

**RULES
OF
THE TREASURY DEPARTMENT
DIVISION OF THE TENNESSEE CONSOLIDATED
RETIREMENT SYSTEM**

**CHAPTER 1700-3-2
RULES OF PROCEDURE FOR CONTESTED CASES AND LESSER APPEALS**

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1700-3-2-.01 SCOPE. Rules of Procedure for hearing contested cases are governed by the Rules of the Secretary of State, Chapter 1360-4-1, subject to the following definitions and procedures necessary for addressing specific topics unique to the type of cases conducted by the Tennessee Consolidated Retirement System.

Authority: T.C.A. §§4-5-219 and 8-34-313. **Administrative History:** Original rule filed August 11, 1988; effective September 25, 1988.

1700-3-2-.02 DEFINITIONS.

- (1) Administrative Judge - An impartial employee of the Treasury Department, who is licensed to practice law and is designated by the Board of Trustees for the Tennessee Consolidated Retirement System to conduct contested case proceedings pursuant to T.C.A. § 4-5-301 et. seq., or an administrative judge from the office of the Secretary of State, or if applicable, a substitute shall be appointed in accordance with T.C.A. § 4-5-302 and 4-5-314(e).
- (2) TCRS - The Tennessee Consolidated Retirement System.
- (3) State Treasurer - Agency Chair.
- (4) Agency - The Board of Trustees for the Tennessee Consolidated Retirement System.
- (5) Director - Director of the Division of Retirement of the Department of the Treasury or employee of the Division of Retirement designated by the State Treasurer.
- (6) Contested Case - A proceeding, including a declaratory proceeding, in which the legal rights, duties or privileges of a party are required by any statute or constitutional provision to be determined by the agency after an opportunity for a hearing.
- (7) Informal Conference - An "informal conference" is a proceeding held for a lesser appeal. The conference, which is before the director or a Division of Retirement employee designated by the State Treasurer, is one in which the aggrieved individual may present his/her case and show why the TCRS's action or decision should be corrected.
- (8) Lesser Appeal - If it is determined by the director that an aggrieved individual is not entitled to a contested case proceeding, his/her appeal shall be deemed a "lesser appeal" and shall be reviewed by means of an informal conference.

(Rule 1700-3-2-.02, continued)

- (9) Petitioner - The “petitioner” in a contested case is the “moving” party, i.e., the party who has initiated the proceedings. The petitioner usually bears the ultimate burden of proof and will therefore present his or her proof first at the hearing. In some cases, however, the party who initiated the proceedings will not be the party with the burden on all issues. In such cases, the administrative judge will determine the order of proceedings, taking into account the interests of fairness, simplicity and the speedy and inexpensive determination of the matter at hand.
- (10) Respondent - The “respondent” in a contested case proceeding is the party who is responding to the charges or other action brought by the “petitioner”. The “respondent” is usually the TCRS.

Authority: T.C.A. §§4-5-219 and 8-34-313; 1988 TN Public Acts, Chapter 973, §11. **Administrative History:** Original rule filed August 11, 1988; effective September 25, 1988.

1700-3-2-.03 RIGHT TO APPEAL.

- (1) Any person who is aggrieved by an action or decision made within the discretion or control of the TCRS, may appeal the action or decision to the director. Grievances shall address the TCRS’s interpretations of the law and the validity and applicability of the policies promulgated under the law as they apply to each individual’s situation. Upon application, the director shall determine, with the use of the following criteria, whether the matter should be resolved as a lesser appeal or whether to convene a contested case proceeding.
 - (a) Individuals appealing decisions involving issues, the resolution of which in prior instances have been attained by applying established TCRS procedural, policy or statutory guidelines, shall not be entitled to a contested case proceeding. These requests shall be deemed lesser appeals, which entitle the individual to an informal conference before the director or a Division of Retirement employee who shall be designated by the State Treasurer. Issues that shall be resolved by means of an informal conference include questions concerning creditable service, average final compensation and leaves of absence.
 - (b) If the substance of the individual’s appeal raises issues of first impression, a contested case proceeding may be conducted if the director determines that such issues cannot be affirmatively resolved by applying established procedural, policy or statutory guidelines.
 - (c) Individuals appealing decisions relative to disability pension benefits shall be entitled to a contested case proceeding before the administrative judge.
 - (d) A contested case proceeding may be convened at any time when required by statute or a constitutional provision.
 - (e) If the appeal involves factual matters or expert opinions which require the resolution of disputed credible evidence, a contested case proceeding should be convened.
- (2) Individuals appealing a TCRS action or decision shall request a hearing by any clear written expression.
- (3) Upon receipt of the request by the director, each individual shall be advised of:
 - (a) his right to administrative review by an informal conference or contested case proceeding;
 - (b) the methods by which an informal conference may be obtained and the criteria used to determine the availability of a contested case proceeding;

(Rule 1700-3-2-.03, continued)

- (c) his right to be represented by an attorney, if a contested case proceeding is convened, or to be assisted by an attorney, if an informal conference is held.

Authority: T.C.A. §§4-5-102(3) and 8-34-313. **Administrative History:** Original rule filed August 11, 1988; effective September 25, 1988.

1700-3-2-.04 TIME. Hearings shall be conducted during regular TCRS business hours and located at a time and place convenient to the individual and the director.

Authority: T.C.A. §§4-5-219 and 8-34-313. **Administrative History:** Original rule filed August 11, 1988; effective September 25, 1988.

1700-3-2-.05 LESSER APPEAL - INFORMAL CONFERENCE. Lesser appeals shall be heard by means of an informal conference. This is an informal procedure through which the director provides an opportunity for the aggrieved individual to express dissatisfaction with a TCRS decision or action and seek resolution of the dispute in question.

Authority: T.C.A. §8-34-313. **Administrative History:** Original rule filed August 11, 1988; effective September 25, 1988.

1700-3-2-.06 REQUEST FOR INFORMAL CONFERENCE. Upon receipt of a written request by an aggrieved individual for a conference, the director or Division of Retirement employee designated by the State Treasurer to respond to such requests shall send written notification of receipt of the request to the individual. He shall be informed in writing of the scheduled conference date and site. The conference shall be held within thirty (30) business days of the date of receipt of the request. An informal conference may be conducted by means of a telephone conference.

Authority: T.C.A. §8-34-313. **Administrative History:** Original rule filed August 11, 1988; effective September 25, 1988.

1700-3-2-.07 FINDINGS FOLLOWING AN INFORMAL CONFERENCE. The findings of the informal conference shall be made in writing within ten (10) business days following the conference and shall be in writing and address all issues raised at the conference. Documentation of the actions and decisions resulting from the informal conference shall be entered as part of the individual's case record.

Authority: T.C.A. §8-34-313. **Administrative History:** Original rule filed August 11, 1988; effective September 25, 1988.

1700-3-2-.08 APPEAL OF DIRECTOR'S FINDINGS AT INFORMAL CONFERENCE. The director shall make every effort to resolve individual complaints at the informal conference level; however, should an individual wish to appeal the director's findings he shall be informed by the director of the possibility of further administrative review through a contested case proceeding, if applicable pursuant to rule 1700-4-1-.03(1).

Authority: T.C.A. §8-34-313. **Administrative History:** Original rule filed August 11, 1988; effective September 25, 1988.

1700-3-2-.09 REVIEW OF INITIAL ORDERS IN CONTESTED CASES. Review of an initial order in contested cases shall be in accordance with T.C.A. § 4-5-315. However, in the event the agency fails to meet within the ten (10) day time period, the State Treasurer may give notice of the agency's intention to review and the agency shall either affirm or reverse the State Treasurer's action at its next meeting.

Authority: T.C.A. §§4-5-315 and 8-34-313. **Administrative History:** Original rule filed August 11, 1988; effective September 25, 1988.

1700-3-2-.10 EFFECT OF INITIAL ORDERS AND FINAL ORDERS IN CONTESTED CASES.

- (1) Initial Orders.
 - (a) Unless a later date is stated in the order, or a stay is granted, the initial order shall become effective upon entry.
 - (b) An initial order shall become a final order in accordance with T.C.A. § 4-5-314(b):
 - 1. When after entry of the initial order, 10 days have passed and no party has filed a petition to appeal and the agency has not given written notice of its intention to review; or
 - 2. When, after petition to appeal has been filed, the agency exercises its discretionary right not to review.
- (2) Final Orders. Final orders shall become effective upon entry.

Authority: T.C.A. §§4-5-219, 4-5-318, and 8-34-313. **Administrative History:** Original rule filed August 11, 1988; effective September 25, 1988.