

Appeals of Unemployment Decisions



*How to Prepare for the
Appeal Hearing*


Department of
Workforce Services

***Please
READ CAREFULLY
before
your scheduled
hearing***

***Further information can be
obtained from the Internet at:
<http://jobs.utah.gov/appeals/>***

**Department of Workforce Services
Adjudication Division**

Appeals Unit

P.O. Box 45244 • Salt Lake City, Utah
801-526-9300 or toll free 1-877-800-0671
Fax: 801-526-9242

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INTRODUCTION

Following a Department determination made on an unemployment claim, an appeal may be filed by a claimant or employer to protest such determination. It is extremely important that we have your correct address at all times. Please note the following instructions:

Claimants: Notify the Claims Center (1-888-848-0688) or the Appeals Unit immediately if your address changes after an appeal has been filed.

Employers: If your address changes after an appeal has been filed, contact both the Contributions Unit (801-526-9235 or 1-800-222-2857) and the Appeals Unit immediately.

Failure to provide immediate notice of an address change may not constitute a good reason to reopen the hearing.

IMPORTANT CLAIMANT INFORMATION on filing weekly claims during the appeals process

You must continue to file weekly claims throughout the appeals process if you wish to receive benefits for those weeks.

If you have not filed a weekly claim during the past three weeks, you must request reopening and/ or backdating of your claim by calling the Claims Center (801)526-4400. If you are filing an interstate claim, report to the nearest unemployment office in your state for help in filing your weekly claims. When requesting reopening or backdating, notify the representative that you have filed an appeal.

STRUCTURE OF THE HEARING

An unemployment compensation appeal hearing is conducted by an impartial administrative law judge (ALJ). The purpose of the hearing is to decide

whether unemployment benefits should be allowed or denied and if the employer is liable for charges associated with the claim. Anyone with an interest in the outcome of the hearing is a “party” to the hearing.

Parties to the hearing are typically the claimant and employer. The hearing is a fact-finding meeting, which is recorded. It is the ALJ’s job to see to it that all parties receive a fair hearing. A fair hearing means that the ALJ will explain the proceedings and allow all parties to present their relevant information.

The ALJ will make an independent and impartial written decision based only on the evidence presented by the parties at the hearing. This evidence includes the sworn testimony of witnesses who participate in the hearing and documents submitted to the parties and the ALJ prior to the hearing. The decision will either affirm, modify, or reverse the initial Department decision. The decision may also result in the assessment of an overpayment against the claimant if an initial allowance of benefits is reversed.

Appeal decisions will be made according to the Utah Employment Security Act and related rules (Utah Code Section 35A, Title R994).

At the beginning of the hearing, the ALJ will explain the issues to be considered during the hearing and the order of testimony. The order of testimony will depend on which party has the burden of proof. The ALJ will also answer any questions the parties may have about the appeals process.

The ALJ usually will question each witness and allow the witness to tell his/her story after the witness has been sworn to tell the truth. The party who requested the witness’ testimony then will have the opportunity to ask their own questions of the witness.

Finally, the opposing party may ask the witness questions about the relevant issues. The next witness is then called and the same process is followed. When one side has finished presenting their case,

the opposing side will have the opportunity to present their case. The ALJ will close the hearing when neither side has any additional relevant information to present. Most hearings involving a separation from employment last between 30 and 60 minutes.

The ALJ's written decision usually will be sent to the parties within ten days after the hearing.

PREPARATION FOR THE HEARING

The hearing before the ALJ is your **only** chance to present everything relevant to the case. A record of the hearing will be made and the ALJ may consider only the evidence introduced during this hearing. Further review and decisions on appeal are limited solely to the evidence introduced at this hearing.

Take time to prepare for your hearing. Know the issue or issues involved. Obtain documents that help prove your facts and provide them to the ALJ and opposing party. Also, be sure to line up witnesses which support your side of the case. To help you remember what you want to present at the hearing, you may prepare a simple outline or written summary with the key information you want to present.

Prepare all evidence and be ready to explain company records, abbreviations, technical terms, and/or symbols. **Do not rely solely upon written statements of witnesses as part of your evidence presentation. Have witnesses available to testify.** (See Witnesses and Subpoenas.)

PREPARE AND PARTICIPATE EVEN IF YOU ARE NOT THE APPEALING PARTY

The ALJ's decision is based only on what is presented at the hearing. You must participate and be prepared to present and defend your position if you wish your point of view to be considered. If you choose not to participate, the hearing will proceed without you, and the decision will be based on the other party's evidence presented at the hearing.

PREPARE FACTS

Facts, not conclusions, are the basis of a good case. Be prepared to answer the questions of who, what, when, where, and why. Saying that an employer was unfair or that an employee was unsatisfactory is a conclusion. Prepare facts that prove the point you wish to make, and present evidence and witnesses that will verify the facts asserted at the hearing.

PREPARE YOUR APPEAL BASED ON FACTS, NOT ON PHILOSOPHICAL ARGUMENTS OR PROOF OF FINANCIAL NEED

Respond to the issues under appeal. Prepare to prove your point of view on the issues under appeal, not on issues unrelated to the appeal. Some people incorrectly think that unemployment insurance is based upon financial need. If you prepare only to argue that you need the money or wish to protect an employer's experience tax rate, you are not prepared to address the issue on appeal.

TELEPHONE HEARINGS

Your appeal hearing will be scheduled to take place by telephone. The "Notice of Unemployment Appeal Telephone Hearing," gives the date and time of the telephone hearing and explains the procedure for participation in the hearing. Upon receiving the Notice of Hearing, the parties are required to call the Appeals Unit immediately and supply a telephone number where they can be contacted for the hearing.

Be sure to follow this instruction even if you believe the Department should have your telephone number. Tardiness is treated as a failure to participate. Follow the instructions on your Notice of Hearing.

In a telephone hearing, the testimony of witnesses is taken under oath, by telephone, and is recorded. The ALJ conducts the conference call hearing using a question and answer format. Parties to the hearing

will present their case and question the witnesses involved.

Before the hearing starts, you should make sure your telephone is working, keep the line clear, and be ready to receive the call from the ALJ. If you are not contacted by the ALJ after waiting **ten minutes** from the time you are supposed to be called, immediately call the Appeals Unit at (801) 526-9300 or toll free 1-877-800-0671.

At the time of the hearing be in a location free from background noise so you will be clearly heard. If the ALJ and/or other party cannot hear you or your witness clearly, the ALJ has the right to stop the hearing and schedule it for another time.

If you are going to use a cellular phone or cordless telephone make sure it is fully charged and in an area with good reception. ALJs do not conduct hearings with parties or witnesses who are operating a motor vehicle. Pay telephones should not be used unless absolutely necessary. If you must use a pay telephone, be sure it is one that will accept incoming calls and is free of traffic and other background noises. If using a speaker telephone, make sure the area is free of all background noise and make arrangements so that each of the witnesses testifying is in close proximity to the telephone when speaking.

If you have witnesses testify on your behalf, have them at the same location whenever possible in order to reduce the number of telephones connected to the hearing telephone conference call.

If you do not have access to a telephone, you must contact the Appeals Unit immediately and make arrangements for access to a telephone. Arrangements can be made to provide telephone access at a Workforce Services office near you if requested well in advance of the hearing.

ACCOMMODATIONS

If you need special services, such as accommodations for disabilities or an interpreter, contact the Appeals Unit when you receive the Notice of Hearing so that

necessary arrangements are in place at the time the hearing begins.

Hearings are conducted in English. If your knowledge of English is limited, if you are reading this brochure on behalf of a person whose knowledge of English is limited, or you are hearing, sight or speech impaired, contact the Appeals Unit immediately to request accommodations. The Appeals Unit can arrange to have an interpreter or other forms of assistance available for the hearing. There is no charge for this service.

ATTORNEY OR OTHER REPRESENTATIVE

You have the right to hire your own representative, who may or may not be a lawyer, to help you at the hearing. Historically, most parties do not have a representative at their appeal. The ALJ is an active participant in the hearing and will question both parties to gather the relevant facts of the case. However, if the facts in your case are complicated, there are many legal issues involved, or you don't feel comfortable doing it alone, you are allowed to have someone help you prepare and present your case.

If you choose to hire a representative, contact your representative immediately to allow them sufficient time to prepare for the hearing. It is your responsibility to notify them of the time and place of the hearing and to pay any fees charged for such representation. (Attorneys for claimants may not bill the claimant for their services without the ALJ's prior approval of their fees.) During the hearing, if you feel you need a representative, you may ask the ALJ for time to get one. The ALJ will decide whether or not to allow your request.

WITNESSES AND SUBPOENAS

If you need witnesses to help you present your case, contact them immediately to arrange for their appearance. Be sure they are available to participate in the hearing by telephone. If they are not available to participate, you may be able to reschedule the hearing. If the witnesses must participate by telephone at another location, have those numbers available for the ALJ.

Essential witnesses refusing to participate in the hearing or provide essential documents may be ordered or subpoenaed. A subpoena is a paper which orders the person to participate in the hearing and/or provide records. You must ask the ALJ to issue a subpoena at least 3 days prior to the day of the hearing. You must provide the mailing address of the person you want to subpoena. If a fax number is available, provide that also. Have this information when you call the Appeals Unit.

Before you ask witnesses to come to the hearing, be sure you need their testimony. **The best witnesses are those who were personally involved in the events and circumstances which are being explained to the ALJ. When a witness testifies about what someone else said happened, this is “hearsay” and is not very helpful in making a decision.** “Hearsay” is also any statement, whether oral or in writing, made by a person who does not personally appear to testify under oath in the hearing. Hearsay is admissible in the hearing, but is not persuasive if contested.

No finding of fact or decision may be based solely on uncorroborated, hearsay evidence. Hearsay evidence carries less weight and credibility than does firsthand testimony, especially if the other party disputes that information. You should have the witnesses themselves who made the statement and/or observations available to testify during the hearing and try not to rely upon documents or witnesses who have no firsthand knowledge of events.

DOCUMENTS AND OTHER EVIDENCE

Copies of the documents that will be used as exhibits in the hearing are sent to both parties prior to the hearing. Read them carefully and have them available during the hearing.

If you want the ALJ to consider other documents, you must mail or fax a copy of these papers immediately to the Appeals Unit and to the other party who received notice of the hearing so the documents will be received with adequate time to be reviewed before

the hearing. The other party's address is on the Notice of Hearing. Failure to provide the other party with the documentation submitted to the ALJ may result in your documentation not being admitted. The Appeals Unit will not send the opposing party copies of your documents for you.

Start preparing for the hearing as soon as you file your appeal or receive notice that the other party has appealed. You may need written evidence to help your case. Examples of written evidence are: letters, time cards, medical reports, company policies, performance evaluations, written warnings, etc. For the written evidence to be admitted as evidence, you must be able to explain who prepared the document or paper, what its purpose is, and how it helps your case. If you need records that are not available to you, call the Appeals Unit about requesting a subpoena for the documents.

If it is necessary to submit numerous documents, prepare a summary of the information necessary to prove your point. Copy and submit only those pages of a handbook, manual, rules, or policy book, etc., which contain the necessary information.

To draw attention to a particular part of the information, use a black pen to mark in the margin or to underline the important parts.

DO NOT USE A HIGHLIGHTER. When copied or faxed, highlighter obscures what you wanted the judge to see.

RESCHEDULING A HEARING

You must make every effort to participate in the hearing at its appointed date and time. After you receive the Notice of Unemployment Appeal Telephonic Hearing, which informs you of the date and time of your hearing, you should call the Appeals Unit immediately if you cannot appear at that time.

To ensure a prompt hearing, rescheduling requests are rarely granted. You are expected to take time off from your everyday activities, including work/management duties, school, vacation, doctor appointment, etc., to

participate in the appeal hearing. A request for rescheduling may be granted due to a crisis or an extraordinary circumstance.

You must speak directly with an Appeals Unit representative when requesting rescheduling of the hearing. Only an Appeals Unit representative can approve your request. Your request is not granted automatically. Be prepared to give specific details as to the reason for the rescheduling request. After making the request, unless you have specifically been informed that your request was granted, you should plan to participate at your hearing as originally scheduled.

FAILURE TO PARTICIPATE IN THE HEARING

If you asked for the hearing, and do not call and confirm your participation in advance with the Appeals Unit as required or you fail to answer the call at the time of the hearing, your appeal will be dismissed. The decision you appealed will remain the same.

Only evidence given at the hearing can be used by the ALJ in reaching a decision. If you do not participate in the hearing and you are the non-appealing party, the ALJ will only get to hear one side of the story and will base the decision on that evidence.

If you are prevented from participating and cannot telephone the Appeals Unit before the hearing, you must submit a written request for another hearing **within ten (10) days after the date the ALJ's written decision is issued**. You will have to explain why you did not attend. If your request is filed more than ten (10) days after the ALJ's decision is issued, you must also explain why you filed a late request for a new hearing date.

WITHDRAWING AN APPEAL

If you asked for a hearing and later decide you do not want to appeal, you can withdraw your appeal either by mailing or faxing a letter to the address or fax number on the front of this booklet or by calling the Appeals Unit. Notify the Appeals Unit as soon as possible.

If you withdraw your appeal, the decision you appealed will stay the same. Only the appealing party may request a withdrawal.

QUESTIONS

For purposes of preserving a bias-free hearing and decision, the parties are not allowed by law to individually speak with the ALJ assigned to the case either before or after the hearing about the facts of the case.

The only exception would be to discuss procedural matters that need to be resolved before the hearing. Under no circumstances will the ALJ be allowed to give legal advice to either party. If you have questions or concerns about your hearing, contact:

APPEALS UNIT
TELEPHONE: (801) 526-9300
TOLL-FREE 1-877-800-0671
FAX: (801) 526-9242

Utah Department of Workforce Services
Adjudication Division • P.O. Box 45244
140 East 300 South • Salt Lake City, UT 84145-0244

DECISIONS AND APPEAL RIGHTS

In most cases, a decision will be sent to the parties within ten days of the completed hearing. The decision will give the facts of the case as determined by the ALJ, and the law and reasons for the ALJ's decision.

If you believe the ALJ decision is incorrect as to the facts or contrary to law, you may file an appeal with the Workforce Appeals Board (Board). The Board is a three-person panel appointed by the Governor to provide an independent review of unemployment hearing decisions. The Board does not hold new hearings. It only reviews the record from the hearing held by the ALJ. The record consists of the testimony and written evidence, or exhibits, presented.

The Board may send your case back to the ALJ for more evidence if you can show that you had good reasons for not presenting it at the hearing.

The Board also will consider any written arguments you may want to present. After reviewing the case, the Board will issue a decision to affirm, reverse, or modify the ALJ's decision.

You have 30 calendar days from the date the judge's decision is issued to file your appeal with the Workforce Appeals Board. The instructions for filing a further appeal are contained in the decision issued by the ALJ. You must submit your appeal in writing, either by letter or by fax. No specific form is required. You must indicate that you want to appeal the ALJ's decision. You should list the claimant's name and the case number. **You must sign the appeal and state why you disagree with the decision.**

Your appeal should be submitted to the Workforce Appeals Board using one of the following methods:

1. By mail to:
WORKFORCE APPEALS BOARD
PO Box 45244 • Salt Lake City, UT 84145-0244
2. By fax to: (801) 526-9244; **or**
3. By internet at: **jobs.utah.gov/appeals/**

If you have questions, call the Workforce Appeals Board at (801) 526-9310.

For information on administrative law judge performance standards see DHRM Rule R477-101 available at:

www.rules.utah.gov/publicat/code/r477/r477-101.htm

TIPS FOR THE HEARING

- Before the hearing, write down what you want to tell the ALJ. List the points you want to cover at the hearing. Use this list to prepare your case. Check it at the hearing to make sure you cover everything.
- Be sure to talk to your witnesses as soon as possible. Find out what they know that can help your case and find out if they are willing to testify. If they are reluctant or afraid, call the Appeals Unit right away and explain the problem. Do not wait until the hearing. (See Witnesses and Subpoenas.)
- Write down questions that you want to ask witnesses. Make your questions short and to the point. Ask only one question at a time. Take notes when listening to witnesses so that you remember the questions you wish to ask them.
- Get your written evidence together as soon as possible and make sure the ALJ and the opposing party have copies prior to the hearing. (See Documents and Other Evidence.)
- Be prompt. Be at the phone number you provided for the hearing at least ten minutes before the hearing. Hearing time is limited.
- When you testify, tell the truth. Witnesses testify under oath and are subject to the perjury laws

OUR MISSION:

We strengthen Utah's economy by supporting the economic stability and quality of our workforce.



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Utah Department of Workforce Services
Utah's Job Connection

Adjudication Division • Appeals Unit

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Salt Lake City, Utah

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Equal Opportunity Employer/Program Auxiliary aids and services are available upon request to individuals with disabilities by calling (801) 526-9240. Individuals with speech and/or hearing impairments may call Relay Utah by dialing 711.

Spanish Relay Utah: 1-888-346-3162