



Ohio Revised Code Section 4141.281 Appeal to director.

Effective: December 23, 2003

Legislation: Senate Bill 92 - 125th General Assembly

APPEALS

(A) APPEAL FILED

Any party notified of a determination of benefit rights or a claim for benefits determination may appeal within twenty-one calendar days after the written determination was sent to the party or within an extended period as provided under division (D)(9) of this section.

(B) REDETERMINATION

Within twenty-one days after receipt of the appeal, the director of job and family services shall issue a redetermination or transfer the appeal to the unemployment compensation review commission. A redetermination under this section is appealable in the same manner as an initial determination by the director.

(C) REVIEW COMMISSION

(1) JURISDICTION

The commission shall provide an opportunity for a fair hearing to the interested parties of appeals over which the commission has jurisdiction. The commission has jurisdiction over an appeal on transfer or on direct appeal to the commission. If the commission concludes that a pending appeal does not warrant a hearing, the commission may remand the appeal to the director for redetermination. The commission retains jurisdiction until the appeal is remanded to the director or a final decision is issued and appealed to court, or the time to request a review or to appeal a decision of a hearing officer or the commission is expired.

(2) CONDUCT OF HEARINGS



Hearings before the commission are held at the hearing officer level and the review level. Unless otherwise provided in this chapter, initial hearings involving claims for compensation and other unemployment compensation issues are conducted at the hearing officer level by hearing officers appointed by the commission. Hearings at the review level are conducted by hearing officers appointed by the commission, by members of the commission acting either individually or collectively, and by members of the commission and hearing officers acting jointly. In all hearings conducted at the review level, the commission shall designate the hearing officer or officers who are to conduct the hearing. When the term "hearing officer" is used in reference to hearings conducted at the review level, the term includes members of the commission. All decisions issued at the review level are issued by the commission.

Provisions contained in the remainder of this paragraph apply to hearings at both the hearing officer level and the review level. The principles of due process in administrative hearings shall be applied to all hearings conducted under the authority of the commission. In conducting hearings, all hearing officers shall control the conduct of the hearing, exclude irrelevant or cumulative evidence, and give weight to the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of serious affairs. Hearing officers have an affirmative duty to question parties and witnesses in order to ascertain the relevant facts and to fully and fairly develop the record. Hearing officers are not bound by common law or statutory rules of evidence or by technical or formal rules of procedure. No person shall impose upon the claimant or the employer any burden of proof as is required in a court of law. The proceedings at hearings shall be recorded by mechanical means or otherwise as may be prescribed by the commission. In the absence of further proceedings, the record need not be transcribed. After considering all of the evidence, a hearing officer shall issue a written decision that sets forth the facts as the hearing officer finds them to be, cites the applicable law, and gives the reasoning for the decision.

(3) HEARING OFFICER LEVEL

When an appeal is transferred to the commission by the director, the commission shall notify all interested parties of the time and place of the hearing and assign the appeal for a hearing by a hearing officer. The hearings shall be de novo, except that the director's file pertaining to a case shall be included in the record to be considered.



Following a hearing, the hearing officer shall affirm, modify, or reverse the determination of the director in the manner that appears just and proper. The hearing officer's written decision shall be sent to all interested parties. The decision shall state the right of an interested party to request a review by the commission.

A request for review shall be filed within twenty-one days after the decision was sent to the party, or within an extended period as provided under division (D)(9) of this section. The hearing officer's decision shall become final unless a request for review is filed and allowed or the commission removes the appeal to itself within twenty-one days after the hearing officer's decision is sent.

(4) REVIEW LEVEL

At the review level, the commission may affirm, modify, or reverse previous determinations by the director or at the hearing officer level. At the review level, the commission may affirm, modify, or reverse a hearing officer's decision or remand the decision to the hearing officer level for further hearing. The commission shall consider an appeal at the review level under the following circumstances: when an appeal is required to be heard initially at the review level under this chapter; when the commission on its own motion removes an appeal to itself within twenty-one days after the hearing officer's decision is sent; when the assigned hearing officer refers an appeal to the commission before the hearing officer's decision is sent; or when an interested party files a request for review with the commission within twenty-one days after the hearing officer's decision is sent.

(5) COMMISSION EXAMINATION

The commission shall consider a request for review by an interested party, including the reasons for the request. The commission may adopt rules prescribing the methods for requesting a review. The commission may allow or disallow the request for review. The disallowance of a request for review constitutes a final decision by the commission.

(6) REVIEW PROCEDURE

If the commission allows a request for review, the commission shall notify all interested parties of



that fact and provide a reasonable period of time, as the commission defines by rule, in which interested parties may file a response. After that period of time, the commission, based on the record before it, may do one of the following: affirm the decision of the hearing officer; provide for the appeal to be heard or reheard at the hearing officer or review level; provide for the appeal to be heard at the review level as a potential precedential decision; or provide for the decision to be rewritten without further hearing at the review level. When a further hearing is provided or the decision is rewritten, the commission may affirm, modify, or reverse the previous decision.

(7) NOTICES

The commission shall send written notice to all interested parties when it orders an appeal to be heard or reheard. The notice shall include the reasons for the hearing or rehearing.

(8) PRECEDENTIAL

An appeal the commission identifies as potentially precedential shall be heard at the review level. In the notice for that type of hearing, the commission shall notify the director, all interested parties, and any other parties, as the commission determines appropriate, that the appeal is designated as potentially precedential. After the hearing, parties shall be given the opportunity to submit briefs on the issue or issues involved. The commission may designate a decision as precedential after issuing the decision or at any point in the appeal process, even if the commission does not initially identify the appeal as potentially precedential.

(9) MASS APPEALS

When the commission determines that it has five appeals pending that have common facts or common issues, the commission may transfer the appeals to the review level on its own motion to be heard as a mass appeal, including appeals from claimants separated due to a labor dispute, on the condition that there are fewer than twenty-five claimants involved.

To facilitate a mass hearing, the commission may allow an authorized agent to accept notice of hearing on behalf of claimants. An authorized agent may waive this notice of hearing and also the sending of decisions to individual claimants represented by the agent.



(D) SPECIAL PROVISIONS

(1) TIMELINESS OF APPEALS

The date of the mailing provided by the director or the commission is sufficient evidence upon which to conclude that a determination, redetermination, or decision was sent to the party on that date.

Appeals may be filed with the director, commission, with an employee of another state or federal agency charged with the duty of accepting claims, or with the unemployment insurance commission of Canada. Any timely written notice by an interested party indicating a desire to appeal shall be accepted.

The director, commission, or authorized agent must receive the appeal within the specified appeal period in order for the appeal to be deemed timely filed, except that: if the United States postal service is used as the means of delivery, the enclosing envelope must have a postmark date or postal meter postmark that is on or before the last day of the specified appeal period; and where the postmark is illegible or missing, the appeal is timely filed if received not later than the end of the fifth calendar day following the last day of the specified appeal period.

The director and the commission may adopt rules pertaining to alternate methods of filing appeals under this section.

(2) WAIVER

Interested parties may waive, in writing, a hearing at either the hearing officer or review level. If the parties waive a hearing, the hearing officer shall issue a decision based on the evidence of record.

(3) TELEPHONE HEARINGS

Hearing officers may conduct hearings at either the hearing officer or review level in person or by telephone. The commission shall adopt rules that designate the circumstances under which hearing officers may conduct a hearing by telephone or grant a party to the hearing the opportunity to object to a hearing by telephone. An interested party whose hearing would be by telephone may elect to



have an in-person hearing, provided that the party agrees to have the hearing at the time and place the commission determines pursuant to rule.

(4) EVENING HEARINGS

Where a party requests that a hearing at either the hearing officer or review level be scheduled in the evening because the party is employed during the day, the commission shall schedule the hearing during hours that the party is not employed. If a conflict concerning a request for an evening hearing and an in-person hearing arises, the commission shall schedule the hearing by telephone during evening hours.

(5) NO APPEARANCE -- APPELLANT

For hearings at either the hearing officer or review level, if the appealing party fails to appear at the hearing, the hearing officer shall dismiss the appeal. The commission shall vacate the dismissal upon a showing that written notice of the hearing was not sent to that party's last known address, or good cause for the appellant's failure to appear is shown to the commission within fourteen days after the hearing date.

If the commission finds that the appealing party's reason for failing to appear does not constitute good cause for failing to appear, the commission shall send written notice of that finding, and the appealing party may request a hearing to present testimony on the issue of good cause for failing to appear. The appealing party shall file a request for a hearing on the issue of good cause for failing to appear within ten days after the commission sends written notice indicating a finding of no good cause for failing to appear.

(6) NO APPEARANCE -- APPELLEE

For hearings at either the hearing officer or review level, if the appellee fails to appear at the hearing, the hearing officer shall proceed with the hearing and shall issue a decision based on the evidence of record. The commission shall vacate the decision upon a showing that written notice of the hearing was not sent to the appellee's last known address, or good cause for the appellee's failure to appear is shown to the commission within fourteen days after the hearing date.



(7) AGENT

Any appeal or request for review may be executed on behalf of any party or any group of claimants by an agent.

(8) COLLATERAL ESTOPPEL

No finding of fact or law, decision, or order of the director, hearing officer, the commission, or a reviewing court under this section or section 4141.28 of the Revised Code shall be given collateral estoppel or res judicata effect in any separate or subsequent judicial, administrative, or arbitration proceeding, other than a proceeding arising under this chapter.

(9) EXTENSION OF APPEAL PERIODS

The time for filing an appeal or a request for review under this section or a court appeal under section 4141.282 of the Revised Code shall be extended in the manner described in the following four sentences. When the last day of an appeal period is a Saturday, Sunday, or legal holiday, the appeal period is extended to the next work day after the Saturday, Sunday, or legal holiday. When an interested party provides certified medical evidence stating that the interested party's physical condition or mental capacity prevented the interested party from filing an appeal or request for review under this section within the appropriate twenty-one-day period, the appeal period is extended to twenty-one days after the end of the physical or mental condition, and the appeal or request for review is considered timely filed if filed within that extended period. When an interested party provides evidence, which evidence may consist of testimony from the interested party, that is sufficient to establish that the party did not actually receive the determination or decision within the applicable appeal period under this section, and the director or the commission finds that the interested party did not actually receive the determination or decision within the applicable appeal period, then the appeal period is extended to twenty-one days after the interested party actually receives the determination or decision. When an interested party provides evidence, which evidence may consist of testimony from the interested party, that is sufficient to establish that the party did not actually receive a decision within the thirty-day appeal period provided in section 4141.282 of the Revised Code, and a court of common pleas finds that the interested party did not actually receive



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the decision within that thirty-day appeal period, then the appeal period is extended to thirty days after the interested party actually receives the decision.