

## **787 KAR 1:110. Appeals.**

RELATES TO: KRS 131.570(1), 341.420(2), 341.430(2), 341.440, 341.450

STATUTORY AUTHORITY: KRS 151B.020(3)(e)1, 341.115(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. KRS 13B.020(3)(e)1 exempts unemployment insurance hearings from the provisions of KRS Chapter 13B. This administrative regulation establishes the appeals process and general rules for the conduct of hearings.

### Section 1. Appeals to Referee.

#### (1) The presentation of an appeal to a referee.

(a) Any interested party wishing to appeal to a referee from a determination issued pursuant to KRS 131.570(1) or 341.420(2) shall file with the Division of Unemployment Insurance or its authorized representative a written statement clearly indicating the party's intention to appeal within the time limits prescribed by KRS 131.570(1) or 341.420(2).

(b) An appeal to a referee shall be considered filed as of the date it is received by the department as established in 787 KAR 1:230.

#### (2) Notification of hearings.

(a) Except as provided in paragraph (b) or (c) of this subsection, the Division of Unemployment Insurance shall schedule all hearings promptly and shall mail notices to the parties specifying the date, time, and place of the hearing at least ten (10) days prior to the hearing date.

(b) The referee may conduct a hearing without ten (10) days notice if the parties to the hearing agree to waive the notice of hearing.

(c) Any party to a hearing may request that the hearing be rescheduled. The division shall reschedule the hearing upon presentation by a party of good cause. Examples of good cause for rescheduling shall include:

1. A claimant's inability to attend the hearing due to current employment;
2. Medical emergency;
3. Death of a family member; or
4. Acts of God.

#### (3) Disqualification of referees.

(a) A referee shall not participate in the hearing of an appeal in which the referee has an interest.

(b) Challenges to the interest of any referee shall be heard and decided by the commission.

#### (4)

##### (a) Hearing of appeals.

1. The claimant and any other party to the appeal may present evidence as may be pertinent and may question the opposite party and witnesses.

2. The referee shall, if necessary to secure full information on the issues, examine each party who appears and witnesses.

3. The referee may take any additional evidence that is necessary.

4. If additional evidence is taken, all interested parties shall be afforded an opportunity of examining and refuting the evidence.

##### (b)

1. The parties to an appeal, with the consent of the referee, may stipulate the facts involved, in writing.

2. The referee shall:

- a. Decide the appeal on the basis of the stipulation; or

- b. Schedule a hearing and take further evidence.
  - (c) Except as provided in paragraph (d) of this subsection, the hearing shall be scheduled in-person or via teleconference in order to provide the earliest possible hearing date.
  - (d) The hearing shall be scheduled via teleconference if an in-person hearing would:
    - 1. Create undue expense for any party;
    - 2. Require any party to travel more than fifty (50) miles;
    - 3. Put either party or the referee at personal risk; or
    - 4. Create a security risk for the public or division staff.
  - (e) The referee may grant a continuance of a hearing in order to secure necessary evidence.
  - (f)
    - 1. Parties to a teleconference hearing who wish to introduce documents or written materials into the record at the referee hearing shall provide copies of the documents to the referee and the opposing party prior to the hearing.
    - 2. Failure to provide both the referee and the opposing party with copies of the evidence shall result in its being excluded from the record.
- (5) Decisions.
- (a)
    - 1. After the hearing is concluded, the referee shall set forth in writing the referee's finding of facts on the issues involved, the decision, and the reasons for the decision.
    - 2. If the appellant fails to appear and prosecute an appeal, the referee shall summarily affirm the determination.
  - (b) Copies of the decision shall be mailed to the claimant and other parties to the appeal, and a copy shall be retained in the division's files.
  - (c)
    - 1. The recording of the hearing shall be retained in the division's files pending further appeal.
    - 2. If an appeal is not initiated, the recording may be deleted ninety (90) days from the date the final administrative decision is mailed.
  - (d)
    - 1. Any referee decision may be superseded and amended after being released in order to correct obvious technical errors or omissions.
    - 2. The corrected decision shall have the same appeal rights as the decision that it amends or corrects.
  - (e) If the decision is to deny previously awarded benefits either retroactively or forthwith, a stop payment directive shall be issued to the division by the referee on the date the decision is mailed to the claimant.

## Section 2. Appeals to the Commission From a Referee Decision.

- (1) Presentation of an appeal to the commission.
  - (a)
    - 1. Any interested party wishing to appeal to the commission from a decision of a referee shall give notice in writing to the commission, the division, or the division's authorized representative in any form that clearly indicates the party's intention to appeal.
    - 2. The appeal shall be mailed by the division to other interested parties.
  - (b) An appeal, based on the conformity of the appeal with the requirements of KRS 341.420(4), shall be considered initiated and filed as of the date it is received by the department as established in 787 KAR 1:230.
  - (c) The commission shall:
    - 1. Grant or deny the application for leave to appeal without a hearing; or

2. Notify the parties to appear at a specified place and time for appeal on the application.

(2) Hearing of appeals.

(a)

1. Except if the commission orders cases removed to it from a referee, all appeals to the commission shall be heard upon the records of the division and the evidence and exhibits introduced before the referee.

2. In the hearing of an appeal on the record, the parties may present written arguments and present oral arguments.

3.

a. The party presenting an appeal to the commission (appellant) shall have ten (10) days from the date of mailing of the commission's notification of appeal receipt within which to file a written argument.

b. The appellee shall have seven (7) days thereafter within which to file response.

4. Written argument shall be considered filed as of the date it is received by the department as established in 787 KAR 1:230.

5. The commission may extend the time for filing written argument upon a showing of good cause, in accordance with the examples listed in Section 3(2)(c)1 through 4 of this administrative regulation. by either party to the appeal.

(b)

1. The commission may direct the taking of additional evidence before it, if needed, in order to determine the appeal.

2. If additional evidence is necessary to determine the appeal, the parties shall be notified of the time and place the evidence shall be taken at least seven (7) days prior to the date on which the evidence will be taken.

(c)

1. The commission may return any case or issue to a referee for the taking of additional evidence.

2. The referee shall take the testimony in the manner prescribed for the hearing of appeals before referees and shall return the record to the commission for its decision.

(3) Any case ordered by the commission to be removed to it from a referee shall be heard and decided by the commission in the manner prescribed in Section 3 of this administrative regulation.

(4) The determination of appeals before the commission.

(a)

1. Following the conclusion of a hearing, the commission shall issue a written decision, which shall affirm the decision of the referee or present a separate finding of facts, decision, and reasons.

2. The decision shall be signed by members of the commission who heard the appeal.

3.

a. The commission may designate a decision a precedent for future cases of similar circumstance if the decision:

(i) Is a matter of first impression;

(ii) Clarifies or defines the application of statutory language;

(iii) Reverses a previous precedential commission decision; or

(iv) Adopts a court decision.

b. A decision designated a precedent shall be binding on all lower levels of determination.

(b)

1. If a decision of the commission is not unanimous, the decision of the majority shall control.

2. The minority may file a dissent from the decision of the majority setting forth the reasons why it fails to agree with the majority.

(c) Copies of the decision shall be mailed to all interested parties.

(d) Ninety (90) days after the administrative remedies have been exhausted, the commission may delete the recording of the hearing under review unless the commission has previously been served with summons and complaint pursuant to KRS 341.450.

(5) Reconsideration.

(a) A party adversely affected by a decision of the Kentucky Unemployment Insurance Commission may, within ten (10) days of the mailing date of the decision, request in writing a reconsideration of the commission's decision.

1. The commission shall grant or deny the request for reconsideration based on the conformity of the request to this paragraph.

2. A request for reconsideration shall be considered initiated and filed as of the date it is received by the department as established in 787 KAR 1:230.

(b) A request for reconsideration of a decision of the commission shall not stay the running of time for appeal to the circuit court.

(6) Precedent decision process and digest.

(a) The Kentucky Unemployment Insurance Commission shall develop, distribute, and maintain a manual or digest containing all precedent decisions currently valid.

(b) Individual decisions shall be available on request without charge.

### Section 3. Appeals to the Commission From an Employing Unit.

(1) Presentation of an appeal to the commission.

(a) Any employing unit wishing to make application for review of any administrative determination pursuant to KRS 131.570(1) or 341.430(2) shall do so by filing with the commission, the division, or the division's authorized representative a written statement clearly indicating the employing unit's intention to appeal within the time limits prescribed by KRS 131.570(1) or 341.420(2).

(b) An appeal shall be considered initiated and filed as of the date it is received by the department as established in 787 KAR 1:230.

(2) Notification of hearings.

(a) Except as provided in paragraph (b) or (c) of this subsection, upon receipt of an appeal under this section, the commission shall:

1. Deny the appeal as untimely; or

2. Promptly schedule a hearing and mail notices to all interested parties specifying the date, time, and place of the hearing at least ten (10) days prior to the hearing date.

(b) The commission or its representative may conduct a hearing without ten (10) days notice if the parties to the hearing agree to waive the notice of hearing.

(c) Any party to a hearing may request that the hearing be rescheduled. The commission shall reschedule the hearing upon presentation by a party of good cause. Examples of good cause for rescheduling shall include:

1. A claimant's inability to attend the hearing due to current employment;

2. Medical emergency;

3. Death of a family member; or

4. Acts of God.

(3) Appointment of commission representative.

(a) The commission may direct that any hearing be conducted on its behalf by an authorized representative.

(b) A representative shall not participate in the hearing of an appeal in which the representative has an interest.

- (c) Challenges to the interest of any representative shall be heard and decided by the commission.
- (4) Hearing of appeals.
  - (a) Any party to the appeal may present pertinent evidence and may question the opposite party and witnesses.
    - 1. The commission shall, if it deems it necessary to secure full information on the issues, examine each party who appears and witnesses.
    - 2.
      - a. The commission may take any additional evidence which is necessary.
      - b. If additional evidence is taken, all interested parties shall be afforded an opportunity of examining and refuting the evidence.
  - (b)
    - 1. The parties to an appeal, with the consent of the commission or its authorized representative, may stipulate the facts involved, in writing.
    - 2. The commission shall:
      - a. Decide the appeal on the basis of the stipulation; or
      - b. Schedule a hearing and take further evidence.
  - (c) Except as provided in paragraph (d) of this subsection, the hearing shall be scheduled in-person or via teleconference in order to provide the earliest possible hearing date.
  - (d) The hearing shall be scheduled via teleconference if an in-person hearing would:
    - 1. Create undue expense for any party;
    - 2. Require any party to travel more than fifty (50) miles;
    - 3. Put either party or the referee at personal risk; or
    - 4. Create a security risk for the public or division staff.
  - (e) The commission may grant a continuance of a hearing in order to secure necessary evidence.
  - (f)
    - 1. Parties to a teleconference hearing who wish to introduce documents or written materials into the record at the hearing shall provide copies of the documents to the commission and to the opposing party prior to the hearing.
    - 2. Failure to provide both the commission and the opposing party with copies of this evidence shall result in its being excluded from the record.
- (5) Decisions.
  - (a)
    - 1. Following the conclusion of a hearing, the commission shall set forth in writing its finding of the facts, its decision, and its reasons for the decision.
    - 2. If the appellant fails to appear and prosecute an appeal, the commission shall summarily affirm the administrative determination from which the appeal was made.
    - 3. The decision shall be signed by the members of the commission who considered the appeal.
    - 4. The commission may designate a decision a precedent for future cases of similar circumstance if the decision:
      - a. Is a matter of first impression;
      - b. Clarifies or defines the application of statutory language;
      - c. Reverses a previous precedential commission decision; or
      - d. Adopts a court decision.
    - 5. A decision designated a precedent shall be binding on all lower levels of determination.
  - (b)
    - 1. If a decision of the commission is not unanimous, the decision of the majority shall control.

2. The minority may file a dissent from the decision of the majority setting forth the reasons why it fails to agree with the majority.

(c) Copies of the decision shall be mailed to all interested parties.

(d) Ninety (90) days after the administrative remedies have been exhausted, the commission may delete the recording of the hearing under review unless the commission has previously been served with summons and complaint pursuant to KRS 341.450.

(e)

1. Any commission decision may be superseded and amended after being released in order to correct obvious technical errors or omissions.

2. The corrected decision shall have the same appeal rights as the decision which it amends or corrects.

(6) Reconsideration.

(a) Any party adversely affected by a decision of the commission may, within ten (10) days of the mailing date of the decision, file a request in writing for reconsideration of the commission's decision.

1. The commission shall grant or deny the reconsideration based on the conformity of the request to this paragraph.

2. A reconsideration shall be considered initiated and filed as of the date it is received by the department as established in 787 KAR 1:230.

(b) A request for reconsideration of a decision of the commission shall not stay the running of time for appeal to the circuit court.

#### Section 4. General Rules for Referee and Commission Appeals.

(1) Issuance of subpoenas. Subpoenas requested by a claimant or an employer to compel the attendance of witnesses or the production of records for any hearing of an appeal shall be issued only on a sworn statement by the party applying for the issuance setting forth the substance of the anticipated proof to be obtained and the need for the proof.

(2) Appeal record.

(a) All reports, forms, letters, transcripts, communications, statements, determinations, decisions, orders, and other matters, written or oral, from the worker, employer, or personnel or representative of the division that have been written, sent, or made in connection with an appeal shall constitute the record with respect to the appeal.

(b) Pursuant to KRS 341.440, a digital recording shall be made of any hearing conducted by the division or commission.

(3) Supplying information from the records of the Division of Unemployment Insurance.

(a) Information from the records of the division shall be furnished to an interested party or representative to the extent necessary for the proper presentation of the party's case, only upon written request.

(b) All requests for information shall state, as clearly as possible, the nature of the information desired.

(c) An interested party or representative may examine a record in the possession of a referee, the commission, or its authorized representative at a hearing.

(4) Conduct of hearings.

(a) All hearings shall be conducted informally without regard to common law, statutory or technical rules, or procedure and in a manner as to determine the substantial rights of the parties.

(b) The parties and their witnesses shall testify under oath or affirmation.

(c) All issues relevant to the appeal shall be considered and passed upon.

(5) Reopening hearings.

(a) Any party to an appeal who fails to appear at the scheduled hearing may, within seven (7) days from the hearing date, request a rehearing.

(b) The request shall:

1. Be granted if the party has shown good cause, in accordance with the examples listed in Section 3(2)(c)1 through 4 of this administrative regulation, for failure to appear;
2. Be in writing;
3. Set forth the reasons for the failure to attend the scheduled hearing; and
4. Be mailed or delivered to the office where the appeal was filed, to the Appeals Branch, Division of Unemployment Insurance, Frankfort, Kentucky, or to the Unemployment Insurance Commission, Frankfort, Kentucky.

(c) Upon the rehearing being granted, notice of the time and place of the reopened hearing shall be given to the parties or to their representatives.

(6) Providing a digital recording of testimony to interested parties.

(a) Parties or their authorized representatives may secure a duplicate of the recording of testimony made at a hearing. To request a duplicate, the party or authorized representative shall:

1. Contact the Kentucky Unemployment Insurance Commission at the address listed on the decision; and
2. Include with the request a CD-R, CD-RW, or USB flash drive, with the appropriately stamped return envelope.

(b) There shall not be a charge for this service, if the party included with the request a CD-R, CD-RW, or USB flash drive and appropriately stamped return envelope.

(7) Retention and destruction of recordings. Ninety (90) days after the administrative remedies have been exhausted, the commission may delete the recording of the hearing under review unless the commission has previously been served with summons and complaint pursuant to KRS 341.450.

Section 5. Service of Process. The Branch Manager, Kentucky Unemployment Insurance Commission, Cabinet for Workforce Development, 275 East Main Street, Frankfort, Kentucky 40621, is hereby designated, by the Kentucky Unemployment Insurance Commission, as the person for receipt of Service of Process (Summons) in Civil Actions filed under the provisions of KRS 341.450(2).

(22 Ky.R. 466; eff. 11-6-1995; 33 Ky.R. 2179; 3182; eff. 5-4-2007; 35 Ky.R. 641; 1463; eff. 1-5-2009.)