



STATE UNIVERSITIES CIVIL SERVICE SYSTEM

1717 Philo Road, Suite 24
Urbana, Illinois 61802-6099
Phone: 217/278-3150
Fax: 217/278-3159

Please mark appropriate Box

- ☐ COPY 1 – Merit Board (*University System Office*)
☐ COPY 2 – Employee
☐ COPY 3 – Employer
☐ COPY 4 – Employer Legal Counsel

WRITTEN CHARGES FOR DISCHARGE

Employee Information

TO: _____
Name _____ Home/Cell Phone Number _____

Address – Street and Number _____ Home e-mail address (*if known*) _____

City _____ State _____ Zip Code _____

Civil Service Class: _____ CS Position Number _____

Place of Employment: _____

The undersigned employer hereby makes specific and factual Written Charges for Discharge against the above named employee in separately numbered charges; include the dates, names of persons, places, and facts necessary to properly allege cause for discharge as follows: (Please make reference to any additional sheets or attachments.) Please list charges numerical.

1.

2.

3.

4.

5.

6.

Dated this _____ day of _____, 20 _____.

Employer

By: _____ Title _____

DER's Signature

NOTE: When printing form, please print on both sides

(over)

NOTICE TO EMPLOYEE: The effective date of discharge and your rights relating to an opportunity to be heard in your own defense are determined by the Section 36o of the State Universities Civil Service Act (110 ILCS 70/36o) and section 250.110(f) of the Illinois Administrative Code (Code) (80 Ill. Adm. Code §250.110(f)). (See attached section 250.110(f) of the Code.) ***If you desire to present a defense or otherwise contest your discharge, you are required to submit a written request to the Secretary for the Merit Board within 15 calendar days from the date that you are personally served, or within 15 calendar days from the date of the postmark if you have been notified by certified mail or by overnight delivery. Please submit your intent to contest your discharge to the following: State Universities Civil Service System Office, 1717 Philo Road, Suite 24, Urbana, Illinois 61802-6099 or by fax to 217/278-3159 or by email to hearingrequest@sucss.illinois.gov. For further assistance or information you may also contact the State Universities Civil Service System at 217/278-3150.***

PROOF OF SERVICE ON EMPLOYEE

The undersigned hereby certifies that at _____'clock _____M. on the _____ day of _____, 20_____, the employee named in this **WRITTEN CHARGES FOR DISCHARGE** was served by

[] personal service by _____.

[] an overnight delivery service that requires signature upon receipt in an envelope fully prepaid and addressed to said employee as stated in said **WRITTEN CHARGES FOR DISCHARGE**, which is hereby certified to be the last known address of said employee as shown on the employer's records. Overnight Delivery NO. _____ by _____ and by First Class Mail.
(FedEx, UPS, USPS, etc.)

Name (typed or printed), Title

Signature

Section 36o of the State Universities Civil Service Act (110 ILCS 70/36o)

Sec. 36o. Demotion, removal, and discharge.] After the completion of his or her probationary period, no employee shall be demoted, removed or discharged except for just cause, upon written charges, and after an opportunity to be heard in his or her own defense if he or she makes a written request for a hearing to the Merit Board within 15 days after the serving of the written charges upon him or her. Upon the filing of such a request for a hearing, the Merit Board shall grant such hearing to be held within 45 days from the date of the service of the demotion, removal or discharge notice by a hearing board or hearing officer appointed by the Merit Board. The members of the hearing board or the hearing officer shall be selected from among the members of a panel established by the Merit Board after consultation with the Advisory Committee provided in Section 36c. The hearing board or hearing officer shall make and render findings of fact on the charges and transmit to the Merit Board a transcript of the evidence along with the hearing board's or hearing officer's findings of fact. The findings of the hearing board or hearing officer when approved by the Merit Board shall be certified to the employer. If cause for demotion, removal or discharge is found, the employee shall be immediately separated from the service. If cause is not found, the employee shall forthwith be reassigned to perform the duties of a position in his or her classification without loss of compensation. In the course of the hearing, the Director of the Merit Board shall have power to administer oaths and to secure by subpoena the attendance and testimony of witnesses and the production of books and papers relevant to the inquiry.

The provision of the Administrative Review Law and all amendments and modification thereof, and the rules adopted pursuant thereto, shall apply to and govern all proceedings for the judicial review of final administrative decisions of the Merit Board hereby created. The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure.

Section 250.110(f) of the Illinois Administrative Code (80 Ill. Adm. Code §250.110(f))

f) Discharge Proceedings and Effective Date of Discharge

- 1) Reason for Discharge. Causes justifying discharge and any suspension during the discharge proceedings shall include, but are not limited to:

- A) all those listed as cause for suspension if they become recurring offenses; and
- B) theft; consuming intoxicating liquors or other illicit drugs on institutional time or property; consuming intoxicating substances resulting in mental impairment at work; malicious damage to property, tools or equipment; inciting or instigating a physical altercation, or continuing a physical altercation beyond immediate self-defense; immoral or indecent conduct that violates common decency or morality; conduct that is a clear departure from ordinary standards of honesty, good morals, justice, or ethics so as to cause shock to the moral sense of the community.

- 2) Pre-discharge Proceedings

- A) Notification Procedures. Prior to initiating any proceedings before the Merit Board for the discharge of an employee, the employer shall notify the employee in writing, served upon the employee in person if the employee is present on the job or, otherwise, by an overnight delivery service that requires signature upon receipt to the most recent address of the employee as shown on the employer's records, and also by First Class U.S. Mail, of the employer's intention to initiate the proceedings. The notification shall advise the employee of the substance of the charges proposed to be filed in sufficient detail to inform the employee of the nature of the conduct on which the proposed charges are based. (Note: It is the employee's responsibility to maintain a current mailing address with his/her employer.) The notification shall also advise the employee that either or both of the following options are available to the employee:

- i) within 3 work days after service of the employer's notification, the employee may notify the employer of his/her decision to require the employer to hold a conference with the employee or his/her representative for the purposes of responding to the matters contained in the notification and of attempting to achieve a reconciliation or understanding; and
- ii) within 3 work days after service of notification, the employee may deliver to the employer a written response to the matters contained in the employer's notification; provided that, if the employee elects to require the conference identified in subsection (f)(2)(A)(i), at that conference the employee may request and receive an opportunity to respond further in writing within 3 work days after the conclusion of the conference.

- B) Employer's Decision

- i) Within 7 work days after compliance with the provisions of subsection (f)(2)(A), the employer shall either:

- notify the employee that no further action will be taken to initiate discharge proceedings with the Merit Board against the employee based solely on the matters contained in the employer's notification; or
 - initiate proceedings before the Merit Board under this subsection (f) seeking discharge of the employee based solely on the matters contained in the employer's notification.
- ii) The employer's election not to initiate discharge proceedings with the Merit Board shall not preclude the employer from imposing a suspension in accordance with subsection (e) or some lesser penalty.
- C) **Excused Absence with Pay.** An employee who has been served with an employer's notification as provided in subsection (f)(2)(A) may be placed on excused absence with pay during all or any part of the period covered by this subsection (f)(2) to provide the employer an opportunity to investigate serious charges.
- 3) **Actual Discharge Proceedings**
- A) **Initiating Discharge Proceedings.** Proceedings before the Merit Board seeking the discharge of an employee shall be initiated by the employer by completing and filing a Written Charges for Discharge form with the Merit Board/University System, employee, legal counsel for employer, and employer, setting forth the causes for discharge in sufficient detail to inform the employee of the nature of the conduct on which the charges are based. The Written Charges for Discharge form shall be set forth in separately numbered charges. Also, the employer shall develop and attach a document that contains the dates, names of persons, places and facts necessary to properly allege the cause for discharge. If a breach of duty, statute or rule of the employer is alleged, the statute, law or rule shall be cited in connection with the charge. Any and all exhibits that the employer plans to present at the time of the hearing shall be submitted in accordance with subsection (f)(5)(E) or as appropriate to the circumstances. The exhibits shall not be attached to the Written Charges for Discharge form.
- B) **Written Charges for Discharge.** The Written Charges for Discharge form shall be accompanied by a certification by the employer that all procedures set forth in subsection (f)(2) have been followed and that there has been full compliance with any options elected by the employee. At the time the Written Charges for Discharge form and the certification are filed with the Merit Board/University System office, the employer shall serve copies upon the employee in person if the employee is present on the job; otherwise, service shall be by an overnight delivery service that requires signature upon receipt to the most recent address of the employee as shown on the employer's records, and also by First Class U.S. Mail. The employer shall file proof of service with the Merit Board/University System office.
- C) **Amended Written Charges for Discharge.** At any time prior to commencement of the hearing, the Executive Director may direct or authorize the Written Charges for Discharge to be amended to correct technical defects or to set forth additional facts or allegations that clarify the subject matter of the original charges. The technical amendments shall relate back to the original proof of service date of the Written Charges for Discharge form. The employer shall serve copies of the Amended Written Charges for Discharge form upon the employee in person if the employee is present on the job; otherwise, service shall be by an overnight delivery service that requires signature upon receipt to the most recent address of the employee as shown on the employer's records, and also by First Class U.S. Mail. The employer shall file proof of service on employee for Amended Charges, on the form provided by the University System, with the Secretary for the Merit Board. Nothing in this subsection (f)(3)(C) shall change the timing requirements in subsection (f)(5).
- D) **Suspension Without Pay.** An employee who has been served with Written Charges for Discharge in accordance with subsections (f)(3)(A) and (B) and/or (C) may be suspended without pay by the employer during all or any part of the period that the discharge proceeding is pending, and until final disposition, if the employer is of the opinion that the employee's presence on the job might constitute a substantial risk of injury to life or property, or might cause a disruptive effect on employer's operations. Any suspension without pay shall become effective on the date the employer serves the Suspension Notice Pending Discharge upon the employee, which may be served with the Written Charges for Discharge or on any date thereafter. Service shall be upon the employee in person if the employee is present on the job; otherwise, service shall be by an overnight delivery service that requires signature upon receipt to the most recent address of the employee as shown on the employer's records, and also by First Class U.S. Mail. The employer shall file with the Merit Board/University System office a copy of the Suspension Notice Pending Discharge and proof of service.
- 4) **Effective Date of Discharge When There Is No Request for Hearing.** If the employee does not file a written request for hearing with the Secretary for the Merit Board within 15 calendar days from the date specified in the "Proof of Service on Employee" section on the Written Charges for Discharge form, the employee's discharge shall become effective at the end of the 15-day period without further action by the Merit Board. The Secretary for the Merit Board shall promptly notify the employer of the employee's failure to file a timely written request for hearing.

5) Written Hearing Request/Timing of Parties' Actions

- A) **Written Request for Hearing.** An employee who has been served with Written Charges for Discharge may request a hearing by filing a written request for hearing with the Secretary for the Merit Board within 15 calendar days from the "Proof of Service on Employee" section on the Written Charges for Discharge form that is the date of either personal delivery or mailing of the Written Charges for Discharge form to the employee. Any request for a hearing must include a postal address and a telephone number where the employee can be reached and where notices to the employee under this subsection (f) shall be sent. If the employee has a personal e-mail address at which the employee is willing to accept notices under this subsection (f), the employee may also provide that e-mail address. The employee shall notify the Secretary for the Merit Board and the employer of any change to this notice information. The Secretary for the Merit Board shall immediately acknowledge receipt of the request for a hearing and notify the employer that the employee has filed for a hearing. Thereafter, further proceedings shall be as provided in this subsection (f) and any discharge shall be effective on the date of the discharge order of the Merit Board, unless otherwise expressly stated in the order.
- B) **Requests for Document and Other Tangible Items.** Any party may, by written request, direct any other party to produce for inspection, copying, reproduction, photographing, testing or sampling specified documents, including electronically stored information, objects, or tangible things, relevant to the Written Charges for Discharge or the employee's defense to the charges.
- i) The request shall specify a reasonable time and place for production or review of the requested items, no fewer than 10 calendar days prior to the scheduled hearing.
 - ii) A party directed to produce documents or other tangible items that is unable to produce the requested items by the date requested by the other party may file an objection or request an extension of time to produce the requested items. The objection or request for an extension of time shall be sent to the Executive Director and shall state the cause of the anticipated delay.
 - iii) All written requests or objections under this subsection (f)(5)(B) shall be served on the Secretary for the Merit Board at the same time it is served on the other party.
 - iv) All actions taken under this subsection (f)(5)(B) shall be taken as early as practicable and shall be taken in good faith.
- C) **Evidence Depositions.** Upon request to the Executive Director and upon good cause shown (which shall include, but is not restricted to, potential unavailability of a witness at the time the hearing is scheduled, scheduling or travel arrangement considerations, or agreement of the parties), any party may request a deposition of any witness to be taken for evidence in a hearing. The use of this provision shall be severely restricted, and designated as a "last resort" option. If desired, subpoenas may be requested upon application to the Executive Director in a manner consistent with this Part. The deposition shall proceed in the manner provided by law for depositions in civil actions in the circuit courts of the State of Illinois.
- D) **Subpoenas.** Requests for subpoenas shall be directed to the Executive Director at least 5 calendar days before the scheduled hearing, unless an exception is granted by the Executive Director. Subpoena requests may be granted if reasonably designed to produce or lead to the production of evidence related to the alleged charges and the terms of compliance are reasonable given the time frames and other circumstances. The party requesting the subpoenas shall be responsible for service and costs related to the subpoena of a witness. A subpoena may be served by personal delivery of an executed original to the individual, or by leaving an executed original at the individual's usual place of abode, with some person of the family who is age 13 years or older, provided the server also sends a copy of the subpoena, postage prepaid, addressed to the individual at the individual's usual place of abode. The fees of the witnesses for attendance and travel shall be the same as the fees of witnesses before the circuit courts of the State of Illinois. Subpoenas are effective throughout the course of the proceedings. Requests for subpoenas must be submitted in writing and include the following:
- i) the name and address of the witnesses sought;
 - ii) any specific documents the witnesses will be required to bring; and
 - iii) a brief statement of the relevant facts or testimony that the witnesses will be providing.
- E) **Witness and Document Lists and Documents for Hearing**
- i) At least 5 calendar days prior to the hearing, each party shall serve upon the other party and file a copy with the Secretary for the Merit Board, to be submitted to the Hearing Board or Hearing Officer, the following information, to the extent available at that time:

- a list of the names and addresses of the witnesses the party proposes to call in its case-in-chief; and
 - all documents the party proposes to offer in its case-in-chief.
- ii) Each party shall bring to the hearing 4 identical copies of each document the party proposes to use at the hearing.
- F) Commencement of Discharge Hearing. The Executive Director, the Hearing Board or Hearing Officer, the employee and the employer shall all make good faith efforts to commence the hearing within 10 calendar days after receipt of the employee's written request for hearing, but in no event shall the hearing commence later than 45 days after service of the Written Charges for Discharge, unless a continuance is granted pursuant to subsection (f)(15)(B). Dilatory tactics or actions will not be permitted and the Executive Director, the Hearing Board or Hearing Officer, the employee and the employer shall all make good faith efforts to conduct the hearings in no more than 3 hearing days, unless justice, due process, and fundamental fairness require otherwise.
- 6) Hearing Proceedings
- A) Appointment of Hearing Board or Hearing Officer. Upon receipt of the employee's written request for hearing on the Written Charges for Discharge, the Merit Board/University System office shall promptly appoint a Hearing Board or Hearing Officer to hear the charges and the employee's response.
- B) Disqualification of Assigned Hearing Board or Hearing Officer. A Hearing Board or Hearing Officer may be disqualified on grounds of bias or conflict of interest. An adverse ruling, or the fact that a Hearing Board or Hearing Officer has had contact with the University System, by itself, shall not constitute bias or conflict of interest.
- i) Disclosing a Potential Conflict of Interest. The Hearing Board or Hearing Officer shall communicate with the Secretary for the Merit Board and all parties immediately upon suspecting that the Hearing Board or Hearing Officer may have a conflict of interest.
- ii) Whenever any party believes a Hearing Board or Hearing Officer should be disqualified from conducting an assigned proceeding, that party may file a request with the Executive Director to disqualify the Hearing Board or Hearing Officer, setting forth by affidavit the alleged grounds for disqualification, with proof of service on all parties. The Executive Director shall rule and make the final determination on all requests for disqualification.
- iii) The Executive Director, on his/her own motion, may disqualify a Hearing Board or Hearing Officer if the Hearing Board or Hearing Officer has deviated from, or failed to comply with, this subsection (f), and such disqualification, in the judgment of the Executive Director, is required for justice, due process, and fundamental fairness.
- iv) Upon the disqualification of any Hearing Board or Hearing Officer under this subsection (f)(6)(B), a new Hearing Board or Hearing Officer shall be appointed by the Merit Board or by the Executive Director. If the hearing has already been convened, the parties of record shall be notified of the disqualification and the appointment of a new Hearing Board or Hearing Officer. The Executive Director shall make all other such orders as required for justice, due process, and fundamental fairness.
- C) Role and Responsibilities of the Hearing Board or Hearing Officer. The Hearing Board or Hearing Officer shall be responsible for the following activities:
- i) conduct the pre-hearing conference;
- ii) facilitate the timely completion of the hearing process, taking necessary steps to avoid delay;
- iii) establish reasonable limits on the duration of witness testimony;
- iv) limit repetitive or cumulative testimony;
- v) rule on motions, objections or evidentiary questions;
- vi) hear evidence as presented at the hearing by the employer and the employee on behalf of their respective positions (the evidence may include matters in aggravation, mitigation and justification, which may pertain to the question of "just cause" for discharge);

- vii) direct questions to witnesses at any time, but restrict questioning to the clarification of the testimony already presented;
- viii) prepare and transmit to the Merit Board a signed findings of fact within 15 calendar days after receipt of the transcript and exhibits of the hearing proceedings. The findings of fact shall set forth each of the written charges alleged in the Written Charges for Discharge, including an evaluation of the facts presented by the employer and employee with respect to each charge, and based on this evaluation, a determination as to whether the charges are sufficiently supported by the evidence presented. The findings of fact shall be based exclusively on the evidence and on matters officially noticed. The findings of fact presented by the Hearing Board or Hearing Officer are advisory only to the Merit Board. It is not the role of the Hearing Board or Hearing Officer to determine whether just cause for discharge exists. The determination of just cause is the sole province of the Merit Board; and
- ix) enter any order that further carries out the purpose of this subsection (f)(6)(C).

D) Ex Parte Communications

- i) Except in the disposition of matters authorized by law to entertain or dispose of on an ex parte basis, the Merit Board, the Executive Director, employees of the University System, and the assigned Hearing Board or Hearing Officer shall not, after the Notice of Convening of Hearing has been issued to the parties of record, communicate, directly or indirectly, with any party or the party's representative regarding any issue of fact or with any person or party in connection with any other issue regarding the case, except upon notice and opportunity for all parties to participate. However, the Merit Board, the Executive Director, employees of the University System, and the Hearing Board or Hearing Officer may communicate with each other. Also, members of the Merit Board and the Hearing Board or Hearing Officer may have the aid and advice of one or more personal assistants.
- ii) Neither party shall make direct contact with the Hearing Board or Hearing Officer in any manner or for any purpose after the Notice of Convening of Hearing has been issued to the parties of record.
- iii) Communications regarding procedure, including interpretation and application of Section 36o of the Act, subsection (f), and related procedures, are not considered ex parte communications.

- E) Open Hearings. All hearings shall be open to the public unless, upon motion of either party, the Hearing Board or Hearing Officer finds it necessary to close the hearing or parts of the hearing in instances in which personal safety is of concern or when confidential testimony/exhibits are to be referenced or revealed. There shall be presumption that hearings will be closed only under extraordinary circumstances.
- F) Transcript of Hearing. A transcript of the hearing, including exhibits, shall be made and shall be filed with the Secretary for the Merit Board as soon as possible following the conclusion of the hearing. Transcripts and exhibits will be provided by the Secretary for the Merit Board to all parties simultaneously. No party may request or obtain a copy of the transcript or exhibits of the hearing from the court reporter or any other source. If a party or his/her representative receives the transcript or exhibits of the hearing from any source other than the Secretary for the Merit Board, the party shall immediately send, without first having read the transcript or exhibits and without retaining any copy, to the Secretary for the Merit Board.
- G) Findings of Fact by the Hearing Board or Hearing Officer. Within 15 calendar days after receipt of the transcript and exhibits from the Secretary for the Merit Board, the Hearing Board or Hearing Officer shall file its findings of fact and any other recommendations with the Secretary for the Merit Board, unless that time is extended by the Executive Director for good cause shown. For the purpose of this subsection (f)(6)(G), good cause shall include, but not be limited to: sickness, attendance at court proceedings, death, weather conditions that prevent the members of the Hearing Board from meeting.
- H) Failure of Hearing Board or Hearing Officer to Submit Findings of Fact. If, by 15 calendar days after receipt of the transcript and exhibits from the Secretary for the Merit Board, the findings of fact have not been received by the Secretary for the Merit Board, the Executive Director shall either appoint another approved Hearing Board or Hearing Officer that shall then review the record and submit findings of fact within 10 calendar days after the appointment, or the Executive Director shall give written notice to the Hearing Board or Hearing Officer and to all parties to the proceeding that he/she will, within 10 calendar days, discontinue the hearing and commence a new hearing and that the present Hearing Board or Hearing Officer will be dismissed without pay. Within this 10-day period following the Executive Director's notice, the Hearing Board or Hearing Officer can appeal to the Executive Director by showing cause why time should be extended.
- I) Certification of Hearing Record. The Executive Director shall certify as the Hearing Record the Written Charges for Discharge, the Suspension Notice Pending Discharge, the employee's request for hearing, the transcript and exhibits, the Hearing Board's or Hearing Officer's findings of fact and other recommendations, and other documents that have been filed. Upon certification

by the Executive Director, the Secretary for the Merit Board shall, by an overnight delivery service that requires signature upon receipt, immediately forward a copy of the Hearing Record, along with notice that the Hearing Record has been certified, to all parties of record.

- J) Objections to Hearing Record. Any objections to the form or contents of the Hearing Record, or briefs, abstracts, or excerpts from the Hearing Record, or arguments, motions, or recommendations, relating to the hearing proceedings or the Hearing Record, or requests for further hearing or for permission to supplement further the Hearing Record by other evidence, must be filed with the Secretary for the Merit Board within 14 calendar days after the date of the overnight delivery service that the Hearing Record has been certified, with proof of service on all parties. If such an objection is made, the non-objecting party may file an answer to the objection with the Secretary for the Merit Board within 14 calendar days after the date of the overnight delivery service of the Objection, with proof of service on all parties. No further briefs and/or arguments in response to these filings will be permitted unless expressly authorized by the Executive Director or the Merit Board or its Chair.

7) Conduct of Hearing

- A) Pre-hearing Conference. In all hearings, it is recommended that the Hearing Board or Hearing Officer hold a pre-hearing conference immediately preceding the hearing on the first day of the hearing. The Hearing Board or Hearing Officer shall give the parties an opportunity to discuss issues and share information at the pre-hearing conference that will allow them to present their cases in a fair, efficient, and timely manner. Generally, the Hearing Board or Hearing Officer shall conduct the pre-hearing conference for the purpose of achieving one or more of the following points, as determined by the Hearing Board or Hearing Officer on a case by case basis:
- i) defining and simplification of the issues;
 - ii) negotiating admissions or stipulations of fact to avoid unnecessary proof;
 - iii) reviewing each party's witness and exhibit list;
 - iv) limiting redundant witness testimony or duplication of evidentiary material, if necessary;
 - v) determining the length of time each party will need to present its case;
 - vi) exchanging exhibits;
 - vii) discussing any matter that may aid in the efficient and timely disposition of the case; and
 - viii) work with each party to determine if a settlement agreement can be achieved. If a settlement is reached during the pre-hearing conference, the hearing shall be formally convened and the parameters of the settlement agreement shall be entered into the record in written form or by testimony/statement and agreement by each party.
- B) Length of Pre-hearing Conference. The length and scope of the pre-hearing conference is at the discretion of the Hearing Board or Hearing Officer, but should generally be conducted with a one hour timeframe.

8) Evidence and Motions

- A) Admissibility of Evidence
- i) As a general matter, the rules of evidence and privilege as applied in civil cases in the circuit courts of the State of Illinois shall be followed. However, evidence not admissible under those rules may be admitted (except when precluded by statute) if it is of a type commonly relied upon by reasonably prudent persons in the investigation and conduct of serious matters of this nature. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.
 - ii) Consistent with these requirements and in order to expedite the hearing, any part of the evidence may be received in written form, provided the interests of the parties are not jeopardized.
 - iii) Performance records of the employee or past disciplinary records are admissible and relevant for the purpose of mitigation or aggravation, except if otherwise excluded by a local employer policy or collective bargaining agreement.
- B) Oath or Affirmation. All testimony shall be presented under oath or affirmation.
- C) Objections. Objections to testimony or evidentiary offers shall be noted in the record.

- D) **Standard of Proof.** The standard of proof applied by the Hearing Board or Hearing Officer when evaluating the charges will be the preponderance of the evidence.
 - E) **Notice Taken by Hearing Board or Hearing Officer.** The Hearing Board or Hearing Officer may, on its own motion or upon motion of one of the parties, take notice of matters of which the circuit courts of the State of Illinois take judicial notice.
 - F) **Non-Dispositive Motions.** The Hearing Board or Hearing Officer has the authority to rule on all motions that do not dispose of the proceedings. Examples of motions that can be ruled on by the Hearing Board or Hearing Officer are motions in limine or motions to suppress evidence. Motions directed at the Hearing Board or Hearing Officer shall be presented at the pre-hearing conference, if possible, and actions taken by the Hearing Board or Hearing Officer shall be entered into the record.
 - G) **Dispositive Motions.** Motions that dispose of the proceedings must be directed to the Merit Board. Examples of motions that are to be directed to the Merit Board are motions to dismiss, motions to decide a proceeding on the merits, or motions claiming lack of jurisdiction. Motions must be filed with the Secretary for the Merit Board within 14 calendar days after the date of the overnight delivery service of the certified Hearing Record. Motions will be ruled on by the Merit Board at the Merit Board meeting in which the case is being considered. The filing of a motion of this nature shall not be allowed to cause any delay in the proceedings.
- 9) **Order of Hearing**
- A) **Convening of Hearing.** All hearings shall be convened by and under the control of the Executive Director or authorized representative.
 - B) **Recording of Pre-hearing Conference Information.** The Hearing Board or Hearing Officer shall enter into the record any action taken and any agreements made by the parties as to the matters considered.
 - C) **Excluding Witnesses from Hearing Room.** The Executive Director, or authorized representative, shall request all persons who have been asked to serve as witnesses, other than a party or employer representative, to be excluded from the hearing room while the hearing is in process, except during their own testimony and cross-examination. Except as he/she might intervene, or be requested to intervene, the Executive Director, or authorized representative, shall empower the Hearing Board or Hearing Officer to proceed with the hearing in such a manner as to provide the employer and the employee a full opportunity to present their positions to the Hearing Board or Hearing Officer.
 - D) **Stipulations.** Parties may agree by stipulation upon any facts involved in the hearing. The facts stipulated shall be considered as evidence in the hearing. It is the policy of the Merit Board to encourage stipulation of facts whenever practicable.
 - E) **Opening Statements.** The parties may make a brief opening statement at the beginning of the hearing. The employer shall proceed first, followed by the employee. Opening statements may be waived or may be reserved and presented at the commencement of the party's case-in-chief.
 - F) **Employer's Case.** The employer shall first present its case-in-chief, with an opportunity for the employee to cross-examine the employer's witnesses. The employee may be called as an adverse witness during the course of the hearing.
 - G) **Employee's Case.** The employee shall then present his/her case-in-chief, with an opportunity for the employer to cross-examine the employee's witnesses.
 - H) **Rebuttal.** Each party may call rebuttal witnesses if found to be necessary by the Hearing Board or Hearing Officer.
 - I) **Closing Arguments.** After both parties have concluded the presentation of their case, the Hearing Board or Hearing Officer may call for a break in the proceedings for up to 30 minutes to allow each party to make final preparations of their closing argument. After any such break, the parties may make an oral closing argument. The employer shall proceed first, followed by the employee. The employer shall be permitted a brief rebuttal at the end of the employee's closing argument.
 - J) **Closing the Hearing.** The hearing shall be closed when the employer and the employee have had a fair and reasonable opportunity to present their positions to the Hearing Board or Hearing Officer.
 - K) **Motion for Permission to Make Oral Argument.** Oral argument is reserved for presentation of extraordinary matters regarding the discharge case. A party desiring to present oral argument before the Merit Board in cases of discharge must file a Motion to Make Oral Argument with the Secretary for the Merit Board within 14 calendar days after the date of the overnight delivery service of the certified Hearing Record, with proof of service on all parties. The Motion must specifically state the

extraordinary issues to be presented, any relevant law, and a synopsis of the argument to be presented. Any Motions without the required information shall not be considered by the Merit Board. The Merit Board will decide whether to grant the Motion for Permission to Make Oral Argument at the same meeting where the case is to be decided. Oral Argument shall not be intended to be a recitation or summary of either party's case as presented at the hearing. The Merit Board's chair has the authority to halt or redirect either party's oral argument as circumstances warrant.

10) Failure to Appear. Failure of a party to appear on the date set for hearing may result in a loss of rights by default.

A) Failure to Appear by Employee

- i) A Notice of Convening of Hearing will be sent to all parties of record confirming the date, time and place of the hearing. If an employee or his/her representative is not present on the designated hearing date, the Executive Director or authorized representative shall try to make reasonable contact with the employee or his/her representative immediately. If, within a reasonable time on the hearing date, the Executive Director or authorized representative is unable to contact the employee, the hearing will commence.
- ii) The Executive Director or authorized representative shall commence the hearing with an opening statement. At the conclusion of the opening statement, if the employee or his/her representative has still failed to appear, the hearing will be suspended for 3 work days. During this 3 work day period, the Executive Director or authorized representative shall try to make contact with the employee or his/her representative using the last known address, phone, e-mail or any similar method as shown on the employee's request for a hearing.
- iii) If the employee or his/her representative cannot be reached within 3 work days or if the employee is unable to produce a reasonable explanation for failure to attend the hearing, the hearing will be closed and the employee's discharge shall become effective at the end of the 15-day period of the date on the Proof of Service on Employee, as found on the Written Charges for Discharge form, without further action by the Merit Board. The Merit Board/University System office shall notify the parties of record immediately of the action.
- iv) If the employee or his/her representative has a reasonable explanation for not attending the hearing, the Executive Director or authorized representative shall schedule a new hearing date. A new Notice of Convening of Hearing will be issued to the parties of record and the Executive Director or authorized representative shall appoint either the same Hearing Board or Hearing Officer or appoint a new Hearing Board or Hearing Officer to conduct the hearing.

B) Failure to Appear by Employer. If the employer's representative fails to appear at the hearing and cannot be reached by the end of the next business day, or if the employer is unable to produce a reasonable explanation for failure to attend the hearing, the hearing will be closed and the employee will be reinstated to his/her position without loss of compensation as of the Proof of Service on Employee date on the Written Charges for Discharge form.

C) Reasonable Explanations. Reasonable explanations can include, but are not limited to: injury on the day or preceding day of the scheduled hearing, traffic accident, death or significant injury of a family member, or other cause that is deemed reasonable by the Executive Director or authorized representative. In any event, the party that failed to appear is required to demonstrate that there was reasonable effort made to contact the Merit Board/University System office.

11) Settlement Agreements. Following the request for a hearing by the employee set forth in subsection (f)(5)(A), the employer and the employee may enter into a settlement agreement that may include a suspension of no more than 120 calendar days. Such a suspension is only permissible if the employer files with the Secretary for the Merit Board the terms of that suspension, which must include a signed waiver of the rights provided by Section 360 of the Act. The employer is otherwise limited to a suspension of no more than 30 calendar days as set forth in subsection (e).

12) Final Decision of the Merit Board. In the course of reaching its decision, the Merit Board may request the Executive Director to make recommendations that he/she deems appropriate with respect to the discharge proceedings. Nothing in this subsection (f)(12) is intended to eliminate or limit the Merit Board's discretion to determine the appropriate disposition on a case-by-case basis. The Merit Board shall enter findings of fact and shall order the following decision and order or any other decision and order it deems appropriate:

A) Discharge, if just cause is found to exist. No employee shall be discharged except for just cause. Just cause is defined as some substantial shortcoming that renders the employee's continuance in his/her position in some way detrimental to the discipline and efficiency of the service and that the law and sound public opinion recognize as good cause for the employee no longer holding the position; or

B) Reinstatement, if just cause for discharge is found not to exist. An employee shall be reinstated as follows:

- i) Reinstatement with no loss of compensation when none or few of the significant charges are proven and/or when the proven charges do not justify disciplinary action.
 - ii) Reinstatement with an unpaid suspension of a minimum of 3 calendar days to a maximum of 120 calendar days when the proven charges do not rise to the level of just cause for discharge, but some disciplinary action is justified based on the severity of the proven charges. If the Merit Board orders reinstatement with a suspension, any time served while on suspension pending discharge shall be applied towards the fulfillment of the suspension. The Merit Board shall not order a reinstatement with a suspension past the day of the action taken by the Merit Board.
- 13) Final Decision and Order of the Merit Board. The Secretary for the Merit Board shall immediately forward copies of all Merit Board orders to the employer and the employee by an overnight delivery service that requires signature upon receipt. The employer is required to enact the Decision and Order of the Merit Board in a timely manner. No later than 14 calendar days after the date that a copy of the final Notice of Decision and Order of the Merit Board has been served upon the parties, any employee who has been reinstated, as provide in subsection (f)(12)(B), shall be returned to pay status. The employer shall take all other required actions to enact the Decision and Order of the Merit Board within 30 days after the serving of the Notice of Decision and Order of the Merit Board.
- 14) Administrative Review. All final decisions of the Merit Board shall be subject to appeal by the parties to the proceedings under the Administrative Review Law [735 ILCS 5/Art. III]. A complaint for administrative review must be filed and summons issued within 35 days after the date that a copy of the final Merit Board decision has been served upon the party affected. A final decision of the Merit Board shall be deemed served either when personally delivered or when deposited in the United States mail in a sealed envelope or package, with postage paid, addressed to the party affected by the decision at his/her last known residence or place of business.
- 15) Time Periods for Proceedings
 - A) Requests for Extensions. On the motion of either party with notice to the other party, or by independent action of the Chair of the Merit Board or the Executive Director communicated to both parties, any time period set forth in this subsection (f) may be extended by the Chair of the Merit Board or by the Executive Director for good cause shown. The Executive Director, in his/her discretion, may grant an extension by written agreement of the parties.
 - B) Extensions to be Granted by Executive Director. No extension may be beyond a period established by statute, except for cases in which a written motion for continuance of a scheduled hearing is filed with the Secretary for the Merit Board at least 48 hours prior to the time scheduled for hearing, unless an exception is granted by the Executive Director. The moving party must set forth emergency grounds for a continuance, which are limited to unforeseen, unavoidable or uncontrollable circumstances, such as an Act of God; the sudden illness or death of the movant, a member of his/her immediate family, or his/her legal counsel; or if the movant is able to demonstrate some other real and compelling need for additional time. If there is an arrest or criminal indictment of any employee that resulted from an employee's conduct in the course of employment duties, the Executive Director, at the request of the employee, may grant a continuance of hearing pending some resolution of the criminal charges. Requests for continuances must be preceded by contacting the opposing party and asking for agreement to the continuance.
 - C) Deadlines That May Be Extended. The time periods set forth in this subsection (f), except for the 15-day period set forth in subsection (f)(5)(B) and except for any time period provided for seeking administrative review of a final decision of the Merit Board, shall be deemed directory and not mandatory; and no failure to comply with any of the time periods set forth in this subsection (f), except for the 15-day period set forth in subsection (f)(5)(B) and except for any time period provided for seeking administrative review of a final decision of the Merit Board, shall cause the Merit Board to lose jurisdiction of any matter.
 - D) Weekends and Holiday. If the last date for filing falls on a weekend or legal holiday, the last date for filing is the first business day following that weekend or legal holiday.
- 16) Hearing Expenses
 - A) Employer Expenses. All customary and reasonable court reporter and copying expenses incident to the preparation of the Hearing Record and providing copies to parties to the proceedings shall be paid by the employer.
 - B) Merit Board Expenses. The Merit Board will pay all expenses of the Hearing Board or Hearing Officer and any legal expenses incurred by a Hearing Board or Hearing Officer, to the extent that those expenses have been approved by the Merit Board or its Executive Director.