

CHAPTER 3
UNEMPLOYMENT INSURANCE APPEALS

486—3.1(10A) Appeals.

3.1(1) *Lower authority's decisions to employment appeal board.* A copy of each administrative law judge's decision, pertinent to unemployment insurance matters, shall be submitted to the employment appeal board on the date the decision is issued.

3.1(2) *Form and time of appeal.* A party aggrieved by a decision of an administrative law judge may appeal to the employment appeal board within 15 days from the date of the decision. The appeal shall state the grounds for the appeal. The appeal shall be addressed to Employment Appeal Board, Lucas State Office Building, Fourth Floor, 321 East 12th Street, Des Moines, Iowa 50319. The appeal may also be filed in any office maintained by the workforce development department which processes claims for unemployment insurance. Appeals may also be filed by facsimile transmission (fax). If the appeal is filed by fax, the original copy shall be mailed to the employment appeal board. The date of the appeal is the date of the fax transmission.

3.1(3) *Procedure when an appeal is filed.* Upon receipt of notice of appeal, the entire record before the administrative law judge shall be forwarded to the employment appeal board. One copy of the testimony and evidence received by the administrative law judge shall be mailed to the parties or their designated representative. That mailing shall be identified by a transmittal of testimony and shall provide instructions for the filing of written briefs.

3.1(4) *Additional parties.* Whenever it appears that other parties should be joined in order to dispose of all issues, the employment appeal board shall so order and notify the parties of further procedures to be followed.

3.1(5) *Consolidation of proceedings.* Any number of cases before the employment appeal board may be consolidated for hearing, argument, consideration and decision when the facts and circumstances are the same or similar and no substantial right of any party will be prejudiced.

3.1(6) *Issues on appeal.* The employment appeal board may consider any issue raised by the action pertaining to the eligibility of an individual for unemployment insurance benefits. If new issues appear, different from those which are noticed in the appeal, the board may remand such issues to an administrative law judge for appropriate action, or in the interest of prompt administration of justice and without prejudicing the substantive rights of any party, may hear and decide any issue material to the appeal, even if not specifically indicated as a ground for appeal or not noticed for the administrative hearing.

3.1(7) New or additional evidence.

a. An application to present new or additional evidence shall be in writing and shall be filed within ten days after the date of mailing notice to the parties that an appeal has been filed.

b. The application to present new or additional evidence shall state the nature of the evidence, the materiality of such evidence, and the reasons why such evidence was not introduced at the hearing before the administrative law judge. No such evidence shall be considered by the board unless the board has ordered it admitted.

c. Whenever the board, on its own motion, or upon the application of a party, orders the taking of new or additional evidence, the board may schedule a hearing or remand the matter to an administrative law judge. The issues at such hearing shall be limited to those issues designated by the appeal board. The parties shall be notified ten days before the date of the hearing, specifying the place and time of the hearing.

d. Whenever the board holds the hearing, the parties may introduce such evidence as may be pertinent to the issues on which the board has directed the taking of evidence. All parties shall have the right to examine and cross-examine other parties and witnesses.

e. If only documentary evidence is to be admitted, a copy of the evidence shall be mailed by the board to each of the parties, and the parties shall be granted ten days to submit written arguments on that evidence. The party which has not submitted the new evidence may submit rebuttal evidence to the new evidence.

3.1(8) Postponement of hearing of appeals. Applications for postponement of hearing of appeals, scheduled before the appeal board, shall be submitted in writing at least three days before the date of the scheduled hearing, and shall be granted at the discretion of the appeal board. Each party shall be granted only one postponement, except as determined by the chairperson of the appeal board.

3.1(9) Adjournment and continuance. Adjournment and continuance may be granted for good cause by the appeal board. Notice of the adjournment or continuance shall be given to all parties, at their last-known address according to the division's record.

3.1(10) Hearing of appeals. An appeal to the board may be considered and decided based upon the evidence in the record made before the administrative law judge or the appeal board. The board may schedule a hearing to permit the parties to offer oral or written argument, or both. The parties shall be notified by the appeal board of such hearing by notice at least ten days before the date of the hearing.

3.1(11) Remand of appeals. The appeal board may remand any claim or claims for any issue involved in the claim or pertaining to the claim to an administrative law judge for the taking of additional evidence as the appeal board may deem necessary.

3.1(12) Taking of evidence. If the appeal board decides that evidence shall be taken, such evidence may be taken before the appeal board. The hearing may be conducted by the appeal board, or the board may designate an attorney employed by the appeal board to conduct such hearing. The parties shall be notified of the time and date of the hearing and shall be provided with instructions about how to participate in the hearing. The proceedings shall be recorded and made a part of the record.

3.1(13) Written briefs and oral arguments. The parties shall be granted the opportunity to submit written briefs on all issues to be decided. The briefs and arguments shall be submitted within seven days from the date of mailing of the transcript of testimony, in cases where an evidentiary hearing was held. In those cases where no hearing was held, the parties shall have ten days to submit written briefs and the opportunity to show good cause for not appearing. A request for extension of time to submit briefs must be made within the time set for submission of the briefs. Each party shall be granted one seven-day extension without justification. Requests for second extensions must be for good cause and will be granted at the discretion of the chairperson of the appeal board.

The appeal board may afford the parties an opportunity to present oral arguments and may limit the time of oral arguments. Requests to present oral arguments shall be submitted within ten days from the date of mailing of the acknowledgment of appeal and shall state the reasons for the oral argument.

3.1(14) Nonappearance at appeal hearing. If the appellant fails to appear at a scheduled hearing and does not submit good cause for failing to appear within ten days from the date of the hearing, the appeal board shall issue a decision based upon the evidence contained in the record.

3.1(15) Withdrawal of appeal. Any appeal may be withdrawn by the appellant, by written request, anytime before a decision is issued by the appeal board. If a request is made, the appeal shall be dismissed. An appeal so dismissed may be reinstated by the appeal board if the appellant files a written request to reinstate and shows that the request for withdrawal resulted from misinformation given by the workforce development department, unemployment insurance division, or for other good cause shown, as determined by the appeal board. A request for reinstatement shall be made within 60 days after the mailing of the decision dismissing the appeal or, in the event of fraud, within 60 days after discovery of the fraud.

3.1(16) Late appeals. The appeal board shall dismiss appeals which are not filed within 15 days from the date of the administrative law judge's decision, unless good cause for the delay has been shown.

486—3.2(10A) Removals.

3.2(1) Within ten days following the decision of an administrative law judge, and in the absence of a filing of a notice of appeal to the appeal board by any of the parties from a decision of the administrative law judge, the appeal board on its own motion may order the parties to appear before the board for a hearing on the claim or any issue involved therein.

3.2(2) Such hearings shall be held only after notice, mailed to the parties ten days from the date of the removal of the case to the appeal board.

3.2(3) The proceedings on any claim before an administrative law judge ordered by the appeal board to be removed to itself shall be presented, heard, and decided by the appeal board in the manner prescribed for the hearing of appeals before an administrative law judge. The appeal board may review the evidence already contained in the record, giving the parties time to file written briefs and arguments, and issue a decision based upon that evidence.

486—3.3(10A) Appeal board decisions.

3.3(1) An appeal shall be decided based upon the evidence contained in the entire record before the administrative law judge, including the testimony of the hearing before the administrative law judge, together with any oral or written arguments presented to the board. Should the appeal board order additional evidence be admitted to the record, that evidence and briefs pertaining to that evidence shall be considered.

3.3(2) Following the review of an appeal or the conclusion of a hearing on appeal, the appeal board shall, within a reasonable time, render a written decision. The decision shall be signed by the members of the appeal board who reviewed the appeal, and a copy of said decision shall be filed in the offices of the employment appeal board. All decisions of the appeal board shall be filed in the offices of the unemployment insurance division of the workforce development department.

3.3(3) A quorum of two members of the appeal board must be present when any decision is made by the appeal board. Should there be only two members present and those two members cannot agree upon the decision, the case shall be issued as a split decision and the decision of the administrative law judge shall be affirmed by operation of law.

3.3(4) If a decision of the appeal board is not unanimous, the decision of the majority shall control. A majority shall be two members. The minority member may file a dissent from such decision setting forth the reasons why that member fails to agree with the majority. The appeal board, in its discretion, may omit the giving of any reasons for its decision on cases in which the decision of an administrative law judge is affirmed without any alteration or modification.

3.3(5) Copies of the decision shall be mailed to all parties to the appeal. The decision shall specify the parties' appeal rights.

3.3(6) The appeal board's decision shall become the final decision of the unemployment insurance division of the workforce development department 30 days after the decision is mailed to all interested parties of record. The date of mailing shall be affixed to the decision immediately below the signatures of the board members reviewing the decision. Any party may file an application for rehearing within 20 days of the date of the board's decision.

3.3(7) The appeal board's decision on an application for rehearing shall be final and without further review 30 days after the date the decision is mailed to the parties of record, unless within that 30 days a petition for judicial review is filed in the appropriate district court.

3.3(8) An application for rehearing shall be deemed denied unless the appeal board acts upon that application within 20 days of its filing date with the appeal board. A petition for judicial review may be filed within 30 days of the date of the appeal board's decision without the necessity of filing an application for rehearing.

3.3(9) After a decision of the appeal board has become final, the matter shall not be reopened, reconsidered, or reheard. The decision shall not be changed except to correct obvious clerical errors in the decision.

486—3.4(10A) Rehearing of the appeal board decision.

3.4(1) Solely on showing of good cause, the appeal board may, upon application by a party, reopen and review any prior decision, provided the application for rehearing is filed within 20 days from the date of the issuance of the prior decision.

3.4(2) The application shall be in writing, stating specific grounds therefor and the specific relief sought. Copies of such application shall be mailed, by the appeal board, to all parties of record not joining in the application.

3.4(3) In determining whether good cause exists for the appeal board to rehear a prior decision, the following factors shall be considered:

a. Whether the application presents newly discovered evidence or facts which are not cumulative, corroborative, or material to the issue decided and are not of sufficient weight to cause a reversal or change in the appeal board's decision.

b. Prior to and at the time of the appeal board's decision, such new information must not have been available through reasonable search by the applicant and must not have been previously considered in any prior appeals decision.

c. When the application presents evidence that benefits were allowed or denied, or the amount of benefits was fixed on the basis of nondisclosure or a misrepresentation of material fact.

3.4(4) If the application for rehearing is granted, the record shall be reopened and the matter may be remanded to an administrative law judge to allow the taking of further testimony and the establishment of further or new findings of fact. The matter then may be transferred to the appeal board for final action. The appeal board may admit documentary evidence or take additional testimony and then reissue a decision based upon the entire record.

3.4(5) The application for rehearing shall be deemed denied unless the appeal board takes action to grant or deny the application within 20 days from the date of the filing of the application.

3.4(6) If the application for rehearing is denied, all administrative remedies shall have been exhausted and the applicant may petition the appropriate district court for review pursuant to Iowa Code section 17A.19.

486—3.5(10A) Disqualification of appeal board members.

3.5(1) No appeal board member shall participate in any hearing in which the member has an interest which might affect the ultimate decision.

3.5(2) A challenge to the interest of an appeal board member may be made in writing at any time prior to the date the appeal board's decision becomes final.

3.5(3) Such challenge shall be filed with the chairperson of the appeal board and will be heard by the unchallenged members of the appeal board. A tie vote shall result in dismissing the challenge.

3.5(4) In the event one or more members of the appeal board are absent or otherwise disqualified, the case will be reviewed by the remaining members. A tie vote will result in affirming the administrative law judge's decision by operation of law.

486—3.6(10A) Public hearing. All hearings and meetings of the employment appeal board shall be open to the public except where the provisions of Iowa Code section 20.5 apply.

486—3.7(10A) Specific rules applicable to unemployment insurance claims.

3.7(1) Investigations.

a. Whenever, in the course of an appeal, an investigation, inquiry, payroll audit or other examination appears necessary for a proper determination of a case, the appeal board may request such investigation, inquiry, payroll audit, or other examination through the appropriate department.

b. Hearings on the appeal shall be continued or adjourned pending the completion of such investigation, inquiry, or examination.

c. The right to be informed of, to cross-examine, to inspect, and to rebut the results of the investigation, inquiry, or examination shall be preserved to all parties to the appeal.

3.7(2) Information to be furnished.

a. Information from the records of the workforce development department, unemployment insurance division, shall be furnished to a party or the party's representative to the extent necessary for the proper presentation of an appeal upon application.

b. Applications for information from records of the division shall state the nature of the information desired.

3.7(3) Payment of benefits. If the appeal board's decision allows benefits by reversing or modifying an administrative law judge's decision, benefits shall be promptly paid. The filing of an application for a rehearing or for judicial review shall not stay the effect of the appeal board's decision.

3.7(4) Redeterminations.

a. If a claim has been decided under the gross misconduct section of the Iowa Code, a redetermination may be made anytime within five years of the effective date of the claim, even though a final decision has been made by the appeal board.

b. The redetermination may be appealed to the appeal board.

c. If the redetermination results in a reversal of an allowance of benefits and holds that the claimant was discharged for an act of gross misconduct, all benefits paid to the claimant prior to the redetermination shall be assessed as an overpayment and shall be collectible in the manner provided in Iowa Code section 96.14(3) for the collection of past due contributions.

d. If the redetermination results in an allowance of benefits by reversing a previously imposed disqualification for gross misconduct, the claimant shall be paid benefits for all weeks for which the claimant has submitted a continued claim report form.

e. A request for a redetermination may be made only by an interested party to the original case which resulted in the determination, decision, or final decision of the appeal board under the gross misconduct section.

3.7(5) Workforce development department employees as witnesses.

a. Those employees of the workforce development department directly involved in handling the claim which resulted in the appeal may be called to testify by the appeal board.

b. The employee having direct knowledge of the local job market may be called as a witness by the appeal board to testify concerning the wages, hours and other conditions of employment relating to the particular job and job market involved in the appeal.

c. The employer to whom an applicant is referred for work or who offers work or recall to work of an individual claiming unemployment insurance benefits shall be named in the appeal and shall receive all applicable notices and decisions.

486—3.8(10A) Retention of records. Records of proceedings in contested cases, appealed to the employment appeal board, shall be retained:

1. Sixty days following the final date for an appeal to the district court.
2. Sixty days following the entry of a final order by the district court.
3. Sixty days following the filing of the decision of the court of appeals.
4. Sixty days following the filing of an opinion by the supreme court.

Other records of the employment appeal board may be retained as determined by the board.

Records of cases involving federal appeals or those cases which are governed by federal law or rules shall be retained as determined by federal regulation pertaining to the case.

These rules are intended to implement Iowa Code section 10A.601.

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