

PART 4

MISCELLANEOUS STATUTORY PROVISIONS

Article 41 - Scope

Part 4 contains rules specific to and are promulgated pursuant to miscellaneous statutory provisions granting the Board jurisdiction in certain areas. In applying these rules, the provisions of Article 12, General Rules, contained in Part 1 of these rules, are applicable to proceedings instituted under Part 4 to the extent they do not conflict with express provisions of Part 4.

Article 42 - Claims Against State Employees

Section 42.1 Jurisdiction

The Board shall hear and make final determination on appeals by employees pursuant to 3 V.S.A. §1102(c) from a determination by the attorney general that an alleged act or omission which resulted in a civil action being brought against the employee did not occur within the scope of the employee's official duties, provided that such appeal is filed within 30 days after receipt of notice of the determination of the attorney general.

Section 42.2 Contents of Appeal

The notice of appeal shall be in writing, signed by the appellant or his/her representative, and shall contain:

- (A) the full name and address of the person filing the appeal;
- (B) The full name and address of the employer involved;
- (C) A concise statement of the nature of the appeal;
- (D) A copy of the attorney general's notification to the employee that the alleged act or omission did not occur within the scope of the employee's official duties;
- (E) A copy of the pleadings in the civil action brought against the employee; and
- (F) A brief statement of facts concerning the appeal.

Section 42.3 Answer; Filing; Service

The attorney general shall have the right to file an answer within 20 days after service of the

appeal. Upon application, the Board may extend the time within which the answer shall be filed.

Section 42.4 Contents of Answer; Denials

The answer shall admit or deny each specific allegation contained in the appeal or shall indicate any lack of knowledge or information thereof sufficient to form a belief. An allegation in the appeal not specifically denied in the answer, unless the party asserts that it is without knowledge or information thereof sufficient to form a belief, shall be deemed admitted and shall be so found by the Board. Allegations of new matter in the answer shall be deemed denied without the necessity of a reply.

Section 42.5 Admission by Failure to Answer

Failure to file a timely answer may be deemed by the Board to constitute an admission of the material facts alleged in the appeal and a waiver by the attorney general of an evidentiary hearing, leaving a question or questions of law to be determined by the Board.

Section 42.6 Hearing

The Board shall make a final determination on the appeal after an evidentiary hearing *de novo*.

Article 43 - Indemnification of State Employees

Section 43.1 Jurisdiction

The Board shall hear and make final determination on appeals by employees pursuant to 12 V.S.A. §5606 from a determination by the attorney general that the state will not indemnify a state employee for the amount of an employee's liability in any action defended by the attorney general or the attorney general's designee in which a judgment is rendered against the employee for acts or omissions within the scope of his or her employment, or a settlement requires payment by such an employee, and the attorney general believes there is reasonable doubt about whether the employee is eligible for indemnification, provided that such appeal is filed within 30 days after receipt of notice of the determination of the attorney general.

Section 43.2 Contents of Appeal

The notice of appeal shall be in writing, signed by the appellant or his/her representative,

and shall contain:

- (A) the full name and address of the person filing the appeal;
- (B) The full name and address of the employer involved;
- (C) A concise statement of the nature of the appeal;
- (D) A copy of the attorney general's notification to the employee that the state will not indemnify the employee for the amount of the employee's liability;
- (E) Copies of the pleadings in the civil action brought against the employee, any judgment rendered against the employee, and any settlement requiring payment by the employee; and
- (F) A brief statement of facts concerning the appeal.

Section 43.3 Answer; Filing; Service

The attorney general shall have the right to file an answer within 20 days after service of the appeal. Upon application, the Board may extend the time within which the answer shall be filed.

Section 43.4 Contents of Answer; Denials

The answer shall admit or deny each specific allegation contained in the appeal or shall indicate any lack of knowledge or information thereof sufficient to form a belief. An allegation in the appeal not specifically denied in the answer, unless the party asserts that it is without knowledge or information thereof sufficient to form a belief, shall be deemed admitted and shall be so found by the Board. Allegations of new matter in the answer shall be deemed denied without the necessity of a reply.

Section 43.5 Admission by Failure to Answer

Failure to file a timely answer may be deemed by the Board to constitute an admission of the material facts alleged in the appeal, leaving a question or questions of law to be determined by the Board.

Article 44 - Disciplinary Action Against State Police Members

Section 44.1 Jurisdiction

The Board shall hear and make final determination on appeals by State Police members

pursuant to 20 V.S.A. §1880(c) from disciplinary action taken by the Commissioner of the Department of Public Safety, provided that such appeal is filed within 30 days after receipt of notice of the Commissioner's action.

Section 44.2 Contents of Appeal

The notice of appeal shall be in writing, signed by the member or his/her representative, and shall contain:

- (A) The full name and address of the person filing the appeal;
- (B) The full name and address of the employer involved;
- (C) A concise statement of the nature of the appeal;
- (D) A copy of the commissioner's notification to the employee of the disciplinary action;
- (E) If applicable, a copy of the report of the hearing panel to the commissioner that charges were proved pursuant to 20 V.S.A. §1880(e); and
- (F) A brief statement of facts concerning the appeal.

Section 44.3 Answer, Filing; Service

The Commissioner of the Department of Public Safety shall have the right to file an answer within 20 days after service of the appeal. Upon application, the Board may extend the time within which the answer shall be filed.

Section 44.4 Review of the Facts

The Board shall conduct a *de novo* review of the facts leading up to the imposition of discipline against members to the extent such *de novo* review is specifically authorized by 20 V.S.A. §1880.

Article 45 - Legislative Leave

Section 45.1 Answer to Appeal

The involved employee shall have the right to respond in writing to an appeal filed by an employer pursuant to 21 V.S.A. §496, in which the employer alleges unreasonable hardship would result to the employer if legislative leave was granted to the employee. If the involved employee so chooses to respond in writing, such response shall be filed within seven days after service of

the appeal and shall be responsive to the employer's allegations of unreasonable hardship.

Section 45.2 Stipulation of Facts

The involved employee and employer may submit to the Board a signed stipulation of facts and a request for a decision by the Board without an evidentiary hearing. The request shall state whether the parties desire to present oral argument and/or file briefs.

Section 45.3 Hearings

The arbitrator selected pursuant to 21 V.S.A. §496(d) shall conduct a hearing within 20 days of the Board's receipt of the notice of appeal, unless the involved employer and employee have stipulated to facts pursuant to Section 45.2. At the hearing, the involved employee and employer shall have the opportunity to present evidence and arguments concerning the employer's claim of unreasonable hardship. The hearing procedure will be the same as outlined in Article 12, General Rules, contained in Part 1 of these Rules. The word "arbitrator" will be substituted in place of "Board".

Article 46 - Temporary State Employees

Section 46.1 Jurisdiction

The Board shall hear and make determination on an appeal by any party aggrieved by a decision of the commissioner of human resources concerning the creation of a temporary position, and the hiring of a person to fill such temporary position, pursuant to 3 V.S.A. §331, provided that such appeal is filed within 30 days after receipt of notice of the commissioner of human resource's determination on reconsideration of the commissioner's decision.

Section 46.2 Contents of Appeal

The notice of appeal shall be in writing, signed by the appellant or his/her representative, and shall contain:

- (A) the full name and address of the person filing the appeal;
- (B) The full name and address of the employer involved;
- (C) A concise statement of the nature of the appeal;
- (D) A copy of the commissioner of human resource's notification of determination on reconsideration of the commissioner's decision; and

(E) A brief statement of facts concerning the appeal.

Section 46.3 Answer; Filing; Service

The commissioner of human resources shall have the right to file an answer within 20 days after service of the appeal. Upon application, the Board may extend the time within which the answer shall be filed.

Section 46.4 Contents of Answer; Denials

The answer shall admit or deny each specific allegation contained in the appeal or shall indicate any lack of knowledge or information thereof sufficient to form a belief. An allegation in the appeal not specifically denied in the answer, unless the party asserts that it is without knowledge or information thereof sufficient to form a belief, shall be deemed admitted and shall be so found by the Board. Allegations of new matter in the answer shall be deemed denied without the necessity of a reply.

Section 46.5 Admission by Failure to Answer

Failure to file a timely answer may be deemed by the Board to constitute an admission of the material facts alleged in the appeal and a waiver by the commissioner of personnel of an evidentiary hearing, leaving a question or questions of law to be determined by the Board.

Section 46.6 Hearing

The Board shall make a final determination on the appeal after an evidentiary hearing *de novo*.

