

TITLE 84
PROCEDURAL RULE
DEPARTMENT OF EMPLOYMENT SECURITY
BOARD OF REVIEW
SERIES 1
AMENDED RULES AND REGULATIONS GOVERNING
PROCEDURES OF THE BOARD OF REVIEW

84-1-1. General.

1.1. Scope. -- These regulations supplement and supersede prior rules and regulations for the processing of appeals pending before this Board and its subordinate tribunals and for the administrative operation of its office.

1.2. Authority. -- W. Va. Code §21A-7-13 and §21A-4-9, paragraph (3)

1.3. Filing Date. -- December 27, 1968

1.4. Effective Date. -- March 1, 1969

84-1-2. Appeals from a Deputy of the Commissioner of Employment Security.

2.1. Filing of appeals. -- Any interested party as defined by statute (claimant, employer or Commissioner of Employment Security), desiring to appeal from the decision of a Deputy of the Commissioner of Employment Security, may do so by filing a written notice of appeal with the Office of the Board of Review, 112 California Avenue, Charleston, West Virginia, or with the local office of the West Virginia Department of Employment Security where the claim was filed or to which the claimant last reported. Such written notice may be on the forms provided, or in the form of a letter, setting forth the names of claimant and the employer, the name of the deputy who signed the decision, the date of the decision and clearly indicating that it is intended as a request for an appeal. Such notice shall bear the proper signature of the party appealing. If the party appealing is an incorporated employer, it shall be signed in the manner and by the proper officer, as such corporation would execute a deed or other legal instrument. Appeals for any party may be signed by the attorney-at-law, duly licensed and authorized to represent the party in the courts of this State. Such notice of appeals should be received by the Board of Review within the appeal period provided by law. When such notice arrives at the office of

the Board of Review after the expiration of the appeal period, the acceptance or rejection of the same shall be governed solely by the discretion of the Board of Review. If, after filing a notice of appeal, the party appealing desires to withdraw the appeal, such party may do so by filing a written notice of withdrawal in the same manner and form as the notice of appeal.

2.2. Procedure on acceptance of appeals. -- Upon acceptance of the appeal, the Board of Review may assign the case to the appeal tribunal normally conducting hearings in the geographical area which includes the local office in which the claimant is currently filing claims. The appeal tribunal may be designated by the Board of Review as either one (1) trial examiner or one (1) member of the Board of Review. The appeal tribunal shall cause a notice to be mailed or served according to law, advising all interested parties of the time and place of the hearing and of their rights and duties with relation thereto. Such notice may be mailed instead to the attorney-at-law representing any party. In the case of "Group" claims, where more than one claimant has filed claims against the same employer, arising out of substantially the same factual situation, such notice shall then be sent to the employer (or its attorney), the Commissioner of Employment Security (or his attorney) and to any attorney-at-law who represents one or more claimants in the group. In instances in which the Board of Review has been advised that there are claimants who are not represented by an attorney-at-law, notice will be sent to each such claimant. Such notice shall be consistent with the law and these regulations. If any party finds the location or time of hearing inconvenient, such party should immediately make his objection known to the appeal tribunal, giving reasons therefor. If, in the opinion of the appeal tribunal, good cause has been shown, continuance may be granted or additional hearings may be scheduled for the taking of evidence offered by the objecting party. In cases involving the claims of claimants now residing and filing claims in states outside of West Virginia, (Multi-State Claimants), only the hearing

conducted by such state for taking evidence of claimant shall be scheduled unless an interested party shall make objection as herein provided, in which case an additional hearing may be scheduled in this State for the taking of evidence offered by the objecting party.

2.3. Conduct of hearings by appeal tribunal.

(a) Hearings will be conducted informally and in such manner as to ascertain the substantial rights of the parties. All issues relevant to the appeal shall be considered and passed on. Any individual party to an appeal, or the duly qualified attorney-at-law representing any party, individual or corporate, may cross-examine adverse parties and witnesses for adverse parties. The appeal tribunal may conduct such inquiries as it deems necessary.

(b) The parties to an appeal, with the consent of the appeal tribunal, may stipulate in writing the facts involved. The appeal tribunal may decide the appeal upon such stipulation or, in its discretion, may set the appeal for hearing and take such further evidence as it deems necessary to enable it to determine the issue arising on the appeal.

2.4. Adjournment or continuance of hearings. -- The appeal tribunal may, in its discretion, grant such adjournment or continuance as it deems necessary for a fair hearing and full development of the evidence.

2.5. Notice of decision. -- Copies of the decision of the appeal tribunal shall be mailed to the claimant, the last employer, the Commissioner, and any other parties to the appeal, or to their counsel, if represented by an attorney-at-law, at the last known address as furnished by the parties.

84-1-3. Appeals from appeal tribunal.

3.1. Filing of appeals. -- Any interested party as defined by statute (claimant, employer or Commissioner of Employment Security), desiring to appeal from the decision of a trial examiner, may do so by filing a written notice of appeal with the Office of the Board of Review, 112 California Avenue, Charleston, West Virginia, or with the local office of the West Virginia Department of Employment Security where the claim was filed or to which the claimant last reported. Such written notice may be on the forms pro-

vided, or in the form of a letter, setting forth the names of the claimant and the employer, the name of the trial examiner who signed the decision, the date of the decision and clearly indicating that it is intended as a request for an appeal. Such notice shall bear the proper signature of the party appealing. If the party appealing is an incorporated employer, it shall be signed in the manner, and by the proper officer, as such corporation would execute a deed or other legal instrument. Appeals for any party may be signed by the attorney-at-law, duly licensed and authorized to represent the party in the courts of this State. Such notice of appeals should be received by the Board of Review within the appeal period provided by law. When such notice arrives at the office of the Board of Review after the expiration of the appeal period, the acceptance or rejection of the same shall be governed solely by the discretion of the Board of Review. If, after filing a notice of appeal, the party appealing desires to withdraw the appeal, such party may do so by filing a written notice of withdrawal in the same manner and form as the notice of appeal.

3.2. Procedure on acceptance of appeals. -- Upon acceptance of appeals, the Board of Review shall take such steps as are necessary to cause the evidence to be transcribed into readable typewritten form and copies thereof may be sent to the interested parties or to the counsel for interested parties, if represented by an attorney-at-law. In the case of multi-state claims, the evidence taken in the other state may be transcribed and copies furnished to interested parties. Upon receipt of the completed transcript, the Board of Review shall cause a notice to be mailed or served according to law, advising all interested parties of the time and place of hearing and of their rights and duties with relation thereto. Such notice may be mailed instead to the attorney-at-law representing any party. In the case of "Group" claims, where more than one claimant has filed claims against the same employer, arising out of substantially the same factual situation, such notice shall then be sent to the employer (or its attorney), the Commissioner of Employment Security (or his attorney) and to any attorney-at-law who represents one or more claimants in the group. In instances in which the Board of Review has been advised that there are claimants who are not represented by an attorney-at-law, notice will be sent to each such claimant. Such notice shall be consistent with the law and these regulations. Such hearings shall normally be held in the hearing room of the Board of

Review, Room 102, 112 California Avenue, Charleston, West Virginia, but if it shall appear to the Board of Review that the interests of the parties may be better served by holding such hearings elsewhere, the Board of Review may schedule such hearings elsewhere, at any convenient point within the State of West Virginia.

3.3. Procedure on hearing of appeals.

(a) Appeals to the Board may be heard upon the evidence in the record made before the appeal tribunal, or the Board may, if in its discretion additional evidence is necessary to enable it to determine the appeal, direct the taking of additional evidence before it or remand the case to an appeal tribunal for the taking of further evidence.

(b) In the hearing of an appeal on the record, the Board may limit the parties to oral argument or the filing of written argument, or both.

(c) If the Board directs the taking of additional evidence, the parties shall be notified of the time and place that such evidence will be taken and any party may present such evidence as may be taken.

(d) The Board of Review may, in its discretion, grant such adjournments or continuances as it deems necessary for a fair hearing and full development of the case.

3.4. Review by the Board on its own motion. -- Within eight (8) days following a decision by an appeal tribunal and in the absence of 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. Such hearing may be held under any of the procedures prescribed in section ten, article seven, of the Unemployment Compensation Law.

3.5. Notice of decision. -- Copies of the decision of the Board shall be mailed to the claimant, the last employer, the Commissioner and any other parties to the appeal. The copy of any party may be mailed instead to the attorney for such party.

3.6. Appeals to Board of Review from administrative decisions relating to chargeability of benefits.

(a) Appeals taken by applicants (employers) under section thirty, article seven, chapter twenty-one-a of the West Virginia Code Michie's Sec. 2366 (123a))

shall be by written notice to the Board of Review, properly signed as prescribed hereinbefore for appeals from an appeal tribunal to the Board of Review. Such notice must be received by the Board of Review within eight (8) calendar days of the date on which the decision of the Commissioner, or special Deputy Commissioner, was rendered. When such notice arrives at the Board of Review after the expiration of said eight (8) calendar days, the acceptance or rejection of the same shall be governed solely by the discretion of the Board of Review. Upon receipt of such notice, the Board of Review shall promptly request the Commissioner, or special Deputy Commissioner to certify to it the record of the proceedings resulting in the decision appealed from, together with the findings of fact thereon.

(b) All rules herein promulgated for the conduct of hearings before the Board of Review are hereby specifically made to apply to hearings on appeals from such administrative decisions.

84-1-4. General rules for conduct of hearings.

4.1. Subpoena for witnesses.

(a) Subpoenas to compel the attendance of witnesses or the production of papers for any hearing of an appeal will be issued by the Board of Review or by the appeal tribunal before which the appeal is to be heard, upon timely written application showing a necessity therefor filed by a party to the appeal.

(b) Subpoenas may be served or accepted in the manner provided by law.

(c) Subpoenaed witnesses who testify at a hearing will be paid witness fees: Provided, however, That not more than two (2) witnesses per party shall be called at the expense of the department to testify to any fact in issue, except with respect to issues of fact arising under subsection four, section four, article six, and section six and seven, article six, of the Unemployment Compensation Law.

4.2. Department records as evidence. -- The records of the Department of Employment Security shall be competent evidence of the facts disclosed thereby.

4.3. Representation of parties. -- Any party may appeal in person for himself, or may be represented by an attorney licensed to practice law in the courts of

this State, in any proceeding before the Board of Review or appeal tribunal. The amount of the fee of such attorney shall be subject to the approval of the Board of Review.

4.4. Continuances. -- Any party having good cause to make a motion or request for a hearing at a location other than that originally scheduled, or for a continuance, or for the taking of additional evidence, or for any other proper procedure, shall do so in writing, bearing proper signature as hereinbefore prescribed for an appeal. Such motions or requests should be received by the Board of Review or the appeal tribunal not less than two (2) days before the scheduled hearing. In the event that good cause for such motion or request arises within such two (2) day period, the Board of Review or appeal tribunal may take such facts into consideration, in the exercise of its discretion, to grant or deny the motion.

4.5. Additional parties. -- Any former employer of the benefit claimant against whose account benefits paid such claimant may lawfully be charged, may upon request and shall upon notice of hearing given, be made a party to the appeal.

4.6. Appeals for appeal tribunal to the Board of Review. -- For the purpose of conducting hearings on appeals from appeal tribunals to the Board of Review, any one (1) member may conduct a hearing for the purpose of introduction of additional evidence and the making up of the record in its entirety. The Board, or a quorum thereof, shall consider said record and determine the appeal upon the records so made.

4.7. Appeals from deputies to the Board of Review in specified areas. -- For the purposes of conducting hearings on appeals from the deputy in Kanawha County and adjacent area (in cases which can be heard conveniently in Charleston) the Board may hear and determine all cases, thus combining the first and second appeals in a final determination.

84-1-5. General rules applying to the administrative operation of the Board of Review.

5.1. All hearings shall be scheduled, whenever possible, during the normal business hours of the day,

on the five (5) normal business days of the week. (Monday, Tuesday, Wednesday, Thursday and Friday.) Hearings shall not be scheduled on Saturdays, Sundays nor legal holidays except by consent of the parties.

5.2. The office of the Board of Review shall be open for business within the hours nine a.m. to twelve noon and one p.m. to five p.m., Mondays through Fridays, legal holidays excepted. Persons having business with the Board of Review may be required to conduct such business at the office of the Board of Review within such hours.

5.3. Individual parties (claimants, employers and Commissioner), or the attorneys for parties, to pending appeals may examine the file of the Board of Review under proper supervision of the Board of Review or appeal tribunal having the custody of such file. No other person may have access to such files or any of the contents thereof.

84-1-6. Decisions and records.

6.1. Copies of all decisions of the appeal tribunals and of the Board of Review shall be kept on file at the office of the Board of Review. Such decisions shall not be open to public inspection in such a manner as to reveal the names or addresses of the interested parties or their witnesses.

6.2. Persons not parties nor attorneys for parties desiring information from the records of the Board of Review may request the same in writing, identifying the party requesting, setting forth the nature of the information desired and the reason for desiring it. Such written request must be properly signed.

6.3. Written replies may be made to requests made in accordance with Paragraph 6.2 above, either noting the information requested or advising the person why the request is considered improper.

84-1-7. Forms.

The forms adopted for use in complying with these regulations are available from the Department of Employment Security.