

APPROVED

Date: 9-15-98

Submitted by:

Chairman of the Assembly at the
Request of the Mayor

Prepared by:

Police and Fire Retirement Board

For Reading:

July 14, 1998

ANCHORAGE, ALASKA

AR NO. 98- 216

A RESOLUTION REPEALING AND RE-ENACTING CHAPTER 3.85 OF THE ANCHORAGE MUNICIPAL CODE OF REGULATIONS TO ESTABLISH THE ADMINISTRATIVE PROCEDURES OF THE POLICE AND FIRE RETIREMENT BOARD INCLUDING THE ADMINISTRATIVE PROCEDURES GOVERNING THE FILING, PROCESSING AND DECISIONS ON APPLICATIONS FOR DEATH OR DISABILITY BENEFITS.

WHEREAS, Sections 3.85.040, 3.85.120, 3.85.130, 3.85.230, and 3.85.240 of the Anchorage Municipal Code authorize the Police and Fire Retirement Board to administer the Police and Fire Retirement System and make determinations on disabilities; and

WHEREAS, the Police and Fire Retirement Board has complied with all the requirements of AMC 3.40 regarding the promulgation of regulations, notice, and consideration of evidence prior to adoption of a regulation; and

WHEREAS, Anchorage Municipal Code provides that the Assembly may by resolution adopt, amend, or reject proposed regulations; now therefore,

THE ANCHORAGE ASSEMBLY RESOLVES:

Section 1. Anchorage Municipal Code of Regulations Chapter 3.85 is hereby repealed and re-enacted to read as follows:

3.85.010 [3.85.002] Authority and purpose.

These procedures are established pursuant to AMC 3.85.040, .085, .120, .130, .230, and .240 for the purpose of the administration of the Retirement System and facilitating the orderly and fair processing of applications for disability or death benefits.
(AR No. 81-237; AR No. 84-160; AR No.)

3.85.020 [3.85.003] Filing a claim for disability or death benefits.

A. A member or member's beneficiary who desires benefits from the retirement system shall file a written application for disability or death benefits with the board within 180 days after the occurrence of the injury or the death or after the onset of the illness upon which the member's or beneficiary's entitlement to benefits is claimed. However, the period for filing an application for permanent disability benefits may be extended by the board to 365 days after the initiating injury or illness, if the member files a written request for an extension of the application filing period with the board within the previously described 180 day period. This request must be supported by a physician's written statement that the member is undergoing medical treatment for the disabling condition and that there is a reasonable likelihood that the member will be able to return to his or her usual duties as a police officer or as a firefighter within the extended application period.

B. Failure to file an application for disability or death benefits within the applicable filing period shall bar the application from further consideration, unless the board excuses the delay in filing upon a demonstration of extenuating circumstances which justify the delay. After the filing deadline, an applicant may file a written request for exemption from the deadline by documenting the extenuating circumstances which caused the delay in filing. The board will review each request for exemption to the filing deadline on a case by case basis.

C. The application for disability or death benefits shall be made on a form prescribed by the board and shall include, at a minimum, the following:

1. The factual history leading up to the diagnosis of the member's condition and the application for disability or death benefits;
2. The inclusive dates for which benefits are requested;
3. Any medical or other documentation related to the application for benefits;
4. Identification of the type of benefit sought and the reasons supporting the application;
5. An executed medical records release in a form prescribed by the board and authorizing staff to obtain the member's medical records;
6. One or more executed releases pertaining to records of which staff may seek copies in connection with its review of the application, when such records are in the custody of a government agency, the member's former employer or other person.

1 D. Every qualified member or member's beneficiary of the Anchorage Police and
2 Fire Retirement System shall have a full and fair opportunity to present an application for
3 disability or death benefits to the board.
4

5 E. A member or member's beneficiary may withdraw an application for disability
6 or death benefits only by filing written notice with the board. Withdrawal of an
7 application for disability or death benefits shall preclude a future application for disability
8 or death benefits arising from the same facts upon which the member or member's
9 beneficiary relied as the basis for the withdrawn application.
10 (AR No. 81-237; AR No. 84-160; AR No.)
11

12
13 **3.85.030 [3.85.004] Claim review.**
14

15 A. The staff shall investigate each application for disability or death benefits and
16 present its analysis and recommended disposition of the application to the board at the
17 next regularly scheduled meeting after completion of the investigation. Staff shall
18 complete its investigation within 90 days after an application is received, unless the board
19 authorizes a longer period of time for investigation. During the course of its investigation,
20 the staff shall promptly provide the applicant with copies of all pertinent documentation
21 which it has gathered. Staff shall provide to the applicant written notice of the date and
22 time of the board meeting during which staff intends to present its analysis, together with
23 its recommendation, and analysis, no later than ten working days prior to that board
24 meeting.
25

26 B. Unless otherwise instructed by the board, the staff shall review the continuing
27 eligibility of every recipient of disability benefits on an annual basis or upon receipt of
28 information which suggests the possibility of a change in eligibility. In conjunction with
29 this review, the recipient shall provide staff with relevant requested information which is
30 in the possession or control of the recipient. The recipient shall also sign any relevant
31 information or records release authorization forms presented by staff. Staff shall provide
32 to the recipient written notice of the date and time of the board meeting during which staff
33 intends to present its analysis of the issue of continuing eligibility for disability benefits,
34 together with copies of its analysis and of all pertinent documentation which it has
35 gathered, no later than ten working days prior to that board meeting.
36

37 C. If an applicant or a benefit recipient fails to provide medical records, other
38 relevant records or signed records or information release authorization forms reasonably
39 requested by staff, or otherwise interferes with the staff's investigation of the disability
40 application, the staff may request that the board suspend consideration of the application
41 or suspend payment of the disability or death benefits under investigation for the reasons
42 set forth above and shall provide the applicant or recipient with notice of that request.
43 The applicant or recipient shall have 10 days after notice to file evidence with the board
44 to show that the applicant or recipient has not failed to produce requested documents, that

1 the applicant or recipient has not interfered with the staff's investigation, or that the
2 applicant's or recipient's actions are justified. If the board finds, after providing the
3 applicant or recipient with an opportunity to be heard, that the applicant or recipient
4 unreasonably failed to give a records or information release authorization or to produce
5 documents or unreasonably interfered with staff's investigation, then the board may, among
6 other potentially applicable sanctions, suspend consideration of the application or suspend
7 payment of the disability benefits under investigation until the records or information
8 release authorization is given, the documents are produced or the interference ceases.
9

10 D. During its investigation and analysis of an application or of continuing eligibility
11 for benefits, staff may consult with the board's attorney in order to identify legal issues
12 which may relate to the staff's investigation and analysis or to receive other pertinent
13 advice. The board's attorney, at this stage, is initially neutral and is not charged to
14 function as an advocate for or against the benefit claim.
15

16 E. Upon initial review of an application or of a continuing eligibility investigation,
17 the board may vote to decide the issue presented, or it may postpone decision and consult
18 with its attorney or other experts or require additional information, including mental or
19 physical examinations.
20

21 F. If the board decides to award benefits as requested by the applicant, the staff
22 shall implement that decision.
23

24 G. If the board decides not to grant the benefits requested or decides to terminate
25 benefits being received, the applicant or the recipient may demand a formal hearing on
26 the claim for benefits. This demand must be made in writing within 15 days of the board's
27 initial decision. The board shall set a formal hearing to occur within 90 days after receipt
28 of the demand for formal hearing. The hearing may be scheduled for a later date only
29 with approval of the applicant or recipient, except that the board may suspend or
30 reschedule the hearing without the applicant's or recipient's approval if it finds that the
31 applicant or recipient has failed or refused to cooperate or otherwise comply with the
32 claim investigation requirements of the board or with legitimate discovery obligations.
33

34 H. In all cases in which an applicant or a recipient requests a formal hearing, the
35 board will refer its decision to its attorney for review and advice. The attorney shall
36 provide a review analysis at the next regularly scheduled meeting of the board, or at such
37 other time as the board may direct. If appropriate, the board may, upon notice to the
38 applicant or recipient, reconsider its original decision prior to a formal hearing on the
39 matter.
40

41 I. The staff is authorized to receive, investigate and grant normal, early deferred
42 vested retirement benefit applications, and survivor benefits pursuant to AMC 3.85.110 or
43 AMC 3.85.220 without active participation by the board.
44 (AR No. 81-237; AR No. 84-160; AR No.)

1
2 **3.85.040 [3.85.005] Preparation for formal hearing.**
3

4 A. The applicant or recipient may choose to be represented by an attorney or other
5 representative at the formal hearing. The applicant or recipient shall file written notice
6 of the identity and profession of the chosen representative with the board within 25 days
7 of the board's initial decision. The board shall have the authority, after notice and an
8 opportunity to be heard, to deny a representative permission to appear before the board
9 as a result of refusal to comply with the board's directions, continued use of dilatory
10 tactics, refusal to adhere to reasonable standards of orderly and ethical conduct, failure to
11 act in good faith, or violation of the prohibition against ex parte communications.
12

13 B. The board may decide to have its attorney, the staff, or both, represent the
14 interests of the retirement system at a formal hearing held under this chapter. The board
15 shall give notice of its decision to the applicant or recipient and to any other party to the
16 proceeding. If the applicant or recipient chooses to be represented by an attorney, the
17 system shall be represented by the board's attorney, unless the board decides otherwise by
18 an affirmative vote of at least five board members. The role of the board's attorney, or
19 of staff, will be to test the validity of an applicant's claim or of the recipient's continuing
20 eligibility for benefits. In performing this role, the board's attorney or staff may concede
21 issues, should justice require; however, unless otherwise permitted by the board, the
22 board's attorney or staff shall give the board and the other parties written notice of the
23 decision to concede an issue at least ten working days prior to the date of the formal
24 hearing.
25

26 C. No later than ten working days before a formal hearing, staff or the board's
27 attorney and the applicant or recipient shall file with the board the documents described
28 in paragraphs 1 and 2 of this subsection and an affidavit of service stating that those
29 documents were also simultaneously served on the other party. No later than seven
30 working days before a formal hearing, staff shall provide all documents filed under this
31 subsection to each member of the board to include the following:
32

- 33 1. A witness list, identifying each witness and containing the substance of his
34 testimony. For purposes of this paragraph, the term "testimony" means only
35 testimony given by deposition or live at a hearing and shall not be
36 interpreted to require any party to list as a witness any person upon whose
37 written medical record, report or written opinion that party intends to rely.
38 Depositions to be utilized as testimony during the hearings shall be
39 transcribed and presented to the staff at the same time the written materials
40 are furnished to staff under this subsection.
41
42 2. All documents to be submitted by a party as exhibits at the hearing.
43
44

1 D. In addition to the materials described in subsection C of this section, staff or
2 the board's attorney shall, and the applicant or recipient may, pursuant to the deadline set
3 forth in subsection C, submit a memorandum outlining the party's position regarding
4 disposition of the claim for benefits.
5

6 E. Motion Practice:
7

- 8 1. Preliminary motions are to be filed in advance of the hearing and copied to
9 all parties.
- 10 2. The hearing officer may decide all pending motions, except those listed in
11 paragraphs 3 below.
- 12 3. The board shall rule upon all motions to continue hearings and motions to
13 disqualify staff, board members and the hearing officer.
- 14 4. The board may rule on all motions governing application of law to the case,
15 after receiving any recommendations of the hearing officer.
16
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20 F. The parties may engage in discovery in the form of depositions, interrogatories,
21 requests for admissions and production of documents as described in Rules 30, 33, 34 and
22 36 of the Alaska Rules of Civil Procedure, except that responses shall be due within 15
23 days. The parties may also agree to other forms of discovery. All aspects of discovery
24 shall be completed no later than ten working days before the hearing date set by the
25 board.
26

27 G. The board may, upon its own motion or upon the request of a party, require an
28 applicant for or recipient of disability benefits to submit to mental or physical examinations
29 relevant to the claim at the expense of the system. The results of such examinations shall
30 be provided to the board and to the parties. Upon request, the applicant or recipient shall
31 be given an opportunity to demonstrate to the hearing officer or to the board that any
32 mental or physical examination should not be required. Any delay resulting from the
33 exercise of this right may justify a continuance of the formal hearing.
34

35 H. If a party fails or refuses to submit to required mental or physical examinations
36 or to comply with legitimate discovery requests, the board may issue appropriate sanction
37 rulings, including refusal to process the application further or suspension of benefits under
38 investigation, until compliance with discovery obligations or submission to required mental
39 or physical examinations is demonstrated.

40 (AR No. 81-237; AR No. 84-160; AR No.)
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3.85.050 [3.85.006] Hearing procedures.

A formal hearing before the board shall include the following procedures:

A. The board may retain a hearing officer to conduct a formal hearing in the manner determined by the board.

Responsibilities of hearing officer:

1. Prior to a hearing:

- a. In consultation with the parties, the hearing officer shall set the date, time and place of the hearing.
- b. In consultation with the parties, the hearing officer may identify issues to be addressed at the hearing, may set deadlines for discovery and other prehearing events, and may solicit or accept stipulations to promote the orderly and efficient resolution of disputed issues.
- c. The hearing officer may conduct prehearing conferences as necessary.
- d. The hearing officer may, in connection with prehearing proceedings, make decisions or recommendations to the board in accordance with section 3.85.040 E, on motions made prior to hearing. In the event that any party disagrees with decision or recommendation made by the hearing officer on a motion filed before a hearing, that matter shall be taken up de novo by the board at the hearing for final resolution. A decision of the hearing officer may be sustained only upon an affirmative vote of at least five members of the board.

2. During hearings the hearing officer shall:

- a. Conduct the hearing;
- b. Identify the record of the hearing;
- c. Allow the member to review the record and comment upon the record or offer rebuttal evidence;
- d. Make rulings during the hearing regarding evidence and procedures to be followed by the board;
- e. Administer the hearing and regulate the conduct of parties in a judicious, fair and impartial manner;

1 f. Determine when the hearing record is closed. If possible, the hearing
2 record shall be closed at the conclusion of the hearing. If necessary,
3 the record may be left open for inclusion of specific items as
4 determined by the board.
5

6 3. During deliberations, the hearing officer shall:
7

8 a. Assist the board in deliberations, upon request, over legal and factual
9 matters presented to the board. The hearing officer may give legal
10 advice regarding proper legal standards, weight of evidence, the
11 relationship between evidence and opinion, and other legal or factual
12 matters as may arise during board deliberations. The hearing officer
13 shall not offer his own opinion or conclusion regarding the ultimate
14 issues of application before the board.
15

16 b. The hearing officer shall, in consultation with the board, prepare
17 recommended findings of fact and conclusions of law in explanation
18 of the board's decision. Recommended findings of fact and
19 conclusions of law shall be distributed to all voting board members
20 prior to issuance. Each member shall be given the opportunity to
21 amend the recommended findings of fact and conclusions of law in
22 order to ensure that his or her views are accurately expressed.
23

24 B. Parties may appear in person or through counsel or other representative.
25

26 C. Parties may present witnesses and evidence on their own behalf.
27

28 D. Parties or their counsel or other representative may cross examine opposing
29 witnesses on matters relevant to the issues, impeach witnesses regardless of which party
30 first called the witness to testify, and rebut evidence against themselves.
31

32 E. Relevant evidence shall be admitted if it is the sort of evidence on which
33 responsible persons are accustomed to rely in the conduct of serious affairs, regardless of
34 the existence of a common law or statutory rule which makes improper the admission of
35 the evidence over objection in a civil action. Hearsay evidence may be considered
36 provided there are guarantees of its trustworthiness and that it is more probative on the
37 point for which it is offered than any other evidence which the proponent can procure by
38 reasonable efforts. Written medical records shall always be admitted as evidence so long
39 as they are authenticated in a manner acceptable to the board.
40

41 F. All hearings before the board shall be open to the public unless all parties to
42 such hearings and the board agree that the subject matter tends to prejudice the reputation
43 and character of any person. All applications for award of disability benefits premised on
44 a psychological impairment and documents pertaining to those applications shall be

1 confidential, pursuant to AMC 3.85.095. Applications for disability benefits premised on
2 psychological impairments may, at the discretion of the board, be heard in executive
3 session. The board may not, however, take any action in executive session pertaining to
4 the merits of any application for disability benefits premised on a psychological
5 impairment.
6

7 G. All parties shall have the right to subpoena witnesses and documents in the
8 manner described in Anchorage Municipal Code 3.60.045.F. Timely service of a subpoena
9 is the sole responsibility of the party for whom it is issued.
10

11 H. All administrative hearings before the board shall be memorialized by an
12 electronic recording or a stenographic record.
13

14 I. Disqualification of board members or hearing officers:
15

- 16 1. A board member, hearing officer or any party to a proceeding before the
17 board may request disqualification of any board member or hearing officer
18 in accordance with this subsection.
19
- 20 2. Any person seeking disqualification of a board member or a board hearing
21 officer shall file with staff one or more affidavits, based on personal
22 knowledge, stating any reason for disqualification of the hearing officer or
23 a board member, at least 5 days before commencement of any hearing at
24 which that board member or hearing officer is scheduled to participate. The
25 person seeking disqualification shall state with particularity the grounds
26 supporting a claim that the board member or hearing officer cannot fairly
27 and impartially participate in the matter.
28
- 29 3. Upon receipt of a timely request for a disqualification of a board member
30 or hearing officer, the board shall determine whether the board member or
31 hearing officer is unqualified to participate fairly or impartially in the matter
32 then before the board. A board member or hearing officer whose
33 qualifications have been questioned under this subsection shall not
34 participate in any vote or deliberations of the board regarding the question
35 of disqualification.
36
- 37 4. Board members and hearing officers may voluntarily disqualify themselves
38 whenever their impartiality might reasonably be questioned or whenever
39 circumstances may reasonably present the appearance of the absence of
40 impartiality.

41 (AR No. 81-237; AR No. 84-160; AR No.)
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3.85.060 [3.85.007] Decisions.

A. The board is limited in its consideration of any claim to those matters which have been made part of the record. An applicant for benefits must prove each element of his or her claim by a preponderance of the evidence. No benefits may be finally terminated unless termination is supported by a preponderance of the evidence, except that benefits may be suspended as provided in AMCR 3.85.030 C or AMCR 3.85.040 G. Whenever benefits are thus suspended, they shall be forfeited, unless forfeiture is waived by the board with an affirmative vote.

B. No later than 30 days following a formal hearing, the board shall issue a written decision based on findings and conclusions expressed by the members of the board serving on the hearing panel. Such findings must be in writing and must be reasonably specific so as to provide interested persons and, where appropriate, reviewing authorities a clear and precise understanding of the reasons for the decision entered. The decision, findings of fact and conclusions of law shall be forwarded to all parties to the proceeding.
(AR No. 81-237; AR No. 84-160; AR No.)

A decision of the board may be reconsidered or reheard only if:

- A. There was substantial procedural error in the original proceeding; or
- B. The board acted without jurisdiction in the original proceeding; or
- C. The original decision was based on fraud or misrepresentation.

Any person seeking reconsideration or rehearing must file a request with the staff of the board together with the materials supporting one or more of the grounds stated above within 15 days of the decision for which reconsideration or rehearing is requested. A rehearing shall be conducted in the same manner as the original proceeding, unless the parties agree to a different period of time in which to conduct further discovery.
(AR No. 81-237; AR No. 84-160)

3.85.070 [3.85.009] Interpretive rulings.

The board may, from time to time, issue rulings of general applicability which interpret the substance of these regulations or of the provisions of AMC Chapter 3.85. The staff shall keep all such rulings collected together and shall make them available upon reasonable request. Staff shall provide written notice to all applicants for benefits and all recipients whose continuing eligibility to receive benefits is under investigation that the board may be guided in its decision by the interpretive rulings, as well as by the provisions

1 of these regulations and by AMC Chapter 3.85 or any other provision of law which may
2 be applicable.

3
4 A. Five members of the board shall constitute a quorum. In the absence of a
5 quorum, the board shall not transact any business other than adjournment of the meeting.
6

7 B. In order for any motion to be passed by the board, it must be supported by not
8 less than five votes of board members.
9

10 C. Board members attending disability hearings shall be present during the
11 proceedings. Board members who miss part of a hearing, shall not participate in the
12 adjudication, without stipulation of the parties and only after a review of the recorded
13 testimony taken in their absence.

14 (AR No. 84-160; AR No.)
15

16
17 **3.85.080 [3.85.011] Conflicts of interest.**
18

19 A. A board member may not participate in any adjudication or other decision to
20 be made by the board if that board member is not impartial. A board member is not
21 impartial if that board member fails to meet the requirements of AMC 1.15 or AMC
22 4.05.010 or otherwise has a conflict of interest or relationship whether financial or
23 otherwise with any party which could reasonably be expected to influence that member's
24 judgment concerning the matter then before the board.
25

26 B. A board member may not knowingly engage in ex parte communications with
27 any party regarding a claim pending before the board. Any board member who
28 participates in such communications shall disclose the nature and substance of those
29 communications to the board and the board shall determine the board member's further
30 participation in adjudication of that matter.

31 (AR No.)
32

33
34 **3.85.090 [3.85.012] Public notice.**
35

36 The staff will publish public notice of all board and subcommittee meetings and
37 hearings as required by AMC 1.25.010.

38 (AR No.)
39
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41

3.85.100 [3.85.013] Record of meetings.

Staff will memorialize all board and subcommittee meetings and administrative hearings by an electronic recording and published minutes.
(AR No.)

3.85.110 [3.85.014] Retirement system files.

A. The staff will maintain accurate and current files on all active members. These files will include at a minimum:

1. Copy of the job description or classification specification in effect when the member was hired by the Municipality in a covered classification,
2. Member's retirement system enrollment form,
3. Latest designation of beneficiary form,
4. A qualified domestic relations order (QDRO), if one has been served on the member's retirement benefits,
5. Annual contribution statements.

B. The staff will maintain accurate and current files on all retired and deferred vested members. These files will include at a minimum:

1. Copy of the job description or classification specification, in effect when the member was hired by the Municipality in a covered classification,
2. For disabled retirees, a complete copy of the application for disability benefits and all evidence submitted to the board, the board's decision, and results of any annual physicals,
3. Member's application for termination/retirement,
4. Original calculation of benefits worksheet and backup documents,
5. Annual cost of living allowance (COLA) calculations for each Plan III retiree,
6. Annual audit verification,
7. Retiree's most recent designation of beneficiary form,

1 8. Spousal consent of benefits/refund,
2

3 9. A qualified domestic relations order (QDRO), if one has been served on the
4 member's retirement benefits.
5

6 C. Staff will develop and maintain a checklist for early, normal service, deferred
7 vested, and disability retirements and for survivor benefit awards, listing necessary
8 documents to be filed for future utilization by the staff and board for annual audits to
9 include continued receipt of benefits by disabled retirees.
10 (AR No.)
11

12
13 **3.85.120 [3.85.015] Military service credit.**
14

15 A. Eligibility requirements:
16

17 1. Interruption of Employment
18

19 To be eligible to receive service credit with the Police and Fire Retirement
20 System (PFRS) for military time under the Veterans Re-employment Rights
21 Act (VRRA), a member must have had an interruption of the member's
22 employment with the municipality. For purposes of this section "interruption
23 of employment" means: the member was inducted (enlists or is ordered or
24 called to active duty) into the armed forces of the United States and left
25 employment with the municipality that was in a covered classification in the
26 Police and Fire Retirement System (other than a temporary position). The
27 member must begin the period of active duty within 90 days after leaving
28 municipal employment and must make application for reemployment within
29 90 days of honorable discharge.
30

31 2. Award of Service Credit
32

33 Service credit will not be awarded until all required documentation is
34 received by the board. If the member purchases the military time, payment
35 must be made in full prior to receiving early, normal or deferred vested
36 retirement benefits.
37

38 3. Service Credit Maximum
39

40 Service credit for military time will be for periods of service up to five years.
41 Service credit for military time which exceeds five years may be awarded if
42 served at the request of the federal government or imposed pursuant to law.
43 The member must provide proof that the extended service was not voluntary.
44

1 B. Documentation:
2

3 The burden of proof will be on the member for providing documentation necessary
4 to determine what military time is eligible for service credit. The following documentation
5 is required before service credit will be awarded:
6

- 7 1. The member must provide a legible copy of military discharge papers (DD
8 214);
9
10 2. For members requesting service credit for extended military service
11 discussed under (A)(3) above, a legible copy of the appropriate military
12 papers must be furnished;
13
14 3. An agreement to purchase military time must be completed.
15

16 C. Costs:
17

- 18 1. Employee Cost
19 The member shall receive service credit if, within two years after the
20 member has resumed his duties as an employee of the Municipality of
21 Anchorage, the member makes a contribution to the system equal to that
22 which the member would have made had the member not been on leave
23 without DU plus the interest which such contributions would have accrued
24 had they been the normal course, The calculation shall presume a normal
25 work week comprised of regularly assigned hours compensated at a total
26 dollar rate equal to the base pay, longevity pay and educational differential
27 pay that the member would have received had the member not taken leave,
28 The interest to be paid by a member shall be premised upon the applicable
29 actuarial interest assumption.
30
31
32 2. Employer Cost
33 The employer cost shall be determined by the number of pay periods service
34 credit is being purchased by the member, times the employer contribution
35 rate(s) identified by the PFRS actuary as that which would have been
36 required if the member had made contributions in the normal course. Upon
37 being billed by the board, the Municipality of Anchorage will have 30 days
38 in which to make payment in full.
39

40 (AR No.)
41

42 **Section 2.** This resolution shall become effective immediately upon passage and approval
43 by the Assembly.
44

1 PASSED AND APPROVED by the Anchorage Assembly this 15th day of
2 September, 1998.
3
4

5 Fay Von Hennigen
6 Chair of the Assembly
7
8
9

10 ATTEST:

11 Lizanne Ferguson
12 Municipal Clerk
13
14



MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. AM 678-98

Meeting Date: July 14, 1998

From:

Mayor

Subject:

Anchorage Police & Fire Retirement Board
AR 98-216, A Resolution Providing for the Repeal and
Reenactment of Anchorage Code Of Regulations 3.85, pertaining
to the Administration of the Anchorage Police and Fire Retirement
System.

AR 97- 223 was submitted to the Municipal Assembly on October 7, 1997. This resolution proposed the Repeal and Reenactment of Anchorage Code of Regulations 3.85 that defines the administrative processing procedures for disability applications before the Police and Fire Retirement Board.

The Municipal Assembly tabled the resolution due to concerns voiced by Plan members

The Board has reviewed all concerns and has met on numerous occasions with the members of the Police and Fire Retirement System. The present version has been reviewed and has the support of representatives for both the Police and Fire Plan members.

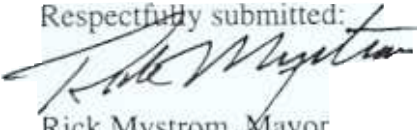
The new regulation formalizes many of the existing aspects of the administrative hearing process and sets forth in greater detail the procedures to be followed. The new regulation also establishes some new procedures.

The repeal of the current AMCR 3.85 effective since June 19, 1984 and the enactment of the new AMCR 3.85 will update the procedures used in the daily processing and the administration of the retirement system.

Concur:


George J. Vakalis
Municipal Manager

Respectfully submitted:


Rick Mystrom, Mayor

Concur:


Tim Rogers, Chairman
Police & Fire Retirement Board

Prepared by:


Charles M. Laird
Director
Police & Fire Retirement Board

AR 98-216

Summary of Economic Effects - General Government

AO Number: 98-216 Title: AMCR 3.85, Police & Fire Retirement, Administration

Sponsor: C.M. Laird
Charles M. Laird, Director

Preparing Agency PERB Others Affected _____

CHANGES IN EXPENDITURES AND REVENUES

(Thousands of Dollars)

Operating Expenditures	FY	FY	FY	FY	FY
1000 Personal Services					
2000 Supplies					
3000 Other Services					
4000 Debt Service					
5000 Capital Outlay					
TOTAL DIRECT COSTS:					
ADD: 6000 Charge from Others					
LESS: 7000 Charge to Others					
FUNCTION COST:					
REVENUES:					
CAPITAL:					
POSITIONS: FT/PT and Temp.					

Public Sector Economic Effects:

The repeal and reenactment of AMCR has no economic effect.

If further explanation is necessary, a separate page may be attached.

Form ECON2

Municipality
of
Anchorage



ANCHORAGE ASSEMBLY

P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650
TELEPHONE: (907) 343-4311

October 8, 1997

Joe Caswell, Chairman
Police and Fire Retirement Board
PO Box 196650
Anchorage, AK 99519-6650

RE: Administrative Procedures of the Police and Fire Retirement Board

Dear Mr. Caswell:

On October 7, 1997 the Assembly tabled resolution number AR 97-223 which proposed to amend Municipal Regulations governing procedures of the Police and Fire Retirement Board. The Assembly took this action in part because of a letter members received from Rob Heun detailing concerns about the proposed changes. A copy of this letter is enclosed. Please review the letter and report the Board's responses to the concerns raised to Assembly.

Thank you for your assistance in this matter.

Sincerely

A handwritten signature, likely of the Mayor, is written in dark ink. It is a stylized, cursive signature that appears to start with a capital 'A' or 'M'.

Enclosure: 10/7/97 Letter from Rob Heun

cc: Assembly Members
Police & Fire Retirement Board Members

ANCHORAGE POLICE DEPARTMENT EMPLOYEES ASSOCIATION

4501 South Bragaw Street

Anchorage, Alaska 99507-1599

Charles Wohlforth
PO Box 196650
Anchorage, Alaska 99519

October 7, 1997

RE: AR 97-223

Dear Charles:

Please take a moment to consider the following concerns regarding AR 97-223, the resolution amending Section 3.35 of the Anchorage Municipal Code to establish regulations for the Police and Fire Retirement Board.

Section 3.35.004 (B) - Claim Review (Continuing Eligibility for Benefits). This section provides that the staff "shall review" the continuing eligibility of every recipient of disability benefits. In the review, the recipient "shall provide staff with relevant requested information" and "shall also sign any relevant information or records release authorization forms presented by staff." While we see no difficulty with the Board reserving their right to assess the continuing eligibility of disability retirees on a periodic basis, it appears to be an unnecessary expense to require the evaluation of every single disability retiree on an annual basis. Some retirees may simply be so obviously permanently disabled that the evaluation of their continuing status would be a waste of the Board's resources. As such, we would recommend that this section be changed to indicate that review of continuing eligibility is discretionary with the Board.

Section 3.35.004(C) - Claim Review (Furnishing of Information). This section of the proposed resolution provides that if an applicant or benefit recipient fails to provide medical records or other relevant records "requested by staff, or otherwise interferes with the staff's investigation of the disability application," the Board may suspend payment of benefits and may suspend consideration of the application until the information is provided. We see several difficulties with both the intent and draftsmanship of this section of the Resolution. With respect to intent, while we agree that the Board should have the ability to compel members to provide relevant information, moving directly to the suspension of benefits for a member who is perceived to have not provided requested information in a form sufficient to the Retirement Board staff appears to be a draconian measure at best. The Resolution should instead contain a range of intermediate sanctions available to the Board to ensure compliance with its information requests, and should provide that suspension of benefits or suspension of an application for benefits is a last resort, not the first option available to the Board.

Section 3.35.004(D) - Claim Review (Role of the Board's Attorney). The draft Resolution contains a number of confusing and potentially contradictory provisions dealing with the changed role of the Board's attorney. Section 3.35.004(D) provides that during the "investigation and analysis of an application or continuing eligibility for benefits" the staff has the ability to consult the Board's attorney who "is not charged to function as an advocate for or against the benefit claim." Section 3.35.005(B) later allows the Board's

Post-it Fax Note	7671	Date	# of pages
To	Charles Wohlforth	From	Rib. [Signature]
Co./Dept.		Co.	
Phone #		Phone #	343-6404
Fax #	274-2271	Fax #	

attorney to act as an advocate to "represent the interest of the retirement system" (whatever such a phrase might mean) at a formal hearing. Thus, the role of the Board's attorney may well depend upon the technicality of what stage of the proceedings are currently pending.

We believe that the dual roles given to the Board's attorney are likely to be confusing at least to applicants for benefits, if not to the Board, staff, and to the Board's attorney. Further, we find it difficult to understand how the Board's attorney could act as an advocate for "the interests of the retirement system" at a formal hearing to establish eligibility for benefits and then subsequently lose his or her advocacy role after benefits have been granted and the issue before the Board is the same individual's continuing eligibility for benefits. For all these reasons, we would recommend that the Resolution be restructured to require the Board's attorney always act as the attorney for the Board, and if there is a need to retain an attorney to oppose an attorney retained by an applicant for benefits, the Board should be required to retain outside counsel.

Section 3.85.005 - Preparation for Formal Hearing (Representation of Applicant). This section provides that an applicant or recipient of benefits may choose to be represented by "an attorney or other competent representative at the formal hearing." The Resolution also provides that the applicant or recipient must file written notice of the identity and profession of the chosen representative within 25 days of the Board's initial decision on benefits. We see difficulty with both of these requirements.

First, the Resolution's use of the term "competent representative" would appear to grant the Board far too much discretion in determining whether or not an applicant could be represented by a non-attorney representative. Who, for example, is to determine the "competence" of a representative? Could the Board in its discretion simply deem "incompetent" a representative because of that representative's relative success before the Board in prior cases? Questions such as these, and dozens more, all stem from the draft Resolution's use of the term "competent." We would strongly recommend that the Resolution be redrafted to indicate that an applicant or recipient has the ability to be represented by any representative of his or her choice.

In addition, though Section 3.85.005 (A) clearly allows an applicant or recipient to be represented by a non-attorney representative, other portions of the Resolution (e.g., 3.85.006 (B)) appear to clearly state that an applicant may only be represented by an attorney, not a lay representative. This conflict in the draft Resolution should be resolved before the Resolution is finalized.

Section 3.85.005 - Preparation for Formal Hearing (Concession of Issues). This section of the draft Resolution allows "the Board's attorney or staff [to] concede issues, should justice require." However, the draft Resolution requires the Board's attorney or staff to give the Board and other parties ten days' written notice of the decision to concede an issue. While the requirement that advance notice be given of the concession of the issues no doubt designed to ensure that the parties do not waste resources preparing to unnecessarily litigate uncontested issues, we believe that the advance notice requirement may actually deter the concession of issues. If the only issues which may be conceded are those which are identified in writing ten days in advance of a hearing, the Board's attorney or staff representative may be compelled to litigate issues simply because they were unable to make an early enough determination that the issue should have been conceded. This difficulty with the structure of the Resolution could be eliminated if the ten day notice requirement for the concession of issues was established as a goal rather than as a minimum requirement. For these reasons, we would recommend that the draft Resolution provide that "where possible," ten days advance notice of the concession of issues should be given.

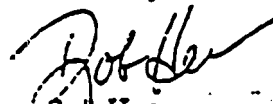
Section 3.85.005(C) and (F) - Preparation for Formal Hearing (Discovery). This section of the draft Resolution calls for a formal system of discovery prior to a hearing. We are concerned that with the enactment of such rules, Board hearings will become much more complex and less "user friendly"; the considerable amount of rules governing pre-hearing discovery may well turn into a fertile ground for disputes between attorneys rather than the discussions of the merits of a claim. While we understand that the exchange of all relevant documents prior to a hearing is an integral part of a fair hearing process, we question whether the extensive discovery provisions in the draft Resolution are truly necessary.

Section 3.85.005(G) - Preparation For Formal Hearing (Mental or Physical Examinations). This section of the draft Resolution allows the Board to require an applicant for or a recipient of disability benefits to submit to "relevant mental or physical examinations at the expense of the system." This provision is far too broad and appears to facially violate the Americans With Disabilities Act. Under ADA, an employer or pension board may only compel a medical or physical examination if the reasons for the examination are "consistent with business necessity" and if the examination is limited in scope to those issues which arise under the "business necessity test".

Section 3.85.006(A) - Hearing Procedures (Hearing Officer). As was the case with the role of the Board's attorney, we believe the draft Resolution contains confusing and potentially conflicting language with respect to the role of the hearing officer retained by the Board. Section 3.85.006(A)(3)(a) provides that "the hearing officer shall not offer his opinion or conclusion regarding the application before the Board." However, the same section of the draft Resolution allows the hearing officer to give advice concerning "proper legal standards, weight of evidence, the relationship between evidence and opinion, and other legal or actual matters as may arise during Board deliberations." Advice in any of these four areas could well involve the hearing officer giving advice concerning the merits of the ultimate application before the Board. We believe that this confusion could be eliminated by eliminating the ability of the hearing officer to give "any advice concerning the merits of the application before the Board."

In addition to the foregoing, there are numerous other sections of the draft Resolution which appear to have minor conflicts and/or are inconsistent with what the intent of the draft Resolution appears to be. For these reasons, we would strongly recommend that the draft Resolution be voted down in its current form and be submitted to a comprehensive staff analysis before it is considered by the Assembly.

Sincerely,


Rob Heun
President, APDEA



MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. AM 808-97

Meeting Date: September 16, 1997

1 **From:** Mayor
2
3 **Subject:** Anchorage Police and Fire Retirement Board
4 AR 97-223, A Resolution Providing for the Repeal and
5 Reenactment of Anchorage Code Of Regulations 3.85, Pertaining to
6 the Administration of the Anchorage Police and Fire Retirement
7 Board.
8
9

10 AR 97-223 defines the procedures used by the retirement board in the administrative
11 processing of disability applications. These procedures have been developed by the board
12 over time, in order to give the retirement system members clear and comprehensive
13 procedures for the filing and determination of disability and death claims.
14

15 The new regulation formalizes many of the existing aspects of the administrative hearing
16 process and set forth in greater detail the procedures to be followed. The new regulation
17 also establishes some new procedures.
18

19 It extends the time frame in which a member may apply for disability benefits and defines
20 the roles of the retirement board, staff and hearing officer.
21

22 The ability of a member to request disqualification of a board member or hearing officer is
23 set forth, and the requirements for quorum voting are clarified.
24

25 The new regulations set administrative procedures for the files to be maintained by the
26 retirement board staff and set the procedures to be followed by a member applying for
27 military service credit.
28

29 The repeal of the current AMCR 3.85 approved June 19, 1984 and the enactment of the
30 new AMCR 3.85 will update the procedures used in the daily processing and admini-
31 stration of the retirement system.
32

33 Prepared by:

34 
35 Dean Ramoy
36 Acting Director
37 Police & Fire Retirement System
38
39
40
41

42 Concurred:

43  8/28/97 FOR VICE CHAIR
44 Joseph Caswell, Chairman
45 Police & Fire Retirement Board
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AM 97-223

Regulation 3.85

ADMINISTRATIVE PROCEDURES POLICE AND FIRE RETIREMENT BOARD

Sections:

- 3.85.001 Definitions.
- 3.85.002 Authority and purpose.
- 3.85.003 Filing a claim.
- 3.85.004 Claim review.
- 3.85.005 Preparation for administrative hearing.
- 3.85.006 Hearing procedures.
- 3.85.007 Decisions.
- 3.85.008 Reconsideration.
- 3.85.009 Discovery.
- 3.85.010 Quorum--Voting.

3.85.001 Definitions

- A "Board" means the Police and Fire Retirement Board established by Chapter 3.85 of the Anchorage Municipal Code.
- B "Member" means a police officer or fire fighter of the Municipality as defined by Chapter 3.85 of the Anchorage Municipal Code.
- C. "Staff" means those municipal employees who have responsibility for providing administrative assistance to the board and includes attorneys, consultants and other persons who have been retained to participate in that effort. (Authority: AMC 3.40, 3.85.040, 4.05.120, AR 81-237, am AR 84-160).

3.85.002 Authority and purpose

These procedures are established pursuant to AMC 3.85.100, for the purpose of facilitating the orderly and fair processing of claims under the Police and Fire Retirement System. (Authority: AMC 3.40, 3.85.040, 4.05.120, AR 81-237, am AR 84-160).

3.85.003 Filing a claim

A member may file a written claim for benefits with the staff of the board within 180 days after the incident upon which the member's entitlement to benefits is claimed. Failure to file a claim within the stated period shall constitute a jurisdictional defect. The claim shall be made on a form prescribed by the board and shall include, at a minimum, the following:

1. the factual history leading up to the diagnosis of the member's condition and his claim for benefits.
 2. the inclusive dates for which benefits are requested
 3. any medical or other documentation related to the claim.
 4. identification of the type of benefit sought and the reasons why the member believes he is entitled to receive that benefit.
 5. an executed medical records release in a form prescribed by the board and authorizing staff to obtain the member's medical records.
 6. one or more executed releases pertaining to records of which staff may seek copies in connection with its review of the claim, when such records are in the custody of a government agency, the member's former employer or other person.
- B. A member may withdraw a claim only by filing written notice with the board. Withdrawal of an application for benefits shall preclude a future claim for benefits arising from the same facts upon which the member relied as the basis for the withdrawn claim. (Authority: AMC 3.40, 3.85.040, 4.05.120, AR 81-237, am AR 84-160).

3.85.004 Claim review.

- A. The staff shall investigate each claim for benefits and present its analysis and recommended disposition of the claim to the board at the next regularly scheduled meeting after completion of the investigation. Staff shall complete its investigation within 90 days after a claim is received, unless the board authorizes a longer period of time for investigation.
- B. If the board decides to award benefits as requested by the member, the staff shall implement that decision.
- C. If, upon initial review of a claim and after receipt of staff's recommended disposition of a claim, the board decides not to grant the benefits requested, the board shall set a formal hearing on the claim to occur within the next 90 days. The hearing may be scheduled for a later date only with the approval of the member.
- D. The staff is authorized to receive, investigate and grant normal retirement benefit claims pursuant to AMC 3.85.110A, B, and C or AMC 3.85.220A, B, and C without active

participation by the board. (Authority: AMC 3.40, 3.85.040, 4.05.120, AR 81-237, am AR 84-160).

3.85.005 Preparation for administrative hearing.

- A. No later than five days before the administrative hearing commences, the member and the staff shall each submit the following to the board and to each other:

a witness list, identifying each witness and containing the substance of his testimony.

- 2 all documents to be submitted by a party as exhibits or otherwise to be relied upon at the hearing.

- B. In addition to the materials described in the preceding paragraph, staff shall, and the applicant may, submit a memorandum outlining the party's position relevant to disposition of the member's specific claim for benefits. (Authority: AMC 3.40, 3.85.040, 4.05.120, AR 81-237, am AR 84-160).

3.85.006 Hearing procedures.

Administrative hearings before the board shall be conducted informally and include the following procedures:

- A. The board may retain a qualified hearing officer to conduct administrative review of a claim for benefits in the manner determined by the board.
- B. Parties may appear in person or through counsel.
- C. Parties may present witnesses and evidence on their behalf.
- D. Parties or their counsel may cross-examine opposing witnesses on matters relevant to the issues, impeach witnesses regardless of which party first called the witness to testify, and rebut evidence against themselves.
- E. Relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule which makes improper the admission of the evidence over objection in a civil action. Hearsay evidence may be considered provided there are guarantees of its trustworthiness and that it is more probative on the point for which it is offered than any other evidence which the proponent can procure by reasonable efforts. Written medical records shall always be admitted as evidence so long as they are authenticated in a manner acceptable to the board.

- F. All administrative hearings before the board shall be open to the public unless all parties to such hearings and the board agree that the subject matter tends to prejudice the reputation and character of any person.
- G. All parties shall have the right to subpoena witnesses and documents in the manner described in AMC 3.60.045F. Timely service of a subpoena is the sole responsibility of the party for whom it is issued.
- H. All administrative hearings before the board shall be memorialized by an electronic recording or a stenographic record. (Authority: AMC 3.40, 3.85.040, 4.05.120, AR 81-237, am AR 84-160).

3.85.007 Decisions.

- A. The board is limited in its consideration of any claim to those matters which have been made part of the record.
- B. No later than 30 days following an administrative hearing, the board shall issue a written decision based on findings and conclusions adopted by the board. Such findings must be in writing and must be reasonably specific so as to provide interested persons and, where appropriate, reviewing authorities a clear and precise understanding of the reason for the decision entered. The decision, findings of fact, and conclusions of law shall be forwarded to all parties to the proceeding. (Authority: AMC 3.40, 3.85.040, 4.05.120, AR 81-237, AR 84-160).

3.85.008 Reconsideration.

A decision of the board may be reconsidered or reheard only if:

- A. There was substantial procedural error in the original proceeding; or
- B. The board acted without jurisdiction in the original proceeding; or
- C. The original decision was based on fraud or misrepresentation.

Any person seeking reconsideration or rehearing must file a request with the staff of the board together with the materials supporting one or more of the grounds stated above within 15 days of the decision for which reconsideration or rehearing is requested. A rehearing shall be conducted in the same manner as the original proceeding, unless the staff and the member agree to a different period of time in which to conduct further discovery. (Authority: AMC 3.40, 3.85.040, 4.05.120, AR 81-237, am AR 84-160).

3.85.009 Discovery.

For good cause shown to the board, the member and the staff may engage in discovery in the form of depositions, interrogatories, requests for admissions and production of documents as described in Rules 26, 30, 34 and 36 of the Alaska Rules of Civil Procedure, except that responses shall be due in 15 days. All aspects of discovery shall be completed no later than 10 days before the hearing date set by the board. (Authority: AMC 3.40, 3.85.040, 4.05.120, AR 84-160).

3.85.010 Quorum--Voting.

- A Five members of the board shall constitute a quorum. In the absence of a quorum, the board shall not transact any business other than adjournment of the meeting.
- B. In order for any motion to be passed by the board, it must be supported by not less than five votes of board members. (Authority: AMC 3.40, 3.85.040, 4.05.120, AR 84-160).

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an executed medical records release in a form prescribed by the board and authorizing staff to obtain the member's medical records.

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