

TITLE 2 PUBLIC FINANCE
CHAPTER 80 PUBLIC EMPLOYEES RETIREMENT
PART 1500 APPEAL OF DENIAL OF CLAIM OF BENEFITS

2.80.1500.1 ISSUING AGENCY: Public Employees Retirement Association, P. O. Box 2123, Santa Fe, New Mexico 87504-2123
[10-15-97; 2.80.1500.1 NMAC - Rn, 2 NMAC 80.1500.1, 12-28-01]

2.80.1500.2 SCOPE: This rule affects the members, former members, retirees, beneficiaries, public employers, retirement board, and the association under the Public Employees Retirement Act, Judicial Retirement Act, Magistrate Retirement Act and Volunteer Firefighters Retirement Act.
[10-15-97; 12-15-99; 2.80.1500.2 NMAC - Rn, 2 NMAC 80.1500.2, 12-28-01]

2.80.1500.3 STATUTORY AUTHORITY: This rule is authorized by NMSA 1978, Section 10-11-120, 10-11-130, 10-12B-3, 10-12C-3, and 10-11A-4, as amended.
[10-15-97; 12-15-99; 2.80.1500.3 NMAC -Rn, 2 NMAC 80.1500.3, 12-28-01]

2.80.1500.4 DURATION: Permanent.
[10-15-97; 2.80.1500.4 NMAC - Rn, 2 NMAC 80.1500.4, 12-28-01]

2.80.1500.5 EFFECTIVE DATE: July 1, 1993 unless a different date is cited at the end of a section.
[10-15-97; 2.80.1500.5 NMAC - Rn, 2 NMAC 80.1500.5, 12-28-01]

2.80.1500.6 OBJECTIVE: The objective of this rule is to establish procedures and requirements for appealing denials of claims for benefits.
[10-15-97; 2.80.1500.6 NMAC - Rn, 2 NMAC 80.1500.6, 12-28-01]

2.80.1500.7 DEFINITIONS: [Reserved]

2.80.1500.8-9 [Reserved]

2.80.1500.10 GENERAL PROVISIONS

A. The denial of any claim for retirement benefits may be appealed by a claimant. A refund or withdrawal of a member's contributions causes the forfeiture of service credit and shall result in the automatic dismissal of an appeal and the issuance of notice of dismissal. The appeal shall be initiated by receipt by PERA of a notice of appeal within ninety (90) days of the date of the letter in which the written notification to the claimant of the denial. The notice of appeal must state the reasons for claiming the denial is improper. If the claimant fails to submit a notice of appeal as provided herein, the initial denial of any claim shall constitute the final order of the board.

B. The appeal shall be heard by a hearing officer designated to represent the board unless otherwise provided by the board or board rules.

C. Procedure.

(1) PERA's office of general counsel will establish internal procedures for processing appeals, within the parameters set by this rule.

(2) Discovery and evidence.

(a) Following the filing of an appeal, the parties must submit to the hearing officer, with a copy to the other parties, including PERA, at least fifteen (15) days prior to the scheduled hearing, any documentary evidence he or she may wish to present for consideration at the de novo hearing. The hearing officer may grant a request for extension of time to submit documentary evidence for good cause, if such extension is not prejudicial to another party. This documentary evidence shall include all documents that will be introduced as exhibits at the hearing. Failure to comply with the requirements of this paragraph may result in the consideration of the appeal without the documentary evidence.

(b) At the same time documentary evidence is due to be submitted, PERA may, but is not required to file a written response to claimant's notice of appeal.

(c) Upon written request of any party, the parties shall provide to the other parties the names and addresses of persons that may be called as witnesses at the hearing.

(d) Pre-hearing discovery permitted by the rules of civil procedure for the district courts in New Mexico shall be allowed as authorized by the hearing officer. Upon the request of any party in writing, the hearing officer may authorize depositions.

(e) Upon request, the claimant shall provide to the attorney for the association authorizations for the release of records regarding the claimant's health care and employment (whether self-employed or as an employee or an independent contractor).

(f) The rules of evidence do not apply, but the hearing officer may admit all relevant evidence, which in the opinion of the hearing officer, is the best evidence most reasonably obtainable, having due regard to its necessity, competence, availability and trustworthiness. Such evidence shall be given the weight the hearing officer deems appropriate.

(g) The hearing officer may, upon good cause shown, remand the matter back to the disability review committee or the association for reconsideration.

(3) Hearing.

(a) A hearing shall be held within sixty (60) days of receipt of the notice of appeal unless the parties mutually agree to an extension of time and the extension is approved in writing by the hearing officer. The parties shall be given at least thirty (30) days written notice of the scheduled hearing.

(b) The board's authority to issue subpoenas is delegated to the hearing officer for the purpose of obtaining evidence or testimony not otherwise available.

(c) The board's authority to administer oaths is delegated to the hearing officer for the purpose of conducting the hearing.

(d) The parties have the right to present argument and evidence orally, to present or cross-examine witnesses, and to be accompanied by counsel.

(e) Failure of the claimant or his or her representative to appear at the hearing, without prior approval from the hearing officer, shall result in automatic final denial of any claims previously asserted.

(f) If the claimant or his or her representative requests rescheduling of a hearing so late that additional costs are incurred, any additional costs incurred shall be assessed against the claimant.

(4) Burden of persuasion. Unless otherwise established by law, the claimant has the burden of proving by a preponderance of the evidence the facts relied upon to show he or she is entitled to the benefit denied.

(5) Record. The hearing shall be recorded by a certified court reporter, and copies of all evidence offered shall be maintained by the association for a period of not less than five (5) years. Any party desiring a copy of the transcript of the proceedings shall be responsible for paying the cost, if any, of preparing such copy. The appellant shall make arrangements with the association for the preparation of transcripts for appeal to the district court.

(6) Recommended decision.

(a) The hearing officer's recommended decision shall be based upon the evidence adduced at the hearing and shall be issued by the hearing officer within sixty (60) days following the close of the record.

(b) The hearing officer shall propose findings of fact and conclusions of law as part of the recommended decision to the board.

(7) Exceptions to recommended decision.

(a) The parties to a proceeding may file with the board exceptions to the hearing officer's recommended decision within fifteen (15) days of the date of issuance of the recommended decision. Upon the written request of a party, and for good cause shown, the hearing officer may extend the time to file exceptions.

(b) Copies of such exceptions and any briefs shall be served on all parties and the hearing officer, and a statement of such service shall be filed with the exceptions.

(c) Exceptions to a hearing officer's recommended decision shall cite the precise substantive or procedural issue to which exceptions are taken and shall be based only on the evidence and arguments presented at the hearing.

(d) Any exception not specifically made shall be considered waived. Any exception that fails to comply with the foregoing requirements may be disregarded.

(e) The hearing officer may file with the board a response to any exceptions filed within fifteen (15) days of the date of filing of the exceptions and shall serve copies on all parties.

D. Final action by the board.

(1) The board shall consider the hearing officer's recommended decision, exceptions and any supporting briefs to the recommended decision, and the hearing officer's response to the exceptions, if any. The board may review all of the record made before the hearing officer.

(2) The board shall not consider any additional oral argument, evidence or affidavits not in the record before the hearing officer, or pleadings not filed in accordance with these rules.

(3) The board may request that the hearing officer be present at the time the board reviews a recommended decision issued by a hearing officer and may discuss the recommended decision with the hearing officer. The board members may also discuss the recommended decision among themselves and with legal counsel to the board.

(4) The board's final action shall be rendered no later than 180 days from the date of the hearing officer's recommended decision. Board members who need additional time to review the record before taking final action may request of the board chair that additional time for review be given. If additional time is requested, the deadline for the board's final action shall be extended for one month.

(5) Ex parte communication with board members or hearing officers concerning a decision that is on appeal is prohibited.

(6) The board may remand a recommended decision to the hearing officer for additional findings, conclusions, clarification or the taking of additional evidence. Such a remand shall restart the time frames contained in this rule.

(7) The board shall approve, disapprove or modify the recommended decision, and shall enter a final order concerning the matter being appealed. The board may modify the proposed conclusions of law based on the proposed findings of fact. If the board wishes to modify the proposed findings of fact, it may do so only after review of the record before the hearing officer. The board shall provide a reasoned basis for changing the hearing officer's recommendation.

[10-15-97; 11-15-97; 12-15-99; 2.80.1500.10 NMAC - Rn, 2 NMAC 80.1500.10, 12-28-01; A, 9-30-03; A, 8-31-04; A, 9-30-10]

HISTORY of 2.80.1500 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under: PERA Rule 1500.0, Appeal of Denial of Claim of Benefits, filed on 10-21-88; PERA Rule 1500, Appeal of Denial of Claim of Benefits, filed on 7-10-90; PERA Rule 1500, Appeal of Denial of Claim of Benefits, filed on 7-1-91; PERA Rule 1500, Appeal of Denial of Claim of Benefits, filed on 7-1-93.