

I. Purpose and Scope

1. Preamble

These guidelines describe general policies and procedures followed by the Disability Board of the City of Renton, established and empowered under the Revised Code of Washington (RCW 41.26). Conditions may exist or come into existence, which are not fully or clearly encompassed by these guidelines. In such cases, the Board will take whatever action is necessary to deal with the situation in keeping with the spirit of statutory authority, legal and administrative precedent.

2. Scope

The policies and procedures in this document apply to all City of Renton fire fighters and police officers covered by RCW Chapter 41.26, the Law Enforcement Officers and Fire Fighters Retirement System (also known as LEOFF I), except as specifically excluded within this document.

3. Effect of Policies and Procedures

All uniform personnel covered by LEOFF I are required as a condition of employment to follow these procedures. Any member who fails to follow these procedures may be subject to loss of any or all benefits otherwise due under the LEOFF I Act. In the event, any portion of these policies and procedures is found to be contrary to law, in general terms or as applied to a particular member, all other policies and procedures will continue to apply to all members.

4. Declaration and Notification of Members

Upon adoption of this document, a copy will be distributed to each covered member. Revised Policies and Procedures will be sent to members when changes occur.

II. Meetings

1. Regular Meetings

The Board holds regular meetings on the fourth Tuesday of each month at Renton City Hall, Seventh Floor Conference Room, beginning at 9:00 a.m. In the event the regular meeting day is a holiday; the meeting will be rescheduled.

2. Special Meetings

Special meetings may be called by the Chairperson at the request of any Board member. Additionally, a majority of Board members present at a regular meeting may call a special meeting. Written notice of special meetings is delivered by mail or email to each Board member. Notice is also given to the local general-circulation newspaper and to each local radio or television station, which has requested in writing to be notified of particular special meetings or all special meetings. The notice must be delivered to the members of the Board and the media at least 24 hours before the meeting. Notice of a special meeting must include the date, time, and location of the meeting and a description of business to be transacted.

3. Open Meetings

It is Board policy to allow open public access (except as noted in Section 4) to all meetings of the Board. The Board Secretary will keep an official record of deliberations and other order connected therein for entering or submission to the State Retirement Board.

4. Closed Meetings

The Board may close portions of meetings when consideration of a disability leave, retirement, or medical claim may include discussion of sensitive medical information, or upon request of the claimant. **[Authorized under RCW 42.30.140(2)]**

5. Quorum

Three (3) members of the board is a quorum. A majority of the members (quorum) may conduct business.

III. LEOFF Board Member Job Description

1. General Functions

Reviews and makes decisions on the approval of medical claims and requests for disability leave and retirement. Determines medical and health coverage for the membership of the LEOFF I retirement system under RCW 41.56.

2. Scope of Responsibility

Participates as an active member of a decision-making Board. May serve as Chairperson or in his/her absence, Acting Chairperson. Is accountable for the efficient and effective administration of RCW 41.56, LEOFF Act as granted by Title 415 WAC. Works in conformance with established Board policies and procedures. Operates with considerable latitude in evaluating comprehensive medical reports for the purpose of independent decision-making. Functions as a member of the LEOFF I Board in deciding payment or non-payment of claims. The term of office is for a two-year period.

3. Election of Chair

A chairperson is elected each year by a majority vote of the Board at the January meeting. The Chair shall be the presiding officer of all meetings of the Board. In his/her absence or inability to act, another Board member shall be appointed as Acting Chair by the Board.

4. Examples of Job Duties

- A. This is an administrative decision-making body with considerable authority governing benefits to LEOFF I members as described under RCW 41.56.
- B. The Board reviews and authorizes disability leaves/retirement request consistent with the RCW. This would include Leaves of Absences and Return to Work requests.
- C. The Board evaluates and makes decisions on comprehensive medical claims and legal documents presented by members or staff. The Board evaluates the information presented to support a legal basis for payment or non-payment of claims.

IV. Disability Board Membership and Election Procedures

1. Membership

Members include two (2) City Council Members to be selected by the Mayor; one Representative of Law Enforcement Officers and one Representative of Fire Fighters (both elected by fellow department members and retirees); and one Citizen-at-Large selected by the other Board members. Terms will be staggered with each member serving a two-year term. Substitute Senate Bill No. 6212 - effective June 9, 1988, allows an active or retired LEOFF I Police Officer or Fire Fighter to serve on the City of Renton Disability Board for a two year term.

According to Attorney General's Opinion AGO 1981 No. 12, LEOFF II employees may also serve on the LEOFF I Disability Board. This does not mean that LEOFF II members are covered under LEOFF I guidelines regarding disability leave or retirement.

2. Election Procedures, Police and Fire

- A. Disability Board staff will notify the Administrative Secretaries that the election process needs to begin. Disability board staff will provide Secretaries with a format to be used for elections, and direct them to send out a request for nominations for a Police or Fire Representative position by the third week of September. The election process will be conducted by mail. Requests for nominations should be returned to the Administrative Secretaries by the second week in October.
- B. Once a roster of nominees has been established (self- nominations are accepted), a ballot will be distributed by the Administrative Secretaries to all Active and Retired LEOFF 1 and Active LEOFF 2 members to vote. Ballots should be returned to the Administrative Secretaries by the second week in November. Members may only vote for nominees within their own department.
- C. Ballots will be tabulated at the regular November meeting. Candidates may attend or have a representative present to witness the ballot count.
- D. The results of the election will be announced to all Police and Fire employees and retirees at the regular December meeting.
- E. The Mayor's office will notify the LEOFF Board of changes in appointment information.

V. Amendment of Policies and Procedures

1. Amendment of Policies and Procedures

The Board shall adopt Policies and Procedures necessary to conduct business, which may be amended from time to time. These procedures may be amended using the following process:

- a) At the direction of the Disability Board, Staff drafts a proposed amendment and presents it to the Board for review and comment.
- b) The Disability Board approves the draft amendment and directs Staff to incorporate the change into the Policy and Procedures document.
- c) In all cases, the most recently adopted policy/procedure takes precedence.
- d) The Policies in effect on the date of medical or dental service (when related to a medical necessity), disability leave or retirement are the policies and procedures governing the Board's review and action as pertains to that particular service, leave or retirement.

These policies and procedures shall be reviewed and approved on a bi-annual basis.

VI Disability Leave

1. Board Review Required

Requests for disability benefits must be acted upon and approved or disapproved by the Board. The Board's authority under the statute is limited to determining, after actively reviewing the application, whether a member is unfit for duty and, therefore, entitled to disability leave benefits. [RCW 41.26.110 - 41.26.120]

2. Sick Leave Bank

All sick leave banks must be exhausted before an employee is placed on disability leave.

Disability leave and any other leave are mutually exclusive and cannot be used together.

3. Requesting Leave

A Disability Leave Request form must be submitted to the Disability Board Secretary at least three days prior to the Board meeting. All members and their supervisors should be aware of how much sick leave is available to the employee in order to immediately request disability leave when sick leave is exhausted.

A completed form will include exact dates of duty time off among other items. The completed form should be forwarded and signed by payroll prior to submittal to the LEOFF Board.

If you are injured on the job it is the employee's responsibility to include a copy of the Incident Report with the request for disability leave.

The Disability Board approves continuing leaves for a period not to exceed six months in duration. The requested initial application for disability leave indicates the requested start date of the leave and the leave continues until the Board determines that the member's disability has ceased or until six months have passed from the start date, whichever is sooner. A Disability Leave/Retirement Attending Physician Statement may be requested by the Board. At the end of the six-month period, the member must return to duty, if able, or must file for permanent disability retirement.

4. Release to Return to Work

The member must provide a written medical release to return to duty in any instance in which the member has been absent for a period of one continuous month or more. A release to return to duty may be required following shorter absences when the Board, the department head, or a ranking officer requests a

release. For the Police Department, ranking officer is defined as Police Chief or Designee; and for the Fire Department, Fire Chief or Designee. No member may return to duty under the above circumstances without this release. The release must be signed by the member's attending physician.

If an applicant receives a release from his doctor and the department disagrees with the decision of the doctor, the matter will be forwarded to the Disability Board for determination.

5. Obligation To Return When Possible

It is the responsibility of each employee granted disability leave to seek return to active service at the earliest possible time he/she is fit to return to duty. In the event the Board finds a member has not immediately sought to return to active service upon cessation of disability, the Board has authority to retroactively set the date of return to service and cancel the member's disability pay for the period in question. [Authorized by RCW 41.26]

6. Conditional Return to Work

If, after examination for disability retirement and review of the medical and other relevant evidence, the Disability Board still cannot determine with reasonable certainty whether the applicant should or should not be granted disability retirement allowance, the Disability Board may specify, in a written order, a reasonable period of trial service to determine the applicant's fitness for active duty. During the period of trial service the applicant is to return to the same duties in the same position held at the time of discontinuance of service. The trial period would serve no useful purpose in determining the applicant's fitness for the duties of the position held if he/she were required to perform only "light duty" tasks or the duties required of a different position.

The length of any trial service must be for a reasonable period and must be supported by medical evidence. If, based on a period of trial service, the applicant is found to be disabled, he/she is not entitled to a second six-month period of disability leave, but will return to disability leave status for the remainder of the initial six-month leave. (see WAC 415-105-050(2)).

7. Member Cooperation

While on disability leave, members are required to comply with all directives of the Board. Such directives may include, but are not limited to, requests for medical and/or psychological evaluations, submittal of other relevant reports, and orders to appear before the Board. In the event a member fails to comply, the Board will evaluate whether compliance was within the member's control. If the Board finds a member to have willfully failed to comply, the Board will presume the member to have recovered.

8. Activities on Disability Leave

Individuals on disability leave are prohibited from engaging in any activity or employment contrary to the instructions of the attending physician, and/or the Disability Board physician. Failure to comply may result in termination of disability benefits.

9. Participation in Rehabilitation

During the period of disability leave, the Board has authority to inquire of any examining physician as to what physical, medical or therapeutic treatments might rehabilitate the applicant and, based upon such evaluation, may direct the applicant to participate in certain treatments. If the applicant fails or refuses to comply, the Board may terminate the applicant's disability benefits.

VII. Disability Retirement

1. Claimant's Responsibilities

It is the claimant's responsibility to prove the existence of a disabling condition and whether that condition was incurred in the line of duty or not. In order to receive or continue receipt of a disability retirement allowance, the claimant is required to prove that he/she is unable to perform the duties of his/her position or rank with average efficiency.

2. Examination

Applicants for disability retirement will be examined by a Board appointed physician during disability leave in order to determine potential eligibility for disability retirement.

3. Findings of Disability

The Board reviews all relevant information pertaining to a claimant's fitness for duty. If a majority of the Disability Board finds the evidence supports the applicant's claim of disability, the claimant will be granted disability leave and separation from active service for a period not to exceed six months. (RCW 41.26.120 and 125)

The Board may require the appearance of the claimant, his/her supervisors or other superiors, and such medical experts, as the Board may deem appropriate. When obtaining medical services or evaluations in connection with any condition cited in application for disability leave, it is the claimant's responsibility to advise each and every examining physician that evaluation is being conducted for the Board. Any attending physician may be called to testify before the Board, and the "physician-patient" privilege may not be invoked to excuse attendance or testimony.

4. Granting Disability Retirement

If the evidence shows to the satisfaction of the Board that the member is physically or mentally disabled from further performance of duty and that disability has been continuous for a period of six months from the beginning date of disability leave, the Board enters a written decision and order, accompanied by appropriate "Findings of Fact and Conclusions of Law." [RCW 41.26.120]

If disability retirement is granted, the written Decision and Order with supporting documentation is forwarded to the State Retirement Board for review.

5. Periodic Re-Examinations

In the event a member is placed on retirement, the Board determines whether the member is irretrievably and permanently disabled with no possibility of rehabilitation restoring the member to fitness for duty.

If the Disability Board determines that the retiree is so disabled that no possibility exists for the retiree to return to work or that rehabilitation could not possibly restore the retiree to fitness for duty, the Board must send to DRS a copy of that determination and the current medical evidence on which it was based.

In the event the retired member resides outside the greater Renton area, the member may be authorized to have re-examinations conducted by a physician in his/her immediate area, provided however, selection of the examining physician has first been approved by the Board's medical advisor and the examining physician has been informed of the nature of the examination and the issues to be addressed in an evaluation report to the Board.

If the retiree refuses to submit to medical re-examination, the allowance is to be discontinued until the retiree complies with the examination requirement. If the retiree continues for one year to refuse to undergo reexamination, the Disability Board must cancel his or her retirement allowance. The cancellation of the retirement allowance can be appealed to the Director pursuant to RCW 41.26.200.

6. Retiree Address Verification

Retirees are required to complete and return to the Board an address verification form, which is sent to each retiree at the retiree's last-known address on an annual basis. Retirees should notify the Board promptly in case of relocation.

VIII. Medical Services

1. Scope

Whenever any active member, or any member hereafter retired, on account of service, sickness, or disability, not caused or brought on by dissipation or abuse, of which the disability board shall be judge, is confined in any hospital or in home, and whether or not so confined, requires medical services, the employer shall pay for the active or retired member the necessary medical services not payable from some other source as provided for in subsection (2) of this section. (RCW 41.26.150)

The medical services payable under this section will be reduced by any amount received or eligible to be received or eligible to be received by the member under workers' compensation, social security including the changes incorporated under Public Law 89-97, insurance provided by another employer, other pension plan, or any other similar source. Failure to apply for coverage if otherwise eligible under the provisions of Public Law 89-97 shall not be deemed a refusal of payment of benefits thereby enabling collection of charges under the provisions of this chapter. (RCW 41.26.150 (2))

2. Exclusions and Limitations

Medical services received outside the coverage's provided by the employee's City provided health plan are ineligible for payment except in circumstances where the service is not included in the health plan and the Board finds that the treatment was medically necessary.

A. Service Charges

The Board will not approve payment of service charges if the employee fails to submit claims to the insurance carrier or to the Disability Board in a timely manner. Timely manner is defined as within 90 days of the date of service. The 90-day limit may be waived by the Board upon proof from the employee that a delay in processing the claim was beyond the employee's control.

Delinquency service charges imposed by service providers on past due accounts will not be approved for payment unless the employee can show these charges were a result of delay in submitting a documented claim to the Board due to circumstances beyond the employee's control

B. Missed Appointments

Claims submitted to the Disability Board for missed doctor's appointments will not be approved by the Board for payment unless the member can show that missing the appointment without giving 24 hours notice of cancellation was due to circumstances beyond the member's control.

C. Dental Services

Dental services, including any service of a cosmetic nature, are precluded from coverage, except in circumstances where a member sustains an accidental injury to his/her teeth, and treatment is commenced with a legally licensed dentist within 90 days following the accident.

D. Substance Abuse

Claim determinations of recovery or dissipation of substance abuse are at the discretion of the Board after considering the evaluation of the Board's medical advisor or member's physician, together with any other relevant evidence. Note limit defined. If a medical doctor diagnosis a medical condition, benefits may be exceeded with board approval.

3. Vision Services

Benefits for vision correcting lenses are available only when lenses are prescribed by a licensed optometrist or ophthalmologist and are subject to the maximums set below:

- \$400 limit every two years for lenses, frames or contact lenses. Includes Refractive/Laser Eye Surgery, tinting.
- One eye exam per year shall be paid in full.
- Replacement for breakage or loss will be reviewed on a case-by-case basis.
- Eligible payments will be reduced by any amount received or eligible to be received by Medicare, insurance provided by the City or another employer, pension plan, or other similar source
- Reimbursed co-pays.

4. Hearing Aids

The Board will approve payment for hearing aids within these guidelines:

- Referral must be from a physician.
- Up to a maximum of \$1,600 per ear within a thirty-six month period.
- Up to a maximum of \$2,500 per ear for a digitally programmable analog hearing aid within a five-year period.
- Up to a maximum of \$2,800 per ear for a digital programmable hearing aid within a five-year period

- Batteries will be provided as necessary.
- On-the-job injuries which result in hearing aid damage are not subject to the limitations above, but will be reviewed on a case-by-case basis.
- Amounts will be reduced by any amount received or eligible to be received by Social Security, Medicare, insurance provided by the City or another employer, pension plan, or other similar source.

5. Subrogation Rights

Upon making payment for medical services, the City shall be subrogated to all rights of the member against any third party. If a member institutes any lawsuit against a third party for the member's injuries or costs of medical services, the member must immediately notify the City in writing of the lawsuit. [Authorized by RCW 41.26]

6. Nursing Facility/Home Health Care

Expenses incurred in a nursing home or extended care facility for reasonable and necessary medical services will be approved by the Board within the following guidelines. Members must receive prior approval from the Board before obtaining treatment. The Board will approve payment of such services, when combined with insurance or other sources that does not exceed the average cost for such care in the King County area.

Eligible payment shall be reduced by any amount that the member receives or is eligible to receive from insurance, Medicare, Medicaid, or any similar source.

The facility must be a state licensed nursing home center or a center as approved by the Board.

Skilled Nursing Facility: A \$175.00/day maximum plus any necessary medical services that may be required.

In Home Care: A \$175.00/day maximum plus any necessary medical services that may be required.

Hospice Care: A \$175.00/day maximum plus any necessary medical services that may be required.

Items for entertainment purposes such as televisions, cable hook-ups, and telephone charges are not reimbursable expenses.

Shall be reviewed on a yearly basis.

Home healthcare daily maximum dollar limit is limited to the same daily maximum as skilled nursing home care. Exceptions are on a case-by-case basis.

Services of a Registered Nurse - **neither related to the member nor living in the member's house.**

Members must receive prior approval of the Board before exceeding defined benefit. The Board may require a written treatment plan from the provider or request any additional information as needed.

7. Medicare

All eligible members must sign up or notify a member of the Human Resources staff or a Board representative in order that the initial reimbursement for premiums can be set up to be paid on a quarterly basis.

8. Chiropractic Care – (Limited to 20 visits per year)

Members must receive prior approval of the Board before exceeding defined benefit. The Board may require a written treatment plan from the provider or request any additional information as needed. The Board may also seek a second opinion conducted by a Board appointed physician.

9. Psychologist Care – (Limited to 20 visits per year)

Members must receive prior approval of the Board before exceeding defined benefit. The Board may require a written treatment plan from the provider or request any additional information as needed. The Board may also seek a second opinion conducted by a Board appointed physician.

10. Psychiatrist Care

The Board may require a written treatment plan from the provider or request any additional information as needed. The Board may also seek a second opinion conducted by a Board appointed physician.

11. Counseling - Family, Substance Abuse, Individual

Members must receive prior approval of the Board before exceeding defined benefit. The Board may require a written treatment plan from the provider or request any additional information as needed. The Board may also seek a second opinion conducted by a Board appointed physician. Refer to City health plan for defined benefit.

12. Other Necessary Medical Services

Charges for medical services and supplies obtained pursuant to licensed practitioners listed as follows (this list is not all inclusive):

Drugs or medicines obtained pursuant to a physicians prescription.

Diagnostic x-ray and laboratory examinations.

X-ray, radium, and radioactive isotopes therapy.

Anesthesia and oxygen.

Rental of iron lung and other durable medical equipment.

Artificial limbs and eyes, casts, splints, trusses.

Sleep Apnea supplies and equipment.

Necessary Ambulance Service (Refer to City Plan for defined benefit.)

Physical therapy by a registered physical therapist.

Blood transfusions, including the cost of blood and blood plasma not replaced by voluntary donors.

Repairs and maintenance of approved medical equipment used by the member.

Necessary hospital expenses, including room and board expenses at the semi-private room rate, unless otherwise required by the attending physician.

Diabetic strips, test kits, and supplies.

Diabetes Classes.

Flu Shots.

Items such as Nicoderm, hearing aide batteries, or requests for over the counter medication should be submitted directly to the board.

13. EXCLUSIONS AND LIMITATIONS

Massage Therapy unless approved by Board and recommended by a physician as part of the treatment process. Services include those of the following as listed:

Naturopathic
Acupuncture
Acupressure

IX. Processing of Medical Claims

1. Payment of Claims

Claims must be submitted to all coverage providers as soon as possible after treatment. Claims may be submitted either by the covered member or by the service provider. All medical claims of active or retired members must be submitted first to the Third Party Administrator (TPA). The following information should be given to your treating physician:

Healthcare Management Administrators
P.O. Box 85008
Bellevue, WA 98015

Group #3034

2. Coordination of Benefits

Members who are covered by health insurance other than that provided by the City must submit a claim to that coverage provider.

Claims exceeding the limitations set forth in (RCW 41.26.152) will be returned to the board by the covered provider for approval. In order to enable coordination of benefits, all members are required to advise the TPA of any other health insurance coverage the member has or obtains.

3. Board Approval

As soon as the insurance carrier's "Explanation of Benefits" is received the member should attach it and the billing statement from the service provider and send it the Board Secretary. The completed packet should then be sent to the Board Secretary to be included on the agenda for the next Board meeting. The Board Secretary has the authorization to pay necessary medical services up to \$100.00 without Board approval.

The items to be forwarded to the Board are:

- a) Billing statement from the service provider. (If the provider bills the insurance carrier directly, it is the member's responsibility to obtain an itemized statement from the provider).
- b) Insurance carrier's "Explanation of Benefits."

All claims MUST be received by the Board Secretary at least 3 days prior to the monthly Board meeting if they are to be included on the agenda.

4. Timely Submission of Claims

Only claims submitted within one year of the service date will be considered for payment by the Board unless the employee can show the delay was beyond his/her control. Claims shall be submitted to the Board as soon as possible after an Explanation of Benefits is received from the insurance carrier to avoid any administrative issues, which could arise from withholding and then submitting large groups of claims together. Exceptions to this policy are extremely small claims, such as those under \$20 that can be held during a calendar year and consolidated with another claim.

5. Appeals Procedure

A member may appeal a medical claim that has been denied by the Board. If a claim is denied, a written notice of that claim denial and the member's subsequent right of appeal shall be sent to the member within seven working days from the date of the Board meeting. The member then has 20 working days from the date of the notification to file for appeal. The member may either submit an appeal in writing or request an appearance at the next regularly scheduled meeting.

6. Maximum Dollar Limit Claims

When a member has reached the limit which the insurance plan will pay per calendar year for certain kinds of care such as chiropractic and mental health, the member does not have to continue to submit bills to the insurance carrier for denial of those benefits for the remainder of that year for each maximum met. The employee needs to attach a copy of the Explanation of Benefits which verifies that the maximum limit has been attained and a copy of the itemized statement or invoice from the service provider. From that point on, the employee need only submit a copy of the invoice or bill to the Board Secretary as a request for payment for the remainder of that year. The Disability Board Secretary will track amounts approved by the Board per employee per calendar year.

As a new year begins, the employee must again submit claims to the Disability Board until a new annual maximum is reached.

Members have the right at any time to ask for a second medical opinion.

Washington Law Enforcement Officer's & Firefighter's Retirement System (LEOFF), Plan 1

Local Disability Board Guidelines

THE APPLICATION

Any member who believes he or she is physically or mentally disabled may apply for disability retirement. Although applications filed with a disability board are sometimes designated as applications for disability leave, they are at all times applications for disability retirement. (See AGLO 1975 No. 84.) If the member is so disabled that he or she cannot complete and file the application, someone acting in the member's behalf may apply. In either case, the application must be filed within one year from and after the member's discontinuance of service. (See RCW 41.26.120 and .125.)

It is the applicant's responsibility to:

- prove the existence of a disabling condition;
- prove whether the condition was or was not incurred in the line of duty; and
- prior six provide the name(s) of any physician(s) contacted for the disabling condition within the months.
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(See WAC 415-105-040)

DISCONTINUANCE OF SERVICE

Under the provisions of RCW 41.26.120 and .125, an applicant is not entitled to be granted disability leave until he or she has discontinued service.

Sick leave or vacation leave and disability leave are mutually exclusive; a person cannot be on sick leave or vacation leave and disability leave at the same time.

An applicant who is on sick leave or vacation leave is still in service because the member is receiving salary. On the other hand, an applicant who has been granted disability leave receives an allowance equal to salary.

DISABILITY LEAVE

After the Disability Board receives the application for disability retirement, it must:

- review all relevant information about the applicant's fitness for duty;
 - consider the duties of the applicant's position;
 - consider any other pertinent evidence; and
 - grant or deny disability leave
- or
- continue the matter pending receipt of additional information.

(See WAC 415-105-040)

If a majority of the Disability Board agrees that the evidence supports the applicant's claim of disability, the Disability Board is to grant disability leave - for a period not to exceed six months - effective the day following the applicant's discontinuance of service. (See RCW 41.26.120 and .125)

The Disability Board does not have authority to grant disability leave retroactively if the applicant was in service by virtue of being in paid sick or vacation leave status. Further, it is not up to the Disability Board to require an applicant to use sick leave and/or vacation leave prior to granting disability leave. However, if the terms of the bargaining agreement between the employer and employee require such usage, the Disability Board can set the beginning date of the disability leave accordingly.

If the employee has an absolute, contractual right to use sick leave or vacation leave during an absence from duty, then the employee may elect to use any or all of such leave before going on disability leave. On the other hand, the employee may separate from the payroll without using any accrued leave and be eligible for disability leave immediately upon being found disabled by the Disability Board. (See Letter Opinion dated 9/9/71. See also Allen v. Fire Protection District, 68 Wn. Appl, P.2d, 1992.) If the information before the Disability Board is insufficient to determine whether the applicant is or is not disabled, the matter can be continued to the next regular meeting or set for consideration at a special meeting. The Disability Board must advise the applicant of:

- the additional information needed;
- the applicant's obligation to provide the additional information; and
- the date by which the information must be provided.

The Disability Board is authorized to demand the appearance of the member and to request the appearance of any other persons it deems appropriate.

When seeking additional medical evidence to support the claim of disability, the applicant should advise each examining physician that:

- the board has requested additional information;
- any reports of the evaluation will be reviewed by the board; and
- the physician may be requested by the Disability Board to testify as to the physician's findings.

After the additional evidence has been submitted to the Disability Board, the Disability Board is to review the material; consider the applicant's fitness to perform with average efficiency the duties of his or her position or rank; and grant or deny disability leave.

(See WAC 415-105-040)

The period of disability leave will be for six consecutive months from and after discontinuance of service with the following exceptions:

- If at any time during the disability leave the Disability Board finds that the applicant is no longer disabled, the disability leave allowance shall be canceled and the member will be restored to duty in the same rank or position, if any, held by the member at the time of discontinuance of service. (See RCW 41.26.120 and .125)

- If the applicant established that the disabling condition will be in existence for at least six months and he or she voluntarily waives disability leave, the applicant will immediately be granted a disability retirement allowance by the Disability Board. (See WAC 415105-050(11) and RCW 41.26.120(4) and .125(4).)
- If, after examination for disability retirement and review of the medical and other relevant evidence, the Disability Board still cannot determine with reasonable certainty whether the applicant should or should not be granted a disability retirement allowance, the Disability Board may specify, in a written order, a reasonable period of trial service to determine the applicant's fitness for active duty. During the period of trial service the applicant is to return to the same duties in the same position held at the time of discontinuance of service. The trial period would serve no useful purpose in determining the applicant's fitness for the duties of the position held if he or she were required to perform only "light duty" tasks or the duties required of a different position.

The length of any trial service must be for a reasonable period and must be supported by medical evidence. If, based on a period of trial service, the applicant is found to be disabled, he or she is not entitled to a second six-month period of disability leave, but will return to disability leave status for the remainder of the initial six-month leave. (See WAC 415-105-050(3))

DENIAL OF DISABILITY LEAVE

If the Disability Board denies disability leave or cancels a previously granted disability leave, the applicant has the right to appeal. (See Appeal Procedures, pg. 9.) An appeal is to be filed with the Director of the Department of Retirement Systems (DRS) within 30 days of the Disability Board's pronouncement of its decision. If the matter is appealed, the Disability Board must, within 90 days, submit the following to the Director for review:

- the Disability Board's certified decision and order, which shall include findings of fact and conclusions of law; AND
- a transcribed copy of the record of all proceedings in the matter; AND
- all other relevant evidence (See RCW 41.26.200).

EXAMINATION FOR DISABILITY RETIREMENT

During the fifth or sixth month of disability leave, the Disability Board must have the applicant examined by the Disability Board's doctor or a specialist of the disability Board doctor's selection. The Disability Board shall not approve disability retirement without this examination unless:

- the applicant establishes that the disabling condition will exist for at least six months; AND
- he or she voluntarily waives disability leave.

In order to perform an appropriate examination and provide a valid and useful report to the Disability Board, the Disability Board's doctor or selected specialist must be

knowledgeable about the normal, routine duties, functions and general demands of the position the applicant held at the time he or she discontinued service.

The Disability Board must furnish the examining physician with the applicant's job and/or position description. It should also inform the physician that the Board's decision to grant or deny a disability retirement allowance is to be measured against the actual, ordinary, routine duties that the applicant performs. See Clark v. Board of Police Pension Fund Comm'rs, 189 Wash. 555.66 P.2d 307 (1937); Rauch v. Fisher, 39 Wn. App. 910, 696 P. 2d 623 (1985), and WAC 415-105-030(2) and (3).

NOTE: WAC 415-105-030 provides for those situations where the applicant's condition will be more appropriately evaluated by a medical doctor certified as a specialist in that particular field of medicine. For example, if the applicant alleges a mental disability and the Disability Board's doctor is a general practitioner, the Disability Board should ask its doctor to select a psychiatrist to conduct the examination for disability retirement.

DETERMINATION

Whether an applicant may or may not be granted a disability retirement allowance is mandated by RCW 41.26.120 and .125 which both provide, in relevant part, as follows:

Any member ... may be retired ... for any disability ... which has been continuous since [the member's] discontinuance of service and which renders [the member] unable to continue ... service.

The phrase "unable to continue ... service" means that the applicant is disabled to such extent that he or she is unable to discharge, with average efficiency, the ordinary routine duties of the member's position.

NOTE: In unmistakable terms, the statute pertains to a current disability, not one that might occur or recur in the future. There is a critical distinction between "unable to continue ... service," which is the condition stated in law, and "shouldn't continue" or "shouldn't return to service." The former is existing and certain, whereas a possibility of future injury or illness is speculative.

The court has held that "... benefits clearly are not justified where a claimant adequately is performing those specific duties required by the position actually held by him." Rauch v. Fisher, 39 Wn. App. 910, 696. P.2d, 623 (1985)

The applicant is not entitled to a disability retirement allowance if:

- there is an available position for which the applicant is qualified and to which a person of the member's grade or rank is normally assigned; and
- the Disability Board determines that the applicant is capable of discharging, with average efficiency, the duties of such available position.

In order to qualify to receive a disability retirement allowance, the applicant must prove that he or she is so physically or mentally disabled that he or she is unable to discharge

with average efficiency the duties of the position held at the time service was discontinued.

If the Disability Board determines that the evidence satisfactorily supports the application for disability, the Disability Board is to grant the applicant a disability retirement allowance. (See WAC 415-105-060(2))

DECISION AND ORDER

Upon granting a disability retirement allowance, the Disability Board must enter a written decision and order that is accompanied by appropriate findings of fact and conclusions of law. The findings of fact must be supported by credible evidence sufficient to sustain the Disability Board's decision. When a disability retirement allowance is granted, findings of fact must include:

- the applicant's length of service with the employer and the position held at discontinuance of service;
- the names of the examining physicians and the dates of the examinations;
- the nature of the disability;
- whether or not the disability was incurred in the line of duty;
- whether or not the disability was incurred in other employment;
- dates encompassing disability leave;
- dates related to authorized return to duty on a trial basis and the factual basis for the decision; and
- dates encompassing waiver of disability leave, if applicable, and that applicant established that the disability will be continuous for at least six months.

(See WAC 415-105-070.)

The written decision and order, with findings of fact and conclusions of law and all the supporting documentation on which the decision was based, must be sent to DRS for review. Supporting documentation must include at least the following:

- the application for disability benefits showing the applicant's current mailing address;
- the job description accurately reflecting the duties of the position the applicant held at discontinuance of service;
- employer statement(s), if any, relevant to the applicant's position and/or fitness for duty;
- all medical and other evidence considered by the Disability Board; and
- the minutes and/or transcript of all meetings at which the applicant's disability status was considered.

(See WAC 415-105-070.)

REVIEW BY THE LEOFF ADMINISTRATOR

According to statute, every order of a Disability Board granting a disability retirement allowance is reviewed by DRS except the finding that the disability was or was not incurred in the line of duty.

The LEOFF Administrator reviews the record for compliance with Chapter 41.26 RCW and Chapter 415-105 WAC. For example:

1. Are the applicant's grade or rank (sergeant, captain, etc.) and his or her position (patrol, detective, combat firefighter, administrator, etc.) included in the findings?
2. Are the dates referring to discontinuance of service, disability leave, trial service and retirement correct?
3. Has the Disability Board complied with the statutory provisions for examination by the Board doctor?
4. Has the Disability Board submitted all the evidence - including a description of applicant's duties - upon which the decision was based?

If the Disability Board has made technical errors in the findings, conclusions, and/or order, or if the record is incomplete or insufficient, the Administrator can remand the matter to Disability Board for further proceedings:

If the review shows that the record is technically correct, the Administrator will review the case on its merits; i.e., the Administrator will review the medical and other relevant material to determine if the evidence is sufficient to support the decision of the Disability Board. If the Administrator determines that the Disability Board's decision is correct, the Administrator will issue an order affirming the decision. The applicant then becomes a retiree and begins receiving a disability retirement allowance.

If the Administrator finds that the Disability Board's findings, inferences, conclusions or decisions are:

- in violation of constitutional provisions; or
- in excess of the statutory authority or jurisdiction of the Disability Board; or
- made upon unlawful procedure; or
- affected by other error of law; or
- clearly erroneous in view of the entire record as submitted; or
- arbitrary or capricious; the Administrator will reverse the Disability Board's decision.

The applicant has the right to appeal an administrative order denying disability retirement. The applicant is provided information about the appeal process with the mailing of the order.

THE ORDER OF REMAND

If the Administrator remands a matter for further proceedings, the Disability Board is to review the order and pay particular attention to the discussion of the technical or procedural errors and to the specific steps required to correct them. The order of remand is intended to be used as a source of information and assistance to the

Disability Board in the case at hand and possibly in subsequent cases as well. The remand will usually direct the Disability Board to amend certain findings or conclusions or to obtain additional evidence. After the Disability Board has complied with the provisions of the remand, the matter is again referred to the Administrator for review on its merits.

DENIAL OF DISABILITY RETIREMENT

If the Disability Board denies disability retirement, it must immediately notify the applicant and advise the applicant of his or her right to appeal to the Director. See WAC 415-105-080. The notice must be in writing and mailed or delivered to the applicant. If the applicant or the applicant's representative attends the meeting or hearing and is advised of the decision and the right to appeal, a separate notice is not required; however, such advice and an acknowledgment of understanding by the applicant must be reflected in the Disability Board record/minutes.

The Disability Board must issue a written decision and order accompanied by appropriate findings of fact and conclusions of law and all supporting documentation. The applicant must be served with a copy of the order. DRS does not review the order denying a disability retirement allowance unless the applicant files an appeal within 30 days of issuance of the Disability Board's order.

Chapter 41.26 RCW does not address the issue of reemployment rights or restoration to duty following denial of a disability retirement allowance. In such cases, neither the Disability Board nor the Director of DRS has jurisdiction over the issue of reemployment.

REEXAMINATION OF THE RETIREE

Every disability retiree under age fifty is required to undergo periodic medical reexaminations with the following exceptions:

- Those who are over 49.5 years of age; and
- Those who are permanently disabled as determined by the Disability Board. If the Disability Board determines that the retiree is so disabled that no possibility exists for the retiree to return to work or that rehabilitation could not possibly restore the retiree to fitness for duty, the Disability Board must send to DRS a copy of that determination and the current (within 90 days) medical evidence on which it was based.

The Disability Board's representative must:

- order a reexamination at six-month intervals;
- furnish the Disability Board with a copy of the examination report; and
- send a copy to DRS with notice of the Disability Board's action, e.g., continuation of disability retirement, determination that disability is permanent, etc.

If the retiree currently lives more than 100 miles from his or her former place of employment, the Disability Board may authorize the retiree to be examined by a physician in the retiree's immediate area. The local physician must:

- be approved by the Disability Board;
and
- be informed by the Disability Board of the basis for the examination and the issues to be addressed in his or her report;
and
- be furnished with a copy of the retiree's job/position description.

If the retiree refuses to submit to medical reexamination, the allowance is to be discontinued until the retiree complies with the examination requirement. If the retiree continues for one year to refuse to undergo reexamination, the Disability Board must cancel his or her retirement allowance. The cancellation of the retirement allowance can be appealed to the Director pursuant to RCW 41.26.200. (See WAC 415-105-090)

HEARING AND CONSIDERATION

If the medical reevaluation discloses that the retiree is fit to perform the duties of the rank or position held at the time of disability retirement, the retiree is entitled to a hearing before the Disability Board and further consideration of the matter. The hearing is required by statute (RCW 41.26.140(2)) and must be held, unless waived by the retiree, before his or her retirement allowance can actually be canceled. Both the notice and the hearing must comply with the provisions of RCW 34.05.

STANDARDS FOR CANCELLATION OF DISABILITY RETIREMENT

The standards for Disability Board proceedings to determine whether a disability retirement allowance is to be canceled were established by the State Supreme Court in the case of Malland v. Retirement Systems, 103 WN. 2d 484, 694 P.2d 16 (1985). This action involved a police officer and a firefighter who sought review of administrative determinations canceling their disability retirement allowances following reexaminations of their conditions.

These cases were consolidated and the court held, in essence, that cancellation of a disability retirement allowance is improper absent a showing that the circumstances under which the disability retirement allowance was originally granted have changed.

The standards provide that upon reexamination, the Disability Board is to determine whether the retiree is "still unable to perform his duties." See RCW 41.26.140(1). This phrase implies that some change in circumstances must be shown before a disability retirement allowance may be canceled. Moreover, the burden of proving such a change in circumstance rests with the Disability Board.

The most significant change in circumstance is an objective improvement in the physical or mental condition for which the individual was granted disability retirement. However, the court also indicated that it is not necessary to prove an objective improvement in the retiree's medical condition in all cases. Changed circumstances may also include:

- the retiree's adaptation to the disability or his or her ability to compensate for the impairment; or
- changes in equipment used in the retiree's former job or in other requirements of the position; or
- the retiree's ability to perform his or her current job or other non-work activities.

While the retiree's ability to perform in his or her current job or other non-work related activities may be evidence of an improved medical condition, it is the Disability Board's responsibility to prove that the ability to hold another job or to participate in non-work activities demonstrates an improved condition and the ability to perform the duties of the retiree's former position or rank.

The court's decision precludes cancellation of a disability retirement allowance on the basis of new medical evidence to the effect or indicating that the retiree's medical condition was incorrectly diagnosed and that the individual should never have been retired. Further, new expert testimony that a retiree's unchanged physical or mental condition does not prevent such person from performing his or her former duties is not evidence that would justify a cancellation of a disability retirement allowance. In a 1986 LEOFF case, the court held that if a new position is created within the grade or rank previously held by the retiree, the retiree may be reexamined to determine if the retiree is capable of performing the duties of the new position. Boyles v. Department of Retirement Systems, 105 Wn 2d 499 (1986).

The key elements in the process of determining whether to cancel a previously granted disability retirement allowance are summarized as follows:

- The Disability Board must determine whether the retiree is still unable to perform, with average efficiency, the routine duties of his or her position or rank.
- The Disability Board must offer evidence of change(s) in circumstances to support any contention that the retiree is not still disabled.
- The burden of establishing that the circumstances under which the disability retirement was originally granted have changed rests with the Disability Board.

CANCELING THE ALLOWANCE

After conducting the hearing and considering the evidence, if the Disability Board determines that the retiree is not still disabled, the Disability Board is to cancel the retiree's disability retirement allowance and the retiree is to be restored to duty in the same civil service rank, if any, held at the time of disability retirement. If the member is unable to perform the duties of that rank, then, at his or her request, the member is to be restored to duty in a like or lesser rank (as may be or become open and available) the duties of which the member is then able to perform.

In any event, the member shall not be returned or restored to duty at a salary or rate of pay less than the current salary attached to the rank or position the member held at the time of disability retirement.

Any person aggrieved by the Disability Board's order or determination canceling a previously granted disability retirement allowance has the right to appeal to the Director under the provisions of RCW 41.26.200. (See RCW 41.26.140)

LEOFF ADMINISTRATIVE APPEAL PROCEDURE

The LEOFF appeal process, provides for decisions of local Disability Boards to come before DRS for review. The following are elements of the appeal process:

1. the statutory framework;
2. decisions which are appealable to DRS under the provisions of RCW 41.26.200.
3. decisions not appealable to DRS under the provisions of RCW 41.26.200.
4. final decisions which require a hearing prior to petition for judicial review.
5. who can appear during the course of a hearing.

The statutes governing those issues which can come before DRS on appeal are RCW 41.26.200 through 41.26.221. These statutes together establish a two step process. The first step involves a review of the record of the proceedings which occurred before the Disability Board, and the second step involves a de novo hearing.

The first appeal statute is RCW 41.26.200 which provides as follows:

Any person feeling aggrieved by any order or determination of a disability board denying disability leave or disability retirement, or canceling a previously granted disability retirement allowance, shall have the right to appeal the order or determination to the director. The director shall have no jurisdiction to entertain the appeal unless a notice of appeal is filed with the director within thirty days following the rendition of the order by the applicable disability board. A copy of the notice of appeal shall be served upon the director and the applicable disability and, within ninety days thereof, the disability board shall certify its decision and order which shall include findings of fact and conclusions of law, together with a transcript of all proceedings in connection therewith, to the director for review. Upon review of the record, the director may affirm the order of the disability board or may remand the case for such further proceedings as he or she may direct, in accordance with such rules of procedure as the director shall promulgate.

Further, RCW 41.26.140(6) provides:

Any person feeling aggrieved by an order of a disability board determining that a beneficiary's disability has not ceased, pursuant to RCW 41.26.130(3) has the right to appeal the order or determination to the director. The director shall have no jurisdiction to entertain the appeal unless a notice of appeal is filed with the director within thirty days following the rendition of the order by the disability board. A copy of the notice of appeal shall be served upon the director and the applicable disability board and, within ninety days thereof, the disability board shall certify its decision and order which shall include findings of fact and conclusions of law, together with a transcript of all proceedings in connection therewith, to the director for review. Upon review of the

record, the director may affirm the order of the disability board or may remand the case for further proceedings if the director finds that the disability, inferences, conclusions, or decisions are:

- a) in violation of constitutional provisions; or
- b) in excess of the statutory authority or jurisdiction of the disability board; or
- c) made upon unlawful procedure; or
- d) affected by other error of law; or
- e) clearly erroneous in view of the entire record as submitted and the public policy contained in this chapter; or
- f) arbitrary or capricious.

The decisions of a Disability Board which can be appealed to DRS are: denial and/or cancellation of disability leave; denial of disability retirement; cancellation of a previously granted disability retirement allowance; and a determination by the Disability Board that a retiree's disability has not ceased following the retiree's application for a determination under RCW 41.26.135(1).

There are two decisions made by local Disability Boards which are never reviewed by DRS. The local disability board is required to make a finding, in connection with the granting of a disability retirement allowance, as to whether or not the disability was incurred in the line of duty. DRS is precluded by law from reviewing that particular finding. See RCW 41.26.120(3) and RCW 41.26.125(3). Further, the decision of a Disability Board to deny approval of a claim for medical services is not reviewed by DRS. The Director has no statutory authority or jurisdiction to either review or consider an appeal from such decisions. Persons aggrieved by either of these must seek relief in the courts. See RCW 7.16.040.

A decision granting a disability retirement allowance is automatically reviewed by DRS pursuant to RCW 41.26.120(3) and RCW 41.26.125(3). Those statutes give the Director the right to affirm the decision, remand for further proceedings, or reverse the decision. If the decision is reversed an aggrieved person must file notice for hearing before the Director before petitioning for judicial review. See RCW 41.26.211.

A typical case under RCW 41.26.200 begins with a Disability Board denying disability retirement benefits to a member. The member then has 30 days to appeal by filing a notice with DRS. A copy of the notice of appeal is also served upon the Disability Board. If a proper notice is timely filed, the Disability Board has 90 days to certify its decision and order to DRS. That certification must include findings of fact, conclusions of law, together with a copy of the record including a transcript of all proceedings which were held before the local Disability Board regarding the matter.

When the record is received by DRS, it is reviewed by the LEOFF Administrator under the authority delegated by the Director. The Administrator enters an order of remand for further proceedings, an order of affirmance, or an order of reversal and remand. The order (with the exception of a remand for further proceedings) is a final decision subject to appeal pursuant to RCW 41.26.211.

The record to be reviewed under RCW 41.26.200 is the record established by the local Disability Board together with any relevant materials in the Department records.

RCW 41.26.211 provides as follows:

Any person aggrieved by any final decision of the director must, before petitioning for judicial review, file with the director of the retirement system by mail or personally within sixty days from the day such decision was communicated to such person, a notice for a hearing. The notice of hearing shall set forth in full detail the grounds upon which such person considers such decision unjust or unlawful and shall include every issue to be considered, and it must contain a detailed statement of facts upon which such person relies in support thereof. Such persons shall be deemed to have waived all objections or irregularities concerning the matter on which such appeal is taken other than those specifically set forth in the notice of hearing or appearing in the records of the retirement system.

Unlike RCW 41.26.200, appeals under RCW 41.26.211 can be taken from decisions, which have the effect of either granting or denying benefits. That is, in addition to decisions rendered pursuant to RCW 41.26.200, the one other decision requiring that a hearing be requested and held prior to petitioning for judicial review is a decision reversing a Disability Board's order granting a disability retirement allowance. The notice for hearing must list every issue the appellant wants to have considered and is to comply with the format set forth in WAC 415-08-020.

When a notice for hearing is filed within the prescribed time, the provisions of RCW 41.26.221 apply. This statute provides as follows:

A hearing shall be held by the director, or the director's duly authorized representative, in the county of the residence of the claimant at a time and place designated by the director. Such hearing shall be de novo and shall conform to the provisions of chapter 34.05 RCW, as now or hereafter amended. The disability board and the department shall be entitled to appear in all such proceedings and introduce testimony in support of the decision. Judicial review of any final decision by the director shall be governed by the provisions of chapter 34.05 RCW as now or hereafter amended.

At the request of the director, the DRS Presiding Officer conducts the hearing. The hearing is held in the county of the claimant's residence, unless waived by agreement of the parties.

Two important aspects of the hearing outlined by RCW 41.26.221 are:

- The hearing is de novo (a new record is made);
- Both DRS and the Disability Board have a statutory right to appear and present evidence in support of the Administrator's decision. Further, if the hearing is requested by a member, the employer is given an opportunity to file a notice of appearance and become a party in the case. If the hearing is requested by the employer, the member is a party to the hearing.

After the hearing, the Presiding Officer issues a Final Decision, including findings of fact and conclusions of law.

Any person aggrieved by the Final Decision may petition for judicial review pursuant to RCW 34.05.130.

Adverse decisions relating to membership, service credit, and retirement benefits may be appealed to the Department pursuant to Chapter 415-04 WAC.