



STATE OF WISCONSIN
Department of Employee Trust Funds
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CORRESPONDENCE MEMORANDUM

DATE: November 15, 2013

TO: Employee Trust Funds Board
Teachers Retirement Board
Wisconsin Retirement Board

FROM: David H. Nispel, General Counsel

SUBJECT: The Department of Employee Trust Funds (ETF) Appeals Process Prior to the Boards Receiving the Appeal

I. Introduction

- a) Ch. ETF 11, Wis. Admin. Code and Ch. 40, Wis. Stats.
- b) 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.
- c) "Direct Appeal" relates to an employer's determination.
- d) Nature of the appeal determines which Board hears the case (s. 40.03 (6)).
- e) Common complaint/appeal issues (see attached sheet).
- f) Customer service initiative (ETF's plan to resolve disagreements, complaints, and appeals at the most appropriate level).
- g) 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 because of:
 - ETF Ombudsperson Services
 - Special Consultant to ETF Deputy Secretary
 - Settlement authority of the ETF Secretary
 - Settlement authority of supervisors and managers
 - Daily customer service activities of staff
- b) Participant and Department discuss whether the concerns or appeal can be resolved informally.
- c) If informal resolution is not possible, appeal is referred to the Department of Administration's Division of Hearings and Appeals.

Reviewed and approved by Robert J. Marchant, Deputy Secretary

Electronically signed 11/21/13

Board	Mtg Date	Item #
JM	12.5.13	3A

- 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 the 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 Boards 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.
 - Transcripts (electronic or paper).

- 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, 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 of ETF determinations 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.
- Retaliation, discrimination, negligence by ETF staff, health care provider or third-party administrator.
- Misinformation from ETF staff and third party administrator.
- Mistreatment by ETF staff or third party administrator.