

CHAPTER 1. ADMINISTRATIVE OPERATIONS

SUBCHAPTER 3. ADMINISTRATIVE REVIEW AND HEARINGS

590:1-3-2. Definitions

The following words and terms, when used in this Subchapter shall have the following meaning, unless the context clearly indicates otherwise:

"Claimant" means the member; ~~or participating employer;~~ or in the case of a deceased member, a joint annuitant or beneficiary, ~~filing an appeal requesting a hearing with the System.~~

"Final agency decision" means the completed decision by the System Executive Director or General Counsel which, upon request of a claimant, may be reviewed by a Hearing Examiner and the Board of Trustees pursuant to Subchapter 3 of this Chapter.

"System" means the Oklahoma Public Employees Retirement System, the Uniform Retirement System for Justices and Judges, the Oklahoma State Employees Deferred Compensation Plan, the Oklahoma State Employees Deferred Savings Incentive Plan, and the Oklahoma Defined Contribution System.

590:1-3-3. Commencement of hearing

(a) ~~Appeal Request for hearing.~~ A claimant may request a hearing before the Board of Trustees to review a final agency decision of the System affecting service credit, contributions, benefits, eligibility or any other rights of a claimant may be appealed to the Board of Trustees. The hearing process appeal must be commenced by commences when the claimant submits a filing a timely written request for hearing with to the OPERS General Counsel. In order for the appeal to be considered timely, it To be considered, a request for hearing must be submitted filed within thirty (30) calendar days after the date of mailing notification of the final agency decision.

(b) ~~Contents of appeal hearing request.~~ The appeal request for hearing shall be in writing and shall set forth the following:

- (1) the name, address, e-mail address, and Social Security OPERS member number of the claimant;
- (2) a statement regarding the nature or amount of the disagreement or of the dispute;
- (3) a clear and concise assignment statement of each alleged error alleged to have been committed;
- (4) a brief summary of the argument and relevant legal authority upon which regarding each assignment statement of error is made; provided, the claimant shall not be bound or restricted in the hearing, or on appeal, to the arguments and legal authorities contained and cited in this the initial writing request for hearing; and
- (5) a statement of the relief sought requested.

(c) ~~Assignment of hearing number; and pre-hearing conference date.~~ The General Counsel shall assign a hearing number to the appeal, create a court file, notify the Hearing Examiner, and set a coordinate a date for a pre-hearing conference between the parties and the Hearing Examiner.

590:1-3-5. Representation and participation in administrative proceedings

(a) ~~Pro se or legal counsel.~~ The claimant Claimant may appear pro se at any stage of the proceeding or may be represented by legal counsel, provided such counsel must be duly licensed to practice law in the State of Oklahoma, and that such counsel has the right to appear and act for and on behalf of the claimant. Legal counsel representing a claimant shall submit an Entry of Appearance to the System.

(b) ~~Other representation.~~ If the claimant wants to be represented by someone other than himself/herself or an attorney, the Hearing Examiner may require that such person, before being recognized as a representative of the claimant, make a proper showing that he or she has the necessary qualifications to enable the representative to render such services to the claimant. Upon such showing by the representative, the Hearing Examiner shall certify the representative.

(c) ~~Proof of authority to represent.~~ Any person representing a claimant may be required to show written proof, in a form satisfactory to the System, of his or her authority to represent the claimant in the matter.

590:1-3-8. Hearing Examiner hearing procedure

(a) **Purpose and process.** The hearing provides each party the opportunity to present witnesses and evidence in support of his or her respective their case. Hearings shall be conducted in accordance with the Oklahoma Administrative Procedures Act and the rules in this Subchapter subchapter. The hearing shall be structured by the Hearing Examiner and open to the public. The Hearing Examiner may order parts of the proceedings closed when confidential evidence of a confidential nature is to be introduced or where to do so closing the proceedings would be in the best interests of a party, witness, the public, or other affected persons.

(b) **Party responsibility.** Each party shall be present, on time, and prepared. Failure to do so may result in dismissal of the appeal unless hearing absent good cause is shown.

(c) **Hearing Examiner responsibility.** The Hearing Examiner will convene the hearing, note appearances, and consider rule on any motions or preliminary matters. The Hearing Examiner shall administer oaths or affirmations of the witnesses. The Hearing Examiner may also:

- (1) question any party or any witness;

- (2) establish a scheduling order for the hearing to include time lines for further filings and the date of the hearing before the Board of Trustees;
- (3) rule on any request for an extension of time, or on any other motions or other procedural matters;
- (4) regulate the course of the hearing, rule on admissibility of all evidence, and regulate the and conduct of the participants;
- (5) rule on admissibility of all evidence request additional briefs on issues or law as may be reasonably necessary;
- (6) request briefing on issues or law as reasonably necessary take official notice of any material fact not appearing as evidence in the record if the fact is among traditional matters of judicial notice;
- (7) take notice of judicially cognizable facts;
- (8) recess and reconvene the hearing; ~~or~~ and
- (9) order ~~the~~ to expedite the proceedings ~~to be expedited~~ in the event of severe financial hardship, ~~upon good cause shown~~, in accordance with 590:1-3-17.

(d) **Transcript of hearing** Electronic recording. The System shall electronically record the proceedings pursuant to 75 O.S. §309. shall cause a full stenographic record of the hearing to be made by a competent court reporter. A copy of the stenographic record shall be provided to any party at the request and expense of such party. Copies of the recordings shall be provided by the System at the request of any party to the proceeding. Costs of transcription of the recordings shall be borne by the party requesting the transcription.

(e) **Arguments, witnesses, and evidence**. The claimant party requesting the hearing shall first present their case ~~be heard first and~~ has, unless otherwise provided by law, the burden of proof to show in what respect the action or proposed action of the System is incorrect. Each party shall have the opportunity to present its case, to make opening statements, to call and examine witnesses, to offer documentary evidence, into the record and to make closing arguments. Each party shall also have the opportunity to may cross-examine opposing witnesses on matter matters covered in direct examination and, in at the discretion of the Hearing Examiner, may examine the witnesses upon matter matters relevant to the issues ~~even though~~ not covered in direct examination. Any objection Objections to testimony or evidentiary offers ~~should be made, and shall state the basis of the objection stated on the record~~ and the record shall document the Hearing Examiner's ruling on the objection.

(f) **Burden of proof**. Unless otherwise provided by law, the claimant must show by a preponderance of the evidence that the final agency decision was in error.

(g) **Scheduling order**. Prior to closing the record, each party shall agree to a proposed scheduling order which shall include deadlines for submitting a proposed final order, objections to the Hearing Examiner's Proposed Final Order, rebuttals to any objections, requesting rehearing, and the date of the hearing before the Board of Trustees. The Hearing Examiner shall sign the agreed scheduling order and each party shall receive a copy. the Hearing Examiner shall enter a scheduling order setting a date for the final hearing before the Board of Trustees, and each party shall receive a copy. The scheduling order shall establish deadlines for submitting a proposed final order, objections to the Hearing Examiner's proposed final order, responses to any objections, and requests for rehearing.

(h) **Closing the record**. The record shall be closed ~~close the record~~ when each party has ~~had an opportunity to be heard~~ presented their arguments and present evidence. Once the record is closed, no additional evidence or arguments shall be considered. The Hearing Examiner may grant a rehearing, reopening or reconsideration of the hearing upon a showing of good cause by either party prior to the date of the scheduled hearing before the Board of Trustees.

(i) **Petition for rehearing, reopening, or reconsideration**. The final decision of the Hearing Examiner shall be subject to rehearing, reopening, or reconsideration. A petition for rehearing, reopening, or reconsideration shall be submitted within ten (10) calendar days from the date of the entry of the Hearing Examiner's proposed final order.

590:1-3-9. Pleadings; filing; order and continuances

(a) **Filing** Submission of pleadings; paper size. The ~~OPERS General Counsel~~ counsel serves as the "Court Clerk" clerk for the administrative hearing process ~~and all original pleadings shall be filed therein. To be considered timely received. All pleadings must be received by OPERS counsel shall be filed with the System no later than 5:00 PM on the deadline required date. Pleadings not received by the deadline will be considered as filed out of time. The General Counsel~~ OPERS counsel shall forward copies of all submitted original pleadings or other documents filed with the System in the hearing process to the Hearing Examiner in a timely manner. All pleadings shall be signed; and dated and filed on letter size 8 1/2" x 11" paper and double spaced in 12 point type with 1" margins.

(b) **Electronic submission** filing; facsimiles. Parties are encouraged to submit pleadings in PDF format by e-mail attachment. Electronic filing is encouraged. Electronic copies or facsimiles will be accepted but must be signed and filed by the appropriate deadline. Electronic copies shall be sent to the General Counsel as an email attachment. The attachment must be a scanned document in a pdf format reflecting the signature of the claimant or the representative of the claimant. Any exhibits filed submitted electronically shall be contained in a separate pdf/PDF file and each exhibit properly labeled. It ~~is~~ shall be the responsibility of the claimant submitting party to verify that the System has received the electronic copy or facsimile and that it is legible and acceptable to the System.

(c) **Order of filings** submitting statements ~~briefs~~. Each party shall have the opportunity to file a written brief or statement of the case setting forth the facts, arguments, and legal authorities. The briefs shall be included in the record. The claimant shall submit a brief according to the pre-hearing conference order. The System shall respond to such brief within twenty (20) days of the filing of the claimant's brief. At the discretion of the Hearing Examiner, the claimant may file a reply to the System's response within seven

~~(7) days of the of the System's response.~~ The claimant shall submit a written statement of the case according to the pre-hearing conference order. The System shall respond to the claimant's statement within twenty (20) calendar days of the submission of the claimant's statement. At the discretion of the Hearing Examiner, the claimant may submit a reply to the System's response within seven (7) calendar days of the submission of the System's response. The statement of the case shall set forth the facts, arguments, and legal authorities. All statements and responses shall be included in the record.

(d) ~~Continuances or extensions.~~ A party seeking a continuance ~~or extension~~ shall ~~file~~ submit a proper motion; and, for good cause shown, a continuance ~~or extension~~ will be granted by the Hearing Examiner.

590:1-3-12. Proposed order; ~~objections; rehearing and objections.~~

(a) ~~Proposed order.~~ After the close of the hearing record is closed, each party shall be permitted the opportunity to ~~may~~ submit to the Hearing Examiner a proposed final order which shall ~~include~~ includes findings of fact and conclusions of law to the Hearing Examiner. The Hearing Examiner shall prepare and ~~file with~~ submit to the System a proposed final order which shall ~~include~~ includes findings of fact, conclusions of law, and a recommended order to for the Board of Trustees. The System shall provide a copy of the Hearing Examiner's proposed order shall be provided to all parties by the System as soon as practical and at least twenty (20) calendar days prior to the scheduled hearing before the Board of Trustees. The parties may waive the twenty-day requirement by written stipulation.

(b) ~~Objections to proposed order.~~ Each party shall have the opportunity to ~~file~~ may submit a written statement setting forth any objections, ~~exceptions and/or and~~ arguments to the Hearing Examiner's proposed final order for they desire the Board of Trustees to consider in its review of the proposed order by the Hearing Examiner. This statement shall be ~~filed with~~ submitted to the System within the time limit prescribed by the Hearing Examiner in pursuant to the scheduling order and with a copy shall be provided to all the other party parties. The parties may ~~prepare a~~ submit written rebuttal responses to the other party's objecting statement within the time limit prescribed by the Hearing Examiner in the any written objections pursuant to the scheduling order and a copy shall be provided to the all other party parties. In no event shall the objections or the response in rebuttal any pleadings be submitted be filed less than seven (7) calendar days prior to the Board of Trustees hearing. New or additional evidence or materials may shall not be introduced by either any party in the objections or in the responses pleadings submitted pursuant to this section.

(c) ~~Rehearing before the Hearing Examiner.~~ Each party shall have the opportunity to request a rehearing before the Hearing Examiner. Such request must be filed with the System and made within the time limit prescribed by the Hearing Examiner in the scheduling order. A copy shall be provided to the other party.

590:1-3-14. Rehearing; appeal and appeal of Board's final order

(a) **Rehearing.** Any party receiving an adverse order from the Board may file a petition for rehearing, reopening or reconsideration of the final order of the Board. Such application shall be filed with the System within ten (10) days from the date of the entry of the Board's order and must be in compliance with 75 O.S. § 317. **Petition for rehearing, reopening, or reconsideration.** The final order of the Board shall be subject to rehearing, reopening, or reconsideration. A petition for rehearing, reopening, or reconsideration shall be submitted within ten (10) calendar days from the date of the entry of the Board's final order. All petitions shall be in accordance with 75 O.S. § 317.

(b) **Appeal.** Pursuant to 75 O.S. § 318, Any any party aggrieved by the final order of the Board may, within thirty (30) days from the date the aggrieved party is notified of the order, file an action for judicial review in the District Court of Oklahoma County.