

PROCEDURES AND REGULATIONS FOR DISABILITY RETIREMENT MATTERS

Section 1: Administrative Recommendations

1. NOTIFICATION OF BOARD ACTION

Applicant or Applicant's authorized representative will be notified in writing that SDCERA's administrative recommendation on the application will be placed on the consent calendar at a Board of Retirement meeting on the specified date and time. The written notice (the "Notice") will be mailed at least 10 days prior to the Board meeting. The Notice will include a copy of all documentation that the Board will review in ruling on the application.

2. CHANGE OF ADMINISTRATIVE RECOMMENDATION BOARD MEETING DATE

If a request for hearing de novo is filed on behalf of the Applicant pursuant to Section 2, Rule 4, at least 3 days before the Board meeting date, the administrative recommendation will be removed from the consent calendar, and the matter will be referred to hearing de novo.

Any other requests to continue or otherwise change a noticed Board meeting date on an application must be received at least 3 days prior to the Board meeting date. Written and telephonic requests must be directed to the SDCERA Member Services Manager. The Member Services Manager is granted authority to act upon such requests for continuance of noticed Board meeting dates. Requests for continuance must establish good cause. Telephonic requests are subject to confirmation of receipt by SDCERA.

3. PRESUMPTION OF OPEN SESSION

All matters before the Board on Administrative Recommendations will be in open session unless the Board grants Applicant's written request to have the matter heard in closed session.

4. REQUESTS FOR CLOSED SESSION BEFORE THE BOARD

Written requests for a closed session Administrative Recommendations matter must be received by the SDCERA Member Services Manager no less than 3 days prior to the noticed Board meeting. Requests for closed sessions must clearly state the reasons for the request. The Board will consider the written request for a closed session in open session.¹

5. ADMINISTRATIVE RECOMMENDATION MATTERS BEFORE THE BOARD

¹ If the motion is granted, the Board will move into closed session after the last disability matter on the open session calendar.

The Administrative Recommendation by Staff shall be placed on the Board's consent calendar unless a request for hearing de novo has been filed on behalf of the Applicant pursuant to Section 2, Rule 4, at least 3 days prior to the noticed Board meeting. Applicant and/or Applicant's authorized representative may attend the Board meeting. Applicant or the authorized representative may address the Board regarding the application by submitting a speaker slip at the commencement of the Board meeting. SDCERA may also address the Board. Any argument presented to the Board shall be limited to the record before the Board. No new evidence or witness testimony shall be permitted at this time. The Board chair will set time limits for argument.²

6. BOARD ACTION

The Board may take action(s) involving all or part of any pending application duly noticed before the Board. If the Board acts on less than the entire application the Board reserves its right to rule on other parts of the application at a later date.

7. SERVICE OF NOTICE OF BOARD DECISION

SDCERA will serve, by mail, a Notice of Board Decision within 5 days of the date the Board acts on the Application.

² If a speaker slip is submitted, the Administrative Recommendation will be heard following the last matter on the consent calendar.

Procedures and Regulations For Disability Retirement Matters

Section 2: Hearing de novo

1. PARTIES DEFINED

SDCERA shall be referred to as Respondent and the member or the member's department shall be referred to as Applicant.

2. DAYS DEFINED

Unless otherwise provided, any reference to "day" or "days" shall mean calendar days and shall include weekends and court holidays. If a due date or deadline falls on a Saturday, Sunday or San Diego Superior Court holiday, the due date or deadline shall advance to the next regular business day.

3. SERVICE OF DOCUMENTS

Unless otherwise provided, service of documents provided for in these rules may be made by mail or by personal service. The extensions of time regarding notice, rights and duties to do any act or make any response set forth in Code of Civil Procedure Section 1013 shall not apply in the proceedings described in Section 2 of these Procedures and Regulations.

4. TIME TO FILE WRITTEN REQUEST FOR HEARING DE NOVO

Applicant is entitled to a hearing de novo under either of the following circumstances:

- A.** If the Application or any portion of the Application is denied by Board Action based on an Administrative Recommendation. The written request for hearing de novo must be timely filed with SDCERA within 30 days of the date of service of the Notice of Decision; or
- B.** If the Applicant is given notice pursuant to Section 1, Rule 1 of SDCERA's recommendation to deny the application in full. The written request for hearing de novo must be timely filed with SDCERA 3 days prior to the noticed Board meeting. If no request for hearing de novo is timely filed, the applicant may still file a request for hearing de novo pursuant to Section 2, Rule 4(A) above.

When a written request for a hearing de novo is timely received by the Director of Member Services, the matter shall be referred for hearing de novo before a Board-appointed Hearing Officer.

5. NOTIFICATION OF REFERRAL TO HEARING OFFICER AND NOTIFICATION OF HEARING COMPLETION DATE

The Board shall serve a written notice upon the Applicant or the Applicant's authorized representative that the matter has been assigned to a Board-appointed

Hearing Officer. The notice shall be made within 5 days of the date of filing of the written request for hearing de novo. The notice shall contain a copy of these procedures. The notice shall include the Hearing Completion Date.

The Hearing Completion Date is the date by which all phases of the hearing must be completed and the recommended decision submitted. The Hearing Completion Date set in the notice served under this Rule shall be 160 days from the date of filing of the Applicant's request for hearing de novo.

The notice shall show that a copy is sent to the assigned Hearing Officer whose full name, address and business contact information will be set forth in the notice. This notice shall constitute notification to the Applicant of the assignment of the Hearing Officer. This notice shall constitute notification that the assigned Hearing Officer is charged with working with the parties to ensure prompt scheduling of all matters related to the hearing and completion of the hearing de novo and submission of the recommended decision by the Hearing Completion Date.

6. AUTOMATIC LOSS OF HEARING OFFICER JURISDICTION

- A.** The Hearing Officer is responsible for ensuring full and fair adjudication of hearings prior to the Hearing Completion Date set under Rule 5, as such date may be extended under Rules 7 and 10.
- B.** Failure of a Hearing Officer to fully adjudicate a hearing by the Hearing Completion Date set under Rule 5, as such date may be extended under Rules 7 and 10, will result in the automatic loss of the Hearing Officer's jurisdiction over the matter at 5 p.m. on the 10th day after the Hearing Completion Date.

7. PROCESS FOR REINSTATEMENT OF HEARING OFFICER JURISDICTION

- A.** The Board delegates to the Chief Executive Officer the power to grant one reinstatement of jurisdiction, and a corresponding extension of the Hearing Completion Date, of up to 30 days beyond the Hearing Completion Date set under Rules 5 and 10 upon a showing of good cause.
- B.** Any subsequent requests for reinstatement of the Hearing Officer's jurisdiction and any requests for extension of the Hearing Completion Date in excess of 30 days require Board action. Written requests for relief under this Rule 7(B) must be addressed to the Chairperson of the Board. The request must explain the reasons for the substantial delay in adjudication of the hearing and must recommend a new Hearing Completion Date. The new recommended Hearing Completion Date must represent the most expeditious timeline for completion of the matter. At its discretion the Board may grant or deny a request for reinstatement of the Hearing Officer's jurisdiction and set a new Hearing Completion Date. Following an automatic loss of Hearing Officer jurisdiction and absent a timely request for reinstatement, the matter shall be submitted to the Board for action.

C. The Board will consider requests for reinstatement of Hearing Officer jurisdiction at the next available Administrative meeting. The Board will provide notice to all parties of the hearing on the request to reinstate Hearing Officer jurisdiction. The parties may appear and briefly address the Board regarding the reinstatement request.

D. The Board may rule on the request for reinstatement of jurisdiction as follows:

- i. Accept the request for reinstatement of Hearing Officer jurisdiction and the revised Hearing Completion Date.
- ii. Reinstate jurisdiction with the Hearing Officer with a Hearing Completion Date other than the one proposed by the Hearing Officer.
- iii. Reassign the matter to a new Hearing Officer with a new 150 day Hearing Completion Date or an abbreviated timeline for Hearing Completion.
- iv. Set the matter for hearing de novo before the Board, or
- v. Pursuant to findings consistent with Section 18, dismiss the Application without prejudice.

8. NOTIFICATION OF ASSIGNMENTS

SDCERA shall have 5 days to assign a Hearing Officer and counsel for SDCERA to the hearing de novo and to provide applicant with notification of these assignments and of SDCERA's *Ex Parte Communication Policy For Disability Retirement Applications*.

9. PETITION FOR AUTOMATIC REASSIGNMENT OF HEARING OFFICER

Each party to a hearing shall be entitled to reassignment of the hearing to another Hearing Officer in accordance with the provisions of this section. A petition requesting reassignment of the Hearing Officer must be filed within 10 days after the service of the notification of assignment of the Hearing Officer and shall be directed to the attention of SDCERA's Director of Member Services. Each party shall be entitled to make only one such petition. Proceedings for Hearing Officer reassignment shall be instituted by the submission to SDCERA of a declaration under penalty of perjury in substantially the following form:

STATE OF CALIFORNIA)

SS.

COUNTY OF _____)

The undersigned, _____, declares under penalty of perjury, that the undersigned is a party or an attorney or authorized representative for a party to the above-named hearing de novo. The undersigned believes that a fair and impartial trial before the Hearing Officer to whom the case is assigned may not be possible and requests reassignment of this appeal to another Hearing Officer.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____ at _____, California.

(Signature)

10. PETITION FOR EXTENSION OF HEARING COMPLETION DATE

Each party shall be entitled to petition the Hearing Officer for one 30-day extension of the Hearing Completion Date set under Rule 5. A petition requesting an extension of up to 30 days of the Hearing Completion Date set under Rule 5 must be filed within 10 days after the service of the notification of assignment of the Hearing Officer. Each party shall be entitled to make only one such petition to the Hearing Officer. Upon a showing of good cause the Hearing Officer may extend the Hearing Completion Date set under Rule 5 for up to 30 days, and the Hearing Officer will not have the authority to grant any other requests for extension of the Hearing Completion Date. If the petition to extend the Hearing Completion Date is granted, the Hearing Officer will serve notice on all parties and SDCERA of the revised Hearing Completion Date.

11. PRE-HEARING STATEMENTS

The parties shall simultaneously serve upon the Hearing Officer and the opposing party, or its counsel or authorized representative, a pre-hearing statement no later than 45 days from the filing of Applicant's written request for hearing de novo. The pre-hearing statement shall contain the following:

- A. A statement of the party's issues and contentions;
- B. A list and copies of any medical reports and copies of any transcripts containing medical witness testimony on which the party will rely as part of its direct case;
- C. A list and copies of all other documents or transcripts the party intends to offer into evidence at the hearing;
- D. The names, business addresses and telephone numbers of any lay witnesses whose testimony the party intends to present at the hearing as part of its direct case;
- E. The names of any medical witnesses the party intends to call for oral testimony at a hearing as part of its direct case. Such a listing shall not

constitute a waiver of a subsequent request for medical testimony under Sections 13 and 21;

- F. A list and copies of any affidavits the party proposes to introduce in evidence;
- G. All dates within the 60-day period following submission of the pre-hearing statement on which the party and its witnesses are unavailable for hearing or other proceedings. A party may not designate more than 20 days as unavailable. The Hearing Officer will rely upon this information in setting the matter for hearing, and a party may not subsequently claim unavailability on a date not identified in the pre-hearing statement absent a showing of good cause.

12. EXTENSION OF TIME FOR FILING PRE-HEARING STATEMENTS

Any party may request an extension of time to submit a pre-hearing statement upon a showing of good cause. The party requesting the extension of time to submit a pre-hearing statement shall direct the request in writing to the Hearing Officer and shall serve a copy of the request on all parties. The request shall state the reason the pre-hearing statement cannot be submitted within the prescribed time limit. Upon a showing of good cause the Hearing Officer may grant one 10-day extension.

13. AMENDED APPLICATIONS

If at any time during the hearing de novo process, Applicant asserts an injury, illness, or disease not listed on the disability retirement application, or raises an issue that was not previously presented to the Board, the hearing process shall be terminated and the raising of the new injury, illness, disease or issue(s) shall be treated as an amended application that is referred back to the Administrative Recommendation Department for processing.

An amended application will be treated as a newly filed application. Amended applications will not change the member's original filing date for the purposes of determining the effective date.

Notwithstanding the foregoing, the parties may stipulate to continue the hearing de novo on all issues, including any new injury, illness, disease or issue, without referral to the Administrative Recommendation Department. Any stipulations under this Rule 13 shall not extend or otherwise alter any of the deadlines set forth in these Procedures and Regulations.

14. CROSS EXAMINATION OR DEPOSITION OF MEDICAL EXPERTS

If a party wishes to cross-examine any physician who has prepared a written medical report to be offered by an opposing party at the time of hearing, or if a party wishes to depose such a physician prior to the hearing date, then the party wishing to cross-examine or depose such physician must serve a written request to do so upon all parties within 10 days of the date on which the party is served with a pre-hearing statement identifying the medical report and the physician to be cross-examined or deposed. A copy of the request to depose or cross-examine the physician must be

served on all parties. The right to cross-examine or depose a physician on their written report is deemed waived if a party fails to make a timely request in accordance with this provision.

15. SCHEDULING OF HEARING DATE

- A.** Within 5 days of the filing of pre-hearing statements the Hearing Officer shall assign and give notice of the hearing date. Absent extenuating circumstances, the hearing date selected must be within 60 days of the filing of pre-hearing statements.
- B.** Written emergency continuance requests for extension of the hearing date may be served upon the Hearing Officer at any time prior to the day of the hearing. The Hearing Officer is authorized to grant one emergency continuance of the hearing date of up to 30 days or until the Hearing Completion Date. The Hearing Officer may revise the Hearing Completion Date only pursuant to Rule 10 and any delay resulting in expiration of the Hearing Completion Date must be addressed pursuant to Rules 6 and 7 above.
- C.** If the Applicant is granted a continuance or cancels the hearing less than 3 days prior to the scheduled hearing date, the Board is authorized to order Applicant to reimburse Respondent for its actual costs incurred as a result of the continuance or cancellation.
- D.** The parties may request, or the Hearing Officer upon his/her motion, may schedule a pre-hearing conference. In all pro-per cases the Hearing Officer shall schedule a pre-hearing conference. The pre-hearing conference shall occur within 10 days after filing of pre-hearing statements. The pre-hearing conference may be conducted telephonically or in person.

16. TIME AND PLACE OF HEARINGS

Unless the parties and the Hearing Officer agree otherwise, a hearing shall be deemed set for one full day. Hearings which are not concluded by the end of the day, or whatever other time period to which there has been a stipulation shall be continued to the next agreeable hearing date which shall be no more than 10 days from the initial hearing date. When the hearing date and time have been selected, SDCERA shall arrange for use of a hearing room and shall in writing notify the parties and the Hearing Officer of the time and place of the hearing.

17. RECORDING AND TRANSCRIPTION OF HEARINGS

SDCERA will provide a stenographic recording by a certified shorthand reporter of all hearings to the Hearing Officer and all parties free of charge within 5 business days of the completion of the hearing. The reporter's transcript shall constitute the official record of the proceeding. However, if the parties, with the approval of the Hearing Officer, stipulate in writing to the use of a DVD recording as the official record instead of stenographic reporting, SDCERA will provide such a recording at

its expense and distribute copies of the DVD to the Hearing Officer and the parties in the same manner provided above.

18. PENALTIES FOR FAILURE TO COMPLY WITH PROCEDURES AND REGULATIONS FOR DISABILITY RETIREMENT HEARINGS

At the time of hearing, failure of a party to comply with the Procedures and Regulations for Disability Retirement Hearings set forth herein may result in the imposition of one or more of the following penalties upon motion by the adversely affected party or at the discretion of the Hearing Officer:

- A. Exclusion of documentary evidence, written testimony and/or oral testimony at the hearing;
- B. Limited admission of documentary evidence, written testimony and/or oral testimony at the hearing;
- C. Limitation and/or preclusion of issues to be considered at the hearing;
- D. Suspension of filing and pre-hearing deadlines upon a showing of good cause.

19. BOARD PENALTIES FOR FAILURE TO COMPLY WITH PROCEDURES AND REGULATIONS FOR DISABILITY RETIREMENT HEARINGS

In addition to the penalties contained in Rule 18 above, the Board, upon review of the Proposed Findings of Fact and Recommended Decision of the Hearing Officer, may:

- A. Adopt the recommended penalties of the Hearing Officer;
- B. On the Board's own motion, or a motion by the adversely affected party, impose penalties as outlined in Rule 18 above; and/or
- C. Dismiss the Application for disability retirement, without prejudice, for Applicant's failure, without good cause to comply with procedures specified herein resulting in the matter not being heard within one year of the receipt of Applicant's request for a hearing de novo; or
- D. Upon a Board finding of bad faith actions, dilatory tactics, frivolous tactics causing undue delay in the proceedings, disobedience to a lawful order and/or obstruction or interference with the due course of a proceeding, dismiss the Application without prejudice.

20. WRITTEN MEDICAL REPORTS AS EVIDENCE

It is policy of SDCERA that production of medical evidence shall be in the form of written medical reports attached to the parties' pre-hearing statements. A written medical report bearing the signature of the medical witness shall be admissible in evidence as the

author's direct testimony. Such medical reports shall not be inadmissible on the basis that they constitute hearsay, but each party shall have the right to cross-examination of the authors of medical reports in person or telephonically.

21. MEDICAL WITNESS DEFINED

A medical witness is a person who by profession is a physician and/or surgeon, holding an M.D. or D.O. degree, psychologist, optometrist, dentist, podiatrist, or chiropractic practitioner, licensed by the State of California or by such other jurisdiction in which such person maintains his or her regular practice.

22. WITNESS TESTIMONY IN LIEU OF PERSONAL APPEARANCE AT HEARING

Parties have the right to depose a witness in lieu of personal appearance at the hearing. The deposition of a witness on direct or cross-examination, in lieu of personal appearance at a hearing, may be taken at a deposition set at a reasonable time and place as requested by the witness and based on 10 days notice to all parties. All depositions must be completed at least 15 days prior to the hearing. The Hearing Officer shall consider the transcript of the witness' testimony as part of the record in reaching the recommended decision. The party requesting the testimony in lieu of personal appearance shall bear the costs associated with the testimony.

23. SUBPOENAS

It shall be the responsibility of the parties to obtain those subpoenas they deem necessary for the presentation of their respective portions of the case. All subpoenas are to be issued in accordance with Government Code Section 31535. Subject to Government Code Section 31535, the power to sign subpoenas is delegated to Hearing Officers.

24. CONDUCT OF HEARINGS BEFORE THE HEARING OFFICER OR BEFORE THE BOARD DE NOVO

Hearings before the Hearing Officer, or before the Board if it elects to conduct a hearing de novo itself, shall be conducted according to the following procedures:

- A.** All hearings will be in closed session unless the Hearing Officer or the Board grants Applicant's written request to have the matter heard in open session.
- B.** Each party may make an oral opening statement.
- C.** The Applicant will present its evidence first, followed by the Respondent. Each party may then present its rebuttal evidence. The Applicant shall have the burden of proof, except as may be expressly provided in applicable law.
- D.** Each party shall have these rights subject to compliance with all other applicable rules contained herein: to call and examine witnesses listed in that party's pre-hearing statement, telephonically or in person; to introduce exhibits listed in that party's pre-hearing statement, including reports and depositions of medical witnesses; to cross-examine opposing witnesses, telephonically or in person, on

any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness, telephonically or in person, regardless of which party first called the witness to testify; and to rebut adverse evidence. If the member does not testify, the member may be called and examined by Respondent as if under cross-examination. The member may testify telephonically or in person.

- E.** Oral evidence, telephonically or in person, shall be taken only on oath or affirmation.
- F.** Refusal of the Applicant or any other witness to submit to examination or to answer relevant questions shall be grounds for considering such questions, for the purposes of the hearing, to be answered unfavorably to that witness.
- G.** The hearing need not be conducted according to technical rules of evidence. Any relevant evidence shall be admitted, consistent with the requirements of these rules, if it is evidence on which responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing. Irrelevant and unduly repetitious evidence shall be excluded.
- H.** Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.
- I.** Subject to Rule 24(I)(vi) below, the Hearing Officer shall receive into evidence at the beginning of the hearing:
 - i. The application for disability retirement;
 - ii. The administrative recommendation;
 - iii. All medical reports;
 - iv. Transcripts of any witness testimony taken pursuant to these rules;
 - v. All other documents, affidavits, and other evidentiary materials identified in each party's pre-hearing statement, unless a written objection was served on the opposing party and the Hearing Officer within 10 days after service of the pre-hearing statements, in which event the Hearing Officer may exclude the evidence if the objection is found to be meritorious.
 - vi. The Hearing Officer has broad discretion to analyze and evaluate the weight of the received evidence within the context of the entire proceeding. If argument, testimony, or other evidence received during

the course of a hearing establishes to the Hearing Officer's satisfaction that any evidence is not admissible, the Hearing Officer may exclude it, even though it was initially received.

- J.** The Hearing Officer shall take official notice of those matters which must be judicially noticed pursuant to Section 451 of the California Evidence Code, may take official notice of those matters which may be judicially noticed pursuant to Section 452 of the Evidence Code, and shall take official notice of any matter specified in said Section 452 if the provisions of Section 453 of the Evidence Code are complied with by a party.
- K.** At the conclusion of all evidence, each party may make an oral closing argument, after which the hearing is closed.
- L.** A written closing argument is not allowed. A party may submit a written brief only in the discretion of the authority hearing the matter. Discretionary written briefs may be allowed only for the purpose of addressing a specific issue necessary to the resolution of the Application. Discretionary written briefs must be submitted within 5 business days of the date the hearing is closed. The length of the brief cannot exceed 10 pages. Nothing in this rule prevents a party from submitting a pre-hearing brief to the Hearing Officer, provided that a copy of the brief is also served upon all parties to the Application.
- M.** The matter is deemed submitted at the close of the hearing or upon submission of any post hearing briefing, whichever is later. Any post hearing briefing shall not extend the date the Proposed Findings of Fact and Recommended Decision are due.

25. LIMITED ATTORNEYS' FEES AND COSTS; MOTION FOR ATTORNEYS' FEES AND COSTS.

If the Hearing Officer finds that the member is entitled to a disability retirement net benefit greater than the net benefit granted following the administrative recommendation in the same matter, the Hearing Officer may recommend to the Board of Retirement that the member be awarded reasonable attorneys' fees and costs relating to the hearing de novo and incurred from the filing of the request for hearing de novo up to and including service of the Hearing Officer's Recommended Decision in an aggregate amount not to exceed \$6,000. Attorney's fees and costs recoverable under this rule are limited only to attorneys' fees and costs incurred by a member's attorney or costs incurred by a member acting in pro per during the hearing de novo. Attorneys' fees and costs incurred in connection with administrative recommendation, writ of mandamus, any subsequent appeal, or work of any other kind or nature unrelated to the hearing de novo are not recoverable under this rule.

All attorneys' fees and cost determinations shall be conducted according to the following procedures:

- A.** The member may submit a *Memorandum of Attorneys' Fees and Costs* to the Hearing Officer and all opposing parties no later than 7 days after service of the

Hearing Officer's Recommended Decision. Attorneys' fees and costs shall be supported by sufficient evidence, including itemization of the attorney's hourly rate, the time spent, and a description of the services provided.

- B. Respondent may submit objections to the member's *Memorandum* no later than 5 days after service of the *Memorandum*.
- C. The Hearing Officer may schedule an in person or telephonic conference regarding the member's *Memorandum*.
- D. The Hearing Officer shall recommend to the Board of Retirement whether attorneys' fees and costs should be awarded and in what amount. The Hearing Officer's recommendation shall be served on the parties and SDCERA by the Hearing Officer no later than 20 days after service of the Recommended Decision.

26. SERVICE OF PROPOSED FINDINGS OF FACT AND RECOMMENDED DECISION

The Proposed Findings of Fact and Recommended Decision of the Hearing Officer shall be served on the parties and SDCERA by the Hearing Officer no later than 30 days after the hearing is closed.

27. FORM OF SUBMISSION OF HEARING OFFICER'S PROPOSED FINDINGS OF FACT AND RECOMMENDED DECISION

The Hearing Officer shall submit the Proposed Findings of Fact and Recommended Decision to SDCERA together with a summary of the evidence, the pleadings of the parties, and the exhibits offered by the parties, both those received into evidence and those not received.

28. NOTICE OF BOARD HEARING ON PROPOSED FINDINGS OF FACT AND RECOMMENDED DECISION

Within 5 days of receipt of the Hearing Officer's Proposed Findings of Fact and Recommended Decision, SDCERA shall schedule and notice the hearing before the Board. The hearing before the Board on the Hearing Officer's Proposed Findings of Fact and Recommended Decision shall occur at the next scheduled Administrative Board meeting but no sooner than 25 days after receipt of the Hearing Officer's Proposed Findings of Fact and Recommended Decision.

29. REQUESTS FOR CLOSED SESSION DISABILITY HEARING BEFORE THE BOARD

Written requests for a closed session hearing before the Board on the Hearing Officer's Proposed Findings of Fact and Recommended Decision must be received by the SDCERA Director of Member Services no less than 3 days prior to the Board hearing date. Requests for closed session hearings must clearly state the reasons for the request. The Board will consider the written request for a closed session disability hearing in open session.³

³ If the motion is granted, the Board will move into closed session after the last disability matter on the open session calendar.

30. OBJECTIONS TO PROPOSED FINDINGS OF FACT AND RECOMMENDED DECISION OF THE HEARING OFFICER

An unsuccessful party may submit written objections to the Board no later than 10 days after service of the proposed findings of fact and recommended decision. The unsuccessful party must also serve the objections on adverse parties. The objections shall be incorporated into the record to be considered by the Board.

At Hearing before the Board on the Hearing Officer's proposed decision, the Board may:

- A. Approve and adopt the proposed findings and the recommendations of the Hearing Officer
- B. Make such changes in the findings as the Board deems appropriate in light of the evidence, the objections submitted by the unsuccessful party, and any response.
- C. Require a transcript or summary of all the testimony, plus all other evidence received by the Hearing Officer. Upon the receipt thereof, the Board shall take such action as in its opinion is indicated by such evidence
- D. Refer the matter back with or without instructions to the Hearing Officer for further proceedings, or
- E. Set the matter for hearing before itself. At such hearing the Board shall hear and decide the matter as if it had not been referred to the Hearing Officer.

31. ORAL ARGUMENT IN SUPPORT OF OBJECTIONS TO HEARING OFFICER'S RECOMMENDED DECISION

The Board will allow the presentation of oral argument in support of objections to the Hearing Officer's recommended decision only where the following requirements are met:

- A. Written objections to the Hearing Officer's recommended decision have been timely filed.
- B. Written notice of the intent to present oral argument must be given both to the Chairperson of the Board and to the opposing party no later than 10 days before the meeting at which the Board will consider the Hearing Officer's recommended decision.
- C. When a party has given notice of intent to present oral argument, a continuance to the next Board meeting will be granted only upon a showing of good cause made in writing and directed to the Chairperson of the Board. The Board shall determine if there is good cause for the continuance at the meeting at which the Hearing Officer's Recommended Decision would otherwise be considered.
- D. Any argument presented to the Board shall be limited to the record of the hearing de novo. No new evidence or witness testimony shall be permitted.
- E. The guidance for oral argument is:

- i. The unsuccessful party will address the Board first for up to 10 minutes
- ii. The successful party shall respond for up to 10 minutes
- iii. The unsuccessful party is entitled to a rebuttal of up to 5 minutes
- iv. Further argument and discussion is permitted only at the Board's discretion.
- v. Time limits should not be construed as binding, but shall be at the discretion of the Chairperson of the Board.

F. If a party who requested an opportunity to present oral argument wishes to withdraw the request, the party shall immediately notify the Board and opposing counsel. Such notification must be no later than 10 days before the meeting at which the Board will consider the Hearing Officer's Recommended Decision.

32. BOARD'S DECISION AFTER REVIEW OF THE RECORD; ALTERNATIVE FINDINGS OF FACT AND RECOMMENDED DECISION

- A.** In any case where the Board makes a decision pursuant to Rule 30, subdivision C, to require a transcript or summary of all the testimony, plus all other evidence received by the Hearing Officer, the party who is objecting to the Hearing Officer's Proposed Findings of Fact and Recommended Decision, or the party who made the request to the Board for a review of the testimony and evidence, or any party directed by the Board shall, not less than 10 days prior to the Board meeting at which the matter will be reviewed, submit an alternative written Proposed Findings of Fact and Recommended Decision, which shall become part of the record.
- B.** Upon consideration of the testimony and evidence, the Board shall either adopt the Hearing Officer's Proposed Findings of Fact and Recommended Decision, adopt the Alternative Proposed Findings of Fact and Recommended Decision, or take whatever action as in the Board's opinion is indicated by the testimony and evidence, including but not limited to the adoption of findings of fact and a decision other than in the form presented by the Hearing Officer and the parties.
- C.** If the Board adopts either the Hearing Officer's Proposed Findings of Fact and Recommended Ruling, or the Alternative Proposed Findings of Fact and Recommended Ruling, or adopts findings of fact and a recommended ruling in a form other than as submitted by the Hearing Officer or the parties, a copy of the Boards adopted findings of fact and ruling shall be served upon the Applicant, the Applicant's employer, and Respondent's attorney.

33. EFFECTIVE DATE OF BOARD'S DECISION

Board decisions become effective upon service to all parties and service to Applicant's employer of the Notice of Decision. The time for filing a writ review request shall run from the date of service to all parties of the Board decision.

34. NO RECONSIDERATION BEFORE THE BOARD

Applicant is not entitled to any further written briefing, hearing or oral argument before the Board. Requests for review and reconsideration of Board decisions must proceed directly to the appropriate court of review.

35. STIPULATIONS

Nothing in these procedures is to be construed as preventing the parties from stipulating to lesser intervals than those prescribed above. The parties may also stipulate to additional briefing or discovery in the matter. In addition, the parties may stipulate to allow service by facsimile transmission or by other electronic means. The parties may also stipulate to remand the matter to the Administrative Recommendation Department for further processing.

36. SHORTENING OF TIME

The Hearing Officer may for good cause shown, after giving both parties an opportunity to be heard, shorten the times specified above.

37. COUNTY EMPLOYEES RETIREMENT LAW OF 1937

Nothing in these Procedures and Regulations expressly or impliedly changes any applicable provision of the County Employees Retirement Law of 1937, California Government Code Section 31450, et seq.

REVIEW

This policy shall be reviewed by the Board at least every three (3) years and may be amended at any time.

HISTORY

November 2, 2006	Adopted, effective January 1, 2007
November 5, 2009	Amended
February 7, 2008	Adopted Ex Parte Communication Policy for Disability Retirement Applications
June 7, 2012	Amended, effective July 1, 2012
June 5, 2014	Amended, effective January 1, 2015
December 4, 2014	Amended, effective January 1, 2015