

Date: January 22, 2016

To: Group Insurance Board

From: Charlotte Gibson
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Subject: Overview of Board's Role in Deciding Administrative Appeals

I. The Board function in an appeal

- a) Quasi-judicial
- b) Closed session deliberation—parties not present during the deliberation
- c) Review on the record—Board does not take evidence or hear testimony
- d) Provide oversight of the initial decision making process—either that of the Department, or, in direct appeals, the participant’s employer
- e) Can be a big part of a board member’s service, or a not-so-big part, depending on number of appeals

II. Who are the parties?

- a) A person with a “substantial interest” in the issue to be decided
- b) Except for direct appeals, the Department is a party, but may choose not to participate
- c) In cases involving death benefits, the parties may include potential beneficiaries

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- d) In cases involving insurance benefits, the third-party administrator or health insurance program may be a party

III. The proposed decision.

- a) The hearing examiner issues a proposed decision, but the Board need not adopt it, either in part or in full. The proposed decision is not entitled to deference by the Board.
- b) The hearing examiner may issue a final decision in specific types of cases, primarily ones involving time-barred claims. The Board normally does not see these cases.

IV. The decisionmaking process.

- a) Prior to Board meeting: read the record, identify the specific issues to be resolved and any factual and legal disputes.
- b) At Board meeting: counsel provides summary of case and a recommendation for deciding the appeal
- c) Board discusses members' views of the facts and law at issue
- d) Problems of hearsay
 - i) what is hearsay?
 - ii) use in administrative proceedings
 - iii) substantial evidence standard
- e) Vote. Not all Board decisions are unanimous
- f) Board's powers to correct "unfairness" are very limited

- g) Options include remanding the appeal back to the hearing examiner to gather additional evidence that the Board finds is needed, or to consider a point of law that the parties did not address.

V. What must the final decision include?

- a) Findings of fact and conclusions of law. Should include facts establishing the Board's jurisdiction, including the date on which the appeal was filed
- b) A statement of the disposition of the appeal: whether the decision of the Department or employer is affirmed, reversed, or remanded for further proceedings
- c) Parties to the appeal

VI. What happens once the final decision is drafted?

VII. What are the losing party's options after the final decision issues?

- a) Petition for re-hearing
- b) Judicial review in circuit court
 - i) Time to appeal
 - ii) All appeals heard by a trial judge in Dane County
 - iii) Review is on the record—no additional gathering of evidence
 - iv) The Board's findings and conclusions of law are typically entitled to some level of deference
- c) Appeal beyond the circuit court