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Title 292 WAC

ETHICS IN PUBLIC SERVICE

Chapters 292-100

Procedural rules.

Chapter 292-100 WAC PROCEDURAL RULES

WAC

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WAC 292-100-005 Purpose. The purpose of this chapter is to promulgate executive ethics board rules concerning complaints, investigations, and hearings pursuant to RCW 42.52.410, 42.52.420, 42.52.430, 42.52.470 and 42.52.500.

[Statutory Authority: RCW 42.52.360 (2)(b), 99-06-073, § 292-100-005, filed 3/2/99, effective 4/2/99.]

WAC 292-100-006 Adoption of model rules of procedure. The model rules of procedure, chapter 10-08 WAC, adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended, are hereby adopted for use by the board. In the case of a conflict between the model rules of procedure and procedural rules adopted in this chapter, the procedural rules adopted by the board shall take precedence.

[Statutory Authority: RCW 42.52.360 (2)(b), 99-06-073, § 292-100-006, filed 3/2/99, effective 4/2/99.]

WAC 292-100-007 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board staff" shall include the executive secretary, the investigator, attorneys who bring cases before the board, and the board clerk.

(2) "Complainant" means a person who has filed a complaint with the board.

(3) "Employing agency" means the former or current state agency of the respondent during the time the alleged violation occurred.

(4) "Party" includes the board staff and the respondent. The respondent may be represented in any matter filed under chapter 42.52 RCW by an attorney or an exclusive bargaining representative. If the respondent is represented by a person who is not an attorney, the representation shall conform to the standards of ethical conduct required of attorneys before the courts of the state of Washington.

(5) "Preliminary investigation" refers to the confidential fact-finding investigation that occurs before the board's determination of reasonable cause.

(6) "Presiding officer" refers to the board chair, vice chair, a board member designated as presiding officer by the chair or vice chair, or an administrative law judge.

(7) "Respondent" means a current or former state officer or state employee alleged to have violated chapter 42.52 RCW by a complainant.

[Statutory Authority: RCW 42.52.360 (2)(b), 99-06-073, § 292-100-007, filed 3/2/99, effective 4/2/99.]

WAC 292-100-010 Initiation of complaint. (1) A complaint alleging a violation of chapter 42.52 RCW may be filed by:

- (a) Any person;
- (b) The board;

(2) If a member of the board or the board's staff files a complaint in his or her individual capacity, the board member or staff member shall be disqualified from acting in his or her official capacity with regard to the disposition of that complaint.

(3) Other agencies may refer information about possible violations of chapter 42.52 RCW to the board for consideration. The board may file a complaint if appropriate.

(4) Complaints initiated by the board will be signed on behalf of the board by the executive secretary.

[Statutory Authority: RCW 42.52.360 (2)(b), 99-06-073, § 292-100-010, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b), 96-22-028, § 292-100-010, filed 10/30/96, effective 11/30/96.]

WAC 292-100-020 Complaint procedures—Status of complainant and others. (1) When a complaint has been filed with the board, neither the complainant, if other than board, nor any other person shall have special standing to participate or intervene in the investigation or consideration of the complaint by the board. The complainant is not a party to an ethics case for any purpose; however, the board staff will give notice to the complainant and the employing agency of any open board hearings on the matter.

(2) The person or persons alleged in a complaint to have violated chapter 42.52 RCW, are respondents as to that complaint.

[Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-020, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-020, filed 10/30/96, effective 11/30/96.]

WAC 292-100-030 Procedures for filing complaints.

(1) A complaint filed with the board shall be in writing on a form provided by the board, or in an appropriate written form that includes the information in subsection (2) of this section, and signed by the complainant. A complaint signed by the complainant may also be filed by the complainant's attorney.

(2) A complaint shall include:

(a) The complainant's name; except that the board may choose to issue a complaint based upon information provided by a person who refuses to be identified;

(b) A statement of the nature of the alleged violation or violations, date, time and place of each occurrence and name of person or persons responsible; and

(c) All available documentation and other evidence including any witnesses to the violation which the complainant is able to supply to demonstrate a reason for believing that a violation of chapter 42.52 RCW, or the rules adopted under it has occurred.

(3) A complaint which is incomplete, or does not contain enough information to allege a violation of chapter 42.52 RCW, will not be accepted for filing.

(4) The board will not consider allegations in a properly filed complaint that fall outside the jurisdiction of the board. The board or its staff may refer such allegations to an appropriate agency with jurisdiction.

[Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-030, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-030, filed 10/30/96, effective 11/30/96.]

WAC 292-100-040 Investigation of complaints. (1)

Upon acceptance of a complaint the board staff shall conduct an investigation.

(2) If board staff determine that a complaint alleges conduct which may violate a criminal statute, the staff may refer the complaint to the appropriate prosecuting attorney or the Washington State Patrol and if referred, will suspend their investigation until the prosecuting attorney or the Washington State Patrol responds as to whether criminal charges will be filed. If the prosecuting attorney elects to file criminal charges, no further action will be taken while the criminal case is pending. If the prosecuting attorney elects not to file criminal charges, board staff shall complete their investigation and follow the procedures set forth in these rules.

(3) During the course of the preliminary investigation, the board staff will give the respondent(s) a copy of the complaint and an opportunity to present such information as the respondent may desire, provided that if a complainant has requested confidentiality under chapter 42.17 RCW, the complainant's name and identifying information will be deleted from the complaint.

(4) It is the intent of the board that board staff who are investigating a complaint will work with the respondent's

employing agency, unless in the judgment of the investigator it will impede the investigation. During the course of the investigation, the board staff will provide the employing agency with a copy of the complaint. If a complainant has requested confidentiality under chapter 42.17 RCW, the complainant's name and identifying information will be deleted from the complaint.

(5) The board staff may refer a complaint to the employing agency for investigation and recommendation of resolution. The referral will include a copy of the complaint and all supporting documentation and shall include a date for submission of the report and recommendation allowing at least 30 days. The agency receiving the referral may request additional time, if needed. During the course of the agency's investigation, the agency shall contact the respondent and provide the respondent with a copy of the complaint. If a complainant has requested confidentiality under chapter 42.17 RCW, the complainant's name and identifying information will be deleted from the complaint. The agency will provide the respondent with an opportunity to present such information as the respondent may desire.

[Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-040, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-040, filed 10/30/96, effective 11/30/96.]

WAC 292-100-050 Determination on reasonable

cause. (1) Following the preliminary investigation, the board staff shall prepare a written investigation report and make a recommendation to the board on whether to find reasonable cause, including a recommendation as to whether the penalty may be greater than \$500.

(2) Upon receipt of the board staff's investigation report and recommendation, the board shall determine whether or not there is reasonable cause to believe that a violation of chapter 42.52 RCW has occurred.

(3) The board's reasonable cause determination shall be done in closed session.

(4) If the board finds reasonable cause, the board shall consider whether the penalty for the alleged violation may be greater than \$500. If the board concludes that the potential penalty and costs may be greater than \$500, the respondent shall be given the option to have an administrative law judge conduct the hearing and rule on procedural and evidentiary matters. If the respondent is not given that option, the board may not impose a penalty or costs greater than \$500. The board may, on its own initiative, choose to retain an administrative law judge to conduct any hearing.

(5) Upon receipt of an investigation report and recommendation on a complaint referred to the employing agency for investigation, the board shall either:

(a) Reject the report and recommendation and initiate its own investigation; or

(b) Concur with the report and recommendation and either initiate a hearing if the recommended penalty is a monetary fine or refer the matter to the employing agency for implementation of the recommendation if the recommendation is within the agency's authority to implement. The agency shall report implementation to the board and the board shall dismiss the complaint; or

(c) Concur with the report and recommendation, enter a finding of no reasonable cause and dismiss the complaint; or

(d) Concur with the report and recommendation, consider the report an investigative report, enter a finding of reasonable cause, and proceed under this section.

[Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-050, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-050, filed 10/30/96, effective 11/30/96.]

WAC 292-100-060 Filing of answer—Notice of hearing. (1) Following the board's determination on reasonable cause, the board shall provide the complainant, the respondent and the employing agency with a copy of the written determination on reasonable cause, a copy of the board staff's written investigation report, and a copy of the complaint. If a complainant has requested confidentiality under chapter 42.17 RCW, the complainant's name and identifying information will be deleted. If reasonable cause is found, the determination of reasonable cause shall include a statement of the alleged violations. Prior to scheduling a public hearing, the board shall provide the respondent with an explanation of the option to request that the hearing be conducted by an administrative law judge if the penalty and costs for the alleged violation may be greater than \$500.

(2) Within 30 days of service of the written determination on reasonable cause, the respondent shall file an answer to the written determination on reasonable cause which shall state his/her response to the alleged violations.

(3) Failure to file an answer to the written determination on reasonable cause within 30 days of service constitutes a default, and the board may proceed to resolve the case without further notice to, or hearing for the benefit of, the respondent.

(4) Within 10 days after service of a default order under subsection (3) of this section, the respondent may file a written motion requesting that the order be vacated, and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the board chair or a designated board member may adjourn further proceedings or conduct them without the participation of the respondent.

(5) Within 30 days of service of the written determination on reasonable cause, the respondent shall file a request for hearing. The request shall include either a request for or a waiver of the right to request an administrative law judge if the penalty and costs for the alleged violation may be greater than \$500.

(6) The respondent shall be notified of the date of the hearing no later than 30 days before the hearing date.

[Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-060, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-060, filed 10/30/96, effective 11/30/96.]

WAC 292-100-070 Investigation materials not disclosable during investigation. (1) It is the policy of the board during the course of any investigation that all records generated or collected as a result of that investigation are exempt from public inspection and copying under RCW

42.17.310 (1)(d). The investigation is not considered complete until a case is resolved either by a stipulation and settlement that is signed by all parties; or, when the board enters a final order after a public hearing. If a public records request is made following a signed stipulation and settlement or a final order for any such record which implicates the privacy of an individual, written notice of the records request will be provided to the individual in order that such individual may request a protective order from a court under RCW 42.17.330.

[Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-070, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-070, filed 10/30/96, effective 11/30/96.]

WAC 292-100-080 Investigation procedures—Subpoenas. (1) During the course of an investigation, the board, or any board member, may issue a subpoena directed to any person who is likely to possess information which is relevant and material to the investigation. The subpoena shall:

(a) Specifically describe the information which is sought, and

(b) Require the production of information at a reasonable place and time, but no later than ten days from the date it is served, and

(c) Notify the person that if the information is not produced, the board will apply to the superior court for an appropriate order or other remedy. The subpoena may be personally delivered or sent by certified mail, return receipt requested.

(2) The board may issue a subpoena under RCW 42.52.390 to compel persons to appear and give testimony and may require the production of any books, papers, correspondence, memorandums or other documents which the board deems relevant and material.

[Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-080, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-080, filed 10/30/96, effective 11/30/96.]

WAC 292-100-090 Informal settlement—Cases resolvable by stipulation. (1) RCW 34.05.060 authorizes agencies to establish by rule specific procedures for attempting and executing informal settlement of matters. The following procedures are available for informal dispute resolution that may make more elaborate proceedings under the Administrative Procedure Act unnecessary.

(a) Any respondent may request settlement by notifying board staff in writing.

(b) If settlement may be accomplished by negotiation, negotiations shall be commenced at the earliest possible time. When board staff and the respondent agree that some or all of the facts are uncontested and a stipulation of the facts is reached, board staff is responsible for providing a written description of the recommended resolution or stipulation to the person(s) involved.

(c) If settlement of a hearing may be accomplished by informal negotiation, negotiations may be concluded by:

(i) Stipulation of facts by the parties; or

(ii) Stipulation of facts, conclusions and penalty by the parties.

(iii) A stipulated order agreed to by the parties.

(d) Board staff shall only present proposed stipulations and settlements to the board which it recommends the board adopt.

(2) Any proposed stipulation shall be in writing and signed by each party to the stipulation and his or her attorney, if represented. The stipulation may be recited on the record at the hearing. The board has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the board accepts the stipulation or modifies the stipulation with the agreement of the respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or the respondent does not agree to the board's proposed modifications to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussions shall not be admitted into evidence at a subsequent public hearing. If the board requests additional facts be presented, the matter shall be referred to the board staff for further investigation.

[Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-090, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-090, filed 10/30/96, effective 11/30/96.]

WAC 292-100-100 Prehearing conference—Rule. (1)

In any proceeding, the presiding officer upon his/her own motion or upon request by board staff or the respondent or their counsel, may direct the board staff or respondent to appear at a specified time and place for a conference to consider:

- (a) Simplification of issues;
- (b) The necessity of amendments to the hearing notice;
- (c) The possibility of obtaining stipulations, admissions of facts and of documents;
- (d) Limitation on the number of witnesses;
- (e) Authorizing discovery by any party; and
- (f) Procedural and such other matters as may aid in the disposition of the proceeding.

(2) Prehearing conferences may be held by telephone conference call or at a time and place specified by the presiding officer.

(3) Following the prehearing conference, the presiding officer shall issue an order reciting the action taken and decisions made at the conference. If no objection to the order is filed with the presiding officer within seven days after the date the order is mailed, the order shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

[Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-100, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-100, filed 10/30/96, effective 11/30/96.]

WAC 292-100-105 Discovery—Authority of presiding officer. After a finding of reasonable cause, no discovery is permitted by a party pursuant to WAC 292-100-110 through 292-100-150 unless authorized by the presiding

officer. In deciding whether to authorize discovery and the extent of discovery to be allowed, the presiding officer shall consider the party's need for discovery while ensuring that discovery does not unduly delay the hearing. If the determination of reasonable cause includes an allegation that the respondent has violated RCW 42.52.180, the presiding officer shall permit discovery by the parties. Prior to the appointment of a presiding officer, the chair or other member designated by the board may authorize discovery if the party can demonstrate a compelling reason why discovery must be conducted prior to the appointment of a presiding officer.

[Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-105, filed 3/2/99, effective 4/2/99.]

WAC 292-100-110 Hearings—Discovery—Subpoenas.

(1) The board, a board member, or the executive secretary may issue subpoenas for discovery, subpoenas to persons to appear and give testimony, and may require the production of any books, papers, correspondence, memoranda, or other records deemed relevant or material and the board or presiding officer may issue protective orders as appropriate. Any party may issue subpoenas. All subpoenas for hearings must be filed with the board, together with proof of proper service, at least five days prior to the date of the hearing for which they are issued. All subpoenas will be issued and may be enforced in the form and manner set forth in RCW 34.05.446 and WAC 10-08-120.

(2) The board, upon motion and before the time specified in the subpoena for compliance therewith, may:

- (a) Quash or modify the subpoena if it is unreasonable and oppressive; or
- (b) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(3) The attendance of witnesses and such production of evidence may be required from any place within the state of Washington to any location where a hearing is being conducted.

[Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-110, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-110, filed 10/30/96, effective 11/30/96.]

WAC 292-100-120 Hearings—Discovery—Methods

authorized. The following discovery methods are authorized: Deposition upon oral examination, written interrogatories, requests for production, and requests for admission. Deposition upon oral examination, written interrogatories, and requests for admission may be used as evidence in the hearing. The attendance of witnesses to a deposition may be compelled by use of a subpoena. Depositions shall be taken only in accordance with this rule and the rules on subpoenas, except that board staff and the respondent may stipulate to other arrangements.

[Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-120, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-120, filed 10/30/96, effective 11/30/96.]

WAC 292-100-130 Hearings—Discovery—Depositions and interrogatories—Notice. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice of not less than five business days in writing to all parties. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined. On motion of a party to whom the notice is served, the presiding officer may for cause shown, enlarge or shorten the time. If the parties so stipulate in writing, depositions may be taken at any time or place, upon any notice, and in any manner and when so taken may be used as other depositions.

[Statutory Authority: RCW 42.52.360 (2)(b), 99-06-073, § 292-100-130, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b), 96-22-028, § 292-100-130, filed 10/30/96, effective 11/30/96.]

WAC 292-100-140 Depositions and interrogatories in hearings—Protection of parties and deponents. After notice is served for taking a deposition, upon its own motion or upon motion reasonably made by any party or by the person to be examined and upon notice and for good cause shown, the presiding officer may order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or the board may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression.

At any time during the taking of the deposition, on motion of any party or the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the presiding officer may order the party conducting the examination to cease forthwith from taking the deposition or may limit the scope and manner of the taking of the deposition as above provided. If the order made terminates the examination, it shall be resumed only upon the order of the board. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

[Statutory Authority: RCW 42.52.360 (2)(b), 99-06-073, § 292-100-140, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b), 96-22-028, § 292-100-140, filed 10/30/96, effective 11/30/96.]

WAC 292-100-150 Discovery—Production of documents and use at hearing. (1) Upon request by either party, copies of all materials to be presented at the hearing shall be provided to the requester within seven days of the request but, for good cause shown, not less than three business days prior to the date of the hearing.

(2) When documents are to be offered into evidence at the hearing, the one offering the exhibit shall provide a minimum of ten copies, for the opposing party, members of the board, the board's legal counsel, and board staff.

(3) If documentary evidence has not been exchanged prior to the hearing, the parties shall arrive at the hearing location in sufficient time before the time scheduled for the hearing for the purpose of exchanging copies of exhibits to be introduced.

[Statutory Authority: RCW 42.52.360 (2)(b), 99-06-073, § 292-100-150, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b), 96-22-028, § 292-100-150, filed 10/30/96, effective 11/30/96.]

WAC 292-100-160 Conduct of hearings. (1) A hearing shall be conducted pursuant to the Administrative Procedure Act (chapter 34.05 RCW) and its supporting regulations (chapter 10-08 WAC), shall be followed unless modified by chapter 292-100 WAC.

(2) A hearing shall be conducted either by the board or by an administrative law judge. If an administrative law judge participates, either by request of a respondent or by request of the board, the board may choose to sit with the administrative law judge to hear the matter and to enter a final order at the conclusions of the proceedings; or to have the administrative law judge hear the matter alone and prepare an initial order for review by the board. If an administrative law judge sits with the board, he or she shall rule on procedural and evidentiary matters.

(3) After the hearing the board may find that:

(a) The respondent(s) did not violate the act, as alleged, and dismiss the case; or

(b) The respondent(s) has (have) violated chapter 42.52 RCW; or

(c) The respondent(s) is(are) in violation of chapter 42.52 RCW, the board's remedy would be inadequate and the matter should be referred to the appropriate law enforcement agency as provided in RCW 42.52.470.

(4) Following a hearing in which the board participates, the board:

(a) Shall set forth in writing its findings of fact, conclusions of law and decision on the merits of the case; and

(b) Shall serve each party, the complainant and the employing agency, a copy of the findings of fact, conclusions of law and decision.

(5) Following a hearing in which the board does not participate, the administrative law judge shall:

(a) Set forth written findings of fact, conclusions of law and decision on the merits of the case in an initial order;

(b) Shall serve each party and board staff a copy of the findings of fact, conclusions of law and decision, including a statement of the right to request review of the initial order by the board.

[Statutory Authority: RCW 42.52.360 (2)(b), 99-06-073, § 292-100-160, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b), 96-22-028, § 292-100-160, filed 10/30/96, effective 11/30/96.]

WAC 292-100-170 Review of initial orders by an administrative law judge. (1) An initial order by an administrative law judge shall become the final order of the board within twenty days of the initial order unless:

(a) The board, upon its own motion, determines that the initial order should be reviewed;

(b) A party files a petition for review of the initial order within twenty days of the entry of the initial order.

(2) The petition for review will specify the portions of the initial order to which exception is taken and will refer to the evidence of record relied upon to support the petition.

(3) Petitions for review shall be filed with the executive secretary and served on all other parties. The party not filing the petition for review shall have twenty days to reply to the petition for review. The reply shall be filed with the executive secretary and copies of the reply shall be served on all other parties or their counsel at the time the reply is filed, and may cross-petition for review. If the reply contains a cross-petition, it shall specify portions of the initial order to which exception is taken by the replying party, and shall refer to the evidence of the record relied upon to support the reply.

(4) The board shall personally consider the whole record or such portions of it as may be cited by the parties.

(a) The board shall afford each party an opportunity to present written argument and may afford each party an opportunity to present oral argument.

(b) The board shall enter a final order disposing of the proceeding.

(c) The board shall serve copies of the final order on all parties, the complainant, and the employing agency.

[Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-170, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-170, filed 10/30/96, effective 11/30/96.]

WAC 292-100-180 Brief enforcement hearing—Authority. The board may provide a brief enforcement hearing for violations of provisions in chapter 42.52 RCW in which the facts are undisputed, the violations appear to be relatively minor in nature, and a penalty no greater than \$500 will be assessed for the violations.

[Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-180, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-180, filed 10/30/96, effective 11/30/96.]

WAC 292-100-190 Brief enforcement hearing—Procedure. (1) A brief enforcement hearing may be presided over by the chair, or a member of the board designated by the chair.

(2) When a violation is alleged, before taking action, the executive secretary shall send the alleged violator notice, which shall include:

(a) Alleged violation;

(b) The maximum amount of the penalty and costs which can be imposed at the hearing and the amount of any proposed fine; and

(c) Person's right to respond, within ten days, either in writing or in person to explain his/her view of the matter.

(3) At the time of the hearing if the presiding officer believes alleged violations are of such magnitude as to merit penalties and costs greater than \$500, the presiding officer shall immediately adjourn the hearing and direct the matter to be scheduled for an enforcement hearing by the full board or an administrative law judge.

(4) At the time any unfavorable action is taken, the presiding officer shall serve upon each party a written statement describing the violation, the reasons for the decision, the penalty and costs imposed and their right to request review by the board at the next scheduled board meeting.

(5) The written decision of the presiding officer is an initial order. If no review is taken of the initial order, the initial order shall be the final order.

[Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-190, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-190, filed 10/30/96, effective 11/30/96.]

WAC 292-100-200 Brief enforcement hearing—Administrative review procedures. (1) The board will conduct a review of the initial order upon the written or oral request of a party if the board receives the request within twenty-one days after the service of the initial order.

(2) If the parties have not requested review, the board may conduct a review of the initial order upon its own motion and without notice to the parties, but it may not take any action on review less favorable to any party than the original order without giving that party notice and an opportunity to explain that party's view of the matter.

(3) The order on review shall be in writing stating the findings made, and the reasons for the decision, and notice that judicial review is available. The order on review shall be entered within twenty-one days after the date of the initial order or of the request for review, whichever is later.

[Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-200, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-200, filed 10/30/96, effective 11/30/96.]

WAC 292-100-210 Reconsideration and review of decisions. (1) For purposes of this rule, "decision" means any findings, conclusions, order, or other action by the board which is reviewable by a court.

(2) A decision may be reconsidered only upon:

(a) The written request of a party; or

(b) The motion or written request of a board member who voted on the prevailing side when that decision was made.

(3) Such a request for reconsideration shall be served at the office of the board and on all parties, or motion made, no later than ten days after service of the decision of which reconsideration is sought.

(4) A request or motion for reconsideration shall specify the grounds therefor.

(5) When a request for reconsideration is served, or motion made, enforcement of the decision of which reconsideration is sought shall be stayed and the decision shall not be final until the board has acted on the reconsideration. Any party may respond to a request or motion for reconsideration. The response is due no later than ten days after the party is served with the request of motion.

(6) The board shall act on the reconsideration, at the next meeting at which it practicably may do so by:

(a) Deciding whether to reconsider its decision; and

(b) If it decides to do so, either affirming or amending its decision. A copy of the board's decision on reconsideration shall be served on all parties, the complainant, and the employing agency.

(7) Upon being served with a decision, the respondent may treat that decision as final for the purpose of petitioning for judicial review. The board may not reconsider any decision after being served with a petition for judicial review.

[Statutory Authority: RCW 42.52.360 (2)(b), 99-06-073, § 292-100-210, filed 3/2/99, effective 4/2/99.]

Title 296 WAC

LABOR AND INDUSTRIES, DEPARTMENT OF

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Chapter 296-14 WAC INDUSTRIAL INSURANCE

WAC

296-14-100	Definition of voluntary retirement.
296-14-410	Reduction, suspension, or denial of compensation as a result of noncooperation.

WAC 296-14-100 Definition of voluntary retirement.

(1) **What is voluntarily retired?** The worker is considered voluntarily retired if both of the following conditions are met:

- (a) The worker is not receiving income, salary or wages from any gainful employment; and
- (b) The worker has provided no evidence to show a bonafide attempt to return to work after retirement.

Time-loss compensation is not paid to workers who voluntarily retired from the work force.

(c) Payment of union dues or medical or life insurance premiums does not constitute attachment to the work force.

(2) **When is a worker determined not to be voluntarily retired?** A worker is not voluntarily retired when the industrial injury or occupational disease is a proximate cause for the retirement.

[Statutory Authority: RCW 51.04.020, 99-18-062, § 296-14-100, filed 8/30/99, effective 9/30/99. Statutory Authority: RCW 51.32.060, 51.32.090, 51.32.160, 51.21.220(6) [51.32.220(6)] and 51.32.240 (1), (2) or (3), 86-18-036 (Order 86-33), § 296-14-100, filed 8/28/86.]

WAC 296-14-410 Reduction, suspension, or denial of compensation as a result of noncooperation. (1) **Can the department or self-insurer reduce, suspend or deny industrial insurance benefits from a worker?** The department or the self insurer, after receiving the department's order, has the authority to reduce, suspend or deny benefits when a worker (or worker's representative) is noncooperative with the management of the claim.

(2) **What does noncooperative mean?** Noncooperation is behavior by the worker (or worker's representative) which obstructs and/or delays the department or self-insurer from reaching a timely resolution of the claim.