

**871—26.13(17A,96) Conduct of hearings.** The conduct of hearings is governed by rule 481—10.20(17A), with the exception of the additional following subrules:

**26.13(1)** The presiding officer shall begin each hearing with a brief statement identifying the parties and issues, outlining the history of the case, advising the parties of their appeal rights and announcing what matters, if any, will be officially noticed. Any party may inspect and use any portion of the administrative file necessary for the presentation of its case. The administrative file may include information from the claimant's files maintained in the agency's computer system.

**26.13(2)** Each party shall be afforded an opportunity for an opening statement and final arguments.

**26.13(3)** The hearing shall be confined to evidence relevant to the issue or issues stated on the notice of hearing.

**26.13(4)** If, during the course of a hearing, it appears to the presiding officer that an issue not set forth in the notice of hearing may affect the presiding officer's decision, the presiding officer shall so notify the parties and announce willingness to continue taking testimony on the underlying factual matters if the parties agree to waive on record further notice and make no objection to continuing. If any party objects, the presiding officer shall postpone or continue the hearing and cause new notices of hearing, containing all relevant issues, to be sent to the parties. Notwithstanding, voluntary quits and discharges generally shall be construed to constitute the single issue of separation from employment so that evidence of either or both types of separation may be received in a single hearing.

**26.13(5)** If factual issues generally relevant to a party's eligibility or liability for benefits but unrelated to the underlying facts in controversy in the present contested case are exposed, the presiding officer may remand the issue to the appropriate section of the department for investigation and preliminary determination.

**26.13(6)** If a party fails to appear for the hearing, the presiding officer may proceed with the hearing or decide the appealing party is in default and dismiss the appeal as provided in Iowa Code section 17A.12(3). If no decision has been issued, the absent party may make a written request to reopen the record for good cause as defined in subrule 26.7(3). The presiding officer may reopen the record for additional material, relevant and nonrepetitious evidence not submitted at the case hearing.

*a.* If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

*b.* If an absent party responds to the notice of hearing after the record has been closed and any party that has participated is no longer on the telephone line or present, the presiding officer shall not take the evidence of the late party and the party may file a written request to reopen the record.

*c.* Once a decision has been entered, the absent party may file an appeal to the employment appeal board to request a new hearing.

**26.13(7)** Whenever necessary, the presiding officer may require the attendance at a hearing of department employees having knowledge of the facts in controversy or having technical knowledge concerning the issues raised in appeal.

*a.* If the primary issue is the claimant's ability to work, availability for work or work search, the department may be named as respondent. The presiding officer may call department personnel having knowledge of the facts in controversy as witnesses.

*b.* If the issue on appeal is an offer of or recall to work or a job referral by a local workforce development center, both the employer making the offer or recall and the workforce development center representative making the referral may be witnesses at the hearing.

*c.* If the issue on appeal is the claimant's refusal of employment because of wages, the presiding officer may take the testimony of the workforce development representative having knowledge of prevailing wages in the vicinity. The presiding officer may also obtain testimony and evidence of the hours and other conditions of work for similar jobs in the area.

**26.13(8)** At the discretion of the presiding officer, witnesses may be excluded from the hearing room or telephone hearing until called to testify. The presiding officer shall admonish such witnesses not to discuss the case among themselves until after the record has been closed. All witnesses shall be subject to examination by the presiding officer and by all parties.

**26.13(9)** The presiding officer may expel or refuse admittance to any party, witness or other person whose conduct at the hearing is disorderly.

**26.13(10)** If the parties agree that no dispute of material facts exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant material evidence either by stipulation or otherwise as agreed by the parties, without the necessity of a formal evidentiary hearing.

**26.13(11)** Any party may appear in any proceeding. Any partnership, cooperation, or association may be represented by any of its members or officers or a duly authorized representative of an interested party. Any party may appear by, or be represented by, an attorney-at-law or a duly authorized representative of an interested party.

**26.13(12)** If a party not attending the hearing will be represented by another person, such person must submit to the presiding officer written proof of the representation, signed by the party such person claims to represent, at least three days before the hearing.

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