

## TITLE 13. PUBLIC SAFETY

CHAPTER 8. DEPARTMENT OF PUBLIC SAFETY  
LOCAL RETIREMENT BOARD

(Authority: A.R.S. § 38-841 et seq.)

## ARTICLE 1. PROCEDURES

Article 1, consisting of Sections R13-8-101 through R13-8-114, adopted effective July 22, 1994 (Supp. 94-3).

## Section

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## ARTICLE 1. PROCEDURES

**R13-8-101. Definitions and Interpretation**

- A. "System" means the Public Safety Personnel Retirement System, created by the provisions of A.R.S. Title 38, Chapter 5, Article 4, (A.R.S. § 38-841 et seq.).
- B. "Local board" means the Department of Public Safety Local Retirement Board for the Public Safety Personnel Retirement System established pursuant to A.R.S. § 38-847.
- C. "Secretary" means the secretary of the local board.
- D. "DROP" means deferred retirement option plan.
- E. Interpretation and application of the rules in this Chapter shall be consistent with the definitions set forth in A.R.S. § 38-842.

**Historical Note**

Adopted effective July 22, 1994 (Supp. 94-3). Amended by final rulemaking at 13 A.A.R. 1801, effective June 30, 2007 (Supp. 07-2).

**R13-8-102. Distribution of Information, Retirement Forms, and Applications**

- A. Information explaining the system received from the fund manager, shall be maintained by the secretary who shall distribute the information:
  1. To potential members within one month of hire,
  2. Upon request, and
  3. Upon application for retirement.
- B. The retirement forms and applications are provided by the fund manager and shall be maintained by the secretary who shall distribute them upon request.

**Historical Note**

Adopted effective July 22, 1994 (Supp. 94-3).

**R13-8-103. New Memberships**

- A. Within one month of hire, the secretary shall distribute membership forms to the newly employed commissioned officers.
- B. After receipt of completed membership forms, the secretary shall request each applicant's medical report from the medical advisor of the Department of Public Safety and review the medical reports. The secretary shall report to the local board when the medical report indicates a pre-existing physical or mental condition or prior injury.
- C. The local board at its regularly scheduled meetings shall review the applications for new membership for eligibility in the system and the medical reports of any applicants with a pre-existing physical or mental condition or prior injury.
- D. If an applicant has a physical or mental condition or injury that existed or occurred prior to the date of membership in the system, but is otherwise eligible for membership, the local board shall approve membership, excluding accidental, catastrophic, or ordinary disability benefits relating to the pre-existing physical or mental condition or injury.
- E. If the local board denies membership or approves membership with an exclusion based on a pre-existing condition or prior injury, the secretary shall so notify the applicant in writing.
- F. The local board may review on its own initiative and redetermine its prior decisions on membership and exclusions. The local board shall notify any member of any meeting at which the local board will review a prior decision affecting a member's membership.

**Historical Note**

Adopted effective July 22, 1994 (Supp. 94-3). Amended by final rulemaking at 13 A.A.R. 1801, effective June 30, 2007 (Supp. 07-2).

**R13-8-104. Normal Retirement, Deferred Retirement, Deferred Retirement Option Plan (DROP) and Reverse DROP**

- A. When a member applies for normal retirement, deferred retirement, DROP, or reverse DROP, the member shall be provided with the appropriate forms, information on the documentation required, and assistance in applying for retirement benefits.
- B. When all required forms and documentation have been fully completed and submitted to the secretary, the application for normal retirement, deferred retirement, DROP, or reverse DROP shall be placed on the agenda for the next regularly scheduled meeting of the local board, provided the submission is completed ten calendar days prior to the meeting.
- C. A member shall be permitted to address the local board when the local board is considering the member's application.

**Historical Note**

Adopted effective July 22, 1994 (Supp. 94-3). Amended by final rulemaking at 13 A.A.R. 1801, effective June 30, 2007 (Supp. 07-2).

**R13-8-105. Disability Retirement**

- A. When a member applies for ordinary, accidental, catastrophic, or temporary disability pension, the member shall be provided with the appropriate forms, information on the documentation required, and assistance in applying for a disability pension.
- B. When all required forms and documentation have been fully completed and submitted to the secretary, the secretary shall schedule the appointed Medical Board, notify the claimant of the date, time, and location of the Medical Board examination,

and forward the application and all appropriate papers to the Medical Board.

- C. If the claimant is applying for an ordinary disability pension, the local board shall request the Medical Board to address specifically:
1. Whether the claimant:
    - a. Has a physical condition which totally and permanently prevents the claimant from performing a reasonable range of duties within the member's department, or
    - b. Has a mental condition which totally and permanently prevents the claimant from engaging in any substantial gainful activity, and
  2. Whether the claimant's disability is the result of a physical or mental condition or injury that existed or occurred prior to the claimant's date of membership in the system.
- D. If the claimant is applying for an accidental disability pension, the local board shall request the Medical Board to address specifically:
1. Whether the claimant has a physical or mental condition which totally and permanently prevents the claimant from performing a reasonable range of duties within the member's job classification,
  2. Whether the disabling condition was incurred in the performance of the member's job duties, and
  3. Whether the claimant's disability is the result of a physical or mental condition or injury that existed or occurred prior to the claimant's date of membership in the system.
- E. If the claimant is applying for a temporary disability pension, the local board shall request the Medical Board to address specifically:
1. Whether the claimant has a physical or mental condition which totally and temporarily prevents the claimant from performing a reasonable range of duties within the member's department, and
  2. Whether the disabling condition was incurred in the performance of the member's job duties.
- F. If the claimant is applying for a catastrophic disability pension, the local board shall request the Medical Board to address specifically:
1. Whether the claimant has a physical condition which totally and permanently prevents the claimant from engaging in any gainful employment,
  2. Whether the disabling physical condition or injury was incurred in the performance of the claimant's employment duties, and
  3. Whether the claimant's disability is the result of a physical condition or injury that existed or occurred prior to the claimant's date of membership in the system.
- G. Upon receipt of the Medical Board's evaluation, the secretary shall forward a copy of the evaluation to the claimant, and the application for disability retirement shall be placed on the agenda for the next regularly scheduled meeting of the local board, provided the evaluation is received ten calendar days prior to the meeting.
- H. A member shall be permitted to address the local board when the local board is considering the member's application.

#### Historical Note

Adopted effective July 22, 1994 (Supp. 94-3). Amended by final rulemaking at 13 A.A.R. 1801, effective June 30, 2007 (Supp. 07-2).

#### **R13-8-106. Medical Examination of and Recovery by Member with Accidental or Ordinary Disability**

- A. When the local board determines that a member qualifies for an ordinary or accidental disability retirement pension and the

member will not reach normal retirement date within one year of the initial determination, the local board shall determine whether and when to request medical re-examination pursuant to A.R.S. § 38-844(E).

- B. If the local board requests a medical re-examination, the secretary shall so calendar the requested medical examination; process and direct the relevant medical documents; notify the member of the date, time, and location of the medical examination; and forward appropriate documentation to the doctors or clinic performing the medical examination.
- C. The local board shall request the Medical Board performing the medical re-examination to address specifically whether the member has sufficiently recovered to be able to engage in a reasonable range of duties within the member's department.
- D. Upon receipt of the report of the medical re-examination, the secretary shall forward a copy to the member and place the item on the agenda for the next regularly scheduled meeting of the local board, provided the report is received ten calendar days prior to the meeting.
- E. The member shall be permitted to address the local board at any board meeting at which a determination on recovery may be made.
- F. If the local board determines that the member has recovered sufficiently to be able to engage in a reasonable range of duties within the member's department, the local board shall notify the member and the member's department. If the member's department makes an offer of employment to the member, and the member refuses an offer of employment from the member's department or from any employer in the system, the local board shall terminate benefits.
- G. If the local board determines that the member has not recovered, the local board shall determine whether and when to request another medical re-examination pursuant to A.R.S. § 38-844(E).
- H. Notwithstanding the provisions of subsections (A) and (G), the local board may request a medical re-examination pursuant to A.R.S. § 38-844(E) at any time prior to the normal retirement date of a member with a disability pension.

#### Historical Note

Adopted effective July 22, 1994 (Supp. 94-3). Amended by final rulemaking at 13 A.A.R. 1801, effective June 30, 2007 (Supp. 07-2).

#### **R13-8-107. Survivor's Benefits**

- A. When a surviving spouse or a guardian applies for benefits, the surviving spouse or guardian shall be provided with the appropriate forms, information on the documentation required, and assistance in applying for death benefits for surviving spouse, guardian, and eligible children.
- B. When all required forms and documentation have been fully completed and submitted to the secretary, the application for survivor's benefits shall be placed on the agenda for the next regularly scheduled meeting of the local board, provided the submission is completed ten calendar days prior to the meeting.
- C. Upon application, the surviving spouses, guardians, and eligible children shall be permitted to address the local board.

#### Historical Note

Adopted effective July 22, 1994 (Supp. 94-3).

#### **R13-8-108. Notification to Claimant of Determination as to Right of Claimant to a Benefit**

- A. When the local board approves applications for retirement, disability pensions, and survivor's benefits, the claimant shall receive notification of the local board's original determination either by attending the meeting at which the action was taken,

by certified mail, or by receiving benefits from the system pursuant to the local board's original action.

- B.** When the local board denies applications for retirement, disability pensions, and survivor's benefits, the claimant shall receive notification of the local board's original determination either by attending the meeting at which the action was taken or by certified mail. The notification shall include notification to claimant of the statutory right to apply for a rehearing on the original determination within 60 days after receipt of notification.

**Historical Note**

Adopted effective July 22, 1994 (Supp. 94-3).

**R13-8-109. Benefits Calculations**

- A.** The local board delegates to the secretary the calculation of DROP benefits, service retirement benefits, disability retirement benefits, and death benefits for surviving spouses of members and retired members, guardians, and eligible children.
- B.** Subsequent to the issuance of a member's last paycheck, the secretary shall calculate the member's service retirement benefits or the disability retirement benefits.
- C.** Subsequent to a member's last contribution to the System after approval of the member's participation in DROP, the secretary shall calculate the member's DROP benefit.
- D.** The member, surviving spouse, guardian, or eligible child shall receive notification of the calculation of benefits by receiving benefits from the system or by certified mail.

**Historical Note**

Adopted effective July 22, 1994 (Supp. 94-3). Amended by final rulemaking at 13 A.A.R. 1801, effective June 30, 2007 (Supp. 07-2).

**R13-8-110. Termination of Benefits**

- A.** Upon the death of a retired member, the local board shall terminate the member's benefits effective the first day of the month following the death and shall consider applications for survivor's benefits, if and when submitted.
- B.** When an eligible child is no longer eligible, the local board shall terminate the child's pension and, where appropriate, any guardian or conservator's pension.

**Historical Note**

Adopted effective July 22, 1994 (Supp. 94-3). Amended by final rulemaking at 13 A.A.R. 1801, effective June 30, 2007 (Supp. 07-2).

**R13-8-111. Income Reporting for Member with Ordinary Disability Pension**

- A.** No later than April 30 of each year, each member receiving ordinary disability payments during the period prior to the member's normal retirement date shall provide a notarized statement to the local board which identifies all income from employment, including self-employment, received by the member in the previous calendar year and describes the employment and self-employment from which the member received income. The statement shall also include the fair market value of all benefits received by the member during the previous calendar year as compensation for such employment or self-employment. Copies of all income tax statements, 1099 forms, and W-2 forms reflecting the member's income for the previous calendar year shall be attached to the notarized statement.
- B.** Upon written request by a member, the local board may grant the member an additional 30 days to allow the member to provide the local board with the information required under subsection (A).

- C.** If a member fails to report income as required by this rule, the local board shall suspend any further ordinary disability payments to the member until the member reports income for the previous year.
- D.** After the local board reviews the reported income information, the secretary shall return the copies of all income tax statements, 1099 forms, and W-2 forms to the member.

**Historical Note**

Adopted effective July 22, 1994 (Supp. 94-3). Amended by final rulemaking at 13 A.A.R. 1801, effective June 30, 2007 (Supp. 07-2).

**R13-8-112. Rehearing on Original Determination**

- A.** The local board shall conduct rehearings pursuant to A.R.S. § 38-847(H) as though the rehearings were an adjudicative proceeding under A.R.S. Title 41, Chapter 6, Article 6 (A.R.S. § 41-1061 et seq.).
- B.** If the fund manager applies for a rehearing, the claimant whose benefit determination may be affected shall be a party to the proceeding.
- C.** By ten calendar days prior to the rehearing, the claimant or fund manager shall submit to the local board a list of witnesses whom the claimant or fund manager intends to call to testify at the hearing and of all exhibits which the claimant or fund manager intends to use at the hearing as well as a copy of all listed exhibits.
- D.** By ten calendar days prior to the rehearing, the claimant or fund manager may submit to the local board a written statement setting forth the facts of the case and a brief addressing relevant issues.
- E.** If the claimant, fund manager, or local board desires subpoenas pursuant to A.R.S. § 41-1062(A)(4), the subpoenas shall be submitted at least ten calendar days prior to the rehearing to the secretary for issuance by the presiding hearing officer. Service of the subpoenas is the responsibility of the party requesting issuance of the subpoenas.
- F.** Applications for permission to take depositions pursuant to A.R.S. § 41-1062(A)(4) shall be submitted to the secretary for determination by the presiding hearing officer.
- G.** Unless the local board decides otherwise, the chairperson of the local board shall function as the presiding hearing officer.
- H.** The burden of proof for establishing a disability shall be with the claimant.

**Historical Note**

Adopted effective July 22, 1994 (Supp. 94-3). Amended by final rulemaking at 13 A.A.R. 1801, effective June 30, 2007 (Supp. 07-2).

**R13-8-113. Review of Decision by Local Board on Rehearing of Original Determination**

- A.** Except as provided in subsection (H), the decision by the local board on rehearing of the original determination may be vacated and a new rehearing granted on motion of the aggrieved party for any of the following causes materially affecting that party's rights:
1. Irregularity in the administrative proceedings of the local board or the hearing officer or prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing.
  2. Misconduct of the local board, the hearing officer, or prevailing party.
  3. Accident or surprise which could not have been prevented by ordinary prudence.
  4. Material evidence, newly discovered, which with reasonable diligence could not have been discovered and produced at the rehearing.

5. Error in the admission or rejection of evidence, or other errors of law occurring at the rehearing or during the progress of the administrative proceeding.
  6. That the decision is the result of passion or prejudice.
  7. That the decision is not justified by the evidence or is contrary to law.
- B.** A new rehearing may be granted to all or any of the parties and on all or part of the issues for any of the reasons for which new hearings are authorized by law or rule of the local board. On the granting of a motion for review, the local board may take additional testimony, amend findings of fact and conclusions of law, or make new findings and conclusions and direct the entry of a new decision.
- C.** The motion for review shall be in writing, shall specify generally the grounds upon which the motion is based, and may be amended at any time before it is ruled upon by the local board.
- D.** A motion for review shall be filed not later than 15 calendar days after receipt of notification of the decision by the local board on the rehearing of original determination. For purposes of this subsection, the claimant shall receive notification either by attending the meeting at which the decision is made or by certified mail.
- E.** Any party to the proceeding may file a response to the motion or amended motion within ten calendar days after service of the motion or amended motion. The local board may require filing of briefs upon issues raised in the motion and may provide for oral argument.
- F.** When a motion for rehearing is based upon affidavits, they shall be served with the motion. All parties to the proceeding have ten calendar days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 calendar days either by the local board for good cause shown or by the parties by written stipulation. The local board may permit reply affidavits.
- G.** Not later than 40 calendar days after the decision, the local board of its own initiative may order a new rehearing for any reason for which it might have granted a new rehearing on motion of a party. Additionally, after giving the parties notice and an opportunity to be heard on the matter, the local board may grant a motion for review, timely served, for a reason not stated in the motion. In either case the local board shall specify the grounds therefore.
- H.** If the local board makes specific findings that the immediate effectiveness of a decision in a particular matter is necessary for the protection of the system and its members and that a review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without opportunity for a review. If a decision is issued as a final decision without an opportunity for review, any application for judicial review of the decision shall be made within the time limits permitted by law for applications for judicial review of the local board's final decisions.

**Historical Note**

Adopted effective July 22, 1994 (Supp. 94-3).

**R13-8-114. Transcripts**

If any party designates any portion of the oral proceedings before the local board or hearing officer as part of the record on review in the superior court, the cost of the transcript shall be paid by the party so designating unless the local board waives the cost of transcription upon good cause shown. A request for waiver of the cost of the transcription shall be in writing and served upon the local board at the time of the service of the complaint.

**Historical Note**

Adopted effective July 22, 1994 (Supp. 94-3).

**R13-8-115. Confidentiality of Medical Records and Data**

- A.** Medical records and data of members held by the local board are confidential and are exempt from public copying and inspection requirements of A.R.S. § 39-121 et seq.
- B.** The local board shall discuss all medical records and specific medical data in executive session, including the taking of testimony that is specifically required to be maintained as confidential by state or federal law, unless the member signs a consent form to discuss the member's medical records and data in an open meeting.
- C.** The member, member's legal counsel, and only individuals whose presence is reasonably necessary in order for the local board to carry out its executive session responsibilities may attend an executive session pursuant to A.R.S. § 38-431.03(A)(2) to discuss the member's medical records and specific medical data.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 1801, effective June 30, 2007 (Supp. 07-2).