

(4) A disciplinary demotion for cause is the assignment of responsibilities which results in lower evaluation points for the same position, or movement to a different position that has lower evaluation points. The resulting salary decrease may exceed ten percent and must be in conformance with the provisions of the Fair Labor Standards Act.

(5) Involuntary downward movement based on a nondisciplinary reassignment of duties that results in lower evaluation points for an employee's present position shall not cause a decrease in the employee's current salary. The employee's current salary will be retained until such time as it is exceeded by the Washington management service salary structure or the employee leaves the position.

(6) An agency may provide a lump sum recognition payment within guidelines established by the department of personnel in recognition of documented exceptional work and performance results. Such compensation shall not become a permanent salary increase but is considered to be income for recognizing documented exceptional work and performance results. A payment made as a lump sum for recognition purposes shall be included within the ten percent annual adjustment limitation in the fiscal year in which it is paid.

[Statutory Authority: RCW 41.06.500. 95-19-056, § 356-56-115, filed 9/15/95, effective 10/16/95. Statutory Authority: Chapter 41.06 RCW and RCW 41.06.500. 94-12-055, § 356-56-115, filed 5/27/94, effective 7/1/94; 94-09-012, § 356-56-115, filed 4/12/94, effective 5/14/94; 94-01-126, § 356-56-115, filed 12/17/93, effective 1/18/94.]

Title 358 WAC PERSONNEL APPEALS BOARD

Chapters

- 358-01 General provisions.
- 358-20 Appeals—Filings—Declaratory rulings.
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Chapter 358-01 WAC GENERAL PROVISIONS

WAC

- 358-01-042 Personnel appeals board—Regular meetings.
- 358-01-044 Personnel appeals board—Motions calendar, oral and written argument.

WAC 358-01-042 Personnel appeals board—Regular meetings. (1) Regular meetings of the personnel appeals board will be held at 10:00 a.m. every Monday, except holidays, in which case the meeting will be cancelled.

(2) Allowance for public comment on the operational procedures of the personnel appeals board will be included on the agenda of the regular board meeting on the second Monday of every month. The board may invite testimony as to operational procedures from specific organizations or individuals at these meetings.

[Statutory Authority: RCW 41.64.060 and 34.05.220 [(1)](a). 95-07-074, § 358-01-042, filed 3/15/95, effective 4/15/95.]

WAC 358-01-044 Personnel appeals board—Motions calendar, oral and written argument. (1) The board's normal time and place for considering motions, other than motions heard in conjunction with and at the time of hearings, shall be Mondays, except holidays, at 1:30 p.m., in Olympia, Washington. In addition, the board may periodically announce a supplemental calendar of dates and times for considering motions in other locations throughout the state. Except when presented at hearings, all motions shall be submitted in writing. The party making the motion shall note the motion on the board's motions calendar, regardless of whether or not oral argument is requested.

(2) At the request of either party, oral argument shall be allowed for dispositive motions, such as motions to dismiss or motions for summary judgment. Oral argument may be presented by telephone or other electronic media pursuant to WAC 358-30-028. Nondispositive motions shall be considered upon written argument and affidavit only unless the board specifically authorizes oral argument.

[Statutory Authority: RCW 41.64.060 and 34.05.220 [(1)](a). 95-07-074, § 358-01-044, filed 3/15/95, effective 4/15/95.]

Chapter 358-20 WAC

APPEALS—FILINGS—DECLARATORY RULINGS

WAC

- 358-20-010 Appeal from dismissal, demotion, suspension, reduction, dismissal for abandonment or disability separation.
- 358-20-020 Appeal from violation of law or rules.
- 358-20-030 Appeal of allocation or reallocation.
- 358-20-032 Appeal from exemption of position.
- 358-20-040 Filing appeals.

WAC 358-20-010 Appeal from dismissal, demotion, suspension, reduction, dismissal for abandonment or disability separation. Any permanent employee subject to the statutory jurisdiction of the personnel appeals board who is dismissed, demoted, suspended, reduced in pay, dismissed for abandonment or given a disability separation may appeal to the personnel appeals board.

[Statutory Authority: RCW 41.64.060 and 34.05.220 [(1)](a). 95-07-074, § 358-20-010, filed 3/15/95, effective 4/15/95. Statutory Authority: Chapter 41.64 RCW. 82-01-053 (Order 81-4), § 358-20-010, filed 12/16/81.]

WAC 358-20-020 Appeal from violation of law or rules. An employee who is adversely affected by a violation of the state civil service law (chapter 41.06 RCW) or of the rules promulgated thereunder (Titles 251, 356 and 359 WAC), including rules regarding a layoff or reduction in force, may appeal to the personnel appeals board.

[Statutory Authority: RCW 41.64.060 and 34.05.220 [(1)](a). 95-07-074, § 358-20-020, filed 3/15/95, effective 4/15/95. Statutory Authority: Chapter 41.64 RCW. 82-01-053 (Order 81-4), § 358-20-020, filed 12/16/81.]

WAC 358-20-030 Appeal of allocation or reallocation. An employee incumbent in a position at the time of its

allocation or reallocation or the agency/institution of higher education or related board utilizing the position may appeal by filing exceptions to the determination of the director of personnel or designee.

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

WAC 358-20-032 Appeal from exemption of position. (1) An employee whose position has been exempted after July 1, 1993, may appeal the exemption to the personnel appeals board.

(2) When otherwise authorized, an employee in a nonexempt classification may appeal the failure to exempt the position to the personnel appeals board.

[Statutory Authority: RCW 41.64.060 and 34.05.220 [(1)](a). 95-07-074, § 358-20-032, filed 3/15/95, effective 4/15/95.]

WAC 358-20-040 Filing appeals. (1) An appeal must be received in writing at the principal office of the personnel appeals board within 30 days after: (a) The effective date of the disciplinary or dismissal for abandonment action (WAC 358-20-010); (b) notification of disability separation (WAC 358-20-010); (c) notification of the allocation determination of the director of personnel or director's designee made pursuant to WAC 356-10-060(5), 251-06-060, or their successor rule or rules (WAC 358-20-030); (d) the effective date of the exemption of a position (WAC 358-20-032); or (e) the employee could reasonably be expected to have knowledge of the action giving rise to a law or rule violation claim under WAC 358-20-020 or the stated effective date of the action, whichever is later.

(2) The appeal shall include the name and address of the appellant, the name of the agency, or institution of higher education and any relevant department that took the action which is being appealed, a telephone number at which the appellant can be reached, the job classification or position of the employee at the time of the action which is being appealed, a short statement of the grounds or reasons for the appeal, a short statement of the relief or remedy sought by the appellant, and a brief explanation if the appellant does not believe this case would be appropriate for mediation. The appeal should also include a listing of any related or companion cases filed, if known, and an indication of whether the parties have met to attempt to resolve the issue prior to filing the appeal. The appellant is responsible for notifying the board of any change in address or telephone number. Appellants who are represented shall include the name, address and telephone number of their representative.

(3) An appeal of a violation of the state civil service law or of the rules promulgated thereunder must cite the law(s) or rule(s) which the appellant claims has been violated, the particular circumstances of the alleged violation, and how the employee is adversely affected by the alleged violation.

(4) An appeal of a disciplinary action, disability separation, or layoff or reduction in force shall include the effective date of the action and the employee's appointment status at the time of the action. An appeal of a disciplinary action shall include a short statement of the nature of the disciplin-

ary action which is being appealed or a copy of the disciplinary letter from the agency or institution of higher education.

(5) An appeal of an allocation determination should include a copy of the determination of the director or designee of the department of personnel.

(6) Forms which may be used in filing appeals shall be available from the executive secretary of the board. In the alternative, appellants may prepare and use their own appeal documents. However, such documents must contain all of the information required by subsections (2) through (5) of this section, as appropriate.

(7)(a) Upon receipt of an appeal, the executive secretary or his/her designee will review the document(s) filed to determine whether the information required by this section has been provided.

(b) If any of the required information is not provided with the appeal, the appellant will be directed, with notification to all affected parties, to provide such information.

(c) The appellant must provide the missing information as requested within twenty-one calendar days of the date the notification is mailed.

(d) Upon receipt of the requested information, the executive secretary or his/her designee will send a copy to the other affected parties.

(8) If an appellant fails to provide required information within the time limits set forth in subsection (7) of this section, the executive secretary or his/her designee shall note the matter for a dismissal or other nonmonetary sanctions by the board. The executive secretary or his/her designee shall provide notice to the parties that the matter will be considered for dismissal by the board. The board's order will be based on the information available at the time the matter is considered for dismissal. The appellant shall have the burden of demonstrating compliance with this section. The respondent(s) may submit written argument prior to the date set for the board's dismissal of the appeal. Oral argument shall be allowed at the request of either party and may be presented by telephone or other electronic media pursuant to WAC 358-30-028.

(9) Failure of an appellant to comply with the requirements of this section may result in dismissal for failure to state grounds for an appeal.

[Statutory Authority: RCW 41.64.060 and 34.05.220 [(1)](a). 95-07-074, § 358-20-040, filed 3/15/95, effective 4/15/95. Statutory Authority: Chapter 41.64 RCW. 87-20-035 (Order 87-1), § 358-20-040, filed 9/30/87. Statutory Authority: RCW 41.64.060 and chapter 41.64 RCW. 82-14-007 and 82-16-027 (Orders 82-1 and 82-1A), § 358-20-040, filed 6/25/82 and 7/28/82. Statutory Authority: Chapter 41.64 RCW. 82-01-053 (Order 81-4), § 358-20-040, filed 12/16/81.]

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). 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.

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

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.

[Statutory Authority: RCW 41.64.060 and 34.05.220 [(1)](a). 95-07-074, § 358-30-020, filed 3/15/95, effective 4/15/95. Statutory Authority: Chapter 41.64 RCW. 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). 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). 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). 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). 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 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). 95-07-074, § 358-30-030, filed 3/15/95, effective 4/15/95. Statutory Authority: Chapter 41.64 RCW. 85-20-001 (Order 85-2), § 358-30-030, filed 9/19/85; 82-01-053 (Order 81-4), § 358-30-030, 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.

(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). 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). 95-07-074, § 358-30-045, filed 3/15/95, effective 4/15/95.]

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). 95-07-074, § 358-30-060, filed 3/15/95, effective 4/15/95. Statutory Authority: Chapter 41.64 RCW. 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 act, 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). 95-07-074, § 358-30-070, filed 3/15/95, effective 4/15/95. Statutory Authority: Chapter 41.64 RCW. 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). 95-07-074, § 358-30-080, filed 3/15/95, effective 4/15/95. Statutory Authority: Chapter 41.64 RCW. 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). 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). 95-07-074, § 358-30-084, filed 3/15/95, effective 4/15/95.]

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). 95-07-074, § 358-30-090, filed 3/15/95, effective 4/15/95. Statutory Authority: Chapter 41.64 RCW. 82-01-053 (Order 81-4), § 358-30-090, 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.

[Statutory Authority: RCW 41.64.060 and 34.05.220 [(1)](a). 95-07-074, § 358-30-110, filed 3/15/95, effective 4/15/95. Statutory Authority: Chapter 41.64 RCW. 82-01-053 (Order 81-4), § 358-30-110, 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). 95-07-074, § 358-30-170, filed 3/15/95, effective 4/15/95. Statutory Authority: Chapter 41.64 RCW. 82-01-053 (Order 81-4), § 358-30-170, 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). 95-07-074, § 358-30-190, filed 3/15/95, effective 4/15/95. Statutory Authority: Chapter 41.64 RCW. 82-01-053 (Order 81-4), § 358-30-190, 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). 95-07-074, § 358-30-220, filed 3/15/95, effective 4/15/95. Statutory Authority: Chapter 41.64 RCW. 85-20-001 (Order 85-2), § 358-30-220, filed 9/19/85. Statutory Authority: RCW 41.64.060. 82-14-007 (Order 82-1), § 358-30-220, filed 6/25/82.]

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