

DEPARTMENT OF LABOR

DIVISION OF UNEMPLOYMENT INSURANCE

Statutory Authority: 19 Delaware Code, Section 3122 and 29 Delaware Code, Section 10113(b)(2)
(19 Del.C. §3122 & 29 Del.C. §10113(b)(2))
19 DE Admin. Code 1201

FINAL

ORDER

1201 Unemployment Insurance Appeal Board Regulations

Pursuant to 29 Del. C. § 10118 and 19 Del. C. § 3122, the Unemployment Insurance Appeal Board ("Board") issues this Order adopting the below amendment to the Board's Regulations. Specifically, pursuant to 29 Del. C. § 10113(b)(2), regulation 4.7.4 may be changed without prior publication in order to codify existing agency practice and procedure during the ongoing State of Emergency declared by Governor Carney for the State of Delaware as a result of the serious public health threat from the novel coronavirus ("COVID-19").

SUMMARY OF THE EVIDENCE

1. Regulation 4.7.4 states "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."

2. In order to codify the practice and procedure used by the Board during the ongoing State of Emergency due to COVID-19, the Board amends Regulation 4.7.4 to add subsection 4.7.4 which states as follows (additions are underlined, removals are stricken through):

4. Evidence.

"4.7.4 The Board ~~shall not~~ may receive into evidence any new testimony or document offered by means of a telephone or other electronic or electromagnetic device, ~~however~~ and 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."

The effective date of this Order will be ten (10) days from its publication in the *Delaware Register of Regulations* on February 1, 2021.

IT IS SO ORDERED this 13th day of January, 2021.

UNEMPLOYMENT INSURANCE APPEAL BOARD MEMBERS:

Elmer L. Newlin, Chairman

Vance G. Daniels

Beverly G. Bell

Drew A. Dorak

Sarah Buttner

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.

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 may 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. 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.
- 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~~ may receive into evidence any new testimony or document offered by means of a telephone or other electronic or electromagnetic device, ~~however~~ and 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 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)

24 DE Reg. 286 (09/01/20)

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 to 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)

24 DE Reg. 286 (09/01/20)

24 DE Reg. 800 (02/01/21) (Final)