

# Chapter 358-30 WAC

## HEARINGS—PROCEDURES

### WAC

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**WAC 358-30-005 Waiver of rules to prevent manifest injustice to parties not represented by legal counsel.** Under exceptional circumstances, the board may waive any of these procedural rules, other than a rule relating to jurisdiction, for any party not represented by legal counsel where necessary to avoid manifest injustice.

[Statutory Authority: RCW 41.64.060 and 34.05.220 [(1)](a). WSR 95-07-074, § 358-30-005, filed 3/15/95, effective 4/15/95.]

**WAC 358-30-010 Acknowledgment of appeal, setting of hearing.** (1) Upon receipt of an appeal, the executive secretary of the personnel appeals board or designee will acknowledge receipt of the appeal, send a copy to the other affected parties, and, when applicable, request a copy of the action letter and supporting documentation from the appropriate party.

(2) The executive secretary or his/her designee will review all appeal(s) for compliance with the timeliness requirements of RCW 41.06.170 and WAC 358-20-040. If an appeal appears to be untimely filed, the executive secretary or his/her designee shall direct the parties to submit affidavits and/or written argument in support of or in opposition to dismissal of the appeal. In addition, a motion to dismiss for untimeliness may be submitted by any party to an appeal at any time during the appeal process.

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(3) A hearing before the personnel appeals board or hearings examiner shall be scheduled with written notice, specifying the time and place of the hearing provided to all parties of record to an appeal. Notice of hearing shall be mailed not less than thirty days prior to the date of the hearing, unless all parties agree to a shorter notice period. Hearings may be scheduled for primary and/or secondary settings.

[Statutory Authority: RCW 41.64.060 and 34.05.220 [(1)](a). WSR 95-07-074, § 358-30-010, filed 3/15/95, effective 4/15/95. Statutory Authority: Chapter 41.64 RCW. WSR 82-01-053 (Order 81-4), § 358-30-010, filed 12/16/81.]

**WAC 358-30-015 Motion for more definite statement.** (1) When an appeal is filed pursuant to WAC 358-20-020, the respondent may move for an order requiring the appellant to provide any information required by subsections (2) and (3) of WAC 358-20-040 which does not appear in the appeal documents and/or to make the allegations sufficiently clear to enable the respondent to prepare its defense. Any such motion must be made within fifteen calendar days of the mailing of the acknowledgment required in WAC 358-30-010, or, if the executive secretary requires more information pursuant to WAC 358-20-040(5), within fifteen calendar days after the appellant's response is filed. The board will examine the motion and the appeal, and, if it finds merit in the motion, shall issue such order as it deems necessary to obtain compliance with WAC 358-20-040.

(2) If the motion is granted, the appellant shall provide the information required within fifteen calendar days of the date of the order. Failure to provide the required information in a timely manner may result in dismissal of the appeal for failure to state grounds for an appeal.

(3) If a respondent does not move for an order to correct deficiencies within the prescribed time, any objection on its part to the sufficiency of the appeal shall be deemed waived.

[Statutory Authority: Chapter 41.64 RCW. WSR 87-20-035 (Order 87-1), § 358-30-015, filed 9/30/87.]

**WAC 358-30-020 Hearings examiners.** The personnel appeals board may appoint one or more hearings examiners to conduct mediation, preside at prehearing conferences, and/or preside at hearings and make recommended decisions in accordance with rules established by the personnel appeals board in all cases of employee appeals to the board. Hearings examiners may be retained with a personal services contract and compensated in accordance with the provisions of chapter 43.88 RCW and rules adopted pursuant thereto. Hearings examiners shall conduct hearings in the same manner and shall have the same authority as the personnel appeals board when conducting hearings. The executive secretary may act as a hearings examiner for the purpose of conducting mediation, presiding at prehearing conferences and making prehearing orders.

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[Statutory Authority: RCW 41.64.060 and 34.05.220 [(1)](a). WSR 95-07-074, § 358-30-020, filed 3/15/95, effective 4/15/95. Statutory Authority: Chapter 41.64 RCW. WSR 82-01-053 (Order 81-4), § 358-30-020, filed 12/16/81.]

**WAC 358-30-022 Hearings on appeals of allocation determinations.** (1) Following a review by the director of the department of personnel or designee and within thirty calendar days of the date of service of the director's determination, either party may appeal an allocation or reallocation determination to the board. The appeal shall be in writing and shall detail the specific items of the director's determination to which exception is taken.

(2) The hearing shall be limited to the exceptions set forth in the notice of appeal unless otherwise determined by the board. Either party may petition the board for good cause shown to conduct the hearing on a de novo basis.

[Statutory Authority: RCW 41.64.060 and 34.05.220 [(1)](a). WSR 95-07-074, § 358-30-022, filed 3/15/95, effective 4/15/95.]

**WAC 358-30-024 Mediation.** (1) **Purpose.** The board finds that a mediation process, in which the parties, through an independent mediator, seek a settlement of their disputes in good faith, offers an opportunity early in the appeals process to settle disputes with less cost and time, and to the satisfaction of all parties. Such a process also offers the board the opportunity to concentrate its limited resources on timely resolution of those appeals which the parties have been unable to resolve.

(2) **Process.** After an appeal including all of the required documentation is received, the executive secretary or his/her designee shall:

(a) Review the file to determine whether the matter in dispute is amenable to a mediation process;

(b) Notify the parties that their appeal has been designated for mediation, if the executive secretary or designee determines that mediation would be appropriate or if the parties have jointly requested mediation;

(c) Assign the case to a hearings examiner for mediation. The executive secretary may act as a hearings examiner for this purpose. Nothing in this section prevents the parties from selecting their own mediator. However, if a mediator other than the one designated by the board is selected, the parties shall pay the cost of the mediator.

(3) **Mediation.** After selection of a mediator, the parties shall meet at least once and engage in a good faith attempt to negotiate a resolution of the appeal. Such a conference shall take place within thirty days after the parties are notified that their case has been designated for mediation. The conference may be held by telephone with the consent of the parties. The appellant and at least one designee of the employing agency or institution of higher education shall personally attend the mediation conference, unless excused by the mediator. If the designee of the agency or institution of higher education does not have authority to act on behalf of the agency or institution of higher education, a person with the requisite authority shall be available by telephone. The parties may also have representatives of their choosing at the conference.

(4) **Mediation and settlement conferences privileged.** The proceedings of any mediation or settlement conference shall not be reported or recorded in any manner, except for

agreements that may be reached by the parties during the course of the conference. Statements made by or to the mediator, or by or to any party or other participant in the conference, may not later be introduced as evidence, may not be made known to the board or hearings examiner at a hearing, or may not be construed for any purpose as an admission against interest, unless they are independently admissible. No party shall be bound by anything done or said at the conference unless a settlement is reached. If a settlement is reached, the agreement shall be reduced to writing and shall be binding upon all parties to that agreement and the appellant shall sign a request to withdraw the appeal. Any settlement reached shall not violate civil service laws or the rules promulgated thereunder or any collective bargaining agreement affecting the parties then in force.

(5) **Exemption from mediation.** A party for good cause shown, or the parties by agreement, may decline to engage in the mediation process.

(6) **Mediation available.** If an appeal is not initially selected by the executive secretary or designee as appropriate for mediation, or if at any time prior to the appeal hearing a party or parties desire to engage in the mediation process, application may be made to the executive secretary for appointment of a mediator in the manner provided in subsection (2)(c) of this section.

(7) **Post-mediation process.** If the parties have been unable to resolve their dispute through mediation, the hearings examiner conducting the mediation may direct the parties to proceed to a prehearing conference either immediately or at a later date. The hearings examiner shall also ask the parties to identify acceptable dates for a hearing and shall attempt to schedule the hearing in consultation with the board.

The hearings examiner shall notify the executive secretary of the failure to reach settlement. If not already scheduled, the executive secretary or designee shall then begin the process of scheduling the appeal for hearing, including setting a prehearing conference when appropriate.

[Statutory Authority: RCW 41.64.060 and 34.05.220 [(1)](a). WSR 95-07-074, § 358-30-024, filed 3/15/95, effective 4/15/95.]

**WAC 358-30-026 Prehearing conference.** (1) The board, the executive secretary, or the hearings examiner may direct the parties or their representatives to engage in a prehearing conference or conferences to consider the following:

(a) Simplification or limitation of issues;

(b) The possibility of obtaining stipulations, admissions of fact and admissions of the genuineness of documents which will avoid unnecessary proof;

(c) Discovery, discovery methods and discovery deadlines;

(d) The number of witnesses expected to be called and their names when possible;

(e) The approximate time necessary for presentation of the evidence of the respective parties;

(f) Whether or when motions may be brought;

(g) Exhibits;

(h) Affidavits; and

(i) Such other matters as may aid in the prompt disposition of the appeal.

(2) A prehearing conference may be conducted by the executive secretary, a hearings examiner, or one or more board members. It may be held in conjunction with a mediation conference.

(3) The results of the prehearing conference shall be stated on the record of the proceeding, if any, or in a subsequent written order. The statement or order shall include, where applicable, agreements or rulings concerning issues, admissions, stipulations, witnesses, discovery, length of hearing, motions, exhibits, affidavits, and other matters that may expedite the appeal hearing. The statement or order resulting from the prehearing conference shall control the subsequent course of the appeal, subject to modification upon a filing of exceptions to the statement or order.

(4) Prehearing conferences may be held by telephone with the consent of the parties or in person at a time and place specified by the board, the executive secretary, or the hearings examiner. Refusal by a party to participate in a prehearing conference may result in dismissal of the appeal, or other appropriate sanctions.

(5) During a hearing, the board or the hearings examiner may recess the hearing for the purpose of carrying out the provisions of subsection (1) of this section.

(6) The parties are encouraged where possible to resolve their disputes by agreement. To facilitate such resolution, the presiding officer, at the prehearing conference, may recess the conference at any time to give the parties time to discuss settlement of their dispute. In the event settlement is reached, the fact of settlement shall be stated on the record, if any, of the prehearing conference or in a written order, the parties shall indicate their concurrence on the record, and the appellant shall sign a request to withdraw the appeal. If no settlement is reached at a prehearing conference, the presiding officer shall ask the parties to identify acceptable dates for a hearing and shall attempt to schedule the hearing in consultation with the board.

[Statutory Authority: RCW 41.64.060 and 34.05.220 [(1)](a). WSR 95-07-074, § 358-30-026, filed 3/15/95, effective 4/15/95.]

**WAC 358-30-028 Hearings and conferences by telephone.** Mediation conferences, settlement conferences, hearings on motions, and full hearings may be conducted by telephone or other electronic media with the consent of the parties.

[Statutory Authority: RCW 41.64.060 and 34.05.220 [(1)](a). WSR 95-07-074, § 358-30-028, filed 3/15/95, effective 4/15/95.]

**WAC 358-30-030 Hearings.** (1) Hearings on all appeals shall be open to the public unless the personnel appeals board or hearings examiner determines there is substantial reason for not having an open hearing, or the employee so requests.

(2) The hearing shall be informal. Technical rules of evidence shall not apply to the proceedings, except for the rules of privilege recognized by law.

(3) All parties may select representatives of their choosing, present and cross-examine witnesses, and give evidence before the personnel appeals board or hearings examiner.

(4) All testimony shall be on oath administered by a member of the personnel appeals board or hearings examiner. Testimony by affidavit shall not be admitted at a hearing

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except for good cause shown, or as otherwise permitted in these rules, as provided in a prehearing conference statement or order in compliance with the required timelines for motions pursuant to WAC 358-30-042(1), or by stipulation of the parties.

(5) One member of the personnel appeals board may hold a hearing and take testimony to be reported for action by the board. Any such hearing shall be done only at the direction of the chairperson of the board or as provided in these rules.

(6) The personnel appeals board or hearings examiner shall prepare an official record of the hearing, including all testimony recorded manually or by mechanical device, and exhibits.

(7) The personnel appeals board or hearings examiner shall not be required to transcribe such record unless requested by the parties. A transcript can be obtained:

(a) If the proceedings before the hearings examiner or board were recorded by a court reporter, a transcript can be ordered from the court reporter.

(b) If the proceedings were recorded mechanically, a copy of transcript or copies of cassettes can be ordered from the board for a reasonable charge.

[Statutory Authority: RCW 41.64.060 and 34.05.220 [(1)](a). WSR 95-07-074, § 358-30-030, filed 3/15/95, effective 4/15/95. Statutory Authority: Chapter 41.64 RCW. WSR 85-20-001 (Order 85-2), § 358-30-030, filed 9/19/85; WSR 82-01-053 (Order 81-4), § 358-30-030, filed 12/16/81.]

**WAC 358-30-040 Motions for and orders of continuance.** Any party to a hearing may make a motion to continue the hearing for good cause shown. Any such motion shall be in writing directed to the person or persons who will be conducting the hearing. The motion shall state the specific reasons a continuance is necessary and shall be filed with the executive secretary and served on the hearings examiner, if any, and the opposing party at least five days prior to the scheduled hearing date. In unusual circumstances and only where the reason for the continuance could not reasonably have been foreseen, the motion may be made when the party becomes aware of the reason.

[Statutory Authority: Chapter 41.64 RCW. WSR 82-01-053 (Order 81-4), § 358-30-040, filed 12/16/81.]

**WAC 358-30-042 Motions, generally—Time lines.**

(1) The moving party shall schedule motions by noting them on the board's motions calendar pursuant to WAC 358-01-044 or by scheduling them with the hearings examiner if one has been assigned. Except as otherwise provided in a prehearing conference statement or order or as otherwise specifically provided in these rules, written motions and any supporting affidavits shall be filed and served not less than five days before the date on which the motion has been noted for consideration by the board or scheduled by the hearings examiner; responses to the motion and any opposing affidavits shall be filed and served not less than one day before the date on which the motion has been noted for consideration by the board or scheduled by the hearings examiner.

(2) Except as otherwise provided in a prehearing conference statement or order, dispositive or summary motions shall be filed and served pursuant to WAC 358-30-060.

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(3) Additional time requirements for motions may be found in WAC 358-30-015 for motions for a more definite statement and in WAC 358-30-040 for motions for continuance.

(4) Any party submitting documents in support of or opposition to a motion will provide the original and three copies to the board, and one copy to each opposing party.

[Statutory Authority: RCW 41.64.060 and 34.05.220 [(1)](a). WSR 95-07-074, § 358-30-042, filed 3/15/95, effective 4/15/95.]

**WAC 358-30-045 Filing of prehearing statements, briefs, and written argument.** (1) Any party to a hearing before the board who desires to submit, or when the board or designee requests all parties to submit, a prehearing statement, prehearing brief, or written argument shall provide such documents to the board and to each opposing party no later than three days prior to the scheduled hearing date or at such time as set at the prehearing conference. Any response shall be served no later than one day prior to the scheduled hearing date or at such time as set at the prehearing conference.

(2) Any party submitting such documents will provide the original and three copies to the board, and one copy to each opposing party.

(3) Submission of documents will be accomplished when the document is received in the principal office of the board in Olympia, Washington. The board or designee may refuse to consider documents that are untimely filed.

[Statutory Authority: RCW 41.64.060 and 34.05.220 [(1)](a). WSR 95-07-074, § 358-30-045, filed 3/15/95, effective 4/15/95.]

**WAC 358-30-050 Disposition following hearing.** (1) At the conclusion of a hearing, a hearings examiner or the personnel appeals board may require post-hearing briefs.

(2) A hearings examiner may affirm, reverse or modify an action of an agency.

(3) The personnel appeals board may affirm, reverse or modify the action of an agency or the recommended decision of a hearings examiner or remand the matter for further proceedings before the hearings examiner.

(4) When a hearings examiner or the personnel appeals board reduces a dismissal to a suspension, the period of suspension is not limited by RCW 41.06.170(1).

[Statutory Authority: Chapter 41.64 RCW. WSR 82-01-053 (Order 81-4), § 358-30-050, filed 12/16/81.]

**WAC 358-30-060 Dispositive and summary motions.**

(1) The personnel appeals board, or a hearings examiner, may decide all, or any part, of an appeal by motion, after notice to all parties, if the documents on file, depositions and affidavits, if any, show there is no genuine issue as to any material fact and the appeal should be decided or dismissed as a matter of law.

(2) Dispositive or summary motions may be made by any party. The motion shall be in writing which sets forth the basis for the motion and shall be filed with the executive secretary of the personnel appeals board. The moving party shall note the motion on the board's motions calendar or schedule it with the hearings examiner and shall serve the motion, any memoranda or affidavits, and the notice of date scheduled for

consideration of the motion on all parties at least twenty-one days before the date scheduled. The moving party should make a good faith effort to consult the opposing party as to scheduling the motion prior to noting it on the board's motions calendar. The board or hearings examiner shall allow oral argument on the motion at the request of either party. The party requesting oral argument shall notify the board or hearings examiner and all parties of the request.

(3) The motion may be decided based on written argument and affidavits only unless a party or the board or hearings examiner requests oral argument. Oral argument may be presented by telephone or other electronic media pursuant to WAC 358-30-028.

(4) Any affidavits to be filed in support of a motion shall be served with the motion at least twenty-one days prior to the date scheduled for consideration of the motion. Responses to the motion and any opposing affidavits shall be filed and served at least ten days prior to the date scheduled. Any reply and any counter affidavits by the moving party shall be filed and served at least three days prior to the date scheduled.

(5) When an appeal is dismissed or decided on motion, an order, or recommended order shall be issued as in other cases of appeal to the personnel appeals board.

(6) Deadlines in this rule may be altered as otherwise provided in a prehearing conference statement or order.

[Statutory Authority: RCW 41.64.060 and 34.05.220 [(1)](a). WSR 95-07-074, § 358-30-060, filed 3/15/95, effective 4/15/95. Statutory Authority: Chapter 41.64 RCW. WSR 82-01-053 (Order 81-4), § 358-30-060, filed 12/16/81.]

**WAC 358-30-070 Recommended decisions of hearings examiners—Exceptions.**

(1) A hearings examiner shall serve his/her recommended decision, including findings of fact, conclusions of law, and order, upon the personnel appeals board and upon each party and representative as soon as possible after conclusion of the hearing. Service to the employing agency or institution of higher education and to the employee or the employee's designated representative shall be made by certified mail, a return receipt requested.

(2) Within thirty days after service of the recommended decision, any party adversely affected thereby may take exception to the personnel appeals board by filing a written notice of exceptions at the principal office of the personnel appeals board. The notice shall set forth specific exceptions to the recommended decision including each finding of fact and conclusion of law to which exception is taken and any additional errors the parties contend were made by the hearings examiner. If a party contends a finding of fact is incorrect, or that the examiner has made any other error which requires a review of the record, the party shall identify in the notice or within thirty days of filing the notice the specific portion or portions of the record which it contends supports each claimed error.

(3) If no exceptions are filed, the recommended decision shall become final within forty days after service thereof, unless the personnel appeals board notifies each party within that forty-day period that a hearing will be scheduled to consider the recommended decision.

[Statutory Authority: RCW 41.64.060 and 34.05.220 [(1)](a). WSR 95-07-074, § 358-30-070, filed 3/15/95, effective 4/15/95. Statutory Authority:

Chapter 41.64 RCW. WSR 82-01-053 (Order 81-4), § 358-30-070, filed 12/16/81.]

**WAC 358-30-080 Hearing on exceptions—Orders of board.** (1) The hearing by the personnel appeals board on exceptions from a recommended decision of a hearings examiner shall be limited to the contentions set forth in the notice of exceptions unless the board itself chooses to review other matters.

(2) The personnel appeals board will issue its decision within 30 days after the conclusion of the hearing.

(3) When the construction of a rule, regulation or statute is in question the board will issue findings of fact, conclusions of law and its order.

(4) The decision and order of the personnel appeals board shall be final in cases filed pursuant to RCW 41.06.170 (3) or (4). In cases filed pursuant to RCW 41.06.170(2) the order and decision of the personnel appeals board shall be final subject to action by the court on appeal.

[Statutory Authority: RCW 41.64.060 and 34.05.220 [(1)](a). WSR 95-07-074, § 358-30-080, filed 3/15/95, effective 4/15/95. Statutory Authority: Chapter 41.64 RCW. WSR 82-01-053 (Order 81-4), § 358-30-080, filed 12/16/81.]

**WAC 358-30-082 Default at hearings.** If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding, the board may serve upon all parties a default or dismissal order which shall include a statement of the grounds for the order. Within seven days after service of a default or dismissal order for failure to attend or participate, the party against whom it was entered may file a written motion requesting that the order be vacated, and stating the grounds relied upon.

[Statutory Authority: RCW 41.64.060 and 34.05.220 [(1)](a). WSR 95-07-074, § 358-30-082, filed 3/15/95, effective 4/15/95.]

**WAC 358-30-084 Dismissal by board.** (1) In all appeals filed with the personnel appeals board:

(a) Where the parties have indicated that the case has been settled and ready for dismissal and where there has been no action by the parties during the preceding thirty days; or

(b) When the board deems it appropriate for lack of timeliness or any other jurisdictional matter where there is no question of fact; or

(c) When a party refuses to participate in a prehearing conference pursuant to WAC 358-30-026(4); or

(d) When the board is unable to contact the appellant at the last address and telephone number provided by the appellant, the executive secretary or his/her designee may mail notice to the appellant or the appellant's representative and to the respondent or the respondent's representative that the appeal will be dismissed by the board unless within fifteen days following the date of service of the notice a written request is made to the board and good cause is shown why the appeal should be continued as a pending case.

(2) If no request is made, the matter will be brought before the board for dismissal.

[Statutory Authority: RCW 41.64.060 and 34.05.220 [(1)](a). WSR 95-07-074, § 358-30-084, filed 3/15/95, effective 4/15/95.]

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**WAC 358-30-090 Exhibits at hearings.** At any hearing before the personnel appeals board or hearings examiner when exhibits are offered, copies shall be furnished to the opposing party, to each board member or hearings examiner and for the official file. The parties should interchange copies of exhibits before or at the commencement of the hearing. The number, scope and timing of exhibits may be limited pursuant to the prehearing conference.

[Statutory Authority: RCW 41.64.060 and 34.05.220 [(1)](a). WSR 95-07-074, § 358-30-090, filed 3/15/95, effective 4/15/95. Statutory Authority: Chapter 41.64 RCW. WSR 82-01-053 (Order 81-4), § 358-30-090, filed 12/16/81.]

**WAC 358-30-100 Ethical conduct.** All persons appearing in appeal proceedings before the personnel appeals board or hearings examiner in a representative capacity shall conduct themselves in a manner compatible with generally accepted practices in the courts of the state of Washington.

[Statutory Authority: Chapter 41.64 RCW. WSR 82-01-053 (Order 81-4), § 358-30-100, filed 12/16/81.]

**WAC 358-30-110 Filing papers with the personnel appeals board.** (1) **Filing generally.** Papers which must be filed with the personnel appeals board shall not be deemed filed until actual receipt of the papers in the principal office of the personnel appeals board in Olympia, Washington during customary office hours. The executive secretary or designee shall issue a receipt and an acknowledgment stating the date filed.

(2) **Filing by telephone facsimile.**

(a) The filing of a written communication with the board by telephone facsimile is perfected when a legible copy of the written communication is reproduced on the board's telephone facsimile equipment in Olympia. The hours of operation of the board's telephone facsimile equipment are 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays. If a transmission of a written communication commences after these hours of operation the written communication shall be deemed filed on the next succeeding business day.

(b) Any written communication filed with the board by telephone facsimile should be preceded by a cover page identifying the party making the transmission, listing the address, telephone and telephone facsimile number of such party, referencing the appeal to which the written communication relates, and indicating the date of, and the total number of pages included in, such transmission.

(c) No written communication filed by telephone facsimile should exceed fifteen pages in length, exclusive of the cover page required by this rule.

(d) The party attempting to file the written communication by telephone facsimile bears the risk that the written communication will not be timely received or legibly printed on the board's telephone facsimile equipment due to error in the operation or failure of the equipment being utilized by either the party or the board or to the line being busy. If the telephone facsimile is not received in legible form, it will be considered as if it had never been sent.

(e) The original of any document filed by telephone facsimile should be mailed to the board within twenty-four hours of the time that the telephone facsimile was sent.

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[Statutory Authority: RCW 41.64.060 and 34.05.220 [(1)](a). WSR 95-07-074, § 358-30-110, filed 3/15/95, effective 4/15/95. Statutory Authority: Chapter 41.64 RCW. WSR 82-01-053 (Order 81-4), § 358-30-110, filed 12/16/81.]

**WAC 358-30-120 Subpoenas.** (1) Any member of the personnel appeals board, the executive secretary or the hearings examiner may, and shall at the request of either party, issue subpoenas, including subpoenas duces tecum. The personnel appeals board or the hearings examiner assigned to the appeal shall certify to the superior court the facts of any refusals to obey a subpoena, take the oath, or testify. The court shall summarily hear the evidence on such refusal and, if the evidence warrants, punish such refusal in the same manner and to the same extent as for contempt committed before or in connection with the proceedings of the court.

(2) Every subpoena shall name the personnel appeals board, the title and case number of the proceedings and shall command the person to whom it is directed to appear at a specified time and place and give testimony or produce designated books, documents, or things under that person's control.

(3) Any representative or party not represented shall prepare subpoenas for issuance, and may present them to a personnel appeals board member, the executive secretary or the hearings examiner for signature, and upon return shall make arrangements for service. The service of all subpoenas shall be at the expense of the party requiring the witness to appear. It is recommended that all subpoenas be submitted at least five days prior to the hearing.

(4) Subpoenas shall be personally served upon the designated individual who upon demand, where entitled to make such demand, shall be tendered the fees for one day's attendance and the mileage allowed by law. A copy of the subpoena will also be provided to the opposing representative or pro se party, agency personnel officer and union representative.

(5) Attorneys of record may issue subpoenas, including subpoenas duces tecum, in the same manner and form as members of the personnel appeals board, the executive secretary or the hearings examiner. Any attorney so issuing a subpoena shall report a refusal to obey a subpoena, take the oath, or testify to the personnel appeals board, the executive secretary or the hearings examiner who shall then issue a subpoena in accordance with subsections 1 through 4 of this rule.

[Statutory Authority: Chapter 41.64 RCW. WSR 82-01-053 (Order 81-4), § 358-30-120, filed 12/16/81.]

**WAC 358-30-130 Witness fees.** Witnesses summoned before the personnel appeals board who upon demand, where entitled to make such demand, shall be paid by the party at whose behalf they appear the same fees and mileage that are paid to witnesses in the superior court of the county in which the hearing is being held. State employees who remain in pay status shall be compensated for travel only.

[Statutory Authority: Chapter 41.64 RCW. WSR 82-01-053 (Order 81-4), § 358-30-130, filed 12/16/81.]

**WAC 358-30-140 Proof of subpoena service.** The person serving the subpoena shall prove service by filing an acknowledgement or affidavit of service with the personnel

appeals board or the hearings examiner at any time prior to adjournment of the hearing. Failure to prove service does not affect the validity of the service.

[Statutory Authority: Chapter 41.64 RCW. WSR 82-01-053 (Order 81-4), § 358-30-140, filed 12/16/81.]

**WAC 358-30-150 Discovery.** (1) Attorneys of record may use discovery procedures in a manner consistent with the civil rules for the superior courts of the state of Washington.

(2) A party appearing pro se or not represented by counsel may obtain an order of discovery from the personnel appeals board or the hearings examiner and may use discovery procedures in a manner consistent with the civil rules of the superior courts of the state of Washington.

[Statutory Authority: Chapter 41.64 RCW. WSR 82-01-053 (Order 81-4), § 358-30-150, filed 12/16/81.]

**WAC 358-30-160 Quashing.** Upon motion promptly made by a party to the appeal or by the person to whom the subpoena or discovery is directed and upon notice to the party who issued the subpoena or discovery, the personnel appeals board or hearings examiner may after a hearing:

- (1) Deny the motion;
- (2) Grant the motion if the subpoena or discovery is unreasonable or requires evidence not relevant to any matter in issue; or
- (3) Deny the motion with modification of the subpoena or discovery for just and reasonable cause.

[Statutory Authority: Chapter 41.64 RCW. WSR 82-01-053 (Order 81-4), § 358-30-160, filed 12/16/81.]

**WAC 358-30-170 Burden of proof.** At any hearing on appeal from a layoff or reduction in force, dismissal, suspension, demotion, reduction in pay, dismissal for abandonment or disability separation the appointing authority shall have the burden of supporting the charges upon which the action was initiated. At any other hearing, the party filing the action shall have the burden of proof.

[Statutory Authority: RCW 41.64.060 and 34.05.220 [(1)](a). WSR 95-07-074, § 358-30-170, filed 3/15/95, effective 4/15/95. Statutory Authority: Chapter 41.64 RCW. WSR 82-01-053 (Order 81-4), § 358-30-170, filed 12/16/81.]

**WAC 358-30-180 Restoration of rights and benefits.** Any employee, when fully reinstated after appeal, shall be guaranteed all employee rights and benefits, including back pay, sick leave, vacation accrual, retirement and OASDI credits as provided for in RCW 41.06.220.

[Statutory Authority: Chapter 41.64 RCW. WSR 82-01-053 (Order 81-4), § 358-30-180, filed 12/16/81.]

**WAC 358-30-190 Service.** (1) All notices, documents and other papers filed with the board, after the initial filing of the appeal, shall be served upon each of the parties and the hearings examiner to whom the appeal is assigned, if any, all within the time stated. Service shall be made personally, or, except as provided in WAC 358-30-070(1), by first class mail.

(2) Service upon parties shall be regarded as complete when personal service has been accomplished; or by mail

three days after deposit in the United States mail properly stamped and addressed.

[Statutory Authority: RCW 41.64.060 and 34.05.220 [(1)](a). WSR 95-07-074, § 358-30-190, filed 3/15/95, effective 4/15/95. Statutory Authority: Chapter 41.64 RCW. WSR 82-01-053 (Order 81-4), § 358-30-190, filed 12/16/81.]

**WAC 358-30-200 Computation of time.** The day of the act, event or default after which the designated period of time begins to run is not to be included in computing any period of time prescribed or allowed by the personnel appeals board rules. The last day of the period so computed is to be included unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

[Statutory Authority: Chapter 41.64 RCW. WSR 82-01-053 (Order 81-4), § 358-30-200, filed 12/16/81.]

**WAC 358-30-210 Appeals to superior court.** Within 30 calendar days after the recording and mailing of a personnel appeals board order in appeal cases provided for in RCW 41.06.170(2), the employee may appeal to the Thurston County superior court as provided in RCW 41.64.130. The grounds for the appeal shall be stated in a written notice of appeal filed with the court, with copies thereof served on a member of the board or the executive secretary and on the employing agency, all within the appeal period.

[Statutory Authority: Chapter 41.64 RCW. WSR 85-20-001 (Order 85-2), § 358-30-210, filed 9/19/85; WSR 82-01-053 (Order 81-4), § 358-30-210, filed 12/16/81.]

**WAC 358-30-220 Record for the court—Transcripts on appeal.** (1) By stipulation the parties may agree to shorten the record to be filed with the court. The appellant shall contact counsel for the respondent to discuss stipulating to a shortened record. Either party unreasonably refusing to stipulate to such a limitation may be ordered by the court to pay the additional costs involved.

(2) Within 10 days after filing the notice of appeal, the appellant will notify the board in writing of the portion of the record to be filed.

(3) The transcript certified to the court will be paid for by the board.

(4) The parties may obtain a copy of a transcript to be used on appeal:

(a) If the proceedings before the hearings examiner or board were recorded by a court reporter, a copy of the transcript can be ordered from the court reporter.

(b) If the proceedings were recorded mechanically, a copy can be ordered from the board for a reasonable charge per page.

(5) The board shall transmit to the court a certified transcript of the hearing with exhibits.

[Statutory Authority: RCW 41.64.060 and 34.05.220 [(1)](a). WSR 95-07-074, § 358-30-220, filed 3/15/95, effective 4/15/95. Statutory Authority: Chapter 41.64 RCW. WSR 85-20-001 (Order 85-2), § 358-30-220, filed 9/19/85. Statutory Authority: RCW 41.64.060. WSR 82-14-007 (Order 82-1), § 358-30-220, filed 6/25/82.]