

486—7.1(91C) Appeals.

7.1(1) *Form and time of appeal.* Any contractor aggrieved by a citation of notice of proposed administrative penalty shall notify the commissioner of labor, within 15 working days from the date of receipt of the notice, that the contractor intends to contest the citation or proposed penalty. The commissioner shall, within 10 working days of the receipt of the notice of contest, transmit the original notice of contest to the employment appeal board, together with all records and documents contained in the administrative file, except the agency work product. The contest (hereinafter called appeal) must be in writing, signed by the respondent or authorized agent. If an appeal is signed by an authorized agent, the name of the respondent shall be shown at the end of the appeal, followed by the signature of the authorized agent.

7.1(2) *Taking the appeal.* An appeal shall be deemed filed on the date the notice of contest is filed with the commissioner of labor. The date shall be the date of the postmark, if filed by using the U.S. Postal Service with a properly addressed envelope with sufficient postage paid by the respondent. If the appeal is metered, with no postmark on the envelope, the date of the meter mark shall be the filing date. If neither a postmark nor meter mark is available, the date of the notice of contest shall be the filing date. If the notice of contest is filed by facsimile document, the date of the fax shall be the filing date.

7.1(3) *Hearing date and notice.* Upon receipt of the appeal, a determination shall be made by the appeal board whether the board shall hear the appeal or whether the appeal shall be assigned to an administrative law judge in the appeals section of the department of inspections and appeals. If the board determines it will hear the appeal, notice shall be provided to the parties, by ordinary mail, of the date and time of the hearing. This notice shall be provided not less than ten days prior to the hearing date. If the hearing is to be conducted by an administrative law judge, that judge shall provide notice of the hearing as provided by the rules of the appeals section.

7.1(4) *Continuances.* Requests for continuance of a hearing must be made not less than three days prior to the scheduled hearing date. The request must be in writing and signed by the requesting party or authorized representative. Each party shall be granted only one continuance, unless good cause is established for additional continuances. The chairperson of the appeal board shall determine whether good cause has been established for additional continuances.

7.1(5) *Hearing.* The hearing may be conducted by a quorum of the employment appeal board. A quorum shall consist of two members of the employment appeal board.

7.1(6) *Procedures during hearings.* The hearing shall be conducted in an informal manner as provided for by Iowa Code section 17A.12.

7.1(7) *Decisions.* When the employment appeal board presides at the reception of the evidence, the decision of the employment appeal board is the final decision. If the hearing is conducted by an administrative law judge, the decision of the judge shall be a proposed decision which shall become final unless an application for further review is filed with the employment appeal board within 20 days of the date of the administrative law judge's decision.

7.1(8) *Hearings and further appeals.* The decision of the employment appeal board is the final decision of the agency. An application for rehearing, as provided for by Iowa Code section 17A.16(2), must be filed within 20 days of the date of the employment appeal board's decision. The application shall be in writing, stating specific grounds for the rehearing, and be signed by the aggrieved party or representative.

An application for rehearing shall be deemed denied unless acted upon by the employment appeal board within 20 days of its filing by the party.

The decision of the appeal board shall become final, without further review, unless within 60 days from the date of the board's decision, a petition for judicial review is filed in the appropriate district court. A petition for judicial review may be filed within 60 days from the date the application for rehearing has been denied or deemed denied.

This rule is intended to implement Iowa Code section 10A.601 and Iowa Code chapter 91C.