

Chapter 446-40 WAC
DISABILITY RETIREMENTS—APPLICATIONS—DECISIONS—APPEALS

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WAC

446-40-010	Purpose.
446-40-020	Definitions.
446-40-025	Line duty disabilities.
446-40-030	Application for disability.
446-40-040	Application by member or personnel officer.
446-40-050	Action by chief.
446-40-060	Finality of chief's decision—Exception.
446-40-070	The board—Responsibilities and functions.
446-40-080	Procedure.
446-40-090	Responsibility of member.
446-40-100	Duties of board following hearing.
446-40-110	Decision by the chief.
446-40-130	Statement of earnings and status.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

446-40-120	Pay when disability retirement status in question. [Order II, § 446-40-120, filed 11/22/74.] Repealed by Order 4, filed 2/27/76.
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WAC 446-40-010 Purpose. The purpose of this regulation is to provide an administrative procedure and standards for disability retirements under RCW 43.43.040.

[Order II, § 446-40-010, filed 11/22/74.]

WAC 446-40-020 Definitions. (1) The term "active service," as it applies to a member of the Washington state patrol, is defined as all performance of duties of whatever type, performed pursuant to orders by a superior of the member, provided, such duties shall be consistent with the responsibilities of the Washington state patrol. "Active service" shall consist of "line duty" and "other duty."

(2) "Line duty" is active service which encompasses the traffic law enforcement duties and/or other law enforcement responsibilities of the Washington state patrol. These duties encompass all law enforcement activities, accident and criminal investigations, or actions requiring physical exertion or exposure to hazardous elements.

(3) "Other duty" is active service which encompasses activities consistent with the responsibilities of the Washington state patrol, but which do not foreseeably require more physical exertion than that normally required for the performance of clerical tasks.

(4) "Disability" is defined as any injury or incapacitation of such an extent as to render a member of the Washington state patrol mentally or physically incapable of active service.

(5) "Applicant" as the term is used in this regulation shall refer either to the member or to the department, whichever is initiating action pursuant to this regulation.

(6) The term "member" is defined as a regularly commissioned officer in the Washington state patrol.

(7) The term "chief" in this regulation refers to the chief of the Washington state patrol.

(8) The term "personnel officer" is defined as the person designated by the chief to be responsible for personnel matters within the Washington state patrol.

(9) The term "department" refers to the Washington state patrol as a state agency.

[Statutory Authority: RCW 43.43.040. WSR 89-10-015 (Order 89-01-RD), § 446-40-020, filed 4/24/89; Order II, § 446-40-020, filed 11/22/74.]

WAC 446-40-025 Line duty disabilities. (1) Line duty disabilities occur when a commissioned officer of the Washington state patrol is injured or incapacitated while:

- (a) Performing traffic law enforcement duties.
- (b) Investigating accidents or suspected criminal activities.
- (c) Participating in law enforcement training that requires physical exertion, use of firearms, or exposure to hazardous elements.
- (d) Performing other activities which must be performed by a commissioned law enforcement officer and exposes the officer to hazardous elements or requires physical exertion.

(2) Injuries that occur while performing activities that do not expose the officer to hazardous elements or require physical exertion, such as, but not limited to, report writing, answering telephone inquiries, attending meetings, or performing limited duty, do not qualify as line duty injuries.

(3) If a commissioned officer assigned to administrative duties must perform work defined as "line duty" and is injured, it will be considered a line duty injury.

[Statutory Authority: RCW 43.43.040. WSR 89-10-015 (Order 89-01-RD), § 446-40-025, filed 4/24/89.]

WAC 446-40-030 Application for disability. No member shall be placed in or removed from disability retirement status by application of the member, the department, or the personnel officer except in accordance with this regulation.

[Order II, § 446-40-030, filed 11/22/74.]

WAC 446-40-040 Application by member or personnel officer. (1) Whenever a member of the Washington state patrol desires to be placed in disability retirement status or the personnel officer determines that the member should be placed in disability retirement status, the member or the personnel officer, as appropriate, will make application through command channels to the chief, stating in full the basis of his claim of disability and include with his application such supporting documents as may be available to include medical history, reports, doctors' analyses, and other pertinent materials. When the personnel officer makes such application, he shall forward a copy of the application and supporting documents to the member concerned.

(2) Upon receipt of such application, the chief, after seeking such evaluation and advice as he shall deem necessary, shall determine whether the applicant shall be placed in disability retirement status. Following this determination, the chief shall indicate to the applicant that based upon the information available to him at that time, placement in disability retirement status is or is not warranted. If the chief orders a member into disability retirement status, the member shall not be prejudiced by a failure to obey this order if, within seven days of receiving the order, he requests a formal hearing as provided for in WAC 446-40-070 et seq.

(3) Similarly, when a member of the Washington state patrol is in disability retirement status and seeks return to active service status, he shall apply to the chief, stating in full the basis for his seeking return to active status and including with his application such supporting documents as may be available to include medical history, reports, doctors' analyses, and other pertinent materials. Upon receipt of such application, the chief, after seeking such evaluation and advice as he may deem necessary, shall determine if the applicant should be restored to active service. Following this determination, the chief will indicate to the applicant that based upon the information available to him at that time, restoration is or is not warranted.

[Order II, § 446-40-040, filed 11/22/74.]

WAC 446-40-050 Action by chief. When the chief determines pursuant to RCW 43.43.040 and based upon available medical history, reports, doctors' analyses and the like, that a member in disability retirement status should be returned to active service status, he may so order the member to active service status pursuant to RCW 43.43.040. The member shall not be prejudiced by failure to report if, within seven days after receipt of the order, he requests a formal hearing as provided for in WAC 446-40-070, et seq.

[Order 4, § 446-40-050, filed 2/27/76; Order II, § 446-40-050, filed 11/22/74.]

WAC 446-40-060 Finality of chief's decision—Exception. The decision of the chief, made under any of the circumstances set out in WAC 446-40-040 or 446-40-050, shall be final, unless the member concerned, within seven days of receipt of the decision, requests a formal hearing before the Washington state patrol disability retirement board.

[Order II, § 446-40-060, filed 11/22/74.]

WAC 446-40-070 The board—Responsibilities and functions. (1) The board shall consist of an administrative law judge and three members appointed by the chief, two of whom shall be appointed annually. The administrative law judge shall be the presiding officer and shall make all necessary rulings in the course of the hearing, but shall not participate in the deliberations or preparation of findings and recommendations by the board. The third member shall be appointed each time the board is convened and shall be of the same rank as the member whose case the board is hearing.

(2) The board shall inquire into all pertinent matters relating to the disability retirement questions before the board.

(3) The board shall obtain and review reports or testimony of mental or physical examinations of the member and shall advise the chief whether, in its opinion, the member is mentally or physically capable of continuing in active service or of resuming active service.

(4) When reviewing the case of a member in disability retirement status, the board shall recommend whether disability retirement should

be continued or whether the member shall be directed to return to active duty.

(5) When reviewing an application by a member or the personnel officer for disability retirement status, the board shall recommend whether the chief should deny or grant the application.

(6) When the board recommends that a member presently in disability retirement status should return to active duty, or that a request for disability retirement should be denied, the board shall also make findings based on the evidence before it whether the member is physically or mentally capable of performing any specific assignment while on active duty. Where the board finds the member has a physical or mental impairment or disability, it shall describe such impairment or disability and the expected duration thereof, and shall recommend specific job assignments within the department which the member is mentally and physically capable of performing in his/her present condition.

(7) When the board recommends that the application for disability retirement status should be granted, it shall also determine whether the departmental member was injured or incapacitated while in the performance of his/her official duties or while on standby or available for duty.

[Statutory Authority: RCW 43.43.040. WSR 93-15-074, § 446-40-070, filed 7/19/93, effective 8/19/93; WSR 82-22-004 (Order 82-6), § 446-40-070, filed 10/21/82; WSR 81-04-042 (Order 81-1), § 446-40-070, filed 2/3/81; Order 4, § 446-40-070, filed 2/27/76; Order II, § 446-40-070, filed 11/22/74.]

WAC 446-40-080 Procedure. The provisions of chapter 446-08 WAC shall govern the conduct of the hearing and procedure before the board. The burden of proof in the hearing before the board shall be upon the applicant, whether a member or the department, who is seeking a change in a member's status to disability retirement or to active service.

[Order 4, § 446-40-080, filed 2/27/76; Order II, § 446-40-080, filed 11/22/74.]

WAC 446-40-090 Responsibility of member. All department members having knowledge pertinent to the issues before the board shall cooperate with the board and shall not withhold information or facts within their knowledge, provided that no person shall be required to furnish any information or statements which would tend to incriminate him.

[Order II, § 446-40-090, filed 11/22/74.]

WAC 446-40-100 Duties of board following hearing. In all cases, the board shall prepare a record of the hearing as described in RCW 34.04.090(5). All oral testimony before the board shall be taped. The tapes shall be part of the record. Such record shall be presented to the chief within fourteen days following the conclusion of the board's hearing. A copy of the record shall be delivered to the member within fourteen days following the conclusion of the board's hearings.

[Statutory Authority: RCW 43.43.040. WSR 82-22-004 (Order 82-6), § 446-40-100, filed 10/21/82; Order 4, § 446-40-100, filed 2/27/76; Order II, § 446-40-100, filed 11/22/74.]

WAC 446-40-110 Decision by the chief. (1) The chief shall review the record if he has not heard the evidence, and in all cases shall review the findings, exceptions and recommendations of the other members of the board, and decide on the basis of this material and upon no other basis or prior action whether the member shall or shall not be placed in or removed from disability retirement status. The chief may order the hearing reopened in the event he finds it necessary to do so to make a decision and he shall inform the board what additional inquiry is required. The board's supplemental action, if any, shall be made in the manner set out in WAC 446-40-070 through 446-40-100.

(2) In accordance with RCW 34.04.110, prior to making a final decision which is adverse to the member, the chief, if he has not heard or read the evidence, shall cause to be served on the member a proposal for decision, including findings of fact and conclusions of law, and shall afford the member an opportunity to file exceptions and present written arguments to the chief, who shall personally consider the whole record or such portions thereof as may be cited by the member. Such exceptions and arguments shall be filed with the office of the chief within twenty days of receipt of the proposal for decision. The chief may grant additional time for filing upon good cause shown. In his discretion, the chief may allow oral arguments in support of the exceptions.

[Statutory Authority: RCW 43.43.040. WSR 82-22-004 (Order 82-6), § 446-40-110, filed 10/21/82; Order 4, § 446-40-110, filed 2/27/76; Order II, § 446-40-110, filed 11/22/74.]

WAC 446-40-130 Statement of earnings and status. A member who is in disability retirement status and to whom the provisions of RCW 43.43.040(2) apply shall file with the chief every six months a signed, sworn statement of earnings. In addition, every member in disability retirement status shall file with the chief every six months a signed, sworn statement of his current status of health, any medication or treatment he is undergoing, the nature and description of his employment, if any, and the medical prognosis of his condition.

[Order 4, § 446-40-120, (codified as WAC 446-40-130), filed 2/27/76; Order II, § 446-40-130, filed 11/22/74.]