

**MINUTES
OF
DISABILITY APPEALS COMMITTEE
October 29, 2015 at 9:00 A.M. E.T.
Board Room
Perimeter Park West, 1270 Louisville Road
Frankfort, Kentucky 40601**

At the meeting of the Disability Appeals Committee, held on October 29, 2015, the following members were present: Ed Davis, Chair and Mary Helen Peter.

In addition, those present were Becky Stephens, KRS, Liza Welch, KRS, Joseph Bowman, KRS, Jennifer Jones, KRS and Tracy Chambers, Recording Secretary.

It was moved by Ms. Peter, seconded by Mr. Davis, and carried to approve the Minutes of the August 27, 2015 Disability Appeals Committee Meeting.

Mr. Davis noted the necessity of closed session for the purpose of reviewing the disability applications of Administrative Action Numbers: 13-D-57, 14-D-83, 14-D-89, 14-D-94, 14-D-50, 14-D-23, 13-D-123, 13-D-55, 14-D-100, 14-D-76 and 15-D-54.

Following discussion in closed session, the Committee returned to open session, whereafter the following transpired.

It was moved by Ms. Peter, seconded by Mr. Davis, and carried unanimously, that the Committee members having considered the record, including the recommended order and any exceptions duly filed, in the case of Administrative Action Number: 13-D-57, to reject the Hearing Officer's Report on Remand to approve disability retirement benefits with denial of duty-related disability retirement benefits and to instead, issue a Board of Trustees Final Order, denying claimant's application for disability retirement benefits and claimant's application for duty-related disability retirement benefits. Mr. Bowman recused from participation because of prior involvement in this matter.

It was moved by Ms. Peter, seconded by Mr. Davis, and carried unanimously, that the Committee members having considered the record, including the recommended order and any exceptions duly filed, in the case of Administrative Action Number: 14-D-83, to accept the Hearing Officer's Report, Findings of Fact, Conclusions of Law, and to approve claimant's application for disability retirement benefits, with review in one year.

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It was moved by Ms. Peter, seconded by Mr. Davis, and carried unanimously, that the Committee members having considered the record, including the recommended order and any exceptions duly filed, in the case of Administrative Action Number: 14-D-89, to accept the Hearing Officer's Report, Findings of Fact, Conclusions of Law, and to deny claimant's application for disability retirement benefits.

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It was moved by Ms. Peter, seconded by Mr. Davis, and carried unanimously, that the Committee members having considered the record, including the recommended order and any exceptions duly filed, in the case of Administrative Action Number: 14-D-94, to reject the Hearing Officer's Report to approve disability retirement benefits and to instead, issue a Board of Trustees Final Order, denying claimant's application for disability retirement benefits.

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It was moved by Ms. Peter, seconded by Mr. Davis, and carried unanimously, that the Committee members having considered the record, including the recommended order and any exceptions duly filed, in the case of Administrative Action Number: 14-D-50, to accept the Hearing Officer's Report, Findings of Fact, Conclusions of Law, and to deny claimant's application for disability retirement benefits. Mr. Bowman recused from participation because of prior involvement in this matter.

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It was moved by Ms. Peter, seconded by Mr. Davis, and carried unanimously, that the Committee members having considered the record, including the recommended order and any exceptions duly filed, in the case of Administrative Action Number: 14-D-23, to reject the Hearing Officer's Report to deny disability retirement benefits and to instead, remand this case in order for the hearing officer to issue a new Recommended Order regarding whether the claimant is entitled to disability retirement benefits under KRS 61.600 in light of the following:

- (1) The Board hereby remands this matter for the hearing officer to issue a more detailed finding on the issue of pre-existing condition(s) concerning claimant's alleged feet and knee pain. (See Recommended Order, pp. 33-36). The Hearing Officer's Recommended Order, Finding of Fact No. 13 simply states that "Finally, claimant also failed to prove through medical evidence that her conditions did not pre-exist her membership date in the Systems." (See Recommended Order, p 36). The Board remands this matter for the hearing officer to explain the objective medical evidence, or lack thereof, to support the pre-existing finding, as well as application of any controlling case law on this issue. In so doing, the Board requests clarification as to whether the hearing officer considered claimant's past dancing to be a factor and, if so, how many years were considered. The Board recognizes that the evidence of record describing an alleged eighteen (18) years of pre-membership dancing was in error and shall not constitute the factual basis for any hearing officer determination that claimant's condition(s) were pre-existing.
- (2) The Board hereby rejects the hearing officer's Finding of Fact No. 4 indicating that "claimant's position can be classified as sedentary to light work." (See Recommended Order, p 33). The Board finds that claimant's position is properly classified as "medium work" per KRS 61.600(5)(c)3.

This Remand Order is narrow in scope and this Board finds there is no need to reopen the administrative record for submission of additional evidence nor additional argument or briefing by the parties. Rather, and without undue delay, the hearing officer shall issue a Recommended Order on Remand determining whether the claimant, since her last day of paid employment, has been incapacitated pursuant to KRS 61.600. The hearing officer shall issue a Recommended Order on Remand consistent with the above findings related to claimant's pre-membership dancing and her position's physical exertion requirements.

It was moved by Mr. Davis, seconded by Ms. Peter, and carried unanimously, that the Committee members having considered the record, including the recommended order and any exceptions duly filed, in the case of Administrative Action Number: 13-D-123, to defer this case to the December 21, 2015 meeting.

It was moved by Ms. Peter, seconded by Mr. Davis, and carried unanimously, that the Committee members having considered the record, including the recommended order and any exceptions duly filed, in the case of Administrative Action Number: 13-D-55, to accept the Hearing Officer's Report, Findings of Fact, Conclusions of Law, and to deny claimant's application for disability retirement benefits.

It was moved by Ms. Peter, seconded by Mr. Davis, and carried unanimously, that the Committee members having considered the record, including the recommended order and any exceptions duly filed, in the case of Administrative Action Number: 14-D-100, to accept the Hearing Officer's Report, Findings of Fact, Conclusions of Law, and to deny claimant's application for disability retirement benefits.

It was moved by Ms. Peter, seconded by Mr. Davis, and carried unanimously, that the Committee members having considered the record, including the Claimant's unopposed motion to dismiss her administrative appeal and any exceptions duly filed, in the case of Administrative Action Number: 14-D-76, to accept the Hearing Officer's Order of Dismissal and to dismiss claimant's application for disability retirement benefits.

It was moved by Ms. Peter, seconded by Mr. Davis, and carried unanimously, that the Committee members having considered the record, including the Claimant's unopposed motion to dismiss her administrative appeal and any exceptions duly filed, in the case of Administrative Action Number: 15-D-54, to accept the Hearing Officer's Order of Dismissal and to dismiss claimant's application for disability retirement benefits.

There being no further business, the meeting was adjourned at 10:17 A.M., E.T. to meet on December 21, 2015 at 9:00 A.M., E.T.

CERTIFICATION

I, Tracy Chambers, do certify that I was present at this meeting, and I have recorded the above action of the Committee on the various items considered by it at this meeting.

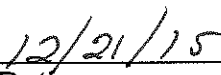
Tracy Chambers
Tracy Chambers
Recording Secretary

12.21.15
Date

I, Ed Davis, do certify that the Minutes of the meeting held on October 29, 2015 were approved by the Disability Appeals Committee on December 21, 2015.




Ed Davis, Chair
Disability Appeals Committee



Date

I, Joseph P. Bowman, was present at the October 29, 2015 Disability Appeals Committee meeting, and have reviewed the minutes for form and legality.



Joseph P. Bowman
KRS Staff Attorney



Date