

HAWAII ADMINISTRATIVE RULES

TITLE 6

DEPARTMENT OF BUDGET AND FINANCE

EMPLOYEES' RETIREMENT SYSTEM

CHAPTER 23

CONTESTED CASE HEARINGS

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#### SUBCHAPTER 1

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

**§6-23-1 Scope.** This subchapter shall govern all petitions for contested case hearing filed with the system disputing a preliminary decision by the system regarding an application for disability retirement benefits or accidental death benefits, pursuant to the medical board's or a designated entity's certifications and findings under chapter 6-22. [Eff 11/9/81; am and comp 11/26/2009; am and comp **APR 11 2022** ] (Auth: HRS §§ 88-28, 91-2) (Imp: HRS §§88-82, 91-2)

**§6-23-2 Definitions.** Definitions applicable to this subchapter are also provided in section 88-21, HRS, and sections 6-20-1 and 6-22-2. As used in this subchapter:

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

- (1) The result of an accident occurring while in the actual performance of duty at some definite time and place; or
- (2) The cumulative result of some occupational hazard; or
- (3) The result of wilful negligence on the part of the member.

"Petition" means a request filed with the system pursuant to section 6-23-4, in which an applicant for disability retirement benefits or accidental death benefits disputes the system's preliminary decision regarding the medical board's or designated entity's certifications and findings. [Eff 11/9/81; am and comp 11/26/2009; am and comp **APR 11 2022** ] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2)

**§6-23-3 Preliminary decision by the system; notice of preliminary decision; petition for contested case hearing.** (a) Upon receipt of the medical board's or a designated entity's certifications and findings pursuant to section 6-22-8, the executive director on behalf of the system shall make a preliminary decision as to whether to accept, reject or remand the medical board's or designated entity's certifications and findings. The executive director on behalf of the system, may reject the medical board's or designated entity's certifications or findings, including findings regarding causation, and make independent determinations. The executive director on behalf of the system, may remand the certifications and findings to the medical board or designated entity for any clarification or correction.

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

board's or designated entity's certifications and findings.

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

APR 11 2022 ] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2)

**§6-23-4 Filing of petition for contested case hearing.** After receipt of notice of the system's preliminary decision pursuant to section 6-23-3, an applicant may file a petition for contested case hearing disputing any adverse determination contained in the preliminary decision. The petition shall be filed in the office of the system in Honolulu no later than thirty days from the date of receipt of the written notification from the executive director of the system's preliminary decision regarding the medical board's or the designated entity's certifications and findings. [Eff 11/9/81; am and comp 11/26/2009; am and comp APR 11 2022 ] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2)

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

- (1) The identity of the petitioner. If the petition is filed by a person or other entity on behalf of the member or applicant, the person or other entity shall state that

it has the right to represent the member or applicant and shall submit proof of that right with the petition; and

- (2) The grounds for the petition, the specific issues involved, the contentions of the petitioner, and a description of the evidence that the petitioner intends to introduce in support of the contentions.

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

(c) Any petition that is not filed within the period prescribed in section 6-23-4 and any petition that is returned and not corrected and refiled within the period prescribed in subsection (b) shall be rejected. [Eff 11/9/81; am and comp 11/26/2009; am and comp **APR 11 2022** ] (Auth: HRS §§ 88-28, 91-2) (Imp: HRS §§88-82, 91-2)

**§6-23-6 Contested case hearing.** When a petition for contested case hearing is filed in accordance with this subchapter, the petitioner shall be afforded a contested case hearing before a hearing officer appointed by the system. [Eff 11/9/81; am and comp 11/26/2009; am and comp **APR 11 2022** ] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2, 91-9, 92-16)

**§6-23-7 Time and place of hearing and notice.** The hearing officer shall set the time and place of hearing and give written notice thereof to the petitioner. The notice of hearing shall conform to the requirements of section 91-9, HRS, and shall be personally delivered or mailed by registered or certified mail with return receipt requested at least

fifteen days before the hearing. [Eff 11/9/81; am and  
comp 11/26/2009; am and comp **APR 11 2022** ]  
(Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2,  
91-9.5, 92-9)

**§6-23-8 Docket.** The system shall maintain a  
docket of all petitions and each petition shall be  
assigned a number. [Eff 11/9/81; am and comp  
11/26/2009; am and comp **APR 11 2022** ]  
(Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2)

**§6-23-9 Computation of time; extension of time.**

(a) In computing any period of time prescribed or  
allowed by this subchapter, or any order of the board,  
system or a presiding officer, the day of the act,  
event, or default after which the designated period of  
time is to run shall not be included. The last day of  
the period shall be included unless it is a Saturday,  
Sunday, or legal holiday in the State, in which event  
the period of time runs until the end of the next day  
which is neither a Saturday, Sunday, or legal holiday.  
Intermediate Saturdays, Sundays, or legal holidays  
shall not be included in the computation when the  
period of time prescribed or allowed is seven days or  
less. A half holiday shall not be considered a holiday  
for purposes of these computations. All references in  
this subchapter to days shall mean calendar days,  
unless otherwise expressed.

(b) Except for the time for filing exceptions  
pursuant to section 6-23-19, whenever a person or  
entity is required or allowed to act within a time  
specified by this subchapter, the hearing officer or  
the executive director on behalf of the system or  
board may:

- (1) With or without motion or notice extend such  
period if written request therefor is made  
before the expiration of the specified  
period; or

- (2) Upon motion, permit the act to be done after the expiration of the specified period where the failure to act was the result of excusable neglect. [Eff 11/9/81; am and comp 11/26/2009; am and comp **APR 11 2022** ] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2)

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

(b) All documents filed with or presented to the board or hearing officer or the executive director on behalf of the system or board, may be retained in the files of the system. The system may permit the withdrawal of original documents upon submission of photostatic or properly authenticated copies to replace the originals. [Eff 11/9/81; am and comp 11/26/2009; am and comp **APR 11 2022** ] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2, 91-9, 92-16)

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

(b) The application shall be made to the hearing officer and shall state the reasons why the deposition should be taken, the time and place for taking the deposition, the name and mailing address of the witness, and the subject matter concerning which the

witness is expected to testify. If good cause is shown, an order for the taking of the deposition containing the appropriate instructions shall be made and served upon the parties. [Eff 11/9/81; am and comp 11/26/2009; am and comp **APR 11 2022** ] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2)

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

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

(c) All objections made at the time of the examination shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objection. The officer taking the deposition shall certify on the deposition that the witness was duly sworn and that the deposition is a true record of the testimony given by the witness and shall forward the deposition with two copies thereof in a sealed envelope, endorsed with the title of the proceeding, to the system at the system's office. [Eff 11/9/81; am and comp 11/26/2009; am and comp

**APR 11 2022** ] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2)

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

(1) The witness is dead;

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

(b) If any part of the deposition is put in evidence by a party, any other party may require the production of the remainder of any other portions of the deposition. [Eff 11/9/81; am and comp 11/26/2009; am and comp **APR 11 2022** ] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2)

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

(b) With respect to contested case hearings governed by this subchapter, the hearing officer as the presiding officer shall have the following powers and duties:

- (1) To determine the time and place of hearing and, in the hearing officer's discretion or at the request of a party, to continue or postpone any hearing;
- (2) To regulate the course and conduct of the hearing;
- (3) To administer oaths and affirmations;
- (4) To examine witnesses;
- (5) To issue subpoenas;
- (6) To rule on offers of proof and receive evidence;
- (7) To hold conferences, before or during the hearing, for the simplification of issues;
- (8) To rule on motions and dispose of procedural requests or similar matters;
- (9) To remand, in the hearing officer's discretion, to the medical board or designated entity the certifications and findings involved in the petition, or any matter or issue related thereto; and to accept from the medical board or designated entity any new or amended report or documents, including any new certifications or findings;
- (10) To make a recommended decision to the board;
- (11) To dispose of any matter that normally and properly arises before or in the course of the hearing; and
- (12) To take any other action authorized by this subchapter or by law that the hearing officer may deem necessary for the orderly and just conduct of the hearing.

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

- (1) To determine the time and place of the hearing of arguments on exceptions and, in the presiding officer's discretion or at the request of a party, to continue or postpone any hearing;

- (2) To regulate the course and conduct of the hearing; and
  - (3) To take any other action authorized by this subchapter or by law that the presiding officer may deem necessary for the orderly and just conduct of the hearing.
- (d) The substantive provisions of sections 6-22-5, 6-22-6, and 6-22-7 shall apply to contested case hearings and arguments on exceptions under this subchapter. [Eff 11/9/81; am and comp 11/26/2009; am and comp **APR 11 2022**] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2, 91-9, 92-16)

**§6-23-14.01 Default.** (a) A presiding officer may find a party to be in default upon motion by a party or at the presiding officer's discretion, on the following grounds:

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

(b) When the presiding officer finds that a default has occurred, the presiding officer may issue a default order against the defaulting party. The order shall include findings of fact showing the grounds for the order, conclusions regarding material issues of fact and law, and other terms or conditions, as appropriate. Terms or conditions of a default order can include dismissal of the petition. The default order shall constitute a recommended decision pursuant to section 6-23-17 if filed by a hearing officer. The default order shall constitute a proposed decision if filed by the chairperson or other designated member of the board. [Eff and comp

**APR 11 2022**] (Auth: HRS §§ 88-28, 91-2) (Imp: HRS §§91-2, 91-9, 91-12, 92-16)

**§6-23-14.02 Motions to dismiss or for summary judgment.** (a) The presiding officer, upon motion by a party, may at any time issue an order for summary judgment as to all or any part of the claims, if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law.

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

(c) An order that grants or denies disposal of some or all claims in the petition shall constitute a recommended decision pursuant to section 6-23-17 if issued by the hearing officer and not considered an interlocutory order. An order that grants or denies disposal of some or all claims in the petition shall constitute a proposed decision pursuant to section 6-23-18 if issued by the board upon receipt of a recommended decision and not considered an interlocutory order. An order that disposes of some but not all of the claims in the petition shall be considered an interlocutory order and shall be appealable under section 91-14, HRS, only after a final decision has been issued, or if deferral of review would deprive the appellant of adequate judicial review under section 91-14, HRS. [Eff and comp **APR 11 2022**] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9, 91-12, 92-16)

**§6-23-15 Reassignment of petition.** If for any reason the hearing officer designated for the hearing of the petition for contested case hearing is unable to complete the hearing, the system may, without

abatement of the proceedings, assign the petition to another hearing officer. [Eff 11/9/81; am and comp 11/26/2009; am and comp  
(Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2, 92-16) ]

APR 11 2022

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

The hearing officer shall convene the hearing and summarize the issues in the petition. The petitioner shall have the burden of proof, including the burden of producing evidence and the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence.

(b) Before presenting the case, the petitioner shall have the opportunity to make an opening statement. The deputy attorney general or other counsel assigned to the respondent medical board or designated entity shall also have the opportunity to make an opening statement then or after the petitioner has presented the petitioner's case. Opening statements may be waived by either party.

(c) Witnesses shall testify in the following order:

- (1) Witnesses for the petitioner;
- (2) Witnesses called by the respondent;
- (3) Witnesses for the petitioner in rebuttal;
- (4) Witnesses called by the respondent in rebuttal;
- (5) Additional witnesses as the presiding officer may deem necessary.

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

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

(e) After the presentations of evidence is concluded, unless the petition is submitted by either party or both parties without argument, the petitioner shall open the argument followed by argument by the respondent and the petitioner may present rebuttal argument which shall be limited to countering any matter or argument presented by the respondent. Reasonable time limits may be imposed by the hearing officer for argument. Argument may be waived by either party.

(f) The hearing officer, within such time limits as the hearing officer may impose, may permit the parties to submit written memoranda in support of their respective positions and proposed findings of fact and conclusions of law. [Eff 11/9/81; am and comp 11/26/2009; am and comp **APR 11 2022**] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2, 91-9, 91-10, 92-16)

**§6-23-17 Recommended decision.** Within sixty days after the close of the reception of evidence or the filing of any memoranda or proposed findings of fact or conclusions of law permitted by the hearing officer, whichever is later, the hearing officer shall make and file with the system a recommended decision which shall include recommended findings of fact and conclusions of law. If any party has been permitted to file proposed findings of fact, the hearing officer shall incorporate in the recommended decision a ruling on each proposed finding so presented. [Eff 11/9/81; am and comp 11/26/2009; am and comp **APR 11 2022**] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2, 91-9, 92-16)

**§6-23-18 Proposed decision.** Upon receipt of the recommended decision, the board may accept it as its proposed decision, or may remand the recommended decision to the hearing officer for any clarification

or correction, or may modify the recommended decision and issue its own draft of a proposed decision. A copy of the proposed decision shall be served upon each party. [Eff 11/9/81; am and comp 11/26/2009; comp **APR 11 2022**] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2, 91-11, 92-16)

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

(b) Any party may apply for an extension of time within which to file exceptions to the proposed decision, or response, by filing a written application setting forth the reasons for the request. The application shall be filed before the expiration of the respective period prescribed for the filing of exceptions or response. Upon good cause shown, the board, any member of the board, or the executive director on behalf of the system, may extend the time for filing exceptions or response, for an additional period not to exceed fifteen days after the applying party's receipt of the extension of time within which to file exceptions or response.

(c) If no exceptions and request for review are filed within the time specified, the proposed decision shall become final, unless the board on its own motion orders further proceedings to be held. [Eff 11/9/81; am and comp 11/26/2009; am and comp **APR 11 2022**]

(Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2, 91-11, 92-16)

**§6-23-20 Argument on exceptions.** Upon the filing of exceptions by a party adversely affected by the proposed decision, the board shall grant such party an opportunity to present arguments to the board. The executive director shall set the time and place of hearing of argument on exceptions and give written notice thereof to the parties. [Eff 11/9/81; am and comp 11/26/2009; am and comp **APR 11 2022** ] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2, 91-11, 92-16)

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

(b) The final decision shall be personally delivered or mailed to the parties by registered or certified mail with return receipt requested. [Eff 11/9/81; am and comp 11/26/2009; am and comp **APR 11 2022** ] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2, 91-10, 91-11, 91-12, 92-16)

**§6-23-21.01 Attorneys' fees upon successful petition.** (a) If after filing a petition, the petitioner is the prevailing party before the board or a court of competent jurisdiction, the petitioner may

file a motion with the system for reasonable attorneys' fees and costs pursuant to the standards set forth in rule 1.5 of the Rules of Professional Conduct adopted by the Hawaii Supreme Court. The system's decision on the motion shall be made by the executive director.

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

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

(c) Reimbursement of attorneys' fees shall not be awarded until the requirements of this section are satisfied. The system may require additional details

and justification of time billed or costs claimed.  
[Eff and comp 11/26/2009; am and comp **APR 1 1 2022** ]  
(Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-28, 88-82,  
91-2)

## SUBCHAPTER 2

### OTHER CONTESTED CASE HEARINGS

**§6-23-22 Scope.** This subchapter shall govern all contested case hearings under chapter 88, HRS, except for petitions from preliminary decisions under subchapter 1, and petitions for declaratory rulings under chapter 6-20, subchapter 4. The rules in this subchapter shall not apply to hearings related to claims arising under chapter 92F, HRS. [Eff 11/9/81; am and comp 11/26/2009; comp **APR 1 1 2022** ] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§ 91-2, 91-9)

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

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

"Petition" means a request for a contested case hearing filed with the system requesting relief from an alleged misapplication or violation of any provision of chapter 88, HRS, or rules promulgated

thereunder, setting forth an alleged entitlement to a benefit, service credit, or other alleged entitlement, and meeting the requirements of sections 6-23-24 and 6-23-28.

"Respondent" means any person proceeded against in a petition under this subchapter. [Eff 11/9/81; am and comp 11/26/2009; am and comp **APR 11 20??** ] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-21, 91-2, 91-9)

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

(a) A proceeding shall commence with the filing of a petition pursuant to section 6-23-28 for a contested case hearing, including a certificate of service, at the system's main office in Honolulu. Upon the filing of a petition and certificate of service, the system shall date stamp the petition and assign a docket number, as provided in section 6-23-8.

(b) The petitioner shall serve personally or by first class mail one copy of the petition and certificate of service on each of the parties to the proceedings, or upon an agent or attorney representing the party. [Eff 11/9/81; am and camp 11/26/2009; am and comp **APR 11 20??** ] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9)

**§6-23-25 Limitations period.** All petitions under this subchapter are forever barred unless filed within two years after the petitioner first knew or should have known that the system had denied the petitioner the alleged benefit, service credit, or other entitlement under chapter 88, HRS, that forms the basis for the petition. Such knowledge includes the petitioner's receipt of an informal decision from the system denying the petitioner the alleged benefit, service credit, or entitlement. The petitioner bears the burden of proving that the petitioner has complied with the imitations period. [Eff and comp 11/26/2009;

comp **APR 11 2022** ] (Auth: HRS §§88-28, 91-2)  
(Imp: HRS §§91-2, 91-9, 661-5)

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

(a) In computing any period of time prescribed or allowed by this subchapter, or any order of the board or a hearing officer, the day of the act, event, or default after which the designated period of time is to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday in the State, in which event the period of time runs until the end of the next day which is neither a Saturday, Sunday, or legal holiday. Intermediate Saturdays, Sundays, or legal holidays shall not be included in the computation when the period of time prescribed or allowed is seven days or less. A half holiday shall not be considered a holiday for purposes of these computations. All references in this subchapter to days shall mean calendar days, unless otherwise expressed.

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

- (1) Extend such period, for a reasonable amount of time, if a written request is filed with the board or hearing officer before the specified period expires; or
- (2) Upon motion, permit the act to be done after the expiration of the specified period where the failure to act was the result of excusable neglect. [Eff and comp 11/26/2009; am and comp **APR 11 2022** ] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9)

**§6-23-27 Appearances.** Any party may appear in person or by counsel or other representative. A

partner may appear on behalf of a partnership and an officer may appear on behalf of a corporation. Persons who appear as counsel must conform to the standards of conduct and ethics required of practitioners before the courts of the State. [Eff and comp 11/26/2009; comp **APR 11 2022** ] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9)

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

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

- (1) The petitioner's name, mailing address, and telephone number, and the petitioner's fax number and e-mail address, if available;
- (2) A brief statement of the nature of the petitioner's interest, including reasons for the submission of the petition;
- (3) A designation of the specific statutory provision, rule, or order in question;
- (4) A complete statement of the relevant facts, including the date of the alleged denial of the benefit, service credit, or other entitlement;
- (5) A brief statement of the issues raised;
- (6) A statement of the petitioner's interpretation of the statute, rule, or order or the petitioner's position or contention with respect thereto;
- (7) A statement containing the legal reasons, including any legal authorities, in support of the petitioner's interpretation and the relief sought;
- (8) The names of any other parties or potential parties; and
- (9) The petitioner's signature.

(b) The petitioner may use Form ERS 202, entitled "Petition for Contested Case Hearing, Sample Format" dated August 2009, Appendix A, located at the end of this chapter, as a petition, or may file a

petition in pleading or letter format, so long as the petition is legible and complies with subsection (a).

(c) The executive director on behalf of the system may reject any petition that does not conform to the requirements of subsections (a) and (b). The rejection shall be in writing and shall state the reasons therefor.

(d) A petition that is not rejected will be assigned by the system to a hearing officer. [Eff and comp 11/26/2009; am and comp **APR 11 2022** ] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9)

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

- (1) Deny the petition where:
  - (A) The question-is speculative or purely hypothetical and does not involve an existing situation or one which may reasonably be expected to occur in the near future;
  - (B) The petitioner's interest is not of the type which confers sufficient standing to maintain an action in a court of law;
  - (C) The issuance of a final decision may adversely affect the interest of the State, the system, or any of the officers or employees in any litigation which is pending or may be reasonably be expected to arise;
  - (D) The petition requests a decision on a matter other than the alleged misapplication or violation of any provision of chapter 88, HRS, or rules promulgated thereunder, setting forth an alleged entitlement to a benefit, service credit, or other alleged entitlement, or on a matter otherwise

not within the scope of this subchapter;

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

(F) The petition is frivolous; or

(2) Set the petition for hearing.

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

(1) Be in writing;

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

(3) Constitute a recommended decision pursuant to section 6-23-48. [Eff and comp

11/26/2009; am and comp **APR 11 2022** ]

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

**§6-23-30 Jurisdiction; powers and duties of presiding officer.** (a) The hearing officer appointed by the system shall preside over contested case hearings governed by this subchapter. The chairperson of the board or other member of the board designated by the chairperson shall preside over hearings of arguments on exceptions under section 6-23-51. The board or the hearing officer shall have jurisdiction over those matters expressly authorized by this subchapter, respectively.

(b) With respect to contested case hearings governed by this subchapter, the hearing officer as presiding officer shall have the following powers and duties:

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

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

(3) Administer oaths and take affidavits;

- (4) Examine witnesses and admit or exclude documentary or other evidence;
- (5) Issue and dispose of subpoenas;
- (6) Hold conferences, before or during the hearing, for the simplification of issues;
- (7) Rule on motions, requests, offers of proof, procedural requests, and similar matters;
- (8) Hear and decide questions of fact, law, or discretion; and
- (9) Do all other acts and take all measures necessary, as authorized by chapter 88, HRS, for the maintenance of order and for the efficient, fair, and impartial adjudication of issues arising in proceedings governed by this subchapter.

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

- (1) To determine the time and place of the hearing of arguments on exceptions and, in the presiding officer's discretion or at the request of a party, to continue or postpone any hearing;
- (2) To regulate the course and conduct of the hearing;
- (3) To take any other action authorized by this subchapter or by law that the presiding officer may deem necessary for the orderly and just conduct of the hearing. [Eff and comp 11/26/2009; am and comp **APR 11 2022** ]  
(Auth: HRS §§88-28, 91-2) (Imp: HRS §§ 91-2, 91-9, 91-10, 92-16)

**§6-23-31 Burden of proof.** Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence and the burden of persuasion. The party having the burden of proof shall proceed first in the presentation of opening statements,

evidence, witnesses, and arguments, followed by the other party. The degree or quantum of proof shall be a preponderance of the evidence. [Eff and comp 11/26/2009; comp **APR 11 2022** ] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-10, 92-16)

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

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

(b) If no prehearing conference is held, the hearing officer may require each party to submit a statement disclosing and identifying all witnesses to be called at the hearing, all exhibits to be used at the hearing, and other matters as shall simplify the issues and expedite the disposition of the proceeding. A copy of the statement shall be served on all parties at a date prior to the hearing as designated by the hearing officer. [Eff and comp 11/26/2009; am and comp **APR 11 2022** ] (Auth: HRS §§ 88-2 8, 91-2) (Imp: HRS §§ 91-2, 91-9, 92-16)

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

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

(b) The notice of hearing shall conform to the requirements of section 91-9, HRS, and shall be personally delivered or mailed by registered or certified mail with return receipt requested. [Eff and comp 11/26/2009; am and comp **APR 11 2022** ]  
(Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9, 91-9.5)

**§6-23-34 Memorandum in opposition.** Each respondent, within thirty days after the receipt of the notice of hearing, may file and serve upon all parties a memorandum in opposition stating concisely and fully the respondent's legal and factual position. [Eff and comp 11/26/2009; comp **APR 11 2022** ] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9)

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

(b) The hearing shall proceed as follows:

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

(c) The hearing shall conclude after closing arguments have been made and the hearing officer is satisfied that no further evidence or argument is necessary. [Eff and comp 11/26/2009; am and comp

**APR 11 2022** ] (Auth: HRS §§ 88-28, 91-2) (Imp: HRS §§ 91-2, 91-9, 91-10, 92-16)

**§6-23-36 Evidence; witnesses; exhibits.** (a)

The hearing officer shall admit all evidence that is not irrelevant, immaterial, unduly repetitious, or otherwise unreliable or of little probative value. Evidence relating to settlement that would be excluded under rule 408 of the Hawaii Rules of Evidence, chapter 626, HRS, shall not be admissible.

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

(c) For any exhibit sought to be admitted during a hearing before a hearing officer, an original plus one copy shall be distributed to the hearing officer, and one copy shall be furnished to each party. [Eff and comp 11/26/2009; am and comp **APR 11 2022** ]

(Auth: HRS §§ 88-28, 91-2) (Imp: HRS §§91-2, 91-9, 91-10, 92-16)

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

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

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

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

(c) Discretion. Upon the motion of a party, or upon the presiding officer's own motion, the presiding officer may extend or shorten the time for a party to file a response to a motion, and may make such other orders regarding a motion as the presiding officer deems appropriate. The presiding officer may permit oral argument where the officer deems it necessary or desirable. [Eff and comp 11/26/2009; am and comp

APR 11 2022 ] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9, 91-10, 92-16)

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

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

(c) An order that grants or denies disposal of some or all claims in the petition shall constitute a recommended decision pursuant to section 6-23-48 if issued by the hearing officer and not considered an interlocutory order. An order that grants or denies disposal of some or all claims in the petition shall constitute a proposed decision pursuant to section 6-23-49 if issued by the board upon receipt of a recommended decision and not considered an interlocutory order. An order that disposes of some but not all of the claims in the petition shall be considered an interlocutory order and shall be appealable under section 91-14, HRS, only after a final decision has been issued, or if deferral of review would deprive the appellant of adequate judicial review under section 91-14, HRS. (Eff and comp 11/26/2009; am and comp **APR 11 2022**) (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9, 91-12, 92-16)

**§6-23-39 Intervention.** (a) Upon timely motion and at the discretion of the hearing officer, the

executive director or any person or agency may be permitted to intervene as a party in a contested case proceeding if the executive director, person, or agency asserts a substantial interest in the outcome of the contested case proceeding or the intervention will be conducive to effectuating applicable laws or governmental functions and purposes.

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

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

(c) Motions to intervene shall be made pursuant to section 6-23-37. [Eff and comp 11/26/2009; am and comp **APR 11 20??** ] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-9, 92-16)

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

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

(b) When the presiding officer finds that a default has occurred, the presiding officer may issue a default order against the defaulting party. The order shall include findings of fact showing the grounds for the order, conclusions regarding material issues of fact and law, and other terms or conditions,

as appropriate. Terms or conditions of a default order can include dismissal of the petition. The default order shall constitute a recommended decision pursuant to section 6-23-48 if filed by the hearing officer. The default order shall constitute a proposed decision if filed by the chairperson or other designated member of the board. [Eff and comp 11/26/2009; am and comp APR 11 2022 ] (Auth: HRS §§ 88-28, 91-2) (Imp: HRS §§91-2, 91-9, 91-12, 92-16)

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

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

(b) Public records. Notwithstanding section 6-20-4, all documents filed in a proceeding under this subchapter shall be retained in the files of the system and shall be government records that are open to inspection and copying by members of the public, except as provided in chapter 92F, HRS, and other applicable law. Any party who believes that a document filed under this subchapter is not a government record shall file a motion with the system, stating the legal basis as to why the party believes that the document is not a government record as defined in chapter 92F, HRS. [Eff and comp 11/26/2009; am and comp APR 11 2022 ] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9, 92F-11, 92F-12, 92F-13, 92F-14)

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

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

(b) The application shall be made to the hearing officer and shall state the reasons why the deposition should be taken, the time and place for taking the deposition, the name and mailing address of the witness, and the subject matter concerning which the witness is expected to testify. If good cause is shown, an order for the taking of the deposition containing the appropriate instructions shall be made and served upon the parties. [Eff and comp 11/26/2009; am and comp **APR 11 2022**] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2; 91-9, 92-16)

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

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

(c) All objections made at the time of the examination shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objection. The officer taking the deposition shall certify on the deposition that the witness was duly sworn and that the deposition is a true record of the testimony given by the witness and shall forward the deposition with two copies thereof in a sealed envelope, endorsed with the title of the proceeding, to the board at the system's office. [Eff and comp 11/26/2009; comp **APR 11 2022**] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9)

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

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

(b) If any part of the deposition is put in evidence by a party, any other party may require the production of the remainder of any other portions of the deposition. [Eff and comp 11/26/2009; am and comp **APR 11 2022** ] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9, 91-10, 92-16)

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

- (1) Has any direct financial interest in the matter being heard;
- (2) Has personally and substantially participated:
  - (A) In an investigation relating to the institution of the proceeding; or

(B) In the development of the evidence to be introduced in the proceeding; or

(3) Is related within the third degree by blood or marriage to any party to the proceeding or any party's representative or attorney.

(b) A board member or hearing officer may be disqualified from the case upon motion of a party or at the presiding officer's discretion, only upon a preponderance of the evidence showing grounds for disqualification. A motion to disqualify a board member or hearing officer shall be filed and decided prior to the hearing. An order granting or denying a motion to disqualify shall contain separate findings of fact and conclusions of law. [Eff and comp 11/26/2009; comp **APR 11 20??** ] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 92-16)

**§6-23-46 Reassignment of case.** If for any reason the hearing officer designated for the hearing of a case is unable to complete the hearing, the system may, without abatement of the proceedings, assign the case to another hearing officer. [Eff and comp 11/26/2009; am and comp **APR 11 20??** ] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 92-16)

**§6-23-47 Ex parte contacts.** At no time after the petition is served and filed shall any member of the board or the hearing officer, who are deciding the petition, consult any person on any issue of fact except upon notice and opportunity for all parties to participate, save to the extent required for the disposition of ex parte matters authorized by law. Any ex parte memorandum or other written communication addressed to a board member or the hearing officer, by or on behalf of any party, shall be regarded as argument made in the proceeding and shall be served on all other parties. [Eff and comp 11/26/2009; comp

1871/6

**APR 11 2022** ] (Auth: HRS §§88-28, 91-2) (Imp:  
HRS §§91-2, 91-13, 92-16)

**§6-23-48 Recommended decision.** When a case is heard by a hearing officer, the hearing officer shall make and file with the board a recommended decision which shall include recommended findings of fact and conclusions of law. If any party has been permitted to file proposed findings of fact and conclusions of law, the recommended decision shall include rulings on each proposed finding of fact and conclusion of law. The hearing officer shall file the recommended decision within sixty days after the close of the reception of evidence or the filing of any post-hearing memoranda or proposed findings of fact and conclusions of law, whichever is later. [Eff and comp 11/26/2009; comp

**APR 11 2022** ] (Auth: HRS §§ 88-28, 91-2) (Imp:  
HRS §§91-2, 91-9, 91-11, 92-16)

**§6-23-49 Proposed decision.** Upon receipt of the recommended decision, the board may accept it as its proposed decision, or may remand the recommended decision to the hearing officer for any clarification or correction, or may modify the recommended decision and issue its own draft of a proposed decision.

A copy of the proposed decision shall be served on each party. [Eff and comp 11/26/2009; comp

**APR 11 2022** ] (Auth: HRS §§ 88-28, 91-2) (Imp:  
HRS §§ 91-2, 91-9, 91-11, 92-16)

**§6-23-50 Filing of exceptions; extension of time; finality of proposed decision.** (a) Within fifteen days after receipt of a copy of the board's proposed decision, any party may file with the board exceptions to any part thereof and request review by the board. Each exception shall specify the portion of

the record and authorities relied on to sustain each point. Within fifteen days after receipt of a copy of a party's exceptions and request for review, any party may file with the board a response to the exceptions and request for review. In addition, a copy of the exceptions and request for review, and response, shall be served upon each of the parties who were served with a copy of the proposed decision.

(b) Any party may apply for an extension of time within which to file exceptions to the proposed decision, or response, by filing a written application setting forth the reasons for the request. The application shall be filed before the respective expiration of the period prescribed for the filing of exceptions or response. Upon good cause shown, the board, any member of the board, or the executive director on behalf of the system, may extend the time for filing exceptions or response, for an additional period not to exceed fifteen days after the applying party's receipt of the extension of time within which to file exceptions or response.

(c) If no exceptions and request for review are filed within the time specified, the proposed decision shall become final, unless the board on its own motion orders further proceedings to be held. [Eff and comp 11/26/2009; comp APR 11 2022 ] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-11, 91-12)

**§6-23-51 Argument on exceptions.** Upon the filing of exceptions by a party adversely affected by the proposed decision, the board shall grant such party an opportunity to present arguments to the board. The executive director shall set the time and place of hearing of argument on exceptions and give written notice thereof to the parties. [Eff and comp 11/26/2009; am and comp APR 11 2022 ] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-11)

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

(b) The final decision shall be personally delivered or mailed to the parties by registered or certified mail with return receipt requested. [Eff and comp 11/26/2009; am and comp **APR 11 2022** ] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-11, 91-12)

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

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

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

(d) Only one motion for reconsideration shall be filed by each party and the filing of a motion for reconsideration shall not operate as a stay of the board's final decision or order. [Eff and comp 11/26/2009; comp **APR 11 2022** ] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9)

### PETITION FOR CONTESTED CASE HEARING SAMPLE FORMAT

BOARD OF TRUSTEES  
EMPLOYEES' RETIREMENT SYSTEM  
STATE OF HAWAII

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

### PETITION FOR CONTESTED CASE HEARING

**I. PETITIONER'S INFORMATION**

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

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

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

**3. STATEMENT OF RELEVANT FACTS**

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

**4. STATEMENT OF LEGAL REASONS SUPPORTING THE PETITION**

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

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

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

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

**6. RELIEF REQUESTED**

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

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

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

**8. APPEARANCE ON BEHALF OF PETITIONER**

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

**A. Name:**

**B. Mailing Address:**

**C. Telephone Number:**

**D. Fax Number:**

**E. E-Mail Address:**

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

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

By \_\_\_\_\_  
Petitioner (signature)