



State of Wisconsin  
Department of Employee Trust Funds  
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## Correspondence Memorandum

**DATE:** January 22, 2016  
**TO:** Group Insurance Board  
**FROM:** David H. Nispel, General Counsel  
**SUBJECT:** The Department of Employee Trust Funds (ETF) Appeals Process – Before the Board Receives the Appeal

### I. Introduction

- a) Ch. ETF 11, Wis. Admin. Code, establishes procedures for ETF appeals.
- b) Ch. 40, Wis. Stats., governs the administration of the WRS and specifies the authority of the boards (s. 40.03 (6) for GIB).
- c) Generally, “Appeal” means the review of a determination made by the Department conducted by a Board under s. 40.03 (1) (j), (6) (i), (7) (f), or (8) (f), Wis. Stats.
- d) “Direct Appeal” relates to an employer’s determination.
- e) Nature of the appeal determines which Board hears the case (s. 40.03)
- f) Common complaint/appeal issues (see attached sheet).
- g) Customer service approach (ETF’s emphasis on resolving disagreements, complaints, and appeals at the most appropriate level).
- h) Role of Assistant Attorney General advising the boards.

### II. Informal Review Process Conducted by ETF

- a) Concerns of participants often are resolved without a formal appeal being filed or without going through the formal appeals process because of:
  - Ombudsperson Services staff in the Office of Legal Services.
  - Special Consultant to ETF Deputy Secretary.
  - Settlement authority of the ETF Secretary.
  - Settlement authority of ETF supervisors and managers.
  - Daily customer service activities of ETF staff.
- b) Participant and ETF staff discuss whether the concerns or appeal can be resolved informally.
- c) If informal resolution is not possible, the appeal is referred to Division of Hearings and Appeals and a Hearing Examiner is assigned to the appeal.

Reviewed and Approved by John Voelker, Deputy Secretary

Electronically Signed: 1/28/16

Board	Mtg Date	Item #
GIB	2.17.16	8C1

### **III. ETF Appeals Process: The Hearing Examiner**

- a) Determine the parties and the issues for each appeal.
- b) Conduct the pre-hearing conference and evidentiary hearing, receive relevant evidence at the hearing, rule on all objections and motions, issue a proposed decision.

### **IV. ETF Appeals Process: The Prehearing Conference**

- a) Identify the specific issues to be resolved and any factual and legal disputes.
- b) Identify witnesses, including any expert witnesses.
- c) Discuss reaching agreement on a Stipulation of Facts and relevant exhibits.
- d) Discuss authority of the Board to hear and decide issues in the appeal.

### **V. ETF Appeals Process: The Hearing**

- a) Burden of proof rests with the appellant; presents case first.
- b) Testimony of witnesses and receipt of other relevant evidence (exhibits, Stipulation of Facts).
- c) Rulings made on evidence offered at the hearing: what is admissible, what is hearsay, when objections are sustained or overruled.
- d) Record of the hearing is developed:
  - Stipulation of Facts.
  - Exhibits admitted and not admitted into evidence.
  - Transcript of the hearing.

### **VI. ETF Appeals Process: Briefs Filed Following the Hearing**

- a) Parties have the opportunity to file briefs or letters:
  - Reference made to the evidence offered at the hearing.
  - Reference made to the laws supporting arguments made by the parties.
  - Cannot contain new evidence or documents not previously offered at the hearing.
- b) Briefs become part of the appeal record.

### **VII. ETF Appeals Process: The Proposed Decision by Hearing Examiner**

- a) Findings of Fact, Conclusions of Law, and Order
- b) Parties may file objections to the proposed decision (become part of record)

### **VIII. Closing**

- a) Board staff provides appeal record to each Board member.
- b) Board meets to consider the appeal.
- c) Board issues the final decision in the appeal.
- d) Number of formal appeals heard by the Boards continues to be very low

## Common Complaint/Appeal Issues

- Beneficiary designation forms.
- What constitutes WRS earnings.
- Health insurance coverage disputes.
- Disability Appeals—particularly where the employer will not certify.
- ICI and Disability offsets.
- Category of employment.
- Participation in the WRS.
- Eligibility for benefits.
- Overpayment of benefits.
- Life insurance coverage.
- Annuity calculation.
- Separation Benefit.
- Allegations of retaliation, discrimination, negligence by ETF staff, health care provider or third-party administrator.
- Allegations of misinformation from ETF staff and third party administrator.
- Allegations of mistreatment by ETF staff or third party administrator.