

DEPARTMENT OF BUDGET AND FINANCE
EMPLOYEES' RETIREMENT SYSTEM

HAWAII ADMINISTRATIVE RULES
AMENDMENTS
TITLE 6, CHAPTERS 20, 22, 23, 24, AND 26

Effective November 26, 2009

***RAMSEYER FORMAT
RUBBER-STAMPED VERSION***

Rules Amending Title 6
Hawaii Administrative Rules

August 10, 2009

1. Chapter 20 of Title 6, Hawaii Administrative Rules, entitled "Public Records and Information; Adoption, Amendment, or Repeal of Rules; Declaratory Ruling; Cost of Rules", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 6

DEPARTMENT OF BUDGET AND FINANCE

EMPLOYEES' RETIREMENT SYSTEM

CHAPTER 20

PUBLIC RECORDS AND INFORMATION;
ADOPTION, AMENDMENT, OR REPEAL OF RULES;
DECLARATORY RULING; COST OF RULES

Subchapter 1 General Provisions

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Subchapter 2 Public Records and Information

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Subchapter 5 Repealed

§6-20-24 Repealed

[Historical Note: This chapter is based substantially on the Procedural Rules of the Employees' Retirement System Relating to Public Records and Information; Adoption, Amendment or Repeal of Rules; Declaratory Ruling and Cost of Rules.] [Eff 6/15/70; R 11/9/81]

SUBCHAPTER 1

GENERAL PROVISIONS

§6-20-1 Definitions. As used in chapters 20 to 29 of this title:

"Administrator" means the administrator of the system or a duly designated assistant.

"Applicant" means a person who files an application for disability retirement or accidental death benefits as provided in chapter 6-22, subchapter 1 of chapter 6-23, and subchapter 1 of chapter 6-26.

"Beneficiary" means the recipient of any benefit from the system or, as the context may indicate, the person or persons designated by a member, former member, or retirant, or as provided by law to receive the benefits payable in the event of the member's, former member's, or retirant's death.

"Board" or "board of trustees" means the board of trustees of the system.

"Contested case" means a contested case proceeding as defined in section 91-1, HRS.

"Hearing officer" means a licensed attorney, duly appointed and authorized by the board of trustees to administer proceedings under this chapter and chapter 6-23.

"Member" means any person included in the membership of the system.

"Party" means any person or agency who participates in a declaratory ruling under subchapter 4 or in a contested case proceeding under chapter 6-23 as a petitioner, respondent, or intervenor.

"Petition" as used in subchapter 4, means a request filed pursuant to section 6-20-8 with the board of trustees for a declaratory ruling.

"Petitioner" means a member or other authorized person who files a petition for declaratory ruling under subchapter 4 or a petition for contested case hearing under chapter 6-23.

"Presiding officer" means the chairperson or other member of the board of trustees, or a hearing officer designated by the board of trustees, who presides over matters set forth in subchapter 4 or chapter 6-23.

"Retirant" means a member who has retired and becomes a beneficiary of the system.

["Secretary" means the secretary of the system or a duly designated assistant.]

"System" means the employees' retirement system of the State of Hawaii. [Eff 11/9/81; am and comp 11/26/93; am and comp NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-21, 91-2)

SUBCHAPTER 2

PUBLIC RECORDS AND INFORMATION

§6-20-2 Public inspection. All public records shall be available for inspection at the office of the

system, 201 Merchant Street, Suite 1400, Honolulu, Hawaii 96813, during regular business hours. [Eff 11/9/81; am 6/11/92; comp 11/26/93; comp NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-103, 91-2, 92F-11, 92F-12)

§6-20-3 Information. Information on matters within the jurisdiction of the system, except confidential information, may be obtained by inquiring in person during regular business hours at, or by submitting a written request to, the office of the system. [Eff 11/9/81; comp 11/26/93; comp NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 92F-11, 92F-12, 92F-13, 92F-14, 92F-21, 92F-22, 92F-23)

§6-20-4 Disclosure of information. Information about a member, a beneficiary, or a retirant contained in the records of the system may be disclosed only to the member, beneficiary, or retirant or to a person authorized in writing by the member, beneficiary, or retirant, or to the duly appointed executor, legal representative, or administrator of the estate of the member, beneficiary, or retirant, or to an agency complying with the requirements of section 92F-19, HRS. Information about a deceased member, beneficiary, or retirant may be disclosed to any person under chapter 92F, HRS, without written authorization from the deceased member's, beneficiary's, or retirant's representatives, to the extent authorized by law. [Eff 11/9/81; am 6/11/92; comp 11/26/93; am and comp NOV 26 2009] (Auth: HRS §§88-28, 91-2, 92F-11) (Imp: HRS §§88-103.5, 92F-11, 92F-12, 92F-13, 92F-14, 92F-19, 92F-21, 92F-23)

§6-20-4.01 Cost of copies for government records and rules. (a) Government records. The system may charge up to fifty cents per page, or less, for each copy of a document that it reproduces under section 92-21, HRS, pursuant to a public records request under section 92F-19, HRS.

(b) Administrative rules. Compilations and supplements of rules adopted by the board shall be made available free of charge upon request by state officers in the case of a state agency and by county officers in

the case of a county agency. Compilations and supplements may also be made available, free of charge, to organizations representing public employees and to agencies of the federal government or of other states. As to all other persons, the price for a copy shall be one dollar for each chapter compilation or chapter supplement. [Eff and comp NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2.5, 91-5, 92-21)

SUBCHAPTER 3

ADOPTION, AMENDMENT, OR REPEAL OF RULES

§6-20-5 Petition. Any interested person may petition the board for the adoption, amendment, or repeal of any rule of the system. The petition shall be submitted in duplicate and delivered to the office of the system. [Eff 11/9/81; comp 11/26/93; comp NOV 26 2009] (Auth: HRS §§88-28, 91-2, 91-6) (Imp: HRS §91-6)

§6-20-6 Form and content of petition. The petition need not be in any special form but it shall contain:

- (1) The petitioner's name, address, including zip code, and telephone number;
- (2) A statement of the nature of the petitioner's interest;
- (3) An explicit statement of the reasons in support of the proposed rule, amendment, or repeal;
- (4) A draft or the substance of the proposed rule or amendment or repeal and a designation of any existing rules affected by the petition; and
- (5) The signature of the petitioner.

Any petition which does not conform to the foregoing requirements may be rejected by the board. The rejection shall be in writing and shall state the reasons therefor. [Eff 11/9/81; am and comp 11/26/93; comp NOV 26 2009] (Auth: HRS §§88-28, 91-2, 91-6) (Imp: HRS §91-6)

§6-20-7 Consideration of petition. Within thirty days after the receipt of the petition, the board shall either deny the petition, stating in writing, its reasons for the denial, or initiate proceedings for the adoption, amendment, or repeal of the rule. [Eff 11/9/81; comp 11/26/93; comp NOV 26 2009] (Auth: HRS §§88-28, 91-2, 91-6) (Imp: HRS §91-6)

SUBCHAPTER 4

DECLARATORY RULING

§6-20-8 Petition for declaratory [order.] ruling: scope. (a) Any [interested] person or agency may petition the board for a declaratory [order] ruling as to the applicability of any statutory provision administered by the system or of any rule or order adopted by the system [to a factual situation].

(b) The scope of this subchapter is limited to petitions requesting the board's interpretation of a statute, rule, or administrative order administered by the board, regarding circumstances that have not yet been decided by the system or the board. A petition for declaratory ruling is a way to seek an advance determination from the board. A petition under this subchapter may not request the board to review a concrete decision already made by the system or the board. For example, a petition alleging that the system has improperly granted or denied the petitioner or other person a benefit, service credit, or other entitlement under chapter 88, HRS, must be filed as a petition for contested case hearing under subchapter 2 of chapter 6-23, and not as a petition for declaratory ruling. [Eff 11/9/81; am and comp 11/26/93; am and comp NOV 26 2009] (Auth: HRS §§88-28, 91-2, 91-8) (Imp: HRS §91-8)

§6-20-9 Form and content of petition. (a) The petition shall be submitted in duplicate. It need not be in any special form but it shall contain:

- (1) The petitioner's name, address, including zip code, and telephone number;

- (2) A statement of the nature of the petitioner's interest, including reasons for the submission of the petition;
 - (3) A designation of the specific statutory provision, rule, or order in question;
 - (4) A complete statement of the relevant facts;
 - (5) A statement of the issues raised;
 - (6) A statement of the petitioner's interpretation of the statute, rule, or order or the petitioner's position or contention with respect thereto;
 - (7) A memorandum containing the reasons, including any legal authorities, in support of the interpretation and relief sought. The board may require the petitioner to file additional data or memoranda;
 - (8) The names of any other potential parties; and
 - (9) The petitioner's signature.
- (b) Any petition which does not conform to the foregoing requirements may be rejected by the board. The rejection shall be in writing and shall state the reasons therefor. [Eff 11/9/81; am and comp 11/26/93; comp NOV 26 2009] (Auth: HRS §§88-28, 91-2, 91-8) (Imp: HRS §91-8)

§6-20-10 Consideration of petition. (a) The board, within a reasonable time after [submission] the receipt of a petition for declaratory [relief,] ruling, shall do one of the following:

- (1) Deny the petition, without a hearing, where:
 - (A) The question is speculative or purely hypothetical and does not involve an existing situation or one which may reasonably be expected to occur in the near future; [or]
 - (B) The petitioner's interest is not of the type which confers sufficient standing to maintain an action in a court of law; [or]
 - (C) The issuance of the declaratory [order] ruling may adversely affect the interest of the State, the system, or any of the officers or employees in any litigation which is pending or may be reasonably be expected to arise; [or]
 - (D) The petition requests a ruling on a statutory provision not administered by

the board or the matter is not otherwise within the jurisdiction of the board; [or]

(E) The petition is frivolous;

(F) The petition is beyond the scope of this subchapter as provided in section 6-20-8(b), or there exists a genuine issue of material fact, the resolution of which is necessary before any declaratory ruling may issue. In either case, the board may dismiss the action or request that the petitioner re-file the action as a petition for contested case hearing under subchapter 2 of chapter 6-23; or

(G) There is other good cause for denial of the petition;

- (2) Set the petition for hearing before the board or hearing officer in accordance with this subchapter. If the board assigns the petition to a hearing officer, the board shall use the decision-making procedures set forth in sections 6-23-48, 6-23-49, 6-23-50, 6-23-51, 6-23-52, and 6-23-53. A hearing officer shall have the same powers as a presiding officer under this subchapter; or
- (3) Grant the petition, without a hearing, at the board's discretion.

(b) If the board denies or grants a petition without a hearing, then the board shall notify the petitioner in writing of the denial or grant by the board, and shall state the reasons therefor. [Eff 11/9/81; am and comp 11/26/93; am and comp NOV 26 2009] (Auth: HRS §§88-28, 91-2, 91-8, 92-16) (Imp: HRS §§91-8, 92-16)

§6-20-11 REPEALED. [R 11/26/93]

§6-20-12 Renumbered as §6-20-23.

§6-20-13 Renumbered as §6-20-24.

§6-20-14 Notice of hearing. (a) [All] If the board, at its discretion, sets the petition for

hearing, all parties shall be given written notice of the hearing, including:

- (1) The date, time, place, and nature of the hearing;
- (2) The section of the pertinent statutes or rules involved; and
- (3) A concise statement of the issues and basic facts giving rise to the petition. A copy of the petition attached to the notice of the hearing shall satisfy this requirement.

(b) The notice of hearing shall conform to the requirements of section 91-9, [Hawaii Revised Statutes.] HRS, and shall be [given] personally delivered or mailed by registered or certified mail[,] with return receipt requested[,] at least fifteen days [prior to] before the hearing.

(c) The notice shall also inform each party of the right to retain legal counsel, if desired. A party may be represented by or with counsel. The board may, at any time, require any person transacting business before the board in a representative capacity to show [his or her] the person's authority or qualification to act in [such] that capacity.

[(d) Except as otherwise provided in this subchapter, the provisions of subchapter 2 of chapter 6-23, Hawaii Administrative Rules, shall apply to hearings on petitions for declaratory orders.] [Eff and comp 11/26/93; am and comp NOV 26 2009]
(Auth: HRS §§88-28, 91-2, 91-8) (Imp: HRS §§91-8, 91-9, 91-9.5)

§6-20-15 Computation of time. In computing any period of time prescribed or allowed by this subchapter, the provisions of section 6-23-9 shall apply. [Eff and comp 11/26/93; comp NOV 26 2009]
(Auth: HRS §§88-28, 91-2, 91-8) (Imp: HRS §91-8)

§6-20-16 Conduct of hearing. (a) [The] In the event that the board, at its discretion, sets the petition for hearing, the chairperson or other member of the board designated by the chairperson, or hearing officer, shall preside at all hearings [before the board] governed by this subchapter.

(b) The presiding officer shall have the following powers and duties:

- (1) To continue or postpone, at the request of a party, any hearing;
- (2) To regulate the course and conduct of the hearing;
- (3) To administer oaths and affirmations;
- (4) To examine witnesses;
- (5) To issue subpoenas;
- (6) To rule on offers of proof and to accept evidence;
- (7) To hold conferences, before or during the hearing, for [settlement or] the simplification of issues; and
- (8) To rule on motions and [to] dispose of procedural requests and similar matters.

(c) The presiding officer shall convene the hearing and summarize the statement of the petitioner. Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence and the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence. The party having the burden of proof shall proceed first in the presentation of opening statements, witnesses, and arguments, followed by the [other party.] administrator and any other person duly admitted by the board to the proceedings. [Eff and comp 11/26/93; am and comp
NOV 26 2009] (Auth: HRS §§88-28, 91-2, 91-8)
(Imp: HRS §§91-8, 91-10, 92-16)

§6-20-17 Parties[.]; service. (a) Unless a petition has been denied or granted in accordance with section 6-20-10, the [secretary] administrator of the system shall be [made] considered a party [respondent] to the proceedings and shall be served accordingly. Within fifteen days after the petition is filed, other persons having a direct and substantial interest in the petition may request, in writing, that the board recognize them as parties to the proceedings. The board may, at its discretion, grant or deny their request.

(b) All parties recognized by the board, including the administrator, shall be served with the petition, correspondence, and other documents filed with the board. [Eff and comp 11/26/93; am and comp
NOV 26 2009] (Auth: HRS §§88-28, 91-2, 91-8)
(Imp: HRS §91-8)

§6-20-18 [Memorandum in opposition.] Advisory memorandum. The administrator, within thirty days after receiving the notice of hearing, shall file a memorandum advising the board of the administrator's position and responding to the points raised in the petition. The administrator shall recommend whether the board should grant or deny the petition, and state the legal and factual reasons for the recommendation. [Each respondent,] Other parties recognized by the board, within thirty days after [the] receipt of the [petition, or] notice of hearing, [whichever is later,] may also file and serve upon all parties a memorandum [in opposition] responding to the petition, advising the board of the parties' position and stating concisely and fully the [respondent's] parties' legal position or contentions and reasons, including legal authorities. [Eff and comp 11/26/93; am and comp NOV 26 2009] (Auth: HRS §§88-28, 91-2, 91-8) (Imp: HRS §91-8)

§6-20-19 Request for additional facts or supplemental memorandum; documents. (a) The board at any time before it files its decision may request [of] the petitioner or any party, including the administrator, to submit a statement of additional facts or a legal memorandum, the purpose of which is to clarify a specific factual or legal issue, position, or contention, [or issue,] provided [that] the request shall aid in effectuating the ends of justice, or in achieving its purposes, and shall not unduly delay the proceedings or hinder, harass, or unreasonably prejudice any party.

(b) If any document filed in a proceeding governed by this subchapter is not in substantial conformity with the applicable rules of the board, or is otherwise insufficient, the board may, on its own motion or on motion of a party, strike [such] that document or require its amendment. All documents filed with or presented to the board may be retained in the files of the system. [Eff and comp 11/26/93; am and comp NOV 26 2009] (Auth: HRS §§88-28, 91-2, 91-8) (Imp: HRS §§91-8, 92-16)

§6-20-20 Argument. [Argument] In the event that the board, at its discretion, sets the matter for

hearing, oral argument shall be heard before the board[.] or the designated hearing officer. All parties shall be afforded a full opportunity to present [evidence and oral] arguments on all issues involved. The argument shall be at the time and place set forth in the notice of hearing, but that time and place may be continued from day to day and adjourned to a later day or to a different place without notice, other than the announcement thereof at the hearing. [Eff and comp 11/26/93; am and comp NOV 26 2009] (Auth: HRS §§88-28, 91-2, 91-8) (Imp: HRS §§91-8, 92-16)

§6-20-21 Proposed findings of fact and conclusions of law. (a) No party shall file written proposed findings of fact and conclusions of law, except where ordered in the discretion of the board. (b) Where ordered, written proposed findings of fact and conclusions of law shall be filed within fifteen days after the close of the hearing, and shall contain specific references to the record and the legal authorities relied upon. [Eff and comp 11/26/93; comp NOV 26 2009] (Auth: HRS §§88-28, 91-2, 91-8) (Imp: HRS §§91-8, 91-12)

§6-20-22 Disposition of petition. [The] In the event that the board, at its discretion, sets the matter for hearing, the board, within sixty days after the close of arguments or submission of all evidence and any permitted or requested memoranda, whichever is later, shall issue its declaratory [order] ruling, either denying or granting the petition and stating the reasons therefor. The [secretary] administrator shall promptly notify the petitioner of the board's ruling and of the petitioner's rights to appeal the ruling to the circuit court. [Eff and comp 11/26/93; am and comp NOV 26 2009] (Auth: HRS §§88-28, 91-2, 91-8) (Imp: HRS §§91-8, 91-12)

§6-20-23 Applicability of orders. Orders disposing of petitions shall be applicable only to the fact situation alleged in the petition or as set forth in the order. They shall not be applicable to different fact situations or where additional facts not considered in the order exist. The order shall have the same force and effect as other orders issued by the

board. [Eff 11/9/81; am, ren 6-20-12, and comp
 11/26/93; comp NOV 26 2009] (Auth: HRS §§88-28,
 91-2, 91-8) (Imp: HRS §91-8)

§6-20-23.01 Withdrawal of petition. A petitioner shall file a written notice of withdrawal in order to withdraw a petition under this subchapter. If a hearing has been set, the petitioner must serve the notice, no later than five days before the date of the scheduled hearing, on all parties named in the petition and the board. A petition withdrawn within five days of the hearing date shall result in the petition being dismissed with prejudice, i.e., the petition may not be refiled at any time thereafter. If a hearing has not been set, the petitioner may withdraw the petition at any time, and shall serve a notice of withdrawal on the board, the administrator, and all other applicable parties. [Eff and comp NOV 26 2009] (Auth: HRS §§88-28, 91-2, 91-8) (Imp: HRS §91-8)

[SUBCHAPTER 5

COST OF RULES

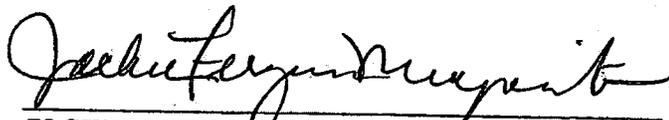
§6-20-24 Cost of rules. Compilations and supplements of rules adopted by the board shall be made available free of charge upon request by state officers in the case of a state agency and by county officers in the case of a county agency. Compilations and supplements may also be made available, free of charge, to organizations representing public employees, to agencies of the federal government or of other states. As to all other persons, the price for a copy shall be \$1."] [Eff 11/9/81; am, ren 6-20-13, and comp
 11/26/93; R NOV 26 2009] (Auth: HRS §§88-28,
 91-2, 91-5) (Imp: HRS §91-5)

2. Material, except source notes, to be repealed is bracketed. New material is underscored.

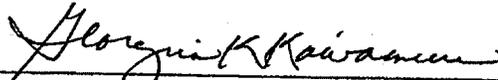
3. Additions to update source notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 6-20, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on August 10, 2009 and filed with the Office of the Lieutenant Governor.

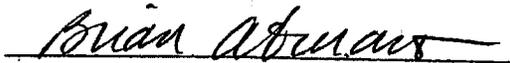


JACKIE FERGUSON-MIYAMOTO
Chair, Board of Trustees
Employees' Retirement System
State of Hawaii



GEORGINA K. KAWAMURA
Director of Finance
Department of Budget and Finance

APPROVED AS TO FORM:



BRIAN P. ABURANO
Deputy Attorney General

Rules Amending Title 6
Hawaii Administrative Rules

August 10, 2009

1. Chapter 22 of Title 6, Hawaii Administrative Rules, entitled "Certifications and Findings of the Medical Board", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 6

DEPARTMENT OF BUDGET AND FINANCE

EMPLOYEES' RETIREMENT SYSTEM

CHAPTER 22

CERTIFICATIONS AND FINDINGS OF THE MEDICAL BOARD

- §6-22-1 Scope
- §6-22-2 Definitions
- §6-22-3 Examination of member by the medical board
- §6-22-4 Engagement of other specialists
- §6-22-5 Workers' compensation and Social Security Administration reports and findings
- §6-22-6 Position description of member
- §6-22-7 Pre-existing condition of member
- §6-22-8 Medical board's certifications and findings
- §6-22-9 Appearance as witness
- §6-22-10 Additional medical reports

§6-22-1 Scope. [The provisions of this] This chapter shall govern the procedures for the [findings] certifications and [certifications] findings of the medical board relating to applications for:

- (1) [ordinary] Ordinary disability retirement under [section] sections 88-75, 88-284, and 88-334, HRS[,];
- (2) [service-connected] Service-connected disability retirement under sections [88-77,] 88-79, [and] 88-80, 88-285, and 88-336, HRS[,]; and

- (3) [accidental] Accidental death benefits under [section] sections 88-85, 88-286, and 88-339, HRS. [Eff 1/9/84; am and comp
NOV 26 2009] (Auth: HRS §88-28)
(Imp: HRS §§88-31, 88-75, 88-79, 88-85,
88-284, 88-285, 88-286, 88-334, 88-336,
88-339)

§6-22-2 Definitions. Definitions generally applicable to this chapter are also provided in section 88-21, HRS, and section 6-20-1. As used in this chapter:

"Accident" means an unlooked for mishap or untoward event which is not expected or designed, occurring while in the actual performance of duty at some definite time and place.

"Actual performance of duty": If the [claimant] member is disabled as the natural and proximate result of an accident, the accident shall be deemed to have occurred while in the actual performance of duty even if the [claimant] member may not have been actually engaged in performing the duties of the [claimant's] member's job; provided that the accident occurred during working hours either:

(1) [on] On the work premises; or

(2) [at] At wherever the [claimant's] member's duties require the [claimant] member to be.

["Applicant" means a member, the head of the member's department or a deceased member's beneficiary or legal representative who has filed for disability retirement or accidental death benefits.

"Board" or "board of trustees" means the board of trustees of the system.

"Claimant" means a member who has filed an application for disability retirement or a deceased member whose death has resulted in a claim for accidental death benefits.]

"Gainful employment" means substantial gainful employment which is commensurate with the [claimant's] member's age, education, experience, training, and physical and mental capacities.

"Medical board" means the board of physicians provided for in section 88-31, [Hawaii Revised Statutes.] HRS.

"Natural and proximate result" means the result that would naturally follow from the accident, unbroken by any independent cause.

"Occupational hazard" means a danger or risk which is inherent in, and concomitant to, a particular occupation or particular job, if not a risk common to employment in general.

"Ordinary disability" means [physical or mental] a mental or physical [incapacitation] incapacity for the further performance of duty, [resulting from an injury, illness or disease which is not an accident or which is not the result of some occupational hazard and] that, at the time of the application for disability retirement, [which incapacitation] is likely to be permanent.

"Service-connected disability" means a mental or physical incapacity for the further performance of duty that, at the time of the application for disability retirement is likely to be permanent, is not the result of wilful negligence on the member's part, and is:

- (1) The natural and proximate result of an accident occurring while in the actual performance of duty at some definite place and time; or
- (2) The cumulative result of some occupational hazard.

"Substantial gainful employment" means a significant amount of fairly constant physical or mental work activity, or both, which is productive in nature and is done for remuneration or profit, whether or not the work activity is part-time, pays less or has less responsibility than that of the person's previous employment; provided that the work activity:

- (1) [shall] Shall amount to at least thirty hours a week[,]; or
- (2) [shall] Shall produce a gross income of not less than an amount which is equivalent to the minimum hourly wage as set by [State] state law multiplied by thirty hours, regardless of the number of hours the person may have actually worked.

["System" means the employees' retirement system of the State of Hawaii.]

"[Willful] Wilful negligence" means the intentional failure to use ordinary care such as a reasonably prudent person would exercise. [Eff 1/9/84; am 2/9/89; am and comp NOV 26 2009] (Auth: HRS §88-28) (Imp: HRS §§88-31, 88-75, 88-79, 88-85, 88-284, 88-285, 88-286, 88-334, 88-336, 88-339)

§6-22-3 Examination of [claimant] member by the medical board. (a) The medical board shall investigate, review, and evaluate all medical reports submitted to it as well as the employer's report of the accident as submitted to the [Workers' Compensation Division of the Department of Labor and Industrial Relations] disability compensation division of the department of labor and industrial relations and the position description submitted by or [in] on behalf of the [claimant] member in support of [his or her] the applicant's claim.

(b) The applicant shall submit medical reports to the medical board as provided in section 6-26-7, including the physician's statement. The medical board may, at its discretion, disregard any medical reports or other records submitted.

- (1) More than sixty days after the application has been filed; or
- (2) After any longer period of time that the medical board expressly provides for the submission of medical reports or other records.

The medical board may disregard any medical reports or other records submitted to the medical board after the medical board has issued its certifications and findings pursuant to section 6-22-8, except as provided in section 6-22-10. The medical board may or may not, at its discretion, subject the [claimant] member to a physical examination in arriving at its [conclusions] certifications and [recommendations] findings on all matters referred to it. [Eff 1/9/84; am and comp
NOV 26 2009] (Auth: HRS §88-28) (Imp: HRS §§88-31, 88-75, 88-79, 88-85, 88-284, 88-285, 88-286, 88-334, 88-336, 88-339)

§6-22-4 Engagement of other specialists. The medical board, if it deems necessary, may at the expense of the [System] system engage other physicians [and/or vocational] or specialists, or both, to examine the [claimant,] member or review [the medical reports] records as requested, or both, and report their findings to the medical board. [Eff 1/9/84; am and comp
NOV 26 2009] (Auth: HRS §88-28) (Imp: HRS §§88-31, 88-75, 88-79, 88-85, 88-284, 88-285, 88-286, 88-334, 88-336, 88-339)

§6-22-5 Workers' compensation and Social Security Administration reports and findings. Any determination of the [Workers' Compensation Division of the Department of Labor and Industrial Relations] disability compensation division of the department of labor and industrial relations, [and of] the [Labor and Industrial Relations Appeals Board] labor and industrial relations appeals board, and the Social Security Administration relating to the same [injury] incapacity for which the applicant or [claimant] member is claiming a disability or death benefit may be taken into consideration; however, [such] that determination shall not be binding upon the medical board. [Eff 1/9/84; am and comp NOV 26 2009] (Auth: HRS §88-28) (Imp: HRS §§88-31, 88-75, 88-79, 88-85, 88-284, 88-285, 88-286, 88-334, 88-336, 88-339)

§6-22-6 Position description of [claimant.] member. The determination of whether the [claimant] member is incapacitated for the further performance of duty shall be related to the duties prescribed in the official position description of the employing agency in which the [claimant] member was employed at the time the accident which resulted in [his or her] the condition occurred. The medical board may consider other probative and credible evidence of the member's actual job duties. [Eff 1/9/84; am and comp NOV 26 2009] (Auth: HRS §88-28) (Imp: HRS §§88-31, 88-75, 88-79, 88-284, 88-285, 88-334, 88-336)

§6-22-7 Pre-existing condition of member. [An accident which results in the aggravation of a non-service connected pre-existing condition shall not be considered unless it can be shown by a preponderance of evidence that the aggravation is the direct cause of the disability and that the disability is not the result of the natural deterioration and degeneration of the pre-existing condition.] Permanent incapacity that is caused by or results from the natural deterioration, degeneration, or progression of a non-service connected pre-existing condition is not the natural and proximate result of an accident nor is it the cumulative result of some occupational hazard. The medical board shall not consider, and the board shall not grant, disability retirement benefits for a permanent incapacity that is caused by or results from the natural deterioration,

degeneration, or progression of a non-service connected pre-existing condition. Whenever there is evidence of a non-service connected pre-existing condition, the applicant shall have the burden of proof, including the burden of producing evidence and the burden of persuasion, of proving that the member's permanent incapacity was not caused by and did not result from the natural deterioration, degeneration, or progression of the non-service connected pre-existing condition. The degree or quantum of proof required shall be by a preponderance of the evidence. [Eff 1/9/84; am 2/9/89; am and comp NOV 26 2009] (Auth: HRS §88-28)
(Imp: HRS §§88-31, 88-79, 88-285, 88-336)

§6-22-8 Medical board's [certification] certifications and findings. Upon completion of the examination of the [claimant] member and the reports submitted to it, the medical board shall certify in writing to the board [of trustees] the following:

- (1) In the case of an application for ordinary disability or service-connected disability retirement, whether or not the incapacity is:
 - (A) For the further performance of duty; or
 - (B) For gainful employment; and
 - (C) Likely to be permanent.

- (2) In the case of an application for service-connected disability retirement or for accidental death benefits, whether or not the incapacity or death is:

- (A) The natural and proximate result of an accident occurring while in the actual performance of duty at some definite time and place; or
- (B) The cumulative result of some occupational hazard (in the case of service-connected disability retirement) or the result of some occupational hazard (in the case of accidental death benefits); and

- (C) Through no [willful] wilful negligence on the part of the [claimant.] member.

[Eff 1/9/84; am and comp NOV 26 2009] (Auth: HRS §88-28)
(Imp: HRS §§88-31, 88-75, 88-79, 88-85, 88-284, 88-285, 88-286, 88-334, 88-336, 88-339)

§6-22-9 Appearance as witness. The [chairman] chairperson of or one of the members of the medical board shall serve as a witness on behalf of the medical board, whenever required to do so, at any hearing of an appeal from the [findings] certifications and [certifications] findings of the medical board. [Eff 1/9/84; am and comp NOV 26 2009] (Auth: HRS §88-28) (Imp: HRS §§88-31, 88-75, 88-79, 88-85, 88-284, 88-285, 88-286, 88-334, 88-336, 88-339)

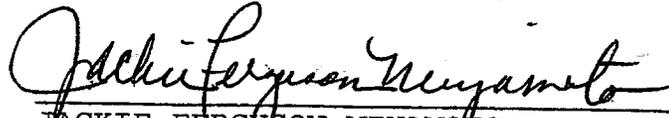
§6-22-10 Additional medical reports. Upon receipt of prior approval of the board [of trustees], the medical board may consider additional medical reports offered by the applicant [subsequent to] after the submission of the medical board's [decision] certifications and findings to the board [of trustees]; provided, however, the additional medical reports must relate to the condition of the member at the time of the application and any determination of disability shall be related to the condition of the [claimant as of the date the medical board first examined him or her in connection with his or her application.] member at the time of application." [Eff 1/9/84; am and comp NOV 26 2009] (Auth: HRS §88-28) (Imp: HRS §§88-31, 88-75, 88-79, 88-85, 88-284, 88-285, 88-286, 88-334, 88-336, 88-339)

2. Material, except source notes, to be repealed is bracketed. New material is underscored.

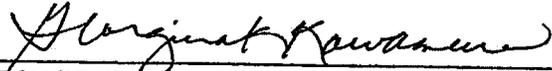
3. Additions to update source notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 6-22, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on August 10, 2009 and filed with the Office of the Lieutenant Governor.



JACKIE FERGUSON-MIYAMOTO
Chair, Board of Trustees
Employees' Retirement System
State of Hawaii



GEORGINA K. KAWAMURA
Director of Finance
Department of Budget and Finance

APPROVED AS TO FORM:



BRIAN P. ABURANO
Deputy Attorney General

Rules Amending Title 6
Hawaii Administrative Rules

August 10, 2009

1. Chapter 23 of Title 6, Hawaii Administrative Rules, entitled "Contested Case Hearings", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 6

DEPARTMENT OF BUDGET AND FINANCE

EMPLOYEES' RETIREMENT SYSTEM

CHAPTER 23

CONTESTED CASE HEARINGS

Subchapter 1 Contested Case Hearings on
Applications for Disability
Retirement and Accidental Death
Benefits

- §6-23-1 Scope
- §6-23-2 Definitions
- §6-23-3 Preliminary decision by board of trustees;
notice of preliminary decision; petition
for contested case hearing
- §6-23-4 Filing of petition for contested case
hearing
- §6-23-5 Contents of petition
- §6-23-6 Contested case hearing; before board or
hearing officer
- §6-23-7 Time and place of hearing and notice
- §6-23-8 Docket
- §6-23-9 Computation of time; extension of time
- §6-23-10 Documents
- §6-23-11 Deposition; application for
- §6-23-12 Depositions; person before whom taken,
oath, examination, and cross-
examination, record of examination,
filing of deposition
- §6-23-13 Use of depositions

§6-23-14 Presiding officer; powers and duties
 §6-23-15 Reassignment of petition
 §6-23-16 Conduct of hearing
 §6-23-17 Recommended decision
 §6-23-18 Proposed decision
 §6-23-19 Filing of exceptions; extension of time;
 finality of proposed decision
 §6-23-20 Argument on exceptions
 §6-23-21 Final decision
 §6-23-21.01 Attorneys' fees upon successful petition

Subchapter 2 Other Contested Case Hearings

§6-23-22 Scope
 §6-23-23 Definitions
 §6-23-24 Commencement of proceedings; service
 §6-23-25 Limitations period
 §6-23-26 Computation of time; extension of time
 §6-23-27 Appearances
 §6-23-28 Contents of petition; form; rejection
 §6-23-29 Consideration of petition
 §6-23-30 Jurisdiction; powers and duties of
 presiding officer
 §6-23-31 Burden of proof
 §6-23-32 Prehearing conference
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 §6-23-36 Evidence; witnesses; exhibits
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 judgment; disposition of claims
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 oath, examination, and cross-
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 filing of deposition
 §6-23-44 Use of depositions
 §6-23-45 Disqualification of board member or
 hearing officer
 §6-23-46 Reassignment of case
 §6-23-47 Ex parte contacts
 §6-23-48 Recommended decision
 §6-23-49 Proposed decision

- §6-23-50 Filing of exceptions; extension of time;
finality of proposed decision
- §6-23-51 Argument on exceptions
- §6-23-52 Final decision
- §6-23-53 Reconsideration of decision

[Historical note: This chapter is based substantially on Permanent Procedural Rules Relating to Appeals from Decisions of the Medical Board, Employee's Retirement System of the State of Hawaii.] [Eff. 10/10/64; am 6/20/66; am 11/23/70; am 3/30/71; R 11/09/81]

SUBCHAPTER 1

[APPEALS FROM DECISIONS OF THE MEDICAL BOARD]
CONTESTED CASE HEARINGS ON APPLICATIONS FOR DISABILITY
RETIREMENT AND ACCIDENTAL DEATH BENEFITS

§6-23-1 Scope. [The provisions of this] This subchapter shall govern all [appeals from the findings and certifications of the medical board relating to applications for disability retirement under sections 88-75, 88-77, and 88-79, Hawaii Revised Statutes, and from all other decisions and recommendations which the medical board is authorized to make.] petitions for contested case hearing filed with the board disputing a preliminary decision by the board regarding an application for disability retirement benefits or accidental death benefits, pursuant to the medical board's certifications and findings under chapter 6-22. [Eff 11/9/81]; am and comp NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2)

§6-23-2 Definitions. Definitions generally applicable to this subchapter are also provided in section 88-21, HRS, and section 6-20-1. As used in this subchapter:

["Appellant" means a member appealing from an adverse finding, certification, or decision of the medical board;

"Board" or "board of trustees" means the board of trustees of the system;]

"Causation" refers to a finding as to whether or not a disability is:

- (1) [the] The result of an accident occurring while in the actual performance of duty at some definite time and place; or
- (2) [as] As the cumulative result of some occupational hazard[,]; and
- (3) [whether] Whether or not the disability was the result of [the willful] wilful negligence on the part of the member[;].

"Medical board" means the board of physicians provided for in [Section] section 88-31, [Hawaii Revised Statutes;] HRS.

["Member" means a member of the system who has made an application for disability retirement;]

"Petition" means a request filed with the board of trustees pursuant to section 6-23-4, in which an applicant for disability retirement benefits disputes the board of trustees' preliminary decision regarding the medical board's certifications and findings.

["Presiding officer" means the chairperson of the board of trustees or a hearing officer designated by the board of trustees to preside over the hearing of an appeal governed by this subchapter.

"Secretary" means the secretary of the system;

"System" means the employees' retirement system of the State of Hawaii.] [Eff 11/9/81; am and comp

NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2)

§6-23-3 [Notice] Preliminary decision by board of trustees; notice of [medical board's] preliminary decision[.]; petition for contested case hearing. (a) Upon receipt of [a report from the medical board on an application for disability retirement,] the medical board's certifications and findings pursuant to section 6-22-8, the board [of trustees] shall make a preliminary [determination] decision as to whether to accept the medical board's [findings] certifications and [certification] findings or to remand the [report] certifications and findings to the medical board for any clarification or correction. The board [of trustees] may reject the medical board's certifications or findings, including findings regarding [as to] causation.

(b) Upon acceptance, rejection, or remand of the medical board's [findings] certifications and [certification,] findings, or any part thereof, the [secretary] administrator shall, within [ten] fifteen

days thereafter, notify the [member] applicant of the board's preliminary decision and the medical board's [findings] certifications and [certification.] findings.

(c) If any [finding] certification or [certification] finding accepted by the board [of trustees] in its preliminary decision, or any independent determination made by the board, is adverse to the [member,] applicant, the [secretary] administrator shall notify the [member] applicant of the [member's] applicant's right to [appeal therefrom] file a petition for contested case hearing disputing the board's preliminary decision pursuant to section 6-23-4 and of the procedure for [perfecting] filing the [appeal.] petition. [If the board of trustees rejects the medical board's findings as to causation, and the findings of the board of trustees are adverse to the member, the member shall have the right to appeal therefrom in the same manner as the right to appeal from an adverse decision of the medical board, and the secretary shall notify the member of the member's right and the procedure for perfecting the appeal.] [Eff 11/9/81; am and comp NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2)

§6-23-4 Filing of [appeal.] petition for contested case hearing. [Any member may appeal from an adverse decision of the medical board to the board of trustees by filing a written statement of appeal on a form prescribed by the board of trustees.] After receipt of notice of the board's preliminary decision pursuant to section 6-23-3, an applicant may file a petition for contested case hearing disputing any adverse determination contained in the preliminary decision. The [statement of appeal] petition shall be filed in the office of the system in Honolulu no later than sixty days from the date of receipt of the written notification from the [secretary] administrator of the board's preliminary decision regarding the medical board's [decision.] certifications and findings. [Eff 11/9/81; am and comp NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2)

§6-23-5 [Statement of appeal.] Contents of petition. (a) The [statement of appeal] petition for contested case hearing disputing the board's

preliminary decision shall include the following [information]:

- (1) The identity of the [appellant.] petitioner. If the [appeal] petition is [made] filed by an employee organization on behalf of the member or applicant, the organization shall state that it has the right to represent the member or applicant and shall submit proof of [such] that right [at the hearing of the appeal;] with the petition; and
 - (2) The grounds for [appeal,] the petition, the specific issues involved, the contentions of the [appellant,] petitioner, and a description of the evidence that the [appellant] petitioner intends to introduce in support of [such] the contentions.
- (b) An incomplete [statement of appeal] petition may be returned to the [appellant] petitioner with an explanation for the return. If returned, the [appellant] petitioner shall have [five working] fifteen days in which to correct and refile the [statement.] petition. Any [statement] petition refiled within the [five working] fifteen day period may be rejected if the [statement] petition is still incomplete and the incompleteness is material and substantial.
- (c) Any [statement of appeal which] petition that is not filed within the period prescribed in [§6-23-4] section 6-23-4 and any [statement which] petition that is returned and not corrected and refiled within the period prescribed in subsection (b) shall be rejected. [Eff 11/9/81; am and comp NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2)

§6-23-6 Contested case hearing; before board or hearing officer. When [an appeal is perfected] a petition for contested case hearing is filed in accordance with this subchapter, [appellant] the petitioner shall be afforded a contested case hearing before the board [of trustees] or a hearing officer appointed by the board. [Eff 11/9/81; am and comp NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2, 91-9, 92-16)

§6-23-7 Time and place of hearing and notice. If the [appeal] petition [is to be] will be heard by the board [of trustees, it], the board shall set the time and place of hearing and the [secretary] administrator shall give written notice thereof to the [appellant.] petitioner. Unless otherwise directed by the board [of trustees], when the hearing of [an appeal] a petition is assigned to a hearing officer, the hearing officer shall set the time and place of hearing and give written notice thereof to the [appellant.] petitioner.

The notice of hearing shall conform to the requirements of section 91-9, [Hawaii Revised Statutes,] HRS, and shall be [given] personally delivered or mailed by registered or certified mail with return receipt requested at least fifteen days before the hearing. [Eff 11/9/81; am and comp
NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2, 91-9.5, 92-9)

§6-23-8 Docket. The [secretary] administrator shall maintain a docket of all [appeals] petitions and each [appeal] petition shall be assigned a number. [Eff 11/9/81; am and comp
NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2)

§6-23-9 Computation of time; extension of time.
(a) In computing any period of time prescribed or allowed by this subchapter, or any order of the board [of trustees, or by any applicable statute], the day of the act, event, or default after which the designated period of time is to run [is] shall not [to] be included. The last day of the period [so computed is to] shall be included unless it is a Saturday, Sunday, or legal holiday[, or a day or a part of a day on or for which the chief executive has granted administrative leave] in the State, in which event the period of time runs until the end of the next [regular work] day [for the system or the circuit courts] which is neither a Saturday, Sunday, [nor a] or legal holiday. Intermediate Saturdays, Sundays, [and] or legal holidays shall not be included in [a] the computation when the period of time prescribed or allowed is [ten] seven days or less. A half holiday shall not be considered a holiday for purposes of these computations. All references in this subchapter to

days shall mean calendar days, unless otherwise expressed.

(b) Except for the time for [the] filing [of] exceptions [covered by §6-23-21(b),] pursuant to section 6-23-19(b), whenever a person or agency is required or allowed to act within a time specified by this subchapter, the board [of trustees] or hearing officer may:

- (1) With or without motion or notice extend such period if written request therefor is made before the expiration of the specified period; or
- (2) Upon motion, permit the act to be done after the expiration of the specified period where the failure to act was the result of excusable neglect. [Eff 11/9/81; am and comp
NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2)

§6-23-10 Documents. (a) If any document filed in a proceeding governed by this subchapter is not in substantial conformity with the applicable rules of the board [of trustees], or is otherwise insufficient, the board or hearing officer may, on its own motion or on the motion of any party, strike such document or require its amendment. If amended, the document shall be effective as of the date of the original filing.

(b) All documents filed with or presented to the board [of trustees] or hearing officer may be retained in the files of the board. The board may permit the withdrawal of original documents upon submission of photostatic or properly authenticated copies to replace the originals. [Eff 11/9/81; am and comp
NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2, 91-9, 92-16)

§6-23-11 Deposition; application for. (a) Upon the written application of a party to a proceeding governed by this subchapter and for good cause shown, the board [of trustees] or the hearing officer may at any time after the filing of the [statement of appeal] petition, [may] order the taking of testimony of a witness by oral examination.

(b) The application shall be made to the board [of trustees] or the hearing officer and shall state the reasons why the deposition should be taken, the

time and place for taking the deposition, the name and [post office] mailing address of the witness, and the subject matter concerning which the witness is expected to testify. If good cause is shown, an order for the taking of the deposition containing the appropriate instructions shall be made and served upon the parties. [Eff 11/9/81; am and comp NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2)

§6-23-12 Depositions; person before whom taken, oath, examination, and cross-examination, record of examination, filing of deposition. (a) The deposition shall be taken before an officer authorized to administer oaths.

(b) The officer before whom the testimony is to be taken shall put the witness to oath. The adverse party shall have the right to cross-examine the witness. The questions propounded to the witness and the answers thereto shall be taken stenographically and transcribed.

(c) All objections made at the time of the examination shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objection. The officer taking the deposition shall certify on the deposition that the witness was duly sworn and that the deposition is a true record of the testimony given by the witness and shall forward the deposition with two copies thereof in a sealed envelope, endorsed with the title of the proceeding, to the board [of trustees] at [its] the system's office [in Honolulu, Hawaii]. [Eff 11/9/81; am and comp NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2)

§6-23-13 Use of depositions. (a) A deposition ordered and taken in accordance with [§6-23-12] section 6-23-12 may be used in a proceeding if the presiding officer finds that the evidence is otherwise admissible and:

- (1) The witness is dead; [or]
- (2) The witness is out of the State, unless it appears that the absence of the witness is procured by the party offering the deposition; [or]

- (3) The witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; [or]
- (4) The party offering the deposition has endeavored and has been unable to procure the attendance of the witness by subpoena; or
- (5) Upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony orally before the board or hearing officer, to allow the deposition to be made.

(b) If any part of the deposition is put in evidence by a party, any other party may require the production of the remainder of any other portions of the deposition. [Eff 11/9/81; am and comp
NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp:
HRS §§88-82, 91-2)

§6-23-14 Presiding officer; powers and duties.

(a) The chairperson or other member of the board [of trustees] designated by the chairperson or a hearing officer designated by the board [of trustees] shall preside at all hearings on [appeals] petitions governed by this subchapter.

(b) When the presiding officer is a hearing officer, the hearing officer shall have the following powers and duties:

- (1) To determine the time and place of hearing and, in the hearing officer's discretion or at the request of a party, [may] to continue or postpone any hearing;
- (2) To regulate the course and conduct of the hearing;
- (3) To administer oaths and affirmations;
- (4) To examine witnesses;
- (5) To issue subpoenas;
- (6) To rule on offers of proof and receive evidence;
- (7) To hold conferences, before or during the hearing, for the [settlement or] simplification of issues;
- (8) To rule on motions and dispose of procedural requests or similar matters;
- (9) To remand, in the hearing officer's discretion, to the medical board[,] the

[report] certifications and findings involved in the [appeal;] petition, or any matter or issue related thereto; and to accept from the medical board any new or amended report or documents, including any new certifications or findings;

- (10) To make a recommended decision to the board [of trustees];
- (11) To dispose of any matter that normally and properly arises before or in the course of the hearing; and
- (12) To take any other action authorized by this subchapter or by law that the hearing officer may deem necessary for the orderly and just conduct of the hearing.

(c) When the [appeal] petition is heard by the board [of trustees], the presiding officer shall have all of the foregoing powers and duties except the making of a recommended decision. [Eff 11/9/81; am and comp NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2, 91-9, 92-16)

§6-23-15 Reassignment of [appeal.] petition. If for any reason the hearing officer designated for the hearing of [an appeal] the petition for contested case hearing is unable to complete the hearing, the board [of trustees,] may, without abatement of the proceedings, [may] assign the [appeal] petition to another hearing officer. [Eff 11/9/81; am and comp NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2, 92-16)

§6-23-16 Conduct of hearing. (a) The presiding officer shall convene the hearing and summarize the [statement of appeal.] issues in the petition. The petitioner shall have the burden of proof, including the burden of producing evidence and the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence.

(b) Before presenting the case, the [appellant] petitioner shall have the opportunity to make an opening statement. The deputy attorney general assigned to the medical board shall also have the opportunity to make an opening statement then or after the [appellant] petitioner has presented the

[appellant's] petitioner's case. Opening statements may be waived by either party.

(c) Witnesses shall testify in the following order:

- (1) Witnesses for the [appellant;] petitioner;
- (2) Witnesses called by the deputy attorney general;
- (3) Witnesses for the [appellant] petitioner in rebuttal;
- (4) Witnesses called by the deputy attorney general in rebuttal;
- (5) Additional witnesses as the presiding officer may deem necessary.

(d) Witnesses shall be examined in the following order:

- (1) Direct examination by the party calling the witness;
- (2) Cross examination by the other party;
- (3) Redirect examination by the party calling the witness;
- (4) Recross examination by the other party;
- (5) Examination by the presiding officer or any member of the board [of trustees].

(e) After the presentations of evidence is concluded, unless the [appeal] petition is submitted by either party or both parties without argument, the [appellant] petitioner shall open the argument followed by argument by the deputy attorney general and the [appellant] petitioner may present rebuttal argument which shall be limited to countering any matter or argument presented by the deputy attorney general.

Reasonable time limits may be imposed by the presiding officer for argument. Argument may be waived by either party.

(f) The presiding officer, within such time limits as the presiding officer may impose, may permit the parties to submit written memoranda in support of their respective positions and proposed findings of fact[.] and conclusions of law. [Eff 11/9/81; am and comp NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2, 91-9, 91-10, 92-16)

§6-23-17 Recommended decision. When [an appeal] a petition is heard by a hearing officer, the hearing officer, within sixty days after the close of the reception of evidence or the filing of any memoranda or proposed findings of fact or conclusions of law

permitted by the hearing officer, whichever is later, shall make and file with the board a recommended decision which shall include recommended findings of fact and conclusions of law. If any party has been permitted to file proposed findings of fact, the hearing officer shall incorporate in the recommended decision a ruling on each proposed finding so presented. [Eff 11/9/81; am and comp
 NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2, 91-9, 92-16)

§6-23-18 Proposed decision. Upon receipt of the recommended decision, the board [of trustees] may accept it as its proposed decision, or may remand [it] the recommended decision to the hearing officer for any clarification or correction, or may modify [it] the recommended decision and issue its own draft of a proposed decision.

A copy of the proposed decision shall be served upon each party. [Eff 11/9/81; am and comp
 NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2, 91-11, 92-16)

§6-23-19 Filing of exceptions; extension of time; finality of proposed decision. (a) Within fifteen days after receipt of a copy of the board's proposed decision, any party may file with the board exceptions to any part thereof and request review by the board. Each exception shall specify the portion of the record and authorities relied on to sustain each point. Eight copies of the exceptions and request for review shall be filed with the board. In addition, a copy of the exceptions and request for review shall be served upon each of the parties who were served with a copy of the proposed decision.

(b) Any party may apply for an extension of time within which to file exceptions to the proposed decision by filing two copies of a written application setting forth the reasons for the request. The application shall be filed before the expiration of the period prescribed for the filing of exceptions. Upon good cause shown, the board, or any member of the board, may extend the time for filing exceptions for an additional period not to exceed fifteen days.

(c) If no exceptions and request for review are filed within the time specified, the proposed decision

shall become final, unless the board on its own motion orders further proceedings to be held. [Eff 11/9/81; am and comp NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2, 91-11, 92-16)

§6-23-20 Argument on exceptions. Upon the filing of exceptions by a party adversely affected by the proposed decision, the board [of trustees] shall grant such party an opportunity to present arguments to the board [of trustees]. The administrator shall set the time and place of hearing of argument on exceptions and give written notice thereof to the parties. [Eff 11/9/81; am and comp NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2, 91-11, 92-16)

§6-23-21 Final decision. (a) Where exceptions have been filed to the board's proposed decision, the board, within sixty days after the hearing on the exceptions, shall render its final decision. In rendering its final decision, the board shall consider the whole record or such portions thereof as may be cited by the parties, and shall resolve all questions of fact by what it deems to be the [greater weight] preponderance of the evidence [thereon]. The final decision shall be in writing and shall contain findings of fact and conclusions of law upon which the decision is based.

(b) Where the board has heard and examined all of the evidence, the board, within [60] sixty days after the reception of the evidence, or filing of any memoranda or proposed findings permitted to be filed by any party, shall render its final decision which shall contain findings of fact and conclusions of law upon which the decision is based. If any party has been permitted to file proposed findings of fact, the final decision shall incorporate a ruling on each proposed finding so presented.

(c) The final decision shall be personally delivered or mailed to the parties by registered or certified mail with return receipt requested. [Eff 11/9/81; am and comp NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2, 91-10, 91-11, 91-12, 92-16)

§6-23-21.01 Attorneys' fees upon successful petition. (a) If after filing a petition with the board, the petitioner is the prevailing party before the board or a court of competent jurisdiction, the petitioner may move for reasonable attorneys' fees and costs pursuant to the standards set forth in rule 1.5 of the Rules of Professional Conduct adopted by the Hawaii supreme court.

(b) The petitioner shall file a motion for attorneys' fees and costs with the board or the court no later than sixty days from the date of the board's final decision or the circuit court's ruling if the board's decision is appealed, whichever is later. The motion shall state the amount of fees and costs requested, and shall attach the following:

- (1) A copy of the fee agreement between the petitioner and the petitioner's attorney, or an affidavit or declaration signed by the petitioner stating the attorney's fees agreed upon between the petitioner and the petitioner's attorney;
- (2) A copy of the billing statement(s) from the petitioner's attorney detailing the legal work performed in connection with the petitioner's case, including:
 - (A) The legal work performed shall be itemized and described in detail by each service, along with the time spent on each service shown in increments of one-tenth of an hour or less. Lumped entries or block billing shall not be accepted; and
 - (B) Costs shall be itemized and described in detail and accompanied by either:
 - (i) Invoices and receipts; or
 - (ii) An affidavit signed by the petitioner's attorney attesting to the costs; and
- (3) Proof of payment of the requested attorneys' fees and costs by the petitioner to the petitioner's attorney.

(c) Reimbursement of attorneys' fees shall not be awarded until the requirements of this section are satisfied. The board may require additional details and justification of time billed or costs claimed.

[Eff and comp NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-28, 88-82, 91-2)

SUBCHAPTER 2

OTHER CONTESTED CASE HEARINGS

§6-23-22 [Applicability of subchapter 1.] Scope.
[Except as otherwise provided in this subchapter, the provisions of subchapter 1 shall apply to all other contested case hearings.] This subchapter shall govern all contested case hearings under chapter 88, HRS, except for petitions from preliminary decisions under subchapter 1, and petitions for declaratory rulings under chapter 6-20, subchapter 4. The rules in this subchapter shall not apply to hearings related to claims arising under chapter 92F, HRS. [Eff 11/9/81; am and comp NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9)

§6-23-23 [Notice of hearing.] Definitions.
[Notice of hearing shall be given by the secretary or by the hearing officer, if the case is to be heard by a hearing officer, conforming to the requirements of section 91-9 and 91-9.5, Hawaii Revised Statutes.] Definitions generally applicable to this subchapter are also provided in section 88-21, HRS, and section 6-20-1. As used in this subchapter:

"Informal decision" means a written determination by the system that has not been expressly approved by the board of trustees, to deny a member or petitioner any benefit, service credit, or other alleged entitlement under chapter 88, HRS.

"Petition" means a request for a contested case hearing filed with the board of trustees requesting relief from an alleged misapplication or violation of chapter 88, HRS, or any rules promulgated thereunder, meeting the requirements of sections 6-23-24 and 6-23-28.

"Respondent" means any person proceeded against in the petition. [Eff 11/9/81; am and comp NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-21, 91-2, 91-9)

§6-23-24 [Conduct of hearing.] Commencement of proceedings; service. [(a) The presiding officer of the hearing shall convene the hearing, briefly state

the nature of the case, and make a determination as to which party has the burden of proof. The determination shall be made in accordance with section 91-10, Hawaii Revised Statutes. Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence and the burden of persuasion.

(b) The party having the burden of proof shall proceed first in the presentation of opening statements, witnesses and argument, followed by the other party.] (a) A proceeding shall commence with the filing of a petition pursuant to section 6-23-28 for a contested case hearing, including a certificate of service, with the board at the office of the system. Upon the filing of a petition and certificate of service, the system shall date stamp the petition and assign a docket number, as provided in section 6-23-8.

(b) The petitioner shall serve personally or by first class mail one copy of the petition and certificate of service on each of the parties to the proceedings, or upon an agent or attorney representing the party. [Eff 11/9/81; am and comp

NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9)

§6-23-25 Limitations period. All petitions under this subchapter are forever barred unless filed within two years after the petitioner first knew or should have known that the system had denied the petitioner the alleged benefit, service credit, or other entitlement under chapter 88, HRS, that forms the basis for the petition. Such knowledge includes the petitioner's receipt of an informal decision from the system denying the petitioner the alleged benefit, service credit, or entitlement. The petitioner bears the burden of proving that the petitioner has complied with the limitations period. [Eff and comp

NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9, 661-5)

§6-23-26 Computation of time; extension of time.

(a) In computing any period of time prescribed or allowed by this subchapter, or any order of the board, the day of the act, event, or default after which the designated period of time is to run shall not be included. The last day of the period shall be included.

unless it is a Saturday, Sunday, or legal holiday in the State, in which event the period of time runs until the end of the next day which is neither a Saturday, Sunday, or legal holiday. Intermediate Saturdays, Sundays, or legal holidays shall not be included in the computation when the period of time prescribed or allowed is seven days or less. A half holiday shall not be considered a holiday for purposes of these computations. All references in this subchapter to days shall mean calendar days, unless otherwise expressed.

(b) Except for the time for filing exceptions under section 6-23-50(b), but including the limitations period, whenever a person or agency is required or allowed to act within a time specified by this subchapter, the board or hearing officer may:

- (1) Extend such period, for a reasonable amount of time, if a written request is filed with the board before the specified period expires; or
- (2) Upon motion, permit the act to be done after the expiration of the specified period where the failure to act was the result of excusable neglect. [Eff and comp

NOV 26 2009] (Auth: HRS §§88-28,
91-2) (Imp: HRS §§91-2, 91-9)

§6-23-27 Appearances. Any party may appear in person or by counsel or other representative. A partner may appear on behalf of a partnership and an officer may appear on behalf of a corporation. Persons who appear as counsel must conform to the standards of conduct and ethics required of practitioners before the courts of the State. [Eff and comp NOV 26 2009]
(Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9)

§6-23-28 Contents of petition; form; rejection.

(a) The original and one copy of the petition shall be filed with the board. The petition shall contain:

- (1) The petitioner's name, mailing address, and telephone number, and the petitioner's fax number and e-mail address, if available;
- (2) A brief statement of the nature of the petitioner's interest, including reasons for the submission of the petition;

- (3) A designation of the specific statutory provision, rule, or order in question;
- (4) A complete statement of the relevant facts, including the date of the alleged denial of the benefit, service credit, or other entitlement;
- (5) A brief statement of the issues raised;
- (6) A statement of the petitioner's interpretation of the statute, rule, or order or the petitioner's position or contention with respect thereto;
- (7) A statement containing the legal reasons, including any legal authorities, in support of the petitioner's interpretation and the relief sought. The board may require the petitioner to file additional statements;
- (8) The names of any other parties or potential parties; and
- (9) The petitioner's signature.

(b) The petitioner may use Form ERS 202, entitled "Petition for Contested Case Hearing, Sample Format" dated August 2009, Appendix A, located at the end of this chapter, as a petition, or may file a petition in pleading or letter format, so long as the petition is legible and complies with subsection (a).

(c) The board may reject any petition that does not conform to the requirements of subsections (a) and (b). The rejection shall be in writing and shall state the reasons therefor. [Eff and comp NOV 26 2009]
(Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9)

§6-23-29 Consideration of petition. (a) The presiding officer, within a reasonable amount of time after the petition has been filed, shall do one of the following:

- (1) Deny the petition where:
 - (A) The question is speculative or purely hypothetical and does not involve an existing situation or one which may reasonably be expected to occur in the near future;
 - (B) The petitioner's interest is not of the type which confers sufficient standing to maintain an action in a court of law;
 - (C) The issuance of a final decision may adversely affect the interest of the State, the system, or any of the

officers or employees in any litigation which is pending or may be reasonably be expected to arise;

(D) The petition requests a decision on a statutory provision not administered by the board or the matter is not otherwise within the jurisdiction of the board; or

(E) The petition is frivolous; or

(2) Set the petition for hearing.

(b) Any order dismissing the petition under this section shall:

(1) Be in writing;

(2) Include separate findings of fact and conclusions of law; and

(3) Constitute a final decision by the board pursuant to section 6-23-52 or, if rendered by a hearing officer, a recommended decision pursuant to section 6-23-48. [Eff and comp

NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9, 91-12, 92-16)

§6-23-30 Jurisdiction; powers and duties of presiding officer. (a) The board or the hearing officer shall preside over the matters governed by this subchapter, and shall have jurisdiction over those matters expressly authorized by chapter 88, HRS.

(b) The presiding officer shall have the following powers and duties:

(1) Continue or postpone, at the request of a party, any hearing;

(2) Regulate the course and conduct of the hearing;

(3) Administer oaths and take affidavits;

(4) Examine witnesses and admit or exclude documentary or other evidence;

(5) Issue and dispose of subpoenas;

(6) Hold conferences, before or during the hearing, for the simplification of issues;

(7) Rule on motions, requests, offers of proof, procedural requests, and similar matters;

(8) Hear and decide questions of fact, law, or discretion; and

(9) Do all other acts and take all measures necessary, as authorized by chapter 88, HRS, for the maintenance of order and for the efficient, fair, and impartial adjudication of issues arising in proceedings governed by

this subchapter. [Eff and comp
 NOV 26 2009] (Auth: HRS §§88-28,
 91-2) (Imp: HRS §§91-2, 91-9, 91-10, 92-16)

§6-23-31 Burden of proof. Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence and the burden of persuasion. The party having the burden of proof shall proceed first in the presentation of opening statements, evidence, witnesses, and arguments, followed by the other party. The degree or quantum of proof shall be a preponderance of the evidence. [Eff and comp NOV 26 2009]
 (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-10, 92-16)

§6-23-32 Prehearing conference. (a) The presiding officer, at any time before the hearing is scheduled, may direct the parties and their counsel or other representatives to appear at a prehearing conference to consider:

- (1) The simplification of issues and stipulations as to facts and law not in dispute;
- (2) The necessity or desirability of amendment to the pleadings;
- (3) The exchange of exhibits, documents, and prepared testimony, admissions, and stipulations as to the admissibility or relevance of exhibits;
- (4) The limitation of the number of witnesses;
- (5) Time, place, and other considerations, such as time constraints, for the hearing; and
- (6) Any other matters which may expedite the disposition of the proceeding.

(b) If no prehearing conference is held, the presiding officer may require each party to submit a statement disclosing and identifying all witnesses to be called at the hearing, all exhibits to be used at the hearing, and other matters as shall simplify the issues and expedite the disposition of the proceeding. A copy of the statement shall be served on all parties at a date prior to the hearing as designated by the hearing officer. [Eff and comp NOV 26 2009]
 (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9, 92-16)

§6-23-33 Notice of hearing. (a) At least fifteen days prior to hearing, all parties shall be given written notice of the hearing, including:

- (1) The date, time, place, and nature of the hearing;
- (2) The section of the pertinent statutes or rules involved;
- (3) A concise statement of the issues and basic facts giving rise to the petition. A copy of the petition attached to the notice of the hearing shall satisfy this requirement; and
- (4) The right to retain counsel, if desired. The board may, at any time, require any person transacting business before the board in a representative capacity to show the person's authority or qualification to act in such capacity.

(b) The notice of hearing shall conform to the requirements of section 91-9, HRS, and shall be personally delivered or mailed by registered or certified mail with return receipt requested. [Eff and comp NOV 26 2009] (Auth: HRS §§88-28, 91-2)
(Imp: HRS §§91-2, 91-9, 91-9.5)

§6-23-34 Memorandum in opposition. Each respondent, within thirty days after the receipt of the notice of hearing, may file and serve upon all parties a memorandum in opposition stating concisely and fully the respondent's legal and factual position. [Eff and comp NOV 26 2009] (Auth: HRS §§88-28, 91-2)
(Imp: HRS §§91-2, 91-9)

§6-23-35 Procedure at hearings. (a) All hearings shall be conducted pursuant to chapter 91, HRS, and this subchapter, before the presiding officer. All parties shall be afforded the full opportunity to present evidence and argument on all issues. If there is no dispute of fact, the presiding officer may permit the parties to proceed by memoranda of law in lieu of a hearing.

- (b) The hearing shall proceed as follows:
- (1) Opening statements. Petitioner shall first present opening statements, followed by respondents;

- (2) Evidence. Petitioner shall first present evidence, followed by respondents, followed by any rebuttal evidence;
- (3) Witnesses. Each witness shall be examined first by the party calling the witness before cross-examination by the opposing party;
- (4) Closing argument. After all evidence and witnesses have been admitted, petitioner shall first make closing arguments, if necessary, and respondent shall then make closing arguments, if necessary.

(c) The hearing shall conclude after closing arguments have been made and the presiding officer is satisfied that no further evidence or argument is necessary. [Eff and comp NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9, 91-10, 92-16)

§6-23-36 Evidence; witnesses; exhibits. (a) The presiding officer shall admit all evidence that is not irrelevant, immaterial, unduly repetitious, or otherwise unreliable or of little probative value. Evidence relating to settlement that would be excluded under rule 408 of the Hawaii Rules of Evidence, chapter 626, HRS, shall not be admissible.

(b) At hearing, witnesses shall be examined orally, under oath. Parties shall have the right to cross-examine witnesses, so long as the cross-examination is not unduly repetitious. At the discretion of the presiding officer, re-direct examination and re-cross examination may be permitted.

(c) For any exhibit sought to be admitted during a hearing before the board, an original plus eight copies shall be furnished to the presiding officer, and one copy shall be furnished to each party. For any exhibit sought to be admitted during a hearing before a hearing officer, an original plus one copy shall be distributed to the hearing officer, and one copy shall be furnished to each party. [Eff and comp NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9, 91-10, 92-16)

§6-23-37 Motions. (a) General. All motions, except those made orally on the record during a hearing, shall:

- (1) Be in writing;

- (2) Provide the name of the petitioner and docket number of the case;
- (3) State the factual or legal grounds, or both, for the motion with particularity;
- (4) Set forth the relief or order sought; and
- (5) Be accompanied by an affidavit or declaration or other evidence relied upon.

The motion may be accompanied by legal memorandum, not to exceed twenty pages. All motions shall be accompanied by a certificate of service and shall be served on each party to the proceeding.

(b) Response to motions. Response to motions shall be filed with the board or the hearings officer within thirty days after service of the motion. The response shall be accompanied by an affidavit or declaration or other evidence, and may be accompanied by legal memorandum, not to exceed twenty pages. If no response is filed within the designated period, the presiding officer may deem that the responsive party has waived any objection to the motion.

(c) Discretion. Upon the motion of a party, or upon the presiding officer's own motion, the presiding officer may extend or shorten the time for a party to file a response to a motion, and may make such other orders regarding a motion as the presiding officer deems appropriate. The presiding officer may permit oral argument where the officer deems it necessary or desirable. [Eff and comp NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9, 91-10, 92-16)

§6-23-38 Motions to dismiss or for summary judgment; disposition of claims. (a) The presiding officer, upon motion by a party, may at any time issue an order for summary judgment in favor of the petitioner or respondent as to all or any part of the claims, if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law.

(b) The presiding officer, upon motion by a party or on the presiding officer's own motion, may at any time issue an order dismissing the petition on the grounds of lack of jurisdiction, failure to state a claim on which relief may be granted, or any other ground upon which the petition may be dismissed prior to the hearing. In addition, the presiding officer may issue an order of dismissal of the petition upon a

stipulation of the parties or upon a voluntary dismissal by the petitioner.

(c) An order to dismiss all claims shall be a final decision if issued by the board, and shall be a recommended decision pursuant to section 6-23-48 if issued by the hearing officer. An order that disposes of some but not all of the claims in the petition shall be considered an interlocutory order and shall be appealable under section 91-14, HRS, only after a final decision has been issued, or if deferral of review would deprive the appellant of adequate judicial review under section 91-14, HRS. [Eff and comp

NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9, 91-12, 92-16)

§6-23-39 Intervention. (a) Upon timely motion and at the discretion of the presiding officer, the administrator or any person or agency may be permitted to intervene as a party in a contested case proceeding if the administrator, person, or agency asserts a substantial interest in the outcome of the contested case proceeding or the intervention will be conducive to effectuating applicable laws or governmental functions and purposes.

(b) The presiding officer shall have the discretion to deny a motion to intervene for reasons including but not limited to the following:

- (1) The position of the person seeking intervention is adequately represented by a party already admitted to the proceeding;
- (2) Granting the intervention will render the proceeding inefficient and unmanageable;
- (3) Granting the intervention will unduly delay the proceeding; or
- (4) Granting the intervention will harass, hinder, or prejudice the rights of any party to the proceeding.

(c) Motions to intervene shall be made pursuant to section 6-23-37. [Eff and comp NOV 26 2009]
 (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-9, 92-16)

§6-23-40 Default. (a) The presiding officer may find a party to be in default upon motion by a party or at the presiding officer's discretion, on the following grounds:

- (1) Failure to comply with an administrative order;
- (2) Failure to appear at a conference or hearing without good cause being shown; or
- (3) Failure to prosecute the case.

(b) When the presiding officer finds that a default has occurred, the presiding officer may issue a default order against the defaulting party. The order shall include findings of fact showing the grounds for the order, conclusions regarding material issues of fact and law, and other terms or conditions, as appropriate. The default order shall constitute a final decision if issued by the board, and shall constitute a recommended decision pursuant to section 6-23-48 if filed by the hearing officer. [Eff and comp

NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9, 91-12, 92-16)

§6-23-41 Filing of documents; public records.

(a) Filing. If any document filed in a proceeding governed by this subchapter is not in substantial conformity with the applicable rules of the board, or is otherwise insufficient, the presiding officer may, at the presiding officer's discretion or on the motion of any party, strike the document or require its amendment. If amended, the document shall be effective as of the date of the original filing.

(b) Public records. Notwithstanding section 6-20-4, all documents filed in a proceeding under this subchapter shall be retained in the files of the board and shall be government records that are open to inspection and copying by members of the public, except as provided in chapter 92F, HRS, and other applicable law. Any party who believes that a document filed under this subchapter is not a government record shall file a motion with the board or hearing officer, stating the legal basis as to why the party believes that the document is not a government record as defined in chapter 92F, HRS. [Eff and comp NOV 26 2009]
(Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9, 92F-11, 92F-12, 92F-13, 92F-14)

§6-23-42 Deposition; application for. (a) Upon the written application of a party to a proceeding governed by this subchapter and for good cause shown, the board or the hearing officer may, at any time after

the filing of the petition, order the taking of testimony of a witness by oral examination.

(b) The application shall be made to the board or the hearing officer and shall state the reasons why the deposition should be taken, the time and place for taking the deposition, the name and mailing address of the witness, and the subject matter concerning which the witness is expected to testify. If good cause is shown, an order for the taking of the deposition containing the appropriate instructions shall be made and served upon the parties. [Eff and comp

NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9, 92-16)

§6-23-43 Depositions; person before whom taken, oath, examination, and cross-examination, record of examination, filing of deposition. (a) The deposition shall be taken before an officer authorized to administer oaths.

(b) The officer before whom the testimony is to be taken shall put the witness to oath. The adverse party shall have the right to cross-examine the witness. The questions propounded to the witness and the answers thereto shall be taken stenographically and transcribed.

(c) All objections made at the time of the examination shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objection. The officer taking the deposition shall certify on the deposition that the witness was duly sworn and that the deposition is a true record of the testimony given by the witness and shall forward the deposition with two copies thereof in a sealed envelope, endorsed with the title of the proceeding, to the board at the system's office. [Eff and comp

NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9)

§6-23-44 Use of depositions. (a) A deposition ordered and taken in accordance with section 6-23-42 may be used in a proceeding if the presiding officer finds that the evidence is otherwise admissible and:

- (1) The witness is dead;
- (2) The witness is out of the State, unless it appears that the absence of the witness is

procured by the party offering the deposition;

- (3) The witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment;
- (4) The party offering the deposition has endeavored and has been unable to procure the attendance of the witness by subpoena; or
- (5) Upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony orally before the board or hearing officer, to allow the deposition to be made.

(b) If any part of the deposition is put in evidence by a party, any other party may require the production of the remainder of any other portions of the deposition. [Eff and comp NOV 26 2009]
(Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9, 91-10, 92-16)

§6-23-45 Disqualification of board member or hearing officer. (a) No matter shall be heard by a member of the board or by a hearing officer who:

- (1) Has any direct financial interest in the matter being heard;
- (2) Has personally and substantially participated:
 - (A) In an investigation relating to the institution of the proceeding; or
 - (B) In the development of the evidence to be introduced in the proceeding; or
- (3) Is related within the third degree by blood or marriage to any party to the proceeding or any party's representative or attorney.

(b) A board member or hearing officer may be disqualified from the case upon motion of a party or at the presiding officer's discretion, only upon a preponderance of the evidence showing grounds for disqualification. A motion to disqualify a board member or hearing officer shall be filed and decided prior to the hearing. An order granting or denying a motion to disqualify shall contain separate findings of fact and conclusions of law. [Eff and comp

NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 92-16)

§6-23-46 Reassignment of case. If for any reason the hearing officer designated for the hearing of a case is unable to complete the hearing, the board may, without abatement of the proceedings, assign the case to another hearing officer. [Eff and comp
NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp:
HRS §§91-2, 92-16)

§6-23-47 Ex parte contacts. At no time after the petition is served and filed shall any member of the board or the hearing officer, who are deciding the petition, consult any person on any issue of fact except upon notice and opportunity for all parties to participate, save to the extent required for the disposition of ex parte matters authorized by law. Any ex parte memorandum or other written communication addressed to a board member or the hearing officer, by or on behalf of any party, shall be regarded as argument made in the proceeding and shall be served on all other parties. [Eff and comp NOV 26 2009]
(Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-13,
92-16)

§6-23-48 Recommended decision. When a case is heard by a hearing officer, the hearing officer shall make and file with the board a recommended decision which shall include recommended findings of fact and conclusions of law. If any party has been permitted to file proposed findings of fact and conclusions of law, the recommended decision shall include rulings on each proposed finding of fact and conclusion of law. The hearing officer shall file the recommended decision within sixty days after the close of the reception of evidence or the filing of any post-hearing memoranda or proposed findings of fact and conclusions of law, whichever is later. [Eff and comp NOV 26 2009]
(Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9,
91-11, 92-16)

§6-23-49 Proposed decision. Upon receipt of the recommended decision, the board may accept it as its proposed decision, or may remand the recommended decision to the hearing officer for any clarification

or correction, or may modify the recommended decision and issue its own draft of a proposed decision.

A copy of the proposed decision shall be served on each party. [Eff and comp NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9, 91-11, 92-16)

§6-23-50 Filing of exceptions; extension of time; finality of proposed decision. (a) Within fifteen days after receipt of a copy of the board's proposed decision, any party may file with the board exceptions to any part thereof and request review by the board. Each exception shall specify the portion of the record and authorities relied on to sustain each point. Twelve copies of the exceptions and request for review shall be filed with the board. In addition, a copy of the exceptions and request for review shall be served upon each of the parties who were served with a copy of the proposed decision.

(b) Any party may apply for an extension of time within which to file exceptions to the proposed decision by filing two copies of a written application setting forth the reasons for the request. The application shall be filed before the expiration of the period prescribed for the filing of exceptions. Upon good cause shown, the board, or any member of the board, may extend the time for filing exceptions for an additional period not to exceed thirty days.

(c) If no exceptions and request for review are filed within the time specified, the proposed decision shall become final, unless the board on its own motion orders further proceedings to be held. [Eff and comp NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-11, 91-12)

§6-23-51 Argument on exceptions. Upon the filing of exceptions by a party adversely affected by the proposed decision, the board shall grant such party an opportunity to present arguments to the board. The administrator shall set the time and place of hearing of argument on exceptions and give written notice thereof to the parties. [Eff and comp

NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-11)

§6-23-52 Final decision. (a) Where exceptions have been filed to the board's proposed decision, the board, within sixty days after the hearing on the exceptions, shall render its final decision. In rendering its final decision, the board shall consider the whole record or such portions thereof as may be cited by the parties, and shall resolve all questions of fact by what it deems to be the preponderance of the evidence. The final decision shall be in writing and shall contain findings of fact and conclusions of law upon which the decision is based.

(b) Where the board has heard and examined all of the evidence, the board, within sixty days after the reception of the evidence, or filing of any memoranda or proposed findings permitted to be filed by any party, shall render its final decision which shall contain findings of fact and conclusions of law upon which the decision is based. If any party has been permitted to file proposed findings of fact, the final decision shall incorporate a ruling on each proposed finding so presented.

(c) The final decision shall be personally delivered or mailed to the parties by registered or certified mail with return receipt requested. [Eff and comp
NOV 26 2009] (Auth: HRS §§88-28, 91-2)
(Imp: HRS §§91-2, 91-11, 91-12)

§6-23-53 Reconsideration of decision. (a) A motion for reconsideration shall be filed with the board within fifteen days after the board files its final decision. The motion for reconsideration shall clearly specify that the motion is for reconsideration.

(b) The motion for reconsideration shall state specifically what points of law or fact, or both, the motion asserts the board has overlooked or misunderstood, together with brief arguments on the points raised.

(c) No answer or reply to a motion for reconsideration shall be required or considered unless requested by the board. Oral argument on the motion shall be at the discretion of the board.

(d) Only one motion for reconsideration shall be filed by each party and the filing of a motion for reconsideration shall not operate as a stay of the board's final decision or order." [Eff and comp

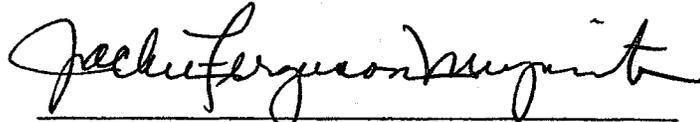
NOV 26 2009] (Auth: HRS §§88-28, 91-2) (Imp:
HRS §§91-2, 91-9)

2. Material, except source notes, to be repealed is bracketed. New material is underscored.

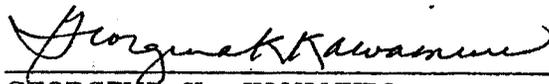
3. Additions to update source notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 6-23, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on August 10, 2009 and filed with the Office of the Lieutenant Governor.



JACKIE FERGUSON-MIYAMOTO
Chair, Board of Trustees
Employees' Retirement System
State of Hawaii



GEORGINA K. KAWAMURA
Director of Finance
Department of Budget and Finance

APPROVED AS TO FORM:


BRIAN P. ABURANO
Deputy Attorney General

PETITION FOR CONTESTED CASE HEARING SAMPLE FORMAT

BOARD OF TRUSTEES EMPLOYEES' RETIREMENT SYSTEM STATE OF HAWAII

In the Matter of)	DOCKET No.:	_____
)		(To be filled in by agency)
_____)	PETITION FOR CONTESTED CASE	
(Petitioner's first and last name))	HEARING	
Petitioner,)	Attachments or Exhibits:	
for a Contested Case Hearing.)	1. _____	
)	2. _____	
)	3. _____	
)	4. _____	
_____)		

PETITION FOR CONTESTED CASE HEARING

1. PETITIONER'S INFORMATION

- A. **Petitioner's Name:** *(Type or write in the Petitioner's full legal name.)*
- B. **Petitioner's Mailing Address:** *(Type or write in the Petitioner's complete mailing address. Unless the Petitioner is represented by an attorney, all notices and pleadings in this proceeding will be mailed to this address.)*
- C. **Petitioner's Telephone Number:** *(Type or write in the Petitioner's complete telephone number.)*
- D. **Petitioner's Fax Number:** *(Type or write in the Petitioner's complete fax number, if available.)*
- E. **Petitioner's E-Mail Address:** *(Type or write in the Petitioner's e-mail address, if available.)*

2. STATEMENT OF PETITIONER'S INTEREST, REASONS FOR SUBMITTING PETITION AND ISSUES

- A. Nature of Petitioner's Interest:** *(Briefly state the nature of Petitioner's interest in this Petition. For example: "I am a member of the Employees' Retirement System," or "I am a beneficiary of the Employees' Retirement System.")*
- B. Petitioner's Reasons for Submitting Petition:** *(Briefly state Petitioner's reasons for filing this Petition. For example, "The Employees' Retirement System has improperly calculated my service credits.")*
- C. Petitioner's Statement of Issues:** *(Briefly describe all of the issues being raised in this Petition including all of the claims being made under the Petition. For example, "Under Hawaii Revised Statutes § 88-132, I am claiming military service credit because I was an active member of the Employees' Retirement System when I went on military leave in March 1972.")*

3. STATEMENT OF RELEVANT FACTS

(In this section of the Petition, state all of the facts that Petitioner believes are relevant to the issues being raised in the Petition, including a chronology of events, if that would be helpful to understanding the issues. If Petitioner is disputing a denial of retirement benefits, service credits, or some other entitlement, state the date of the denial, the date when you became aware of the denial, and how you discovered or learned of the denial.)

4. STATEMENT OF LEGAL REASONS SUPPORTING THE PETITION

(In this section of the Petition, state the legal reasons supporting Petitioner's claims or positions on issues raised in the Petition. If the legal reasons include any court decisions or other legal authorities, identify them and state how they support Petitioner's claims or positions.)

5. PETITIONER'S POSITION ON STATUTES, RULES, AND ORDERS IN QUESTION

- A. Statutes:** *(Identify any statutes which are involved in the Petition and Petitioner's position on those statutes. For example, if Petitioner is disputing a denial of retirement benefits, identify all statutes under which Petitioner believes that those benefits should be granted. If Petitioner is contesting the interpretation of any statutes by the Employees' Retirement System (ERS), identify the statutes in question and provide Petitioner's interpretation of those statutes.)*
- B. Rules:** *(Identify any ERS or other agency rules which are involved in the Petition. For example, if Petitioner is claiming some right or benefit, identify all rules which support Petitioner's claim. If Petitioner is claiming that any ERS rules are invalid, identify those rules and state the reasons that Petitioner claims they are invalid. If Petitioner is contesting the ERS' interpretation of any rules, identify the rules, and provide Petitioner's interpretation of those rules. If no ERS or other agency rules are involved, state "None" or "Not Applicable".)*

- C. **Orders:** (*Identify any court, ERS or other agency orders which Petitioner claims are involved in the Petition. For example, if Petitioner is claiming some right or benefit, identify all orders which support Petitioner's claim. If Petitioner is claiming that a prior ERS order is invalid, identify the order, and state the reasons why Petitioner claims it is invalid. If Petitioner is contesting the ERS' interpretation of any orders, identify the orders, and provide Petitioner's interpretation of those orders. Attach a copy of each order identified to this Petition. If no orders are involved, state "None" or "Not Applicable".*)

6. **RELIEF REQUESTED**

(*In this section, state exactly and completely what relief or remedy Petitioner is seeking from the Board of Trustees of the Employees' Retirement System under this Petition.*)

7. **NAMES OF OTHER PARTIES OR POTENTIAL PARTIES**

(*State the full names and addresses, if known, of any persons, firms, or other entities that Petitioner believes should be made parties to this proceeding or who are potentially parties to this proceeding. If there are no other parties or potential parties, state "None" or "Not Applicable."*)

8. **APPEARANCE ON BEHALF OF PETITIONER**

If the Petitioner is being represented by an attorney or other agent in this proceeding, provide the name, mailing address, telephone number, fax number (if available), and e-mail address (if available) of the attorney or other agent below. By filling in this information, Petitioner is authorizing the Employees' Retirement System to provide all notices and other documents in this proceeding to the attorney or agent identified below instead of to the Petitioner.

- A. **Name:**
- B. **Mailing Address:**
- C. **Telephone Number:**
- D. **Fax Number:**
- E. **E-Mail Address:**

This Petition is being filed pursuant to Section 91-9, Hawaii Revised Statutes, and Hawaii Administrative Rules Chapter 6-23. I declare under penalty of perjury that the facts alleged in this Petition are, to the best of my knowledge, true and correct.

DATED: (*Type or write in Petitioner's city, state, and the date the Petition is signed*)

By _____
Petitioner (*signature*)

Rules Amending Title 6
Hawaii Administrative Rules

August 10, 2009

1. Chapter 24 of Title 6, Hawaii Administrative Rules, entitled "Election of Members and Retirant of the System to the Board of Trustees", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 6

DEPARTMENT OF BUDGET AND FINANCE

EMPLOYEES' RETIREMENT SYSTEM

CHAPTER 24

ELECTION OF MEMBERS AND RETIRANT OF THE SYSTEM
TO THE BOARD OF TRUSTEES

§6-24-1	Definitions
§6-24-2	Candidates proposed by employee organizations or retirant organizations
§6-24-3	Other candidates
§6-24-4	Contents of ballots
§6-24-4.01	Electronic voting authorized
§6-24-5	Mailing of ballots
§6-24-6	Return of ballots
§6-24-7	Non-receipt of ballots; spoiled ballots; new ballots
§6-24-8	Election committee
§6-24-9	Opening and tallying of ballots
§6-24-10	Declaration of election
§6-24-11	Ballots to be held for thirty days
§6-24-12	Computation of time

Historical Note: This chapter is based substantially on Rules covering the Election of Members of the System to the Board of Trustees. [Eff 11/5/71; am 5/26/77; R 11/9/81]

§6-24-1 Definitions. Definitions generally applicable to this chapter are also provided in section 88-21, HRS, and section 6-20-1. As used in this chapter:

"Employee organization" means an organization classified as an employee organization under section 89-2, [Hawaii Revised Statutes.] HRS.

"General employee" means a member who is [classified as a general employee under section 88-24 and 88-102, Hawaii Revised Statutes.] an employee of the State or a county, including police officers and firefighters but excluding teachers.

"General employee organization" means an organization which is comprised principally of members who are general employees.

"General employee-trustee" means a trustee who is classified as a general employee.

["Retirant" means a member who has retired and become a beneficiary of the system, as defined in section 88-21, Hawaii Revised Statutes.]

"Retirant organization" means an organization which is comprised principally of retirants.

"Retirant-trustee" means a trustee who is included in the definition of a retirant.

"Teacher" means a member classified as a teacher under section 88-102, [Hawaii Revised Statutes] HRS; a teacher or an educational officer certified as a teacher by the department of education, and includes a dean, professor, instructor, and lecturer of the University of Hawaii and the community college system.

"Teacher-trustee" means a trustee who is included in the definition of a teacher. [Eff 11/9/81; am and comp 2/9/89; am and comp 7/10/95; am and comp

NOV 26 2009] (Auth: HRS §§88-24, 88-28)
(Imp: HRS §88-24)

§6-24-2 Candidates proposed by employee organizations or retirant organizations. (a) Each of the general employee organizations, if the election is for a general employee-trustee; each of the teacher organizations, if the election is for a teacher-trustee; the above mentioned organizations and retirant organizations, if the election is for a retirant-trustee; shall be invited to submit a list of candidates whose names the organization desires to have on the ballot, together with brief resumes of their qualifications. The resume of each candidate shall

contain not more than one hundred words, inclusive of the candidate's name.

(b) The list of candidates must be received by the system at its Honolulu office, by 4:30 p.m., no later than sixty days from the date the system posts or circulates the notice to submit a list of candidates. Any list of candidates received after the sixtieth day shall not be considered. [Eff 11/9/81; am and comp 2/9/89; am and comp 7/10/95; am and comp

NOV 26 2009] (Auth: HRS §§88-24, 88-28)
(Imp: HRS §88-24)

§6-24-3 Other candidates. Any member or retirant who has not been proposed as a candidate by an employee or retirant organization, as the case may be, and who desires to be a candidate for election to the board [of trustees] may have the member's or retirant's name placed on the ballot by submitting a petition to the board, if the following conditions are met:

- (1) The petitioner shall be a general employee if the election is for a general employee-trustee; a teacher, if the election is for a teacher-trustee; or a retirant, if the election is for a retirant-trustee;
- (2) The petition shall be accompanied by the signatures of at least one hundred members or retirants of the system who desire to have the petitioner's name on the ballot. The signatures shall be obtained on a form provided by the system[, and]. For identification and member or retirant verification purposes, the signatures shall be accompanied by the last four digits of the member's or retirant's social security number, current mailing address, and current or former employing agency of each person signing the petition, and shall be certified by the petitioner;
- (3) The petition [shall be submitted] must be received by the system at its Honolulu office (together with a resume of the qualifications of the petitioner containing not more than one hundred words, inclusive of the petitioner's name) no later than 4:30 p.m. sixty days from the date [of the first appearance of a] the notice to submit petition is published; and

- (4) The system shall verify the petitioner's status as a member or retirant of the system, as the case may be, and the signatures and status as a member or retirant of the system, as the case may be, of at least one hundred of the persons signing the petition.

The notice to submit petition shall be published in a newspaper of general circulation in the State, shall announce the forthcoming election, and shall contain [such] other information as appropriate. [Eff 11/9/81; am and comp 2/9/89; am and comp 7/10/95; am and comp

NOV 26 2009] (Auth: HRS §§88-24, 88-28)
(Imp: HRS §88-24)

§6-24-4 Contents of [ballot.] ballots. The [printed] ballot shall:

- (1) List in alphabetical sequence the names of the candidates; and
 - (2) Contain a resume containing not more than one hundred words, inclusive of the candidate's name, of the qualifications of each candidate. [Eff 11/9/81; am and comp 2/9/89; am and comp 7/10/95; am and comp
- NOV 26 2009] (Auth: HRS §§88-24, 88-28) (Imp: HRS §88-24)

§6-24-4.01 Electronic voting authorized. (a) The system may use electronic means to allow members and retirants to vote. The administrator may implement and maintain the electronic voting system, or the board may appoint an independent electronic balloting service that specializes in the solicitation and compilation of ballots for government entities through electronic means, for the purpose of performing some or all of the functions in connection with electronic voting.

(b) If electronic voting is used, electronic ballots shall be sent, received, and maintained in a manner substantially equivalent to the manner in which paper ballots are sent, received, and maintained. The administrator or the independent balloting agent, whichever implements the electronic voting system, shall maintain and ensure the integrity and security of the electronic voting system. [Eff and comp

NOV 26 2009] (Auth: HRS §§88-24, 88-28)
(Imp: HRS §88-24)

§6-24-5 Mailing of ballots. (a) [A] For printed ballots, a ballot shall be mailed to each member and retirant together with a postage guaranteed return envelope, between September 1 and December 1 of the calendar year preceding the year in which the term of an elected trustee expires; provided that if a vacancy occurs for the unexpired term of a trustee, the board shall determine whether to fill the vacancy by appointment or election and if by election, the dates for the mailing of ballots.

(b) The system shall maintain a listing of the names and mailing addresses of all members and retirants to whom ballots were sent. [Eff 11/9/81; am and comp 2/9/89; am and comp 7/10/95; am and comp NOV 26 2009] (Auth: HRS §§88-24, 88-28)
(Imp: HRS §88-24)

§6-24-6 Return of ballots. (a) [Members] For printed ballots, members and [retirees] retirants shall have at least fifteen days from the date of the mailing of the ballot within which to return the ballot. The postmark date on the return envelope shall determine whether the envelope has been returned within the prescribed period. The system shall date stamp all envelopes which are hand-delivered, or which are not post-marked, or which are received by the system after the last day for the return of ballots.

(b) All ballots received after the time prescribed for the return of ballots shall be kept separately for inspection and disposition by the election committee.

(c) The system shall maintain a daily record of the number of ballots received. [Ballots] Printed ballots shall be kept sealed and locked in boxes until the day for the tallying of ballots. [Eff 11/9/81; am and comp 2/9/89; am and comp 7/10/95; am and comp NOV 26 2009] (Auth: HRS §§88-24, 88-28)
(Imp: HRS §88-24)

§6-24-7 Non-receipt of ballots; spoiled ballots; new ballots. (a) Any member or retirant who claims not to have received a paper or electronic ballot shall be issued a new ballot through paper or electronic means, if the records indicate that [none] no ballot was sent to the member or retirant, [or] the ballot was

sent to the wrong mailing address[;] , or the member or retirant was not able to access the electronic ballot, through no fault of the member or retirant; provided that if the ballot was sent to the wrong mailing address, a reasonable time shall elapse to permit return of the ballot before the issuance of a new ballot. If the records indicate that a ballot was sent to the proper mailing address, a new ballot shall be issued if the member or retirant shall file a written statement certifying that the member or retirant did not receive the ballot.

(b) A member or retirant who has spoiled a ballot may request a new ballot which shall be issued only upon the receipt of the spoiled ballot by the system.

(c) The system shall keep a record of all ballots issued under the provisions of this section. [Eff 11/9/81; comp 2/9/89; am and comp 7/10/95; am and comp NOV 26 2009] (Auth: HRS §§88-24, 88-28)
(Imp: HRS §88-24)

§6-24-8 Election committee. The system shall appoint an election committee of three members who shall be recommended by employee and retirant organizations. The committee shall supervise the opening and tallying of ballots and shall, upon completion of the tally, certify to the board of trustees the results of the election. [Eff 11/9/81; comp 2/9/89; am and comp 7/10/95; comp NOV 26 2009] (Auth: HRS §§88-24, 88-28)
(Imp: HRS §88-24)

§6-24-9 [Tallying] Opening and tallying of ballots. (a) The system shall tally the ballots no earlier than four days after the last day for the return of ballots by mail.

(b) Ballots shall be opened and tallied under the supervision of the election committee. Electronic ballots may be opened and tallied by an independent electronic balloting service under the supervision of the election committee.

(c) Any ballot containing more than the number of votes permitted by the instructions on the ballot and any ballot containing any erasure shall be invalid. The committee shall be the sole judge as to the validity of any other questionable ballot. [Eff 11/9/81; am and comp 2/9/89; am 1/29/90; am and comp

7/10/95; am and comp NOV 26 2009] (Auth: HRS
 §§88-24, 88-28) (Imp: HRS §88-24)

§6-24-10 Declaration of election. Upon receipt of the certified results of the election from the election committee, the board of trustees shall declare as elected the person (or persons, if there is more than one trustee to be elected) receiving the highest number of votes. [Eff 11/9/81; comp 2/9/89; comp 7/10/95; comp NOV 26 2009] (Auth: HRS §§88-24, 88-28) (Imp: HRS §88-24)

§6-24-11 Ballots to be held for thirty days. All ballots which have been tallied shall be held by the system for a period of at least thirty days following the day when the successful candidate or candidates take office. If there are no questions raised as to the results of the election, the system may then destroy the ballots. [Eff 11/9/81; comp 2/9/89; am and comp 7/10/95; comp NOV 26 2009] (Auth: HRS §§88-24, 88-28) (Imp: HRS §88-24)

§6-24-12 Computation of time. In computing any period of time prescribed or allowed by this chapter, or any order of the board, the day of the act, event, or default after which the designated period of time [begins] is to run shall not be included. The last day of the period [so computed] shall be included unless it is a Saturday, [a] Sunday, or [a] legal holiday[. If] in the [last day of] State, in which event the period of time [falls] runs until [on a Saturday, a Sunday, or a holiday, then] the end of [last day shall be] the next day [following the] which is neither a Saturday, Sunday, or legal holiday. [When the period of time prescribed or allowed is less than seven days, intermediate] Intermediate Saturdays, Sundays, [and] or legal holidays shall not be [excluded] included in the computation[.] when the period of time prescribed or allowed is seven days or less. [As used in this chapter, "holiday" includes any day designated as such pursuant to section 8-1, Hawaii Revised Statutes.] A half holiday shall not be considered a holiday for purposes of these computations. All references in this chapter to days shall mean calendar days, unless otherwise expressed." [Eff 11/9/81; comp 2/9/89; am and

comp 7/10/95; am and comp NOV 26 2009] (Auth:
HRS §88-28) (Imp: HRS §§88-24, 88-28)

2. Material, except source notes, to be repealed is bracketed. New material is underscored.

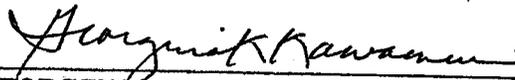
3. Additions to update source notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 6-24, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on August 10, 2009 and filed with the Office of the Lieutenant Governor.



JACKIE FERGUSON-MIYAMOTO
Chair, Board of Trustees
Employees' Retirement System
State of Hawaii



GEORGINA K. KAWAMURA
Director of Finance
Department of Budget and Finance

APPROVED AS TO FORM:



BRIAN P. ABURANO
Deputy Attorney General

Rules Amending Title 6
Hawaii Administrative Rules

August 10, 2009

1. Chapter 26 of Title 6, Hawaii Administrative Rules, entitled "Application for Retirement Benefits Proof and Computation of Age", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 6

DEPARTMENT OF BUDGET AND FINANCE

EMPLOYEES' RETIREMENT SYSTEM

CHAPTER 26

APPLICATION FOR RETIREMENT BENEFITS;
PROOF OF AGE AND COMPUTATION OF AGE

Subchapter 1 Application for Retirement Benefits

- §6-26-1 Application for retirement; person filing; when filed
- §6-26-2 Effective date of retirement
- §6-26-3 Contents of application
- §6-26-4 Simultaneous filing of more than one application
- §6-26-5 Election of retirement allowance option; change; irrevocability
- §6-26-5.01 Spousal or reciprocal beneficiary notification
- §6-26-6 Designated beneficiary; when more than one
- §6-26-7 Disability application; medical evidence
- §6-26-8 Application for three-year evaluation; calculation of benefits; cancellation of request for evaluation

Subchapter 2 Proof of Age

- §6-26-9 Purpose and scope
- §6-26-10 When submitted

§6-26-1

§6-26-11 Original documents of record; copies
§6-26-12 Types of evidence

Subchapter 3 Computation of Age

§6-26-13 Computation of age to determine the actuarial equivalence of the maximum allowance
§6-26-14 Repealed
§6-26-15 Computation of age to determine the age reduction penalty
§6-26-16 Computation of age to determine the member's age on the date of retirement
§6-26-17 Thirty-day month

SUBCHAPTER 1

APPLICATION FOR RETIREMENT BENEFITS

§6-26-1 Application for retirement; person filing; when filed. (a) An application for service retirement shall be filed by the member.

(b) An application for ordinary disability retirement[,] or service-connected disability retirement shall be filed by the member [or by the head of the member's department].

(c) Any application that a member may file may be filed by the [person appointed by the family court as] member's duly authorized, court-appointed guardian [of] or legal representative, in the event the [person of an] member has been found to be incapacitated [member.] as provided in chapter 560, article V, HRS.

(d) For the purpose of this chapter, an application is filed when it is received by the system at its [office] offices in Honolulu [or with the office of the director of personnel services of the counties of] Kauai [and] Maui [and the director of civil service of the county of], or Hawaii. [Eff 2/9/89; am and comp NOV 26 2009] (Auth: HRS §88-28) (Imp: HRS §§88-70, 88-73, 88-75, 88-79, 88-281, 88-284, 88-285, 88-331, 88-334, 88-336)

§6-26-2 Effective date of retirement. The effective date of retirement shall be as follows:

- (1) Service retirement: the date specified in the written application, which date shall not be [no earlier than thirty days nor more than ninety days after the execution and filing of the application.] less than thirty days nor more than one hundred fifty days subsequent to the date of filing. Retirement shall be effective on the first day of the month, except for the month of December when retirement on the first or last day of the month shall be allowed.
- (2) Ordinary disability retirement: no earlier than thirty days from the [execution and filing of the application and no later than ninety days from the date of the notice informing the member of the board's approval of the application. If the applicant fails to retire within ninety days after the mailing of the notice of the board's action the application shall be deemed cancelled.] date the application was filed or the date the member terminated service, whichever is later. A member whose application is approved by the board while the member is still in service may terminate service and retire at any time following the approval; provided that retirement shall become effective on the first day of the month following the month the member terminates employment or goes off the payroll, except for the month of December when retirement on the first or last day of the month shall be allowed.
- (3) Service-connected [total or occupational] disability retirement: the date the application is filed with the system, if the applicant is off the payroll as of that date. If an applicant who files an application for service-connected disability retirement continues to work at the applicant's regular job, or remains on the payroll by taking paid sick or vacation leave of absence, the effective date of retirement shall be the date the applicant terminates employment or goes off the payroll.

[For the purpose of computing or determining benefits for an elected officer or judge who elected to retire as provided in section 88-61(c), Hawaii Revised Statutes, the effective date of retirement shall be the

date specified in section 88-73(3), Hawaii Revised Statutes.] [Eff 2/9/89; am and comp NOV 26 2009]
(Auth: HRS §88-28) (Imp: HRS §§88-73, 88-75, 88-79, 88-83, 88-281, 88-283, 88-284, 88-286, 88-331, 88-333, 88-334, 88-336)

§6-26-3 Contents of application. (a) All applications for retirement benefits shall contain the following information:

- (1) The member's name, mailing address, and social security number;
- (2) The date of the application;
- (3) The member's [birthdate] date of birth;
- (4) The name of the employing department;
- (5) The position or job title held by the member;
- (6) The [mode of] retirement [which] allowance option that the member elects under any of the plans for receiving retirement allowances described in sections 88-74, 88-83, 88-282, [and] 88-283, 88-332, and 88-333, [Hawaii Revised Statutes] HRS;
- (7) The name, relationship, social security number and date of birth of any beneficiary designated to receive the benefit payable upon the death of the member after retirement;
- (8) The duly notarized signature of the member is required unless:
 - (A) [the] The member executes the application in the presence of a staff member who is authorized by the [secretary] administrator of the system to accept applications[, but for disability retirement only, the head of the department in which the member is employed may execute the application on behalf of the member.]; or
 - (B) The application is for ordinary or service-connected disability retirement and is filed by the member's duly authorized and appointed guardian or legal representative, as provided in section 6-26-1(b).

(b) If the application is for disability retirement, the application shall contain the following additional information:

- (1) Whether the application is for ordinary[, service-connected total or occupational

- disability,] or service-connected disability [under the class C system;] retirement.
- (2) If the application is for service-connected disability retirement, a brief statement of the accident causing the disability, including the date, time, place, and circumstances of the accident, or a brief statement of the occupational hazard causing the disability.
- (c) If the application is for service retirement, the application shall also contain the effective date of retirement. [Eff 2/9/89; am 1/29/90; am and comp
NOV 26 2009] (Auth: HRS §88-28) (Imp: HRS §§88-73, 88-75, 88-79, 88-83, 88-281, 88-283, 88-284, 88-286, 88-331, 88-333, 88-334, 88-336)

§6-26-4 Simultaneous filing of more than one application. A member may file applications for different types of retirement at the same time, subject to the following limitations:

- (1) The effective date for retirement shall be in accordance with rules governing the effective date for each retirement;
- (2) The [mode of] retirement allowance option and beneficiary shall be the same for all applications; and
- (3) The [mode of] election of retirement [selected] allowance option shall be irrevocable, notwithstanding the subsequent approval of an application for ordinary disability retirement or service-connected disability retirement. [Eff 2/9/89; am and comp
NOV 26 2009] (Auth: HRS §88-28) (Imp: HRS §§88-73, 88-75, 88-79, 88-83, 88-281, 88-283, 88-284, 88-286, 88-331, 88-333, 88-334, 88-336)

§6-26-5 [Mode] Election of retirement allowance option; change; irrevocability. (a) A member may elect only one retirement allowance option. The [mode of] retirement allowance option elected by the [applicant] member may be changed by filing with the system's [office] offices in Honolulu, [or with the office of the director of personnel services of the counties of] Kauai [and] Maui, or [the director of civil service of the county of] Hawaii, written notice of change no later than one business day [prior to] before the effective

date of retirement. Any written notice of change sent by mail shall not be effective unless it is received by the system no later than one business day [prior to] before the effective date of retirement.

(b) Every written notice of change shall contain the duly notarized signature of the [applicant.] member, or the member may execute the change in the presence of a staff member who is authorized by the administrator of the system to accept changes. If a member does not select a retirement allowance option before the member's effective date of retirement, then the default retirement allowance option shall be the maximum allowance option, and the beneficiary shall be the member's estate, if no beneficiary has been designated on the application. Upon the effective date of retirement, the retirement allowance option is irrevocable and cannot be changed. [Eff 2/9/89; am and comp NOV 26 2009] (Auth: HRS §88-28) (Imp: HRS §§88-83, 88-283, 88-333)

§6-26-5.01 Spousal or reciprocal beneficiary notification. (a) No election by a member of any retirement allowance option in accordance with section 88-83, 88-283, or 88-333, HRS, shall take effect:

- (1) Until the system provides the spouse or reciprocal beneficiary of the member written notification that:
 - (A) Specifies the retirement date, the retirement allowance option selected, and the beneficiary designated by the member; and
 - (B) Provides information indicating the effect of the election;
- (2) Unless the member selects option 2, option 3, including an option that includes options 2 or 3 in combination with some other form of benefit payment, option A or option B and designates the spouse or reciprocal beneficiary as the beneficiary; or
- (3) Unless it is established to the satisfaction of the board that the notice required under paragraph (1) cannot be provided because:
 - (A) There is no spouse or reciprocal beneficiary;
 - (B) The spouse or reciprocal beneficiary cannot be located; or

(C) The member has failed to notify the system that the member has a spouse or reciprocal beneficiary or has failed to provide the system with the name and address of the member's spouse or reciprocal beneficiary.

(b) The notice shall be in writing and provided in one of the following ways:

(1) Via hand-delivery; or

(2) By mail.

(c) Any notice provided to a spouse or reciprocal beneficiary, or determination that the notification of a spouse or reciprocal beneficiary cannot be provided, shall be effective only with respect to that spouse or reciprocal beneficiary. The system shall rely on the representations made by a member as to whether the member has a spouse or reciprocal beneficiary and the name and address of the member's spouse or reciprocal beneficiary. The member shall provide the representations to the system on a form prescribed by the system. [Eff and comp NOV 26 2009] (Auth: HRS §§88-28, 88-83, 88-283, 88-333) (Imp: HRS §§88-83, 88-283, 88-333)

§6-26-6 Designated beneficiary; when more than one. If more than one beneficiary is designated to receive benefits payable upon death, the applicant shall indicate the portion of the benefits payable to each beneficiary and to whom benefits will be paid if the beneficiary predeceases the applicant. [Eff 2/9/89; comp NOV 26 2009] (Auth: HRS §88-28) (Imp: HRS §§88-83, 88-283, 88-333)

§6-26-7 Disability application; medical evidence.
(a) The applicant for ordinary and service-connected disability retirement shall have the responsibility of furnishing all medical evidence available or which can be made available to the applicant pertaining to the applicant's disability, including reports of the applicant's personal physician and consultant physicians, hospital and laboratory reports, and x-rays. The applicant for service-connected disability retirement shall also submit, on a form provided by the system, information concerning the applicant's education, work experience, and medical history.

(b) If the application is for service-connected disability retirement, the system shall obtain the following:

- (1) A copy of the employer's report of the accident submitted by the employer to the department of labor and industrial relations, [workers'] disability compensation division, and any other report of or to the [workers'] disability compensation division, including medical reports, relating to the accident;
- (2) A certified statement from the head of the department in which the applicant is employed, stating the date, time, and place of the accident, and the nature of the service being performed when the accident occurred. The statement shall also include an opinion as to whether or not the accident resulted in the applicant's disability and whether or not the disability was the result of [willful] wilful negligence on the applicant's part;
- (3) A copy of the latest position description of the applicant's duties and responsibilities; and
- (4) A release form signed by the applicant which enables the system to obtain any medical and workers' compensation reports.

(c) The application shall be deemed [cancelled] canceled if:

- (1) The applicant for ordinary or service-connected disability retirement fails to file a report from the applicant's personal physician concerning the applicant's medical condition and disability within sixty days from the date of the filing of the application; or
- (2) Twice fails to keep an appointment with the medical board or with a consultant to whom the applicant may be referred by the medical board or by the system.

Written notice of [any such] the cancellation shall be sent to the applicant.

(d) For the purpose of this subchapter, unless otherwise indicated by the context, the term "service-connected disability retirement" includes service-connected total disability retirement and service-connected occupational disability retirement. [Eff 2/9/89; am and comp NOV 26 2009] (Auth: HRS §88-28) (Imp: HRS §§88-75, 88-79, 88-284)

§6-26-8 Application for three-year evaluation[.]; calculation of benefits; cancellation of request for evaluation. (a) A member who has been retired on service-connected occupational disability retirement for accidents occurring before July 7, 1998 shall be notified in writing at least ninety days [prior to] before the expiration of three years from the effective date of retirement that the member is entitled to be evaluated by the medical board to determine whether the member has become totally incapacitated for gainful employment as a result of the member's service-connected injuries or job hazard. [Prior to the expiration of the ninety-day period, the] The member shall notify the system whether the member desires to be evaluated by submitting a written request for evaluation. The written request for evaluation shall be submitted no earlier than the date of the notice from the system that the member is entitled to be evaluated by the medical board and no later than the expiration of three years from the effective date of retirement. The member shall [also] submit new medical evidence in support of the member's claim of total disability.

- (1) After review by the medical board, if the board determines that the member is totally incapacitated for gainful employment as a result of the member's service-connected injuries or job hazard, the board shall award the member a service-connected disability benefit consisting of an annuity plus a pension of sixty-six and two-thirds per cent of the member's average final compensation;
- (2) After review by the medical board, if the board determines that the member is not totally incapacitated for gainful employment as a result of the member's service-connected injuries or job hazard, the member's benefit after the completion of three years from the date of retirement shall be the member's annuity plus a pension of thirty-three and one-third per cent of the member's average final compensation.

(b) The right to a three-year evaluation shall be deemed waived and the request for an evaluation [cancelled] canceled if the applicant twice fails to keep an appointment with the medical board or with a consultant to whom the applicant may be referred by the

medical board or [by] the system[.] for medical evaluation. Written notice of [any such] the cancellation shall be sent to the applicant. [Eff 2/9/89; am and comp NOV 26 2009] (Auth: HRS §88-28) (Imp: HRS §§88-77 (1997), 88-79 (1997), 88-80 (1997))

SUBCHAPTER 2

PROOF OF AGE

§6-26-9 Purpose and scope. The purpose of this subchapter is to implement section 88-44, [Hawaii Revised Statutes,] HRS, which provides that a member shall present at [such] that time and in [such] the manner as the board [of trustees] prescribes, evidence of the member's date of birth. This subchapter shall also apply to evidence of the date of birth of a member's beneficiary when the age of the beneficiary is a factor in the computation of any benefit or allowance payable to the member and the beneficiary under any of the retirement options described in sections 88-74, 88-83, 88-282, [and] 88-283, 88-332, and 88-333 [Hawaii Revised Statutes.] HRS. [Eff 2/9/89; am and comp NOV 26 2009] (Auth: HRS §§88-28, 88-44) (Imp: HRS §§88-44, 88-73, 88-74, 88-83, 88-282, 88-283, 88-331, 88-332, 88-333)

§6-26-10 When submitted. (a) A member shall submit evidence establishing the member's date of birth upon filing an application for retirement. At the request of the system, a member shall also present evidence of the date of birth of the member's beneficiary, whenever the age of the beneficiary is of significance in computing the allowance or benefit payable to the member and to the beneficiary. At the request of the system, a beneficiary shall present evidence of the beneficiary's date of birth whenever the age of the beneficiary is of significance in computing any benefit to the beneficiary.

(b) Evidence of the member's date of birth may be submitted prior to the filing of any application for retirement. If such evidence is accepted by the system as establishing the date of birth, it need not be

presented again when the application for retirement is filed.

(c) No retirement allowance or benefit shall be paid until evidence which satisfactorily establishes date of birth is submitted to the system. [Eff 2/9/89; comp NOV 26 2009] (Auth: HRS §§88-28, 88-44) (Imp: HRS §§88-44, 88-73, 88-74, 88-83, 88-282, 88-283, 88-331, 88-332, 88-333)

§6-26-11 Original documents of record; copies.

All documents or records presented as evidence of date of birth shall be originals or copies certified by the custodian of the record. Extracts from records shall also be certified by the custodian of the record.

All original documents except documents addressed to the system shall be returned after the system has made copies thereof. [Eff 2/9/89; comp NOV 26 2009] (Auth: HRS §§88-28, 88-44) (Imp: HRS §§88-44, 88-73, 88-74, 88-83, 88-282, 88-283, 88-331, 88-332, 88-333)

§6-26-12 Types of evidence. (a) The member shall submit one of the following as evidence of date of birth:

- (1) A certified birth certificate[.];
- (2) An original baptismal certificate which shows the date of birth and was recorded before age five[.]; or
- (3) A written statement from the Social Security Administration establishing the member's date of birth.

(b) If the evidence in subsection (a) cannot be obtained, the member shall submit at least two of the following:

- (1) An original baptismal certificate or religious record which shows the date of birth or age at a certain time and was recorded after age five;
- (2) A passport;
- (3) An elementary school record which shows date of birth;
- (4) A census record which shows date of birth or age;
- (5) A voter registration record which shows date of birth;

- (6) A marriage record which shows date of birth or age;
- (7) A naturalization record which shows date of birth or age;
- (8) A military record which shows date of birth or age;
- (9) A hospital treatment or birth record which shows date of birth or age;
- (10) An insurance policy which shows date of birth;
- (11) A foreign passport which shows date of birth or age;
- (12) A child's birth certificate which shows the age of the member-parent;
- (13) A Hawaii [State] state [Identification] identification [Card;] card; or
- (14) A Hawaii [Drivers] driver's [License.] license. [Eff 2/9/89; am 1/29/90; am and comp
NOV 26 2009] (Auth: HRS §§88-28,
 88-44) (Imp: HRS §§88-44, 88-73, 88-74,
 88-83, 88-282, 88-283, 88-331, 88-332, 88-333)

SUBCHAPTER 3

COMPUTATION OF AGE

§6-26-13 Computation of [nearest] age[.] to determine the actuarial equivalence of the maximum allowance. (a) The member's age nearest a full year shall be used to determine the actuarial factors to be [employed] applied in determining the actuarial equivalence of the maximum allowance under any of the [optional plans of] retirement allowance options described in sections 88-83 [and], 88-283, and 88-333, [Hawaii Revised Statutes.] HRS. In computing the nearest full year of age of a member, any fraction of six full months or more shall be considered as the next older year of age.

Example A:

<u>Date of retirement</u>	<u>2004 - 7 - 1</u>
<u>Date of birth</u>	<u>1942 - 12 - 31</u>
<u>Actual age</u>	<u>61 - 6 - 0</u>
<u>Nearest age</u>	<u>62</u>

Example B:

<u>Date of retirement</u>	<u>2000 - 6 - 1</u>
<u>Date of birth</u>	<u>1938 - 12 - 12</u>
<u>Actual age</u>	<u>61 - 5 - 19</u>
<u>Nearest age</u>	<u>61</u>

[(b) The member's age nearest the years and full months shall be used in determining the factors of actuarial equivalence to be applied in reducing the member's retirement allowance if the member has not reached the prescribed retirement age.

(c) (b) The method of computing age prescribed in this [subchapter] section shall apply to a beneficiary when the age of the beneficiary is a factor in the computation of any benefit payable to the member and the beneficiary. [Eff 2/9/89; am and comp

NOV 26 2009] (Auth: HRS §88-28) (Imp: HRS §§88-83, 88-283, 88-333)

[§6-26-14 Computation of nearest full year. In computing the nearest full year of age of a member, any fraction of six full months or more shall be considered as the next older year of age.

Example:

Date of retirement	1978 - 7 - 1
Date of birth	<u>1916 - 12 - 31</u>
Actual age	61 - 6 - 0
Nearest age	62

Example:

Date of retirement	1978 - 6 - 19
Date of birth	<u>1916 - 12 - 30</u>
Actual age	61 - 5 - 19
Nearest age	61]

[Eff 2/9/89; R NOV 26 2009] (Auth: HRS §88-28)
(Imp: HRS §§88-73, 88-74, 88-76, 88-83)

§6-26-15 Computation of [nearest full month.] age to determine the age reduction penalty. (a) The member's age nearest the year and full months shall be used to determine the factors of actuarial equivalence

to be applied in reducing the member's retirement allowance if the member has not reached the prescribed retirement age.

(b) In computing the nearest years and full [month,] months of age of a member, any fraction of fifteen or more days shall be considered [the equivalent of a full month] as the next older month of age.

Example A:

Date of retirement	[1978] 2002 - 6 - [15]	<u>1</u>
Date of birth	[1923] 1947 - 6 - [30]	<u>16</u>
Actual age	54 - 11 -	15
Nearest age	55 - 0	

Example B:

Date of retirement	[1978] 2002 - 6 - [14]	<u>1</u>
Date of birth	[1923] 1947 - 6 - [30]	<u>17</u>
Actual age	54 - 11 -	14
Nearest age	54 - 11	

[Eff 2/9/89; am and comp NOV 26 2009] (Auth: HRS §88-28) (Imp: HRS §§88-74, 88-282, 88-332)

§6-26-16 Computation of age to determine the member's age on the date of retirement. The member's actual age in full years shall be used to determine the member's attained age on the date of retirement and shall be the member's age if the member's age is required to meet the retirement eligibility prerequisites under parts II, VII, and VIII of chapter 88, HRS.

Example A:

<u>Date of retirement</u>	<u>2008 - 7 - 1</u>
<u>Date of birth</u>	<u>1946 - 12 - 31</u>
<u>Actual age</u>	<u>61 - 6 - 0</u>
<u>Age in full years</u>	<u>61</u>

Example B:

<u>Date of retirement</u>	<u>2008 - 12 - 31</u>
<u>Date of birth</u>	<u>1954 - 1 - 1</u>
<u>Actual age</u>	<u>54 - 11 - 30</u>
<u>Age in full years</u>	<u>54</u>

[Eff and comp NOV 26 2009] (Auth: HRS §88-28)
(Imp: HRS §§88-73, 88-74, 88-281, 88-282, 88-331,
88-332)

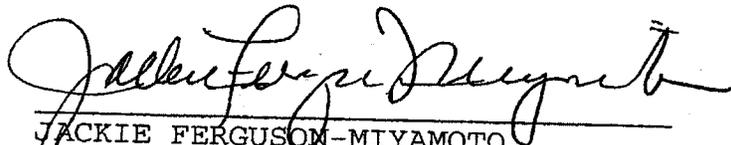
§6-26-17 Thirty-day month. For the purposes of
this subchapter, each month will be deemed to have
thirty days." [Eff and comp NOV 26 2009] (Auth:
HRS §88-28) (Imp: HRS §§88-74, 88-282, 88-332)

2. Material, except source notes, to be repealed
is bracketed. New material is underscored.

3. Additions to update source notes to reflect
these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter
6-26, Hawaii Administrative Rules, shall take effect ten
days after filing with the Office of the Lieutenant
Governor.

I certify that the foregoing are copies of the
rules, drafted in the Ramseyer format pursuant to the
requirements of section 91-4.1, Hawaii Revised Statutes,
which were adopted on August 10, 2009 and filed with the
Office of the Lieutenant Governor.



JACKIE FERGUSON-MIYAMOTO
Chair, Board of Trustees
Employees' Retirement System
State of Hawaii



GEORGINA K. KAWAMURA
Director of Finance
Department of Budget and Finance

APPROVED AS TO FORM:

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