

## **105 KAR 1:215. Administrative hearing.**

RELATES TO: KRS 16.505-16.652, 61.510-61.705, 78.510-78.852

STATUTORY AUTHORITY: KRS 61.645(9)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(e) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. KRS 61.645(16) provides that an affected person aggrieved by a decision of the system, which is not a determination relating to disability retirement benefits, may have the right to request an administrative hearing prior to the filing of an appeal in court. This administrative regulation establishes the administrative appeal procedures.

Section 1. Definition. "Affected person" means a member, retired member or recipient as defined in KRS 16.505, 61.510 and 78.510.

Section 2. If the system takes action which substantially impairs an affected person's benefits or rights under KRS 16.505 to 16.652, 61.510 to 61.705 or 78.510 to 78.852, except action which relates to entitlement to disability benefits, the system shall notify the affected person of the opportunity to request a hearing. The notification shall be contained in the notice of action. An affected person may request a hearing by submitting the request in writing within thirty (30) days after the date of the notice of the opportunity to request a hearing. The request for hearing shall be filed with the executive director of the system at its office in Frankfort. The request for hearing shall contain a short and plain statement of the basis for request.

Section 3. Failure of the affected person to request a formal hearing within the period of time specified shall preclude the affected person from requesting a hearing at a later time.

Section 4. (1) The system may, either through review of its records or conference with the affected person, recommend a favorable determination prior to scheduling a hearing. Upon notification of a favorable determination, the affected person may withdraw the hearing request or request that the hearing be scheduled.

(2) The hearing officer may request a prehearing conference or may consider new evidence not already part of the affected person's file. The prehearing conference is an informal procedure, presided over by the hearing officer. Every effort shall be made by all parties to dispose of controversies, to narrow and define issues, and to facilitate prompt settlement of the claim.

(3) If at the conclusion of the prehearing conference the parties have not reached an agreement on all the issues, the hearing officer shall schedule a hearing to be held within a reasonable time.

(4) If the parties agree upon a settlement after the prehearing conference but before the hearing, the settlement agreement shall be filed with the hearing officer. The hearing shall be cancelled and notice of the cancellation shall be served on all parties.

Section 5. The hearing officer shall make a report and a recommended order to the board. The report and recommended order shall contain the appropriate findings of fact and conclusions of law. The hearing officer shall mail postage prepaid, a copy of his report and recommended order to all parties. The parties may file exceptions to the report and recommended order. There shall be no other or further submissions.

Section 6. The board shall consider an act on the recommended order in accordance with KRS 13B.120.

Section 7. The system shall mail the final decision of the board to the affected person or his legal representative. If any extension of time is granted by the board for a hearing officer to complete his report, the system shall notify the affected person or his legal representative when the extension is granted.

Section 8. A final order of the board shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the board and the facts and law upon which the decision is based.

Section 9. Formal hearings shall be held at the system's office in Frankfort unless another location is determined by the hearing officer.

Section 10. All requests for a hearing pursuant to this section shall be made in writing.

Section 11. The board may establish an appeals committee whose members shall be appointed by the chairman and who shall have the authority to act upon the recommendations and reports of the hearing officer pursuant to this section on behalf of the board.

Section 12. Any affected person aggrieved by a final order of the board may seek judicial review after all administrative appeals have been exhausted by filing suit in the Franklin Circuit Court within the time period prescribed in KRS 13B.140.

Section 13. Any proposed order or order shall be served by one (1) of the following methods:

(1) The system may place a copy of the document to be served in an envelope, and address the envelope to the affected person to be served at the address of the affected person existing in the system files or at the address set forth in written instructions furnished by the affected person or his legal representative. The system shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested. The system shall immediately enter the fact of mailing in the record and make entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record. The system shall file the return receipt or returned envelope in the record. Service by certified mail is complete upon delivery of the envelope. The return receipt shall be proof of the time, place, and manner of service.

(2) The system may cause the document, with necessary copies, to be transferred for service to any person authorized by the board or by any statute or rule to deliver them, who shall serve the documents, and the endorsed return shall be proof of the time and manner of service.

(3) The methods of service specified in this section shall be supplemental to and shall be accepted as an alternative to any other method of service specified by other applicable law. (18 Ky.R. 934; 1326; eff. 11-8-1991; 19 Ky.R. 969; eff. 12-9-1992; 21 Ky.R. 1527; eff. 2-8-1995; 22 Ky.R. 777; eff. 12-7-1995; 29 Ky.R. 770; 1252; eff. 11-12-2002; TAm eff. 3-5-2019; Crt eff. 3-5-2019.)