

Appeals Refresher Training

Item 3A – Joint Meeting of the Retirement Boards

Peter Rank, Attorney
Office of Legal Services

Sarah Huck, Assistant Attorney General
Wisconsin Department of Justice



Overview of the Appeals Process

- This presentation is for educational purposes.
- No Board action is required.

Appeals process

ETF Appeals Process

- Determinations
- Informal Review Process by ETF
- Division of Hearings and Appeals
- Proposed Decision

Board Functions in an appeal

- Quasi-judicial
- Closed Session deliberation
- Review on the record
- Final Decision

Board Oversight

Examples of Appeal Types

ETF Board	Teachers Retirement Board	Wisconsin Retirement Board
<p>Wis. Stat. Sec. 40.03(1)(j)- determinations made by the department, other than appeals regarding disability annuities</p> <ul style="list-style-type: none"> • Eligibility/Calculations • Classification • Sick Leave • And others... 	<p>Wis. Stat. Sec. 40.03(7)(f)- determinations on disability annuity for teacher participants</p> <ul style="list-style-type: none"> • Sec. 40.63 disability claims 	<p>Wis. Stat. Sec. 40.03(8)(f)- determination on disability annuity for participants other than teachers</p> <ul style="list-style-type: none"> • Sec. 40.63 disability claims
Group Insurance Board		Deferred Compensation Board
<p>Wis. Stat. Sec. 40.03(6)(i) – determinations affecting any right or benefit under a group insurance plan</p> <ul style="list-style-type: none"> • Health Insurance/Rx • Life Insurance 		<p>Wis. Stat. Sec. 40.80(2g) – determinations affecting any right or benefit under any deferred compensation plan</p>

Departmental Determinations

The appeals process cannot begin prior to a Determination being made.

- Departmental Determination
 - ETF determination
- Notice of appeal rights
- Statutory time limit to submit appeal of determination
 - 90 days from date of the letter

Independent Review Organizations

- Independent Reviews are not administered by ETF.
- They are requested by a participant and can get to IRO through multiple channels.
- Examples of types of disputes decided by IRO:
 - Coverage issues
 - Medical necessity
 - Experimental treatment
 - Rescission of health policy
- If a participant pursues an IRO, there is no option for ETF review or appeal.

Direct Appeals

Appeal of an Employer's Determination:

- Decision to report, or not report, as a participating employee
- Category of employment:
 - Teacher, executive, general elected official
 - Protective

Some ETF determinations are based directly upon employer's determination:

- Disability determinations based upon employer non-certification
- 40.63(1)(c) or 40.65(2)(b)2

Informal Review Process

- Resolution without a formal appeal being filed
- Resolution upon formal appeal being filed
 - Office of Legal Services internal review
- Resolution and Settlement authority of the ETF Secretary

Division of Hearings and Appeals

- Chapter 11 of ETF's Administrative Code
- Role of Administrative Law Judge:
 - Oversees the formal appeals process
 - Conducts hearings, receives relevant evidence, rules on objections and motions
 - Issues the proposed decision
- Steps in the process vary depending on the legal issues presented.

Proposed Decision

- Findings of Fact
- Conclusions of Law
- Order
- Parties have the opportunity to file objections to the proposed decision.
 - These objections will be included in the appeal record.

The Board's Attorney for ETF Administrative Appeals



Wisconsin Department
of Justice:
AAG Sarah Huck

The Board's Function

- Quasi-judicial
- Closed session deliberation—parties not present during the deliberation
- Review on the record—Board does not take evidence or hear testimony
- Provide oversight of the initial decision-making process—either that of the Department, or, in direct appeals, the member's employer
- 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.

Who are the Parties?

- A “substantial interest” in the issue to be decided.
- The Department is a party but may choose not to participate.
 - ETF often may choose not to participate in direct appeals.
- In cases involving death benefits, the parties may include potential beneficiaries.
- In cases involving insurance benefits, the third-party administrator or health insurance program may be a party.

Decision-making Process

Board staff provides appeal record to each Board member.

Prior to Board meeting: Board members read the record, identify the specific issues to be resolved and any factual and legal disputes.

Board meets to consider the appeal.

At Board meeting: counsel provides summary of case and a recommendation for deciding the appeal.

Board discusses members' views of the facts and law at issue.

Final Decision

- Parties to the appeal
- Must include findings of fact and conclusions of law, and facts establishing the Board's jurisdiction
- A statement of the disposition of the appeal: whether the decision of the Department or employer is affirmed, reversed, or remanded for further proceedings

What happens next?

- Participant accepts the board's decision and ends appeal
- Petition for re-hearing
- Judicial review in Dane County Circuit Court

A family of three—a woman, a man, and a young girl—are walking together on a dirt path through a lush, green forest. The woman is on the left, wearing a red and black plaid shirt and blue jeans. The man is on the right, wearing a white t-shirt, a red and black plaid jacket, and blue jeans. The young girl is in the center, wearing a white dress with a polka-dot collar and a white bow in her hair. They are all smiling and holding hands. The background is filled with tall trees and dense foliage. The entire image has a dark blue overlay.

Questions?