

## Chapter I - GENERAL PROVISIONS

- A. Preamble
- B. Scope
- C. Effect of Rules
- D. Declaration of Rules

## Chapter II - DISABILITY BOARD ADMINISTRATION

- A. Regular Meetings
- B. Special Meetings
- C. Membership
- D. Chairman
- E. Secretary
- F. Term of Office
- G. Vacancy
- H. Quorum
- I. Parliamentary Guide
- J. Agenda
- K. Amendment of Rules
- L. Voting

## Chapter III - POWERS OF THE BOARD

## Chapter IV - DISABILITY LEAVE

- A. Disability Leave Applications
- B. Disability Leave Applications--Granted
- C. Obligations of the member while on Disability Leave
- D. Authorization to Return to Work--Trial Period
- E. Member Cooperation in Board Evaluation
- F. Obligation to Comply with Rehabilitative Directives
- G. Activities of Members While on Disability Leave
- H. Determination of Disability Leave Date
- I. Disability Leave Allowance
- J. Disability Leave Granted--Procedure
- K. Disability Leave Denied or Canceled--Appeal
- L. Application for Immediate Disability Retirement--Six Month Waiver
- M. Administratively Approved Disability Leave

## Chapter V - DISABILITY RETIREMENT

- A. Granting Disability Retirement
- B. Board Decision on Disability Retirement--Time and Hearing
- C. Reexamination
- D. Reentry from Retirement
- E. Reduction of Disability Retirement Allowance
- F. Denial or Cancellation of Disability Retirement--Appeal

## Chapter VI - MEDICAL SERVICES CLAIMS--PROCEDURES

- A. Medical Service Claims
- B. Medical Services--General Guidelines
- C. Claims Procedures
- D. Examination of Member
- E. Subrogation Rights
- F. Claim Filing Limit--Time (120 Days)
- G. Long Term Care and Nursing Facility Care

## Chapter VII - DISABILITY BOARD HEARINGS--PROCEDURES

- A. Time of Hearing
- B. Conduct of Hearing--Mandatory Appearance or Contested Case
- C. Evidence
- D. Findings of the Board
- E. Decision of the Board

## Chapter VIII - APPEAL

- A. Disability Leave/Retirement Denied or Canceled
- B. Filing of Appeal
- C. Hearing on Appeal
- D. Informal Disposition on Appeal
- E. Adoption by Reference of Hearing Rules
- F. Appeal to State Retirement Board

## **Chapter I - GENERAL PROVISIONS**

### **A. Preamble:**

The purpose of these rules is to establish the general operating procedures and to reduce to writing the administrative policies of the Mercer Island Disability Board, hereinafter referred to as "Board". The Board recognizes that conditions may exist or come into existence which are not properly encompassed by these rules. In such cases, the Board reserves the right to take whatever action is necessary to properly deal with the situation.

### **B. Scope:**

These rules shall be applicable to all employees hired on or before October 1, 1977, covered by Chapter 41.26 RCW "LEOFF I", whether firefighters or police officers, unless specifically provided otherwise. (REVISED 6/15/87)

### **C. Effect of Rules:**

All personnel covered by LEOFF I shall be subject to these rules to the extent consistent with applicable state statutory provisions, and shall at all times follow the rules contained herein. In the event any policy or procedure as applied to a particular member, shall be held to be contrary to State law, such member shall not be relieved of any other requirement contained herein, and any such findings, shall not relieve the member from the responsibility to comply with all other procedures and policies contained in these rules. A member's failure to follow these rules may subject such member to the loss of benefits otherwise due under the LEOFF act. (REVISED 6/15/87)

### **D. Declaration of Rules:**

Upon adoption of these rules each member of the respective departments shall be provided a copy of such rules. The Director of Public Safety shall provide the Board with substantiation that each member of the Department of Public Safety read and is familiar with these rules.

## **II) DISABILITY BOARD ADMINISTRATION**

### **A. Regular Meetings**

The regular meeting of the Disability Board shall be at such time and place as is established by a majority decision of the members of the Disability Board. (REVISED 6/15/87)

### **B. Special Meetings:**

The Chairman, upon request of any member of the Board, shall be authorized to call a special meeting. Written or oral notice of the date, time and place of the special meeting shall be given at least twenty-four hours prior to the proposed meeting to each member of the Board. Notice of any special meeting shall specify the subject or subjects to be considered, and no subjects other than those specified shall be considered, except upon the unanimous consent of all members of the Board.

At any regular meeting a majority of the members of the Board may also call a special meeting. Notice must be provided as specified above.

### **C. Membership:**

The Board shall consist of five members, as follows:

- 1) Two members from the City Council to be appointed by the Mayor; subject to the approval of the City Council;
- 2) One fire fighter who is a member of LEOFF I to be elected by the fire LEOFF I fighters employed by the city;
- 3) One law enforcement officer who is a member of LEOFF I to be elected by the law enforcement officers employed by the city; and
- 4) One member from the public at large who resides within the city to be appointed by the other four members heretofore designated in this subsection.

### **D. Chairperson:**

The Chairperson of the Board is elected by a majority vote of the Board and shall be the presiding officer at all meetings of the Board, or in his absence or inability to act, another member of the Board shall be appointed Chairman Pro tempore upon motion by the Board and shall perform the duties and exercise the powers of the Chairman. (REVISED 6/15/87)

The Director of the Department of Public Safety shall be the agent of the Disability Board for purposes of communicating all requests, decisions, orders and other information of the Disability Board. Communications from the Director of Public Safety may be in oral form or in writing unless specifically required to be in a particular form by other provisions of these rules and regulations or state statute.

In those cases where a conflict exists, or is alleged to exist, which would prevent the Director of Public Safety from performing such communication, the Chairman of the Disability Board

may appoint an alternative agent of the Board for purposes of communication. (REVISED 3/25/82 AND 6/15/87)

E. Secretary:

- 1) The Secretary shall be appointed by a majority of the Board and need not be a member of the Board.
- 2) The Secretary's duties shall include preparing all claims, assisting in the filing of claims when necessary, and reporting all findings concerning all claims to the Board. It shall also be the duty of the Secretary to properly prepare and list all claims on forms approved by the Board for its consideration and action. In the case of the inability of a police or fire fighter member to properly file his application for disability, it shall be the duty of his commanding officer to see that it is properly completed and promptly forwarded to the Secretary. In the absence of the Secretary, or inability to act, the Chairperson shall appoint a member of the Board, or other staff member, to act as Secretary. (REVISED 6/15/87)

F. Term of Office:

Elections shall be held on or before February 1 of each year. The law enforcement member shall be elected during even numbered years and the firefighter member shall be elected during odd numbered years. All members shall serve for two year terms. (REVISED 6/15/87)

G. Vacancy:

- 1) In the event a vacancy occurs in the membership of the police or fire fighter members, the members of such department shall, in the same manner as the original election, elect a successor to serve the remaining unexpired term.
- 2) In the case of a vacancy in the appointive positions, a new member will be appointed to fill out the unexpired term. (REVISED 6/15/87)

H. Quorum:

At all meetings of the Board, a majority of the members of the Board shall constitute a quorum for the transaction of business.

I. Parliamentary Guide:

Robert's Rules of Order shall govern the conduct of all Board meetings, unless these rules otherwise provide. (REVISED 6/15/87)

J. Agenda:

- 1) All items and subjects to be acted upon in a regular meeting shall appear on the agenda. No other item or subject may be acted upon except by the consent of a majority of those members present. The Secretary shall prepare and distribute copies of material relevant to the agenda prior to each meeting.
- 2) The order of business for each regular meeting of the Board shall be as follows:

- (a) Call to Order
- (b) Roll Call
- (c) Minutes of Previous Meetings
- (d) Consideration of Applications for Disability Leave or Retirement
- (e) Auditing of Claims
- (f) Reports
- (g) Unfinished Business
- (h) New Business
- (i) Adjournment

K. Amendment of Rules:

The by-laws and rules of procedure of the Board may be amended at a regular meeting of the Board, provided that such amendment or amendments are submitted in writing to each member of the Board at least twenty days prior to the date of the meeting at which they are to be considered by the Board, and provided further that nothing herein shall preclude amendment of the rules without prior notice upon the unanimous consent of every member of the Board if the same is present during a regular or special meeting where at the amendment comes before the Board for consideration.

L. Voting:

Each member shall have one vote which must be cast by that member in person; provided that in the event that one of the police officer or fire fighter members is absent that member's vote may be cast by the alternate representative whose name is on file with the Board's secretary.

### **III. POWERS OF THE BOARD**

The Board shall have the powers granted by the State Legislature in Chapter 41.26 RCW as that chapter now exists or may hereafter be amended.

### **IV. DISABILITY LEAVE**

No member shall receive disability leave unless an application for disability leave has been filed with the Board. The provisions of these rules apply to the disability leave authorized by RCW 41.26.120 and RCW 41.26.125, unless specifically provided otherwise herein. (REVISED 6/15/87)

A. Disability Leave Applications:

- 1) All applications for disability leave shall be submitted to the Secretary of the Board with the exception of applications for administratively approved disability leave which applications shall be submitted to the Director of Public Safety to be processed in accordance with the provisions of subsection M. hereafter (REVISED 12/16/85).
- 2) Upon receipt of an application for disability leave, the Board shall review same to determine whether it is in proper form and order, which order is to include the following:
  - (a) Application for disability leave shall be submitted on a form provided by the Board. If the disability claimed was incurred in the line of duty, proper evidence must be submitted substantiating this claim;
  - (b) A signed statement of the immediate supervisor indicating that the applicant was unfit for duty during the period applied for;
  - (c) A signed statement from one physician for disability leave and two physicians for disability retirement. The physicians shall be appointed by the Board, except as provided in IV. B, and such statement must come from the Board approved physicians and/or their designees. The physician's statement shall be prepared on a Board approved form or comparable form and shall address at a minimum the following terms:
    - (i) Date of injury or condition;
    - (ii) Nature of injury or condition;
    - (iii) Claimant's present complaints;
    - (iv) Physical examination in detail, listing all objective findings referable to complaints and areas involved in the claim;
    - (v) Treatment received for present injury or condition;
    - (vi) Diagnosis (acute or chronic);
    - (vii) Conclusions:
      - (a) Cause of injury;
      - (b) Is further treatment indicated? If so, what;
      - (c) Is claimant able to work;
      - (d) If answer to (c) is yes, when claimant return to work;
      - (e) If answer to (c) is no, is it because of this injury or condition only;
      - (f) If answer to (e) is no, please explain.

- 3) Upon receipt of an application for disability leave, properly filed as aforementioned, the Board shall render its judgment.

B. Disability Leave Application--Granted:

No application for disability leave shall be granted by the Board unless the physician's report substantiates the nature of the illness or injury causing the disability and confirms that the applicant is physically or mentally unfit for duty. In the event the initial report submitted with the member's application for disability is prepared by a physician other than a Board approved physician the applicant shall, as soon as possible be evaluated by the Board approved physician who will submit his findings to the Board in the same manner as provided in Section IV. A. 2. c.

C. Obligations of the Member while on Disability Leave:

It shall be the responsibility of each member granted disability leave pursuant to RCW 41.26 and these rules to seek authorization to return to active service at the earliest possible time he believes he is fit for duty. In the event the Board finds that a member has not actively sought authorization to return to active service immediately upon cessation of disability, the Board shall have the authority to retroactively set the date of return to service and cancel the member's disability leave allowance for the period in question.

D. Authorization to Return to Work--Trial Period:

After an examination to determine eligibility for disability retirement, if the medical and other relevant evidence is inconclusive, the Board may specify in a written order a reasonable trial service period for return to duty in the same position held at the time of discontinuance of service to determine the member's fitness for active duty. The reasonable length of such trial return to service shall be supported by medical evidence. Such a trial return to service does not entitle the member to a second six-month period of disability leave for the same disability if, based upon this trial period of service, the member is found to be disabled. (REVISED 6/15/87)

E. Member Cooperation in Board Evaluation:

While on disability leave, the member shall be obligated to comply with all directives of the Board. Such directives may include, but are not limited to written requests for medical and/or psychological evaluations regarding the nature and extent of the member's disability and whether the applicant is fit to return to normal duty, submittal of other relevant reports, and orders to appear before the Board. In the event a member fails to comply with such requests the Board shall make a finding as to whether compliance was within the control of the member, and upon an affirmative finding, will presume the member to have recovered.

F. Obligation to Comply with Rehabilitation Directives:

- 1) During the period of disability leave, the Board shall have authority to inquire of any examining physician as to what physical, medical or therapeutic treatments might be employed to rehabilitate the member and, based upon such evaluation may direct the member to participate in rehabilitation.

- 2) If the member fails or refuses to submit to any physical, medical or therapeutic treatments ordered by the Board, the Board shall have the authority upon such failure or refusal to order a forfeiture of all rights to benefits under this section for the period of such refusal, provided that the Board shall inform the member of the benefits being forfeited.

G. Activities of Members While on Disability Leave:

- 1) A member who engages in any activity while on disability leave and incurs an injury or illness as a result thereof, may needlessly compound the issues. Therefore, in the event a member, while on disability leave is found to be engaged in an activity which could be detrimental to his returning to full duty status, that member may be directed by the Board to cease that activity.
- 2) If the member fails or refuses to comply with such directive, the Board shall have the authority upon such failure or refusal to order a forfeiture of all rights to benefits under this section for the period of such refusal, provided that the Board shall inform the member of the benefits being forfeited.

H. Determination of Disability Leave Date:

- 1) Disability leave is to commence the first calendar day after the disability is incurred.
- 2) In case of controversy, regardless of the date of application for disability leave, the Board shall have the authority to determine when the applicant actually became disabled. The disability leave period shall begin from that date and continue for the time as provided by law.
- 3) Disability leave is not granted for any specific amount of time. Such leave may encompass a period from one day to the maximum of six months.
- 4) The member may apply immediately for disability leave or at any time within or up through a maximum of six consecutive calendar days that the member is off the job.

I. Disability Leave Allowance:

If the member is found by the Board to be physically or mentally unfit for duty following receipt of his application for disability leave, such member shall be granted a disability leave by the Board and receive a disability leave allowance equal to his full monthly salary or the applicable portion thereof, and shall continue to receive all other benefits provided to active members from his employer for such period.

J. Disability Leave Granted--Procedure:

If after a Board hearing, disability leave is granted, the Board through the Secretary shall notify the member of such decision.

K. Disability Leave Denied or Canceled:

In case the Board either denies or cancels the member's disability leave, the member shall have the right to appeal as provided for in Chapter VIII.

L. Application for immediate Disability Retirement--Six Month Waiver:

Every member who can establish, to the Board, that he is physically or mentally disabled from the further performance of duty and that such disability will be in existence for a period of at least six months may waive the six month period of disability leave and be immediately granted a disability retirement, subject to the approval of the State Retirement Board as provided as provided in RCW 41.26.120.

M. Administratively Approved Disability Leave:

The Director of Public Safety is authorized to approve disability leave on an administrative basis without prior approval of the Disability Board subject to all of the following conditions being satisfied:

- 1) The LEOFF I member has no accumulated sick leave on the books.
- 2) The illness or injury would qualify for sick leave if the member had sick leave available on the books.
- 3) The maximum time allowed for administratively approved sick leave shall be three shifts (24 hours) for LEOFF I Police Officers and 2 shifts (or up to 48 hours) during any consecutive 72 hour period for LEOFF I Firefighters.(AMENDED 10/24/88)
- 4) The applicant must file a short form request for administratively approved disability leave with the Director of Public Safety on the day he/she returns to work.

The Director of Public Safety shall provide the Disability Board with a monthly report listing the disability leave which has been requested and actions taken during the preceding month.

The Director of Public Safety may, at his discretion, decline to take action on the disability leave request and require the applicant to follow the normal disability leave application procedure. (ADDED 12/16/85)

## **V. DISABILITY RETIREMENT**

A. Granting Disability Retirement:

- 1) If the evidence shows to the satisfaction of the Board that the member is physically or mentally disabled from further performance of duty and that the disability has been continuous from the date of commencement of disability leave for a period of six months, the Board shall enter its written decision and order, accompanied by appropriate findings of fact and conclusions of law in compliance with RCW 41.26.120 or RCW 41.26.125. Such written decision and order with supporting documentation shall thereafter be forwarded to the Director, Department of Retirement Systems, for review. In the event a regular meeting of the Board precedes by no more than 40 days the date at which the full six months will conclude and the evidence is clear that the disability can be expected to continue through the full six-month period, the Board may make a finding of six months continuous disability prior to the actual conclusion of the six-month period, so as to eliminate unnecessary delay of receipt of retirement benefits.

- 2) In order to qualify to receive a disability retirement allowance, the applicant will be required to prove that he or she is physically or mentally disabled to such extent that he or she is unable to discharge with average efficiency the duty of the position held at the time of discontinuance of service: PROVIDED, that no member shall be entitled to a disability retirement allowance if the appropriate authority advises that there is an available position for which the member is qualified and to which one of such grade or rank is normally assigned and the Board determines that the member is capable of discharging, with average efficiency, the duties of the position.

In the event the City or the Disability Board seeks to establish that a member should be retired because of advisability, the burden of proof is on the City or the Disability Board to establish that the member is physically or mentally disabled to such extent that he or she is unable to discharge with average efficiency the duty of the position held at the time of discontinuance of service.

- 3) In the event a member is placed on disability retirement, the Board may determine whether or not the member is so disabled that no possibility exists for return to duty or that there is no possibility that rehabilitation could restore the member to fitness for duty. Further, the Board may at any point subsequent to retirement make such a determination provided a current (within ninety days) medical examination by the Board physician or specialist of his/her selection indicates that the retiree is so disabled that no possibility for recovery exists. A copy of all such determinations shall be sent to the Department of Retirement Systems. Unless the Board has made such a finding, the Board's representative shall order a reexamination at six-month intervals and advise the Board of the results thereof with a copy to the Department of Retirement Systems: PROVIDED, that such reexamination need not be conducted on a member over 49.5 years of age. In the event the retired member is residing at a location more than 100 miles from his former place of employment, the member may be authorized to be examined by a physician in his immediate area, provided, however, such physician shall be first approved by the Board and prior to such evaluation the examining physician shall be apprised of the basis upon which the examination is to be conducted and the issues to be addressed in the physician's evaluative report.
- 4) In the event such evaluation discloses fitness to perform duties of the rank or position held by the member at the time of disability retirement, the member shall be entitled to a hearing before the Board, and further consideration of the matter. Such notice and hearing shall comply with the requirements of chapter 34.04 RCW.
- 5) The hearing provided by RCW 41.26.140(2) is to be held, unless the retiree waives such hearing, prior to actual cancellation of a disability retirement allowance.
- 6) The retirement allowance of any member who fails to submit to medical examination as provided herein shall be discontinued and in the event such refusal continues for one year, his retirement allowance shall be canceled. Failure of the member to affirmatively respond to the request for reexamination shall be deemed a continuing refusal. (SECTIONS V. A(1) V. A(6) REVISED 6/15/87)

**B. Board Decision on Disability Retirement--Time and Hearing:**

- 1) The analysis of all information deemed relevant in making a decision on disability retirement will normally be considered by the Board during the regular meeting that falls during the fifth month of the member's disability leave. At this meeting, the Board shall

either grant the disability retirement or schedule a hearing to be held on the matter at the following regular meeting of the Board. The decision to hold a hearing shall be entirely at the discretion of the Board. If the Board determines a hearing is necessary such hearing shall be conducted as provided in Chapter VII.

- 2) In the event a regular meeting of the Board precedes by no more than fifteen days, the date at which the full six months would conclude, and the evidence is clear that the disability can be expected to continue through the full six month period, the Board may make a finding of disability prior to the end of the six month period, so as to obviate the possibility of the member receiving no allowance for an intervening period.

C. Examination and Re-examination for Disability Retirement:

- 1) Every applicant for disability retirement shall be reexamined during the fifth or sixth month of disability leave in order to determine his/her eligibility for disability retirement, with the following exceptions:
  - a) If the Board doctor assures the Board that the applicant's condition has not and will not be corrected before the end of the sixth month; or
  - b) If the applicant establishes that the disabling condition will be in existence for a period of at least six months and he/she voluntarily waives disability leave.

No applicant will be granted a disability retirement allowance unless the conditions imposed by this subsection are met. (SECTION V. C. REVISED 6/15/87)

D. Reentry from Retirement:

- 1) Upon the basis of the semi-annual reexamination of members on disability retirement, the Board shall determine whether such member is still unable to perform his duties either physically or mentally for service in the department where he was employed and the Board shall act as follows:
  - a) Approval of member's continuation of disability retirement; or
  - b) Cancellation of the disability retirement and order member restored to duty.
  - c) When a member is restored to duty it shall be in the same rank held at the time of his retirement, or, at his request, in such other like or lesser rank as may be or become open and available; however, in no event, shall such member be restored to duty at a rate of pay less than the current salary attached to the rank or position held at the date of his retirement or disability.
- 2) If the Board cancels the member's disability retirement, such member may file an appeal as provided in Chapter VIII.
- 3) If a member over age 50 seeks a determination that his/her disability has ceased, the procedure set forth in WAC 415-105-100 through 415-105-150 shall apply. (ADDED 6/15/87)

- 4) If a member under age 50 seeks a determination that his/her disability has ceased, the provisions of WAC 415-105-160 through 415-105-180 shall apply. (ADDED 6/15/87)

#### E. Reduction of Disability Retirement Allowance:

RCW 41.26 provides for reduction of the disability retirement allowance when applicable as follows:

- 1) **Disability Incurred While in Other Employment:** The disability retirement allowance will be reduced by any amount the member receives or is entitled to receive from Workmen's compensation, social security, group insurance, other pension plan, or any other similar source provided by another employer on account of the same disability.
- 2) All members on disability retirement where disability was incurred while in other employment must file with the Board a signed and sworn statement indicating whether they are receiving, will receiving or are entitled to receive any of the benefits listed in V.E.I.

#### F. Denial or Cancellation of Disability Retirement--Appeal:

If the Board either denies or cancels the member's disability retirement the Board shall enter its written decision and order, accompanied by appropriate findings of fact and conclusions of law. If the Board denies or cancels the member's disability retirement, such member may file an appeal as provided in Chapter VIII.

### **VI. MEDICAL SERVICE CLAIMS--PROCEDURES**

#### A. Medical Service Claims:

- 1) Whenever any active member or any member retired on account of service, sickness, or disability, not caused or brought on by dissipation or abuse, of which the Board shall be the judge, is confined in any hospital or in his home, and whether or not so confined, requires medical services, such services, not payable from some other source as provided for in section A.5., shall be paid for by the employer, if approved by the Board.
- 2) Only those medical services which are deemed reasonable and necessary shall be paid for, provided the conditions which caused the need for such medical services were not caused or brought on by dissipation or abuse.
- 3) Determinations of dissipation and abuse and the necessity of such medical services shall be determined by the Board after considering the medical evaluation of the Board's approved medical advisor, together with any other relevant evidence.
- 4) Regular treatment programs including psychological counseling or any medical procedures shall be reviewed and approved by the Board prior to their application or receipt, provided, however, that psychological counseling, not to exceed two office visits may be approved by the Board after their receipt.
- 5) The medical services payable under this section will be reduced by any amount received or eligible to be received under workmen's compensation, social security including the changes incorporated under Public Law 89-97 as now or hereafter amended, insurance

provided by another employer, other pension plan or any other similar source, including amounts received or eligible to be received under the city's or Board's employee insurance plans, as provided for in RCW 41.26.150(4). Failure to apply for coverage if otherwise eligible under the provisions of Public Law 89-97 as now or hereafter amended shall not be deemed a refusal if payment of benefits thereby enabling collection of charges under the provisions of RCW 41.26

B. Medical Services--General Guidelines:

- 1) The Board will not consider any service of a cosmetic nature which is beyond that reasonable necessary to correct the condition complained of to be a necessary medical service.
- 2) The Board construes "medical services" as defined in RCW 41.26.030(22) to be the minimum services legally required to be furnished by the Board. Medical services not listed in that section, may, in the discretion of the Board, be paid by the Board as determined on a case to case basis.
- 3) Dental expenses will not be considered necessary medical services except in those circumstances where they are incurred by a member who sustains an accidental injury to his teeth, and treatment is commenced, with a licensed dentist, within 90 days following the accident. An accidental injury does not include teeth broken or damaged during the act of chewing or biting. (ADDED 10/19/87)
- 4) The Board is responsible for approving payment of charges for medical services to the extent that the charges are "reasonable charges". If there is a doubt as to the reasonableness of a medical service charge, the burden is upon the claimant to establish reasonableness. (ADDED 2/85).
- 5) Members possessing insurance benefits covering the expenses of necessary medical services, which would otherwise be the obligation of the employer, shall first present the claim to the appropriate insurance carrier and only thereafter make claim to the Board for those costs which are not paid by the insurer.
- 6) It shall be the responsibility of each member obtaining medical services in connection with applications for disability leave and subsequent evaluations, to advise each and every examining physician that such evaluation is being conducted at the direction of the Board. The "physician-patient" privilege may not be invoked with respect thereto and physician may be called upon by the Board to testify as to his findings.
- 7) The following rules apply to claims for payment for charges for chiropractic services: (ADDED 2/85).
  - a) When the member is covered by King County Medical, the member is required to submit claims to King County Medical for payment or rejection. King County Medical will pay for chiropractic services up to an amount specified as the "contract year entitlement". Once chiropractic service cost exceed the contract year entitlement, King County Medical will reject the claim and the member should submit the claim to the Board for the Board's consideration.
  - b) When the member is covered by Group Health Insurance, the member should apply to Group Health for chiropractic services since Group Health has chiropractors on staff.

If the Group Health chiropractor certifies that services are unable to be provided through Group Health, the member should seek a referral by a Group Health physician to a non-Group Health chiropractor prior to receiving treatment. When there is a referral, Group Health is required to pay up to an aggregate maximum dollar amount per contract year for chiropractic services. If the Group Health physician refuses to make a referral, the reasons for the refusal should be reported to the Board since the reasons could bear upon the issue of necessity for such services.

- c) In the event that the cost of chiropractic services for a particular injury exceeds the aggregate contract year entitlement, under either King County Medical or Group Health Insurance, the claimant should submit a treatment plan to the Board for approval prior to receiving services over and above the designated contract maximum.
  - d) If the aggregate contract entitlement amount has been reached and chiropractic services are sought for treatment of an injury or condition not related to the one for which the original chiropractic services were rendered, the member may have two visits with a chiropractor prior to submitting a treatment plan for such services to the Board for prior approval. Any treatments in excess of two must have been approved in advance by the Board.
- 8) The following shall apply for reimbursement for annual physicals:  
(ADDED 3/02)
- a) Reimbursement for annual physicals is limited to once every 12 months.
  - b) Reimbursement will be determined by the Disability Board Secretary to a maximum of \$350 per physical. Annual physical costs exceeding \$350, will be reviewed by the Disability Board at their next regularly scheduled meeting. (AMENDED 11/05)

#### C. Claims Procedure:

All claims for payment arising under this section shall be processed in the following manner:

- 1) Claims shall be filed with the Secretary of the Board on forms provided by the Board, and with a copy going to said member.
- 2) The claimant shall certify the claim as being true and correct and that the claimant has not received or is entitled to receive from some other source as provided in VI. A. 5., any amounts claimed.
- 3) Upon receipt of a copy of the completed claim form the Secretary shall determine, where possible, any amounts which the applicant has received or may be eligible to receive under subsection A.5. of this section. In reaching such determination the Secretary shall prepare for processing the necessary forms and documentation to determine those amounts which must be deducted to determine the net amount of the claim.
- 4) Upon determination as to the net amount of the claim the Secretary shall supply the applicant with a duplicate of the net amount determination and advise the applicant that the information will be presented to the Board.
- 5) The Secretary shall present to the Board all claims filed pursuant to this chapter.

- 6) The Board shall act upon all claims, promptly advising the claimant, in writing through the Secretary of the Board as to any claim that is rejected, together with the reason for any such rejection, provided, that the Secretary is authorized to approve properly documented claims for payment of medical services submitted in an amount not to exceed \$200.00, except in the case of annual physicals, which may be approved by the Disability Board Secretary in an amount not to exceed \$350.00. Items exceeding these costs are to be approved at the next regular Board meeting. (AMENDED 11/05)

D. Examination of Member:

- 1) The Board, for the purposes of this chapter, may in all cases have the active or retired member suffering from such sickness or disability examined at any time by a Board approved physician, for the purpose of ascertaining the nature and extent of the sickness or disability, such physician to report to the Board the result of the examination within three days thereafter.
- 2) Any active or retired member who refuses to submit to such examination or examinations shall forfeit all his rights to benefits under this section for the period of such refusal, provided that the Board shall inform the member of the benefits being forfeited, and provided further that the Board shall designate the medical services available to any sick or disabled member.
- 3) Place of confinement while on disability leave shall be defined as follows:
  - a) That address listed in the personnel records as identifying the local residence at which the member resides when commuting daily to work; or
  - b) The hospital at which the member is confined; or
  - c) Any other address specifically authorized by the Director of Public Safety as required by extreme or unusual circumstances.
- 4) Travel Reimbursement; Members leaving the place of confinement, as defined while on disability leave, will not be reimbursed for any subsequent travel which may be necessary to return the member to the place of confinement in order for the member to comply with any order of the Board, which order is necessary to ascertain the member's physical or mental condition during disability leave and/or as a condition precedent to disability retirement; provided, that the Board shall reimburse for travel expenses necessarily incurred by the member when traveling from the place of confinement, when such travel is necessary to comply with order of the Board.

E. Subrogation Rights:

Upon making payment for medical services the city shall be subrogated to all rights of the member against any third party as provided in RCW 41.26. Should the member institute any lawsuit against a third party for the member's injuries or costs of medical services, the member shall immediately notify the city in writing of the lawsuit.

F. Claim Filing Limit--Time (120 Days). (ADDED 3/02) (UPDATED 5/03)

All medical service claims must be submitted by a member of the LEOFF system to the Board Secretary within one hundred and twenty days of the member's receipt of the original billing. Billings submitted after this period of time will not be approved by the Board, except upon good cause shown.

#### G. Long Term Care and Nursing Facility Care

1. Application for Long Term Care. Any request for long-term nursing assistance shall be submitted to the Mercer Island LEOFF Disability Board for approval and shall comply with all conditions of Chapter VI. Members seeking long term care reimbursement must be subjected to an independent medical exam of the Board's choice.
2. Medical Necessity. All charges for services associated with long term care must be substantiated by a physician's report of "reasonable medical necessity". Reasonable medical necessity for long term care will normally be proved by the absence of at least two (2) activities of daily living. Itemized statements or billings shall be submitted with the reimbursement request. The Disability Board has the right to request additional examinations by the Board's doctor or other medical personnel in order to obtain needed information regarding any request for payment for services.
3. Maximum Monthly Benefit. After the Disability Board makes a finding of reasonable medical necessity, the maximum monthly benefit shall be based upon the average cost of three (3) nursing facilities or services in the member's geographic locality for 24 hour-a-day care in a semi-private room as private pay. The Disability Board Secretary will determine the three (3) nursing facilities or services that will be used to average the cost.
4. Excluded Services. The Board shall make no payment for any services not deemed reasonably medically necessary or exceeding the maximum monthly benefit. No payment shall be made for services provided by unlicensed and/or non-bonded providers. No payment shall be made for non-medical services including custodial or housekeeping services such as house cleaning, laundry services, cooking, recreational companionship and other homemaker tasks.
5. Medicare, Medicaid/Other Insurance Coverage. Payment by insurance coverages, including Medicare, Medicaid and private nursing home insurance, are primary to amounts paid by the City. The City will deduct medical costs payable under Medicare, Medicaid and private insurance from the amount the City must pay for medical services, even if the member did not apply for such coverage.

### **VII. DISABILITY BOARD HEARINGS--PROCEDURE**

#### A. Time of Hearing:

- 1) At its next regular meeting following receipt of an application for disability leave, the Board shall review all relevant information pertaining to the question of the member's physical and mental fitness for duty.
- 2) Notice of any hearing, together with notice of any medical examination that may have been scheduled shall be mailed by the Secretary to the applicant member, or the person acting in his behalf, by first class certified mail, return receipt requested. Such notice shall state the date, place and time of the hearing to consider the application for disability leave or disability retirement, and when appropriate, shall also state the date, place and time that the applicant is to report for any medical examination that may have been ordered by the Board. In addition thereto, the notice shall inform the applicant, that he or his representative, legal or otherwise, may appear at the hearing for the purpose of presenting such evidence as may be appropriate to support his application, and for the purpose of cross-examining any other witnesses that may be called to testify; provided, however, that unless otherwise directed by the Board, the applicant's appearance shall not be mandatory; provided further, that in the event a mandatory appearance is not required by the Board, the applicant shall be advised in the notice of hearing that non-appearance, either in person or through a representative, shall constitute a waiver of the right to cross-examine witnesses. The applicant shall be advised that he has the right to present witnesses and evidence in support of his application and, if he is unable to compel the attendance of a necessary witness, the Board shall, pursuant to the provisions of laws of the State of Washington take necessary steps to compel the attendance of any witness the Board deems necessary or desirable to give testimony under oath, relative to the matters under consideration by the Board.

B. Conduct of Hearing--Mandatory Appearance or Contested Case:

- 1) The hearing shall be convened at the time, date and place specified in the notice. The hearing shall be informal, but testimony and argument shall be recorded.
- 2) The record in a contested case shall include:
  - a) All pleading, motions, intermediate rulings;
  - b) Evidence received or considered;
  - c) A statement of matters officially noticed;
  - d) Offers of proof, objections, and ruling thereon;
  - e) Proposed findings and exceptions;
  - f) Any decision, opinion or report by the Board.
- 3) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.
- 4) The Chairman of the Board or the Chairman Pro tempore, shall serve as the presiding officer of the hearing, and shall administer all oaths and shall make all rulings on evidentiary and procedural matters, except as provided otherwise, and regulate the course of the hearing.

5) The Board may:

- a) Examine witnesses and receive evidence under the direction of the presiding officer, and no person shall be compelled to divulge information which he could not be compelled to divulge in a court of law;
  - b) Issue subpoenas upon request of any party, upon a statement showing general relevance and reasonable scope of the evidence sought;
  - c) Take or cause depositions to be taken pursuant to rules promulgated by the Board, and no person shall be compelled to divulge information which he could not be compelled to divulge by deposition in connection with a court proceeding; and
  - d) Hold conferences for the settlement or simplification of the issues by consent of the parties.
- 6) The member, or someone acting in his behalf, shall be given the opportunity, unless waived, to examine or cross-examine any witnesses as to any matter relevant to the application or information before the Board.
- 7) The member may testify or the Board may call as a witness the member himself, or a person acting in his behalf.
- 8) Witnesses at such hearing shall be paid the same fees and allowances, in the same manner and under the same conditions, as provided for witnesses in the courts of this State by Chapter 2.40 RCW and by RCW 5.56.010, as now or hereafter amended. Such fees and allowances, and the cost of producing records required to be produced by subpoena, shall be paid by the party requesting the issuance of the subpoena.
- 9) If an individual fails to obey a subpoena, or obeys a subpoena but refuses to testify when requested concerning any matter under examination or investigation at the hearing, the Board or attorney requesting the subpoena may petition the superior court of the county where the hearing is being conducted for enforcement of the subpoena. The petition shall be accompanied by a copy of the subpoena and proof of service, and shall set forth in what specific manner the subpoena has not been complied with and shall ask the court to compel the witness to appear and testify before the Board.
- 10) Upon good cause being shown, the Board, on its own motion, or at the request of the applicant, or someone acting in his behalf, may continue the hearing from time to time provided, however, that the circumstances requiring any such continuances shall be reflected in the regular minutes of the Board.

C. Evidence:

1) Rules of Evidence:

- a) All relevant evidence is admissible within the opinion of the presiding officer, subject to approval by a majority of the Board, having due regard for its necessity, availability and trustworthiness. In passing upon the admissibility of evidence, the

presiding officer, subject to majority approval, shall give consideration to, but shall not be bound to follow the rules of evidence governing civil proceedings.

- b) When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The presiding officer, subject to majority Board approval, either with or without objection, may exclude inadmissible evidence or order cumulative evidence discontinued. Parties objecting to the introduction of evidence shall state the precise ground of objection at the time the evidence is offered.
- c) All evidence including, but not limited to records and documents in the possession of the city, shall be offered and made a part of the record in the case. Documentary evidence may be received in the form of copies and excerpts or incorporation by reference.
- d) Every party shall have the right of cross-examination of witnesses who testify, unless waived, and shall have the right to submit rebuttal evidence.

## **VIII. APPEAL**

### **A. Disability Leave/Retirement Denied or Canceled:**

When the Board determines that:

- 1) Disability Leave be denied or canceled; or
- 2) Disability Retirement be denied or canceled:

The member shall be formally notified by registered mail of such decision and the reasons therefor. Said notification shall contain a statement that the person has a right to appeal and hearing as provided for by these rules.

### **B. Filing of Appeal:**

- 1) Any person feeling aggrieved by any action of the City of Mercer Island Disability Board regarding disability leave and disability retirement, may file a notice of appeal with the Board specifically setting forth the reasons for such appeal and why the petitioner disagrees with the Board's decision.
- 2) When a notice of appeal is received, a hearing shall be scheduled before the Disability Board as soon as is reasonably possible, but no hearing shall be required until the hearing is demanded. The Secretary of the Board shall give written notice of the hearing before the Board to the petitioner at least fifteen (15) days prior to the date of the hearing. The notice shall include:
  - a) A statement of the time, place and nature of the proceeding;
  - b) A short and plain statement of the matters under appeal.
  - c) Advise that the petitioner may elect to appear pro se before the Board or be represented by legal counsel; and

- d) That the petitioner may elect to testify orally before the Board or furnish a written statement.

#### C. Hearing on Appeal:

The hearing on appeal shall be conducted as follows:

- 1) The Chairman of the Board shall open the public hearing and shall specify the nature of the appeal and disclose the identity of the parties appearing before the Board (including counsel if any) and define the functions of the Board regarding the appeal.
- 2) Presumptions: The Board may make such presumptions as recognized by law.
- 3) Official Notice: In the absence of conflicting evidence, the Board and its presiding officer, may officially notice:
  - a) Business Customs: General customs and practices followed in the transaction of municipal or other business.
  - b) Notorious Facts: Facts so generally and widely known to all well-informed persons so as not to be subject to reasonable dispute.
- 4) Burden of Proof: The burden of proving the existence of a disabling condition, and whether or not the condition was incurred in the line of duty, shall be placed upon the applicant. In order to qualify or to retain the right to receive a disability leave or a disability retirement, in the case of reexamination, the member will be required to prove that he is unable to perform the duties of his rank or position with average efficiency.

#### D. Findings of the Board:

Upon review of all relevant information pertaining to the question of the member's physical and mental fitness for duty; if in the opinion of the majority of the Board members present, the evidence supports the proposition that the member is unfit for duty, such member shall, depending on the type of proceeding:

- 1) Be granted a disability leave and separation from active service; or
- 2) Be granted a disability retirement; or
- 3) Otherwise such disability leave or disability retirement will either be denied or canceled.

#### E. Decision of the Board:

- 1) Form and content of decision. Every decision and order shall:
  - a) Be correctly captioned as to the name of the proceeding;
  - b) Designate all parties and counsel to the proceeding;
  - c) Include a concise statement of the nature and background of the proceeding; and

- d) Be accompanied by appropriate numbered findings of fact and conclusions.
- 2) The petitioner will be called upon to give a brief statement of his case and to present any evidence oral or written on his own behalf.
- 3) The City Attorney will present a statement of the matters in opposition to the appeal and shall present any evidence oral or written on the city's behalf. The petitioner shall be allowed to furnish rebuttal evidence.
- 4) The petitioner may present a concise closing statement to the Board.
- 5) The City Attorney may make a concise closing statement to the Board.
- 6) The petitioner will be allowed a brief rebuttal statement.
- 7) The Board shall at any point during the proceedings be allowed to ask questions for the purposes of information and clarification.
- 8) The Chairman shall close the hearing and the Board shall deliberate in open session the respective merits of the case.
- 9) The Board shall vote upon and decide the appeal by a majority of the members present.
- 10) The findings of the Board and the conclusions shall be reduced to writing and shall be furnished to the petitioner.

#### D. Informal Disposition on Appeal:

Unless precluded by law, informal disposition may also be made of any contested case by stipulation, agreed settlement, consent order, or default.

#### E. Adoption by Reference of Hearing Rules:

The provisions of Chapter VII. B., Conduct of Hearing and VII. C., Evidence, are hereby adopted by reference, insofar as they are consistent with the appellate hearing rules set forth in this chapter.

#### F. Appeal to State Retirement Board:

Nothing contained in these rules shall in any way detract from any remedy otherwise provided by law. Any person feeling aggrieved by any order or determination of the Board either denying a disability leave or disability retirement, or canceling a previously granted disability retirement, shall have the right to appeal said order of determination to the State Retirement Board, as provided in RCW 41.26.200, 41.16.210 and 41.26.220.