

871—26.14(17A,96) Conduct of hearings.

26.14(1) Each contested case hearing shall be heard and decided by a presiding officer who is an administrative law judge.

a. All contested case hearings except as provided in paragraphs “*b*” and “*c*” below shall be heard and decided by an administrative law judge employed by the department of workforce development. The qualifications for administrative law judges employed by the department of workforce development shall be the same as the qualifications for administrative law judges employed by the division of administrative hearings of the department of inspections and appeals.

b. All contested case hearings in which the department of workforce development is a party shall be heard and decided by a presiding officer who is an administrative law judge employed by the division of administrative hearings of the department of inspections and appeals.

c. The department of workforce development is a party to all contested case hearings in which it is the employer. It is a party to those contested case hearings involving issues of employer liability, employee/independent contractor status, fraudulent overpayment and administrative penalty in which it or any of its employees request the right to participate in the hearing by offering testimony and cross-examining witnesses for other parties.

26.14(2) The presiding officer shall inquire fully into the factual matters at issue and shall receive in evidence the sworn testimony of witnesses and physical evidence which are material and relevant to such matters. Upon the presiding officer’s own motion or upon the written application of any party, and for good cause shown, the presiding officer may reopen the record for additional material, relevant and nonrepetitious evidence not submitted at the original contested case hearing.

26.14(3) 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.

26.14(4) The hearing shall be confined to evidence relevant to the issue or issues stated on the notice of hearing. If, during the course of a hearing, it appears to the presiding officer that a section of the Iowa Code 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 the hearing and cause new notices of hearing, containing all relevant issues and law sections, 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.

26.14(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 shall not take testimony or evidence on such issue but shall remand the issue to the appropriate section of the department for investigation and preliminary determination.

26.14(6) In the event that one or more parties which have received notice for a contested case hearing fail to appear at the time and place of an in-person hearing, the presiding officer may proceed with the hearing.

a. If an absent party arrives for an in-person hearing while the hearing is in session, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If an absent party arrives for an in-person hearing after the record has been closed and after any party which had participated in the hearing has departed, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire *ex parte* as to the reason the party was late. For good cause shown, the presiding officer shall cause notice of hearing to be issued to all parties of record and reopen the record. The record shall not be reopened if the presiding officer does not find a good cause for the party’s late arrival.

26.14(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

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

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

26.14(8) The presiding officer shall record all communications with late parties. If the presiding officer does not reopen the record, the decision in the contested case shall state the presiding officer's reason for so doing.

26.14(9) If the late party fails once again to participate in the rescheduled hearing, there shall be no further postponements. Nevertheless, a party's failure to participate in a contested case hearing shall not result in a decision automatically being entered against it.

26.14(10) 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 shall 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.

26.14(11) In the discretion of the presiding officer, witnesses may be excluded from the hearing room 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.

26.14(12) The presiding officer may expel or refuse admittance to any party, witness or other person whose conduct at the hearing is disorderly.

26.14(13) 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.