

**761—620.4(321J) Hearings and appeals.****620.4(1) Contested case hearing.**

*a.* A person may request a contested case hearing by checking the appropriate box on Form 432018 and submitting it to the department or by submitting a written request to the director of driver and identification services at the address given in 761—620.2(321J). The request shall include the person's name, date of birth, driver license number, complete address and telephone number.

*b.* A request for a hearing to contest the denial of a temporary restricted license or to contest the restrictions may be submitted at any time.

*c.* A request for a hearing to contest a revocation shall be submitted within ten days after receipt of the revocation notice. The request shall be deemed timely submitted if it is delivered to the director of driver and identification services or properly addressed and postmarked within this time period.

*d.* Failure to timely request a hearing on a revocation is a waiver of the right to a hearing under Iowa Code chapter 321J, and the revocation shall become effective on the date specified in the revocation notice.

*e.* After a hearing, a written decision will be issued by the presiding officer.

**620.4(2) Appeal.** A decision by a presiding officer shall become the final decision of the department and shall be binding on the department and the person who requested the hearing unless either appeals the decision in accordance with this subrule.

*a.* The appeal shall be decided on the basis of the record made before the presiding officer in the contested case hearing and no additional evidence shall be presented.

*b.* The appeal shall include a statement of the specific issues presented for review and the precise ruling or relief requested.

*c.* An appeal of the presiding officer's decision shall be submitted in writing by sending the original and one copy of the appeal to the director of driver and identification services at the address given in 761—620.2(321J).

*d.* An appeal shall be deemed timely submitted if it is delivered to the director of driver and identification services or properly addressed and postmarked within ten days after receipt of the presiding officer's decision.

*e.* The director of driver and identification services shall forward the appeal to the director of transportation. The director of transportation may affirm, modify or reverse the decision of the presiding officer, or may remand the case to the presiding officer.

*f.* Failure to timely appeal a decision shall be considered a failure to exhaust administrative remedies.

**620.4(3) Final agency action.** The decision of the director of transportation shall be the final decision of the department and shall constitute final agency action for purposes of judicial review. No further steps are necessary to exhaust administrative remedies.

**620.4(4) Default.**

*a.* If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no continuance is granted, either enter a default decision or proceed with the hearing and render a decision in the absence of the party.

*b.* Any party may move for default against a party who has requested the contested case proceeding and who has failed to appear after proper service.

*c.* A default decision or a decision rendered on the merits after a party has failed to appear or participate in a contested case proceeding becomes final agency action unless, within ten days after receipt of the decision, either a motion to vacate is filed and served on the presiding officer and the other parties or an appeal of a decision on the merits is timely submitted in accordance with subrule 620.4(2). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate.

*d.* The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

*e.* Timely filed motions to vacate shall be granted only for good cause shown. The burden of proof is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate.

*f.* “Good cause” for the purpose of this rule means surprise, excusable neglect or unavoidable casualty.

*g.* A decision denying a motion to vacate is subject to further appeal in accordance with subrule 620.4(2).

*h.* A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party in accordance with subrule 620.4(2).

*i.* If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

**620.4(5)** *Petition to reopen a hearing.*

*a.* A petition to reopen a hearing pursuant to Iowa Code section 17A.16 shall be submitted in writing to the director of driver and identification services at the address in 761—620.2(321J). If a petition is based on a court order, a copy of the court order shall be submitted with the petition. If a petition is based on new evidence, the petitioner shall submit a concise statement of the new evidence and the reason(s) for the unavailability of the evidence at the original hearing.

*b.* A petition to reopen a hearing may be submitted at any time even if a hearing to contest the revocation was not originally requested or held.

*c.* A person may appeal a denial of the petition to reopen. The appeal shall be deemed timely if it is delivered to the director of driver and identification services at the address in 761—620.2(321J) or properly addressed and postmarked within 20 days after issuance of the decision denying the petition to reopen.

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