



State of Wisconsin
Department of Employee Trust Funds
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Correspondence Memorandum

Date: February 26, 2016
To: Employee Trust Funds Board
Teachers Retirement Board
Wisconsin Retirement Board
From: Cherylynn Wilkins, Board Liaison
Subject: Administrative Appeals Training

This memo is for informational purposes only. No Board action is required.

Several appeals are scheduled to be heard on March 24, 2016, at the separate Employee Trust Funds Board and Wisconsin Retirement Board meetings. Administrative Appeals Training will be provided at the Joint Meeting of the Boards in order to refresh the Boards' recollection of the appeals process for these and any other upcoming appeals.

Staff will be at the Board meeting to answer any questions.

Attachments:

- A. Memo from ETF General Counsel David Nispel, dated February 26, 2016
- B. Memo from Assistant Attorney General Charlotte Gibson, dated February 22, 2016

Reviewed and Approved by John Voelker, Deputy Secretary

Electronically Signed: 3/4/16

Board	Mtg Date	Item #
JM	3.24.16	3E



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Date: February 26, 2016

To: Employee Trust Funds Board
Teachers Retirement Board
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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.

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- 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.

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, and 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.

Date: February 22, 2016

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

- 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