

# Rules

December 8, 2022

## PERS

- 145-1-01 Organization (No change)
- 145-1-02 Election of board members (No change)
- 145-1-03 Board travel and expense reimbursement policy (No change)

## OP&F

- 742-3-05 Disability benefits procedure (Refiled)

## SERS

- 3309-1-26 Determination of beneficiary

145-1-01

**Organization.****(A) Offices**

- (1) The general offices of the public employees retirement board and its address of record is "277 East Town Street, Columbus, Ohio 43215-4642."
- (2) The location of the office may be changed or additional offices may be established or closed by appropriate board resolution.

**(B) Meetings**

- (1) Except as provided in this paragraph, regular meetings shall be held at nine a.m. on the third Wednesday of each calendar month. At the call of the chair, or in the event of the chair's incapacity, at the call of the vice chair, a regular meeting may be held on the Tuesday preceding the third Wednesday of a month at a time determined by the chair or vice chair. The date and hour of a regular meeting may be changed by appropriate board resolution.
- (2) Special meetings may be held at the call of the chair, or in the event of the chair's incapacity, at the call of the vice chair. Should both the chair and vice chair be incapacitated, a special meeting of the board may be called by any two members of the board.
- (3) The first meeting in each calendar year shall be the annual meeting, at which time as the first order of new business, the board shall elect from its members a chair and a vice chair who shall take office immediately following their election. The chair-elect shall announce committee appointments for the coming year no later than the next regular meeting. The composition of the committees shall remain the same until the new appointments. New board members and re-elected board members shall be sworn in at the annual meeting.
- (4) The director of administrative services may designate a member of such individual's staff to act on the board in such individual's absence, provided the person designated is not disqualified by operation of law to act as such a representative.
- (5) A majority of the actual number of members that have been elected or appointed to and are serving on the board at the time of a meeting where official action is to be taken constitutes a quorum to conduct a meeting. A majority of those members present and voting yes on a proposal shall constitute a favorable vote. An abstention from voting shall not be counted as either an affirmative or negative vote, and a member who abstains shall not be counted as a member present to determine whether a majority needed for a favorable vote has been

reached. A roll call shall occur if there is a division in the vote. Any board member may request a roll call on any vote.

- (6) The regular order of business for any meeting of the board shall be as follows:
- (a) Roll call. An employee or retirant member of the board not able to be present may request to be excused. A request to be excused shall be moved by the chair and voted on by the board.
  - (b) Items of business as presented on a written agenda sent to each board member, and made available to the public, prior to the meeting and such other items that may arise between the release date of the written agenda and the meeting date.
  - (c) Announcement of next regular or special meeting date, hour and place.
  - (d) Adjournment.
  - (e) Without objection, the regular order of business may be changed by the chair or upon the request of a board member. If there is an objection, a motion, second and vote to consider an item out of turn is in order.
- (7) When a question of parliamentary procedure arises, the most current edition of "Robert's Rules of Order" shall be followed unless in conflict with Chapter 145. of the Revised Code, or this rule.
- (8) The minutes shall be the record of the proceedings of the board. Draft copies of the written minutes shall be circulated to the board in advance of each meeting. After approval, the final form shall be inserted in the minutes book of the board.

(C) Officers and their duties

- (1) The chair shall be elected and take office at the annual meeting of each year for a one-year term or until a successor is elected. The chair shall be the voice of the board and shall preside at all board meetings. The chair may call upon the vice chair to preside during a meeting. The chair shall appoint committees; make the determination whether a special meeting of the board is required; and when required, call the meeting. The chair shall present to the board for a vote the member's request to be excused for members unable to attend meetings.
- (2) The vice chair shall be elected and take office at the annual meeting in January of each year for a one-year term. The vice chair shall succeed to the chair in the event of the resignation, retirement or death of the chair. The vice chair shall

preside in the event of the absence or incapacity of the chair or upon the request of the chair.

- (3) Under the direction of the chair, the executive director or other designated person shall keep the minutes of board proceedings.
- (4) Other officers of the board shall include the chairs of standing or special committees.

(D) Committees

- (1) The personnel and salary review committee shall consist of an odd number of board members up to a maximum of seven members. The exact number of members on the committee, the committee chair, and members shall be determined and appointed by the board chair. This committee shall meet at the call of its chair, as occasion requires, to review compensation and personnel matters and to make recommendations through its chair and reports to the board on these matters.
- (2) The audit committee shall consist of five members: the board chair, the director of administrative services, an employee member appointed by the board chair, a retirant member appointed by the board chair, and one additional member appointed by the board chair. The board chair shall make appointments to the committee by considering the accounting, finance, or business management background of the board members. This committee shall meet twice annually, and at any other time at the call of the board chair, to review audit plans and audit findings of the retirement system's independent and/or internal auditors. The committee shall, through the board chair, make its reports to the board. The committee shall prepare and submit an annual report of its activities to the Ohio retirement study council.
- (3) Appointments of the committee chairs and appointments of members to the regular committees listed are concurrent with the board chair who makes the appointment.
- (4) The chair of the board may, at times as required, appoint temporary or special committees for such purposes as the chair deems necessary. The chair of a temporary or special committee shall be announced when the members are named. Unless otherwise stated for a shorter period in the appointment, temporary or special committee appointments shall be concurrent with the board chair who makes such appointment.

- (5) The minutes shall be the record of the proceedings of a committee or subcommittee. Draft copies of the written minutes shall be circulated to the committee or subcommittee for approval. After approval, the final form shall be inserted in the minutes book of the board.

Five Year Review (FYR) Dates: 9/26/2022 and 09/26/2027

CERTIFIED ELECTRONICALLY

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Certification

09/26/2022

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Date

Promulgated Under: 111.15  
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10/11/1988, 04/05/1993, 04/30/1994, 06/01/1996,  
07/06/2000, 01/05/2001, 03/22/2002, 12/24/2004,  
11/30/2007, 10/01/2009 (Emer.), 01/01/2010,  
01/01/2014, 04/01/2018, 01/01/2020

145-1-02

**Election of board members.****(A) Notifications**

- (1) At its regular March meeting in each year that an election of members to the board is required the public employees retirement board shall establish an election time schedule. The schedule shall establish the first Monday in October as the date and place for the election count to be conducted under the supervision of the secretary of state's office.
- (2) This schedule shall include the release of news articles to interested employee and employer organizations and other interested parties, a preliminary notice to employers, the mailing of notice of elections and nominating petitions, the last date for receipt of nominating petitions and required forms, the date of the meeting at which the board shall certify candidates for election, the date by which voting materials must be mailed to eligible voters at their home addresses, and the final date for receipt of votes.

**(B) Nominations**

- (1) Candidates for board members shall be nominated by petition on forms provided by the public employees retirement system.
- (2)
  - (a) Petitions and required forms for candidates as an employee representative on the board shall be mailed to employers by the system with the notice of election posters not later than the thirtieth day of June. At that time petitions and required forms may be sent to members who have requested them.
  - (b) Any member, except a member receiving a disability benefit pursuant to sections 145.35 and 145.36 of the Revised Code, who is not otherwise ineligible under Chapter 145. of the Revised Code, may be nominated to represent the employee group to which the member belongs by submitting petitions that contain at least five hundred valid nominating signatures. Petitions for an employee representative candidate shall contain not less than twenty signatures of members from each of at least ten counties in Ohio. The member's place of employment shall determine the county for such member.
  - (c) Members shall be eligible to sign a petition for an employee representative candidate if they are contributing members under an employing unit

which would be represented by the candidate as of June thirtieth of the election year.

(3)

- (a) A notice of election procedures shall be sent to retirants at their home addresses of record with, or at the same time that, the June benefit payment is released in the year of a retirant representative election. Petitions and required forms for candidates as the retirant representative board member shall be sent, to retirants who have requested them, on the date set by the board pursuant to paragraph (A) of this rule; however, such date shall be no later than June thirtieth.
- (b) Any retirant, who is not otherwise ineligible under Chapter 145. of the Revised Code, may be nominated to represent the retirant group with petitions which contain at least two hundred fifty valid nominating signatures. Petitions for a retirant representative candidate shall contain not less than ten signatures of retirants from each of at least five counties in Ohio. The retirant's place of residence shall determine the county of such retirant.
- (c) Individuals shall be eligible to sign a petition for a retirant representative candidate if they are retirants eligible to receive a monthly benefit as of July first of the election year.

(4)

- (a) Petitions and completed required forms for a candidate shall be received by the system no later than the petition filing date established by the board in the election time schedule. A petition received after such date is invalid.
- (b) Petition signatures shall be verified based on records of the retirement system and the requirements of Chapter 145. of the Revised Code. Signatures that cannot be conclusively verified shall not be counted.
- (c) The board shall certify qualified candidates for election. A qualified candidate is an individual who meets the requirements of Chapter 145. of the Revised Code and this rule as established by the records of the system. Based on the certification, the names of qualified candidates shall be placed on the ballot for election.

(C) Voting

- (1) The board may conduct an election by paper ballots or through electronic methods.

(2)

(a) Voting materials for each voting member or retirant of the system shall include a list of candidates, a biographical statement for each candidate, voting instructions, a disclaimer that neither the board nor the system endorses any particular candidate or statement, and any other materials the board deems necessary.

(b)

(i) The biographical statement of a candidate shall be completed on a template provided by the system. The template shall provide for the candidate's name and county of residence, and may include an email address, website address, and telephone number. The employee representative candidate(s) shall also indicate the current public employer and job title.

The biographical statement of a candidate shall include a brief description of current or prior work and relevant industry knowledge or specific experience. The biographical statement shall not exceed two hundred words. The candidate must provide an affidavit signed by the candidate verifying the accuracy and truthfulness of the statement. The board reserves the right to edit such statement for length or inappropriate content with notice to the candidate.

(ii) In addition, a candidate must provide a disclaimer on or with any written or spoken campaign material that neither the board nor the system endorses any particular candidate or statement, and submit such materials to staff to pre-approve the disclaimer prior to disseminating.

(3) If a candidate is elected by a margin of less than one percent of the votes cast, a recount will automatically be conducted.

(4) In the event there is a tie vote, the vote shall be decided by a coin toss. Certification of the election results shall be provided by the secretary of state at the office of the system.

(D) Protests

(1)

- (a) An individual who fails to obtain sufficient valid nominating signatures by the petition filing date may file a protest on the insufficiency of such individual's petitions. The protest shall be in writing and received by the system no later than five calendar days after notice of the insufficiency.
- (b) A protest shall be heard at the board's next meeting. The individual may be represented by legal counsel at the hearing and may present any information and/or documents relevant to the protest for the board's consideration. The executive director shall notify the individual in writing of the board's decision. If the board determines that the protest is valid, it shall certify the individual for that representative group election.
- (c) Once the board makes a determination of a protest on the sufficiency of an individual's petitions, neither the insufficiency nor determination shall be the basis for any other protest to the board pertaining to that individual. The board's decision is final.

(2)

- (a) An unsuccessful candidate in an election may file a protest in the candidate's representative group election. This protest shall be in writing and received by the system no later than five calendar days after notice of the unofficial election results.
- (b) A protest shall be heard at the board's next meeting.
  - (i) The protesting candidate may be represented by legal counsel at the hearing. The successful candidate may appear, and may be represented by legal counsel. The protesting candidate and the successful candidate may submit any information and/or documents relevant to the protest for the board's consideration.
  - (ii) The executive director shall notify the protesting candidate in writing of the board's decision.
  - (iii) If the board determines that the protest is valid, it shall declare the election for that representative group void, and the position vacant. A new election for that representative group shall be held pursuant to division (C) of section 145.06 of the Revised Code. The board's decision is final.

(E) Vacancies

- (1) Except as provided in this paragraph, if a vacancy occurs in the term of an employee member or retirant member of the board, the remaining retirement board members shall determine the schedule and manner in which they will select a successor member. The board is not required to elect a successor member for a vacancy that occurs on or after the first day of October of the year in which the vacated term ends, as described in section 145.06 of the Revised Code.
  - (a) The board shall notify the membership or retirant group affected by the vacancy in the same manner as is done for elections of retirement board members. This notice shall state the procedure for candidates for the vacancy to submit their names to the board, and the procedures for selection by the board of the candidate to fill the vacancy. Candidates shall qualify under the same eligibility requirements as the predecessor in office.
  - (b) The board shall select a successor member from those names submitted to it. A successor member shall be selected by a majority vote in which successive ballots shall occur until one candidate receives a majority. However, in the event there is a tie vote, the vote shall be decided by a coin toss.
- (2) If a vacancy occurs because an individual is unable to assume the office at the January meeting of the board following the individual's election, the board shall conduct a new election as provided in this rule, except that the time schedule for the election shall occur in order to comply with section 145.06 of the Revised Code.
- (3) All documents regarding filling the vacancy, including resumes and forms required by the system, shall be made available to any person upon request and payment of the costs of compiling, copying, and mailing the documents.

Five Year Review (FYR) Dates: 9/26/2022 and 09/26/2027

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Certification

09/26/2022

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Date

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05/31/1997, 01/05/2001, 10/07/2001, 06/20/2003,  
04/10/2005, 11/30/2007, 05/27/2010, 12/10/2012

145-1-03

**Board travel and expense reimbursement policy.**

(A)

(1) As provided in section 145.08 of the Revised Code and this rule, members of the public employees retirement board described in section 145.04 of the Revised Code shall be reimbursed by the public employees retirement system for travel expenses incurred for retirement system business that are:

(a) Actual, necessary and reasonable, and

(b)

(i) Incurred during attendance at meetings of the retirement board or its committees, or,

(ii) At meetings, conferences, seminars, workshops or sessions presented by other organizations and other group meetings as authorized by the retirement board.

(2) Meetings shall provide education to board members, be necessary for the performance of their duties, be appropriate to the general purpose of the retirement system and be in the interest of the retirement system's participants.

(3) "Actual, necessary and reasonable expenses" mean expenses which are incurred, appropriate in the circumstances, and within prudent judgment.

(B) Travel expenses for approved travel that are reimbursable from the retirement system include, but are not limited to, the following:

(1) Transportation

(a) Travel by common carrier shall be reimbursed in an amount limited to the actual cost of a coach or economy class ticket, except if no such ticket is available and the travel is necessary then at the actual cost of the available ticket.

(b) In-state travel by personal vehicle shall be reimbursed for mileage at the established reimbursable rate. Out-of-state travel by personal vehicle shall be reimbursed at the lesser of "portal to portal" or "air travel cost."

(i) "Portal to portal" expenditures for this calculation include the actual cost of lodging, meals, parking at place of lodging in route, and mileage at the established reimbursable rate.

- (ii) "Air travel cost" expenditures for this calculation include the actual cost of a thirty-day advance coach air fare, airport parking, transportation from the airport to destination lodging, and mileage between home and the airport at the established reimbursable rate.
  - (c) The cost of a rental automobile if it is a reasonable alternative means of transportation under the circumstances.
  - (d) The cost of parking for a personal or rental vehicle if necessary and required.
  - (e) The cost of taxi cabs or public transportation where reasonable under the circumstances.
- (2) Lodging at the single occupancy rate.
- (3) Meals and beverages, excluding alcohol, at reasonable amounts not to exceed limits set by the board.
- (4) Tips based on reasonable and customary amounts, not to exceed limits set by the board.
- (5)
- (a) Telephone calls or other electronic transmissions that are for retirement system business.
  - (b) Personal telephone calls to home/family when travel will require an overnight stay and then such calls must not exceed limits set by the retirement board.
- (C) Reimbursement shall not be made for personal expenditures which include, but are not limited to, the following:
- (1) Entertainment such as movies, theater or sports tickets, or green fees.
  - (2) Personal services such as valet service, laundry or dry cleaning, or other such goods or services. However, if travel is seven days or longer, reasonable laundry and dry cleaning expenses may be reimbursed.
- (D)
- (1) The board, at a regular or other meeting, shall approve in advance all travel for its board members except travel:

- (a) To and from meetings of the board or its committees or other retirement system business within the state of Ohio, or
  - (b) For which a board member will not seek reimbursement.
- (2) Requests for travel authorization shall be made in writing and submitted to the executive director who shall present the request to the board at its next meeting.
- (3) A board member shall not be reimbursed for any expense if the travel for which the expense was incurred was not for system business, or the travel has not been authorized by the board.
- (E) Requests for reimbursement of expenses for travel shall be submitted with the required documentation on a form provided by the system and in accordance with the system's reimbursement procedures.

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Rule Amplifies:	145.08
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742-3-05

**Disability benefits procedure.**

(A) For purposes of divisions (C)(2), (C)(3), (C)(4), and (C)(5) of former section 742.37 of the Revised Code and section 742.38 of the Revised Code and this rule, the following terms shall have the meanings set forth herein:

- (1) "Board," shall mean the board of trustees of the Ohio police and fire pension fund ("OP&F").
- (2) "Applicant" shall mean a member of OP&F who has filed any type of application for disability ~~retirement~~-benefits or any person who has filed such application on behalf of an incapacitated member in accordance with division (B) of section 742.38 of the Revised Code and rules 742-3-12 and 742-3-13 of the Administrative Code and who does not have benefits vested under the deferred retirement option plan under section 742.444 of the Revised Code.
- (3) "Disability benefit recipient" shall have the meaning described in division (A) of section 742.40 of the Revised Code.
- (4) "On-duty illness or injury" means an illness or injury that occurred during or resulted from the performance of official duties ~~under the direct supervision of a member's appointing authority~~ as a police officer or firefighter.
- (5) "Off-duty illness or injury" means an illness or injury that did not occur during or result from the performance of official duties ~~under the direct supervision of a member's appointing authority~~ as a police officer or firefighter. Unless the illness or injury meets the presumption criteria outlined in ~~division (A) of section 742.38 of the Revised Code~~ or competent and credible evidence is submitted to OP&F, a disability condition is presumed to be the result of an off-duty illness or injury.
- (6) "Permanent disability" ~~means a condition of disability with respect to which the board finds that there is no present indication of recovery or those presumptive conditions set forth in division (D)(3) of section 742.38 of the Revised Code, which shall be determined through the medical reports filed with OP&F, as required by the terms of division (A)(1) of section 742.38 of the Revised Code and rule 742-1-02 of the Administrative Code~~ shall have the same meaning set forth in division (D) of section 742.38 of Revised Code.
- (7) "Total disability" shall have the meaning set forth in division (D)(1)(a) of section 742.38 of the Revised Code.

- (8) "Partial disability" shall mean a condition of disability with respect to which the board finds the applicant is prevented from performing the member's official police or fire duties and member's earnings capacity is impaired.
- (9) "Guides" shall mean the American medical association's "Guides to the Evaluation of Permanent Impairment, fifth and sixth editions."
- (10) "Occupational characteristics" shall mean the U.S. department of labor's occupational characteristics for police officer (government service) and fire fighter (any industry) positions as the standards for determining the presence or absence of disability.
- (11) "Medical Advisor," as referred to in this rule, shall mean the expert physician appointed by OP&F's board of trustees who advises the board ~~during its deliberations~~ on appeals of decisions relating to disability applications.
- (12) "Vocational Expert," as referred to in this rule, shall mean the expert in vocational evaluations appointed by OP&F's board of trustees who advises the board ~~during its deliberations~~ on appeals of decisions relating to disability applications.
- (13) "Disability evaluation panel (DEP)" shall mean ~~that panel established~~ the medical consultants retained by the board to make written recommendations to the ~~board~~ board's disability committee on pending disability applications. ~~The DEP shall be comprised of three voting members and at least two non-voting members. The three voting members of the DEP shall be members of the board, who shall be the members of the disability committee, who shall be appointed to such committee by the chairman of the board, and shall be comprised of one active firefighter trustee, one active police officer trustee, and one retiree trustee. The non-voting members of the DEP shall be comprised of expert physicians, including the alternate, all of whom are appointed by the board of trustees and at least one of the non-voting members shall be an expert in vocational evaluations, including the alternate, who shall provide vocational assessments of disability applicants to the DEP. The alternate non-voting member of the DEP shall be a physician appointed by the board of trustees and shall serve in the place of a non-voting member of the DEP in the absence or incapacity of any other non-voting physician member of the DEP.~~
- (14) "~~DEP~~ Disability committee medical advisor," as referred to in this rule, shall mean the expert physician appointed by the board of trustees to advise the ~~DEP~~ disability committee during its deliberations of initial disability applications and ~~post-retirement disability grant~~ reconsiderations, who shall be a different physician than the medical advisor.

- (15) "~~DEP~~Disability committee vocational expert," as referred to in this rule, shall mean the expert in vocational evaluations appointed by the board of trustees to advise the ~~DEP~~disability committee during its deliberations of initial disability applications and post-~~retirement~~ disability grant reconsiderations, who shall be a different evaluator than the vocational expert.
- (16) "Forms" shall mean the forms created, approved, and/or provided by OP&F for the administration of benefits found on the OP&F website at <http://www.op-f.org>.

(B) Impairment and disability evaluation criteria:

- (1) ~~OP&F staff shall work with its advisors and/or physicians who are members of the DEP and shall assign a~~ competent and disinterested physician and expert in vocational evaluation ~~evaluator may be assigned~~ to conduct independent medical examinations for purposes of determining a member's disability, as provided by law, medical impairment and eligibility for disability ~~retirement~~ benefits.
- (2) In evaluating a member's disability, as provided by law, medical impairment and eligibility for disability ~~retirement~~ benefits, the DEP, the disability committee and the board will use the official duties provided by the employer, ~~but in.~~ In the event such information is not provided by the employer or does not clearly define the applicable job duties, the ~~board~~ DEP, disability committee and the ~~DEP~~ board shall use the criteria contained in the "guides", the occupational characteristics adopted by the board, and the criteria set forth in division (D) of section 742.38 of the Revised Code.
- (3) In evaluating a member's eligibility for disability ~~retirement~~ benefits, the physicians, ~~the expert in vocational evaluation~~ evaluators, the DEP, the disability committee and the board shall consider the member's potential for retraining and reemployment and the eligibility criteria set forth in division (D) of section 742.38 of the Revised Code so that the person's ability to be retrained and reemployed shall include any positions, not just police or fire positions.
- (4) The consideration of a member's application shall be limited to the disabling condition(s) listed in the application if supporting medical documentation is provided to OP&F or disclosed by the examination of the physician(s) selected by OP&F. The ~~DEP~~ disability committee and the board shall consider and base its findings and recommendations on all competent evidence made available to it, including medical testimony, opinions, statements, and medical reports submitted by the member's employer under section 742.38 of the Revised Code and rule 742-1-02 of the Administrative Code.

- (5) ~~One of the physician non-voting members of the~~The DEP and ~~one of the non-voting members of the DEP who is an expert in vocational evaluations~~ shall submit to the ~~board's disability committee or DEP~~disability committee a written recommendation on each application evaluated followed by a report incorporating a summary of findings, ~~as outlined in the DEP operating guidelines, which is approved by the board of trustees,~~ along with their medical opinion as to whether or not the disabling condition results from an on-duty illness or injury and whether or not the condition is waiverable under the DEP operating guidelines for the DEP physicians and the vocational evaluation from the DEP vocational expert eligible for waiver.
- (6) In reviewing applications for disability benefits, ~~the DEP and the board disability committee~~ shall rely upon the ~~medical opinions~~recommendations of the ~~DEP physicians and OP&F's medical advisor,~~disability committee medical advisor and the disability committee vocational expert, who have given due consideration of medical and other evidence presented to OP&F.

(C) Initial application.

- (1) Applications for disability benefits shall be made on ~~the disability application~~ a form approved by ~~the board~~OP&F and must be ~~in proper form~~properly completed in order to be processed. The member shall provide necessary substantiating documentation, including, but not limited to, pertinent hospital records, statements from attending physicians, departmental injury reports, the results of any special diagnostic tests, and notice of allowed workers' compensation claims, and any pre-employment physicals or records required or requested under section 742.38 of the Revised Code and rule 742-1-02 of the Administrative Code. The documentation submitted by the member shall be objective, relevant, and recent (i.e., dated within two years from the date of application for disability), as determined by OP&F staff in consultation with the disability committee medical advisor. Any documentation to the contrary or that is duplicative may not be considered as part of the member's application. Documentation that is not considered shall be returned to the member with a written notice listing the documentation being returned and the reason for the return.
- (2) OP&F shall notify the member's employer that an application has been filed and will send a courtesy copy of such notice to the member within fourteen days after receiving an application for disability benefits from a member or a person acting on behalf of a member, as required by the terms of division (B) of section 742.38 of the Revised Code. The notice shall state only the position or rank, as required by the terms of division (B) of section 742.38 of the Revised Code.

- (3) For those notices sent under paragraph (C)(2) of this rule, the member's employer shall forward to ~~the board~~ OP&F a statement certifying the job description for the position or rank and any other information required by the board to process the application and such report or statement shall be filed with the board not later than twenty-eight days after the employer's receipt of the notice referred to in paragraph (C)(2) of this rule or filing an application on behalf of a member, whichever is the first to occur.
- (4) The member's employer shall forward the physician's report of the member's physical examination taken on entry into the police or fire department, as more fully provided in division (A)(1) of section 742.38 of the Revised Code. If the employer fails to forward such report to OP&F on or before the date that is sixty days after the member becomes an OP&F member, division (A)(2) of section 742.38 of the Revised Code requires OP&F to assess against the employer a penalty determined under section 742.353 of the Revised Code and rule 742-8-08 of the Administrative Code. Even though a member may not have a disabling condition that is presumed, by law, to have been incurred in the member's performance of his/her official duties, that does not foreclose the member from being awarded a service-incurred disability grant.
- (5) ~~Once the application is complete, OP&F shall schedule the member covered by the pending disability benefit application may be scheduled for examination by at least one medical examiner and one expert in vocational evaluations designated by OP&F for an independent medical examination(s) and vocational evaluation,~~ unless it is medically inadvisable to do so.
- (a) Payment of any fees connected with the acquisition of records or the preparation of reports of the attending physicians shall be the responsibility of the member.
- (b) Payment of any fees connected with the preparation of the report of the examining physicians or independent medical examination(s) and vocational evaluators of OP&F evaluation shall be the responsibility of OP&F.
- (6) ~~When all the necessary medical reports and records have been received by OP&F, including those reports required or requested under paragraphs (C)(3) and (C)(4) of this rule, OP&F shall schedule such application for review and consideration by the DEP, The DEP shall review the application and all medical reports and records, and then who shall make a written recommendation to the board disability committee based upon the criteria set forth in paragraph (B) of this rule. The board, based on the written recommendation of the DEP disability~~

committee, will then consider the application and make an initial determination of disability. The board may:

- (a) Grant a disability benefit;
- (b) Deny disability benefits; or
- (c) Postpone determination, pending an additional examination, or the submission of additional fact.

The member covered by a pending disability ~~retirement~~ application may withdraw the application through a written authorization filed with OP&F at any time prior to the board's award of the initial determination of disability. To the extent that a pending disability application is withdrawn by a member, the withdrawn application shall not be presented to the ~~DEP~~disability committee or the board, depending on when ~~it~~it is received by OP&F.

- (7) Copies of the reports of the independent medical examiners and vocational evaluators will be sent to the member and the member's agent upon their request, unless the release of such reports is otherwise prohibited by law. The DEP recommendations will not, however, be released until the board has made an initial determination of disability. For purposes of the initial determination ~~hearing of disability~~, OP&F will not consider any documents from a member or a member's agent that seek to rebut or comment on the reports of the independent medical examiners and vocational evaluators.
- (8) Any disability benefit award determined by the board shall be effective as of the date that the board made its initial determination of disability on such pending disability ~~retirement~~ application.
- (9) The member covered by the pending disability ~~retirement~~ application shall be notified of the board's initial determination of disability within thirty days after the board's final action and such notice shall be sent by certified mail, return receipt requested. The member covered by the pending disability ~~retirement~~ application shall be advised of his or her right to:
  - (a) Accept the benefit grant;
  - (b) Waive the benefits and continue working; or
  - (c) Appeal the initial determination of the board.

(D) Acceptance or waiver of benefits.

Not later than ninety days after receipt of the notice of the board provided for in paragraph (C), (E), or (F) of this rule, the disability benefit recipient shall accept or waive the board's determination of disability on the disability benefit election form provided by OP&F. ~~For purposes of making the determination whether the disability applicant has accepted or waived the board's determination of disability, the fund may conclusively rely upon the fund's books and records.~~

For purposes of making the determination whether the disability applicant has accepted or waived the board's determination of disability, OP&F may conclusively rely upon its books and records.

- (1) If no such election is filed with OP&F within the ninety-day time period provided in paragraph (D) of this rule, the award shall be rescinded.
- (2) Subject to the requirement set forth in paragraph (D) of this rule, if a member accepts the award and then fails to establish an effective date of retirement by terminating police or fire employment within ninety days of receipt of notice of the board's determination of disability, as provided under paragraph (C)(9) or (E)(~~5~~)(7) of this rule, the disability benefit shall be rescinded.
- (3) A member whose benefits are rescinded pursuant to paragraph (D)(1) or (D)(2) of this rule shall not be foreclosed from later filing another disability benefit application. ~~with OP&F and any~~ Any subsequent applications shall be treated as a new application for disability benefits, except to the extent that such member does not meet the eligibility requirements set forth in division (D) of section 742.38 of the Revised Code.

(E) Appeal of initial determination.

- (1) Upon a member's appeal of the board's initial determination of disability, the board shall be advised by its medical advisor and vocational expert. The board shall not be under any obligation to adopt the recommendation of its medical advisor or vocational expert if there is some evidence to support a contrary finding.
- (2) A member who wishes to appeal the board's initial determination of disability shall file the notice of disability appeal form provided by OP&F within ninety days of receipt of the board's initial determination of disability referred to in paragraph (C)(6) of this rule. The notice of appeal must contain the member's name, social security number and a brief description of the decision upon which the appeal is based.
- (3) Within sixty days of filing of the notice of appeal, the member shall file ~~with OP&F~~ any new evidence not previously considered by the board on the

initial disability application. Such evidence shall be objective, relevant, and recent (i.e., dated within two years from the date of application for disability), as determined by OP&F staff in consultation with the disability committee medical advisor. Any documentation to the contrary or that is duplicative may not be considered as part of the member's appeal. Documentation that is not considered shall be returned to the member with a written notice listing the documentation being returned and the reason for the return. Failure to submit supporting materials or to request an extension of time within which to do so will be sufficient cause for the director of member services to dismiss the appeal provided OP&F gives the member prior written notice of such dismissal and a deadline date by which all materials must be filed with OP&F and the member fails to file the required documentation with OP&F before the designated deadline. Upon application to OP&F before the expiration of the original sixty day period referred to in this paragraph, the director of member services, for good cause shown, may grant the appellant an extension of sixty days within which to file supporting materials. The director of member services may grant the appellant an additional extension based on a recommendation from the DEP medical advisor that there is solid evidence of a medical reason to grant the extension for a period of time recommended by the DEP medical advisor. In no event shall the hearing be postponed more than three times and in no event shall the extensions, in the aggregate, exceed one year.

(4) Failure to submit supporting materials or to request an extension of time within which to do so will be sufficient cause for the appeal to be dismissed. Upon application before the expiration of the original sixty day period referred to in this paragraph, the appellant may, for good cause shown, be granted an extension of sixty days within which to file supporting materials. The appellant may be granted an additional extension based on a recommendation from the disability committee medical advisor that there is solid evidence of a medical reason to grant the extension for a period of time recommended by the disability committee medical advisor. In no event shall the hearing be postponed more than three times and in no event shall the extensions, in the aggregate, exceed one year.

(4)(5) Depending on the basis for the appeal and the new evidence submitted by the member, OP&F the member may request that the member be requested to undergo a new medical examination and/or vocational evaluation by an OP&F-appointed independent examining physician and/or vocational evaluator. OP&F may also provide the new evidence to the original OP&F-appointed independent examining physician and/or vocational evaluator and request that they review the new evidence and provide OP&F with an addendum to their original reports. The payment of any fees connected with the preparation of the report of the

independent medical examination(s) and vocational evaluation shall be the responsibility of OP&F. The new evidence submitted by the member and any additional medical and/or vocational reports, including addendum reports, shall be forwarded to the board's medical advisor and vocational expert for review and consideration. The medical advisor and vocational expert will then provide recommendations to the board regarding the member's disability application.

~~(5)~~(6) Upon receipt of the recommendations from the medical advisor and vocational expert, the board shall schedule a hearing on the appeal and shall give the appellant reasonable notice of the date, time and place thereof in writing. Such hearings shall be scheduled within sixty days of the receipt of the reports of the medical advisor and vocational expert. Any hearing may be postponed or continued by the board, either upon application of the appellant or on its own motion. The appellant shall be given the opportunity to be present, with counsel or other representation if he or she chooses, at the hearing. A recording of the hearing will be made to provide the board and the medical advisor with a record for further review. Such recording of the hearing shall be available to the disability applicant and to those individuals who are authorized by the disability applicant to receive such information on the authorization to release medical records form provided by OP&F.

~~(6)~~(7) Following the hearing on appeal, the board may choose to:

- (a) Affirm the original determination of disability;
- (b) Modify the original determination of disability;
- (c) Deny the disability application; or
- (d) Postpone a decision pending additional examinations or documentation. ~~The~~

The board's decision on appeal shall be the final determination of the initial disability application, subject to the foregoing time limitations on extensions that can be granted.

~~(7)~~(8) The applicant shall be advised of the board's action within thirty days after the board's final determination of disability and such notice shall be sent by certified mail, return receipt requested. The member covered by the disability appeal shall be advised of the member's right to:

- (a) Accept the benefit granted;
- (b) Waive the benefit and continue working; or

(c) File a mandamus action.

(F) Post-~~retirement~~ disability grant reconsideration.

(1) A member who is receiving a less than maximum partial disability and who believes that deterioration of the disabling physical or mental condition awarded by the board has increased the amount of disability, may apply for a reconsideration. Such application shall be on the disability reconsideration application form prepared by OP&F, which shall be dealt with on not less favorable terms than the process used by the ~~DEP~~ disability committee for recommendation to the board on initial determinations of disability. The member shall supply substantiating documentation including:

(a) Recent medical reports and physician's statements;

(b) A wage statement including taxable earnings for the last five years of retirement, primary employers and occupations, and rehabilitation and training programs pursued.

(2) The ~~DEP~~ disability committee shall review such evidence and shall make a written recommendation to the board. The board shall, based on the written recommendation of the ~~DEP~~ disability committee, review the evidence submitted, and may decide to:

(a) Deny the application for reconsideration;

(b) Approve the application and modify the disability benefit effective the first of the month following the decision; or,

(c) Postpone a determination of the application pending further physical examination, or further documentation.

The board's decision shall be the final determination of an application for reconsideration.

(3) The member shall be advised of the board's final determination within thirty days after the board's final action and such notice shall be sent by certified mail, return receipt requested. The letter shall include notice of the member's right to request a new reconsideration, but the board will consider only one application for reconsideration from a member during any twelve-month period.

(G) Notwithstanding anything herein to the contrary, once a member has deposited, negotiated, or cashed a disability benefit check from OP&F, or failed to withdraw his/her ~~retirement~~ disability benefits application, as outlined in rule 742-3-17 of

the Administrative Code, that member may not apply for any new, increased, or additional benefit for the disabling condition(s) described in such application, except for a member who is granted an off-duty disability less than the maximum amount permitted under division (D)(4) of section 742.38 or former division (C)(5) of section 742.37 of the Revised Code, or a member who had fewer than twenty-five years of service credit and was granted a partial disability in an amount less than the maximum permitted by division (D)(2) of section 742.38 or former division (C)(3) of section 742.37 of the Revised Code, may apply for an increase in payments to the maximum amount provided by those sections upon evidence of deteriorating earning capacity. Any subsequent request by that member shall be treated as a new application under this rule. In addition, a member may elect to receive interim payments without waiving the member's right to appeal a disability award, as provided for in paragraph (E) of this rule.

(H) Additional medical treatment:

- (1) As a condition to granting an applicant disability benefits or continuing disability benefits under an existing award, as provided in division (B) of section 742.40 of the Revised Code, the member shall agree in writing to obtain any medical treatment recommended by the board's physician(s) and submit the required medical reports over the course of the treatment period.
- (2) Such additional medical treatment shall be of common medical acceptance and readily available, and may include, but is not limited to, medicine, alcohol and/or drug rehabilitation, or mechanical devices.

(I) ~~¶~~The board may suspend the awarded disability benefits and any health care stipend upon ninety days prior written notice to the member if the member fails to:

- (1) Obtain the recommended treatment required under division (B) of section 742.40 of the Revised Code, as referenced in paragraph (H) of this rule;
- (2) File the required medical report; or
- (3) Comply with the required treatment regimen, ~~the board may suspend the awarded disability benefits and any health care stipend upon ninety days prior written notice to the disability benefit recipient.~~

If the disability benefit recipient fails to comply within the aforementioned ninety day notice period, the suspension of disability benefits and any health care stipend shall be effective on the first day of the month immediately following the expiration of such notice period until the treatment is obtained,

the required report is received by the board, or the board's physician certifies that the treatment is no longer helpful or advisable.

In the event the disability benefit recipient complies within the aforementioned ninety day notice period or the board's physician certified that the treatment is no longer helpful or advisable, OP&F will not suspend the disability benefit recipient's disability benefits and any health care stipend.

(J) If, after the aforementioned ninety day notice period, referred to in paragraph (I) of the rule, the disability benefit recipient submits to the requested treatment, submits the required reports, ~~or~~ complies with the required treatment regimen, or the board's physician certifies that the treatment is no longer helpful or advisable, OP&F will reinstate the disability benefits and any health care stipend of such disability benefit recipient, effective as of the first day of the month immediately following the month in which the past due statement(s) were received in proper form by OP&F.

(K) ~~If the refusal~~ a disability benefit recipient fails to submit to the medical examination, ~~as required by the terms of division (C)(2) of section 742.40 of the Revised Code and such failure continues for one year, whether documented by the fund's OP&F's books or records or as presumed as provided in rule 742-3-10 of the Administrative Code, then the disability benefit recipient's disability benefits and any health care stipend shall be forfeited, as required by the terms of division (C)(2) of section 742.40 of the Revised Code. The forfeiture shall be effective as of the date of the original suspension, as referenced in a writing provided to the disability benefit recipient from the fund or the board OP&F.~~

(L) For purposes of determining whether the recipient has refused to comply with the provisions of this division (C)(2) of section 742.40 of the Revised Code and this rule, ~~the fund~~ OP&F may conclusively rely upon ~~the fund's~~ its books and records.

(M) Except as expressly provided in this rule or section 742.40 of the Revised Code, all notices to the disability benefit recipient or applicant shall be either delivered personally, sent by express delivery service, certified mail, or first class U.S. mail, postage prepaid, and addressed to the disability benefit recipient at the most recent address set forth in ~~such recipient's file with the fund, or to such other address as the disability benefit recipient shall thereafter designate by proper notice in accordance with this paragraph~~ OP&F's records. All notices to ~~the fund or the board~~ OP&F shall be addressed at its principal place of business. Except as otherwise specifically provided for in this rule, notices will be deemed given as of the earlier of:

- (1) The date of actual receipt;
- (2) The next business day when notice is sent via express mail or personal delivery; or

- (3) Three days after mailing in the case of first class or certified U.S. mail.
- (N) If an initial application for disability, an appeal, or a ~~post-retirement reconsideration~~ application has been filed pursuant to paragraph (C), (E), or (F) of this rule and the supporting documentation has not been filed with OP&F or the applicant has not taken any action to prosecute his/her claims within six months of the filing with OP&F, ~~the director of member services shall have full authority to dismiss the application, appeal, or post-retirement application for reconsideration may be dismissed,~~ as the case may be, for failure to prosecute the claim ~~provided OP&F gives ninety days prior written notice to the member of the need to file certain documentation with OP&F and the member fails to file the necessary documentation with OP&F before the expiration of such ninety day time period.~~
- (O) In determining whether a member had a physical examination before entry into the department, as required in division (D)(3) of section 742.38 of the Revised Code, OP&F shall use the following criteria:
- (1) For disability benefit applicants who became "members" of OP&F prior to September 16, 1998, OP&F will consider the physical examination requirement set forth in division (D)(3) of section 742.38 of the Revised Code to have been met if OP&F receives the following:
- (a) A writing signed by a licensed physician that documents the examination of the member prior to his/her entry into the police or fire department, as the case may be, and the writing is dated prior to the person becoming a "member" of OP&F, as such term is defined in division (E) of section 742.01 of the Revised Code or the person's entry into the department where the person is employed at the time of the filing of the disability application, provided such date is not more than nine months prior to such date; and
- (b) The writing signed by a licensed physician does not document the existence of any heart disease or any cardiovascular or respiratory disease.
- If the foregoing conditions are met, OP&F will then grant the disability applicant a disability that is presumed to be on-duty, as provided for in section 742.38 of the Revised Code.
- (2) For disability benefit applicants who became "members" of OP&F after September 16, 1998, OP&F will consider the physical examination requirement set forth in division (D)(3) of section 742.38 of the Revised Code to have been met if the physician's report meets the requirements set forth in paragraph (A) (3) of rule 742-1-02 of the Administrative Code prior to the person becoming

a "member" of OP&F or before the person's entry into the department where the person is employed at the time of the filing of the disability application, the physician's report does not diagnose the existence of any heart disease or any cardiovascular or respiratory disease.

If the foregoing conditions are met, OP&F will then grant the disability applicant a disability that is presumed to be on-duty, as provided for in section 742.38 of the Revised Code.

- (3) In the event the record of a member's pre-employment physical is lost, destroyed or unavailable, the board may waive the requirement that the absence of disease be evidenced by a physical examination prior to employment as described in paragraphs (O)(1) and (O)(2) of this rule if there is competent medical evidence, as determined by the board's physicians and/or medical advisor, that the cardiovascular or respiratory disease was not evident prior to or at the time of entry into the department.
- (4) For members who do not meet the criteria set forth in division (D)(3) of section 742.38 of the Revised Code and this rule, this will not preclude the member from being granted a duty-related disability if the member is able to document that the disability resulted from the performance of the member's official duties as a member of the police or fire department, as the case may be.

(P) Firefighter cancer presumption:

- (1) In order to be eligible for the presumption described in division (D)(3)(b) of section 742.38 of the Revised Code, a member of a fire department who is applying for disability with cancer as an alleged disabling condition shall complete a questionnaire on a form provided by OP&F. The questionnaire shall be submitted to OP&F at the time of the initial application for disability benefits.
- (2) If the member certifies on the questionnaire required by paragraph (P)(1) of this rule that he or she was assigned to at least six years of hazardous duty as a member of a fire department and has had any exposure to an agent classified by the international agency for research on cancer or its successor agency as a group 1 or 2A carcinogen, the member shall provide OP&F with all documentation in support of such certification, including exposure reports, incident reports, shift logs, approved workers compensation claims, or other similar documentation.

- (3) The cancer presumption can be rebutted by evidence that demonstrates that the cancer was not incurred in the line of duty. Such evidence includes, but is not limited to, documentation which shows that the member:
- (a) Incurred the cancer before becoming a member of a fire department;
  - (b) Used cigarettes or other tobacco products, and such usage was a significant factor in the cause or progression of the cancer;
  - (c) Was not assigned to at least six years of hazardous duty as a member of a fire department, or ~~twenty~~fifteen years or more have passed since the member was last assigned to hazardous duty as a member of a fire department;
  - (d) Has not had any exposure to an agent classified by the international agency for research on cancer or its successor agency as a group 1 or 2A carcinogen;
  - (e) Incurred the cancer as a result of employment or business that is secondary to his or her employment as a member of a fire department;
  - (f) Is not receiving workers compensation for a cancer diagnosis; and
  - (g) Has undergone genetic testing which indicates a predisposition for contracting certain cancers.
- ~~(4) As part of the information that an employer is required to submit to OP&F under division (B) of section 742.38 of the Revised Code, the employer shall certify the following:~~
- ~~(a) Whether or not the member was assigned to at least six years of hazardous duty as a member of a fire department, and provide the dates of all hazardous duty assignments, if available; and~~
  - ~~(b) Whether or not the member has had any exposures to an agent classified by the international agency for research on cancer or its successor agency as a group 1 or 2A carcinogen.~~

Effective:

Five Year Review (FYR) Dates: 4/18/2027

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Certification

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Date

Promulgated Under: 111.15  
Statutory Authority: 742.10  
Rule Amplifies: 742.38, 745.353  
Prior Effective Dates: 01/01/1977, 05/12/1983, 07/26/1986 (Emer.),  
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(Emer.), 04/07/2016, 04/06/2017 (Emer.), 06/22/2017,  
01/01/2019 (Emer.), 03/29/2019, 09/22/2022

3309-1-26

**Determination of statutory beneficiary.**

(A) This rule amplifies divisions (B), (C) and (D) of section 3309.44 and section 3309.50 of the Revised Code.

(B) An individual who does not survive a member or retiree by one hundred twenty hours will be deemed to have predeceased the member or retiree.

~~(B)~~(C) For purposes of division (B) of section 3309.44 of the Revised Code, when a surviving designated beneficiary dies more than one hundred twenty hours after the member, but before receiving payment, the payment shall be paid to the estate of the designated beneficiary.

~~(C)~~(D) For purposes of divisions (C) and (D) of section 3309.44 and section 3309.50 of the Revised Code, a person is considered "not located" and ceases to qualify as beneficiary if:

- (1) No valid mailing address can reasonably be determined for the person; or
- (2) The person fails to file an application for payment within one hundred eighty days from the date the school employees retirement system first notifies the person of beneficiary status.

Effective:

Five Year Review (FYR) Dates: 2/1/2024

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Certification

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Date

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