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SECRETARY OF STATE

James L. Sims
Executive Secretary
Consolidated Public Retirement Board

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.

Bill-CPRB, Benefit

2/17

1622

H. B. 2143

(By Delegates Gallagher, Douglas, Compton,
Linch, Faircloth and Riggs)

(Introduced January 23, 1995; referred to the
Committee on Pensions and Retirement then the Judiciary.)

10 A BILL to amend and reenact section nine, article two, chapter
11 sixty-four of the code of West Virginia, one thousand nine
12 hundred thirty-one, as amended, relating to authorizing the
13 consolidated public retirement board to promulgate
14 legislative rules relating to benefit determination and
15 appeal.

16 Be it enacted by the Legislature of West Virginia:

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

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

22 §64-2-9. Consolidated public retirement board.

23 (a) The legislative rules filed in the state register on the
24 fifth day of November, one thousand nine hundred ninety-one,

1 modified by the consolidated public retirement board to meet the
2 objections of the legislative rule-making review committee and
3 refiled in the state register on the sixteenth day of September,
4 one thousand nine hundred ninety-two, relating to the
5 consolidated public retirement board (general provisions), are
6 authorized.

7 (b) The legislative rules filed in the state register on the
8 fifth day of November, one thousand nine hundred ninety-one,
9 modified by the consolidated public retirement board to meet the
10 objections of the legislative rule-making review committee and
11 refiled in the state register on the sixteenth day of December,
12 one thousand nine hundred ninety-two, relating to the
13 consolidated public retirement board (public employees retirement
14 system), are authorized with the amendment set forth below:

15 "On page one, subsection §162-5-2 after the word 'hereby' by
16 striking out the word 'appealed' and inserting in lieu thereof
17 the word 'repealed'".

18 (c) The legislative rules filed in the state register on the
19 fifth day of November, one thousand nine hundred ninety-one,
20 modified by the consolidated public retirement board to meet the
21 objections of the legislative rule-making review committee and
22 refiled in the state register on the sixteenth day of December,
23 one thousand nine hundred ninety-two, relating to the
24 consolidated public retirement board (teachers' defined benefit

1 retirement system), are authorized with the amendment set forth
2 below:

3 "On page one, subsection §162-4-2 after the word 'hereby' by
4 striking out the word 'appealed' and inserting in lieu thereof
5 the word 'repealed'".

6 (d) The legislative rules filed in the state register on the
7 fourth day of November, one thousand nine hundred ninety-one,
8 modified by the consolidated public retirement board to meet the
9 objections of the legislative rule-making review committee and
10 refiled in the state register on the sixteenth day of September,
11 one thousand nine hundred ninety-two, relating to the
12 consolidated public retirement board (teachers' defined
13 contribution system), are authorized.

14 (e) The legislative rules filed in the state register on the
15 fifth day of November, one thousand nine hundred ninety-one,
16 modified by the consolidated public retirement board to meet the
17 objections of the legislative rule-making review committee and
18 refiled in the state register on the twenty-second day of
19 January, one thousand nine hundred ninety-three, relating to the
20 consolidated public retirement board (benefit determination and
21 appeal), are authorized.

22 (f) The legislative rules filed in the state register on the
23 twenty-fifth day of October, one thousand nine hundred ninety-
24 three, modified by the consolidated public retirement board to
25 meet the objections of the legislative rule-making review

1 committee and refiled in the state register on the thirtieth day
2 of June, one thousand nine hundred ninety-four, relating to the
3 consolidated public retirement board (benefit determination and
4 appeal), are authorized.

5

6 NOTE: The purpose of this bill is to authorize the
7 Consolidated Public Retirement Board to promulgate legislative
8 rules relating to benefit determination and appeal.

9

10 Strike-throughs indicate language that would be stricken from
11 the present law, and underscoring indicates new language that
12 would be added.

SENATE BILL NO. 87

(By Senators Manchin, Anderson, Boley, Grubb and
Macnaughtan)

[Introduced January 20 , 1995; referred to the
Committee on the Judiciary

162-2

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12 would be added.

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March 28, 1995

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SB 133 authorizing, Title 162, Series 2, Benefit Determination and Appeal, passed the Legislature on March 11, 1995. It was signed by the Governor on March 23, 1995.

You have sixty (60) days after the Governor signs SB 133, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in SB 133 section 64-2-2. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: YOUR AGENCY MUST SUBMIT A CLEAN COPY OF THE LEGISLATIVE RULE ON DISK, WITH ALL UNDERLINING, STRIKE-THROUGHS AND HEADERS/FOOTERS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. THE DISK MUST BE ON A WORD PERFECT (5.1 OR 5.2 VERSION) OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM 3 1/2" DOUBLE DENSITY DISK. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL ENABLE US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING, STRIKE-THROUGHS AND HEADERS/FOOTERS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to call our office.

Thank You
Administrative Law Division