



## **ADMINISTRATIVE HEARING RULES AND PROCEDURES**

### **I. PURPOSE AND POLICY STATEMENT**

The Board of Retirement of the Sonoma County Employees Retirement Association (“SCERA”) intends that this policy apply to and govern administrative review hearings regarding disability and benefit decisions made by the Board of Retirement pursuant to the County Employees Retirement Law of 1937, as amended (“CERL”). This policy applies to determinations of individual cases. This policy shall be publicly available and shall be distributed to all Applicants who request or participate in an administrative review hearing.

### **II. DEFINITIONS**

The following terms shall have the meanings set out in this section. All other words shall have their common meanings.

A. **Administrative Record:** The Administrative Record includes any documents submitted by an Applicant or on behalf of an Applicant, documents prepared by SCERA or by independent sources that are received by SCERA, or any other documents that are relevant to deciding the issue of an Applicant’s request to receive or modify a benefit and that are admitted into evidence by the Hearing Officer after the Parties have had an opportunity to object.

The Administrative Record also includes written correspondence, Party Pre-Hearing Statements, Party briefs, Hearing Officer findings and recommendations, Party objections and requests for clarification, rulings on objections and requests for clarification, Hearing transcripts, and other documents that are relevant to deciding the issue of an Applicant’s request to receive or modify a benefit.

B. **Applicant:** Any member of SCERA, or a person or other entity on behalf of a member of SCERA, who files an Application with SCERA to request or modify a benefit that the Board of Retirement may grant pursuant to its authority set forth in the CERL.

C. **Application:** The paper(s) initially filed with SCERA by or on behalf of an Applicant, and/or any amended paper(s) filed with SCERA by or on behalf of an Applicant after the initial filing, to request or modify a benefit provided by SCERA.

D. **Board:** The Board of Retirement of SCERA.

- E. Days: All days are calendar days.
- F. Disability Committee: The standing committee of the SCERA Board that reviews disability Applications and makes recommendations to the Board regarding those Applications.
- G. Effective Date: The effective date of any disability retirement benefits shall be governed by Government Code §31724.
- H. Hearing: Presentation of sworn testimony, other evidence, and legal argument before a Hearing Officer on the merits of an Application or benefit determination.
- I. Hearing Officer: Pursuant to Government Code §31533, either a current member of the California State Bar on the approved SCERA Hearing Officer Panel, an Administrative Law Judge whose services are obtained through the Office of Administrative Hearings, or a member of the Board of Retirement.
- J. Hearing Rules, Rules: The “Board of Retirement Policy, Administrative Hearing Rules and Procedures.”
- K. Medical Witness: A person who by profession is a physician, surgeon, psychologist, optometrist, dentist, podiatrist, or chiropractic practitioner licensed by the State of California or by such other jurisdiction of the United States in which such person maintains his or her regular license in good standing.
- L. Member Services Manager: The SCERA staff member who manages the Member Services Department of SCERA or his / her designee.
- M. Party or Parties: SCERA and / or any Applicant who sought administrative review of a decision by the Board.
- N. Pre-Hearing Conference: A Pre-Hearing Conference is a conference between the Applicant(s) and SCERA conducted by the assigned Hearing Officer to discuss preliminary matters related to the Hearing process.
- O. Respondent: SCERA and / or Board.

- P. Rule: A Hearing Rule including all subparagraphs or subdivisions as contained in this SCERA Board of Retirement Policy on Administrative Hearing Rules and Procedures.

### III. ADMINISTRATIVE HEARING RULES

- A. **Hearing Initiation and Scope:** A written request for Hearing must be received by the Board, or its designee, within sixty (60) days after the initial Board determination on an Application for disability retirement or benefit appeal. If the Applicant does not provided a written request for Hearing within sixty (60) days, the Board's initial determination will be final, and SCERA staff will notify the Applicant in writing of the final determination. A Hearing shall be scheduled before a Hearing Officer. For disability retirement Hearings, the Board on its own referral may limit the issues to be presented to permanent incapacity, service connection, or effective date only. If not so limited, the disability retirement Hearing will address the issues of permanent incapacity, service connection, and effective date. Except as set forth in these Rules, for disability retirement Hearings and all other administrative Hearings, the Hearing Officer shall not make a finding or recommendation on any claim that was not raised before the Board. These Hearing Rules will apply to disability retirement Hearings and all other administrative Hearings.
- B. **Notification of Request for or Referral to a Hearing / Assignment of Hearing Officer:**
1. Within fourteen (14) days after SCERA receives a request for Hearing or referral to a Hearing, SCERA counsel will notify the Applicant in writing of options for selection of a Hearing Officer.
  2. The Applicant shall have thirty (30) days from the date set forth on the notice to inform SCERA of his or her Hearing Officer election.
  3. The Applicant may either select a Hearing Officer from the SCERA Hearing Officer panel or have a Hearing Officer assigned by the Office of Administrative Hearings. If the Applicant has not provided notice of his or her Hearing Officer choice within thirty (30) days of notice, SCERA staff will randomly assign a Hearing Officer.
- C. **Reassignment of Hearing Officers:** A Hearing Officer may be removed and a new Hearing Officer assigned under the following circumstances:

1. **Removal for Cause:** Each Party is entitled to challenge a Hearing Officer for cause by submitting a written request, with supporting declarations and any other evidence the Party is relying on, to the Member Services Manager, who shall then place the matter on the agenda for the next regularly scheduled Board meeting. The Board will then decide whether the party has stated sufficient reasons for the removal of the assigned Hearing Officer. If the Board determines the Hearing Officer should be removed, a new Hearing Officer will be assigned pursuant to section III, B above from the SCERA Hearing Officer panel or the Office of Administrative Hearings.
  2. **Removal Due to Unforeseen Circumstances:** If the service of a Hearing Officer is discontinued due to unforeseen circumstances, including but not limited to death, termination with or without cause, or for medical restrictions, the assigned Hearing Officer will be assigned pursuant to section III, B above from the SCERA Hearing Officer panel or the Office of Administrative Hearings.
- D. **Notice of Appointment to Hearing Officer:** When the selection of the Hearing Officer has been made, the SCERA counsel shall contact the Hearing Officer by letter notifying the Hearing Officer of his / her assignment, providing the name, address and phone number of the Applicant, Applicant's counsel, if any, and counsel representing SCERA.
- E. **Preparation of the Administrative Record:** Following receipt of the request for a Hearing, SCERA counsel shall assemble the Administrative Record and provide it to the Applicant or his or her attorney, if any, and the Hearing Officer.
- F. **Pre-Hearing Statements:** The Applicant and SCERA's counsel shall serve a Pre-Hearing Statement on the other Party and the Hearing Officer no later than thirty (30) days before the date on which the Hearing is to be held.
1. The Pre-hearing Statement shall include the following:
    - a. A statement of the issues and contentions of the Party, and a summary of the evidence to be presented;
    - b. A list and copies of any expert's reports, depositions of any witnesses, and any other documentary evidence, if not already in the Administrative Record;
    - c. The names, addresses and telephone numbers of any non-expert witnesses whose testimony the Party intends to present at the Hearing and a brief description of the content of that testimony; and

- d. The names, addresses and phone numbers of any expert witnesses whom the Party intends to call for oral testimony at the Hearing and a synopsis of the expected testimony.
2. If at any time during the Hearing process the Applicant (i) alleges an injury or disease not listed on the disability retirement Application; (ii) raises an issue that was not previously presented to the Board; or (iii) submits additional material evidence that may have a substantial effect on the Board's determination, the Hearing process may be suspended by SCERA and the Application treated as an amended Application. The amended Application shall be referred back to SCERA to be processed. If the Board denies the amended Application or refers it for Hearing, the Hearing Officer who is presiding at the time of the suspension will hear all allegations at the same time. A new Hearing date will be set in accordance with Rule 8 and all Pre-Hearing Statements not already served will be due in accordance with the new Hearing date.
  3. If an Applicant disputes the Effective Date established by the Board, or the Applicant contends the Effective Date is not the Application date, that Applicant shall raise the Effective Date as an issue and shall state that Applicant's contention in his / her Pre-Hearing Statement.
  4. Any Party may submit supplemental Pre-Hearing Statements in the event of a change of witnesses or discovery of additional documentary evidence. Supplemental Pre-Hearing Statements shall be served on the Parties and the Hearing Officer no later than fourteen (14) days prior to the Hearing date. Supplemental Pre-Hearing Statements served later than fourteen (14) days before the Hearing may be disregarded by the Hearing Officer.
- G. **Applicant's Non-Compliance in Submitting Pre-Hearing Statement:** If, after written notification from SCERA's counsel and a final opportunity to provide a Pre-Hearing Statement, an Applicant does not comply with the requirements of Rule III, F above, the Hearing shall be taken off calendar and the administrative proceeding shall be suspended until the Pre-Hearing Statement has been filed unless otherwise agreed to by the Parties. Subject to Rule III, T, "Dismissal," once the Pre-Hearing Statement has been filed, the Hearing will be reset in the same manner as set forth in Rule III, H, below.
- H. **Establishing a Hearing Date and Time:** The Hearing Officer will confer with the Parties to set a mutually agreeable Hearing date. The Hearing will be held

within the time frame provided by Rule 21. The Hearing Officer may continue any Hearing upon stipulation of the Parties or for good cause upon written request of either Party. The Hearing Officer will confer with the Parties to set a new Hearing date that is agreeable to the Parties. Hearings that are not concluded within the original time set shall be continued to the next agreeable Hearing date.

I. **Reporting and Place of Hearings:** SCERA, at its expense, shall arrange for a court reporter and a Hearing room. All Hearings on the merits shall be held at the offices of Sonoma County Counsel or other conference rooms in the County of Sonoma administrative offices as necessary. Pre-Hearing Conferences shall be held at the Sonoma County Counsel offices and may be held telephonically on the agreement of the Parties and the Hearing Officer.

J. **Documentary Evidence:**

1. **Statement of Policy:** Documentary evidence shall be produced in the form of written medical reports or other documentary evidence attached to the Parties' Pre-Hearing Statements or included in the Administrative Record. A written medical report bearing the signature of the Medical Witness shall be admissible in evidence as the author's direct testimony.
2. **Late Submission of Documentary Evidence:** Documentary evidence that could not have been previously produced despite reasonable diligence may be submitted at any time up to and including the day of the Hearing. Upon submission of such documentary evidence, the Hearing Officer shall allow the other Party or Parties sufficient time to review the evidence and obtain rebuttal evidence from experts.

K. **Pre-Hearing Discovery:**

1. **Documentary Evidence:** Generally, all documentary evidence will be contained in the Administrative Record prepared by SCERA and supplemented with documents provided by the Applicant.
2. **Depositions:** Witness depositions may be taken by either Party before a certified shorthand reporter and shall be taken under oath or affirmation. The Party taking the deposition shall pay all associated costs. If any Party offers any portion of any deposition testimony into evidence at the Hearing, that Party shall provide a full copy of the deposition transcript to each adverse Party and the Hearing Officer free of charge.

3. **Subpoenas and Related Fees / Costs:**

- a. Any Party may request a subpoena for the personal appearance of a witness at the time of the Hearing or at a deposition. The request must be in writing and addressed to the Member Services Manager. SCERA will prepare the subpoena, but the requesting Party shall be obligated to serve the subpoena and pay all associated witness fees and costs of service. The Party requesting oral testimony of an expert witness shall in all cases be responsible for any expert witness fees.
- b. Any Party may request a subpoena for the production of documents. The request must be in writing and addressed to the Member Services Manager. SCERA will prepare the subpoena, but the requesting party shall be obligated to serve the subpoena and pay all associated costs of service and production.
- c. Any fee disputes between a witness and the requesting Party is independent from any proceeding between the Applicant and SCERA. Those fee disputes shall be resolved by the requesting Party and the witness in the California courts, not in this forum. The Hearing Officer has no authority or jurisdiction to hear evidence about, or decide any such dispute.

4. **Subpoena Power:** The subpoena power of the Board is granted by Gov. Code § 31535 (*see also Gov. Code § 25170*). If a witness fails to appear at a deposition or Hearing, or refuses to answer questions after the Hearing Officer determines the witness must answer, the Hearing Officer shall refer the matter to the Board with a recommendation that the witness be held in contempt pursuant to the SCERA By-Laws.

- L. **Resolution of Disputes About Discovery and Conduct of Hearings:** With the exception of accusations and findings of contempt, the Hearing Officer shall resolve disputes about depositions and conduct of the Hearing. If not made at a Hearing, a request for resolution of a dispute shall be made in writing and may be supported by declarations, a copy of the deposition or Hearing transcript, a memorandum of points and authorities and a proposed resolution. The adverse Party involved shall have ten (10) days after receipt of such a request in which to respond. Declarations, a copy of the deposition or Hearing transcript, a memorandum of points and authorities and a proposed resolution may also accompany the response. The Hearing Officer shall notify the Parties and the

witness(es) involved of the Hearing Officer's resolution of the dispute within thirty (30) days of the Hearing Officer's receipt of the adverse Party's response to the request for resolution. Where the Hearing Officer has decided a dispute pursuant to this section and determined a Party has unreasonably failed to comply, the Hearing Officer may impose any sanction available under the Code of Civil Procedure in a superior court civil matter. Such sanctions include, but are not limited to, drawing adverse inferences against the non-complying Party, or suspending or terminating the proceedings.

**M. Conduct of Hearings:**

1. Oral evidence shall be taken only on oath or affirmation administered by the Hearing Officer or the shorthand reporter.
2. Interpreters:
  - a. If an Applicant or witness does not speak or understand English sufficiently to participate in the proceedings or provide testimony, an interpreter certified to provide interpretation services in administrative hearings shall be provided to that Applicant or witness at SCERA's expense. An Applicant or witness who requires interpreting services shall provide SCERA with reasonable notice in advance of the Hearing of the need for an interpreter and the language the Applicant or witness will use during the proceedings so that SCERA has sufficient time to locate and contract with an interpreter.
  - b. The Hearing Officer may continue or reschedule a Hearing so that the Applicant or witness requesting an interpreter can be accommodated.
  - c. All interpreters in SCERA's Hearings shall be certified to provide interpreting services in administrative hearings pursuant to Gov. Code § 11435.30. The interpreter shall not have had any involvement in the issues of the case prior to the Hearing.
  - d. If an Applicant or witness objects to the interpreter provided by SCERA and wishes to locate his or her own interpreter certified under Gov. Code § 11435.30, the Applicant or witness shall provide SCERA with contact information for his or her chosen interpreter. SCERA will pay the chosen interpreter the same amount SCERA would have paid an interpreter hired directly by SCERA. The Applicant or witness shall be responsible for any amounts charged by the interpreter that are over the amount SCERA would have paid to an interpreter hired directly by SCERA. Fee disputes



between the interpreter and the Applicant or witness shall not be resolved in this forum, and the Hearing Officer shall have no authority to resolve any fee disputes between interpreters and the Parties.

3. Each Party shall have these rights:
  - a. Subject to paragraph (b) of this subsection (3) of this Rule, to call and examine witnesses; to introduce exhibits, including reports and depositions of medical witnesses; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which Party first called the witness to testify; and to rebut adverse evidence. If an Applicant does not testify by direct examination, SCERA may call and examine the Applicant under cross-examination.
  - b. Any witness not listed in a Party's Pre-Hearing Statement shall not be called, and any evidence not provided with the Pre-Hearing Statement shall not be admitted except on a showing of good cause. If an unlisted witness is called to testify, the other Party or Parties may request a continuance of the Hearing to obtain rebuttal evidence and / or to cross-examine the unlisted witness. The Hearing Officer, in his or her discretion, may exclude an unlisted witness upon a finding that the unlisted witness' testimony will be repetitive or will not be relevant. The Party who originally called the unlisted witness to testify shall bear the responsibility of ensuring the unlisted witness's attendance at each further Hearing set for that witness's cross-examination. If the unlisted witness does not attend a subsequent Hearing set for cross-examination, the testimony provided on direct examination will not be admitted into evidence.
4. The Hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Irrelevant and unduly repetitious evidence shall be excluded. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the Hearing.

5. Hearsay evidence may be used for the express purpose of supplementing or explaining other evidence but shall not be sufficient by itself to support a finding unless it would be admissible over objection in civil actions.
  6. Each Party shall have the right to submit oral or written argument, as determined by the Hearing Officer.
  7. The record shall be closed to new evidence at the conclusion of the final day of Hearing unless each Party stipulates to leave the record open. However, if subsequent to the close of the Hearing, a Party discovers or obtains new evidence that is relevant and not repetitive, that Party may submit that evidence to the Hearing Officer to be considered for inclusion in the Administrative Record. The Hearing Officer may require the Parties to provide declarations and argument about inclusion of the new evidence. If, after showing of Good Cause under Rule 12(b), the Hearing Officer allows inclusion of the new evidence, the opposing Party will be provided an opportunity to submit rebuttal evidence in accordance with Rule 12(b).
- N. **Findings of Fact, Conclusions of Law, and the Hearing Officer's Recommended Decision:** The Hearing Officer shall serve his / her Proposed Findings of Fact, Conclusions of Law, and Recommended Decision on all Parties or their counsel. Service shall be made within thirty (30) days of either (i) the date the Hearing Officer receives the last brief or (ii) the date the Hearing Officer deems the matter closed.
- O. **Objections to and Responses to Objections to the Hearing Officer's Findings of Fact, Conclusions of Law, and Recommended Decision:**
1. Any Party shall have thirty (30) days after service of the Proposed Findings of Fact, Conclusions of Law, and Recommended Decision, to submit written objections and / or written requests for clarification to the Hearing Officer and serve such objections and / or requests for clarification on each other Party.
  2. The Hearing Officer, in his or her discretion, may reopen the record for good cause if additional evidence accompanies an objection.
  3. Each adverse Party shall then have twenty (20) days after service of the written objections and / or written requests for clarification to serve a response to them.
  4. If the Hearing Officer reopens the record to receive additional evidence, the other Party or Parties shall be given sufficient time to obtain rebuttal evidence.

5. The objections and / or requests for clarification and any response shall be added to the Administrative Record to be considered by the Board.
  6. Within thirty (30) days after the later of the date that Hearing Officer receives the objections and / or requests for clarification or an adverse party's response to such objections and / or requests for clarification, the Hearing Officer may:
    - (a) Affirm the findings, conclusions, and recommendations as originally submitted, or
    - (b) Make such changes the Hearing Officer deems appropriate in light of the evidence, the objections or requests for clarification submitted by the Parties, and the responses.
- P. **Content of Hearing Officer's Proposed Findings of Fact and Recommended Decision:** The Hearing Officer's Proposed Findings of Fact, Conclusions of Law and Recommended Decision shall include a summary of the following: (1) issues raised by the parties; (2) the testimony; (3) the exhibits offered by the parties, both those received into evidence and those not received; (4) procedural issues resolved by the Hearing Officer, if any; (5) a factual discussion of evidence upon which the Hearing Officer relied; (6) conclusions of law with citations to legal authority; and (7) recommended action.
- Q. **Action by the Board:** The Hearing Officer's Proposed Findings of Fact and Recommended Decision shall be referred to the Disability Committee for its consideration and recommendation to the Board. The Proposed Findings of Fact and Recommended Decision shall include the Hearing Officer's Proposed Findings of Fact, Conclusions of Law and Recommended Decision, any related objections and/or requests for clarification and any responses to those objections and/or requests for clarification. After reviewing the foregoing documents, pursuant to Government Code §31534, the Board may:
1. Approve and adopt the proposed findings, conclusions and recommendation of the Hearing Officer; or
  2. Require a transcript or summary of all Hearing testimony, plus all other evidence received by the Hearing Officer. On receipt thereof, the Board shall take such action as in its opinion is indicated by such evidence; or

3. Refer the matter back, with or without instructions, to the Hearing Officer for further proceedings; or
  4. Set the matter for Hearing before itself. At such hearing, the Board shall hear and decide the matter de novo. Generally, the Board will only set a new hearing before the Board itself when there has been a showing of irregularity in the Hearing proceedings, misconduct of the Hearing Officer or counsel, or accident or surprise, which ordinary prudence could not have guarded against.
- R. **Board's Decision After Its Review of the Record:** In any case where the Board makes a decision based on a transcript or summary of all Hearing testimony, plus other evidence received by the Hearing Officer, the Board may approve and adopt the Proposed Findings, Conclusions of Law and Recommended Decision of the Hearing Officer or direct the prevailing Party to prepare Proposed Findings of Fact, Conclusions of Law and Recommended Decision consistent with the Board's tentative decision. In cases where the Board sets the matter for Hearing before itself, the Board shall direct the prevailing Party to prepare Proposed Findings of Fact, Conclusions of Law and Recommended Decision consistent with the Board's tentative decision. The Proposed Findings shall then be served on the unsuccessful Party who shall have ten (10) days after such service to serve and file written objections to the Board. The Party who drafted the Proposed Findings shall then have the opportunity to respond in writing within ten (10) days. The Board shall then consider such written objections, if any, and then adopt its final decision as it deems appropriate.
- S. **Alteration of Time Requirements:** Nothing in these Rules shall be construed to prevent the Parties from stipulating to different intervals than those prescribed in these Rules. The Hearing Officer may, for good cause shown after giving both parties an opportunity to be heard, shorten or lengthen the times specified above as he / she deems necessary.
- T. **Dismissal Without Prejudice for Failure to Pursue the Hearing:** Except as otherwise provided, if, as a result of an Applicant's failure to comply with any of these Rules and / or with any request made by either the Hearing Officer or Member Services staff, the Applicant's request for an Administrative Hearing or Board referral is not heard within one year after receipt of the Applicant's request for Hearing, or the Board's referral of a case to a Hearing Officer, the case shall be dismissed without prejudice by the Board. This section in no way limits an Applicant's right to refile an Application in the future. Any new Application shall

receive a new Application date, and there will be no relation back to any prior Application.

- U. **Service of Documents:** Unless otherwise agreed to by the Hearing Officer and Parties in writing, service of documents provided for in these Rules may be made by first class mail, postage pre-paid, by personal delivery, or by facsimile or electronic mail. If documents are sent by first-class mail, the postmark date shall be deemed the date of service. If served by facsimile transmission or electronic mail, the service date for any documents so delivered will be the date shown in a delivery receipt generated by the facsimile machine or electronic mail program.

#### IV. CONFLICT WITH LAWS

In the event that this policy and process conflicts with relevant statute or authoritative case law, the statute or case law will control.

#### V. HISTORY

The Board adopted this policy on 2/22/2018 (effective April 10, 2018, on Board of Supervisors approval of Bylaw amendments).