Whether to report an employee as a member under the WRS
- 2) Category of employment
 - Teacher, Executive, General, Elected Official, Protective, etc.

Appeal is made "directly" to the **ETF Board** (ETF does not make a determination)

Before Filing an Appeal

Consider the facts and law surrounding the case

- ETF is required to administer benefit programs according to Chapter 40 of the Wisconsin Statutes and Administrative Rules pertaining to ETF
 - ETF, the hearing examiner and the boards cannot make exceptions to the law
 - Cannot make decisions because it seems "fair" when the law requires another action
 - Terms and conditions of some programs are set by contract or administrative rule

6



Filing an Appeal

- Appeals may be submitted on Appeal Form (ET-4938) or by letter
 - If by letter, be sure to include
 - Name, address, WRS Member ID, or Social Security number
 - Identify the DD being challenged
 - Identify the factual and legal basis for the appeal and why you believe the DD is incorrect
- Appeals must be received within 90 days of the date of the ETF determination

Department of Employee Trust Funds
P.O. Box 7931
Madison, WI 53707-7931

APPEAL FORM

Please print or type

EMPLOYEE INFORMATION	EMPLOYER INFORMATION
Member Identification Number	Name
Name	Address
Mailing Address	
City, State, Zip	City, State, Zip

I appeal the determination regarding my:

<input type="checkbox"/> Beneficiary Designation	<input type="checkbox"/> Category of Employment	<input type="checkbox"/> Final Annuity Calculation	<input type="checkbox"/> Forfeited Service
<input type="checkbox"/> Military Service	<input type="checkbox"/> Participation in the Wisconsin Retirement System	<input type="checkbox"/> Separation Benefit	<input type="checkbox"/> 40.63 Disability Benefit
<input type="checkbox"/> 40.65 Disability Benefit	<input type="checkbox"/> Income Continuation Insurance	<input type="checkbox"/> Long-Term Disability Insurance	<input type="checkbox"/> Health Insurance
<input type="checkbox"/> Life Insurance	<input type="checkbox"/> Wisconsin Deferred Compensation Program	<input type="checkbox"/> Other _____	

If health insurance is involved, name of insurance company: _____

Date of the decision: _____

Please explain the error, if any: _____

Date electronic: _____ Signature: _____

Email Address: _____ Daytime Telephone Number: _____

Return completed Appeal Form to: Department of Employee Trust Funds, Attn: Appeals Coordinator, P.O. Box 7931, Madison, WI 53707-7931. Fax (608) 267-0633.

ET-4938 (REV 6/10)

Mail Appeals to:
 Appeals Coordinator
 Department of Employee Trust Funds
 P.O. Box 7931
 Madison WI 53707-7931



Parties Involved In The Appeal

9

***Party* refers to a person with a substantial interest in the determination being challenged**



Parties may include

- ETF
- Any person with an interest in the benefits of the WRS member
- The employer (or former employer)
- The insurance provider
- Others with a direct interest





The Hearing Examiner

The *hearing examiner* presides over the appeal process



- The hearing examiner is an independent - impartial person employed by the *Division of Hearings and Appeals* at the Department of Administration
- The hearing examiner conducts hearings on administrative appeals

The hearing examiner receives facts and arguments **only** when all parties are present

12



Right To Be Represented

Members may choose representation by an attorney (not required)

- If choosing an attorney to represent you:
 - Any associated costs are your responsibility
 - Don't delay! Look immediately
 - If you need help, contact the *State Bar of Wisconsin Lawyer Referral and Information Service*

14

Right To Be Represented

- Union representatives and any non-lawyer advocate may assist
 - Must complete a *Limited Power-of-Attorney for Appeal* form (ET-4944)
 - The form authorizes a representative to act in matters relating to the appeal
- In order for anyone to receive documents regarding a case:
 - Must complete an *Authorization to Disclose Non-Medical Individual Personal Information* form (ET-7406) or *Authorization to Disclose Medical Information* (ET-7414)
 - Available on ETF's website, or contact the appeals coordinator

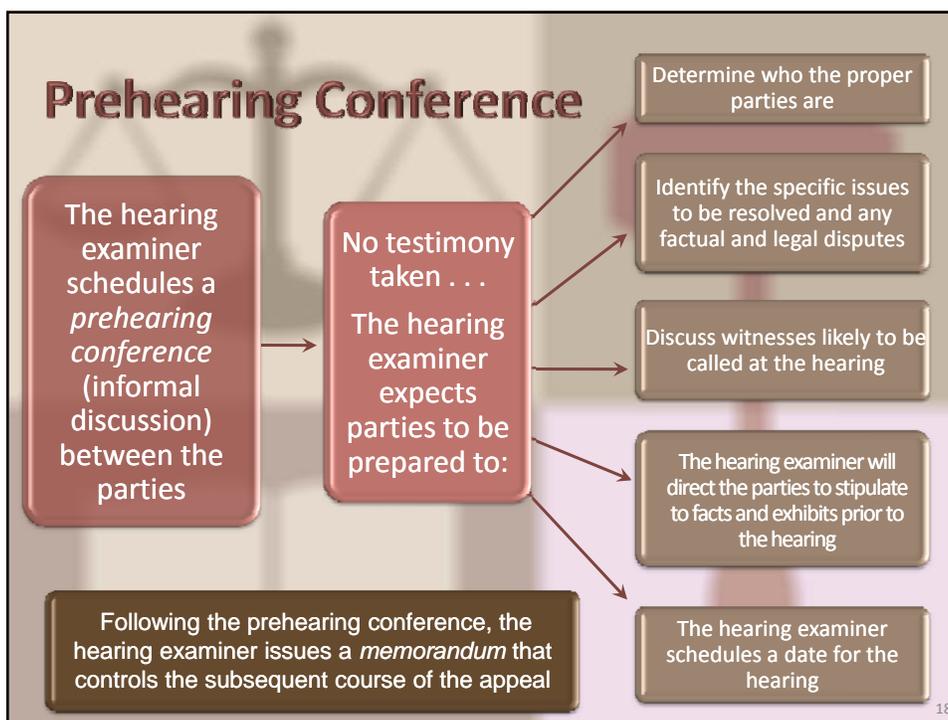
15

Upon Receipt of Your Appeal

- Someone from the ETF appeals office will contact you to determine . . .
 - If a resolution before the appeal proceeds is possible
 - If not possible, your appeal will be referred to the *Division of Hearings and Appeals* for assignment to a hearing examiner



16





The Hearing

The purpose of the hearing is to receive testimony of witnesses and admit other relevant evidence

19



The Hearing Process

- Appearing at the hearing
- Witnesses and subpoenas
- How a hearing is conducted
- Evidence
- The transcript

20

Appearing at the Hearing

- All parties must appear on the date specified in the *Notice of Hearing*
- If you do not appear, the hearing examiner may interpret as a choice to dismiss the appeal or proceed without you



21

Witnesses and Subpoenas

- If you choose to have witnesses testify on your behalf:
 - You are responsible for having them appear (voluntarily) **or**
 - May use a subpoena to order them to appear
 - If no attorney, hearing examiner may sign subpoena for you
 - You must arrange to serve the subpoena on **the witness**
- Must also include payment to the witness (daily fee of \$5) and mileage of 20 cents/mile (see Wis. Stat. § 814.67)



22

How a Hearing is Conducted

Hearings are conducted similar to a trial, but without a jury

- The hearing examiner oversees and rules on procedure, evidence, and objections
 - 1) Each party may present testimony and evidence
 - 2) Each party may call witnesses and ask questions (direct examination)
 - 3) Other parties may ask questions of the witnesses (cross examination)
 - 4) Each party may ask follow-up questions (redirect and re-cross examine)

23

Evidence

- The appellant (person filing the appeal) carries the “burden of proof”
 - Must produce witnesses, documentation, etc., to convince the hearing examiner to rule in his/her favor, **then...**
 - ...Other parties may present evidence and witnesses in support of their side of the appeal
 - Evidence may be documents or oral testimony

Be prepared to present only evidence that supports the facts

Evidence

Witnesses can testify only about matters of which they have personal knowledge (no “hearsay”)



Uncorroborated “hearsay” does not constitute substantial evidence upon which an administrative decision can be based

- Expert witnesses may be required to testify and express their opinions to verify uncorroborated “hearsay” evidence
- You will be required to identify in advance any expert witnesses you intend to call at the hearing
- Expert witnesses will be discussed at the prehearing conference

25

Documents as Evidence

- Bring the original for the Hearing Examiner and copies for yourself and each party
- The Hearing Examiner marks the documents you offer as exhibit(s) and keeps as part of the record

26

Evidence

There is *no right* to take and *preserve* evidence prior to the hearing, except as provided in ETF §11.05 Wis Admin. Code

- Testimony may be taken and preserved of a witness who is:
 - Beyond the reach of a subpoena
 - About to go out of state, not intending to return in time for the hearing
 - Sick or aged, making it probable the witness is unable to attend the hearing
 - A member of the Legislature, (if in session) provided the witness waives his/her privilege
- Depositions may be taken and used at the hearing for the convenience of a party or witness, but only by advance written agreement among all parties

No party shall have access to individual personal information (ETF records) except as authorized under §40.07, Wis. Stats and the Wis. Admin. Code

27

The Transcript



The Hearing

A court reporter prepares a written transcript (record) of each hearing

- Parties may purchase a copy of the hearing transcript
 - Electronic copies available from the court reporter
- Contact the appeals coordinator – fees apply
 - Per ETF § 10.71, Wis. Admin. Code, transcript fee is .25 per page, plus a \$3.00 processing fee

28

The Hearing Rescheduling and Continuance

- Requests for rescheduling or continuance are accepted only if received within a reasonable time (as established by the hearing examiner) before the date of the hearing
- Requests may be granted as warranted by the circumstances, and upon mutual agreement of all parties
- The hearing examiner will decide whether the hearing should be rescheduled or continued



29

After the Hearing: Briefs

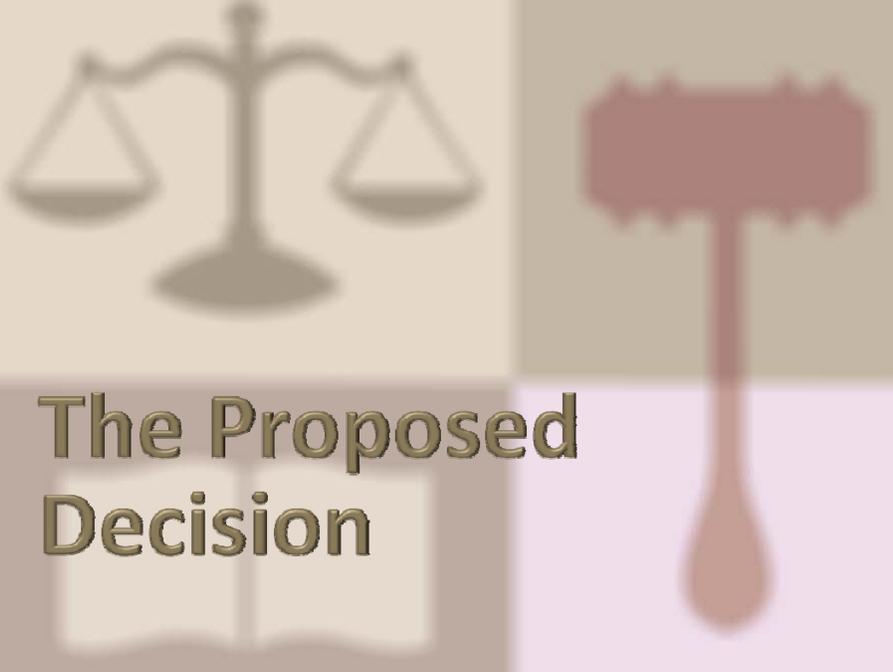
- Parties may file briefs to further argue a case

Briefs should include:

- Reference to the evidence believed to prove your case
- Reference to the laws believed to apply
- Briefs cannot contain additional evidence or documents not previously admitted into the hearing record
- There are no rules regarding the length or format of a brief

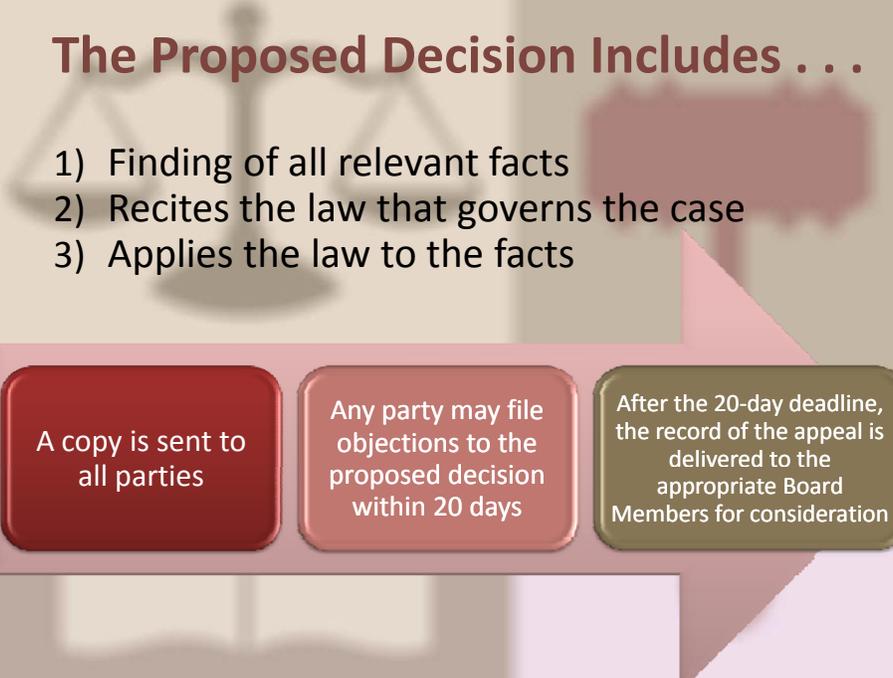


30



The Proposed Decision

31



The Proposed Decision Includes . . .

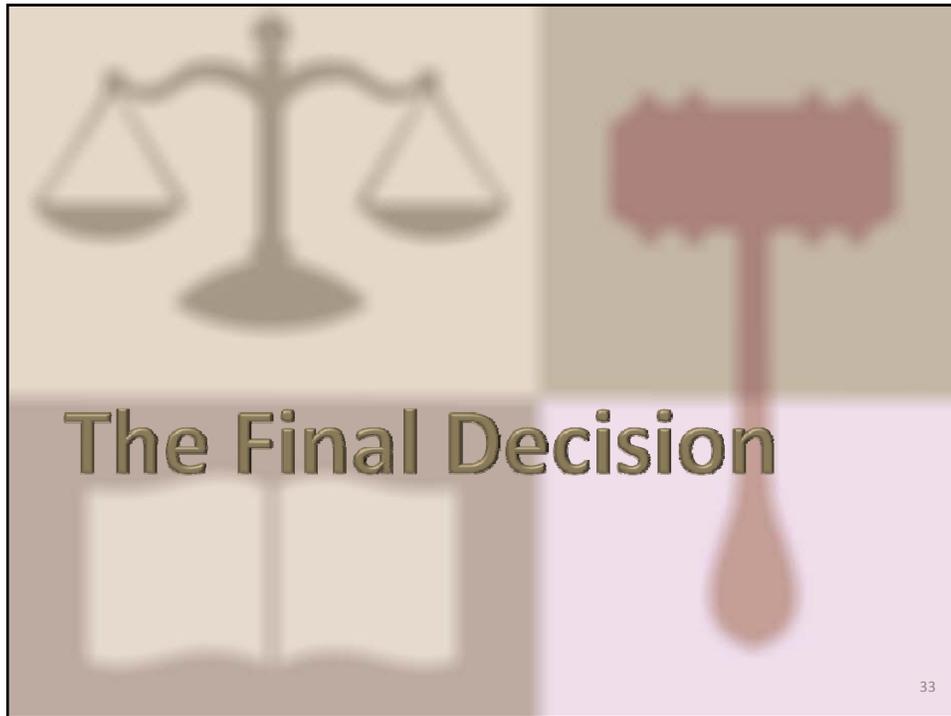
- 1) Finding of all relevant facts
- 2) Recites the law that governs the case
- 3) Applies the law to the facts

A copy is sent to all parties

Any party may file objections to the proposed decision within 20 days

After the 20-day deadline, the record of the appeal is delivered to the appropriate Board Members for consideration

32



The Final Decision



- At the conclusion of the meeting, the board announces the decision and either:
 - 1) Accepts the hearing examiner's proposed decision and order
 - 2) Accepts the hearing examiner's proposed decision and order with changes
 - 3) Adopts a different decision
 - 4) Remands the appeal back to the hearing examiner for further action

As permitted under Wis. Statutes, the board confers with its own legal counsel and considers the appeal in a closed session

34

The Final Decision Limitations on Board's Power

The governing boards have no equity power except:

- The Employee Trust Funds Board - as provided under §40.03(1)(a) Wis. Stats. to correct inequity in the computation of certain benefits resulting from
 - A member's combination of full and part-time service
 - A change in annual earnings period during the high years of earnings
 - The previous receipt and termination of an annuity

35

The Final Decision

1

A copy of the final decision is sent to all parties (with notice of appeal rights)

2

Any party who disagrees with the final decision may appeal to the Dane County Circuit Court for review

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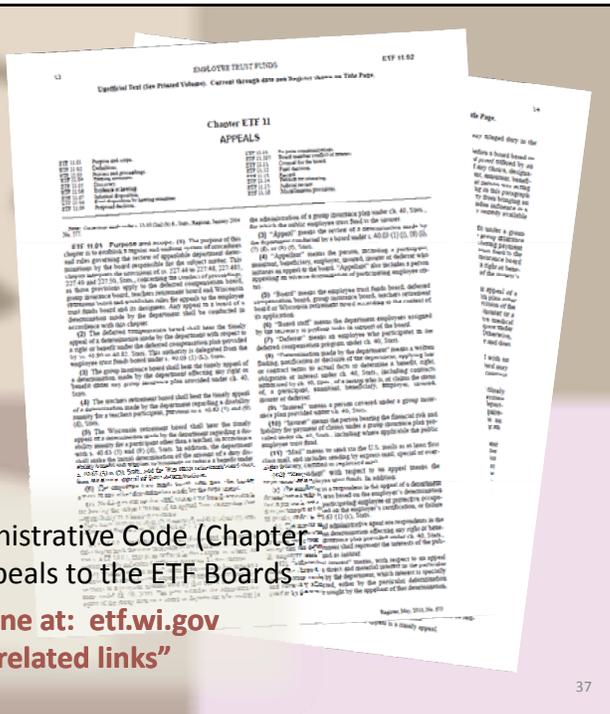
Judicial review is by certiorari action or petition for review, which must be commenced within 30 days - 6 months after the board decision

36

Wisconsin Administrative Code

The Wisconsin Administrative Code (Chapter ETF 11) governs appeals to the ETF Boards

Available online at: etf.wi.gov
click on "related links"



Questions?

If you have any questions relating to the appeals process, please contact the appeals coordinator:

Appeals Coordinator
Department of Employee Trust Funds
801 West Badger Road
P O Box 7931
Madison WI 53707-7931
Phone: (608) 267-2417
Fax: (608) 267-0633
Website: etf.wi.gov

