



CITY OF KENT

LAW ENFORCEMENT OFFICERS' & FIRE FIGHTERS' (LEOFF I)

DISABILITY BOARD

POLICIES AND PROCEDURES

Authorization & Purpose

These policies and procedures are adopted pursuant to the requirements of Chapter 41.26 RCW and Chapter 415-105 WAC. They are intended to provide a basis for uniform administration of disability retirement matters and shall be followed by each Disability Board member. While the purpose of these policies and procedures is to ensure the Board carries out its duties in a manner consistent with state laws and regulations, the Board also recognizes that situations may occur which are not contemplated by these policies and procedures. In such cases, the Board reserves the right to take whatever action is allowed under law to properly deal with the situation.

Pursuant to WAC 415-105-010, the Board is empowered to adopt "additional rules or procedures necessary for performing its duties."

Applicability of Policies & Procedures

The policies and procedures outlined herein shall apply to all persons, active or retired, covered under LEOFF Plan 1. In the event any policy or procedure adopted herein shall be held contrary to state law, members shall still be required to follow all other policies and procedures. A member's failure to follow these policies and procedures may result in loss of benefits under LEOFF Plan 1.

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Section I - The Board

1.01 Disability Board Powers

The Board shall have the powers granted by the state legislature or necessarily implied from such grant of powers in RCW chapter 41.26, and WAC Chapters 415-105 and 415-104.

1.02 Composition of the Board

Per RCW 41.26.110, the Board shall consist of the following five (5) members:

- A. Two members of the City legislative body to be appointed by the Mayor.
- B. One firefighter employed by or retired from the City, regardless of LEOFF Plan 1 membership. However, only active or retired firefighters who are LEOFF Plan 1 members may vote for the person to fill this position. Elections for firefighter representative will be held in even-numbered years.
 1. Alternate Board Member. If no firefighter employed by or retired from the City is willing or able to serve, then an alternate member may be elected to the Board from those eligible alternates as provided for in RCW 41.26.110(1)(b), as currently enacted or later amended.
 2. Alternate Voting. If no LEOFF Plan 1 firefighters are able or eligible to vote, those LEOFF Plan 1 law enforcement officers who are eligible to vote may elect an eligible representative to the Board to the serve the interests of LEOFF Plan 1 firefighters and their survivors as provided for by RCW 41.26.110(1)(a) as currently enacted or later amended.
- C. One law enforcement officer employed by or retired from the City, regardless of LEOFF Plan 1 membership. However, only active or retired law enforcement officers who are LEOFF Plan 1 members may vote for the person to fill this position. Elections for law enforcement officer representative will be held in odd-numbered years.
 1. Alternate Board Member. If no law enforcement officer employed by or retired from the City is willing or able to serve, then an alternate member may be elected to the Board from those eligible alternates as provided for in RCW 41.26.110(1)(b), as currently enacted or later amended.

2. Alternate Voting. If no LEOFF Plan 1 law enforcement officers are able or eligible to vote, those LEOFF Plan 1 fire fighters who are eligible to vote may elect an eligible representative to the Board to the serve the interests of LEOFF Plan 1 law enforcement officers and their survivors as provided for by RCW 41.26.110(1)(a) as currently enacted or later amended.
- D. One member from the public at large who resides within the City. This person shall be appointed by the Board's other four appointed and elected members from a pool compiled in accordance with KCC 2.50.060.
 - E. At the first meeting of each year, the Board members shall elect a Chair and Vice-Chair who shall perform the duties provided for in KCC 2.50.090, summarily described as follows:
 - **Chair** - The Chair shall preside at all meetings and hearings of the local disability board and may call special meetings. The Chair shall have the privilege of discussing all matters before the Board except where it would constitute a conflict of interest. The Chair has all the duties normally conferred by parliamentary procedures on such officers and shall perform such other duties as may be requested by the Board or as otherwise provided for in KCC 2.50.090.
 - **Vice-Chair** - The Vice-Chair shall assume the duties and powers of the Chair in the Chair's absence, and shall perform such other duties as may be requested by the Chair or the Board, or as otherwise provided for in KCC 2.50.090.
 - F. If both the Chair and Vice-Chair are absent from any Board meeting, the Disability Board members may elect a temporary Chair by a majority vote of those present at a regular or special meeting, who shall assume the duties and powers of the Chair and Vice-Chair during their absence.
 - G. The Secretary of the Board shall be the City staff person who the Mayor, or the Mayor's designee, has appointed to assist the Board in accordance with KCC 2.50.050. In addition to those duties provided for in Ch. 2.50 KCC, the Secretary shall:
 - Serve in a non-voting capacity, without authority to bring motions or otherwise carry out the duties of Board members.

- Prepare the minutes of all regular and special meetings of the Board; the Board shall approve such minutes and copies shall be distributed to all members of the Board.
- Provide notice of all regular and special meetings to the Board members and post all notices of adjournment or continuance of meetings and public and/or disability hearings;
- Prepare the agenda of regular and special meetings;
- Serve proper and legal notice of all public and/or disability hearings
- Draft and sign routine correspondence of the Board
- Prepare approved claims for payment
- Maintain a file of all rules, findings, orders, recommendations and all other official records of the Board.

The Board may delegate to the Secretary the authority to investigate activities, including gathering facts regarding matters within the scope of the Board’s authority. This includes, but not limited to, areas of disability leave, pensions, and medical expenses.

1.03 Terms

Each Board member shall serve a two year term. All Board members, except for the appointed legislative body representatives, are subject to term limits as provided for in KCC 2.50.060.G.

1.04 Vacancy

In the event of a vacancy, a successor shall be elected or appointed to the vacant position in the same manner as the original election or appointment and shall serve in the position for the balance of the unexpired term.

1.05 Elections of law enforcement and firefighter representatives

A. General Provisions:

1. The election to fill the position of law enforcement officer representative and firefighter representative shall be by secret ballot.
2. The election to fill the position of law enforcement officer representative shall be held during the month of December of every odd-numbered year.
3. The election to fill the position of firefighter representative shall be held during the month of December in every even-numbered year.
4. The minutes of the next regular Board meeting following an election shall identify the elected individual(s) and the term dates they will serve on the Board.
5. If only one person is nominated for police or fire representative, balloting will not be required, and the individual will be considered elected.

B. Election Procedure by Secret Ballot:

1. In October, the Secretary shall prepare and mail nomination forms to all active and retired LEOFF Plan 1 police or fire representatives at their address of record.
2. Any active or retired LEOFF Plan 1 member wishing to run for representative must nominate themselves on the form provided by the Secretary. Only those LEOFF Plan 1 members nominating themselves will be placed on the election ballot.
3. LEOFF Plan 2 members may serve on the Board, but the LEOFF Plan 2 member must agree to the nomination.
4. The Secretary shall be custodian of all returned ballots and shall not open the ballots until the designated tabulation time. The Secretary shall take all reasonable efforts to assure no other person has access to the ballots until the designated tabulation time.
5. The time between the mailing out of the election packets and the deadline for receipt by the Secretary shall not be less than ten but no more than twenty-one business days.
6. Ballots may be returned to the Secretary via U.S. mail, delivered in person, or sent via inter-office mail. Date of receipt of the returned ballot shall be determined by the

date the ballot is received by the Secretary, not the date of mailing.

7. Ballots shall remain unopened for three business days after the deadline for receipt of ballots to allow for any challenges to the election process to be filed. Any challenges to the election process must be submitted in writing to the Secretary within three business days following the deadline for receipt of ballots. If no challenges to the election are filed, the ballots shall be opened and tabulated by the Secretary. The election results shall be sent to the Human Resources Department for posting.
8. The Board shall resolve all challenges relating to the process of elections. The Board shall render a decision at a public hearing in which it has considered any testimony and other evidence offered to prove or disprove the challenge. The Board shall publish its decision and a summary of the evidence presented in the minutes of the next regularly scheduling meeting of the Board.
9. If there are three or more individuals running for representative and one of the individuals does not receive a simple majority of those voting, a run-off election shall be scheduled between the two individuals receiving the highest vote totals utilizing the same process outlined above.
10. All ballots shall be retained by the Secretary in accordance with state records retention requirements. Currently, records concerning the internal administration of elections held by local government agencies are to be retained for one year after the vote is certified. After that time period, ballots and related records can be destroyed.
11. Candidates elected in December shall take office at the first regularly scheduled meeting in January. Candidates elected at other times shall take office at the first regularly scheduled meeting following the election.

1.06 Meetings

The Board shall hold regular meetings on the second Thursday of January, April, August and November at a time and location that shall be made known to the members and the public prior to the meeting. If the regular meeting falls on a holiday, the meeting may be rescheduled or cancelled. Special meetings may be called by the Chair or by a majority vote of the Board.

Notice of Board meetings shall be given in compliance with applicable laws governing public meetings. No subjects other than those specified in a written agenda shall be considered except upon the unanimous consent of all members present at the meeting. Copies of the agenda shall be prepared and made available at each meeting.

Meetings shall be open to the public. However, the Board may close portions of meetings and meet in Executive Session when discussing retirement or medical claims that have been submitted to the Board for consideration. No decisions may be made during Executive Session. All votes or decisions by the Board shall be made during open meetings.

1.07 Quorum

The presence of a simple majority of Board members shall constitute a quorum and authorize the Board to conduct all Board duties.

1.08 Effect of Absence of Board Members

Should the Chair be absent or unable to exercise authority, the Vice-Chair shall assume the Chair's duties and powers. Each Board member is expected to notify the Chair or the Secretary prior to a scheduled meeting if they will not be able to attend that meeting. Notice will serve to establish the absence as excused. Absence due to illness, work, vacation or family emergency shall be an excused absence. Three unexcused absences in a period of one year shall be cause for review and possible removal from the Board by a majority vote of the Board. Attendance and reason for absence of a Board member shall be recorded in the minutes of the meeting.

1.09 Agenda and Order of Business

The Secretary prepares and distributes the agenda to the members prior to each regular monthly meeting. "Robert's Rules of Order" shall guide the Board where these policies or state law does not otherwise govern the proceedings.

1.10 Minutes

The Secretary shall take the official minutes of the City of Kent Disability Board containing the actions of the Board and a summary account of the proceedings. The minutes shall contain a record of the Board members present and absent, and a record of action authorized

by the Board. The minutes shall be signed by the Secretary and the Chair and placed on record after approval by the Board.

1.11 Voting by the Board

Each Board member must cast their vote in person. If any member has a conflict of interest regarding a matter pending before the Board, or if circumstances call into question whether the member can maintain an appearance of fairness with respect to this matter, that member shall disqualify themselves from participating in the deliberations and the decision-making process with respect to that matter.

1.12 Disclosure of Medical Records to the Board

Medical evaluations to be used in conjunction with determining disability are for the benefit of the Board; doctor/patient privilege may not be invoked with respect there to, and the diagnosing physician may be called upon by the Board to testify as to their findings. (WAC 415-105-040 (2)).

The Board shall maintain the confidentiality of a member's medical records as required by law, subject to the following:

1. When a member applies for disability leave or disability retirement, the Board shall have authority to disclose the applicant's medical records to the applicant's employer.
2. The Board may disclose the applicant's medical records at the request of the employer or on the Board's own motion. However, disclosure shall be made only where the Board determines that the employer can assist the Board in reaching a proper decision on whether to grant the application for disability leave or retirement.
3. The Board may determine the extent of the disclosure and may limit disclosure to relevant issues.
4. Prior to any disclosure, the employer shall agree in writing to maintain the confidentiality of the medical records, to abide by all state and federal laws regarding privacy and to use such records only for the purpose of assisting the Board in its statutory duties.

These rules are subject to change should the relevant laws be amended.

1.13 Reasonable Accommodation

- A. The Board will reasonably accommodate qualified members who, because of sensory, mental or physical disability, need

assistance beyond the level of assistance ordinarily provided by the Board in the processing of requests for medical benefits.

- B. Requests for a reasonable accommodation must be made in a timely fashion to the Board Secretary, who will take it to the Board to determine what accommodation, if any, is to be made. If a reasonable accommodation is made, the Board Secretary may periodically review the accommodation in order to address effectiveness and to implement any necessary changes.
- C. If the Board declines to grant accommodation, or the member disagrees with the accommodation made, the member may renew the request for accommodation by making a written request to the Board Secretary to schedule the matter for review by the Board. The Board will determine if the matter should be reviewed. In the event it elects to review; they will make the final determination regarding accommodation.

1.14 Legal Counsel to the Board

The Kent City Attorney, or their designee, shall serve as legal counsel to the Board and provide assistance as needed. The Board may also seek advice of outside counsel at its own expense.

Section II – Definitions

2.01 RCW 41.26.030 Definitions Shall Apply

Any terms not expressly defined in these *Rules and Procedures* are to be defined according to the definitions contained in RCW 41.26.030, as currently enacted or hereafter amended, unless the context clearly requires otherwise.

2.02 Board Doctor

- A. Pursuant to WAC 415-105-030(1), the Disability Board shall appoint a licensed physician or physicians for the purpose of examining applicants for disability retirement, reexamination of any member on disability retirement, advising the Board on medical matters, or for performing other medical services required or ordered by the Board. The Board shall not approve a disability retirement without prior examination of the applicant by the board doctor or a specialist selected by the board doctor.
- B. Pursuant to WAC 415-105-030(2), each physician appointed or approved by the Board is required to be knowledgeable concerning the duties, functions and general demands required of the employee being examined.
- C. Pursuant to WAC 415-105-030(3), the Board shall furnish the employee's job description to the examining physician and must

inform the physician that the Board's decision to grant or deny an application for a disability retirement allowance is to be measured against the actual, normal, routine duties that the applicant performs.

- D. Pursuant to WAC 415-105-030(4), re-examination of any member already on disability retirement shall be conducted by a Board appointed or approved physician.

2.03 Conditional Return

"*Conditional return*" means a return to duty for the purpose of determining whether the member's previously diagnosed disability persists.

2.03 Disabled or Disability

"*Disabled*" or "*disability*" means the existence of a physical or psychological condition which renders the member unable to discharge with average efficiency the duty of the grade or rank to which the member belongs, or the position in which the member is serving. *Provided*, no member shall be entitled to a disability retirement allowance if there is an available position to which one of such grade or rank is normally assigned and the duties of which the member can perform.

2.05 Disability Leave Period

"*Disability leave period*" means the period of six months, or any portion thereof, during which a member is on leave at an allowance equal to the member's full salary at the time the member began the period of disability leave and prior to the commencement of any disability retirement.

2.06 Employer

"*Employer*" means the legislative authority of any city, town, county, or district or the elected officials of any municipal corporation that employs any law enforcement officer and/or fire fighter, any authorized association of such municipalities, and, except for the purposes of RCW 41.26.150, any labor guild, association, or organization, which represents the fire fighters or law enforcement officers of at least seven cities of over 20,000 population and the membership of each local lodge or division of which is composed of at least sixty percent law enforcement officers or fire fighters as defined in RCW 41.26.030.

2.07 In Line of Duty

"*In line of duty*" means injury, sickness or illness in consequence or as a result of the performance of the applicant's duties.

2.08 Minimum Medical and Health Standards

Pursuant to WAC 415-105-040(7), the minimum medical and health standards previously promulgated by the State Retirement Board for entry or re-entry into LEOFF System membership were provided only to safeguard the fiscal integrity of the pension system and are not the applicable standards for any other purpose. This includes eligibility for disability leave or retirement benefits.

Section III - Disability Leave

3.01 Disability Leave Allowance

Disability leave allowance is not granted for any specific amount of time. Total time on disability leave may not exceed six months. The employer of a member on disability leave shall pay the member an allowance equal to the member's full monthly salary commencing on the first day of such leave (per AGO No 78-8), or the applicable portion thereof.

3.02 Application for Disability Leave

No member shall receive disability leave benefits unless the member has completed and signed an application for disability leave and has filed it with the Board Secretary. In order to be considered at the regular quarterly Board meeting, the application must be received at least one business day prior to the meeting.

Such application must be accompanied by a report from two licensed physicians attesting to the existence of a disabling condition.

The application must meet all the requirements of WAC 415-105-040, as currently enacted or hereafter amended.

3.03 Applicant Bears Burden of Proof

The applicant shall have the burden of proving, by a preponderance of the evidence, the existence of a disabling condition and that the condition was incurred in the line of duty. WAC 415-105-040 (1). A "preponderance of the evidence" means that the Board is persuaded that the evidence shows it is more likely true than not true that the applicant suffers from a disabling condition created in the line of duty.

3.04 Applicant may be Required to Appear

The Board shall be authorized to demand the appearance of an applicant and to request the appearance of such other persons as it deems appropriate. WAC 415-105-040 (3). The applicant is responsible for any travel expenses necessary to comply with an order of the Board.

3.05 Physician's List Required with Application

Each application for disability leave shall be accompanied by a list identifying by name any physician who has been contacted within the last six months for the illness or injury for which disability has been claimed. WAC 415-105-040(2).

3.06 Review of Application by the Board

- A. Following receipt of an application for disability benefits, the Board shall review all relevant information pertaining to the question of the applicant's fitness for duty, and if, in the opinion of the majority of the Board, the preponderance of the evidence supports the proposition that the member is unfit for duty, such member shall be granted disability leave, unless such leave is waived pursuant to RCW 41.21.120 (4). In considering an application, the Board shall consider the duties of the position, and any other evidence that is relevant. WAC 415-105-040 (1).
- B. Any member who requests duty-related disability leave, shall submit an incident report showing the cause of disability. If there is no incident report, the member will be responsible for submitting evidence at the Disability Board meeting immediately following their disability request to show that the injury or illness was duty related. If the Board finds the evidence insufficient for making their decision, they may grant disability leave showing cause as "unspecified" and arrive at a decision on duty-relatedness at a later date.
- C. In the event the Board finds there is insufficient information to make a determination, the matter may be continued to the next regular Board meeting or be set for consideration at a special meeting. The Board shall also advise the member of the additional information needed, and of the member's obligation to provide such information and the deadline date by which such information must be provided. WAC 415-105-040(5).

3.07 Duty to Assist in Recuperation and Treatment

- A. It is the intent of the Board to assure that a member, while on disability leave, shall do all in their power to recuperate from such disability and shall do nothing which reasonably appears would prolong the leave or inhibit recovery from such disability. An applicant who engages in activities which, in the opinion of a licensed physician, are reasonably likely to impede recuperation may face termination of benefits by the Board.
- B. During the period of leave, the Board shall have the authority to inquire of any examining physician as to what physical, medical or therapeutic treatments might be employed to rehabilitate the applicant and, based upon such evaluation, to direct the

applicant to participate in rehabilitation. If the applicant fails or refuses such treatments, the Board may terminate the applicant's disability benefits.

3.08 Examination by the Board Doctor

In all cases, the Board may have the member examined at any time by the Board Doctor or their designee. Refusal to submit to such examination may result in forfeiture of rights to benefits.

3.09 Continuing Physician's Reports Required

After thirty days on disability leave, a member must file with the Board a current medical report prepared by all treating and attending physicians; updated reports must be filed monthly while the member is on disability leave. These reports must be received prior to the next regular Board meeting.

3.10 Doctor – Patient Privilege Inapplicable

It shall be incumbent upon each member obtaining medical evaluations to be used in conjunction with disability leave to advise each and every examining physician that such evaluation is being conducted at the direction of the Board; that any reports relating thereto are for the benefit of the Board; that the doctor/patient privilege may not be invoked with respect thereto; and that the physician may be called upon by the Board to testify as to his findings. WAC 415-105-040(2)

3.11 Member to Promptly Seek Authorization to Return to Duty

It shall be the responsibility of each member granted disability leave pursuant to RCW 41.26 to seek authorization to return to service at the earliest possible time the applicant believes the member is fit for duty.

The Chairperson or their designee is authorized to tentatively return an employee on disability leave to work upon receipt of clearances from the treating physicians; provided, that all required paperwork is in order. Should there be any discrepancies or concerns about the required paperwork, the Chairperson or their designee may call a special Board meeting to expedite the member's return to work.

In the event the Board finds that a member has not actively sought authorization to return to active service immediately upon cessation of disability, the Board shall have the authority to require that the Board appointed physician determine whether the member is able to return to duty and whether the member's disability leave allowance shall be continued.

3.12 Conditional Return to Duty

In the event the relevant evidence is inconclusive, the Board may specify in written order a reasonable trial service period to determine the member's fitness for duty. The reasonable length of such conditional return to service shall be supported by medical evidence. During the period of trial service, the member is to be returned to the same duties and position held at the time of discontinuance of service. Such a conditional return to service does not entitle the member to a second six month period of disability leave for the same disability if, based upon this trial period of service, the member is found to be disabled. WAC 415-105-050(3).

Section IV: Disability Retirement

4.01 Medical Examination for Disability Retirement

- A. Applicants for disability retirement shall be examined by the Board Doctor or their designee during the fifth month of disability leave or sooner as the Board may require, determining the member's eligibility for disability retirement.
- B. Pursuant to WAC 415-105-050(1), no applicant will be granted a disability retirement allowance without an examination by the Board Doctor or their designee, unless:
 - 1. The treating physician assures the Board that the applicant's condition has not and will not be corrected before the end of the sixth month; or
 - 2. The applicant establishes that the disabling condition will be in existence for a period of at least six months; and
 - 3. The applicant voluntarily waives disability leave.

4.02 Requirements for Granting Disability Retirement

In order to receive a disability retirement allowance, the applicant will be required to prove that the member is physically and/or psychologically disabled to such an extent that the member is unable to discharge with average efficiency the duties of the position held at the time of discontinuance of service. WAC 415-105-060.

If the evidence shows to the satisfaction of the Board that the member is physically and/or psychologically disabled and that the disability has been continuous from the date of commencement of disability leave for a period of six months, the Board shall enter a written decision and order that includes appropriate findings of fact and conclusions of law, in compliance with RCW 41.26.120, as currently enacted or hereafter amended. The written decision and order shall then be forwarded with

accompanying documentation to the Director of the Department of Retirement Systems for review.

Pursuant to WAC 415-105-060, the Board may make a finding of six months continuous disability prior to the actual conclusion of the six-month period, to eliminate unnecessary delay of receipt of retirement benefits, where:

- A regular meeting of the Board precedes by no more than forty days the date at which the full six months will conclude, and
- The evidence is clear that the disability can be expected to continue through the full six month period.

4.03 Contents of Disability Decisions

Pursuant to WAC 415-105-070, the Board must grant or deny a request for disability retirement allowance in a written Order that shall contain the following information in clear and concise terms:

1. Findings of fact supported by credible evidence in the record supporting the granting or denying of the disability retirement allowance.
2. Conclusions of law.
 - A. When a disability retirement allowance is granted, the findings of fact in the written Order shall include:
 1. The applicant's length of service with the employer and the position held by applicant at discontinuance of service;
 2. The names of the examining physicians and the dates of the examinations;
 3. The nature of the disability;
 4. Whether or not the disability was incurred in the line of duty;
 5. Whether or not the disability was incurred in other employment;
 6. Dates encompassing disability leave and/or dates relating to authorized trial basis return to duty; and, in the case of return to duty on a trial basis, the factual basis for such decision;

7. Dates encompassing waiver of disability leave, if applicable; and that the applicant established that such disability will be continuous for a period of at least six (6) months.
 8. As required by the Department of Retirement Systems, if the Board relies on the testimony of the treating physician over that of the Board physician, a finding stating that fact.
- B. Pursuant to WAC 415-105-070, when a disability allowance is granted, the written Order and all supporting documentation must be sent to the Director of the Department of Retirement Systems. The supporting documentation shall include:
1. The application for disability benefits showing the applicant's current mailing address;
 2. The job description accurately reflecting the duties of the position the applicant held at the discontinuance of service;
 3. Employer's statements, if any, relevant to the applicant's position and/or fitness for duty;
 4. All medical and other evidence considered by the Board; and
 5. The minutes and/or transcript of all meetings at which the applicant's disability status was considered.

4.04 Re-examination after disability retirement

- A. Burden of proof. The retiree has the burden of proof in proceedings before the Disability Board. WAC 415-105-120.
- B. Review every six months if under age 50. Each member who is under 49.5 years of age and placed on disability retirement is subject to periodic review, unless the Board makes a written Finding of Fact that there is no chance of rehabilitation. The periodic review includes a medical examination and any other evidence brought before Board.
- C. Board decision. Following receipt of the examination report, the Board must either grant or deny disability retirement based on all the evidence or return the applicant to duty for a reasonable period of trial service. If the Board cannot determine with

reasonable certainty whether the applicant is disabled, the Board may return the applicant to trial service in the same position and duties the applicant previously held to determine the applicant's fitness for active duty. WAC 415-105-050.

If the applicant is found to be disabled, the Board is not to grant a second six month period of disability leave but is to return the applicant to disability leave status for the remainder, if any, of the initial six month leave period. WAC 415-105-050(3)(c).

In the event the Board determines that a member is so disabled that no possibility exists for return to duty or there is no possibility rehabilitation could restore the member to fitness for duty, review of the member's status at six month intervals shall not be required. Further, the Board may at any point subsequent to retirement make such a determination. A copy of all such determinations shall be sent to the Department of Retirement Systems.

- D. Retiree may apply for reinstatement where disability has ceased. A member who has been granted disability retirement may apply to the Disability Board for reinstatement where the retiree seeks a determination that the disability has ceased.
- E. Examinations in retired members' area of residence. In the event the retired member is residing at a location more than one hundred miles from their former place of employment, the member may be authorized to be examined by a physician in their immediate area, provided, however, such physician shall first be approved by the Board and prior to such evaluation the examining physician shall be appraised of the basis upon which the examination is to be conducted and the issues to be addressed in the physician's evaluation report. WAC 415-105-090(1).
- F. Fees for medical re-examinations. Fees charged for medical evaluation report letters for required re-examination of disability retirees under the age of 49.5 years may be covered by health insurance providers. The Board will consider authorizing payment for fees charged for medical reports toward fulfillment of the periodic medical examination review which have been shown to have first been submitted to the member's health insurance provider. The Board will cover the amount of the billing not reimbursed by or rejected by the health insurance provider.

4.05 Discontinuation of a Retirement Allowance

A. Refusal to undergo examination.

1. The retirement allowance of any member who fails to submit to a medical examination as required under Section 4.04 shall be discontinued until the retiree complies with the examination requirement. If the retiree continues for one year to refuse to undergo re-examination, the Board shall cancel the retirement allowance. WAC 415-105-090.
2. Failure of the member to affirmatively respond to the Board's request for re-examination shall be deemed a continuing refusal.

B. Notice prior to discontinuance of benefits.

1. In the event an evaluation discloses fitness to perform duties of the rank or position held by the member at the time of disability retirement, the member shall be entitled to a hearing before the Board for consideration of the matter.
2. Pursuant to RCW 34.05 [Administrative Procedures Act], and WAC 415-105-090, the retired member shall be notified by mail of the Board's intent to discontinue or cancel the member's retirement allowance. The notification shall inform the member of the time and place of the hearing and that the purpose of the hearing will be to determine whether the member continues to receive a disability retirement allowance.
3. The hearing to determine whether a disability retirement allowance shall be discontinued must be held prior to the actual cancellation of the disability allowance, unless the retiree waives such hearing.

Section V: Hearing Procedures

5.01**Procedures**

The following rules shall govern the general conduct of Disability Board hearings, unless inconsistent with the Administrative Procedures Act (RCW 34.05).

5.02**Subpoenas**

A. The Board may compel the attendance of a witness at any hearing by issuing a subpoena on its own motion or upon the request of any party. The issuance and service of a subpoena may be obtained upon the filing of an affidavit which:

1. States the name and address of the proposed witness;
2. Specifies the nature of the evidence sought and the materiality thereof to the issues involved; and
3. States that the witness has the desired evidence in their possession or under their control.

- B. The Board may refuse to issue a subpoena when the affidavit requesting a subpoena is incomplete.
- C. If an individual fails to obey a subpoena without lawful excuse or refuses to testify when requested concerning any matter under investigation at the hearing or fails without lawful excuse to produce material evidence in their possession or control as required by any subpoena issued by the Board and served upon such person, the Board may petition the superior court of the county where the hearing is being conducted for enforcement of the subpoena. The petition shall be accompanied by a copy of the subpoena and proof of service and shall set forth in what specific manner the subpoena has not been complied with and shall ask an order of the court to compel the witness to appear and testify before the Board or to produce material evidence.
- D. Subpoenas issued by the Board shall be served in the same manner as required for service of process outlined in the Washington Court Civil Rules.
- E. Witnesses subpoenaed to attend a hearing shall be paid the same fees and allowances, and in the same manner and under the same conditions, as provided for witnesses in the courts of this State, provided, that the Board shall have the power to fix the allowance for meals and lodging in like manner as is provided in RCW 5.56.010, as now enacted or hereafter amended. Such fees and allowances, and the cost of producing records required to be produced by its subpoena, shall be paid by the party requesting the issuance of the subpoena.

5.03 General Procedures for Conduct of Hearings

- A. Submission of Briefs - The member applying for retirement may submit a brief of evidence in support of their application. The brief must be submitted to the Board at least three business days prior to the hearing.
- B. Continuance - The Board may grant a continuance for good cause. Good cause is to be determined by the Board.
- C. Oaths/Certification - In any proceeding of the Board, any member of the Board may administer oaths and affirmations and may certify official acts.

D. Evidence

1. Oral Evidence - Oral evidence shall be taken only on oath or affirmation.
2. Hearsay Evidence - Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this state.
3. Admissibility of Evidence - Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rules which might make improper the admission of such evidence over the objection in civil court action in a court of competent jurisdiction in this state.
4. Evidence May Be Excluded - Irrelevant and unduly repetitious evidence may be excluded by the Board.

G. Rights of the Applicant Member - The rights of the member applying for retirement shall include the ability to:

1. Call and examine witnesses on any matters relevant to the issues presented in the hearing.
2. Introduce documentary and physical evidence.
3. Cross examine witnesses on any matter relevant to the issues of the hearing.
4. Impeach any witness regardless of who called them to testify.
5. Rebut the evidence against them.
6. To represent him/herself or to be represented by legal counsel.

H. Presentation of Testimony

1. Order of Presentation of Testimony - The applicant member, who bears the burden of proof, shall present their evidence first. Then other witnesses may testify as directed by the Board. After any witness concludes their testimony, the Board may direct questions to the witness.
2. Closing Statement - After presentation of all testimony and evidence, the applicant member or their representative shall be allowed to make a summarizing statement. The Board may impose a reasonable time limit on such statement, but a minimum of fifteen minutes shall be allowed.

I. Official Notice of Facts by the Board

1. What May Be Noticed - In reaching a decision, official notice may be taken either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state or of official records of the Board or departments and ordinances of the City or rules and regulations of the Board.
2. Applicant Member to Be Notified - The applicant member, if present at the hearing, shall be informed of the matters to be noticed by the Board, and these matters shall be noted in the record, referred to therein, or appended thereto.
3. Opportunity to Refute - Any applicant member or their representative, if present at the hearing, shall be given reasonable opportunity, upon request, to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such reputation to be determined by the Board.

Section VI: Appeals

6.01 Notice of Right to Appeal Denial or Cancellation of Benefits

If the Board denies a disability leave or disability retirement or cancels a previously granted disability leave or retirement, the affected member shall be immediately notified and advised of the right of appeal such decision or order to the Director of the Department of Retirement Systems, pursuant to RCW 41.26.200. Such notification shall be made in writing and served by personal service or mail, *provided*, written notice need not be given if the affected member or their duly authorized representative is in attendance at the hearing

and is advised at that time of the decision and of the right of appeal. WAC 415-105-080.

6.02 Procedure for Reconsideration of Board Decision

Any party aggrieved by a decision of the Board may file a written request for reconsideration. The request for reconsideration must be filed with the Board within thirty days of the decision and must set forth a concise statement of the facts or errors justifying reconsideration by the Board. The Board may direct that a copy of the request for reconsideration be mailed to other interested parties at least three business days prior to any Board meeting to consider the request. The Board may grant or deny such request for reconsideration at its discretion.

Section VII: Falsifying information

7.01 Record or Statement Falsification

All applications and other documents filed in conjunction with disability leave or disability retirement must be accurate and truthful. Any member who knowingly submits inaccurate, false, or intentionally misleading information is subject to revocation of benefits, reimbursement of any benefits obtained through false or intentionally misleading information, and possible criminal charges.

Section VIII: Medical services

8.01 Medical Services - General Eligibility Guidelines

Members are advised to consult first with their health insurance providers to learn what is or is not covered in existing health insurance BEFORE receiving treatment.

Elective medical procedures, surgery, and medical appliances/supplies may not be covered by the health insurance provided by the employer or may not be authorized for payment by the Board.

Medical services payable by insurance provided by an employer pursuant to RCW 41.26.150 shall not be subject to approval by the Board.

- A. Only those medical services which are deemed necessary shall be approved by the Board.

- B. Where deemed necessary, the Board may approve payment for any medical services which constitute preventative as opposed to curative services. Preventative services are those which are meant to prevent future occurrence of an illness, injury or disabling condition, as opposed to curative services meant to restore health or cure or correct an existing condition.
- C. The Board will not consider any service of a cosmetic nature or which is beyond that reasonably necessary to correct the condition complained of to be a necessary medical service.
- D. Dental expenses will not be considered necessary medical services except in those circumstances where expenses are incurred by a member who sustains an accidental injury to their teeth and has commenced treatment within ninety days after the accident.
- E. The Board will authorize the payment of the expense of an eye exam by a licensed optometrist or licensed ophthalmologist.
- F. Costs for hearing aids shall not be reimbursed without prior approval by board. Failure to obtain advance authorization may result in only partial reimbursement or rejection of the claim at the Board's discretion.

8.02

Coverage for Minimum Medical Services

Pursuant to RCW 41.26.030(22), the following minimum medical services shall be covered for persons who establish membership in the LEOFF 1 retirement system on or before September 30, 1977; reasonable charges for these services shall be paid in accordance with RCW 41.26.150:

- A. Hospital expenses. Those charges made by a hospital, in its own behalf, for:
 - 1. Board and room not to exceed semi-private room rate unless private room is required by the attending physician due to the condition of the patient.
 - 2. Necessary hospital services, other than board and room, furnished by the hospital.
- B. Other medical expenses, if they are not been considered hospital expenses.
- C. The fees of the following:

1. A physician or surgeon licensed under the provisions of Chapter 18.71 RCW.
2. An osteopath licensed under the provisions of Chapter 18.51 RCW.
3. A chiropractor licensed under the provisions of Chapter 18.25 RCW.
4. The charges of a registered graduate nurse other than a nurse who ordinarily resides in the member's home or is a member of the family of either the member or the member's spouse.
5. The charges for the following medical services and supplies as provided in RCW 41.26.030 [22]:
 - a. Drugs and medicines upon a physician's prescription;
 - b. Diagnostic x-ray and laboratory examinations;
 - c. X-ray, radium, and radioactive isotopes therapy;
 - d. Anesthesia and oxygen;
 - e. Rental of iron lung and other durable medical and surgical equipment;
 - f. Artificial limbs and eyes, and casts, splints, and trusses;
 - g. Professional ambulance service when used to transport the member to or from a hospital when the member is injured by an accident or stricken by a disease;
 - h. Dental charges incurred by a member who sustains an accidental injury to their teeth and who commences treatment by a legally licensed dentist within ninety (90) days after the accident;
 - i. Nursing home confinement or hospital care extended facility;
 - j. Physical therapy by a registered physical therapist;

- k. Blood transfusions, including the cost of blood and blood plasma not replaced by voluntary donors;
- l. An optometrist licensed under the provisions of Chapter 18.53 RCW or an ophthalmologist licensed under Chapter 18.71.RCW.

8.03 Medical Claims for Corrective Lenses and Frames

- A. Generally, the Board will reimburse, as secondary coverage, up to the amounts described below. The reimbursement rates apply after all insurance coverage's have been applied. Any balance due after the Board reimbursement is the member's responsibility.
- B. Vision benefits. Payments for eyeglasses and contact lenses, and the reasonable costs of necessary eye examination services of a licensed ophthalmologist or optometrist, will be approved pursuant to the authority granted to the Board under RCW 41.26.150. Appendix B provides the payment schedule.

8.04 Medical Claims for Hearing Aids

- A. All claims for hearing aids must have prior authorization by the Board. Failure to obtain advance authorization may result in only partial reimbursement or rejection of the claim at the Boards discretion. Appendix C provides the payment schedule.

8.05 Skilled Nursing Facility Care Reimbursement

The Board will provide reimbursement for the reasonable expenses incurred by a member needing the services of a skilled nursing facility. Appendix D provides the payment schedule.

- A. Non-medical charges, including but not limited to hair care, personal toiletries and sundries, bed holds, and recreational events organized by the skilled nursing facility shall not be reimbursed.
- B. Before any skilled nursing facility charges may be reimbursed, the Board must be provided with "Request for Long Term Care Form" from the member's attending physician stating medical necessity for and estimated duration of skilled nursing facility care. The question of medical necessity for skilled nursing facility care may be subject to annual or more frequent review by the Board, at the Board's discretion.
- C. All charges must be submitted to the appropriate insurance carriers, Medicare, Medicaid or other available long-term care insurance before submission to the Board. The Board may reduce the amount of reimbursement for skilled nursing facility

care by the amount a member receives from these other sources.

- D. The Board reserves the right, at its sole discretion based on the record before it, to approve or disapprove reimbursement for skilled nursing facility care incurred by a member.
- E. The Board shall only reimburse for services rendered; advance payment of any charges will not be made by the Board.

8.06 Home Health Care Reimbursement

General standards for home health care reimbursement.

- 1. The Board reserves the right, at its sole discretion based on the record before it, to approve or disapprove reimbursement for home health care expenses incurred by a member.
- 2. The Board may provide reimbursement for the reasonable expenses incurred by a member needing the services of home health care. It is the intent of this policy to reduce the amount paid for skilled nursing facility care.
- 3. The Board reserves the right to have an independent assessment agency evaluate the member's home health care needs. The Board also reserves the right to approve or deny home health care reimbursement based upon the findings of the independent assessment agency.
- 4. Before any home health care charges may be reimbursed, the Board must be provided with a "Request for Long Term Care Form" completed by the member's attending physician. The physician shall state the medical necessity and the estimated length of time during which home health care will be required and the type of care required (medical, daily living, and/or other). This form may be obtained from the Board Secretary. The attending physician must provide a description of the services to be performed by the home health care provider. This description is to be as detailed as possible. The question of medical necessity for home health care may be subject to annual or more frequent review by the Board, at the Board's discretion.
 - A. Specific limitations on home health care reimbursement.

1. The total cost amount allowed for reimbursement shall not exceed the current Board allowed rate for skilled nursing home care as provided for in the Skilled Nursing Facility Care Reimbursement Policy.
2. All charges must be submitted to the appropriate insurance carriers, Medicare and other available long-term care insurance before submission to the Board.
3. The Board shall only reimburse for services rendered; advance payment of any charges will not be made by the Board.
4. The Board will not reimburse for home health care provided by an individual who ordinarily resides in the member's home or is a member of the family of either the member or the member's spouse, unless the individual is a licensed home health care provider.

Section IX: Claims Procedure

9.01 Medical Claims Procedure – Generally

The Board complies with HIPAA (Health Insurance Portability and Accountability Act) which is the United States legislation that provides data privacy and security provisions for safeguarding medical information. Therefore, documentation presented to the Board for review will have the personal information whitened out to protect the members' confidentiality.

- A. All medical expenses incurred and claimed for reimbursement by the member will be submitted through the member's health insurance provider(s) BEFORE the claim is sent to the Board for approval.
- B. The medical expenses claim submitted for reimbursement should reflect only the portion NOT covered by the existing health insurance provider(s).
- C. Members possessing insurance benefits covering the expense of necessary medical services which would otherwise be the obligation of the employer, shall first present the claim to the appropriate insurance carrier and only thereafter make claim to the Board for those costs which are not paid by the insurer. The Board will designate those services where this procedure will not be followed.

9.02 Claims not covered by insurance

Members must obtain Board approval for any necessary medical expense not covered by insurance, Medicare, or other similar sources **prior** to commencing treatment. Failure to do so may result in denial or partial approval and reimbursement of the medical claim.

9.03 Medicare

The Board may presume that each individual who has attained the age of sixty-five is eligible for Medicare and will not authorize payment for necessary medical services where such expenses are met by Medicare, pursuant to RCW 41.26.150. However, the City of Kent will reimburse members for Medicare premiums. Pursuant to RCW 41.26.150(5), Medicare premiums supplementing other medical insurance coverage are authorized for reimbursement upon receipt.

- A. It is each member's responsibility to obtain Medicare insurance. Members are advised to consult their employer or Social Security office regarding eligibility for Medicare health insurance coverage, Parts A and B.
- B. Where the expense of necessary medical services exceeds that which is paid by Medicare, the Board will authorize the payment of any balance which may exist after coordination of benefits with the provided medical insurance carrier.

1.04 Submitting a claim

- A. Complete a Claim for Medical Expenses and attach all insurance explanation of benefits documentation showing the amount they paid and/or rejected and any physician documentation necessary to support a claim.

- B. If the medical expense is not covered by insurance, a claim can still be submitted to the Board for payment. However, the burden is upon the claimant to establish both the necessity of a provided medical service and charges for service were reasonable.
- C. Claims which do not have complete documentation shall be tabled until the next Board meeting or until the required documentation is provided.
- D. All claims, except prescription claims, shall be submitted to the Board within ninety days of date processed/paid by the insurance documentation. Failure to comply may result in rejection of the claim. Prescription claims shall be submitted to the Board within six months from date of purchase. This policy shall apply to all prescription claims purchased on or after January 1, 2002.

9.05 Payment process

- A. If the LEOFF Board approves the claim for payment, the claim will be processed according to established Finance Department policies and procedures.
- B. Claims for required medical reexaminations shall be approved for payment upon receipt of proper documentation and processed according to established Finance Department policies and procedures.
- C. All medical expenses are the member's responsibility to pay. Claims for necessary medical services submitted to the Board shall be reimbursed to the member in the amount approved by the Board.
- D. Upon making payment for authorized medical services, the employer shall be surrogated to all rights of the member against any third party who may be held liable for the member's injuries or for the payment of the costs of medical services in connection with a member's sickness or disability. Such subrogation shall be to the extent necessary to recover payments made by the employer.

9.06 Rejected Claims

The Board shall act upon all claims promptly, advising the claimant in writing of any claim that is rejected, together with the reason for rejection.

9.07 Appeals of Claims for Medical Services

Any person feeling aggrieved by any denial of payment of a claim for

medical services by the Board shall have the right to request the Board to reconsider its decision and the Board may grant or deny such request at its discretion. A request for reconsideration must be filed with the Board Secretary within thirty days following the denial of the claim by the Board. The Board will set a date and time for reconsideration at which time the member may present such evidence deemed relevant. If the denial of the claim is sustained by the Board, the member has the right of judicial review.

Section X: Adoption and Review

10.01 Biennial Review

These policies and procedures shall be reviewed in even years in January to assure that:

- A. Provisions herein remain in conformance with Washington Statutory and Administrative Codes.
- B. Dollar amounts specified in schedules of benefits reflect current average charges in the local area.
- C. Provisions herein reflect current philosophy and intent of the Board.

10.02 Formal Adoption

These policies and procedures may be amended or repealed only by the affirmative vote of a majority of the Board members. Such action shall be taken at any regular or special meeting of the Board.

10.03 Severability Clause

The LEOFF 1 Board Policies and Procedures are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of these policies, or the invalidity of the application thereof to any person a circumstance shall not affect the validity of the remainder of these policies, or the validity of its application to other persons or circumstances.

10.04 Repeal Prior Policies and Procedures. Through adoption of these policies and procedures, the Board repeals the "LEOFF 1 Disability Board Policies and Procedures" previously adopted by the Board on _____.

The undersigned Secretary of the Board certifies by signing below that the foregoing policies and procedures have been duly adopted by the Members of the Board on the date noted below.

LEOFF I DISABILITY BOARD

Adopted this ____ day of _____, 2022.

Title: _____ Secretary _____

Print Name: _____