

from time to time. [Statutory Authority: RCW 46.85-.030. 81-02-030 (Order WRC-2), § 410-20-070, filed 1/5/81.]

Title 415 WAC
DEPARTMENT OF RETIREMENT
SYSTEMS

Chapters

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415-105 Local disability board procedures.

Chapter 415-104 WAC**LAW ENFORCEMENT OFFICERS' AND FIRE FIGHTERS' RETIREMENT BOARD****WAC****SERVICE IN STATE ELECTIVE POSITIONS**

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SERVICE IN STATE ELECTIVE POSITIONS

WAC 415-104-800 Continued LEOFF membership for members in state elective positions. RCW 41.40.010(9)(b) provides in part as follows: "Service in any state elective position shall be deemed to be full time service, except that persons serving in state elective positions who are members of the teachers' retirement system or law enforcement officers' and fire fighters' retirement system at the time of election or appointment to such position may elect to continue membership in the teachers' retirement system or law enforcement officers' and fire fighters' retirement system."

An individual covered by RCW 41.40.010(9)(b) in order to remain an active member of the retirement system provided by chapter 41.26 RCW and receive service credit therein for elective service must execute a written election to do so in a format provided by the department. [Statutory Authority: RCW 41.50.050(6). 81-07-017 (Order 81-2), § 415-104-800, filed 3/10/81.]

WAC 415-104-810 Contributions and service credit for members in state elective positions. When an individual makes the election provided in WAC 415-104-800 the following shall apply:

(1) Service credit earned by virtue of elective service shall be credited in LEOFF together with service earned in LEOFF capacity except that no more than one month's service credit shall be allowed during any one calendar month.

(2) Contributions shall be paid on all basic salary earned either as a law enforcement officer or firefighter,

or as an elected official, by the employee at the rate prescribed for employees in the LEOFF retirement system.

(3) Contributions shall be paid on basic salary paid by the LEOFF employer or elected official employer at the rate prescribed for employers in the LEOFF retirement system. [Statutory Authority: RCW 41.50.050(6). 81-07-017 (Order 81-2), § 415-104-810, filed 3/10/81.]

WAC 415-104-820 Members in state elective positions—Entitlement to benefits. (1) In the event an individual who has made the election provided by WAC 415-104-800 qualifies and applies for a service or disability retirement or dies while serving in elective office, the basis for establishing the benefit amount shall be an imputed salary equal to the full salary the member would have been receiving according to the member's rank or position if the member had been in full-time service with the member's last LEOFF employer. Regular increases in basic salary will be included but increases based on promotions which might have occurred but which, in fact, did not occur shall not be considered.

(2) An individual who has made the election provided by WAC 415-104-800 shall not be eligible for a service retirement until such member has terminated both service as a law enforcement officer or fire fighter, and service as a state elective official.

(3) An individual who has made the election provided by WAC 415-104-800 shall not be eligible for a disability retirement allowance until such member has terminated both service as a law enforcement officer or fire fighter, and service as a state elective official.

(4) All payments for disability leave or for medical benefits for an individual who has made the election provided by WAC 415-104-800 shall be made by the individual's last LEOFF employer rather than his or her elective service employer. [Statutory Authority: RCW 41.50.050(6). 81-07-017 (Order 81-2), § 415-104-820, filed 3/10/81.]

WAC 415-104-830 Operation if in conflict with state law. If any part of WAC 415-104-800 through 415-104-820 shall be found to be in conflict with state law, such conflicting part shall be inoperative to the extent of such conflict. [Statutory Authority: RCW 41.50.050(6). 81-07-017 (Order 81-2), § 415-104-830, filed 3/10/81.]

Chapter 415-105 WAC**LOCAL DISABILITY BOARD PROCEDURES****WAC**

- 415-105-010** Preamble.
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415-105-050 Examination for disability retirement.
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WAC 415-105-010 Preamble. In adopting the rules contained herein, it is not the intention of the director of department of retirement systems to in any way weaken the existing powers and practices of any local disability board. Further, it is not the intent of these rules to preclude adoption or continuation of any procedures in addition to those set forth herein by any local disability board. [Statutory Authority: RCW 41.26.115. 81-23-032 (Order 81-03), § 415-105-010, filed 11/16/81.]

WAC 415-105-020 Purpose. These rules are adopted pursuant to section 1, chapter 294, Laws of 1981 [RCW 41.26.115] to implement chapter 41.26 RCW and to provide a basis for uniform administration of disability retirement matters. They shall be followed by each disability board. [Statutory Authority: RCW 41.26.115. 81-23-032 (Order 81-03), § 415-105-020, filed 11/16/81.]

WAC 415-105-030 Board doctor. (1) A duly licensed and practicing physician or physicians shall be appointed by the board. No disability retirement shall be approved by the board without prior examination of the claimant by the board doctor or a specialist of his selection, on or near the expiration of the disability leave period. The board doctor shall render such other medical service as may be requested by the board.

(2) In order to carry out the duties of this position, each physician appointed or approved by the board is required to be knowledgeable concerning the duties, functions and general demands required of the employee being examined. The disability board shall furnish to the examining physician the job and/or position description of the applicant.

(3) Reexamination of any member on disability retirement shall be conducted by a board appointed or approved physician. [Statutory Authority: RCW 41.26.115. 81-23-032 (Order 81-03), § 415-105-030, filed 11/16/81.]

WAC 415-105-040 Disability leave. (1) Following receipt of an application for disability benefits, the board shall review all relevant information pertaining to the question of the applicant's fitness for duty, and if, in the opinion of the majority of the board, the evidence supports the proposition that the member is unfit for duty, such member shall be granted disability leave, unless such leave is waived pursuant to RCW 41.26.120(4). In considering such application, the board shall consider the duties of the position, and any other evidence that is relevant.

(2) The burden of proving the existence of a disabling condition, and whether or not the condition was incurred in line of duty, shall be upon the applicant.

(3) The minimum medical and health standards previously promulgated by the state retirement board for entry or reentry into LEOFF System membership were provided only to safeguard the fiscal integrity of the pension system and are not the applicable standards for any other purpose.

(4) Each application shall be accompanied by a list identifying by name any physician who had been contacted within the last six months for the illness or injury for which disability is claimed.

(5) In the event the board finds that insufficient information is available to make a determination, the matter may be continued to the next regular board meeting or be set for consideration at a special meeting. The board shall also advise the member of the additional information needed, and of the member's obligation to provide additional information and the deadline date by which such information must be provided.

(6) The board shall be authorized to demand the appearance of the member and to request the appearance of such other persons as it deems appropriate. It shall be incumbent upon each member obtaining medical evaluations to be used in connection with such disability leave and subsequent evaluations, to advise each and every examining physician: that such evaluation is being conducted at the direction of the board; that any reports relating thereto are for the benefit of the board; that the doctor-patient privilege may not be invoked with respect thereto; and that the physician may be called upon by the board to testify as to his findings. [Statutory Authority: RCW 41.26.115. 81-23-032 (Order 81-03), § 415-105-040, filed 11/16/81.]

WAC 415-105-050 Examination for disability retirement. (1) Applicants for disability retirement shall be reexamined during the fifth or sixth month of disability leave in order to determine their eligibility for disability retirement, with the following exceptions: (a) if the board doctor assures the board that the applicant's condition has not and will not be corrected before the end of the sixth month; or (b) if the applicant establishes that the disabling condition will be in existence for a period of at least six months and he/she voluntarily waives disability leave. No applicant will be granted a disability retirement allowance unless the conditions imposed by this subsection are met.

(2) In the event the medical and other relevant evidence is inconclusive, the board may specify in written order a reasonable trial service period to determine the member's fitness for active duty. The reasonable length of such conditional return to service shall be supported by medical evidence. Such a conditional return to service does not entitle the member to a second six-month period of disability leave for the same disability if, based upon this trial period of service, the member is found to be disabled. [Statutory Authority: RCW 41.26.115. 81-23-032 (Order 81-03), § 415-105-050, filed 11/16/81.]

WAC 415-105-060 Granting disability retirement. (1) If the evidence shows to the satisfaction of the board that the member is physically or mentally disabled from further performance of duty and that the disability has been continuous from the date of commencement of disability leave for a period of six months, the board shall enter its written decision and order, accompanied by appropriate findings of fact and conclusions of law in compliance with RCW 41.26.120. Such written decision and

order with supporting documentation shall thereafter be forwarded to the director, department of retirement systems, for review. In the event a regular meeting of the board precedes by no more than 40 days the date at which the full six months will conclude and the evidence is clear that the disability can be expected to continue through the full six-month period, the board may make a finding of six months continuous disability prior to the actual conclusion of the six-month period, so as to eliminate unnecessary delay of receipt of retirement benefits.

(2) In order to qualify to receive a disability retirement allowance, the applicant will be required to prove that he or she is physically or mentally disabled to such extent that he or she is unable to discharge with average efficiency the duty of the position held at time of discontinuance of service: *Provided*, That no member shall be entitled to a disability retirement allowance if the appropriate authority advises that there is an available position for which the member is qualified and to which one of such grade or rank is normally assigned and the board determines that the member is capable of discharging, with average efficiency, the duties of the position. [Statutory Authority: RCW 41.26.115. 81-23-032 (Order 81-03), § 415-105-060, filed 11/16/81.]

WAC 415-105-070 Execution. Every order of the disability board granting or denying a disability retirement allowance shall contain the following presented in clear and concise terms:

(1) Findings of fact supported by evidence in the record supporting the granting or denying of the disability retirement allowance. When a disability retirement is granted, findings of fact shall include:

(a) Whether or not the disability was incurred in the line of duty.

(b) Whether or not the disability was incurred in other employment.

(c) Dates encompassing disability leave and/or dates relating to authorized trial basis return to duty; and, in the case of return to duty on a trial basis, the factual basis for such decision.

(d) Dates encompassing waiver of disability leave, if applicable; and that applicant established that such disability will be in existence for a period of six months.

(2) Conclusions of law in accordance with law on the basis of the facts in the case.

(3) Decision and order. [Statutory Authority: RCW 41.26.115. 81-23-032 (Order 81-03), § 415-105-070, filed 11/16/81.]

WAC 415-105-080 Appeal. If the board denies disability leave or disability retirement or cancels a previously granted disability leave or retirement, the applicant shall be immediately notified and advised of the right to appeal such decision or order to the director of the department of retirement systems, pursuant to RCW 41.26.200. Such notification shall be in writing and served by personal service or mail. *Provided*, that written notice need not be given if applicant or his or her duly authorized representative is in attendance at the meeting or hearing and is advised of decision and of the

right of appeal. [Statutory Authority: RCW 41.26.115. 81-23-032 (Order 81-03), § 415-105-080, filed 11/16/81.]

WAC 415-105-090 Reexamination and return to duty. (1) In the event a member is placed on disability retirement, the board shall determine whether or not the member is so disabled that no possibility exists for return to duty or that there is no possibility that rehabilitation could restore the member to fitness for duty. Further, the board may at any point subsequent to retirement make such a determination. A copy of all such determinations shall be sent to the department of retirement systems. Unless the board has made such a finding, the board's representative shall order a reexamination at six-month intervals and advise the board of the results thereof with a copy to the department of retirement systems: *Provided*, That such reexamination need not be conducted on a member over 49.5 years of age. In the event the retired member is residing at a location more than 100 miles from his former place of employment, the member may be authorized to be examined by a physician in his immediate area, provided, however, such physician shall be first approved by the board and prior to such evaluation the examining physician shall be apprised of the basis upon which the examination is to be conducted and the issues to be addressed in the physician's evaluative report.

(2) In the event such evaluation discloses fitness to perform duties of the rank or position held by the member at the time of disability retirement, the member shall be entitled to a hearing before the board, and further consideration of the matter. Such notice and hearing shall comply with the Administrative Procedure Act, chapter 34.04 RCW.

(3) The hearing provided by RCW 41.26.140(2) is to be held, unless the retiree waives such hearing, prior to actual cancellation of a disability retirement allowance.

(4) The retirement allowance of any member who fails to submit to medical examination as provided herein shall be discontinued and in the event such refusal continues for one year, his retirement allowance shall be cancelled. Failure of the member to affirmatively respond to the request for reexamination shall be deemed a continuing refusal. [Statutory Authority: RCW 41.26.115. 81-23-032 (Order 81-03), § 415-105-090, filed 11/16/81.]

Title 419 WAC

SAVINGS AND LOAN ASSOCIATIONS, DIVISION OF (GENERAL ADMINISTRATION, DEPT. OF)

Chapters

- 419-14 Examination and supervision fees for savings and loan associations.
419-18 Examination and supervision fees for credit unions.