

DEPARTMENT OF LABOR

DIVISION OF UNEMPLOYMENT INSURANCE

Statutory Authority: 19 Delaware Code, Section 3122 and 29 Delaware Code, Section 10119(4)
(19 Del.C. §3122 & 29 Del.C. §10119(4))
19 DE Admin. Code 1201

EMERGENCY

ORDER

1201 Unemployment Insurance Appeal Board Regulations

EMERGENCY REGULATION AMENDING SECTION 4.2 OF THE UNEMPLOYMENT INSURANCE APPEAL BOARD REGULATIONS RELATING TO HEARINGS AND IN PERSON APPEARANCE REQUIREMENTS

WHEREAS, The Centers for Disease Control and Prevention has determined that a novel coronavirus ("COVID-19") presents a serious public health threat.

WHEREAS, the Delaware Department of Health & Social Services' Division of Public Health has determined that it is vital for the State of Delaware to prepare for the possible community transmission of COVID-19 and take steps to avoid the transmission of the virus, which may include avoiding public gatherings.

WHEREAS, on March 12, 2020, Governor Carney declared a State of Emergency in Delaware, effective as of Friday, March 13, 2020 at 8:00 a.m. E.S.T., which shall continue until terminated as provided under state law.

WHEREAS, on March 13, 2020, the President of the United States of America declared a National State of Emergency due to the public health threat caused by COVID-19.

WHEREAS, the Board regularly conducts hearings involving the attendance of parties, witnesses, attorneys, Board staff, and other interested persons.

WHEREAS, in the interest of protecting the foregoing individuals and the public, the Board finds that adoption of a regulation temporarily amending the personal appearance requirement for Board hearings set forth in Regulation 4.2 must occur on an emergency basis because the Board has determined that COVID-19 presents an imminent peril to the public health, safety or welfare of the public; and

WHEREAS, a copy of this Order will be submitted to the Registrar for publication in the next issue of the *Delaware Register of Regulations*.

NOW, THEREFORE, IT IS ORDERED this 18th day of March, 2020:

1. Section 4.2 of the Board Regulations entitled "Presence of Parties Required" is amended as follows:

a. Following the existing Regulation 4.2, insert a new Regulation 4.2.1 as follows:

4.2.1 The Board will consider conducting hearings telephonically, when it believes it would be practicable and efficient to do so and will promptly consider any written request by a party to change a hearing from being held in-person to a telephonic hearing or absent any written request by a party, the Board may, on its own initiative, change a hearing from being in-person to a telephonic hearing when it believes it would be practicable and efficient to do so.

2. In accordance with the provisions of 29 Del.C. §10119(4), the Board will receive, consider, and respond to petitions by any interested person for the reconsideration or revision of this Emergency Order.

3. In accordance with the provisions of 29 Del.C. §10119(3), this Emergency Order shall be effective for 120 days from the date of execution unless withdrawn earlier by the Board. At the end of 120 days, the Board may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 Del.C. §10119(3).

IT IS SO ORDERED this 18th day of March, 2020.

UNEMPLOYMENT INSURANCE APPEAL BOARD MEMBERS:

Elmer L. Newlin, Chairman

Sarah L. Buttner

Vance G. Daniels, Sr.

Drew A. Dorak

Beverly G. Bell

1201 Unemployment Insurance Appeal Board Regulations

1.0 Definitions

As used in these Rules and Regulations, the following definitions shall apply:

“**Board**” shall mean the Unemployment Insurance Appeal Board.

“**Chairman**” shall mean the Chairman of the Board.

“**Hearing Officer**” shall mean the Appeals Referee or his or her designate who heard the initial appeal.

“**Hearsay Evidence**” shall be such evidence so designated by the Delaware Rules of Evidence (D.R.E.).

“**Relevant Evidence**” shall mean evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without this evidence, as set forth in D.R.E. 401.

6 DE Reg. 887 (01/01/03)

2.0 Location of Unemployment Insurance Appeal Board

- 2.1 All correspondence or other papers or documents filed with the Board shall be filed, either by mail or by hand delivery, at the following address: Unemployment Insurance Appeal Board, Department of Labor, 4425 North Market Street, Wilmington, DE 19802. The Board phone number is (302) 761-8370 and the Board's fax number is (302) 761-6635.
- 2.2 Notices of Appeal to the Board may be filed, by mail or personal delivery, at any local Unemployment Office or at the Board Office listed at Rule 2.1. All notices of Appeal must be in writing.

6 DE Reg. 887 (01/01/03)

3.0 Commencement

A hearing before the Board may be initiated by:

- 3.1 Either party to the action heard by the Hearing Officer upon filing a timely Notice of Appeal with the Board;
- 3.2 A party whose appeal was dismissed by the Hearing Officer for failure of that party to appear at the scheduled hearing before the Hearing Officer, upon filing of a timely Notice of Appeal with the Board, in which case the Board may, at its sole discretion, remand the case to the Hearing Officer for a prompt hearing to make a full and complete record; or
- 3.3 The Board *sua sponte* with notice to the parties below or their counsel.

6 DE Reg. 887 (01/01/03)

4.0 Hearings

- 4.1 Purpose. The purpose of a hearing before the Board is to examine the factual and legal bases for the decision rendered by the Hearing Officer. The parties shall not re-litigate the case presented to the Referee, but may present additional evidence. Both the referee's record and any new evidence presented to the Board shall be considered by the Board in making its decision.
- 4.2 Presence of parties required. All parties to the appeal shall be present at the Board's hearing. Failure to appear within 10 minutes of the time indicated on the Notice may result in the Board hearing the appeal in absence of the delinquent party or, if the delinquent party is the appellant, dismissal of the appeal.
 - 4.2.1 The Board will consider conducting hearings telephonically, when it believes it would be practicable and efficient to do so and will promptly consider any written request by a party to change a hearing from being held in-person to a telephonic hearing or absent any written request by a party, the Board may, on its own initiative, change a hearing from being in-person to a telephonic hearing when it believes it would be practicable and efficient to do so.
- 4.3 Representation.
 - 4.3.1 At any hearing, a party may appear *pro se* or be represented by an attorney-at-law duly admitted to practice law in the State of Delaware. A corporation or other artificial entity desiring legal representation must be represented by an attorney-at-law duly admitted to practice law in the State of Delaware.
 - 4.3.2 The Board or its attorney may examine any witnesses, and move the admissions of documents and things into evidence.
- 4.4 Continuances and Postponements.
 - 4.4.1 Applications for a continuance or postponement of any hearing shall be made in writing to the Board office no later than 6 days prior to the hearing. The request shall state the reasons for which the continuance or postponement is requested. The grant or denial of any request for continuance or postponement is within the discretion of the Board Chairman or his or her designee.

- 4.4.2 Applications for any continuance or postponement of any hearing made less than 6 days prior to the hearing shall set forth with specificity the reason(s) for the continuance or postponement, and shall typically be granted only for reasons of unanticipated emergencies.
- 4.4.3 An appealing party may request to withdraw its appeal at any time prior to hearing. All requests for withdrawal must be made in writing.
- 4.5 Length of hearing. Hearings are scheduled to last 20 minutes from the time the presiding member calls the case, except that the Board may extend the length of the hearing at its discretion.
- 4.6 Record. A record shall be made of all hearings before the Board. The record may be made either by a stenographic record or by audio recording. The record does not need to be transcribed unless and until an appeal is taken to Superior Court from the Board's decision.
- 4.7 Evidence.
 - 4.7.1 The Board follows the Delaware Rules of Evidence. The Board may admit and consider hearsay evidence, however, the Board shall not base its decision solely on hearsay or other evidence not admissible under the Rules of Evidence.
 - 4.7.2 The Board may consider any relevant evidence relating to any issue raised below, whether or not that issue was decided by the Hearing Officer.
 - 4.7.3 The admissibility of evidence and determinations of the weight to be given evidence and the credibility of witnesses shall be within the sound discretion of the Board.
 - 4.7.4 The Board shall not receive into evidence any new testimony offered by means of a telephone or other electronic or electromagnetic device, however the Board may review testimony contained within the record of the proceedings below that was offered by means of a telephone or other electronic or electromagnetic device.
- 4.8 Subpoenas.
 - 4.8.1 A party may request subpoenas to compel a witness or witnesses to appear at a hearing or to compel the production of documents at or prior to a hearing. Such a request shall be in writing, be received by the Board at least 7 days prior to the hearing, and state the full name and address of the person(s) to be subpoenaed and a detailed description of the documents to be produced. The issuance of such subpoena(s) shall be at the sole discretion of the Board and its attorney.
 - 4.8.2 The Board *sua sponte* may issue subpoenas to compel witnesses to appear at a hearing or documents to be produced at or prior to a hearing.
- 4.9 Exhibits. Any party offering any document into evidence at a hearing shall provide at least 4 copies of such document at the time of the hearing.
- 4.10 Written Submissions. The Board or its attorney may at their discretion request written submissions from the parties prior to or following the hearing.

6 DE Reg. 887 (01/01/03)
21 DE Reg. 496 (12/01/17)

5.0 Remand

The Board may remand any case to the Hearing Officer at any time and for any purpose at its sole discretion.

6 DE Reg. 887 (01/01/03)

6.0 Decisions

- 6.1 The Board shall render its decision promptly, usually within 14 days after the hearing.
- 6.2 The Board may affirm, modify, or reverse, in whole or in part, the decision of the Appeals Referee.
- 6.3 The Board may *sua sponte* affirm, modify or set aside any decision of an appeal tribunal on the basis of evidence previously submitted, without further hearing, or direct the taking of additional evidence or may permit any of the parties to the decision to initiate further appeal before it.
- 6.4 Final decisions shall be accompanied by a notice of the right to appeal the Board's decision to Superior Court pursuant to 19 Del.C. §3323.

6 DE Reg. 887 (01/01/03)

7.0 Rehearing

At any time subsequent to a Board decision but prior to the Board's decision becoming final, any party to the appeal may request by motion, with notice to all parties, a rehearing before the Board. The motion shall set forth briefly and distinctly the grounds for the motion. The Board shall promptly consider the motion for

reconsideration. A copy of the Board's decision on the motion for rehearing shall be mailed to all parties or their counsel if represented by an attorney.

- 7.1 The grant or denial of a motion for rehearing is solely within the discretion of the Board.
- 7.2 The Board shall not consider any motion for rehearing filed after the Board's decision has become final.
- 7.3 The Board shall not consider any motion for rehearing of the Board's denial of a prior motion for rehearing.

6 DE Reg. 887 (01/01/03)

21 DE Reg. 496 (12/01/17)

23 DE Reg. 806 (04/01/20) (Emer.)