



### 3.15 CIVIL SERVICE BOARD

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#### Meetings and Quorum

The Civil Service Board (Board) consists of three commissioners under City Charter Chapter 4. The Board selects one of its members as presiding officer. The Board shall meet at such times and places as are specified, but no less than quarterly, and shall report annually to City Council on its activities for the prior year.

Two members of the Board shall constitute a quorum and the votes of any two members concurring shall be sufficient to make a decision.

The City shall provide to the Board sufficient staff and legal assistance, meeting space, supplies and equipment to conduct its business, in accordance with City budget procedures.

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#### Supplemental Rules of Practice and Procedure

Supplemental rules of practice and procedure with definitions are attached hereto as [Appendix B](#). Parties shall refer to and comply with the supplemental rules as part of the appeal process.

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#### Administrative Duties

1. It shall be the duty of the Board to hold such hearings as it finds necessary in order to perform the duties and responsibilities vested in it by City Charter.
  2. Where the Director of Human Resources denies an appeal because of lack of jurisdiction, the Board may hold such meetings as are necessary to determine whether the Board has jurisdiction over the appeal prior to scheduling a formal or expedited hearing. If the Board denies the appeal on this basis it shall notify all affected parties in writing of its decision and that the decision is subject to court review as set forth below in this Administrative Rule.
  3. Where the Board, on its own motion or the motion of one of the parties to the appeal, determines the appeal involves legal issues that should be resolved prior to a formal or expedited hearing, the Board may schedule a hearing for the sole purpose of resolving those legal issues. Hearings held for this purpose are non-adversarial and the provisions below concerning burden of proof and burden of going forward shall not apply.
  4. On at least an annual basis the Board shall review any administrative rules and policies being considered concerning the duties of the Board and shall provide input to the City Council and to the Director of Human Resources.
  5. The Board may adopt rules of practice and procedure, subject to the approval of the Director of Human Resources.
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#### Filing of an Appeal

Appeals must be timely filed in accordance with this Administrative Rule. Appeals shall not be considered filed until received by the Board Administrator.

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## **Limitations Period**

The time limits set forth in this rule are jurisdictional in nature. Failure to comply with the time limits deprives the Board of jurisdiction. If the Board lacks jurisdiction to hear an appeal, the appeal will be dismissed. For example, for appeals challenging disciplinary suspensions, demotions or discharges, the employee must file a written appeal with the Board within twenty-one (21) calendar days of the effective date of the disciplinary action. For classification appeals, a precondition of the Board's jurisdiction requires the affected employee to file a request for reconsideration of the classification action with the Director of Human Resources within fourteen (14) calendar days of the effective date of the classification action. Similarly, for examination appeals, the candidate must file a written appeal of the examination results with the Director of Human Resources within fourteen (14) calendar days after BHR mails the examination results to the candidate. None of the time limits for Civil Service Board appeals is subject to a discovery rule, i.e. the limitation periods are not tolled until the employee knew or reasonably should have known of a basis to appeal.

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## **Appeals from Suspensions, Demotions and Discharges**

Subject to these rules on Hearings and Appeals, the Board shall review actions of disciplinary suspension, demotion or discharge of a permanent, non-probationary employee, where the employee alleges that the disciplinary suspension, demotion or discharge was for a political or religious reason, was not for cause or was not made in good faith for the purpose of improving the public service. Unless otherwise provided by a collective bargaining agreement, any permanent, non-probationary employee in the classified service who is subject to a disciplinary suspension, demotion or discharge shall have the right to appeal the action to the Board.

1. The employee subject to such disciplinary suspension, demotion or discharge must file a written appeal with the Board within twenty-one (21) calendar days from the effective date of the disciplinary suspension, demotion or discharge. The appeal must contain a detailed statement specifying:
    - a. The action being appealed.
    - b. The reasons why the employee believes the action was for a religious or political reason, was not in good faith for the purpose of improving the public service or was not taken for cause.
  2. The Board Administrator shall serve the appointing authority concerned and the Director of Human Resources with a copy of the written appeal.
  3. When a collective bargaining agreement provides a right of appeal to the Board concerning a suspension, demotion or discharge and as an alternative the right to grieve such suspension, demotion or discharge, if the employee or the employee's union files a grievance, there shall be no appeal to the Board.
  4. Except as provided in paragraph 3 above, when an employee or the employee's union has the right to grieve a suspension, demotion or discharge through a grievance procedure under a collective bargaining agreement and a grievance is filed, the grievance under the collective bargaining agreement shall be the exclusive method to challenge such suspension, demotion or discharge for purposes of this rule and there shall be no appeal to the Board. If no grievance is filed under the employee's collective bargaining agreement, the employee can pursue an appeal to the Board of a disciplinary suspension without pay, demotion or discharge in accordance with and subject to the provisions of this rule.
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**Appeals from Classification Actions**

Subject to these rules on Hearings and Appeals, the Board shall review appeals of classification actions taken by the Director affecting an employee in the classified service, where such action was alleged to be without rational basis or contrary to law or rule promulgated by the Director for classification or taken for a political reason.

Unless otherwise provided by a collective bargaining agreement, any employee adversely affected by a change in classification or whose request for a change in classification was denied, and any appointing authority who disagrees with a classification decision by the Director, may have the final decision of the Director reviewed by the Board.

1. To obtain Board review, the employee affected, or in the event of an appeal by the employing bureau, the appointing authority involved must file a written appeal with the Board. The appeal must contain a detailed statement specifying:
  - a. That the employee or appointing authority had filed with the Director a written request for reconsideration of the Director's classification action within fourteen (14) calendar days after the effective date of the classification action;
  - b. The date of the Director's written decision denying the employee's or appointing authority's request for reconsideration;
  - c. The reasons why the employee or appointing authority believes the action was without a rational basis, or contrary to a provision of rules promulgated by the Director for classifications, or law or was for a political reason;
  - d. The corrective action being requested.
2. The written appeal to the Board must be filed within twenty-one (21) calendar days from the Director's written decision to deny the request for reconsideration.
3. When a collective bargaining agreement provides a right of appeal to the Board concerning a classification action and as an alternative the right to grieve such classification action, if the employee or the employee's union files a grievance, there shall be no appeal to the Board.
4. Except as provided in paragraph 3 above, when an employee or the employee's union has the right to grieve a classification action through a grievance procedure under a collective bargaining agreement and a grievance is filed, the grievance under the collective bargaining agreement shall be the exclusive method to challenge such classification action for purposes of this rule and there shall be no appeal to the Board. If no grievance is filed under the employee's collective bargaining agreement, the employee can pursue an appeal to the Board of a classification action in accordance with and subject to the provisions of this rule.

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**Appeals from Examinations**

Subject to these rules on Hearings and Appeals, the Board shall review appeals of candidates for appointment or promotion to a position in the classified service, where the candidate alleges that the Director's decision was contrary to rules promulgated by the Director for examinations, or that the decision was contrary to law or for a political reason. The Board shall not have jurisdiction over any examination appeal

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where the sole basis of the appeal questions the appointing authority's right to select a candidate for appointment or promotion.

1. If the candidate is not satisfied with the decision of the Director of Human Resources, that candidate may appeal to the Civil Service Board. The appeal must be in writing and must contain a detailed statement specifying:
  - a. That the candidate had filed with the Director a written appeal of examination results within fourteen (14) calendar days after notice of the results is mailed;
  - b. The date of the Director's written decision after such appeal;
  - c. The reasons why the candidate believes that the decision by the Director was contrary to rules promulgated for examinations, or that the decision was contrary to law or for a political reason;
  - d. The corrective action being requested.
2. The written appeal to the Board must be filed no later than twenty-one (21) calendar days after the Director's decision is mailed.
3. When a collective bargaining agreement provides a right of appeal to the Board concerning an examination decision and as an alternative the right to grieve such examination decision, if the employee or the employee's union files a grievance, there shall be no appeal to the Board.
4. Except as provided in paragraph 3 above, when an employee or the employee's union has the right to grieve an examination decision through a grievance procedure under a collective bargaining agreement and a grievance is filed, the grievance under the collective bargaining agreement shall be the exclusive method to challenge such examination decision for purposes of this rule and there shall be no appeal to the Board. If no grievance is filed under the employee's collective bargaining agreement, the employee can pursue an appeal to the Board of an examination decision in accordance with and subject to the provisions of this rule.

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### **Notice of Hearings**

Time and Place of Hearings. The time and place of hearing will be set by the Board or the Board's designated Hearings Officer and notice thereof served by the Board upon the employee affected, the employee's representative, if any, the Director of Human Resources and the Director of the Bureau involved.

Postponements. Any party who desires a postponement shall promptly, upon receipt of notice of the hearing, make written request of the Board or the Board's designated Hearings Officer for such postponement stating the reason therefore in detail. For reasonable cause shown, the Board or Hearings Officer may grant such postponement and may, at any time, order a postponement upon its own motion. In the absence of extraordinary circumstances, the Board or Hearings Officer will not allow more than one postponement.

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### **Type of Hearing**

Upon receiving an appeal, the Board Administrator shall inform the appellant of the choice between an expedited hearing and a formal hearing. The appellant shall have fourteen (14) calendar days in which to exercise their choice by communicating that choice in writing to the Board Administrator. Failure to elect the type of hearing in the allotted time will result in the scheduling of an expedited hearing.

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## **Exhibits for Hearings and other Board Proceedings**

Documents to be considered by the Board as exhibits for a hearing or other Board proceeding must be filed in the format-specified in the supplemental procedural rules set forth in [Appendix B](#).

Upon receipt of exhibits filed by either party, the Board Administrator shall distribute the exhibits to the Board and to the opposing party in advance of the scheduled hearing or proceeding.

### **Expedited Hearing**

1. Notice of Hearing: All parties will be notified of the hearing date as soon as possible following the appellant's notice of a request for an expedited hearing to the Board Administrator. Expedited hearings will receive priority for scheduling over formal hearings. There will be at least twenty-one (21) calendar days' notice prior to any hearing date.
2. Expedited hearings shall be informal in nature.
3. No party may be represented by legal counsel at an expedited hearing.
4. Each party shall be allowed up to 90 minutes to present its case, including presentation of witnesses, response to the other party's arguments and questioning the other party's witness. The Board, at its sole discretion, may extend the time limits for either party.
5. Exhibits to be considered by the Board must be filed by the parties with the Board Administrator fourteen (14) calendar days prior to the date the Board is scheduled to hear the appeal. Exhibits not received by the Board Administrator fourteen (14) calendar days prior to the scheduled hearing date will not be considered. The Board, in its sole discretion, may waive this requirement at the hearing upon good cause being shown.
6. Expedited hearings will normally be open to the public. In disciplinary cases, the Board shall excuse all persons from the hearing room except its staff, the parties and their representatives, if a determination has been made by the employee affected to have the case heard in executive session pursuant to ORS 192.660 (2) (b) of the Public Meetings law.
7. At the conclusion of the hearing, and deliberations as necessary, the Board shall normally render a "bench" decision which will be recorded in the minutes of the Board meeting. The Board shall either grant or deny the appeal. See section below on post-hearing remedies.

### **Formal Hearing**

1. Formal hearings shall be scheduled for initial calendaring as a second priority after expedited hearings. There will be at least sixty (60) calendar days' notice prior to any hearing date.
  2. Either party may be represented at the hearing by legal counsel.
  3. Exhibits to be considered by the Board must be filed by the parties with the Board Administrator thirty (30) calendar days prior to the date the Board is choice to the Board Administrator. Failure to elect the type of hearing in the allotted time will result in the scheduling of an expedited hearing for all appeals except those related to discipline.
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4. When a disciplinary matter is appealed to the Board, the matter will go to formal hearing unless the parties mutually agree to an expedited hearing. Documents not received by the Board Administrator thirty (30) calendar days prior to the scheduled hearing date will not be considered. The Board, in its sole discretion, may waive this requirement at the hearing upon good cause being shown.
  5. Each party must provide the Board and the other parties with a proposed list of witnesses including the general topic of the issues that will be addressed fourteen (14) calendar days prior to the hearing date
  6. General Hearings Procedure:
    - a. The Board will open the hearing with a brief introduction of the parties and issues.
    - b. In disciplinary cases, the Board shall excuse all persons from the hearing room except its staff, the parties and their representatives, if a determination has been made by the employee affected to have the case heard in executive session pursuant to ORS 192.660(2)(b) of the Public Meetings Law.
    - c. The parties or their representatives may make opening statements.
    - d. The parties or their representatives may present evidence in support of their respective positions. Opposing parties will be allowed to cross-examine witnesses.
    - e. Parties may make closing statements. However, in disciplinary cases, a party may request to file a post-hearing memorandum and such request shall not be arbitrarily denied. The Board may set limits on the size, length and scope of post-hearing memoranda to be filed, as the Board deems reasonable and appropriate for the case.
  7. Oaths and Subpoenas. The Board may compel the attendance of witnesses and the production of documents through issuance of subpoenas, either upon its own motion or upon application of a party in writing and good cause being shown. Documents that may be obtained by filing a Public Records Request shall not be subject to subpoena, unless good cause is shown. The Board may issue a protective order or take other measures to protect the confidentiality of documents and may require the return of all documents subject to a protective order at the conclusion of the matter. Applications for subpoenas must comply with the supplemental procedural rules set forth in [Appendix B](#). The Board's designated presiding officer shall administer the oaths to every witness.
  8. Conference During and Prior to Hearings. During or prior to any proceeding, the Board may, at its discretion, call the parties together for a conference or may recess the hearing for such conferences to resolve undisputed or procedural matters. The results of such conference shall be summarized on the record.
  9. Stipulations of Agreed Upon Facts and Issues. Unless excused by the Board, the parties are required to confer before the hearing for the purpose of stipulating to agreed-upon facts and issues involved in the controversy. Such stipulations shall be binding upon the parties and may be used as evidence in the case.
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10. Proposed Findings of Fact and Conclusions of Law. Following the conclusion of the hearing the Board may at its discretion require the prevailing party to serve proposed findings of fact and conclusions of law upon the Board and to all other parties within fourteen (14) calendar days. The opposing party will have fourteen (14) calendar days after service to respond in writing to the proposed findings of fact and conclusions of law to the Board and the prevailing party. See section below on post hearing remedies.
  11. Continuances. On the motion of a party, or on the Board's own motion, if it appears that further testimony or argument should be received, the Board may in its discretion continue the hearing upon a showing of good cause. The date of such continued hearing may be fixed at the time of hearing or by later written notice to the parties.
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### **Use of Hearings Officers**

The Board shall be empowered to refer an appeal to a Hearings Officer who will conduct the appeal process in accordance with this Rule. The Director of Human Resources shall upon request provide the Board with a list of Hearings Officers who shall be qualified individuals known to be committed to the principles of a merit-based system of employment. For inclusion on the list, persons must be specialists in the field of employee relations, or members of the Oregon State Bar Association or the American Arbitration Association.

Any amount or method of compensation of the Hearings Officer shall be prescribed by the Director, subject to Council approval and funding.

Except where expressly otherwise provided in these rules, all provisions of these rules pertaining to the duties and authority of the Board in the conduct of appeals hearings shall be fully applicable to the Hearings Officer. This includes, but is not limited to, rulings on pre-hearing motions and motions filed prior to the conclusion of a hearing.

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### **Burden of Proof in Appeal Hearings**

In a hearing on an appeal from a suspension, demotion or discharge, the appointing authority or designee shall have the burden of proof and the burden of going forward with the evidence. In appeals concerning classification actions and exams, the party filing the appeal shall have the burden of proof and the burden of going forward with the evidence. The party who has the burden of proof shall present its case first.

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### **Standard of CSB Review in Expedited and Formal Hearings**

**Disciplinary Cases.** In such hearings, the Board will apply the "reasonable employer" standard to determine first whether the employee's conduct warranted discipline, and second, if so, whether the discipline imposed for the offense was objectively reasonable.

**Classification Action Appeals.** In appeals from classification decisions, the Board will review the Director's decision to determine whether the decision, as alleged by the appellant was without a rational basis or contrary to law or rules promulgated for classifications or taken for political reason.

**Examination Appeals.** In appeals concerning the examination process, the Board will review the Director's decision to determine whether the decision, as alleged by

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the appellant, was contrary to rules promulgated for examinations, or was contrary to law or for a political reason.

The Standards of Review are set out in [Appendix A](#) to these rules.

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### **Conduct of Witnesses, Parties and the Public During Hearings**

All parties, their representatives, witnesses and spectators shall conduct themselves in a respectful manner. Demonstrations of any kind will not be permitted. Failure to comply with this rule or with the Board's effort to maintain order and proper decorum are grounds for removal from the hearing. Refusal of a witness to answer any question ruled to be proper shall, in the discretion of the Board, be grounds for striking all testimony previously given by the witness.

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### **Post Hearing Procedures**

Board Decisions. Decisions of the Board shall in all cases be based solely on the record made at the hearing and on applicable law and other legal authorities, relevant to the dispute. When the Board has not appointed a Hearings Officer, Board decisions, except in expedited cases, shall be issued as follows:

- a. At the conclusion of hearings in appeals from suspensions, demotions and discharges, the Board shall state the time in which a written decision will be issued. The written decision shall include Findings of Fact, Conclusions of Law and the Board's Final Order. The Board can issue a preliminary decision by voice vote.
- b. Decisions on appeals concerning examination and classification appeals may be made by a voice vote of the Board at the conclusion of the hearing, provided that in the event the Board sustains the appeal in whole or in part and provides a specified remedy, the Board shall issue a written decision within thirty (30) days following the hearing.
- c. In all appeals of classification decisions by the Director of Human Resources, the Board shall issue a written decision within thirty (30) days following the hearing.

Recommended Order of the Hearings Officer. In matters referred to a Hearings Officer, a Recommended Order shall be served on the parties and filed with the Board within the time periods specified in the section above on post hearing procedures. Where applicable, the Recommended Order shall include Rulings on Motions and Evidentiary Matters, Findings of Fact and Conclusions of Law.

Board Decisions on Recommended Orders. Board review of Recommended Orders is limited to the hearing record and applicable law. The Board may adopt a Recommended Order by voice vote. If the Board rejects or requires modification of the Recommended Order, the Board shall base its final decision upon a review of the hearing record and shall issue a written decision within thirty (30) days of its determination to reject or modify the hearings officer's received order.

Effect of Board Decisions. Board decisions are final and binding on the parties, subject to the appeal process outlined below.

Appeal of Board Decisions. The final decision of the Board shall be subject to review by the circuit court in the manner provided by statute for review of quasi-judicial decisions of lower tribunals.

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**Post Hearing Remedies**

Classification Action Appeals. If in an appeal from a classification decision by the Director, the Board concludes that the allegations in the appeal are correct, the Board shall set aside the classification decision and remand the decision back to the Director of Human Resources for further review. The Board's order of remand shall specify and explain the reasons for the Board's action.

Examination Appeals. If in an appeal concerning the examination process, the Board finds the allegations in the appeal are correct, the Board shall order such action, as it deems necessary to fulfill the purposes and principles of the Administrative Rules on examinations and of Chapter 4 of the City Charter.

Appeals from Suspensions, Demotions and Discharges. If the Board finds that the discipline was warranted, the Board shall confirm the action taken. If the Board finds that some discipline was warranted, but that the discipline imposed was too severe, the Board may reduce or otherwise modify the discipline to a level it deems appropriate for the offense and reinstate the employee with or without back pay upon such terms and conditions that the Board may establish. If the Board finds that no discipline was warranted, the Board shall reinstate the employee with back pay and with those fringe benefits which were lost as a result of the discipline. Deductions for unemployment compensation and other interim income received shall be ordered as determined by the Board.

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**Record of Proceedings**

The record of each appeals hearings shall include but not be limited to:

1. A statement identifying the dispute;
2. All written materials offered to the Board, unless withdrawn by the offering party with the approval of the Board or Hearings Officer;
3. The Hearings Officer's Recommended Order if applicable;
4. The Board's final written decision or when allowed by the rules, oral statements of the Board's decision;
5. The recording of the hearing, which shall be either a verbatim written record or mechanical recording.

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**Administrative Rule History**

Adopted by Council March 6, 2002, Ordinance No. 176302  
Effective April 5, 2002  
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Revised September 16, 2005  
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Revised April 17, 2009  
Revised December 4, 2013  
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Revised February 13, 2019

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## APPENDIX A

### I. The Standard of Review

The following is a discussion of the “standard of review” which will apply to Civil Service Board (Board). Included is a review of the State Personnel Law, which the Charter language in question is based upon, and of the Employment Relations Board decisions, which the Board will be able to rely upon in performing its appellate function.

#### 1. Classification Action Appeals

Section 4-401 of the revised Charter provides in relevant part:

Section 4-401. Duties of the Board. The duties of the Board shall be:

- (1) Review classification actions taken by the Director affecting an employee in the classified service, where the employee alleges such action to be without a rational basis or contrary to law or rule or taken for political reason and remand back to the Director of Human Resources for further review and action.

The language above quoted which defines the Board’s authority, was based upon and is, in essence, the same language found in ORS 240.086 which governs the power of the Employment Relations Board (ERB) in reviewing classification appeals by employees of the State of Oregon. In relevant part, ORS 240.086 provides:

“The duties of the [ERB] shall be to:

- (1) Review any personnel action affecting an employee who is not in a certified or recognized appropriate collective bargaining unit, that is alleged to be arbitrary, or contrary to law or rule, or taken for political reason, and set aside such action if it finds these allegations to be correct.”  
(emphasis added).

The Employment Relations Board decision which applies and discusses the operative language in ORS 240.086, which is quoted and underscored above, is in the case of Gladys Patterson v. Department of Fish and Wildlife, ERB Case No. 1431 (December 1983). About its authority, ERB says the following:

“This is the first position allocation [reclassification] appeal from a classified state employee to come before this Board since extensive amendments to state personnel law by the 1979 Legislative Assembly\*\*\*. Unchanged by the amendments, however, were the grounds on which this Board may review personnel actions, namely that such actions be ‘alleged to be arbitrary or contrary to law or rule or taken for political reason’\*\*\*.” ORS 240.086(a). Appellant here appeals to us on the ground that Respondent’s action in refusing her request for reclassification to accounting Clerk 2 was arbitrary.\*\*\*

It is not for this Board to decide whether Respondent’s decision in allocating Appellant’s position was the correct one (i.e. whether we would have selected a different classification), but rather whether there is a rational basis to support the decision which respondent has made. This is the test of ‘arbitrariness’ which we have followed pursuant to Paul v. Personnel Division\*\*\*. The court there said:

‘The word “arbitrary” is not a catchall provision. It may not be used as the vehicle for a policy decision. Rather, it applies to action which is taken without cause, unsupported by substantial evidence, or non-rational. Its typical application is in cases where there is no evidentiary basis for the challenged personnel action.’

There is here a rational, evidentiary basis for respondent's decision that Appellant's position should be classified as that of Accounting Clerk 1\*\*\*." (pages 7-8) (emphasis added)

Along the same vein, in a more recent reclassification appeal, Barbara Rice v. Corrections Division, ERB Case No. 1475, (1985) the ERB said the following about its appellate role:

"Accordingly, this Board consistently has held that an agency classification decision will be upheld unless there is no evidentiary basis to support it. Gladys Patterson v. Department of Fish and Wildlife, Case No. 1431 (1983); Ruth Haucke v. Employment Division, Case No. 1075 (1981). In other words, the agency will prevail unless the evidence is so slim as to require a directed verdict for the appellant were the matter being tried before a jury." (page 8)

In addition to hearing appeals concerning classification matters, it is also ERB's duty to hear appeals by non-union State employees in discipline cases. The ERB applies the "no reasonable employer" standard, but only in the disciplinary cases. Brown v. Oregon College of Education, 52 OR App. 251 (1981). Disciplinary appeals are discussed in further detail below. The important point here is that there is a major difference between the "no reasonable employer standard" applicable in disciplinary appeals, and the "without a rational basis" or "on an arbitrary basis" test applied by the ERB (and to be applied by the Civil Service Board) for classification appeals.

The primary distinction between the two tests is the extent to which the Board or the ERB may substitute its judgment for that of management where there is evidence to support management's position. As the ERB explained in Gladys Patterson v. Department of Fish and Wildlife, supra, a classification decision by the employer must be "upheld unless there is no evidentiary basis to support it." In other words, if there is some evidence to support it, the decision must stand. As also further explained above, the standard for classifications appeals may not be used by the ERB or the Board as the vehicle for a policy decision. Classification policy is for the employer. Gladys Patterson v. Fish & Wildlife, supra.

As previously mentioned, a further explication of the "no reasonable employer" standard appears in Part II of this report below.

## 2. Examination Appeals

City Charter Section 4-401 provides that the duties of the Board shall be:

(3) Review appeals by candidates for appointment or promotion to positions in the classified service, when applicants allege that rules promulgated under Chapter 4 of the City Charter were not followed, were contrary to law or made for political reasons. If the Board finds an allegation to be correct, it shall order such actions necessary to fulfill the purposes and principles of this Chapter

The standard for examination appeals contains only "half" of the standard to be applied for classification appeals. Specifically, the sole issue for the Board will be whether the Director's decision was "contrary to rules promulgated for examinations, or...was contrary to law or for a political reason." Thus, if the Director did not violate any rules promulgated for examinations, or some law (example, ORS 659.030 prohibiting race discrimination) and if the decision was not for a "political reason" (the "political patronage" rule), the Director's decision must stand.

The "standard of review" for examination appeals is purposefully abbreviated because the pre-employment selection process of examinations is primarily, if not solely, an administrative function. In its expertise, the Board has observed that the great majority of examination appeals are an expression by a candidate who did not do well on the test of unspecified frustration or understandable dissatisfaction with the outcome. Few candidates identify any specific Board rule or policy violation. Further, it is a rare occasion that the Board has found it necessary to re-do the entire examination. The "standard of review" appearing in Chapter 3-050 of these Rules was written in light of this experience. Accordingly, in the event the Board finds a rule violation, it will have the latitude to fashion a remedy which fits the situation. Only the rare serious rule violation has deprived one or more candidates of a fair and equal opportunity for employment or has brought into question the integrity of the entire process. Even where a procedural error was found, it has rarely been necessary for the Board to invalidate the entire test and require all candidates to re-apply.

Again, the rule will allow the Board to fashion the appropriate remedy for the particular rule violation, if any is found.

### 3. Disciplinary Action Appeals

City Charter Section 4-401(2) provides the duties of the Board shall be to review suspension, demotion or discharge of permanent employees in the classified service when employees allege discipline was not for cause. If an employee's allegations are found to be correct, reinstatement may be ordered under terms and conditions as may be deemed appropriate by the Board.

Since the case of Sherris v. City of Portland, supra, the Civil Service Board has endeavored to determine whether the discipline imposed was "for cause." The Board is edified by the approach of the Employment Relations Board in reviewing disciplinary appeals in the State's "merit system." The ERB applies the "no reasonable employer" standard. In Oregon School Employees Association v. Klamath County School District, 9 PECBR 8832 (August, 1986), the ERB said the following about the "no reasonable employer" standard.

\*\*\*\*In judging discipline cases under the State Personnel Relations Law, this Board applies a 'no reasonable employer' standard, as explicated by the Court in Brown v. Oregon College of Education, 53 Or App. 251 (1981). We also have applied that standard in cases under the Public Employee Collective Bargaining Act (PECBA) to modify discipline and to reverse a discharge. We believe that the reasonable employer's standard comprehends the generally-accepted elements used by arbitrators or others in making just cause determinations. Consequently, when confronted with (1)(g) complaints concerning 'for cause' discipline questions, this Board will use the reasonable employer standard to determine: first, whether the employee's conduct warranted discipline, and second, if so, whether the discipline imposed for the offense was objectively reasonable." Brown, supra, 52 Or App. at 260. (page 8850) (emphasis added)

Quoting from the Brown case, the ERB gave the following overview of the "no reasonable employer" standard:

"There is no explicit and comprehensive recipe that describes the traits of the reasonable employer. The ingredients must be discerned, and sometimes inferred, from a variety of sources. The Oregon Legislature, courts and this Board have enunciated some of the traits possessed by the reasonable employer; for example, it:

"Does not take action based on political, religious or racial reasons, or because of sex, marital status, or age;

"Disciplines in good faith and for cause;

"Does not impose sanctions disproportionate to the offense or discipline for inconsequential offenses;

"Considers the employee's length of service and prior service record, warns employees about what conduct is improper and generally is consistent in applying disciplinary sanctions;

"Takes disciplinary action in a timely manner;

"Gives an employee who is being dismissed notification of the charges against him and of the kinds of sanctions being considered, and at least an informal opportunity to refute the charges to someone authorized to make or effectively recommend the final decision;

"Bears the burden of proving all elements necessary to justify the discipline exacted; and

"Adopts and enforces reasonable regulations governing the work and conduct of its employees and imposes appropriate forms of discipline where it has good cause.

"My own experience in the field of employment relations and a review of some literature in the field lead me to conclude that the reasonable employer also incorporates other traits. For example, it:

"Makes a fair and objective investigation before administering discipline, except in extraordinary

circumstances; obtains substantial evidence before imposing sanctions; uses progressive discipline, except where the offense charged is gross or the employee's behavior probably will not be improved through such measures; and does not, through its own actions, exacerbate disciplinary problems." Brown at 8-9; footnotes omitted. (pages 8851 and 8852)

As ERB's decision above quoted indicates, the principles of "progressive discipline" have relevance in the "no reasonable employer" standard. On this score, a significant case is Oregon School Employee's Association, Chapter 89 v. Rainer School District 13, ERB Case No. UP-85-85 (appeal to Court of Appeals pending), wherein the ERB said the following about "progressive discipline":

"Complainant argues that Gamble's termination was not justified because the District failed to use progressive discipline. The Contract does not specify what progressive discipline steps, if any, are required. This Board has previously held that the 'reasonable employer' used progressive discipline 'except where the offense charged is gross or the employee's behavior probably will not be improved through such measures.' But the concept of progressive or corrective discipline as a component of just cause, does not require an employer to follow some lock-step progression of disciplinary measure before it may legitimately discharge an employee. Where a contract is silent concerning any requirement for specific disciplinary steps, the progressive discipline component of just cause may be satisfied by corrective measures that put the employee on notice that further misconduct may result in the discipline ultimately imposed and that give the employee a reasonable opportunity to modify his behavior. Gamble was warned in writing that his chronic tardiness could lead to dismissal ('gravest consequences'). The changes in his hours of work and the time clock requirement, although not normally regarded as disciplinary measures, were imposed by the supervisor in an attempt to correct the tardiness problem. We find that the warnings given to Gamble and the opportunity provided him to correct his behavior were sufficient to comply with the contractual just cause requirement." (pages 25-26).

### ***CONCLUSION***

Whereas the appellate jurisdiction and authority of the Board will be limited in classification and examination matters, the Board's authority in disciplinary cases will remain substantial. Since the "no reasonable employer" standard embodies the principles of "just cause," there is a body of ERB decisions, and decisions by arbitrators nation-wide, court decisions concerning employee discipline and arbitral treatises on employee discipline such as Elkouri and Elkouri's How Arbitration Works, 4<sup>th</sup> edition, which are appropriate for the Civil Service Board to refer to when reviewing discipline cases.

## *APPENDIX B*

### UNIFORM SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR APPEALS BEFORE THE CIVIL SERVICE BOARD

#### 1. GENERAL PROVISIONS

##### 1.01 AUTHORITY AND APPLICATION

These rules are promulgated under the authority of the Director of Human Resources for the City of Portland.

##### 1.02 SCOPE AND PURPOSE

The purpose of these rules is to provide a uniform practice and procedure for processing all appeals within the jurisdiction of the Civil Service Board, a three-member panel appointed under the authority of City of Portland Charter Chapter 4. These rules supplement the provisions of City of Portland Human Resources Administrative Rule 3.15 – Civil Service Board (HRAR 3.15).

#### 2. DEFINITIONS

The following definitions shall apply to these supplemental rules and to HRAR 3.15:

**Appellant** shall mean the party that files an appeal before the Board.

**Applicant** shall mean the Appellant, the Appellant’s representative or the Respondent’s representative who applies for issuance of a subpoena.

**Authorized representative** is defined as a representative over the age of eighteen (18) who is not a party to the action and who is authorized to accept delivery of a subpoena on behalf of a subpoenaed party.

**Board** shall mean a quorum of the members of the Civil Service Board.

**Board Administrator** shall mean the Civil Service Board Administrator.

**Board Administrator Address of Record** shall mean the Board Administrator’s physical office or interoffice address of record, as follows:

Physical office:     111 SW Columbia Street  
                              Room 550  
                              Portland, Oregon 97201

Interoffice:         122/550

**Certificate of Service** shall mean a document filed with the Board Administrator that certifies that a copy of the document has been served on the opposing party.

**City** shall mean the City of Portland.

**Days** shall mean calendar days except when specifically noted otherwise. When counting to determine a deadline, count every day, including intermediate Saturdays, Sundays, and paid holidays, unless the deadline falls on a Saturday, Sunday or paid holiday. If the deadline to file or serve a document falls on a Saturday or Sunday, or on a paid holiday, the period of time for which to perform the act shall extend to the next day the City is open for regular City business. "Paid holiday" is defined as any holiday that is recognized and observed by the City as provided for in HRAR 6.02.

**Discovery rule** is defined as a rule that tolls the limitations of time period in which to file an appeal.

**Good cause** is defined as a substantial and compelling reason and may include but is not limited to a reason that is beyond the control of a party. Whenever a party is required to show good cause, the Board will consider whether there is good cause on a case-by-case basis, with an aim toward making decisions as consistent and uniform as possible.

**Hearings Officer** shall mean a neutral party that has been empowered to conduct a hearing by referral of the Board. All procedural rules that apply to the Board also apply to a Hearings Officer prior to the date the Board issues a Final Order pursuant to HRAR 3.15.

**HRAR** or **HRARs** shall mean the City's Human Resources Administrative Rule(s).

**Jurisdiction** means the power or authority given to the Board to hear and determine the merits of an appeal pursuant to the authority of the City Charter and HRAR 3.15.

**PDF format** is defined as a document that is in Portable Document Format.

**Presiding Officer** shall mean the Board member that has been elected by the Board to serve as the Presiding Officer for the Board.

**Representative** shall mean the attorney for the Appellant, the Respondent's non-attorney representative or the City Attorney representing the Respondent.

**Respondent** shall mean the entity that the appeal is filed against. Generally, this is a City bureau.

**Stipulation** shall mean a set of facts or issues that are agreed upon by the Appellant and Respondent.

**With prejudice** means that a final determination on the merits has been issued, and the Appellant is forbidden from again pursuing the same appeal against the same Respondent.

### **3. FILING AND SERVICE OF DOCUMENTS**

#### **3.01 FILING DOCUMENTS WITH THE BOARD ADMINISTRATOR**

Whenever these rules or HRAR 3.15 require the parties to file a document with the Board Administrator, filing may be accomplished by one of the following methods:

- 1) By e-mail to the Board Administrator's e-mail address posted on the Civil Service Board website;
- 2) By facsimile to the fax number posted on the Civil Service Board website;
- 3) By the City's interoffice mail system at the Board Administrator's interoffice address of record;  
or
- 4) By hand delivery, U.S. first class mail, registered mail or certified mail at the Board Administrator's physical office address of record.

Parties may not file a document by e-mail or facsimile if the number of pages exceed 50.

#### **3.02 FILING AND SERVICE DATE**

- A. Documents filed by e-mail, facsimile, interoffice mail or hand delivery with the Board Administrator shall be deemed filed on the date the Board Administrator receives the document, provided that the document is received on or before 5:00 p.m. Documents received by e-mail, facsimile or hand delivery after 5:00 p.m. shall be deemed as filed on the next business day. Documents filed by mail shall be deemed filed on the date that the envelope is postmarked.
- B. Whenever these uniform supplemental rules or HRAR 3.15 require a party to serve a copy of a document on the opposing party, the filing party shall serve the document at the opposing party's address of record by e-mail, facsimile, hand delivery, U.S. first class mail, certified mail or registered mail. Parties may not serve documents by e-mail or facsimile if the number of pages exceed 50. Service shall be complete as described in Section 3.02 A.

#### **3.03 FORMS AND FILING REQUIREMENTS**

- A. All documents served or filed must be dated and signed by the party or Representative submitting the document. Documents served or filed by e-mail must be in PDF format.
- B. Forms are provided in fillable PDF format and are posted on the Civil Service Board website under the "Civil Service Board Fillable Forms" tab for the convenience of all parties. Parties may choose not to use the forms; provided that documents filed with the Board Administrator are in the same or similar format as the forms provided.



The Board, in its discretion, may not consider documents that are not filed in the proper format.

- C. As soon as reasonably possible, a Representative is required to file a Notice of Appearance with the Board Administrator; a form is provided on the Civil Service Board website. The contact information in each Notice of Appearance shall constitute each party Representative's address of record and preferred method of delivery of service for purposes of these rules. In the event an Appellant is unrepresented, the contact information on the Appellant's Notice of Appeal shall serve as the Appellant's address of record and preferred method of delivery of service.
- D. With the exception of a Notice of Appeal and exhibits, all documents filed with the Board Administrator must include a Certificate of Service in the format provided on the Civil Service Board website.

#### **4. FILING OF AN APPEAL**

- A. The form and content of an appeal must comply with the provisions set forth in HRAR 3.15. An Appellant may use the Notice of Appeal form on the Civil Service Board website.
- B. In accordance with HRAR 3.15, an appeal shall not be considered filed unless it has been filed with the Board Administrator.

#### **5. BOARD JURISDICTION**

##### **5.01 REVIEW OF APPEALS**

The Board is limited to hearing appeals that fall within the scope of HRAR 3.15. Furthermore, the time limits specified in HRAR 3.15 for filing an appeal to the Board are jurisdictional in nature. Failure to comply with the time limits specified in HRAR 3.15 means that the Board lacks jurisdiction to hear the appeal. The time limits specified in HRAR 3.15 are not subject to the discovery rule.

##### **5.02 PROCESS OF REVIEW TO DETERMINE BOARD JURISDICTION**

- A. Per HRAR 3.15, the Board may, on its own motion, determine whether an appeal involves legal issues that require resolution before the Board schedules a hearing.
- B. Upon receipt of an appeal to the Board, the Board Administrator shall review the appeal to determine if there is a question whether the Board has jurisdiction over the appeal.
- C. If the Board Administrator determines that there is a question whether the Board has jurisdiction over an appeal, the appeal is untimely or that the appeal does not fall within the scope of HRAR 3.15, the Board Administrator shall notify the Appellant. The Board Administrator shall serve a copy of the notification on the Respondent's Representative and the Board.

- D. The Appellant shall have fourteen (14) days from the date the Board Administrator notifies the Appellant to file a written statement, along with exhibits, if applicable, with the Board Administrator. The Appellant's written statement is limited to seven (7) pages, exclusive of exhibits, and is limited to the issue of whether the Board has jurisdiction to hear the Appellant's appeal.
- E. The Respondent shall have fourteen (14) days from the date the Appellant files the Appellant's written statement, along with exhibits, if applicable, to file a responsive written statement with the Board Administrator. The Respondent's written statement is limited to seven (7) pages, exclusive of exhibits, and is limited to the issue of whether the Board has jurisdiction to hear the Appellant's appeal.
- F. The procedure for filing exhibits set forth in Section 6.03 of these rules applies to exhibits to be submitted with a written position statement concerning a jurisdictional issue.
- G. Upon timely receipt of an Appellant's written statement, the Board Administrator shall schedule a public meeting so that the Board can determine the sole issue of whether the Board has jurisdiction over the appeal. No witness testimony shall be taken at the public meeting unless the Board, in its discretion, finds that testimony will be useful or of assistance to the Board.
- H. If an Appellant fails to file a written statement within fourteen (14) days of the date the Board Administrator notifies the Appellant that the Board may lack jurisdiction, the Board will automatically dismiss the appeal for lack of jurisdiction.
- I. The Board's Order of Dismissal for lack of jurisdiction is final subject to a request for writ of review in accordance with ORS 34.010-34.100.

### **5.03 NOTIFICATION PROCESS WHEN AN APPEAL MEETS JURISDICTIONAL REQUIREMENTS**

- A. If an appeal meets jurisdictional requirements, the Board Administrator shall notify the Appellant of the choice between an expedited hearing or a formal hearing. Information regarding the difference between an expedited hearing and a formal hearing is posted on the Civil Service Board website.
- B. The Appellant must file a Notice of Election of Hearing with the Board Administrator within fourteen (14) days of the date the Board Administrator notifies the Appellant of his or her hearing options. A Notice of Election form is provided on the Civil Service Board website.
- C. Per HRAR 3.15, failure to file a Notice of Election of Hearing with the Board Administrator within the time frame required will result in the scheduling of an expedited hearing. Parties may not be represented by legal counsel at an expedited hearing.
- D. Upon timely receipt of a Notice of Election of Hearing, or in the case where fourteen (14) days has elapsed without timely receipt of a Notice of Election of Hearing, the Board Administrator shall schedule the hearing within the time frame required by HRAR 3.15 and shall serve a Notice of Hearing on all parties at their address of record.

## **6. PRE-HEARING PROCEDURES**

### **6.01 GENERAL WRITTEN COMMUNICATIONS**

All written communications to the Board Administrator on behalf of the Board must be copied to the opposing party so as to avoid the appearance of ex parte communications. If the Board Administrator receives a written communication from one party that has not been copied to the other party, the Board Administrator, in the Board's discretion, may notify the party that the written communication may not be received or considered by the Board until it has been copied to the other party.

### **6.02 PUBLIC RECORDS FOR COPYING AND INSPECTION**

- A.** Per HRAR 3.15, documents that may be obtainable by filing a Public Records Request shall not be subject to subpoena, unless good cause is shown.
- B.** Parties may file a Public Records Request with the appropriate bureau. Bureau contact information is on the Civil Service Board website. Parties may also obtain the current City form to obtain public records on the Civil Service Board website.
- C.** If a party is unable to obtain documents by filing a Public Records Request, the party may file an application for issuance of a subpoena to obtain the documents. Parties who apply for issuance of a subpoena for production of documents must comply with the application process outlined in Section 6.06 and Section 6.07 of these rules. The Board may issue a protective order or take other measures to protect the confidentiality of documents.

### **6.03 FORMAT OF EXHIBITS FOR PUBLIC MEETINGS AND HEARINGS**

- A.** With the exception of exhibits for pre-hearing motions, all exhibits to be considered by the Board for an expedited hearing, a formal hearing or a public meeting must be filed in the following format:
  - 1) Documents must be filed with a Table of Contents that lists and briefly describes each document.
  - 2) Each exhibit must be separated by indexed tabs and clearly marked with an exhibit number.
  - 3) Each party must file six (6) sets of copies of their exhibits with the Board Administrator. Exhibits shall not be filed with the Board Administrator by e-mail or facsimile. Per HRAR 3.15, the Board Administrator distributes exhibits to the Board and to the opposing party.
- B.** A checklist that provides guidance for preparing exhibits is provided on the Civil Service Board website.

### **6.04 UNTIMELY OR IMPROPER FILING OF EXHIBITS**

Exhibits that are not filed within the time frames or format required by HRAR 3.15 and these uniform supplemental rules will not be considered by the Board unless good cause for untimely or improper filing can be shown.

## **6.05 PRE-HEARING MOTIONS**

- A.** All pre-hearing motions shall be filed with the Board Administrator in the format provided on the Civil Service Board website.
- B.** Unless the number of pages for exhibits exceed 50 pages, the procedure for filing exhibits set forth in Section 6.03 A. of these rules does not apply to exhibits for pre-hearing motions. A party may attach copies of exhibits to each party's motion or written objection to pre-hearing motion. In the event a party's exhibits exceed 50 pages, the party must file the exhibits in the format outlined in Section 6.03 A. of these rules.
- C.** If the pre-hearing motion is for postponement of a hearing or for an extension of time, the moving party must show good cause why the hearing date should be postponed or why the party should be allowed an extension of time, unless both parties mutually agree to a postponement or to allow for an extension of time. In any event, it is within the Board's discretion to grant or deny a motion for postponement of a hearing or for an extension of time.
- D.** The opposing party shall have seven (7) days from the date a pre-hearing motion is filed to file any written objections with the Board Administrator in the format posted on the Civil Service Board website. The opposing party shall attach any exhibits the party wishes the Board to consider with the written objections.
- E.** If, in the Board's discretion, oral argument is necessary, the Board Administrator shall schedule a date and time for oral argument and shall notify all parties of such date and time.
- F.** The Board Administrator shall schedule a date and time for the Board to meet and issue a ruling on the motion. The Board may consider an opposing party's failure to file written objections as evidence that the opposing party has no objection to the motion.
- G.** The Board may, in its discretion, waive the requirements of this section for motions made for an extension of time or for postponement of a hearing.

## **6.06 APPLICATION FOR SUBPOENAS**

- A.** Pursuant to HRAR 3.15, subpoenas to compel the attendance of a witness or for production of documents for a hearing may be issued upon application of either party upon a showing of good cause. Good cause for issuance of a subpoena for production of documents includes a showing that the Applicant used due diligence to comply with Section 6.02 of these rules prior to filing a subpoena application. Absent such a showing, the Board may deny the Applicant's subpoena application, to the extent it seeks records that may be subject to or attainable through a public information request.
- B.** An Applicant must comply with the following process to request issuance of subpoenas:
  - 1) An Applicant must file a separate application for each subpoena requested in the format provided on the Civil Service Board website.
  - 2) An Applicant must complete all information for the subpoena in the format provided on the Civil Service Board website.
  - 3) Subpoena application(s) to compel the attendance of a witness must be filed with the Board Administrator no later than twenty-one (21) days in advance of the date of the scheduled hearing if the hearing is an expedited hearing, and no later than thirty (30) days in advance of the hearing if the hearing is a formal hearing.

- 4) Subpoena application(s) to compel production of documents must be filed with the Board Administrator as soon as reasonably possible, and in any event, no more than seven (7) days of the date the Applicant learns that the Applicant is unable to obtain the requested documents through a public information request.
- 5) The opposing party shall have three (3) days from the date a subpoena application is filed to file any written objections with the Board Administrator.
- 6) The Board Administrator shall schedule a date and time for the Board to meet and determine whether the subpoena(s) shall be issued. The Board may consider an opposing party's failure to file written objections to subpoena application(s) as evidence that the opposing party has no objection to the issuance of the requested subpoena(s).
- 7) If a subpoena application has been filed with the Board Administrator outside of the time frame required by these rules, the Board may deny the application.
- 8) If the Board determines that the Applicant's subpoena application(s) shall be granted, the Presiding Officer shall issue the subpoena(s) as soon as reasonably possible, or within no later than five (5) business days from the date the Board met to determine whether the subpoena application(s) should be granted.
- 9) If the Board denies the Applicant's subpoena application(s), the Board will provide the reason(s) for the denial. The Board's decision is final.

#### **6.07 VALID SERVICE OF SUBPOENAS**

If the Board grants an Applicant's subpoena application(s), the Applicant must comply with the following process for service of the subpoena(s):

- A. An Applicant shall be responsible for obtaining issued subpoena(s) from the Board Administrator.
- B. The Applicant shall be responsible for serving the subpoena(s).
  - 1) If the subpoena is to compel witness testimony, service of the subpoena must be made sufficiently in advance of the date of the hearing so as to allow the witness a reasonable time for preparation and travel to the place of attendance.
  - 2) If a subpoena is for production of documents, service of the subpoena must be made sufficiently in advance to allow for production of the documents prior to the date all hearing documents must be filed with the Board Administrator.
- C. If an Applicant is unable to personally serve the subpoena(s), service shall be made by any person over the age of eighteen (18) who is not a party to the appeal. The Applicant must certify under penalty of perjury that the person who effectuated service is over the age of eighteen (18) and is not a party to the appeal.
- D. An Applicant must pay attendance fees and travel expenses to all witnesses who have been subpoenaed to testify in accordance with ORS 44.415(1) (<http://www.oregonlaws.org/ors/44.415>). Service of witness fees is not required for subpoenas for production of documents, unless the subpoena is to compel both attendance at the hearing to testify and for production of documents.

- E. An Applicant shall accomplish valid service of a subpoena by one of the following methods:
- 1) By hand delivering a copy of the subpoena to the subpoenaed party or the authorized representative for the subpoenaed party personally and providing at the same time the fees to which the subpoenaed party is entitled, if applicable.
    - a. Service of a subpoena by hand delivery is effectuated on the date that the subpoenaed party or authorized representative signs a confirmation receipt in the format provided on the Civil Service Board website.
  - 2) By delivering a copy of the subpoena by certified or registered mail with receipt delivery and signature requested to the subpoenaed party's business address, along with the fees to which the subpoenaed party is entitled, if applicable.
    - a. Service by certified or registered mail is effectuated on the date that the return receipt is signed by the subpoenaed party or is signed by the authorized representative for the subpoenaed party.
- F. Once service of a subpoena is effectuated, the Applicant must file a Proof of Service with the Board Administrator in the format provided on the Civil Service Board website. An Applicant must attach to the Proof of Service to the original subpoena, along with documentation that establishes the date, time and method of service.

#### **6.08 STIPULATION OF AGREED UPON FACTS AND ISSUES**

Pursuant to HRAR 3.15, unless excused by the Board, parties are required to meet and confer prior to the date of a hearing for the purpose of stipulating to agreed upon facts and issues. The process for such meetings is as follows:

- A. The Board Administrator will schedule the meeting for a date and time that is mutually agreed upon by all parties.
- B. The Board Administrator or the Board's designee shall facilitate the meeting. All facts and issues that are agreed upon shall be recorded in the format provided on the Civil Service Board website.
- C. Per HRAR 3.15, the stipulations of facts and issues shall be entered as evidence at the hearing and are binding upon all parties.

#### **6.09 PRE-HEARING CASE CONFERENCES**

The Board may, in its discretion, schedule pre-hearing case conferences to resolve issues not covered by these rules prior to the date of a hearing. If, in the Board's discretion, a pre-hearing case conference is necessary, the Board Administrator shall schedule a date and time for the pre-hearing case conference and shall notify all parties of such date and time.

## **6.10 PRE-HEARING DISMISSAL OF AN APPEAL**

Aside from dismissal for lack of jurisdiction, the Board may issue a Final Order dismissing an appeal before a hearing has been conducted for any of the following reasons:

- A.** A voluntary withdrawal of appeal has been filed by the Appellant or the Appellant's representative. In the event an Appellant wishes to withdraw an appeal, the Appellant shall file a Voluntary Withdrawal of Appeal and Order of Dismissal in the format provided on the Civil Service Board website.
- B.** The Appellant and the Respondent settle the appeal by mutual agreement. In the event an appeal is settled by mutual agreement, a Stipulation and Order of Dismissal shall be filed with the Board Administrator in the format provided on the Civil Service Board website.
- C.** On the scheduled hearing date, an Appellant fails to appear within thirty (30) minutes of the scheduled time of the hearing. If the Appellant fails to appear, the following process shall apply:
  - 1) An Appellant may file a Motion to Reopen Hearing with the Board Administrator in the format provided on the Civil Service Board website. The Appellant must show good cause for the Appellant's failure to appear at the date and time of the hearing.
  - 2) A Motion to Reopen Hearing must be filed with the Board Administrator within seven (7) days of the date the hearing had been scheduled to be conducted.
  - 3) The Board Administrator shall schedule a date and time for the Board to meet and rule on the Motion to Reopen Hearing, unless, in the Board's discretion, the Board determines that oral argument is necessary before the Board can rule on the motion.
  - 4) If, in the Board's discretion, oral argument is necessary, the Board Administrator shall schedule a date and time for oral argument and shall notify all parties of such date and time.
  - 5) The Board may consider the Appellant's failure to appear for a scheduled oral argument on a Motion to Reopen Hearing as evidence in determining whether there is good cause for the Appellant's failure to appear at the date and time of the hearing.
  - 6) Upon a showing of good cause, the Board may excuse an Appellant's failure to appear and the hearing will be rescheduled.

## **6.11 EFFECT OF PRE-HEARING DISMISSAL OF APPEALS**

- A.** Appeals dismissed because of a Voluntary Withdrawal of Appeal or Stipulation of Dismissal are with prejudice and cannot be refiled. However, such dismissal of appeals are subject to the right to request writ of review in accordance with ORS 34.010-34.100.
- B.** If an appeal is dismissed because the Appellant does not file a Motion to Reopen Hearing within the time frame required by these rules or because the Appellant fails to show good cause for the Appellant's failure to appear at the hearing, the Board's Order of Dismissal shall become final and is with prejudice. The Appellant's failure to appear at the date and time of the scheduled hearing shall be considered a default and a waiver of all rights except the right to request writ of review in accordance with ORS 34.010-34.100.

## **7. HEARING PROCEDURES**

### **7.01 HEARING FORMAT**

- A.** Although hearings are generally informal in nature, hearings shall be conducted in a manner deemed to make the relevant evidence most readily and efficiently available for the Board to consider and to provide both parties with a fair opportunity to be heard.
- B.** For expedited hearings, each party is limited to 90 minutes to present their case per HRAR 3.15.
- C.** For formal hearings, the Board may, in its discretion, impose limits on the length of each party's presentation and the number of witnesses each party may call to testify at the hearing.
- D.** The Board may limit any party's direct or cross-examination of any witness if the Board deems the examination or testimony redundant, irrelevant, immaterial, or otherwise unhelpful to the Board in determining the issues.
- E.** The general order of a hearing is outlined in HRAR 3.15 under "General Hearings Procedure." The order of a hearing may be modified or a different order established, if the Board deems it necessary for the efficient, clear and fair representation of the evidence.

### **7.02 WITNESS FAILURE TO APPEAR**

If a party moves to postpone or continue a hearing because a witness fails to appear at the scheduled date and time of the hearing, the moving party must show good cause why the hearing should be postponed or continued. Good cause includes a showing that the moving party used due diligence to comply with Sections 6.06 and 6.07 of these rules. Absent such a showing, the Board may deny the party's motion.



*INDEX*

**Administrative Rule History.....9**

**Appeals..1, 2, 3, 8, 10, 11, 12, 16, 17, 18, 25**

**Appeals, of Board Decisions.....8, 18, 25**

**Appeals, of Classification Actions.....2, 10**

**Appeals, of Discharges.....2, 12**

**Appeals, Filing of.....1, 16**

**Appeals, Service Date of.....16**

**Appeals, Limitations Period of..... 2, 3, 17**

**Appeals, of Demotions.....2, 12**

**Appeals, of Examinations.....2, 11**

**Appeals, of Suspensions.....2, 12**

**Appellant, Definition of.....14**

**Applicant, Definition of .....14, 21**

**Application for Subpoenas.....5, 21**

**Authority and Application of Supplemental Rules.....14**

**Authorized Representative.....14, 23, 24**

**Board.....1, 2, 6, 8, 10, 14, 15, 17, 25**

**Board, Administrative Duties.....1**

**Board, Appeal of Board Decisions.....8**

**Board, Jurisdiction.....1, 2, 17**

**Board, Decisions.....8**

**Board, Effect of Decisions.....8, 24, 25**

**Board, Motions by.....2, 6, 17**

**Board, Presiding Officer.....1, 15**

**Board, Process of Review to Determine Jurisdiction.....1, 17**

**Board, Review of Appeals.....17**

**Board, Standard of Review.....7, 10**

**Board, Quorum.....1, 14**

**Board Administrator.....1, 14, 19**

**Board Administrator, Address of Record.....14**

**Board Administrator, Definition of.....14**

**Board Administrator, Filing of an Appeal with.....1, 14**

**Board Administrator, General Written Communications to.....19**

**Burden of Proof.....1, 7**

**Conferences.....6, 23**

**Conferences, During Hearings.....6**

**Conferences, Pre-Hearing Case.....23**

**Conferences, Prior to Hearings....6, 23**

**Certificate of Service.....15**

**Conduct.....7**

**Conduct, of Parties.....7**

**Conduct, of Public.....7**

**Conduct, of Witnesses.....7, 25**

Continuance of Hearings.....	6, 25	Decisions.....	8
Days.....	15	Dismissal, Effect of Pre-Hearing Dismissal of Appeal.....	24
Discovery Rule.....	2, 15, 17	Dismissal, for Lack of Jurisdiction.....	2, 18
Definitions.....	14	Dismissal, by Stipulation.....	24
Definitions, Appellant.....	14	Dismissal, for Appellant Voluntary Withdrawal of Appeal.....	23
Definitions, Applicant.....	14	Documents.....	4, 16, 17
Definitions, Authorized Representative.....	14	Documents, Format of.....	4, 16, 17
Definitions, Board.....	14	Documents, Filing of.....	16
Definitions, Board Administrator.....	14	Documents, Service of.....	16
Definitions, Board Administrator Address of Record.....	14	Effect of Pre-Hearing Dismissal of Appeals.....	24
Definitions, Certificate of Service.....	15	Exhibits.....	4, 19, 20
Definitions, Days.....	15	Exhibits, Format of.....	4, 19, 20
Definitions, Discovery Rule.....	15	Exhibits, Untimely or Improper Filing of.....	20
Definitions, Good Cause.....	15	Expedited Hearing.....	4, 7
Definitions, Hearings Officer.....	15	Failure to Appear, Appellant.....	24
Definitions, HRAR or HRARs.....	15	Failure to Appear, Witness.....	25
Definitions, Jurisdiction.....	15	Filing of Appeals.....	1, 17
Definitions, PDF format.....	15	Filing and Service of Documents.....	16
Definitions, Presiding Officer.....	15	Filing and Service Date.....	16
Definitions, Representative.....	15	Formal Hearing.....	5, 7
Definitions, Respondent.....	15	Forms.....	16
Definitions, Stipulation.....	15	General Written Communications.....	19
Definitions, With Prejudice.....	15	Hearings.....	4, 6, 18, 19
Dismissals.....	2, 18, 23, 24	Hearings, Burden of Proof.....	7
Dismissal, for Appellant Failure to Appear.....	24	Hearings, Continuance of.....	6
Dismissal, Effect of Board			

Hearings, Election of.....	4, 18, 19	Jurisdiction.....	1, 2, 15, 17
Hearings, Expedited.....	4, 18	Jurisdiction, Discovery Rule.....	2, 15
Hearings, Formal.....	4, 18	Jurisdiction, Limitations Period.....	2
Hearings, Type of.....	4	Jurisdiction, Review of Appeals.....	17
Hearings, General Procedure.....	5	Jurisdiction, Process of Review.....	17
Hearings, Notice of.....	4, 18	Legal Counsel.....	4, 5, 17, 19
Hearings, Pre-Hearing Procedures..	19	Legal Counsel, Expedited	
Hearings, Post-Hearing Procedures..	8	Hearings.....	5, 19
Hearings, Postponement of.....	4, 20	Legal Counsel, Formal	
Hearings, Recording of.....	9	Hearings.....	5, 19
Hearings Officer.....	6, 8, 15	Legal Counsel, Notice of	
Hearings Officer, Definition.....	15	Appearance of.....	17
Hearings Officer, Use of.....	6	Motions.....	1, 5, 6, 17, 20, 24, 25
Hearings Officer, Recommended		Motions, by the Board.....	1, 6, 17
Order.....	8	Motions, Pre-Hearing.....	20
Hearing Format.....	5, 25	Motions, to Postpone or	
Hearing Procedures.....	5, 25	Continue a Hearing.....	17, 25
History, Administrative Rule.....	9	Motions, to Re-open a Hearing.....	24
Good Cause.....	4, 6, 15, 21, 24, 25	Notices.....	4, 17, 18, 19, 20, 23
Good Cause, Continuance of		Notice of Appearance.....	17
Hearing.....	6, 25	Notice of Election of	
Good Cause, Definition of.....	15	Hearing.....	4, 18, 19
Good Cause, Failure to file Exhibits		Notice of Hearing.....	4, 19
in a Timely Manner.....	4, 5, 20	Notice of Lack of Jurisdiction.....	17
Good Cause, Failure to file Exhibits		Oaths.....	5
in Proper Format.....	20	Postponement of Hearings.....	4, 17, 25
Good Cause, Issuance of Subpoena...21		Pre-Hearing Case Conferences.....	6, 23
Good Cause, Witness Failure to		Pre-Hearing Dismissal of an Appeal....	23
Appear.....	25	Presiding Officer.....	1, 5, 15

Presiding Officer, Selection of.....	1	Procedures, Subpoenas.....	5, 21, 22
Presiding Officer, Oaths.....	5	Procedures, Supplemental Rules of .....	1, 14
Presiding Officer, Definition of.....	15	Post-Hearing.....	8
Procedures.....	1, 2, 4, 5, 8, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25	Post-Hearings, Procedures.....	8
Procedures, Election of Hearing.....	4, 18	Post-Hearings, Remedies.....	8
Procedures, Exhibits.....	4, 19, 20	Process of Review to Determine Board Jurisdiction.....	17
Procedures, Filing of an Appeal .....	1, 17	Public Records.....	5, 19
Procedures, Filing Documents with the Board Administrator.....	16	Public Meeting Laws.....	4, 5
Procedures, Filing and Service Date.....	16	Recordings.....	9
Procedures, Forms and Filing Requirements.....	16	Representative.....	15, 17
Procedures, General Hearing.....	5, 25	Representative, Definition of.....	15
Procedures, General Written Communications.....	19	Representative, Notice of Appearance.....	17
Procedures, Pre-Hearing.....	19	Respondent, Definition of.....	15
Procedures, Pre-Hearing Dismissal of an Appeal.....	23	Review of Appeals.....	17
Procedures, Pre-Hearing Motions.....	20	Rules.....	1, 9, 14, 15
Procedures, Process of Review to Determine Jurisdiction.....	1, 17	Rules, Administrative History.....	9
Procedures, Postponement of Hearing.....	6, 25	Rules, Authority and Application of.....	14
Procedures, Post-Hearing.....	8	Rules, Definition of HRAR or HRARs.....	15
Procedures, Public Records.....	5, 19	Rules, General Provisions of.....	14
Procedures, Record of Proceeding.....	9	Rules, Scope and Purpose.....	14
Procedures, Stipulations.....	5, 23	Rules, Supplemental.....	1, 14
		Scope and Purpose of Supplemental Rules.....	14
		Standard of Review.....	7, 10
		Standard of Review, Classification	

<b>Action Appeals.....</b>	<b>7, 10</b>
<b>Standard of Review, Examination Appeals.....</b>	<b>7, 11</b>
<b>Standard of Review, Disciplinary Case.....</b>	<b>7, 12</b>
<b>Stipulations.....</b>	<b>6, 15, 23</b>
<b>Stipulation, Definition of.....</b>	<b>15</b>
<b>Stipulations, Procedure.....</b>	<b>6, 23</b>
<b>Stipulation of Agreed Upon Facts and Issues.....</b>	<b>6, 23</b>
<b>Subpoenas.....</b>	<b>5, 21, 22</b>
<b>Subpoenas, Application for.....</b>	<b>21</b>
<b>Subpoenas, Valid Service of.....</b>	<b>22</b>
<b>Supplemental Rules.....</b>	<b>1, 14</b>
<b>Valid Service of Subpoena.....</b>	<b>22</b>
<b>With Prejudice, Definition of .....</b>	<b>15</b>
<b>Witnesses.....</b>	<b>5, 7, 21, 22, 25</b>
<b>Witnesses, Conduct of.....</b>	<b>7</b>
<b>Witnesses, Lists.....</b>	<b>5</b>
<b>Witnesses, Subpoenas for.....</b>	<b>5, 21, 22</b>
<b>Witnesses, Failure to Appear.....</b>	<b>25</b>
<b>Written, General Communications.....</b>	<b>19</b>