

761—13.5(17A) Contested case.**13.5(1) Procedures.**

a. The department may initiate a contested case proceeding. Prior to initiating the contested case proceeding, the department, unless disallowed by statute, may attempt to settle the matter informally.

b. After a contested case hearing, a written decision will be issued by the presiding officer.

13.5(2) Hearing.

a. The department may be represented by legal assistants, paralegals, or designated attorney general staff at contested case hearings. Any such person is under the supervision of the attorney general transportation section chief.

b. The department may designate staff not under the supervision of the attorney general's office to appear at contested case hearings as witnesses. Staff so designated may appear to testify about matters including but not limited to clarifying the record, providing additional information, providing justification for the department's action, or answering questions of the appellants and presiding officer.

c. The department may submit certified copies of records admitted pursuant to Iowa Code section 321.10 in lieu of either legal representation or participation by a department employee.

13.5(3) Appeal of contested case decision.

a. A decision by a presiding officer shall become the final decision of the department and is binding on the department and the party whose legal rights, duties and privileges are being determined unless either appeals the decision as provided in this subrule.

b. No additional evidence is to be presented on appeal that is decided on the basis of the record made before the presiding officer in the contested case hearing.

c. The appeal is to include a statement of the specific issues presented for review and the precise ruling or relief requested.

d. An appeal of a presiding officer's decision is to be submitted in writing to the director of the bureau or division that administers the matter being contested. The appeal is deemed timely submitted if it is postmarked or delivered to the director of the appropriate bureau or division of the department within 20 days after the date of the presiding officer's decision unless otherwise provided in rule or statute.

e. The director of the administering bureau or division will forward the appeal to the director.

f. Failure to timely appeal a presiding officer's decision is considered a failure to exhaust administrative remedies.

g. The director may make a decision affirming, modifying or reversing the presiding officer's decision, or may remand the case to the presiding officer.

h. The decision of the director is the final decision of the department and constitutes final agency action for purposes of judicial review. No further steps are necessary to exhaust administrative remedies.

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