

Amendment and Compilation of Chapter 6-22
Hawaii Administrative Rules

1. Chapter 6-22, 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
OR DESIGNATED ENTITY

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§6-22-1 Scope. This chapter shall govern the procedures for the certifications and findings of the medical board or a designated entity relating to applications for:

- (1) Ordinary disability retirement under sections 88-75, 88-284, and 88-334, HRS;
- (2) Service-connected disability retirement under sections 88-79, 88-80, 88-285, and 88-336, HRS; and
- (3) Accidental death benefits under sections 88-85, 88-286, and 88-339, HRS. [Eff 1/9/84; am and comp 11/26/2009; am and comp] (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 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 member may not have been actually engaged in performing the duties of the member's job; provided that the accident occurred during working hours either:

- (1) On the work premises; or
- (2) At wherever the member's duties require the member to be.

"Designated entity" means an entity designated by the system to review applications for disability retirement and accidental death benefits and to provide findings and certifications to the system regarding those applications in accordance with

sections 88-75, 88-79, 88-85.5, 88-284, 88-285, 88-286, 88-335, 88-336, or 88-339, HRS.

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

"Medical board" means the board of physicians provided for in section 88-31, 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~~]. To be considered an "occupational hazard," the causative factors must be those which are not ordinarily incident to employment in general and must be different in character from those found in the general run of occupations, the general run of occupations meaning many but not all occupations.

"Ordinary 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.

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

"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 11/26/2009; am and comp] (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 member [~~by the medical board.~~] (a) The medical board or a designated entity, as determined by the executive director on behalf of the system, 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 disability compensation division of the department of labor and industrial relations and the member's position description submitted by or on behalf of the member's employer [~~member in support of the applicant's claim~~].

(b) The applicant shall submit medical reports to the medical board or designated entity as provided in section 6-26-7, including the physician's statement. The medical board or designated entity 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 or designated entity expressly

provides for the submission of medical reports or other records.

The medical board or designated entity may disregard any medical reports or other records submitted to [~~the medical board~~] it after [~~the medical board~~] it has issued its certifications and findings pursuant to section 6-22-8, except as provided in section 6-22-10. The medical board or designated entity may or may not, at its discretion, subject the member to a physical examination in arriving at its certifications and findings on all matters referred to it. [Eff 1/9/84; am and comp 11/26/2009; am and comp] (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[] or designated entity, if it deems necessary, may at the expense of the system engage other physicians or specialists, or both, to examine the member or review records as requested, or both, and report their findings to the medical board[] or designated entity. [Eff 1/9/84; am and comp 11/26/2009; am and comp] (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 disability compensation division of the department of labor and industrial relations, the labor and industrial relations appeals board, and the Social Security Administration relating to the same incapacity for which the applicant or member is claiming a disability or death benefit may be taken into consideration; however, that determination shall not be binding upon the medical board[], designated entity, or the system. [Eff 1/9/84; am and comp 11/26/2009; am and comp] (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 member. The determination of whether the 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 member was employed at the time the accident which resulted in the condition occurred. The medical board or designated entity may consider other probative and credible evidence of the member's actual job duties. [Eff 1/9/84; am and comp 11/26/2009; am and comp] (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. 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 or designated entity shall not consider, and the [~~board~~] system 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 11/26/2009; am and comp]
(Auth: HRS §88-28) (Imp: HRS §§88-31, 88-79, 88-285, 88-336)

§6-22-8 ~~[Medical board's certifications]~~

Certifications and findings. Upon completion of the examination of the member and the reports submitted to it, the medical board or designated entity shall certify in writing to the ~~[board]~~ system the following:

- (1) In the case of an application for ordinary disability or service-connected disability retirement, whether ~~[or not the incapacity is:]~~, at the time of the application:
 - (A) ~~[For the further performance of duty; or]~~ The member is incapacitated for the further performance of duty or for gainful employment; and
 - ~~[(B) For gainful employment; and~~
 - ~~(C) Likely to be permanent.]~~ (B) The member's incapacity for the further performance of duty or for gainful employment is 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 wilful negligence on the part of the member. [Eff 1/9/84; am and

comp 11/26/2009; am and comp
] (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 chairperson
of or one~~] One or more of the members of the medical
board [~~shall~~] may serve as a witness on behalf of the
medical board, whenever required to do so, at any
hearing of an appeal from the certifications and
findings of the medical board. One or more
representatives of a designated entity may serve as a
witness on behalf of the designated entity, whenever
required to do so, at any hearing of an appeal from
the certifications and findings of the designated
entity. [Eff 1/9/84; am and comp 11/26/2009; am and
comp] (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,~~] executive
director on behalf of the system, the medical board or
a designated entity may consider additional medical
reports offered by the applicant after the submission
of the medical board's or designated entity's
certifications and findings to the [~~board,~~] system;
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 member at the
time of application." [Eff 1/9/84; am and comp
11/26/2009; am and comp] (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 and other notes, to be repealed is bracketed and stricken. New material is underscored.

3. Additions to update source notes and other notes to reflect these amendments 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 _____ and filed with the Office of the Lieutenant Governor.

Emmit Kane, Chairperson
Employees' Retirement System
of the State of Hawaii, Board
of Trustees

Craig Hirai, Director
Department of Budget and
Finance

APPROVED AS TO FORM:

Deputy Attorney General