

PHILADELPHIA BOARD OF PENSIONS AND RETIREMENT

REGULATION NO. 1

WHEREAS, The Board of Pensions and Retirement is empowered by Section 8-407 of the Home Rule Charter and Section 22-107 of the City of Philadelphia Public Employees Retirement Code (“Retirement Code”) to make all necessary regulations to carry into effect the provisions of the Retirement Code; and

WHEREAS, Section 22-1202(2)(“Hearing Panel”) of the Retirement Code provides that the Board may appoint any three members of the Board as a hearing panel to conduct any hearing, which panel shall take testimony and prepare a recommendation that shall be forwarded to the Board for its consideration; and

WHEREAS, The Local Agency Law, 2 Pa.C.S. §§551-555, governs certain matters concerning the conduct of adjudications of administrative agencies of Pennsylvania political subdivisions, of which the Board is one; and

WHEREAS, No other law provides specific guidance as to the procedural requirements by which Board hearings may be conducted; and

WHEREAS, The Board has determined it appropriate to adopt a regulation in order to provide its staff, members of the Public Employees Retirement System, and attorneys who appear before hearing panels of the Board a specific and consistent statement of the procedure for Board adjudications;

NOW THEREFORE, The Board of Pensions and Retirement hereby adopts this Regulation No. 1, relating to Board adjudications.

1.0 Appeals to the Board. Under Section 112.1 of the Municipal Retirement System Ordinance¹, any member or beneficiary may appeal any decision of the Board's staff to the full Board. Any such appeal must be in writing addressed to the Executive Director, Board of Pensions & Retirement, 16th Floor, Two Penn Center Plaza, Philadelphia, PA 19102, and must be postmarked no later than 30 days after the date of the decision that is the subject of the appeal.

1.1 Status for Hearing Request. If the Board has formally voted, at a public meeting, to deny an application for benefits or to deny an appeal from a decision of the Board's staff,

¹ Now Section 22-1202(1) of the Philadelphia Code.

the person who made the application or appeal may request a hearing before a panel of the Board.

1.2 Request Procedure. Hearing requests must be in writing addressed to the Executive Director, Board of Pensions & Retirement, 16th Floor, Two Penn Center Plaza, Philadelphia, PA 19102, and must be postmarked no later than 30 days after the date of the decision that is the subject of the hearing. Requests that meet these requirements shall be automatically granted by the Board's staff and a hearing shall be scheduled, except as provided in ¶1.13 below or unless otherwise directed by vote of the Board.

1.2a Scheduling of Hearings. The Board's staff will attempt to work with parties and their attorneys in scheduling hearings. However, extended and multiple delays in scheduling hearings will not be permitted. Once 60 days has elapsed after the Board has either received a hearing request or voted to refer a matter to a hearing, if no hearing date has been agreed upon, the Executive Director shall have the authority to fix a hearing date and time and provide notice to the parties, who shall be expected to appear. Failure to appear for such a hearing will result in application of the procedure outlined in Paragraph 1.7a below, including the possibility of denial of further continuances and the Board proceeding to final decision in the absence of a party.

1.3 Board-directed Hearing. The Board may also, on its own motion, refer any application to a hearing panel without otherwise voting on the application.

1.4 Composition of Panels. Panels shall be constituted by the Board's staff, as directed by the Executive Director. Each panel shall consist of three Board members, provided that at least one panel member shall be a member elected to the Board by the employees in the civil service and at least one panel member shall be an ex officio Board member from the Administrative and Executive Branch of the City or his or her designee. In the event of a last-minute unavailability of a scheduled panel member, a hearing may proceed with two panel members, if all parties to the hearing agree.

1.5 Content of Record. All documents on file with the Board prior to the hearing shall be part of the record before the panel, and shall be available for inspection by the applicant and the City at any time during regular office hours prior to the hearing.

1.6 Submissions. All submissions to the Board relating to a hearing must be received by the Board no later than 3 business days prior to the hearing. The Board and all parties may make reasonable discovery requests (such as witness lists) of each other, provided that any request gives the other party at least three business days before the deadline stated in the previous sentence. The Board may, upon sufficient cause shown, extend any such deadline. Upon the scheduling of any hearing, any such deadlines shall be stated in a letter from the Board provided to all participants advising as to the date and time of the hearing.

1.7 Pre-hearing Procedural Communications. All communications to the Board requesting any change in these procedures, such as a request for a continuance or a ruling

on an interpretation of these procedures or other law, must be in writing addressed as provided in ¶1.2 above. Any such communications must be received by the Board no later than 3 business days before the hearing or deposition, except that an exception may be granted by the Executive Director, in his/her sole discretion. Any party that cancels its appearance or requests a continuance after that time, or any party that fails to appear for a hearing or deposition without giving any cancellation notice to the Board, shall be assessed an administrative fee to be set by the Executive Director of the Board in an amount to cover the costs of the stenographer and any other expenses incurred by the Board, including witness fees, as a result of the cancellation or postponement of the hearing or deposition.

1.7a Continuances. Where a party is unable to attend a scheduled hearing, the party may request a continuance from the Board's Executive Director, by giving three business days notice, if possible, and the reason for the request. Continuances will not be automatically granted. After a party has been granted two continuances, no further continuances will be granted, absent acceptable proof of compelling circumstances. Where a party fails to appear for a hearing and has also failed to give advance notice of nonappearance as provided in ¶1.7 above, or where a party fails to appear for a hearing after having been denied a continuance, the Board has the discretion to proceed with the hearing in the absence of that party and to close the record and proceed to a final decision without giving that party any further opportunity for a hearing, except that the Board may grant an exception upon sufficient cause shown.

1.8 Counsel for Parties. At the hearing, the applicant shall have the right to be represented by counsel or to appear without counsel. The assigned legal advisor to the Board shall be available to the hearing examiner to give advice on evidentiary objections and questions of proper procedure.

1.9 Conduct of the Hearing. In accordance with the Local Agency Law, the conduct of the hearing shall not be bound by technical rules of evidence, and all relevant evidence of reasonably probative value may be heard. Reasonable examination and cross-examination shall be permitted.

1.9a Receipt of Evidence and Depositions. The Board presumes that, in the absence of a specific objection, all parties at the hearing impliedly stipulate that any non-opinion documents, such as treatment reports, tests, and hospital admission records, will be admissible as if properly authenticated under the business records exception to the hearsay rule without the necessity of testimony by a custodian or other witness as to the identity and the mode of preparation of those documents. Affidavits when notarized, and personnel records may also be admitted on the same conditions. The Board may obtain stipulations from parties that documents that express an opinion may also be admitted as if the author were present and testifying. In the absence of such a stipulation, the Board may take testimony by deposition. Where it is necessary for a member of the Board's Medical Panel or other doctor, or a City employee to testify at a deposition or hearing, the Board or the City, as appropriate, may provide counsel to ensure appropriate direct and cross

examination and observance of the rules of evidence to the extent appropriate to a local agency hearing.

1.10 Close of the Record. At the close of each hearing, the hearing examiner shall announce the date when the record shall be closed, which shall be immediately, unless a party has additional evidence to submit and shows good cause why that evidence could not be submitted at or before the hearing. Otherwise, during the remaining period during which the record is open, any applicant, the City, or the Board may submit any reasonably relevant documentary evidence, provided that each participant shall receive a copy of any such submission.

1.11 Transcript. Hearings shall be stenographically reported by a reporter provided by the Board, and a transcript of the report shall be a part of the record and the sole official transcript of the proceeding.

1.12 Recommendations of Panel Members. Following the close of the record, each panel member shall complete a form recording his or her recommendation to the Board as to the resolution of the matter. After all recommendations have been submitted, the panel members' recommendations shall be reported at the next regular monthly meeting of the Board, along with the transcript of the hearing. The file on the matter shall be available for review by any Board member prior to and during the Board meeting. The Board shall consider, but shall not be bound by, the recommendations of the panel in making a final decision on the application. In the event that an assigned panel member should become unavailable, the hearing may proceed before two panel members, provided that all parties in the matter consent.

1.13 Additional Hearings. If there has already been one hearing on a matter before the Board, a request for a second hearing before the Board's final decision shall only be granted by vote of the Board. In making a second request, the applicant shall identify the additional evidence to be presented at the second hearing and the reason why that evidence was not produced at the first hearing, or provide other substantial justification for a second hearing. After the Board's final decision on a matter, requests for a second hearing shall be considered to be requests for reconsideration under ¶1.14 below.

1.14 Reconsideration. The Board's decision on a matter following a hearing and based on the record at the time of the Board's vote shall be final. If a party in a matter desires to apply to the Board for reconsideration of such a decision, the party must apply in writing to the Executive Director at the address in ¶1.2 above, postmarked no later than 10 days after the date of the Board's decision (as evidenced either by the Board's vote or the letter to applicant reporting the Board's decision, whichever is later). The application must identify the additional evidence, law, or other information to be presented upon reconsideration, the reason why such material was not produced before the Board's vote on the matter, and the reason why the applicant believes the additional evidence, law, or other information is sufficient justification for the Board to change its decision.

1.15 Findings. In the event of an appeal to the Court of Common Pleas of a final decision of the Board, the legal advisor to the Board shall, subject to the direction and review of the Chairperson of the Board, draft Findings of Fact and Conclusions of Law, which the Chairperson of the Board, or designee, shall approve and sign on behalf of the Board.

Originally effective August 22, 1994

Amended by revising ¶1.8, effective May 25, 1995

Amended by revising ¶1.7, and adding new ¶s 1.7a and 1.9a, effective January 17, 1997

Amended by adding new ¶1.0, effective August 19, 1997

Amended by adding new ¶1.2a, and revising ¶s 1.0, 1.2, 1.4, and 1.15 by vote of the Board
December 18, 2003, effective February 12, 2004