

# Chapter 415-08 WAC

## APPEALS

**WAC**

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filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.

Computation of time—When service complete. [Order 4, § 415-08-220, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.

Computation of time—Filing with board. [Order 4, § 415-08-230, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.

Computation of time—Fees. [Order 4, § 415-08-240, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.

Computation of time—Proof of service. [Order 4, § 415-08-250, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.

Computation of time—Quashing. [Order 4, § 415-08-260, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.

Computation of time—Enforcement. [Order 4, § 415-08-270, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.

Computation of time—Documentary evidence. [Order 4, § 415-08-290, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.

Computation of time—Excerpts from documents. [Order 4, § 415-08-300, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.

Computation of time—Failure to supply prehearing information. [Order 4, § 415-08-310, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.

Computation of time—Agreements at prehearing conference. [Order 4, § 415-08-320, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.

Rules of evidence—Admissibility criteria. [Order 4, § 415-08-330, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.

Rules of evidence—Official notice—Matters of law. [Order 4, § 415-08-340, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.

Rules of evidence—Official notice—Material facts. [Order 4, § 415-08-350, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.

Rules of evidence—Tentative admission—Exclusion—Discontinuance—Objections. [Order 4, § 415-08-360, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.

Presumptions. [Order 4, § 415-08-370, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.

Presumptions—Additional evidence by presiding officer. [Order 4, § 415-08-380, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.

Stipulations and admissions of record. [Order 4, § 415-08-390, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.

Expert or opinion testimony number and qualifications of witnesses. [Order 4, § 415-08-400, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.

- 415-08-410 Expert or opinion testimony number and qualifications of witnesses—Written sworn statements. [Order 4, § 415-08-410, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.
- 415-08-430 Petitions for rule making, amendment or repeal—Who may petition. [Order 4, § 415-08-430, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.
- 415-08-440 Petitions for rule making, amendment or repeal—Requirements. [Order 4, § 415-08-440, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.
- 415-08-450 Petitions for rule making, amendment or repeal—Agency must consider. [Order 4, § 415-08-450, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.
- 415-08-460 Petitions for rule making, amendment or repeal—Notice of disposition. [Order 4, § 415-08-460, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.
- 415-08-470 Declaratory rulings. [Order 4, § 415-08-470, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.
- 415-08-480 Declaratory rulings—Forms. [Order 4, § 415-08-480, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.

**WAC 415-08-010 Scope.** This chapter governs the procedure the department follows in conducting adjudicative proceedings under chapter 34.05 RCW. The department adopts the model rules of procedure contained in chapter 10-08 WAC to the extent that those provisions are not contrary to the provisions of this chapter. These rules shall govern all adjudicative proceedings before the department.

[Statutory Authority: RCW 41.50.050, 41.50.060 and 34.05.425. 96-11-036, § 415-08-010, filed 5/7/96, effective 6/7/96. Statutory Authority: RCW 41.50.050(5) and 34.05.250. 93-11-079, § 415-08-010, filed 5/18/93, effective 6/18/93; Order 4, § 415-08-010, filed 7/27/77.]

**WAC 415-08-015 Appealing a denied request for an in-service deferred compensation withdrawal.** WAC 415-501-510 and Section 457 of the Internal Revenue Code authorize distributions from the deferred compensation plan due to an unforeseeable emergency. If your application for a pay out is denied, you are entitled to have that decision reviewed.

(1) **Filing deadline.** You must apply for review in writing within sixty days of the date you receive the denial.

(2) **Contents of review application.** Your application must contain the items listed in WAC 415-08-023.

(3) **Type of proceeding.** Within twenty days of receipt of your application, the department will notify you in writing that it will conduct either:

(a) A brief adjudicative proceeding under RCW 34.05.-482 through 34.05.494; or

(b) A full adjudicative proceeding under this chapter.

(4) **Brief adjudicative proceeding.**

(a) The director's designee will serve as presiding officer. The presiding officer will:

(i) Review the agency's view of the matter, as expressed in the documentation denying your request for a withdrawal;

(ii) Review the materials you have previously submitted, as well as any additional material you wish to submit;

(iii) Give each party an opportunity to be informed of the other's view of the matter;

(iv) Make a decision on the request; and

(v) Within ten days, give the parties a brief written statement of the reasons for the decision and information about any internal review available.

(b) If the presiding officer makes an unfavorable determination in your case, you may request an administrative review provided you do so within twenty-one days after you are served with the presiding officer's written determination. If you seek administrative review, the reviewing officer will be a different person than the presiding officer.

(c) If you do not seek administrative review, you may seek judicial review within thirty days after you are served with the written determination (see RCW 34.05.542).

(5) **Full adjudicative proceeding.** If the department conducts a full adjudicative proceeding, that proceeding will be governed by the Administrative Procedure Act (chapter 34.05 RCW), and rules adopted thereunder; and chapters 10-08 and 415-08 WAC. The department will be represented in the proceeding by an assistant attorney general.

[Statutory Authority: RCW 41.50.050(5), 41.50.060, 41.50.770, 41.50.780, 2001 c 42. 02-12-084, § 415-08-015, filed 6/4/02, effective 7/5/02. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-08-015, filed 7/29/96, effective 7/29/96.]

**WAC 415-08-020 Time limit for filing appeals—Procedure.** (1) Any party aggrieved by a petition decision rendered pursuant to chapter 415-04 WAC may appeal the decision by filing a notice of appeal within sixty days from the date such decision was communicated to the party.

(2) The appealing parties shall file the original and two copies of the notice of appeal with the department. The department will acknowledge receipt of the copies filed. The department's stamp placed upon such copies shall be prima facie evidence of the date of receipt. The department may thereafter require additional copies to be filed if necessary.

(3) If a party fails to file a timely appeal the party waives the right to judicial review due to failure to exhaust administrative remedies as required by RCW 34.05.534.

[Statutory Authority: RCW 41.50.050, 41.50.060 and 34.05.425. 96-11-036, § 415-08-020, filed 5/7/96, effective 6/7/96. Statutory Authority: RCW 41.50.050(5) and 34.05.250. 93-11-079, § 415-08-020, filed 5/18/93, effective 6/18/93; Order 4, § 415-08-020, filed 7/27/77.]

**WAC 415-08-023 Contents of the notice of appeal.** The notice of appeal must contain:

(1) The name and mailing address of the member or beneficiary, and the employer of the member;

(2) The name and legal residence of the appealing party, together with the mailing address of his or her representative, if any;

(3) In the case of disability claims:

(a) The date and nature of the accident, injury or disease, the place it occurred and location of the employer, in the case of disability claims; and

(b) If the injury or disease did not occur in the county where the member or beneficiary resides, the name of the county in which the appealing party desires to have the hearing held and a city or town most convenient within the county where the hearing is to be held;

(4) A statement identifying the decision appealed from and that portion of the decision considered to be unjust or unlawful;

(5) A clear and concise statement of facts in support of the grounds stated including, where applicable, a description of the physical facts constituting the claimant's present disability and how it is manifested;

(6) The type of relief sought, including specific dates at which time the appealing party believes the benefit accrued; and

(7) A statement that the appealing party has read the notice of appeal and believes the contents to be true, followed by his or her signature and the signature of his or her representative, if any.

[Statutory Authority: RCW 41.50.050, 41.50.060 and 34.05.425. 96-11-036, § 415-08-023, filed 5/7/96, effective 6/7/96.]

**WAC 415-08-025 Presiding officer.** The director will designate a presiding officer to issue an order. The director may issue a general or specific presiding officer designation.

(1) If the director designates a presiding officer to issue a final order, that person shall be a different person than director's designee under chapter 415-04 WAC.

(2) If the director designates a presiding officer to issue a proposed order the director, or a person designated by the director, will be the reviewing officer. In that event, the reviewing officer will issue a final order.

[Statutory Authority: RCW 41.50.050, 41.50.060 and 34.05.425. 96-11-036, § 415-08-025, filed 5/7/96, effective 6/7/96. Statutory Authority: RCW 41.50.050(5) and 34.05.250. 93-11-079, § 415-08-025, filed 5/18/93, effective 6/18/93.]

**WAC 415-08-027 Parties may stipulate to the record on appeal.** If the parties stipulate to a record, a hearing before the presiding officer may be waived by agreement of all parties. The presiding officer will then issue a final order on the stipulated record.

[Statutory Authority: RCW 41.50.050, 41.50.060 and 34.05.425. 96-11-036, § 415-08-027, filed 5/7/96, effective 6/7/96.]

**WAC 415-08-030 Parties.** The parties to an appeal shall be the appealing party or parties and the department. There is no obligation to serve notices, pleadings or correspondence upon any person who has not entered an appearance as a party. Service upon the representative of a party shall constitute service upon such party.

[Statutory Authority: RCW 41.50.050, 41.50.060 and 34.05.425. 96-11-036, § 415-08-030, filed 5/7/96, effective 6/7/96. Statutory Authority: RCW 41.50.050(5) and 34.05.250. 93-11-079, § 415-08-030, filed 5/18/93, effective 6/18/93; Order 4, § 415-08-030, filed 7/27/77.]

**WAC 415-08-040 Representing another person before the presiding officer.** Only the following persons may appear in a representative capacity before the presiding officer:

(1) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington.

(2) Attorneys at law duly qualified and entitled to practice before the highest court of record of any other state, if the attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative

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agencies of such other state, and if not otherwise prohibited by our state law.

(3) A legal intern authorized to practice law pursuant to Admission to Practice Rule (APR) 9 of the state supreme court and subject to the limitations contained in said rule. A legal intern shall not appear without the presence of the supervising attorney except in *ex parte* matters and noncontested cases.

(4) A bona fide officer, partner, or full-time employee of an individual firm, association, partnership, or corporation who appears on behalf of the entity.

[Statutory Authority: RCW 41.50.050, 41.50.060 and 34.05.425. 96-11-036, § 415-08-040, filed 5/7/96, effective 6/7/96. Statutory Authority: RCW 41.50.050(5) and 34.05.250. 93-11-079, § 415-08-040, filed 5/18/93, effective 6/18/93; Order 4, § 415-08-040, filed 7/27/77.]

**WAC 415-08-050 Appearance in certain proceedings may be limited to attorneys.** In all hearings involving the taking of testimony and the formulation of a record subject to review by the courts, where the presiding officer determines that representation in such hearing requires a high degree of legal training, experience, and skill, the board or its examiner may limit those who may appear in a representative capacity to attorneys-at-law.

[Statutory Authority: RCW 41.50.050, 41.50.060 and 34.05.425. 96-11-036, § 415-08-050, filed 5/7/96, effective 6/7/96; Order 4, § 415-08-050, filed 7/27/77.]

**WAC 415-08-080 Withdrawal or substitution of representatives.** An attorney or other representative withdrawing from a case shall immediately so notify the presiding officer and all parties of record in writing, or shall state such withdrawal for the record at a conference or hearing. Any substitution of an attorney or representative shall be accomplished by written notification to the presiding officer and to all parties of record.

[Statutory Authority: RCW 41.50.050, 41.50.060 and 34.05.425. 96-11-036, § 415-08-080, filed 5/7/96, effective 6/7/96. Statutory Authority: RCW 41.50.050(5) and 34.05.250. 93-11-079, § 415-08-080, filed 5/18/93, effective 6/18/93; Order 4, § 415-08-080, filed 7/27/77.]

**WAC 415-08-090 Ethical conduct required.** All persons appearing in a representative capacity in proceedings before the presiding officer shall conform to the standards of ethical conduct required of attorneys before the courts of Washington. If any such person does not conform to such standards, the presiding officer may, in his/her discretion and depending on all the circumstances, admonish or reprimand such person, exclude such person from further participation in the proceedings and adjourn the same, or report the matter to the department.

[Statutory Authority: RCW 41.50.050, 41.50.060 and 34.05.425. 96-11-036, § 415-08-090, filed 5/7/96, effective 6/7/96. Statutory Authority: RCW 41.50.050(5) and 34.05.250. 93-11-079, § 415-08-090, filed 5/18/93, effective 6/18/93; Order 4, § 415-08-090, filed 7/27/77.]

**WAC 415-08-100 Appearance by former employee of agency or former member of attorney general's staff.** No former employee of the department or system or former member of the attorney general's staff may appear in a representative capacity on behalf of other parties in a formal proceeding wherein he or she previously took an active part as a

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representative of the department. No such former employee shall appear where to do so would violate RCW 42.52.080.

[Statutory Authority: RCW 41.50.050, 41.50.060 and 34.05.425. 96-11-036, § 415-08-100, filed 5/7/96, effective 6/7/96. Statutory Authority: RCW 41.50.050(5) and 34.05.250. 93-11-079, § 415-08-100, filed 5/18/93, effective 6/18/93; Order 4, § 415-08-100, filed 7/27/77.]

**WAC 415-08-105 Prehearing and posthearing memoranda.** A presiding officer shall grant all timely requests to submit prehearing and posthearing memoranda, and shall set a reasonable time for the submission of memoranda. The department reserves the right to file a brief in response to any posthearing brief submitted by another party.

[Statutory Authority: RCW 41.50.050, 41.50.060 and 34.05.425. 96-11-036, § 415-08-105, filed 5/7/96, effective 6/7/96. Statutory Authority: RCW 41.50.050(5) and 34.05.250. 93-11-079, § 415-08-105, filed 5/18/93, effective 6/18/93.]

**WAC 415-08-280 Discovery.** Any party may obtain discovery in the manner specified in Superior Court Civil Rule 26(a). The attendance of witnesses may be compelled by the use of a subpoena. Such discovery shall be governed generally by the procedures established by Superior Court Civil Rules 26-37, inclusive.

[Statutory Authority: RCW 41.50.050, 41.50.060 and 34.05.425. 96-11-036, § 415-08-280, filed 5/7/96, effective 6/7/96. Statutory Authority: RCW 41.50.050(5) and 34.05.250. 93-11-079, § 415-08-280, filed 5/18/93, effective 6/18/93; Order 4, § 415-08-280, filed 7/27/77.]

**WAC 415-08-420 Presentation of evidence—Burden of proof.** (1) The presiding officer shall determine the proper order of presentation of evidence.

(2) The person appealing or requesting a hearing shall have the burden of proof in the matter.

[Statutory Authority: RCW 41.50.050(5), 41.50.060, 41.50.770, 41.50.780, 2001 c 42. 02-12-084, § 415-08-420, filed 6/4/02, effective 7/5/02. Statutory Authority: RCW 41.50.050, 41.50.060 and 34.05.425. 96-11-036, § 415-08-420, filed 5/7/96, effective 6/7/96. Statutory Authority: RCW 41.50.050(5) and 34.05.250. 93-11-079, § 415-08-420, filed 5/18/93, effective 6/18/93; Order 4, § 415-08-420, filed 7/27/77.]