

## **How to Conduct an Unemployment Benefits Hearing**

### **Qualifications for receiving Unemployment Benefits**

Good Morning my name is Dorothy Hervey and I am a paralegal with Colorado Legal Services and I will talk with you briefly on conducting an Unemployment Benefits Insurance hearing. Unemployment Benefit Insurance hearings are only required if you apply for Unemployment Benefits and you are denied those benefits. You qualify for Unemployment Insurance Benefits when you lose a job due to no fault of your own and you are monetarily eligible, which means you have worked enough quarters to be eligible to be able to get the Unemployment Benefits. In addition to being monetarily eligible, you also must meet a few other characteristics such as, you must be able to work, you must be actively seeking work and you must be available for work.

### **The precursor: Denial of Benefits**

If for some reason you are denied those benefits, after being monetarily eligible and meeting all of the other criteria, I would like to briefly tell you how to go about getting a hearing and getting through that hearing process. If you receive a notice of denial or a notice to disqualify you for usually a ten week period due to some fault of your own, you will then be required to file an appeal. A written appeal is required, and that appeal must be filed within twenty days from the date of notice in which you've received. In that appeal you must state, usually on the reverse side of the notice, why you disagree with the disqualification. That must be filed with the division no less than 20 days from the date of the hearing. Once you submit that information, that information should contain any and every issue you plan to raise or you would like to raise before the hearing officer.

### **Notice of Hearing**

Once that information is received by the division, a hearing will be scheduled before a hearing officer. And another notice of hearing will be sent to you outlining in that notice of hearing will be the hearing officers name and number, the time, date and place of the hearing, as well as the most important part of the notice is the issue that will be held before the hearing officer on the scheduled date. The notice contains the information the hearing officer plans to hear on that date only, you will not be able to raise any new issues or bring up any issues that are not outlined in the notice of hearing.

### **Failure to submit the Notice of Appeal**

Points I'd like to make; if for some reason you are unable to submit your appeal to the division with a 20 day period, you are sometimes allowed to file a late appeal. A late appeal is an appeal that is filed beyond the 20 days. In that late appeal, you must state the reason you are unable to file in a timely manner. Such as an emergency, you were out of town, you did not receive the mail, you no longer lived at the address where the notice was sent. So you must submit that reason for late appeal initially as it will be reviewed and once it's reviewed a decision will be made whether or not it is decided that the reason you missed the deadline was a good reason or a good cause. If it is decided in your favor, you will get a new decision and that decision will state, the division has reviewed your

request for good cause and it has been granted. Once that is granted, you will get a hearing date and you will follow the same procedures as I mentioned earlier.

### **Access to Documents and Preparing the Facts of the Hearing**

In preparing your case, you must look at the notices of hearing. You should expect to get copies of all the documents that have been filed by you and the employer concerning the issues that will be heard at the hearing. In reviewing those documents, this is the opportunity to prepare yourself for the hearing before the judge. Look at the statements, look at the facts in which you want to prove to the judge and decide what you need.

If you need people who may have been a part or may have been present at the time of the termination or if you need documents that you think are essential in helping you to prove the point you need to the hearing officer, you can get those things by voluntarily talking to those people whom you would like to testify or if there are documents in which you would like to submit and that you think are essential, you can request a subpoena from the division. Once that subpoena is requested, which can be done in writing or it can be done by telephone, you must state to the division the reason you need the subpoena. You must state the subpoena is needed either for a person to appear at the hearing or documents you would like someone to provide to the hearing officer to help to prove your point. Once the subpoenas are granted, the division will contact you and let you know that the subpoenas have been granted, it is your responsibility to pick up those subpoenas and get them served on the parties you are requiring information or testimony from. The subpoenas which you obtain must be served on the party at least 48 hours prior to the date of the hearing. If there are documents you are requesting, you need to indicate whether you want the documents delivered to you directly prior to the hearing or you want the documents delivered to the hearing officer. Any documents you plan to use in the hearing must be shared with the hearing officer and with the other party prior to the hearing. If those documents are not provided to the other parties and the hearing officer prior to the hearing, those documents will not be allowed to be used during the hearing process.

In preparing your case for the hearing, one of the most important things is preparing your facts; you need to determine what the actual facts of your case are. Facts are not conclusions and are the basis for a good case. Saying that an employer is unfair or didn't like you is not a fact, that is a conclusion. The judge is not interested in hearing your opinion about the employer nor are they interested in hearing about the business practices the employer has, other than those things that pertain directly to you and what occurred in your job separation. These are the only things a judge will listen to, the facts of your case. The judge is not interested in your financial needs, how bad your situation is as a result of losing your job or how it has adversely affected your family. The judge is only interested in the facts that caused your job separation not, what a great person you've been or a great friend you've been to those around you, just the facts of the job separation, the only exception that the judge will listen to your financial needs or financial hardship is if you have an overpayment. If you have an overpayment, at that point the documents will be provided to you in which you will have to outline what your current financial situation is and why you are unable to repay this overpayment claim.

### **Importance of fact submittal and the Hearing process**

At the time you attend the hearing, you cannot present any new facts that have not been noticed to the employer or to the judge prior to the hearing. That is why it is very important for you to be clear in your appeal as to what you are appealing and the reason. You cannot bring in any new documents, any new people or any news issues at the hearing, it will not be allowed, only the issue that is outlined on the hearing notice. Any evidence that you plan to submit in the way of documents, video tapes or testimony you should prepare that in advance. You should review those documents that you plan to submit, make sure you have enough copies of that document to present to the judge and the opposite side at the time of hearing. Many times, the other party that you serve with the subpoena may not bring their documents. It is a lot easier to have extra copies during the hearing. If there are photographs, charts or video tapes, you will need to make arrangements in advance to make sure that there is equipment available to present these things to the hearing officer.

### **Best evidence: 1<sup>st</sup> hand witness**

The best evidence you can present is 1<sup>st</sup> hand evidence such as, a person who was present at the time of the termination. It is better to have that person appear and testify, if at all possible, rather than have you present to the judge what the person said or witnessed. The first hand evidence is the best evidence. Also, in reference to documents, if you can provide an original document versus a copy of a document, it is a better level of evidence. Prior to your witnesses coming into the hearing, you should take some time to review with them specifically what it is you want them to testify to. They don't need to testify to how long they've known you or what type or relationship you've had other than a work relationship. You must be specific about the item or testimony they will give and try to be short and to the point when it comes to that testimony. Most hearings are scheduled for one hour, (many times longer, but primarily one hour) so try to keep testimony as short and to the point as possible would be appreciated by the judge.

### **The Hearing and presenting to the Judge**

During the hearing, the judge will swear in all those who plan to testify at the hearing. The hearings are all recorded on audio tape because the hearings are sometimes later transcribed, should an appeal be needed. I usually recommend that my clients appear in person for the hearings; however it is not necessary since hearings can be done by telephone.

The credibility of a witness is determined by a judge and only the judge. In many decisions, the judge will address the issue of credibility. I find that it is very difficult for a judge to assess credibility by telephone and I usually recommend to my client and the witnesses that we appear in person before the judge. Also, the other advantage to appearing before the judge is if you have several documents or papers that you need to present and refer to during the hearing. It is a lot easier if you are in the presence of a judge to refer to those documents than it would be by telephone. However, it is not impossible, but creates an easier flow of the hearing if you are present. The judge will ask some preliminary questions at the beginning of the hearing, after the judge has asked

those questions if the parties are represented, the judge will allow the representative to outline and present their cases.

There is cross-examination available to the opposite party on each witness of the employer as well as the employee. Any documents that you may have submitted to the judge and opposite party in advance, must be requested by you during the hearing to be made an exhibit for the case file. The file the judge has may contain many documents, those documents are not considered evidence unless they are presented, a foundation is made and it is requested that those documents be stamped by the judge as an exhibit on behalf of the party. Not all documents will come in as evidence; the judge will determine the relevance of the document. Once that is decided, the judge will determine whether to mark the documents as an exhibit. Once they are marked as an exhibit, the documents then become a part of the file. After all the parties have been interviewed and all the parties have presented all evidence during the hearing, the judge may have a few other questions to clarify any uncertain points.

### **Closing and the Decision**

Once that is done, the hearing is then closed by the judge. The judge will provide instructions on what will happen next. Basically no decision, no oral decision will be given on that date. All decisions are written decisions; those are mailed out after the hearing has been held.

### **Appeals**

Once that decision has been mailed to all the parties involved, the party who may not agree with that decision has 20 days in which to file an appeal to another level, which is to the Industrial Claims and Appeals Office. If a person decides to do that, a copy of the transcript will be provided free of charge to the appealing party.

### **Conclusion**

Most of all, the hearing is your only opportunity to present evidence and the only opportunity to present any testimony. You cannot present any testimony or evidence once the hearing has been closed. Your record is made at that point and no other evidence at a later point can be presented. So it is very important that you prepare your case, present your case and do everything possible to convince the judge during the hearing of your point, in hopes you will get a favorable decision from the hearing officer. Thank you.

