

Form #4

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

modities and services from the handicapped to promulgate legislative rules relating to participation qualifications, as modified; authorizing consolidated public retirement board to promulgate legislative rules relating to benefit determination and appeal, as amended authorizing division of personnel to promulgate legislative rules relating to the administrative rules of the West Virginia division of personnel, as modified and amended; and authorizing ethics commission to promulgate legislative rules relating to guidelines and standards for determining the existence of disqualifying financial interests, as modified.

Be it enacted by the Legislature of West Virginia:

That article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-1. Committee for the purchase of commodities and services from the handicapped.

186-4

1 The legislative rules filed in the state register on the
2 fifteenth day of August, one thousand nine hundred
3 ninety-four, modified by the committee for the purchase
4 of commodities and services from the handicapped to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the fourth
7 day of January, one thousand nine hundred ninety-five,
8 relating to the committee for the purchase of commodi-
9 ties and services from the handicapped (qualifications
10 for participation, 186 CSR 4), are authorized.

§64-2-2. Consolidated public retirement board.

162-2

Amend.

1 The legislative rules filed in the state register on the
2 twenty-fifth day of October, one thousand nine hundred
3 ninety-three, modified by the consolidated public
4 retirement board to meet the objections of the legislative
5 rule-making review committee and refiled in the state
6 register on the thirtieth day of June, one thousand nine

7 hundred ninety-four, relating to the consolidated public
8 retirement board (benefit determination and appeal, 162
9 CSR 2), are authorized with the following amendment:

10 On page 1, section 2.1, following the word "Board" by
11 striking out the period and inserting in lieu thereof a
12 comma and the words "unless Disability Retirement is
13 decided by the Governor of the State of West Virginia
14 pursuant to statutory authority.

TITLE 162
LEGISLATIVE RULES
SERIES 2
CONSOLIDATED PUBLIC RETIREMENT BOARD
BENEFIT DETERMINATION AND APPEAL

§ 162-2-1 GENERAL

2-1-1 Scope. The scope of this Rule involves the determination of eligibility, benefits, and appeal rights to the Board not previously adopted by the Board as they relate to the several Retirement Systems.

2-1-2 Authority. West Virginia Code 5-10D-1

2-1-3 Filing Date. _____

2-1.4 Effective Date. _____

§ 162-2-2 Disability Application. An individual seeking Disability Retirement Benefits must apply to the Consolidated Public Retirement Board unless Disability Retirement is decided by the Governor of the State of West Virginia pursuant to statutory authority. The application shall be upon a form adopted by the Board. The employing agency shall, upon a

form adopted by the Board, state the agency's position as to whether or not the disability is work related.

§ 162-2-2.2 **Disability Medical Reports.** The applicant and the employing agency shall furnish all current and relevant medical reports in their possession, including the report of the treating physician and/or other professional to the Board. The applicant is required to obtain any additional information requested by the Board and shall complete any other forms and answer any other questions from the Board as may be appropriate. The Board shall only consider a medical report if the author of the report is a licensed practitioner of his or her profession in West Virginia or the jurisdiction in which he or she is located. At the request of the Board the applicant may be examined by an independent professional appropriate to the nature of the claimed disability. The cost of this examination shall be paid by the Board. These reports shall state a clear and understandable opinion as to whether or not the applicant is disabled as defined by then current applicable West Virginia law. The Board shall employ the faculty and staff of the Marshall University School of Medicine, the West Virginia University School of Medicine, or the West Virginia School of Osteopathic Medicine, whenever appropriate.

§ 162-2-2.3 **Initial Determination.** The Executive Secretary and two staff members appointed by him or her constitute the Staff Review

Committee. The Staff Review Committee shall review all reports and other evidence from all sources and shall make a recommendation consistent with the evidence, the applicable Laws and Rules and the purpose of the individual retirement system to the Board Review Committee, comprised of at least three Board members and appointed by the Board. Based on information submitted by the Board Review Committee, the full Board shall then consider the recommendations of the Board Review Committee and is free to make any finding consistent with the facts. If the applicant is not granted disability Retirement benefits, the Board will inform the applicant in writing the reason why benefits were denied as well as what additional action may be taken by the applicant.

§ 162-2-2.4 **Second Review.** If the Board does not grant disability Retirement benefits the applicant has two options. The applicant may request an additional examination by another appropriate medical professional chosen by the Board at the applicant's expense and there after submit additional medical information or the applicant may appeal the Board's decision to a hearing officer appointed by the Board as stated in Section 162-2-2.5 of this rule.

If additional medical information is obtained, the Staff Review Committee will review the new information concerning disability retirement benefits. The application should include all reports and other evidence, as

well as any new information. The Staff Review Committee shall make a second recommendation to the Board Review Committee either to grant or not to grant disability retirement benefits. The Board Review Committee may adopt the new recommendation of the Staff Review Committee, remand the application for further study, or make any other recommendation consistent with the facts. Based on information submitted by the Board Review Committee, the full Board shall then consider the current recommendations and shall make any finding consistent with the facts.

§ 162-2-2.5 **Appeal of the Decision.** If the Board rejects the application on two occasions, the Board will notify the applicant in writing within ten days from the date of rejection of the opportunity for a hearing before an independent hearing officer appointed by the Board.

The Board will not hear appeals directly, but will appoint a hearing officer who will make a complete and independent review of the disability application and then make recommendations to the Board. The hearing officer hired by the Board will be an attorney who has a license to practice law in the State of West Virginia. The hearing officer shall conduct the hearing. Within 60 days of the notice from the application of the desire to appeal the decision, the hearing officer shall schedule a time and place to hear the appeal and give the applicant 10 days written notice of the hearing.

At the hearing, the applicant may represent himself or herself or may be represented by counsel or a representative and witnesses or written evidence may be submitted by both parties. The rules of evidence shall not strictly apply, and the applicant has the right to any and all relevant documents in the possession of the Consolidated Public Retirement Board. The hearing officer has the right to subpoena documents and witnesses if the information is relevant and reasonable in order for the hearing officer to make a recommendation on the appeal. The interests of justice and fair play shall guide procedure before the hearing officer. The Board shall retain but not transcribe a stenographic recording of the hearing which is the official record of the hearing. The hearing officer shall, within sixty days of receiving all documents, prepare formal findings, stating the reasons for the findings, in clear language, and noting all medical and other evidence considered. After proper notice the hearing officer shall present the information at the next regular meeting of the Consolidated Public Retirement Board. The staff on behalf of the Board will notify the applicant of the date, time, and place that the appeal will be acted up by the Board. The Board in open session will then make a decision based on the recommendation of the hearing officer and accept the recommendation unless there is an abuse of discretion in finding or the finding is contrary to law. The applicant also has the right to propose a final order.

§ 162-2-2.6 **Other Appeals.** Any other type of appeal other than for

disability retirement benefits will be considered by the Board's staff of the Consolidated Public Retirement Board. If the Board's staff does not believe that the request should be granted, the staff will notify the applicant in writing stating the reasons for the denial and informing him or her of his or her right to appeal to the Board. If the applicant appeals the decision of the staff, the staff will refer the appeal to the hearing officer hired by the Board. Within 60 days of the notice from the applicant of the desire to appeal the denial, the hearing officer shall schedule a time and place to hear the appeal and give the applicant 10 days written notice of the hearing. The applicant may represent himself or herself or may be represented by counsel or another representative and witnesses or written evidence may be submitted by both parties at this hearing. The rules of evidence shall not strictly apply and the applicant has the right to any and all relevant documents in the possession of the Consolidated Public Retirement Board. The hearing officer has the right to subpoena documents and witnesses if the information is relevant and reasonable in order for the hearing officer to arrive at a finding of fact and to make a recommendation on the appeal. The interest of justice and fair play shall guide proceedings before the hearing officer. The Board shall retain but not transcribe a stenographic recording of the hearing which is the official record of the hearing. The hearing officer shall within sixty days of receiving all documents prepare formal finding stating the reasons for the findings. The hearing officer shall prepare a final recommendation in clear language, and noting all evidence

considered. Thereafter the finding and recommendation of the hearing officer will be presented at the next regularly scheduled meeting of the Consolidated Public Retirement Board. The Board's staff will notify the applicant of the date, time, and place that the appeal will be acted upon by the Board. The applicant also has the right to propose and submit a final order for consideration by the Board. The Board, in open session, will then make a decision on the findings and recommendation of the hearing officer and accept the recommendation unless the Board Finds that the hearing officer has abused his or her discretion in the findings, or the findings are contrary to law.

§162-2-2.7 Appeal Denied. If an appeal is denied in whole or in part by the Board pursuant to Sections 162-2-2.5 and 162-2-2.6 of this rule (a final decision), an applicant may request a transcript of the appeal hearing, with the cost to be paid by the applicant. An individual aggrieved by a final decision of the Board has a right of appeal to the Circuit Court of Kanawha County pursuant to West Virginia Code §5-10D-1.

§162-2-2.8 Errors. Each level of review is presumed to cure all errors in procedure of any prior level, and no right to remand to cure procedural errors exists, but each level of review shall make an independent determination upon the facts.



FILED

JUN 15 10 59 AM '94

West Virginia Legislature
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Room M-152, State Capitol
Charleston, West Virginia 25305
(304) 340-3286

Senator Joe Manchin, III, Co-Chair
Delegate Brian A. Gallagher, Co-Chair

June 13, 1994

Debra A. Graham, Counsel
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. James L. Sims
Executive Director
Consolidated Public Retirement Board
Bldg. 5, Room 1000
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Benefit Determination and Appeal

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.