



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

J.B. VAN HOLLEN  
ATTORNEY GENERAL

Kevin M. St. John  
Deputy Attorney General

17 W. Main Street  
P.O. Box 7857  
Madison, WI 53707-7857  
www.doj.state.wi.us

Charlotte Gibson  
Assistant Attorney General  
gibsoncj@doj.state.wi.us  
608/266-7656  
FAX 608/267-2223

November 19, 2013

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

From: Charlotte Gibson  
Assistant Attorney General

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

Board	Mtg Date	Item #
JM	12.05.13	3A2

- 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 decision-making 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