

**PENSION BOARD POLICIES
FIREFIGHTERS & POLICE OFFICERS
PENSION FUND OF THE CITY OF TAMPA**

Policy Number: 108
Policy: Procedures for Hearings before the Board
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Ref: Board Minutes; Pension Contract Section 5(H)

POLICY:

- A. **PURPOSE:** The purpose and intent of this policy is to provide a full administrative and quasi-judicial remedy to any person (“affected person”) claiming his/her substantial rights have been affected by a decision of the Board of Trustees (“Board”). As an independent administrative entity, the Board is empowered to conduct hearings for the resolution of disputes concerning entitlement to benefits. Hearings involving the determination of factual questions are “quasi-judicial hearings.” This means that the Board will be responsible for evaluating all evidence presented, the demeanor of the witnesses and determining the truth of a fact in question.
- B. **STATUTORY AUTHORITY:** As an independent municipal entity, the Board of Trustees is exempt from coverage under the Florida Administrative Procedures Act, Chapter 120, Florida Statutes, except in the case of forfeiture proceedings under Section 112.3173, Florida Statutes. The Board is authorized to determine all questions arising under the plan pursuant to Sections 175.071 and 185.06, Florida Statutes and Section 5 of the Compendium Contract.
- C. **INFORMAL HEARINGS:** Below are the procedures for informal hearings before the Board:
- a. Requesting an informal hearing: Upon written request on a form adopted by the Board (attached to this policy) submitted to the Plan Administrator via mail or email, the Board shall grant an initial hearing to the affected person. Such written request shall include: (a) the name and status/affiliation (e.g. retiree or active member) of the affected person requesting the initial hearing (the “applicant”) and (b) the reason for the request. For a disability hearing, the disability application is the request for an informal hearing. For a forfeiture hearing, the affected person will be provided a notice of proposed agency action to forfeit the benefit, which will outline the steps necessary for an informal hearing.

Upon receipt of a written request for an informal hearing, the Plan Administrator will provide to the affected person confirmation of the date and time of the informal hearing. The Board holds informal hearings at its regularly scheduled meetings, generally held at 9:30 a.m. on the fourth Wednesday of every month. The affected person shall have the right to be accompanied, represented, and advised by counsel.

- b. The Board, in its discretion, may appoint an independent advocate to represent the Fund in a disability, contested death benefit, adjustment of benefit, or any other informal hearing. The Board shall be represented by an independent advocate in all forfeiture proceedings.
- c. Evidence considered: The evidence considered will be the *written material* provided by the affected person and which shall accompany the hearing request form. **There will be no taking of additional evidence at an informal hearing, except for subparagraph (1) below.** The specific evidence for the various types of hearings will include as follows:
 - (1) Disability: Application for line-of-duty or non-line-of-duty disability, medical records, notice of injury reports, medical board reports, and other documents/records related to the disability that would help the Board make a determination. The Board, at its discretion, may ask questions to clarify the information provided during the informal hearing or in the written material. See Board Policy 402 for line-of-duty or non-line-of-duty disability application procedures.
 - (2) Forfeiture: All records relating to the criminal charge, prosecution, and conviction of a specified offense.
 - (3) Contested death benefits: Beneficiary forms, estate records.
 - (4) Adjustment of benefits: Benefit application, benefit calculation, payment records, payroll records.
 - (5) All other matters: All information contained within the affected person's pension file and other documents/ records that would help the Board make a determination.
- d. The affected person and/or his/her attorney will customarily be afforded fifteen (15) minutes to make a presentation. The fifteen (15) minutes may be extended at the discretion of the Chairman.
- e. Decision/Recommendation by the Board: A decision will customarily be made at the informal hearing; however, the Board recognizes that additional research and review may be necessary, on occasion. When a decision is not reached at the meeting where the informal hearing is held, it will come to the Board for consideration at the next meeting or as soon as practical thereafter considering the complexity of the matter. The hearing will be deemed to be continued until such time as a decision is rendered. The Board shall base its decision on the evidence presented.

Once a decision is made by the Board, written notice by the Board's attorney shall be given to the affected person. The written notice shall contain the specific reasons for the decision and shall advise the affected person of his/her right to request a formal hearing and the time limit in which such formal hearing must be requested in writing, should the affected person wish to exercise that right.

The decision of the Board of Trustees at the informal hearing shall not be final until after the time has expired to request a formal hearing. Upon the expiration of the time to request a formal hearing, if no such hearing is requested, written notice by the Board's attorney shall be given to the claimant(s) stating that the decision of the Board is deemed final.

- f. Any affected person wanting a verbatim record of the proceeding shall provide for a certified court reporter to record and transcribe the proceedings. For forfeiture hearings, the Board shall provide a verbatim record.

D. FORMAL HEARINGS: Below are the procedures for formal hearings before the Board:

- a. Requesting a formal hearing: In the event the affected person is dissatisfied with the results of the informal hearing, he/she may request a formal hearing by making a written request within thirty (30) calendar days of service of the written order resulting from the informal hearing. In calculating the time, the day of the informal order is not counted but the last day of the period is counted. If the 30th day falls upon a Saturday, Sunday or holiday in which the Pension Fund office is closed or U.S. mail is not delivered, the last day of the period will be the next business day.

Upon receipt of a written request for a formal hearing, the Plan Administrator will issue a written notice setting the time, date, and place of the hearing. Such notice shall be publicly posted in compliance with Florida Statutes. The affected person shall have the right to be accompanied, represented, and advised by counsel.

In order that the appropriate length of time be reserved in the scheduling of a formal hearing, the affected person shall notify the Pension Office in writing of the estimated time needed for the formal hearing no later than **forty-five (45) calendar days** prior to the date of the formal hearing. The written notification must also include a list of witnesses who will testify at the formal hearing.

Formal hearings must be scheduled and heard within one year of the request for formal hearing. If the formal hearing is scheduled but not heard within one year due to a request by the applicant, the matter shall be placed on the next Board agenda following the one-year expiration period and the Board shall deny the matter, unless good cause is shown satisfactory to the Board why it should not be denied. Written notice shall be sent to the affected person informing him/her that the matter is being placed on the Board's agenda and that it will be denied unless good cause is shown. Examples of good cause are death or disability of a doctor/witness, or a serious physical infirmity of the affected person or his/her attorney (such as paralysis or coma) which prevents the attorney from preparing for the formal hearing.

- b. The Board, in its discretion, may appoint an independent advocate to represent the Fund in a disability, contested death benefit, adjustment of benefit, or any other formal hearing. The Board shall be represented by an independent advocate in all forfeiture proceedings.
- c. Evidence considered: Additional evidence not presented at the informal hearing may be presented at the formal hearing. Witnesses may appear at a formal hearing in person or by deposition. All testimony, including that of the affected person, will be sworn or affirmed. Arrangements for any evidence requiring audio/visual setup must be made 5 business days prior to the formal hearing. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

In those cases involving medical testimony, the Board prefers that testimony of witnesses other than the affected person be submitted by deposition transcript, because it will give the Board more time for review and consideration. Depositions timely submitted, as described below, will be part of the record for consideration before the Board but will not be read in totality at the formal hearing. However, this does not preclude the affected person or his/her attorney from reading parts of the deposition transcripts as part of an opening statement or closing argument.

The Board is responsible for submitting any documents to the pension office in accordance with the timeline described below and is responsible for the appearance of any witnesses called on behalf of the Board. The affected person is responsible for submitting any documents to the pension office in accordance with the timeline described below and is responsible for the appearance of any witnesses called on behalf of the affected person.

Copies of all documents to be offered into evidence at the formal hearing, including depositions, shall be furnished to the Pension Office by the offering person at least **thirty (30) days prior to the formal hearing**. In disability cases, or a case concerning admission into the Pension Fund, or cases involving benefit terminations, any newly offered medical evidence received thirty (30) days prior to the formal hearing shall be forwarded directly to the Medical Director for submission to the previous examining medical board physicians for their review, comments, and opinions. Documents not furnished to the pension office within the prescribed time limit shall be excluded from evidence at the formal hearing, except as authorized by the Chairman.

Any costs associated with discovery, appearance of any witnesses called at the formal hearing on behalf of the affected person, and/or the making of a verbatim record of the proceedings shall be the responsibility of the

affected person. However, the Fund will reimburse the affected person fifty (50) percent of the costs for depositions of the Fund's medical board doctors if: (1) the counsel for the Board attends such depositions and (2) the affected person files all pages of the original deposition transcript with the Plan Administrator at least thirty (30) days prior to the formal hearing. Such costs shall be limited to (1) reasonable witness fees of the medical board doctors to attend a deposition at the request of the affected person and (2) reasonable cost to obtain the original transcript of the deposition of the medical board doctors, including the court reporter's appearance or per diem fee.

- d. Burden of proof: Except in the case of forfeiture proceedings, the applicant will bear the burden of proof to prove the matter at issue by the greater weight of the evidence. In a forfeiture proceeding, the burden of proof shall be on the Fund to prove that a specified offense has been committed by clear and convincing evidence.
- e. Evidentiary issues: Counsel for the Board shall assist the Board in determining evidentiary issues and shall advise the Board on the applicable law. All evidentiary objections shall be resolved by the Chairman, subject to review by a vote of the Board. The rules of evidence applicable in civil proceedings will not apply. Rules of evidence generally applicable in administrative proceedings shall apply. Hearsay shall be admissible as corroborating evidence but may not be the sole proof of an issue.
- f. Appearance in person: All individuals participating in formal hearings shall appear in person, unless a virtual appearance is approved by the Chairman no less than 24-hours in advance. A physical quorum of the Board is required to proceed. Participating individuals include, but are not limited to, trustees, the affected person(s), counsel for all parties, live witnesses, court reporters, and professionals. **In the event the affected person(s) or the affected person's counsel, court reporter, live witness, or other professional does not attend in person without prior approval by the Chairman, the formal hearing will be rescheduled and any costs incurred by the fund for scheduling and holding the formal hearing will be charged back to the affected person. At the discretion of the Chairman, repayment of costs may be waived in the event of an emergency or other extenuating circumstance. In the event a live witness does not appear in person, that witness' testimony will not be included in the record.**
- g. Procedures for forfeiture hearing: The Chairman, or designee, shall open the formal hearing by outlining the procedures to be followed, as listed below:
 - (1) Opening statement by Board's advocate
 - (2) Opening statement by the affected person or his/her attorney

- (3) Presentation of the Board advocate's case in chief, including cross-examination of any witnesses
 - (4) Presentation of the affected person's case in chief, including cross-examination of any witnesses
 - (5) Rebuttal evidence from the Board's advocate
 - (6) Closing argument by the Board's advocate
 - (7) Closing argument by the affected person or his/her attorney
- h. Procedures for all other hearings: The Chairman, or designee, shall open the formal hearing by outlining the procedures to be followed, as listed below:
- (1) Opening statement by the affected person or his/her attorney, not to exceed five (5) minutes
 - (2) Opening statement by Board's advocate, if applicable, not to exceed five (5) minutes
 - (3) Presentation of the affected person's case in chief, including cross-examination of any witnesses
 - (4) Presentation of the Board advocate's case in chief, including cross-examination of any witnesses
 - (5) Closing argument by the affected person or his/her attorney, not to exceed ten (10) minutes
 - (6) Closing argument by the Board's advocate, not to exceed ten (10) minutes
- i. Decision/Recommendation by the Board: Once the formal hearing is closed, the Board shall enter the determination phase to make findings of fact and conclusions of law as to the evidence presented. A decision shall be made at the formal hearing and the Board shall base its decision on the evidence presented.

Written notice by the Board's attorney shall be given to the affected person in the form of a Final Administrative Order ("Order"). The Order shall contain the specific reasons for the decision and shall advise the affected person of his/her appellate rights and the time limit in which such appeal must be filed.

The decision of the Board of Trustees at the formal hearing shall not be final until after the time has expired to request an appeal. Upon the expiration of the time to request an appeal, if no such appeal is requested, written notice by the Board's attorney shall be given to the claimant(s) stating that the decision of the Board is deemed final.

Any applicant aggrieved of the Board's Order may file a petition for writ of common law certiorari in the circuit court of the 13th Judicial Circuit of Florida within 30 days of the date the order is filed with the Administrator/Clerk of the Board in the manner prescribed in the Florida Rules of Court. The sole issues for review shall be (1) whether the

applicant was provided due process; (2) whether the decision is based on competent and substantial evidence; or (3) whether the Board's decision departed from the essential requirements of the law.

- j. The affected person requesting a formal hearing shall provide for a certified court reporter to record and transcribe the proceedings. In the event the affected person does not provide for a court reporter, the formal hearing will be rescheduled and any costs incurred by the fund for scheduling and holding the formal hearing will be charged back to the affected person. At the conclusion of the formal hearing, the affected person is required to provide a transcript of the proceedings to the Board prior to the Board issuing a final order, except in those cases when the affected person's request is granted. For forfeiture hearings, the Board shall provide a verbatim record.
- E. The Plan Administrator shall be deemed the Clerk of the Board.
- F. In any administrative proceeding under Chapter 120, Florida Statutes or in any judicial proceeding, the prevailing party shall recover reasonable attorneys' fees and costs as provided in Chapters 175 and 185, Florida Statutes.
- G. It is unlawful for a person to willfully and knowingly make, or cause to be made, or to assist, conspire with, or urge another to make, or cause to be made any false, fraudulent, or misleading oral or written statement or withhold or conceal material information to obtain any benefit available under a retirement plan receiving funding under Chapters 175 and 185, Florida Statutes (175.195, 185.185). This pension fund receives funding under Chapters 175 and 185, Florida Statutes. Any person who violates this section is guilty of a misdemeanor of the first degree, punishable as provided in Section 775.082 or 775.083, Florida Statutes. In addition to any applicable criminal penalty, upon conviction for a violation described herein, a participant or beneficiary of a pension plan receiving funding under Chapters 175 and 185, Florida Statutes, may, in the discretion of the Board of Trustees, be required to forfeit the right to receive any or all benefits to which the person would otherwise be entitled. For the purposes of this paragraph, "conviction" means a determination of guilt that is the result of a plea or trial regardless of whether adjudication is withheld.