

DISABILITY RETIREMENT BOARD HEARING PROCEDURES

Arlington County Employees' Retirement System

The Arlington County Code (Code §46-52 & §21-57) provides that the Retirement Board will hold a hearing whenever the County Manager reduces or discontinues a retiree's retirement allowance, or whenever a member appeals the denial of his application for disability benefits. The retiree or member and his representative have the right to be present and heard at such hearing.*

The procedures below govern appeals from the County Manager's denial of disability benefits. For purposes of this procedure, a discontinuance of a disability allowance for medical reasons shall be treated as a denial of disability benefits. When hearing the appeal, the Board may decide to obtain an independent medical opinion. The medical opinion of the Board-appointed physician will control over the County Manager's medical advisor on all issues requiring certification by the medical advisor .

- 1. Time for Filing the Appeal** Any member whose application for disability benefits has been denied by the County Manager may appeal the decision in writing directly to the Board. The appeal should identify the decision being appealed. It should be postmarked (or comparably transmitted) to the Board's Executive Director within 45 days of the postmark of the decision by the County Manager denying the application. The 45-day period may be extended by the Board for good cause shown.
- 2. Representation of Applicant** The Applicant may be represented by any person of his choice. If someone has been designated, the Board will communicate with the Applicant through the representative unless the Applicant indicates otherwise.
- 3. Scheduling the Hearing** Upon receiving a timely filed appeal, the Board will schedule a hearing. The hearing will generally be held at the next regularly scheduled Board meeting that is at least 30 days after the appeal is filed. The Board, however, may set an earlier or later date where circumstances warrant.
- 4. The Record** At least ten (10) business days before the hearing, the County Manager must submit the complete Record in the County's custody or control relating to the application to the Board and the Applicant. The Record should indicate the person who actually made the decision on the application. If the Applicant believes the Record compiled by the County Manager is missing relevant medical records or other documentation previously submitted to the County, he must provide these documents to the Board and to the County Manager before the hearing. The Board may request the Applicant to provide additional records in his custody or control it deems relevant.

The party appealing the decision of the County Manager should submit any new medical evidence ten (10) business days prior to their scheduled hearing. This new material should be provided to the County in order to give the County the option to have the new medical

* Whenever this policy refers to the County Manager, it means the County Manager or designee.

evidence considered by their medical advisor and defer the appeal process by the Retirement Board if appropriate.

5. **Presentation of Evidence** Both parties may present evidence at the hearing. The County Manager may elect to rely on the Record submitted to the Board.

6. **Governance of the Hearing** The President of the Board will preside at the hearing and determine the order of proceedings. In general, the Applicant or representative will present the case, including any opening remarks, examination of witnesses and summation.

7. **Questioning and Attendance of Witnesses**

(a) All witnesses are subject to questioning by the Board and both parties. If the County Manager wishes to ask questions, he will appoint one individual for this purpose.

(b) If the Applicant believes he needs to ask questions of the County Manager's medical advisor in order to fairly present his case, he must notify the Board and the County Manager when filing the appeal, or as promptly as possible thereafter. The Retirement Board shall then request the attendance of the County Manager's medical advisor. The Board may reschedule the hearing to accommodate the medical advisor's schedule for good cause shown.

8. **Board Deliberations** Once testimony has been concluded, the Board will close the Record. Discussion is then restricted to the Trustees, and will not be open to the public.

9. **Determinations Made by the Board**

(a) If at the hearing, it appears to the Board that an independent medical opinion should be obtained, action on the application will be deferred until the written report has been received.

(b) If the Applicant has asked to question the County Manager's medical advisor but the medical advisor fails to attend the hearing, the Board may obtain an independent medical opinion.

(c) The independent medical opinion of the Board-appointed physician will, for purposes of the disability application, replace the opinion of the County Manager's medical advisor. It will govern the Board's decision on all issues requiring determinations by a medical advisor. If the Board-appointed physician certifies that the Applicant is disabled, the Board will treat it as the governing medical opinion and then resolve any other issues raised by the appeal.

(d) Examples of other issues the Board may be required to resolve include (i) review of a finding by the County Manager that the Applicant was not engaged in the actual performance of duty during the accident in question; (ii) the impact, if any, of a change in

the Applicant's medical status since the injury or illness in question; and (iii) any other issues set forth in the relevant ordinances.

(e) The Board, in its discretion, may seek assistance of legal counsel, the Manager's medical advisor or the Board-appointed physician in making these decisions.

10. Effective Date This procedure will apply to all appeals from the County Manager's denial of disability benefits filed after its adoption by the Board on February 2, 2006.

Adopted by the Board as resolution 2006-01 on February 2, 2006, Revised September 7, 2006.