

Amendment and Compilation of Chapter 6-23
Hawaii Administrative Rules

1. Chapter 6-23, 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

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SUBCHAPTER 1

CONTESTED CASE HEARINGS ON APPLICATIONS FOR DISABILITY RETIREMENT AND ACCIDENTAL DEATH BENEFITS

§6-23-1 Scope. This subchapter shall govern all petitions for contested case hearing filed with the [~~board~~] system disputing a preliminary decision by the [~~board~~] system regarding an application for disability

retirement benefits or accidental death benefits, pursuant to the medical board's or a designated entity's certifications and findings under chapter 6-22. [Eff 11/9/81; am and comp 11/26/2009; am and comp] (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~~] sections 6-20-1[~~-~~] and 6-22-2. As used in this subchapter:

"Causation" refers to a finding as to whether or not a [~~disability~~] member's disability or death is:

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

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

"Petition" means a request filed with the [~~board of Trustees~~] system pursuant to section 6-23-4, in which an applicant for disability retirement benefits or accidental death benefits disputes the [~~board of trustees'~~] system's preliminary decision regarding the medical board's or designated entity's certifications and findings. [Eff 11/9/81; am and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2)

§6-23-3 Preliminary decision by [~~board of trustees~~] system; notice of preliminary decision; petition for contested case hearing. (a) Upon receipt of the medical board's or a designated entity's certifications and findings pursuant to

section 6-22-8, the ~~[board]~~ executive director on behalf of the system shall make a preliminary decision as to whether to accept, reject or remand the medical board's or designated entity's certifications and findings ~~[or to remand the certifications and findings to the medical board for any clarification or correction. The board].~~ The executive director on behalf of the system, may reject the medical board's or designated entity's certifications or findings, including findings regarding causation[-], and make independent determinations. The executive director on behalf of the system, may remand the certifications and findings to the medical board or designated entity for any clarification or correction.

(b) Upon acceptance, rejection, or remand of the medical board's or a designated entity's certifications and findings, or any part thereof, the ~~[administrator]~~ executive director on behalf of the system shall, within fifteen days thereafter, notify the applicant of the ~~[board's]~~ system's preliminary decision and the medical board's or designated entity's certifications and findings.

(c) If any certification or finding accepted by the ~~[board]~~ executive director on behalf of the system in ~~[its]~~ the preliminary decision, or any independent determination made by the ~~[board,]~~ executive director on behalf of the system in the preliminary decision, is adverse to the applicant, the ~~[administrator]~~ executive director on behalf of the system shall notify the applicant of the applicant's right to file a petition for contested case hearing disputing the ~~[board's]~~ preliminary decision pursuant to section 6-23-4 and of the procedure for filing the petition. [Eff 11/9/81; am and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2)

§6-23-4 Filing of petition for contested case hearing. After receipt of notice of the ~~[board's]~~ system'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 petition shall be filed in the office of the system in Honolulu no later than ~~[sixty]~~ thirty days from the date of receipt of the written notification from the ~~[administrator]~~ executive director of the ~~[board's]~~ system's preliminary decision regarding the medical board's or the designated entity's certifications and findings. [Eff 11/9/81; am and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2)
(Imp: HRS §§88-82, 91-2)

§6-23-5 Contents of petition. (a) The petition for contested case hearing disputing the ~~[board's]~~ system's preliminary decision shall include the following:

- (1) The identity of the petitioner. If the petition is filed by ~~[an employee organization]~~ a person or other entity on behalf of the member or applicant, the ~~[organization]~~ person or other entity shall state that it has the right to represent the member or applicant and shall submit proof of that right with the petition; and
- (2) The grounds for the petition, the specific issues involved, the contentions of the petitioner, and a description of the evidence that the petitioner intends to introduce in support of the contentions.

(b) An incomplete petition may be returned to the petitioner with an explanation for the return. If returned, the petitioner shall have fifteen days in which to correct and refile the petition. Any petition refiled within the fifteen-day period may be rejected if the petition is still incomplete and the incompleteness is material and substantial.

(c) Any petition that is not filed within the period prescribed in section 6-23-4 and any 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 11/26/2009; am and comp _____] (Auth: HRS §§ 88-28, 91-2) (Imp: HRS §§88-82, 91-2)

§6-23-6 Contested case hearing~~[; before board or hearing officer]~~. When a petition for contested case hearing is filed in accordance with this subchapter, the petitioner shall be afforded a contested case hearing before ~~[the board or]~~ a hearing officer appointed by the ~~[board.]~~ system. [Eff 11/9/81; am and comp 11/26/2009; am and comp _____] (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 petition will be heard by the board, the board shall set the time and place of hearing and the administrator shall give written notice thereof to the petitioner. Unless otherwise directed by the board, when the hearing of a petition is assigned to a hearing officer, the]~~ The hearing officer shall set the time and place of hearing and give written notice thereof to the petitioner. 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 at least fifteen days before the hearing. [Eff 11/9/81; am and comp 11/26/2009; am and comp _____] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2, 91-9.5, 92-9)

§6-23-8 Docket. The ~~[administrator]~~ system shall maintain a docket of all petitions and each petition shall be assigned a number. [Eff 11/9/81; am

and comp 11/26/2009; am and comp]
(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, system or a presiding officer, 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 pursuant to section 6-23-19[~~(b)~~], whenever a person or [agency] entity is required or allowed to act within a time specified by this subchapter, the [board or] hearing officer or the executive director on behalf of the system or board 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 11/26/2009; am and comp]
(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~~] system, or is otherwise insufficient, the board or hearing officer or the executive director on behalf of the system or board 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 or hearing officer or the executive director on behalf of the system or board, may be retained in the files of the [~~board.~~] system. The [~~board~~] system 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 11/26/2009; am and comp] (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 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 11/9/81; am and comp 11/26/2009; am and comp] (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~~] system at the system's office. [Eff 11/9/81; am and comp 11/26/2009; am and comp] (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 section 6-23-12 may be used in a proceeding if the [~~presiding~~] hearing 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 11/9/81; am and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2)

§6-23-14 ~~[Presiding]~~ Jurisdiction; presiding officer; powers and duties. (a) ~~[The chairperson or other member of the board designated by the chairperson or a hearing officer designated by the board shall preside at all hearings on petitions governed by this subchapter.]~~ The hearing officer appointed by the system shall preside over contested case hearings governed by this subchapter. The chairperson of the board or other member of the board designated by the chairperson shall preside over hearings of arguments on exceptions under section 6-23-20. The hearing officer, and chairperson of the board or other member of the board designated by the chairperson, shall have jurisdiction over those matters expressly authorized by this subchapter, respectively.

(b) ~~[When the presiding officer is a hearing officer,]~~ With respect to contested case hearings governed by this subchapter, the hearing officer as the presiding 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, 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 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 or designated entity the certifications and findings involved in the petition, or any matter or issue related thereto; and to accept from the medical board or designated entity any new or amended report or documents, including any new certifications or findings;
- (10) To make a recommended decision to the board;
- (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 petition is heard by the board, the presiding officer shall have all of the foregoing powers and duties except the making of a recommended decision.]~~ With respect to hearings of arguments on exceptions governed by this subchapter, the chairperson of the board or other member of the board designated as presiding officer shall have the following powers and duties:

- (1) To determine the time and place of the hearing of arguments on exceptions and, in

the presiding officer's discretion or at the request of a party, to continue or postpone any hearing;

- (2) To regulate the course and conduct of the hearing; and
- (3) To take any other action authorized by this subchapter or by law that the presiding officer may deem necessary for the orderly and just conduct of the hearing.

(d) The substantive provisions of sections 6-22-5, 6-22-6, and 6-22-7 shall apply to contested case hearings and arguments on exceptions under this subchapter. [Eff 11/9/81; am and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2, 91-9, 92-16)

§6-23-14.01 Default. (a) A 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 pre-hearing 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. Terms or conditions of a default order can include dismissal of the petition. The default order shall constitute a recommended decision pursuant to section 6-23-17 if filed by a hearing officer. The default order shall constitute a proposed decision if filed by the chairperson or other designated member of the board. [Eff and comp

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

§6-23-14.02 Motions to dismiss or for summary judgment. (a) The presiding officer, upon motion by a party, may at any time issue an order for summary judgment 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 standing, 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 for summary judgment or to dismiss all claims shall be a recommended decision pursuant to section 6-23-17 if issued by the hearing officer. An order for summary judgment or to dismiss all claims shall be a proposed decision if filed by the chairperson or other designated member of the board.

[Eff and comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9, 91-12, 92-16)

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

§6-23-16 Conduct of contested case hearing. (a)

The [~~presiding officer~~] hearing officer shall convene the hearing and summarize the 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 petitioner shall have the opportunity to make an opening statement. The deputy attorney general or other counsel assigned to the respondent medical board or designated entity shall also have the opportunity to make an opening statement then or after the petitioner has presented the petitioner's case. Opening statements may be waived by either party.

(c) Witnesses shall testify in the following order:

- (1) Witnesses for the petitioner;
- (2) Witnesses called by the [~~deputy attorney general;~~] respondent;
- (3) Witnesses for the petitioner in rebuttal;
- (4) Witnesses called by the [~~deputy attorney general~~] respondent 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.

(e) After the presentations of evidence is concluded, unless the petition is submitted by either party or both parties without argument, the petitioner shall open the argument followed by argument by [~~the deputy attorney general~~] the respondent and the

petitioner may present rebuttal argument which shall be limited to countering any matter or argument presented by the [~~deputy attorney general~~] respondent. Reasonable time limits may be imposed by the [~~presiding~~] hearing officer for argument. Argument may be waived by either party.

(f) The [~~presiding~~] hearing officer, within such time limits as the [~~presiding~~] hearing 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 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2, 91-9, 91-10, 92-16)

§6-23-17 Recommended decision. [~~When a petition is heard by a hearing officer, the hearing officer, within~~] 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, the hearing officer shall make and file with the [~~board~~] system 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 11/26/2009; am and comp] (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 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 upon each party. [Eff 11/9/81; am and comp 11/26/2009; am and comp] (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. Within fifteen days after receipt of a copy of a party's exceptions and request for review, any party may file with the board a response to the exceptions and request for review. [~~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, and response, 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, or response, 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 respective period prescribed for the filing of exceptions or response. Upon good cause shown, the board, [~~or~~] any member of the board, or the executive director on behalf of the system, may extend the time for filing exceptions or response, for an additional period not to exceed fifteen days after the applying party's receipt of the extension of time within which to file exceptions or response.

(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 11/26/2009; am and comp]

(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 shall grant such party an opportunity to present arguments to the board. The [administrator] executive director 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 11/26/2009; am and comp] (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 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)]~~ (b) 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 11/26/2009; am and comp
] (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~~] file a motion with the system 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. The system's decision on the motion shall be made by the executive director.

(b) The petitioner shall file a motion for attorneys' fees and costs with the [~~board or the court~~] system 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] system may require additional details and justification of time billed or costs claimed. [Eff and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-28, 88-82, 91-2)

SUBCHAPTER 2

OTHER CONTESTED CASE HEARINGS

§6-23-22 Scope. 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 11/26/2009; comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§ 91-2, 91-9)

§6-23-23 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:

"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 alleged entitlement to a 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]~~ system requesting relief from an alleged misapplication or violation of any provision of chapter 88, HRS, or any rules promulgated thereunder, setting forth an alleged entitlement to a benefit, service credit, or other alleged entitlement, and meeting the requirements of sections 6-23-24 and 6-23-28.

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

§6-23-24 Commencement of proceedings; service.

(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.]~~ at the system's main office in Honolulu. 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 camp 11/26/2009; am and comp] (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 imitations period. [Eff and comp 11/26/2009; comp] (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~~[r]~~ or a hearing officer, 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 or hearing officer 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 11/26/2009;

am and comp] (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 11/26/2009; comp] (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~~] system. 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~~] executive director on behalf of the system 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.

(d) A petition that is not rejected will be assigned by the system to a hearing officer. [Eff and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9)

§6-23-29 Consideration of petition. (a) The [~~presiding~~] hearing 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 matter other than the alleged misapplication or violation of any provision of chapter 88, HRS, or rules promulgated thereunder, setting forth an alleged entitlement to a benefit, service credit, or other alleged entitlement, or on a matter otherwise not within the scope of this subchapter;

~~[(D)]~~ (E) 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)]~~ (F) 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 11/26/2009; am and comp

] (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 hearing officer appointed by the system shall preside over contested case hearings governed by this subchapter. The chairperson of the board or other member of the board designated by the chairperson shall preside over hearings of arguments on exceptions under section 6-23-51. 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.]~~ this subchapter, respectively.

(b) ~~[The]~~ With respect to contested case hearings governed by this subchapter, the hearing officer as 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.

(c) With respect to hearings of arguments on exceptions, the chairperson of the board or other member of the board designated as presiding officer shall have the following powers and duties:

- (1) To determine the time and place of the hearing of arguments on exceptions and, in the presiding officer's discretion or at the request of a party, to continue or postpone any hearing;
- (2) To regulate the course and conduct of the hearing;
- (3) To take any other action authorized by this subchapter or by law that the presiding officer may deem necessary for the orderly and just conduct of the hearing. [Eff and

comp 11/26/2009; am and comp]
(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 11/26/2009; comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-10, 92-16)

§6-23-32 Prehearing conference. (a) The [~~presiding~~] hearing 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~~] hearing 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 11/26/2009; am and comp] (Auth: HRS §§ 88-2 8, 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 11/26/2009; am and comp] (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 11/26/2009; comp] (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~~] a hearing 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~~] hearing 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~~] hearing officer is satisfied that no further evidence or argument is necessary. [Eff and comp 11/26/2009; am and comp] (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~~] hearing 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~~] hearing 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 11/26/2009; am and comp] (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~~]

presiding 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 11/26/2009; am and comp] (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 to dismiss all claims shall constitute a proposed decision if issued

by the chairperson or other designated member of the board. 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 11/26/2009; am and comp] (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~~] hearing officer, the [~~administrator~~] executive director or any person or agency may be permitted to intervene as a party in a contested case proceeding if the [~~administrator,~~] executive director, 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~~] hearing 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 11/26/2009; am and comp] (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. Terms or conditions of a default order can include dismissal of the petition. 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. The default order shall constitute a proposed decision if filed by the chairperson or other designated member of the board. [Eff and comp 11/26/2009; am and comp] (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,]~~ system, 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]~~ system 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,~~] system, 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 11/26/2009; am and comp] (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 11/26/2009; am and comp] (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 11/26/2009; comp] (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~~] hearing 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 11/26/2009; am and comp] (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 11/26/2009; comp] (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]~~ system may, without abatement of the proceedings, assign the case to another hearing officer. [Eff and

comp 11/26/2009; am and comp] (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 11/26/2009; comp] (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 11/26/2009; comp] (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 11/26/2009; comp] (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. Within fifteen days after receipt of a copy of a party's exceptions and request for review, any party may file with the board a response to the exceptions and request for review. [~~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, and response, 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, or response, by filing [~~two copies of~~] a written application setting forth the reasons for the request. The application shall be filed before the respective expiration of the period prescribed for the filing of exceptions or response. Upon good cause shown, the board, [~~or~~] any member of the board, or the executive director on behalf of the system, may extend the time for filing exceptions or response, for an additional period not to exceed thirty days after the applying party's receipt of the extension of time within which to file exceptions or response.

(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 11/26/2009; comp] (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]~~ executive director shall set the time and place of hearing of argument on exceptions and give written notice thereof to the parties. [Eff and comp 11/26/2009; am and comp] (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.~~

~~(e)]~~ (b) The final decision shall be personally delivered or mailed to the parties by registered or

certified mail with return receipt requested. [Eff
and comp 11/26/2009; am and comp]
(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 11/26/2009; comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9)

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 6-23, 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 _____ 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