

# QUESTIONS AND ANSWERS ABOUT YOUR UNEMPLOYMENT INSURANCE BENEFITS HEARING

## Introduction

This pamphlet will answer some basic questions about your unemployment benefits hearing. It explains how to prepare for the hearing and your rights at the hearing itself.

## What is a Hearing?

A hearing is an informal trial held before an Administrative Law Judge in a hearing room. Based on the evidence presented at the hearing the Judge will decide whether you are entitled to unemployment insurance benefits. At the hearing, you, your employer and any witnesses for either side may testify. The testimony will be recorded. Either side can also present papers or other physical evidence.

## Who is the Administrative Law Judge?

The hearing is conducted by an Administrative Law Judge, also called an ALJ. The ALJ is employed by the UI Appeal Board (Department of Labor) to decide whether or not the decision made at the local office was correct or in error. The judge's job is to insure that all parties have a fair chance to be heard and get a fair and impartial decision.

## What Will the Hearing be About?

If you were denied benefits, the local unemployment insurance office should have mailed you a "Notice of Determination" giving the reason the local office denied you benefits. If you disagree with this decision, you may request a hearing. The hearing is to find out whether the local office was correct.

If your employer requested a hearing after you were granted benefits, the hearing is to find out whether your employer's objection is correct.

The judge can decide to consider questions about your case other than those in the Notice of Determination or the employer's objections, but he or she must have a good reason for doing this and must tell you what that reason is. If you are not prepared to discuss a new question, you have a right to get more time to prepare for the hearing.

## Who Can Come to the Hearing?

- You.
- Your employer or their representative(s), which may include a lawyer.

- You can bring someone to help you. This person can be a lawyer, an authorized agent, union representative, or just a friend.
- You and your employer both have the right to bring witnesses.
- The Department of Labor may send a representative to defend the decision of the local office.

## What Happens at a Hearing?

Before the hearing begins the judge will look through your file. That file may include your original claim form, the summary of the interview you had at the local office, your employer's statements, and the local office's decision.

The judge will begin the hearing by identifying all the parties to the hearing and then telling everyone what the hearing is about. The judge may then ask questions of you, your employer and any witnesses either side may have. The judge may hear your employer's side of the story first. If either side has brought a lawyer or representative, the judge will allow the lawyer or representative to ask questions. At the end of the hearing both you and your employer can give closing statements summing up your arguments.

## Can I Ask Questions?

Yes. You have the right to ask questions of your witnesses, your employer, and your employer's witnesses. If you have trouble, you can ask the judge to help you.

Your employer or your employer's representative will have a chance to question you and your witnesses.

## What Should I Bring to the Hearing?

You should bring all the papers you have received from the Unemployment Insurance Division of the Department of Labor.

You should bring any papers or other evidence that will support your position, such as contracts, letters, pay stubs, arbitration decisions, collective bargaining agreements, employee handbooks or manuals, doctors' notes, and photographs. Ask the judge to accept these papers for the record of your hearing. In deciding your case the judge can consider only those papers or other pieces of evidence that have been identified at the hearing and accepted into the record after the other side has had an opportunity to look at them.

Your employer can also ask the judge to accept evidence and the judge sometimes will put papers from your file into the record. You have the right to look at any evidence before the judge accepts it for the record.

## Can I Examine My File Before the Hearing?

Yes. At any time before the hearing you may call the Administrative Law Judge Section to arrange to see your file.

## Can I Bring Witnesses?

Yes. you can bring any individual(s) who can tell the judge something that helps you support your position. You, your employer, and the judge will be able to question witnesses. Your employer may also bring witnesses, and you can question them.

## What if I can't get the Evidence or Witnesses I Need?

If there is a paper or other evidence which will help you prove your case, but which you can't get because the person who has it won't give it to you, ask the judge to force the person who has the evidence to bring it in. To do this the judge prepares a paper called a "Subpoena" (Sa-pee-na). If the judge grants your request, the judge will put off the hearing, so that the subpoena can be delivered.

In the same way, if an important witness can't or won't come to your hearing, ask the judge to force the witness to appear by issuing a subpoena. Again, this will cause the hearing to be adjourned.

If you don't need a judge's help to get a paper or witness, but you need time to get it, ask the judge to give you more time. The judge will only give you more time if you have a good reason for requesting it.

Your employer and the Department of Labor have the same rights to get evidence or witnesses.

## Can I Bring a Lawyer or Someone to Help Me?

Yes. You can bring a lawyer or anyone else to the hearing to help you. If you can't afford to hire a lawyer, you may be able to get one free through your local Legal Aid Society or Legal Services office. Only a lawyer or a registered agent can charge a fee to help you (and then only if you win). Anyone can help you who doesn't charge a fee.

Your employer can also bring a lawyer or agent.

**NEW YORK STATE  
DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION**

**QUESTIONS AND ANSWERS  
ABOUT YOUR UNEMPLOYMENT  
INSURANCE BENEFITS  
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**Can I Put Off the Hearing?**

If you have a good reason for a delay, ask the judge to put the hearing off to a later date. The judge will decide whether there is adequate reason for a delay. Some good reasons may be:

- 1) you have been called for jury duty;
- 2) you have not had time to meet with your lawyer or representative; or
- 3) you need more time to gather evidence.

If possible, ask for a delay ahead of time by writing to or calling on the Administrative Law Judge Section. If a delay is not granted in advance, you must go to your hearing to request a delay in person or to testify if a delay is not granted. If you can't go yourself, you may send a representative along with a signed explanation as to why you can't attend.

**What Happens if I Miss a Hearing?**

The judge will hold the hearing without you and will decide your case without hearing your side of the story.

If you miss a hearing for a good reason (for example, you had a medical emergency), apply to your local office to reopen your case, so that the judge can hear your side of the story. If the judge finds that you had a good reason, the judge will reopen the case.

**What Happens if Your Employer Misses a Hearing?**

If your employer misses the hearing, the judge will hold the hearing and will decide your case without hearing your employer's side of the story.

Your employer may also request a reopening if there is good and sufficient reason for missing the hearing.

If your employer is appealing a local office decision to give you benefits and your employer does not appear at the hearing, the case will automatically be decided in your favor.

**When Will I find out About the Judge's Decision?**

The decision will be mailed to you two to three weeks after the hearing. If you do not receive a decision in three weeks, go to your local office or phone the Administrative Law Judge Section where you had your hearing (the phone number is on the notice of hearing).

**What if I Disagree with the Judge's Decision?**

You have 20 days to appeal the judge's decision to the Unemployment Insurance Appeal Board by going to your local office and filling out a form. You may also request an appeal by sending a letter to the local office. You must have been at the hearing to request an appeal. If you did not appear at the hearing, you may request that your case be reopened. Your employer may also appeal.

**How Does an Appeal Work?**

The Appeal Board will tell you that you have a right to send a written statement to the Appeal Board why you think the judge's decision was wrong. You can get an attorney or someone else to help you prepare your statement. Your employer will also be allowed to file a statement.

You can review the transcript of your hearing before you write your statement. (The transcript is the written record of everything said at the hearing). To do this write to the Appeal Board after you receive a "Notice of Receipt of Appeal" and before your statement is due. Ask the Board to let you know when the transcript is ready and to give you two weeks from the time the transcript is ready to submit your statement.

If the Appeal Board finds that there was a problem with your hearing, it can send your case back to the judge for another hearing or it can decide to hold a hearing itself.

If the Appeal Board decides that the judge's decision was wrong, it can overturn the judge's decision.

**What if I Win But My Employer Appeals?**

Your employer (or the Department of Labor) may appeal a decision that is rendered in your favor. If the Appeal Board agrees with them, you will be required to repay your benefits. Therefore, you should submit a written statement in opposition to any appeal made by the employer or the Department of Labor. You have the same rights, that you would have if you had lost the hearing and brought an appeal yourself. For example, you may review the transcript and/or consult an attorney.

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Si le gustaría obtener una copia de este folleto en español, por favor póngase en contacto con su oficina local o la Sección de Jueces de Ley Administrativa (Administrative Law Judge Section) donde ocurrirá su audiencia.

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