

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

Do Not Mark in this Box

APR 6 3 20 PM '99

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Board of Review TITLE NUMBER: 84

RULE TYPE: Procedural Rules; CITE AUTHORITY WV Code §21A-4-9(3),
21A-7-7, 21A-7-13

AMENDMENT TO AN EXISTING RULE: YES NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 1

TITLE OF RULE BEING PROPOSED: Board of Review

Procedural Rules

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH
ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS
COMMENT PERIOD WILL END ON April 15, 1999 AT 12:00 noon.
ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING
ADDRESS.

Board of Review

112 California Avenue

Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE
LIMITED TO THIS PROPOSED RULE.

Truman Sayre, Jr. 3/8/99
Acting Chief Administrative Law Judge

Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

\$4.20

Janet E. James
Chairman
Harold E. Starr
Member
Susan W. Hastings
Member



Unemployment Compensation Board of Review

Offices located at 1321 Plaza East, Charleston

All communications should be addressed to the mailing address shown at the bottom of this page.

an equal opportunity/affirmative action employer

BRIEF SUMMARY OF PROPOSAL

The Board of Review Procedural Rules are intended to document the procedures presently practiced by the Board of Review.

Mailing Address: 112 California Avenue, Charleston, West Virginia 25305-0112

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Board of Review Procedural Rules

Type of Rule: Legislative Interpretive X Procedural

Agency Board of Review

Address (mailing) 112 California Avenue (situate) Plaza East, Rm. 100
Charleston, WV 25305 Charleston, WV

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A
PERSONAL SERVICES	N/A	N/A	N/A	N/A	N/A
CURRENT EXPENSE	N/A	N/A	N/A	N/A	N/A
REPAIRS & ALTERNATIONS	N/A	N/A	N/A	N/A	N/A
EQUIPMENT	N/A	N/A	N/A	N/A	N/A
OTHER	N/A	N/A	N/A	N/A	N/A

2. Explanation of above estimates:

These procedural rules document present practices of the Board of Review

3. Objectives of these rules:

Document present practices of the Board of Review

Rule Title: Board of Review Procedural Rules

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

No economic impact

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

No economic impact

C. Economic Impact on Citizens/Public at Large.

No economic impact

Date: March 8, 1999

Signature of Agency Head or Authorized Representative

Truman Sayre, Jr.

Truman Sayre, Jr.
Acting Chief Administrative Law Judge

TITLE 84
BOARD OF REVIEW
PROCEDURAL RULES

SERIES 1

177 511
Mar 3 3 20 PM '99
OFFICE OF THE CLERK OF THE WEST VIRGINIA
SECRETARY OF STATE

Procedural Rules to govern the initiation and conduct of hearings in contested unemployment claims before the Board of Review and its subordinate tribunals.

§ 84-1-1. General.

1.1. Scope. -- These procedural rules shall govern the initiation and conduct of hearings in contested unemployment compensation claims before the Board of Review and its subordinate tribunals.

1.2. Authority. -- West Virginia Code §§21A-4-9(3), 21A-7-7, 21A-7-13.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Repeal of Former Rule. -- These procedural rules repeal and replace the Regulations of the Board of Review for the Department of Employment Security filed in the Secretary of State's office December 27, 1968 and effective March 1, 1969.

§ 84-1-2. Basic Provisions.

2.1. Delegation of Authority. -- The Board of Review shall delegate authority necessary for the fair and efficient administration of the office to the Chief Administrative Law Judge or to such other person as the Board deems fit. These powers shall include, but are not limited to, ruling on motions, continuances, requests and fee petitions.

2.2. Purpose. -- The purpose of the hearing process shall be to receive and consider, as expeditiously and as fairly as possible, evidence and information relevant to the determination of the rights of the parties and to provide a review of the Commissioner's decisions and determinations with regard to the granting or denial of any award, or the entry of any Order, or the granting or denial of any modification or change with respect to former findings, Orders or awards made pursuant to the West Virginia Unemployment Compensation Law, West Virginia Code, §21A-1-1 et seq., as amended.

2.3. Definitions. --

2.4. Appeal Tribunal. -- an Administrative Law Judge or panel of Administrative Law Judges in unemployment compensation claims or labor dispute cases.

2.5. Special Provisions. -- The Board and its subordinate tribunals shall take reasonable measures to accommodate persons appearing before them who must contend with physical impairments or language barriers.

§ 84-1-3. General Appeals.

3.1. Right of Appeal. -- Any party wishing to appeal a Deputy Commissioner's decision may do so by filing an appeal with the local office of the Department of Employment Security where the claim was originally filed or where the claimant last reported.

3.2. Appeal in Writing. -- An appeal from a Deputy Commissioner's determination shall be made either in person at the local office using the appropriate appeal forms or by letter mailed or faxed to the local office. All such letters should include the following elements:

3.2.1. Name of the claimant and the employer.

3.2.2. Date of the Deputy's decision.

3.2.3. Statement of intention to appeal the decision.

3.2.4. Signature of the requesting party or counsel.

3.3. Time Period of Filing Appeal. -- Any appeal shall be filed within eight (8) calendar days after the decision has been mailed to the claimant and last employer as provided in West Virginia Code §21A-7-8.

3.4. Late Appeals. -- All appeals must be filed in accordance with the time periods set forth in these rules. The postmark date is the filing date. If the last filing day for an appeal falls on a weekend, or a state or federal holiday, postmarkings for the next business day will be accepted. For good cause shown, the Board or its designee may accept and process a late appeal. A decision refusing a late appeal may be appealed to the Board.

3.5. Notice of Hearing. -- Notice of the date, time, and place of appeal hearing shall be mailed to all interested parties and their counsel at least ten (10) days in advance of the hearing date unless such time period is waived. This notice shall inform the parties of their respective rights and duties in relation to the pending proceeding.

3.6. Withdrawal of Appeal. -- If, after filing a notice of appeal, the appealing party decides to withdraw the appeal, the party must do so by filing a written notice of withdrawal to the Board.

3.7. Composition of Appeal Tribunal. -- All appeals from the decision of a Deputy shall be heard by an appeal tribunal composed, as the Board or its designee may direct, of either a single Administrative Law Judge, three Administrative Law Judges, a member of the Board, or the Board itself. West Virginia Code §21A-7-7.

3.8. Time Period for Decision. -- A decision shall be issued within twenty-one (21) days after the date the hearing is concluded and shall be mailed to all parties.

§ 84-1-4. Labor Dispute Cases.

4.1. Notice of Hearing. -- Notice of the date, time, and place of the hearing shall be sent to all interested parties at least ten (10) days in advance of the hearing date. This notice shall also inform the parties of their respective rights and duties in relation to the pending proceeding. In labor dispute cases involving more than ten claimants, where all or some claimants are represented by counsel, then notice to

the represented claimants shall be sufficient if mailed to the represented claimants' counsel.

4.2. Composition of Labor Dispute Appeal Tribunal. -- All cases relating to a labor dispute or to a disqualification under West Virginia §21A-6-3(4) shall be heard by an appeal tribunal composed either of three Administrative Law Judges or of the Board itself, as the Board may direct. West Virginia Code §21A-7-7.

4.3. Time Period for Decision. -- Upon consideration of all evidence, the appeal tribunal shall make a decision within fourteen (14) days after the date of the hearing and shall notify all interested parties of its findings and decision. West Virginia Code §21A-7-7a.

§ 84-1-5. Appeal From Appeal Tribunal's Decision.

5.1. Right to Appeal. -- Any party wishing to appeal an appeal tribunal's decision may do so by filing a written notice of appeal with the Board or with the local office of the Department of Employment Security where the claim was originally filed or where the claimant last reported.

5.2. Appeal in writing. -- An appeal under this section shall be made either in person or by letter mailed to the Department of Employment Security or to the Board office. All such letters should include the following elements:

5.2.1. Name of the claimant and the employer.

5.2.2. Date of the decision.

5.2.3. Statement of intention to appeal the appeal tribunal's decision.

5.2.4. Signature of the appealing party or counsel.

5.3. Time period for Filing Appeal. -- Any appeal shall be filed within eight (8) calendar days after the decision has been mailed to the claimant and last employer as provided in West Virginia Code §21A-7-9.

5.4. Late Appeals. -- All appeals must be filed in accordance with the time periods set forth in these rules. For computation purposes, the postmark date is considered the filing date. If the last filing day for an appeal falls on a weekend, state or federal holiday, postmarkings on the next business day will be accepted. For good cause shown, the Board or its designee may accept and process a late appeal.

5.5. Review by the Board on its Own Motion. -- Within eight days following a decision by an appeal tribunal, and in the absence of an appeal by a party, the Board may, on its own motion, order a hearing before the Board on the claim or any issue involved therein.

5.6. Transcription. -- Once an appeal has been duly filed with the Board, a transcript of the appeal tribunal proceeding shall be prepared and mailed to all interested parties and their representatives.

5.7. Notice of Hearing. -- Notice of the date, time, and place of appeal hearing shall be sent to all interested parties and their counsel at least ten (10) days in advance of the hearing date.

5.8. Motions for Additional Evidence. -- Motions to present additional evidence will not be

granted upon appeal to the Board except for good cause shown. To establish good cause, a party must demonstrate that the evidence was not available prior to the appeal tribunal hearing or that he or she did not know, nor reasonably could have known, of the evidence in question at that time. Any party having good cause to offer additional evidence should forward a written request to the Board for an opportunity to present such evidence. A copy of such request must be served on all parties.

5.9. Withdrawal of Appeals. -- If, after filing a notice of appeal, the appealing party decides to withdraw the appeal, the party must do so by filing a written notice of withdrawal to the Board.

5.10. Quorum. -- All appeals from the decision of an appeal tribunal shall be heard by at least two Board members.

5.11. Notice of Decision. -- Upon consideration of all evidence, the Board shall issue a decision within fifteen (15) days of the conclusion of the hearing and mail a copy to all parties.

§ 84-1-6. General Hearing Procedures and Policies.

6.1. Time, Place, and Manner of Hearing. -- Upon receipt of a duly filed appeal of the decision of a deputy commissioner, or following the Commissioner's referral of a labor dispute case, the Board shall set the date, time, and place at which a hearing will be conducted. Location of the hearings shall be set by the Board at its discretion to achieve judicial efficiency.

6.1.1. Notice of Hearings. - Notice of the date, time, and place of hearing shall be sent to all interested parties at least ten (10) days in advance of the hearing date.

6.1.2. If a continuance of the hearing is granted, the ten (10) day notice requirement may be waived.

6.2. Telephonic Hearings. -- The Board, in its discretion, may schedule appeal tribunal hearings telephonically. Any party has a right to an in-person hearing. In a case where a party is not a resident of the State of West Virginia and does not have an office or business location in the State of West Virginia, the Board may permit that party to appear telephonically.

6.3. Rules of Evidence and Procedure. -- In the conduct of the hearings, neither the Board of Review nor its subordinate tribunals shall be bound by the usual common law or statutory rules of evidence or by the formal rules of procedure, except as provided for by these rules.

6.3.1. Discovery. - There shall be no discovery in claims or cases before the Board or an Appeal Tribunal.

6.3.2. Subpoenas. - The presence of a witness or production of evidence may be obtained by the issuance of a subpoena or a subpoena duces tecum by the Board or its designee.

6.3.2.a. Request. - A subpoena may be requested verbally or in writing from the Board or its designee.

6.3.2.b. Service. - Subpoenas may be served or accepted in any manner provided for by the rules of civil procedure with the exception that a party may serve a subpoena. Regardless of the method, service is not the responsibility of the Board.

6.3.2.c. Fee. - Subpoenaed witnesses who testify at the hearing will be paid witness fees in accordance with the guidelines of the Circuit Court of Kanawha County, West Virginia.

6.3.2.d. Noncompliance. - If a person refuses to comply with a subpoena, the Board may apply to the Circuit Court of Kanawha County, West Virginia to compel production of the testimony or evidence sought.

6.4. Persons Authorized to Appear at Proceedings. -- All representation before the Board and its subordinate tribunals must comply with the following guidelines.

6.4.1. Natural Persons. - An employer who is a natural person, or any claimant may appear:

6.4.1.a. By an attorney duly licensed and admitted to the practice of law in the State of West Virginia;

6.4.1.b. By a nonresident attorney satisfying the Rules for Admission to the Practice of Law, including Rule 8.0-Admission Pro Hac Vice.

6.4.1.c. Pro se.

6.4.2. Corporations. -- An employer who is not a natural person may only appear:

6.4.2.a. By an attorney duly licensed and admitted to the practice of law in the State of West Virginia;

6.4.2.b. By a nonresident attorney satisfying the Rules for Admission to the Practice of Law, including Rule 8.0 Admission Pro Hac Vice.

6.5. Representation Fees. -- In any claim where a claimant is represented by counsel, any fee charged the claimant must be approved by the Board. Such fee may be contingent or based on an hourly rate or a fixed amount. An attorney's fee shall be reasonable.

6.5.1. The factors to be considered by the Board or its designee in determining whether to approved a fee shall include the following:

6.5.1.a. The time and labor required, the novelty and difficulty of the questions involved, and skill requisite to perform the legal service properly.

6.5.1.b. The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the attorney.

6.5.1.c. The fee customarily charged in the locality for similar legal services.

6.5.1.d. The amount involved and results obtained.

6.5.1.e. The time limitations imposed by the client or by the circumstances.

6.5.1.f. The nature and length of the professional relationship with the client.

6.5.1.g. The experience, reputation, and ability of the attorney or attorneys performing the services.

6.5.1.h. Whether the fee is fixed or contingent.

6.6. Argumentation. -- The Board may limit the parties to oral argument, or the filing of written argument, or both.

6.7. Initial Burden of Going Forward. -- The initial burden of going forward shall fall as denoted below. Once this initial burden has been met by the designated party, the burden may shift between the parties as directed by the presiding official. This provision should be read and interpreted in conjunction with West Virginia Code §21A-6-1 and 21A-6-3.

6.7.1. Quit Without Good Cause - Claimant.

6.7.2. Quit for Personal Reasons - Claimant.

6.7.3. Quit for Educational Reasons - Claimant.

6.7.4. Discharge for Misconduct - Employer.

6.7.5. Failure to Accept Suitable Work - Commissioner of the Bureau of Employment Programs or Employer.

6.7.6. Existence of Labor Dispute or Work Stoppage - Employer.

6.7.7. Receipt of Other Compensation - Commissioner of the Bureau of Employment Programs or Employer.

6.7.8. Sports or Athletics - Claimant.

6.7.9. Illegal Aliens - Commissioner of the Bureau of Employment Programs or Employer.

6.7.10. Vacation - Employer.

6.7.11. Federal Benefits - Commissioner of the Bureau of Employment Programs or Employer.

6.7.12. Fraud - Commissioner of the Bureau of Employment Programs or Employer.

6.7.13. Eligibility - Claimant.

6.8. Continuance of Hearing. -- Continuances shall be granted only upon the request of a party for good cause shown. After a hearing date has been set, a party may file in a timely fashion a written motion with the Board setting forth in detail the reasons why such a continuance is necessary. Further, the requesting party shall serve the motion on all interested parties in a timely fashion.

6.9. Reconsideration. -- Requests or motions for reconsideration will not be considered except

those involving administrative or clerical error.

6.10. Records. -- Copies of all decisions made by either an appeal tribunal or the Board shall be kept on file at the Board office for three years. These records are open to the parties and may be viewed upon request in the presence of a Board employee.