

**661—401.301 (17A) Contested case proceeding.** Consideration of an appeal of a decision of the board shall be a contested case proceeding subject to the provisions of Iowa Code chapter 17A.

**401.301(1) Delivery of notice.** Delivery of the notice of hearing by the secretary constitutes the commencement of a contested case proceeding. Delivery may be executed by regular mail. The notice shall be delivered to the applicant, the applicant's attorney if known, and the assistant attorney general designated to represent the public interest.

**401.301(2) Contents of notice.** The notice of hearing shall contain a statement of the time, place, and nature of the hearing. The notice shall contain a statement that it is the applicant's burden to prove each of the statutory elements relative to the application. The notice shall also contain a reference to the applicable statute and rules.

**401.301(3) Scope of issues.** The applicant shall prove each of the statutory elements required before the application may be granted. Denial of an application shall be upheld based on the applicant's failure to prove any of the statutory elements. When an applicant has requested accidental disability benefits, the board has the option of denying accidental disability benefits, but granting ordinary disability benefits based on the evidence.

**401.301(4) Legal representation.** Following the filing of the notice of hearing, the office of the attorney general shall be responsible for the legal representation of the public interest in all proceedings before the board. The public interest, as referenced in this rule, shall include the responsibility to protect the assets of the system from applications that do not meet the standards set by the statute for disability benefits. Any private party to a contested case shall be entitled to legal representation at the discretion and expense of that party.

**401.301(5) Presiding officer.** The presiding officer in a contested case shall be an administrative law judge assigned by the department of inspections and appeals.

**401.301(6) Procedural matters.** Procedural matters and motions, including, but not limited to, motions to continue, may be heard and ruled upon by the presiding officer.

**401.301(7) Service and filing.**

*a. Service—when required.* Except where otherwise provided by law, every document filed in a contested case proceeding shall be served upon each of the parties of record to the proceeding, including the assistant attorney general designated as attorney for the state or the agency, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16, subsection 2, the party filing a document is responsible for service on all parties.

*b. Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by personal delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

*c. Filing—when required.* After the notice of hearing, all documents in a contested case proceeding shall be filed with the secretary. All documents that are required to be served upon a party shall be filed simultaneously with the secretary.

*d. Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the secretary at the location set forth in rule 661—400.6(97A), delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

*e. Proof of mailing.* Proof of mailing includes either:

- (1) A legible United States Postal Service postmark on the envelope;
- (2) A certified mail return receipt;
- (3) A notarized affidavit; or
- (4) A certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Secretary of the Board of Trustees, Iowa Department of Public Safety, Peace Officers' Retirement System, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319, and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date)

(Signature)

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