

CHAPTER 20

BOARD OF REVIEW

Authority

N.J.S.A. 34:1A-3(e); 43:21-6(d), (e), and (f); 43:21-10; and 43:21-17.

Source and Effective Date

R.2010 d.044, effective January 14, 2010.
See: 41 N.J.R. 3196(a), 42 N.J.R. 588(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1.c(2), Chapter 20, Board of Review, expires on July 13, 2017. See: 49 N.J.R. 320(a).

Chapter Historical Note

Chapter 20, Board of Review, was filed and became effective prior to September 1, 1969.

Pursuant to Executive Order No. 66(1978), Chapter 20, Board of Review, was readopted as R.1989 d.473. See: 21 N.J.R. 1496(a), 21 N.J.R. 2797(a).

Subchapter 6, Telephone Hearings, was adopted as R.1989 d.474, effective September 5, 1989. See: 21 N.J.R. 1644(a), 21 N.J.R. 2798(a).

Pursuant to Executive Order No. 66(1978), Chapter 20, Board of Review, was readopted as R.1994 d.408, effective July 18, 1994. See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a). Subchapter 6, Telephone Hearings, was repealed by R.1994 d.408, effective August 1, 1994. See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

Appendix, Unemployment Benefit and State Plan Temporary Disability Cases, was adopted as R.1994 d.406, effective August 1, 1994. See: 26 N.J.R. 2174(a), 26 N.J.R. 3154(a).

Pursuant to Executive Order No. 66(1978), Chapter 20, Board of Review, was readopted as R.1999 d.250, effective July 12, 1999. See: 31 N.J.R. 1475(a), 31 N.J.R. 2221(a).

Chapter 20, Board of Review, was readopted as R.2004 d.324, effective July 23, 2004. See: 36 N.J.R. 2297(a), 36 N.J.R. 3883(a).

Chapter 20, Board of Review, was readopted as R.2010 d.044, effective January 14, 2010. See: Source and Effective Date. See, also, section annotations.

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 20, Board of Review, was scheduled to expire on January 14, 2017. See: 43 N.J.R. 1203(a).

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SUBCHAPTER 1. ORGANIZATION OF BOARD OF REVIEW

12:20-1.1 Membership

The Board of Review shall consist of three members appointed by the Assistant Commissioner who is responsible for the administration of the Unemployment Compensation Law and subject to the provisions of N.J.S.A., Title 11A, and the supplements and amendments thereto, from Department of Personnel eligible lists.

Amended by R.1989 d.473, effective September 5, 1989.
See: 21 N.J.R. 1496(a), 21 N.J.R. 2797(a).

Stylistic revisions.
Amended by R.1994 d.408, effective August 1, 1994.
See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

12:20-1.2 Officers

(a) The Board of Review shall elect one of its members as chairperson and one as vice-chairperson to serve at the pleasure of the Board.

(b) The Board of Review may appoint a secretary to serve at the pleasure of the Board.

Amended by R.1994 d.408, effective August 1, 1994.
See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

12:20-1.3 Duties

(a) It shall be the duty of the members of the Board of Review to act as a final appeals board in hearing and deciding cases of benefit disputes, including appeals from determinations with respect to demands for refunds of benefits under N.J.S.A. 43:21-16(d) of the Unemployment Compensation Law, to determine all matters of policy in the Board of Review, to supervise the work of appeal tribunals, and to issue rules and regulations governing the conduct of hearings and the presentation of appeals to the appeal tribunals and to the Board of Review.

(b) The chairperson of the Board of Review shall convoke and preside at all meetings of the Board of Review.

(c) The vice-chairperson shall perform the duties of the chairperson during any period of the latter's absence or incapacity.

(d) The executive secretary of the Board of Review shall keep a record of proceedings at meetings of the Board of Review and shall prepare minutes to record all actions of the Board at each meeting. Said minutes shall be presented to the Board of Review for approval at its next meeting.

(e) The executive secretary may, with the consent of the Board of Review, issue subpoenas and shall sign all orders and other official documents issued in the name of the Board of Review and shall certify its decisions. The executive secretary shall maintain the permanent file of the approved minutes of Board of Review meetings and shall be charged with the supervision of all administrative work of the Board of Review.

Amended by R.1989 d.473, effective September 5, 1989.
See: 21 N.J.R. 1496(a), 21 N.J.R. 2797(a).

Stylistic revisions.
Amended by R.1994 d.408, effective August 1, 1994.
See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

Case Notes

Claimant receiving full unemployment benefits while employed part-time must refund entire amount of benefits paid; Appeal Tribunal and Board of Review may have appellate authority to review or adjudicate only claim disputes and not the imposition of fines; remand to Appellate Division to consider propriety of fine imposed. *Malady v. Bd. of Review*, Div. of Unemployment Security, 76 N.J. 527, 388 A.2d 947 (1978) on remand 166 N.J.Super. 523, 400 A.2d 119.

12:20-1.4 Quorum

A quorum of the Board of Review shall consist of two members of the Board. No decision, determination, opinion or other official duty shall be rendered or taken by the Board of Review except with the approval of a majority thereof.

SUBCHAPTER 2. ORGANIZATION OF APPEAL TRIBUNALS

12:20-2.1 Membership

Appeal tribunals shall consist of a single member who shall be a salaried examiner appointed by the Director subject to the provisions of N.J.S.A., Title 11A, and the supplements and amendments thereto, from Department of Personnel lists.

Amended by R.1989 d.473, effective September 5, 1989.
See: 21 N.J.R. 1496(a), 21 N.J.R. 2797(a).

Deletion of (b) to conform to recent legislation.
Amended by R.1994 d.408, effective August 1, 1994.
See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

12:20-2.2 Duties

It shall be the duty of the appeal tribunals to hear and decide disputed benefit claims, including appeals from determinations with respect to demands for refunds of benefits under N.J.S.A. 43:21-16(d) of the Unemployment Compensation Law of New Jersey and determinations with respect to requests by employers for relief from benefit charges pursuant to N.J.A.C. 12:17-21.

Amended by R.1989 d.473, effective September 5, 1989.
See: 21 N.J.R. 1496(a), 21 N.J.R. 2797(a).

Stylistic revisions.
Amended by R.1994 d.408, effective August 1, 1994.
See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).
Amended by R.1999 d.250, effective August 2, 1999.
See: 31 N.J.R. 1475(a), 31 N.J.R. 2221(a).

Added "and determinations with respect to requests by employers for relief from benefit charges pursuant to N.J.A.C. 12:17-21" at the end.

Case Notes

Claimant receiving full unemployment benefits while employed part-time must refund entire amount of benefits paid; Appeal Tribunal and Board of Review may have appellate authority to review or adjudicate only claim disputes and not the imposition of fines; remand to Appellate Division to consider propriety of fine imposed. *Malady v. Bd. of Review*, Div. of Unemployment Security, 76 N.J. 527, 388 A.2d 947 (1978) on remand 166 N.J.Super. 523, 400 A.2d 119.

12:20-2.3 (Reserved)

Recodified by R.1989 d.473, effective September 5, 1989.
See: 21 N.J.R. 1496(a), 21 N.J.R. 2797(a).

Text on chairman at N.J.A.C. 12:20-2.3 repealed and replaced with text from N.J.A.C. 12:20-2.5, on disqualification of members of appeal tribunals and changes made to conform to recent legislation.
Repealed by R.1994 d.408, effective August 1, 1994.
See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

Section was "Disqualification of members of appeal tribunals."

12:20-2.4 (Reserved)

Repealed by R.1989 d.473, effective September 5, 1989.
See: 21 N.J.R. 1496(a), 21 N.J.R. 2797(a).

12:20-2.5 (Reserved)

Recodified by R.1989 d.473, effective September 5, 1989.
See: 21 N.J.R. 1496(a), 21 N.J.R. 2797(a).

SUBCHAPTER 3. APPEALS TO APPEAL TRIBUNALS

12:20-3.1 Presentation of appealed claims

(a) Any written statement, including a facsimile, electronic mail or other electronic transmission, filed within the time for appeals allowed by law, which sets forth the fact that a party to a determination made by the division is aggrieved thereby or dissatisfied therewith, shall be deemed to be an appeal.

(b) Every appeal shall set forth the reasons alleged for disputing the determination or decision appealed from. The appellant shall not be required to use technical forms or language in setting forth the said reasons.

(c) In computing any period of time the day of the act or event after which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a legal holiday.

(d) The date on which an appeal is filed is the date of the postmark, or in the event the postmark is missing, the date of receipt by an office or employee of the Department of Labor and Workforce Development authorized to accept appeals.

(e) In cases involving a large number of claimants, a blanket notice of appeal may be filed on behalf of, or with respect to, such claimants, listing their full names and social security numbers, and the date of filing of such notice will be accepted as the date of filing of the individual appeals thereunder, provided, however, no case will be scheduled for hearing until an individual appeal has been filed with the appeal tribunal. Following the filing of the blanket appeal, a reasonable time will be allowed for preparation of the individual appeals.

(f) Upon the scheduling of a hearing on an appeal, notices of hearing shall be mailed to the claimant and to the parties interested in the determination which is being appealed at least five days before the date of the hearings, specifying the place and time of the hearing.

(g) Notice of appeal filed in the local office shall be transmitted immediately to the appeal tribunal. If, after an appeal has been filed, it is found that the matter may be adjusted to the satisfaction of the parties without further hearing, a request for dismissal of the appeal will be entertained and acted upon by the tribunal to which the case is referred.

(h) An appeal shall be considered on its merits if it is filed within seven calendar days after delivery of the initial determination or within 10 calendar days after such notification was mailed to the appellant's last known address, with the exception of an appeal filed pursuant to N.J.S.A. 43:21-55.1, which shall be considered on its merits if it is filed within 20 calendar days after delivery of the initial determination or within 24 calendar days after such notification was mailed to the appellant's last known address. Delivery of notification of an initial determination means actual receipt of the determination by the claimant or any interested party to the appeal.

(i) A late appeal shall be considered on its merits if it is determined that the appeal was delayed for good cause. Good cause exists in circumstances where it is shown that:

1. The delay in filing the appeal was due to circumstances beyond the control of the appellant; or
2. The appellant delayed filing the appeal for circumstances which could not have been reasonably foreseen or prevented.

Amended by R.1989 d.473, effective September 5, 1989.
See: 21 N.J.R. 1496(a), 21 N.J.R. 2797(a).

Stylistic revisions.

Amended by R.1994 d.408, effective August 1, 1994.

See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

Amended by R.1999 d.250, effective August 2, 1999.

See: 31 N.J.R. 1475(a), 31 N.J.R. 2221(a).

In (d), substituted a reference to the Department of Labor for a reference to the Division of Employment Security; in (e), deleted "on the prescribed appeal form" following "appeal" in the first sentence; and rewrote (h).

Amended by R.2004 d.324, effective August 16, 2004.

See: 36 N.J.R. 2297(a), 36 N.J.R. 3883(a).

In (a), inserted "electric mail or other electronic transmission," following "facsimile".

Amended by R.2010 d.044, effective February 16, 2010.

See: 41 N.J.R. 3196(a), 42 N.J.R. 588(b).

In (d), inserted "and Workforce Development".

12:20-3.2 Appeal process

The appeal procedures for cases before the Appeal Tribunals are now to be found at N.J.A.C. 1:12 and are also appended to the end of this chapter.

Amended by R.1984 d.516, effective November 5, 1984.

See: 16 N.J.R. 2237(a), 16 N.J.R. 3046(a).

(a): added "or representatives".

Amended by R.1989 d.473, effective September 5, 1989.

See: 21 N.J.R. 1496(a), 21 N.J.R. 2797(a).

Stylistic revisions.

Amended by R.1994 d.408, effective August 1, 1994.

See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

Originally 12:20-3.2 was "Conduct of hearings."

Amended by R.1999 d.250, effective August 2, 1999.

See: 31 N.J.R. 1475(a), 31 N.J.R. 2221(a).

Case Notes

Claimant receiving full unemployment benefits while employed part-time must refund entire amount of benefits paid; Appeal Tribunal and Board of Review may have appellate authority to review or adjudicate only claim disputes and not the imposition of fines; remand to Appellate Division to consider propriety of fine imposed. *Malady v. Bd. of Review, Div. of Unemployment Security*, 76 N.J. 527, 388 A.2d 947 (1978) on remand 166 N.J.Super. 523, 400 A.2d 119.

12:20-3.3 (Reserved)

Amended by R.1989 d.473, effective September 5, 1989.

See: 21 N.J.R. 1496(a), 21 N.J.R. 2797(a).

Revisions to conform to recent legislation.

Repealed by R.1994 d.408, effective August 1, 1994.

See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

Section was "Adjournment of hearings."

12:20-3.4 (Reserved)

Amended by R.1989 d.473, effective September 5, 1989.

See: 21 N.J.R. 1496(a), 21 N.J.R. 2797(a).

Revised to conform to recent legislation.

Repealed by R.1994 d.408, effective August 1, 1994.

See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

Section was "Decisions of appeal tribunals."

SUBCHAPTER 4. APPEALS TO BOARD OF REVIEW

Cross References

Disability benefits cases under the state plan, appeals, rules of Board of review govern, see N.J.A.C. 12:18-3.9.

12:20-4.1 Presentation of appeals

(a) Notice of appeal shall be filed within 10 calendar days after the date of notification or mailing of the decision which is being appealed. Any written statement, including a facsimile, electronic mail or other electronic transmission, filed within the time for appeals allowed by law, which sets forth the fact that a party to a decision made by an appeal tribunal is aggrieved thereby or dissatisfied therewith, shall be deemed to be an appeal. A copy of the Appeal Tribunal decision being appealed shall be included whenever possible.

(b) In computing any period of time the day of the act or event after which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday.

(c) The date on which an appeal is filed is the date of the postmark, or in the event that the postmark is missing, the date of receipt by an office or employee of the Department of Labor and Workforce Development authorized to accept appeals.

(d) A party appealing from a decision of an appeal tribunal may also file at the office where the claim was filed or with the Board of Review a notice of appeal to the Board of Review, or at an office or with an employee authorized to accept such appeals, setting forth the information required thereby.

(e) Notice of appeal filed at an office authorized to accept such appeals shall be transmitted immediately to the Executive Secretary of the Board of Review. If, after an appeal has been filed, it is found that the matter may be adjusted to the satisfaction of the parties without further hearing, a request for dismissal of the appeal will be entertained and acted upon by the Board of Review.

(f) Receipt by any party of notice of hearing on an appeal shall be deemed to constitute notice that an appeal has been filed. Any party, other than the appellant, shall be supplied with a copy of the appeal if request is made therefor before the date of the scheduled hearing.

(g) An appeal shall be considered on its merits if it is filed within 10 days of notification or mailing. Notification of a decision means actual receipt of a decision by the claimant or any interested party to the appeal.

(h) A late appeal shall be considered on its merits if it is determined that the appeal was delayed for good cause. Good cause exists in circumstances where it is shown that:

1. The delay in filing the appeal was due to circumstances beyond the control of the appellant; or

2. The appellant delayed filing the appeal for circumstances which could not have been reasonably foreseen or prevented.

Amended by R.1989 d.473, effective September 5, 1989.

See: 21 N.J.R. 1496(a), 21 N.J.R. 2797(a).

Revised to conform to recent legislation.

Recodified from 12:20-4.3 by R.1994 d.408, effective August 1, 1994.

See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

Originally 12:20-4.1 was "Conduct of hearings."

Amended by R.1999 d.250, effective August 2, 1999.

See: 31 N.J.R. 1475(a), 31 N.J.R. 2221(a).

In (c), substituted a reference to the Department of Labor for a reference to the Division of Employment Security; in (d), deleted "in triplicate" following "file", and inserted "or at an office or with an employee authorized to accept such appeals," following "Review"; and in (e), substituted "at an office authorized to accept such appeals" for "in the local office" following "filed".

Amended by R.2004 d.324, effective August 16, 2004.

See: 36 N.J.R. 2297(a), 36 N.J.R. 3883(a).

Rewrote (a); in (d), substituted "may also" for "shall" following "tribunal".

Amended by R.2010 d.044, effective February 16, 2010.

See: 41 N.J.R. 3196(a), 42 N.J.R. 588(b).

In (c), inserted "and Workforce Development".

Case Notes

If review of Appeal Tribunal's decision regarding unemployment compensation was not initiated within ten-day period, Tribunal decision became final. *Von Ouhl v. Board of Review*, 254 N.J.Super. 147, 603 A.2d 114 (A.D.1992), certification denied 130 N.J. 10, 611 A.2d 649.

Appeal from Appeal Tribunal's affirmance of one of three determinations by Deputy Director did not confer jurisdiction upon Board of Review to review Tribunal's reversal of another determination by Deputy Director. *Von Ouhl v. Board of Review*, 254 N.J.Super. 147, 603 A.2d 114 (A.D.1992), certification denied 130 N.J. 10, 611 A.2d 649.

Board of Review has ten-days to review decision of Appeal Tribunal. *Von Ouhl v. Board of Review*, 254 N.J.Super. 147, 603 A.2d 114 (A.D.1992), certification denied 130 N.J. 10, 611 A.2d 649.

12:20-4.2 Appeal process

The appeal procedures for cases before the Board of Review are found at N.J.A.C. 1:12 and are also appended to the end of this chapter.

New Rule, R.1994 d.408, effective August 1, 1994.

See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

Original 12:20-4.2 was "Adjournment."

Amended by R.1999 d.250, effective August 2, 1999.

See: 31 N.J.R. 1475(a), 31 N.J.R. 2221(a).

Case Notes

Review of Appeal Tribunal's decision on unemployment compensation must be completed within ten days or decision becomes final. *Von Ouhl v. Board of Review*, 254 N.J.Super. 147, 603 A.2d 114 (A.D.1992), certification denied 130 N.J. 10, 611 A.2d 649.

Appeal to Board of Review from Appeal Tribunal's affirmance of one of three determinations by Deputy Director did not confer jurisdiction upon Board to review Tribunal's reversal. *Von Ouhl v. Board of Review*, 254 N.J.Super. 147, 603 A.2d 114 (A.D.1992), certification denied 130 N.J. 10, 611 A.2d 649.

Review of Appeal Tribunal decision regarding unemployment compensation must occur within ten days or decision becomes final. *Von Ouhl v. Board of Review*, 254 N.J.Super. 147, 603 A.2d 114 (A.D.1992), certification denied 130 N.J. 10, 611 A.2d 649.

12:20-4.3 Temporary appointment to Board of Review

The Executive Secretary to the Board of Review shall serve in the place of any member of the Board who is temporarily absent or unavailable.

New Rule, R.1986 d.312, effective August 4, 1986.

See: 18 N.J.R. 544(b), 18 N.J.R. 1611(a).

Recodified 12:20-4.8 by R.1994 d.408, effective August 1, 1994.

See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

12:20-4.4 (Reserved)

Repealed by R.1994 d.408, effective August 1, 1994.

See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

Section was "Hearing of appeals."

12:20-4.5 (Reserved)

Amended by R.1989 d.473, effective September 5, 1989.

See: 21 N.J.R. 1496(a), 21 N.J.R. 2797(a).

Remand provisions added at (a).

Repealed by R.1994 d.408, effective August 1, 1994.

See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

Section was "Hearing appeals on own motion."

12:20-4.6 (Reserved)

Repealed by R.1994 d.408, effective August 1, 1994.
See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

Section was "Hearing appeals on cases removed from appeal tribunal to Board of Review."

12:20-4.7 (Reserved)

Repealed by R.1994 d.408, effective August 1, 1994.
See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

Section was "Decisions of Board of Review."

SUBCHAPTER 5. GENERAL RULES FOR BOTH APPEAL STAGES

12:20-5.1 Inspection of decisions

Copies of all decisions of the appeal tribunals and the Board of Review shall be kept on file at the offices of the Board of Review and of the appeal tribunals at Trenton. Such decisions shall be open for inspection but without in any manner revealing the names of any of the parties or witnesses involved.

Recodified from 12:20-5.5 by R.1994 d.408, effective August 1, 1994.
See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

12:20-5.2 (Reserved)

Repealed by R.1994 d.408, effective August 1, 1994.
See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

Section was "Witness fees."

12:20-5.3 (Reserved)

Repealed by R.1994 d.408, effective August 1, 1994.
See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

Section was "Orders for supplying information from division records."

12:20-5.4 (Reserved)

Amended by R.1978 d.116, effective March 31, 1978.
See: 10 N.J.R. 117(a), 10 N.J.R. 202(a).
Amended by R.1989 d.473, effective September 5, 1989.
See: 21 N.J.R. 1496(a), 21 N.J.R. 2797(a).

Representation provisions changed.

Repealed by R.1994 d.408, effective August 1, 1994.
See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

Section was "Representation."

SUBCHAPTER 6. (RESERVED)

APPENDIX

CHAPTER 12

UNEMPLOYMENT BENEFIT, STATE PLAN TEMPORARY DISABILITY AND STATE PLAN FAMILY LEAVE INSURANCE CASES

Authority

N.J.S.A. 34:1A-3(e), 43:21-6(d) through (f), 43:21-10, 43:21-17, 43:21-25 et seq., and 52:14F-5(e), (f) and (g).

Source and Effective Date

R.2011 d.204, effective July 8, 2011.
See: 42 N.J.R. 2170(a), 43 N.J.R. 1861(a).

Chapter Expiration Date

Chapter 12, Unemployment Benefit, State Plan Temporary Disability and State Plan Family Leave Insurance Cases, expires on July 8, 2018.

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SUBCHAPTER 1. HEARING APPLICABILITY

1:12-1.1 Applicability

The rules in this chapter shall apply to unemployment benefit cases, State plan temporary disability hearings, and State plan family leave insurance hearings, under N.J.S.A. 43:21-50(b), heard by the Board of Review or the appeal tribunals of the Department of Labor and Workforce Development pursuant to N.J.S.A. 43:21-1 (see also N.J.A.C. 12:20). Private plan temporary disability and private plan family leave insurance cases heard by hearing officers of the Department of Labor and Workforce Development pursuant to N.J.S.A. 43:21-50(a) shall be conducted in accordance with N.J.A.C. 1:12A.

SUBCHAPTER 2. DEFINITIONS

1:12-2.1 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Appeal tribunal” means the entity which conducts hearings and renders decisions concerning employer and employee appeals of decisions for unemployment, State plan temporary disability and State plan family leave insurance benefits made at the local office level. In so doing, the appeal tribunal acts as agency head.

“Appellate body” means either the appeal tribunal, Board of Review or hearing officer which is conducting the proceeding.

“Board of Review” means the entity which conducts appeals of unemployment benefit determinations and State plan temporary disability and State plan family leave insurance claim determinations made by an appeal tribunal. In so doing, the Board of Review acts as agency head.

SUBCHAPTERS 3 THROUGH 4. (RESERVED)

SUBCHAPTER 5. REPRESENTATION

1:12-5.1 Representation

(a) A party may represent himself or herself or may be represented by an attorney or a non-lawyer representative pursuant to R.1:21-1(f)(11). Representation by an attorney shall be at the party’s expense. Representation by a non-lawyer representative shall comply with N.J.A.C. 1:1-5.4.

(b) In any unemployment benefits proceeding and in any State plan temporary disability and State plan family leave insurance claim proceeding of an appeal before an appeal tribunal or the Board of Review, all fees for attorneys representing claimants shall be approved by the Board of Review after it receives submission of an authorization form and a copy of the applicable decision.

(c) The amount of fees approved for persons representing claimants shall be discretionary with the Board of Review. In determining the amount of fees, the Board of Review shall at least consider the following factors:

1. The amount of time spent on the case;
2. The complexity of the case;
3. The services performed as noted on the authorization form or any other documentation to the Board of Review; and
4. The results achieved (that is, favorable or unfavorable).

(d) The Board of Review or any appeal tribunal, in its discretion, may refuse to allow to appear before it any person who engages in misconduct at a hearing or who intentionally or repeatedly fails to observe the provisions of the Unemployment Compensation Law of New Jersey, the rules and regulations of either the Division of Unemployment Insurance or the Division of Temporary Disability Insurance, or the rules of the Board of Review.

SUBCHAPTERS 6 THROUGH 8. (RESERVED)

SUBCHAPTER 9. SCHEDULING

1:12-9.1 Notice of hearing

Written notices of the time and place of any hearing shall be mailed to the parties in interest at least five days before the date of hearing but a shorter notice may be given if not prejudicial to the parties.

1:12-9.2 Adjournments

(a) Adjournments shall be granted only in exceptional situations which could not have been reasonably foreseen or prevented.

(b) Requests for adjournment of hearings scheduled before the appeal tribunal shall be made to the appeal tribunal which shall use its best judgment as to when adjournments of hearings shall be granted in order to secure all facts that are necessary and to be fair to the parties.

(c) Applications and requests for adjournment of hearings scheduled before the Board of Review shall be made at least 24 hours before the date of the scheduled hearing and shall be granted at the discretion of the Board of Review.

(d) All parties to an adjournment shall be responsible for giving prompt notice to their witnesses as to the adjournment.

1:12-9.3 (Reserved)

SUBCHAPTER 10. DISCOVERY

1:12-10.1 Inspection of Division files

(a) In cases involving unemployment compensation benefit appeals and State plan temporary disability or State plan family leave insurance claim appeals, requests for the production or inspection of the records of either the Division of Unemployment Insurance or the Division of Temporary Disability Insurance shall be addressed to the Board of Review.

(b) A request for the production or inspection of the records of either the Division of Unemployment Insurance or the Division of Temporary Disability Insurance shall be in writing and shall clearly state the nature of the information required and the reason therefor.

(c) Orders for the production or inspection of the records of either the Division of Unemployment Insurance or the Division of Temporary Disability Insurance may be issued in any proceeding to the extent necessary for the proper presentation of the case.

(d) In all cases where an application to supply a party or his or her representative with information from the records of either the Division of Unemployment Insurance or the Division of Temporary Disability Insurance is granted, the party shall be furnished with a copy of such information.

(e) Individuals may be assessed reasonable administrative costs for the copying of records and any other costs for obtaining information from the Board of Review.

(f) Following an appeal to the Appellate Division and upon direction of the Attorney General's office, the transcript of any proceeding which has been sound recorded shall be provided to all parties by the Board. Any request by an employer shall be accompanied by a reasonable security deposit not to exceed either the estimated cost of the transcript as determined by the Board or \$300.00 for each day or fraction thereof of the proceeding, the deposit to be made payable to the Board. The Board shall bill the employer for any amount due for the preparation of the transcript and any hard copies or shall reimburse the employer for any overpayment.

(g) To obtain a copy of a sound recording of any proceeding, the requesting party must file a request with the executive secretary of the Board. Such a request is subject to

approval by the Board. The requesting party shall notify all other parties of such a request. The request shall be accompanied by a reasonable payment of costs in the amount of \$15.00 for the initial copy of the sound recording and \$10.00 for any subsequent copy.

(h) No claimant shall be charged any fee of any kind in any proceeding under the Unemployment Compensation Law by the Board of Review.

(i) No disclosure of information, obtained at any time from, and identifiable to, specific workers, employers or other persons for the proper administration of an appeal, shall be made directly or indirectly except as authorized by the Board of Review in accordance with N.J.A.C. 12:15-2.

SUBCHAPTER 11. SUBPOENAS

1:12-11.1 Subpoenas

Subpoenas to compel the attendance of witnesses and the production of records for any hearing on an appeal may be directed to be issued by a member of the Board of Review in cases appealed to the Board of Review, or by the appeal tribunal, in cases appealed to an appeal tribunal, only upon the showing of the necessity therefor by the party applying for the issuance for such subpoena.

1:12-11.2 Witness fees

(a) Witness fees at the rate of \$1.00 for each day of attendance upon a hearing in response to a subpoena ad testificandum and mileage at the rate of \$0.25 per mile from the residence of the witness to the place of hearing and return, shall be allowed and paid upon presentation of a voucher signed by the witness and properly certified by a member of the appellate body before whom the witness appeared.

(b) Witness fees at the rate of \$2.00 for each day of attendance upon a hearing in response to a subpoena duces tecum and mileage at the rate of \$0.25 per mile from the residence of the witness to the place of hearing and return, shall be allowed and paid upon the presentation of a voucher signed by the witness and properly certified by a member of the appellate body before whom the witness appeared.

SUBCHAPTERS 12 AND 13. (RESERVED)

SUBCHAPTER 14. CONDUCT OF CASES

1:12-14.1 Public hearings

Hearings shall, in the absence of a showing of sufficient cause for a closed hearing, be open to the public.

1:12-14.2 Conduct of hearing

(a) The proceedings shall be fair and impartial and shall be conducted in such manner as may be best suited to determine the parties' rights.

(b) The appellate body shall open the hearing by ascertaining and summarizing the issue or issues involved in the appeal. The parties, their attorneys or representatives may examine or cross-examine witnesses, inspect documents, and explain or rebut any evidence. An opportunity to present argument shall be afforded the parties, which argument shall be made part of the record. Where a party is not represented, the appellate body shall give every assistance that does not interfere with the impartial discharge of its official duties. The appellate body may examine each party or witness to such extent as it deems necessary. All oral testimony shall be under oath or affirmation and shall be recorded.

(c) The appellate body may take such additional evidence as it deems necessary; provided, that in case such further evidence is taken, the parties shall be given proper notice of the time and place of such further hearing.

(d) The appellate body, in its discretion, may refuse to allow to appear before it any person who engages in misconduct at a hearing or who intentionally or repeatedly fails to observe the provisions of the Unemployment Compensation Law of New Jersey or the rules and regulations of either the Division of Unemployment Insurance or the Division of Temporary Disability Insurance.

1:12-14.3 Appeals hearings

(a) All appeals to the Board of Review may be heard upon the evidence in the record made before the appeal tribunal, or the Board of Review may direct the taking of additional evidence before it.

(b) In the hearing of an appeal on the record, the Board of Review may limit the parties to oral argument or the filing of written argument, or both. If, in the discretion of the Board of Review, additional evidence is necessary to enable it to determine the appeal, the parties shall be notified by the Board of Review of the time and place such evidence will be taken. Any party to any proceeding in which testimony is taken may present such evidence as may be pertinent to the issue.

(c) The Board of Review, in its discretion, may remand any claim or any issue involved in a claim to an appeal tribunal for the taking of such additional evidence as the Board of Review may deem necessary. Such testimony shall be taken by the appeal tribunal in the manner prescribed for the conduct of hearings on appeals before appeal tribunals. Upon the completion of the taking of evidence by an appeal tribunal pursuant to the direction of the Board of Review, the claim or the issue involved in such claim shall be returned to the Board of Review for its decision upon the entire record, including the evidence before the appeal tribunal and such

additional evidence and such oral argument as the Board of Review may permit before it.

(d) The Board of Review, in its discretion, may remand any claim or any issue involved in a claim to an appeal tribunal for the taking of additional evidence and a decision or may remand for a new decision only.

1:12-14.4 Failure to appear

(a) If the appellant fails to appear for a hearing before an appeal tribunal, the appeal tribunal may proceed to make its decision on the record or may dismiss the appeal on the ground of nonappearance unless it appears that there is good cause for adjournment.

(b) If an appeal tribunal issued an order of dismissal for nonappearance of the appellant, the chief appeals examiner shall, upon application made by such appellant, within six months after the making of such order of dismissal, and for good cause shown, set aside the order of dismissal and shall reschedule such appeal for hearing in the usual manner. An application to reopen an appeal made more than six months after the making of such order of dismissal may be granted at the discretion of the chief appeals examiner.

1:12-14.5 Scheduling of hearings

(a) Hearings before the Board of Review or Appeal Tribunal may be conducted in-person or by telephone. A telephone hearing, which means a hearing at which any party, witness, representative or attorney appears via telephone, may be initiated by the Board of Review or the Appeal Tribunal or upon the request of any party with the consent of the Board of Review or the Appeal Tribunal. Both in-person and telephone hearings shall be subject to the rules governing hearings and appeals in this chapter.

(b) The Board of Review or Appeal Tribunal will schedule telephone hearings:

1. When it appears from the record that a party or necessary witness is located more than 50 miles from the location from which the Board of Review or Appeal Tribunal will conduct the hearing;
2. When a party or witness cannot appear in person because of a physical, medical or other compelling reason;
3. For good cause shown on a case-by-case basis; or
4. For the administrative expedience of the Board of Review or Appeal Tribunal.

(c) Any party to an appeal may request a telephone hearing by immediately contacting the Board of Review or Appeal Tribunal upon receipt of the notice of the scheduled in-person hearing with reasons for the request to have a telephone hearing. Prior to the hearing, the requesting party shall provide written notice to all other interested parties of the request for the telephone hearing.

(d) Any party may object to a telephone hearing. Objections shall be made immediately upon receipt of the notice or request for a telephone hearing and shall:

1. Be received by the Board of Review or Appeal Tribunal in advance of the hearing; and
2. Set forth the reasons supporting the objections.

(e) The Board of Review or Appeal Tribunal may deny a party's objection to a telephone hearing if the Board of Review or Appeal Tribunal determines:

1. That the objecting party's intent is to purposely inconvenience the other party or delay the proceeding;
2. That a party or witness is more than 50 miles away from the hearing site;
3. That a person is unable to appear in person because of physical, medical or other compelling reason; or
4. That good cause exists to order a telephone hearing notwithstanding the party's objection.

(f) The Board of Review or Appeal Tribunal may deny a party's objection to an in-person hearing when good cause exists to order an in-person hearing notwithstanding the party's objection.

(g) If the Board of Review or Appeal Tribunal accepts a party's objections, an appropriate hearing, either in-person or by telephone, shall be scheduled by the Board of Review or Appeal Tribunal.

(h) The Board of Review or Appeal Tribunal shall exercise its discretion in granting or denying such requests and immediately notify the parties of its decision.

1:12-14.6 Conduct of telephone hearing

(a) The Board of Review or appeal tribunal, at the inception of the hearing, shall advise all participants that the proceedings are being recorded.

(b) Any party who fails to appear at the scheduled telephone hearing shall meet the requirements of N.J.A.C. 1:12-18.4 before any reopening of the hearing shall be granted.

(c) The Board of Review or appeal tribunal shall permit the parties, attorneys or other representatives a reasonable opportunity to question any witness testifying via telephone for the purpose of verifying the identity of such witness.

(d) Any party that intends to offer documentary or physical evidence at the telephone hearing shall submit a copy of that evidence to the Board of Review or appeal tribunal and all other interested parties immediately upon receipt of notice of the scheduled telephone hearing. Also, the requesting party shall provide timely notice of this request to offer evidence to all other interested parties.

1. Any evidence not submitted as required in this subsection may be admitted at the discretion of the Board of Review or the appeal tribunal provided that such evidence is submitted to the Board of Review or appeal tribunal and all other parties within 24 hours of the telephone hearing.

2. The other parties shall have 24 hours from the time of receipt of the evidence to properly respond to its admission and use.

3. Upon review of the evidence, the Board of Review or the appeal tribunal shall determine if the telephone hearing shall be continued.

(e) When the Board of Review or the appeal tribunal determines that a crucial document exists which is essential to the determination of the appeal, it shall make every effort to provide such document to the parties prior to the scheduled telephone hearing. If the document cannot be provided prior to the telephone hearing, the hearing may be postponed. If a document is disputed during the hearing, a continuance shall be granted to allow all parties an opportunity to review the document in question.

1:12-14.7 Disqualification of members of appeal tribunals

(a) No member of an appeal tribunal shall participate in the hearing of any appeal in which the member has an interest.

(b) Challenges to the interest of any member of an appeal tribunal may be heard and decided by the chief appeals examiner of the appeal tribunal, or, in the chief appeals examiner's discretion, referred to the Board of Review.

1:12-14.8 Hearing appeals on own motion

(a) Within the legal time limit for appeal following a decision by an appeal tribunal and in the absence of the filing by any of the parties to the decision of the appeal tribunal of a notice of appeal, the Board of Review, on its own motion, may remove such decision to itself and may either decide the case on the record below or may remand the decision to the appeal tribunal or may schedule a hearing before the Board of Review or order the parties to appear before it for a hearing on the claim or any issue involved therein.

(b) Such hearings shall be held only after five days' prior notice to the parties to the decision of the appeal tribunal, and shall be heard in the manner prescribed for the conduct of hearings before the Board of Review.

1:12-14.9 Case transfer on own motion

The Board of Review may, on its own motion, remove to itself or transfer to another Appeal Tribunal any case pending before an appeal tribunal for hearing and decision.

SUBCHAPTER 15. EVIDENCE

1:12-15.1 General rules

(a) All exhibits admitted into evidence shall be properly identified, appropriately marked and retained as part of the record.

(b) Hearsay evidence shall be admissible and accorded whatever weight the examiner deems relevant, appropriate, and reasonable under the circumstances. Notwithstanding the admissibility of hearsay evidence, the decision as rendered must be supported by sufficiently substantial and legally competent evidence to provide assurance of reliability and to avoid the fact or appearance of arbitrariness.

1:12-15.2 Stipulations

The parties to an appeal, with the consent of the appellate body, may stipulate in writing the facts involved. The appellate body may decide the appeal on the basis of such stipulation, or, in its discretion, may set the appeal down for hearing and take such further evidence as it deems necessary to enable it to determine the appeal.

SUBCHAPTERS 16 AND 17. (RESERVED)

SUBCHAPTER 18. DECISIONS

1:12-18.1 Decisions of appeal tribunals

(a) Copies of all decisions concerning unemployment compensation benefits and State plan temporary disability or State plan family leave insurance claims and the reasons therefore shall be mailed to the claimant and to all other parties to the appeal and shall include or be accompanied by a notice specifying the appeal rights of the parties. The notice of appeal rights shall state clearly the place and manner for taking an appeal from the decision and the period within which an appeal may be taken.

(b) The decision shall be in the following form:

1. The first section shall indicate the party appealing, the determination appealed from, the date of the decision, and the date of the initiation of the appeal. The appearances shall be noted.

2. The second section shall be a recital of the facts upon which the decision is based and shall be entitled "Findings of Fact." It shall include among all the pertinent facts the date the claim was filed.

3. The third section shall be entitled "Opinion" and shall contain the reasons for the decision.

4. The fourth section shall contain the "Decision." This shall be followed by the signature of the examiner. Each decision shall also indicate the date of hearing and mailing.

(c) Every decision of an appeal tribunal shall, immediately upon issuance, be transmitted to the executive secretary of the Board of Review for consideration. The Board shall forthwith determine whether or not the decision shall be allowed to stand.

1:12-18.2 Decisions of Board of Review

(a) Following the conclusion of proceedings on an appeal, the Board of Review shall forthwith announce its decision with respect to the appeal. The decision shall be in writing and signed by at least a majority of the Board of Review. It shall set forth the findings of fact of the Board of Review with respect to the matters appealed, its opinion and decision. A quorum of the Board of Review must be present when any decision is voted.

(b) If a decision of the Board of Review is not unanimous, the decision of the majority shall control. The minority may file a dissent from such decision, which shall set forth the reasons why it fails to agree with the majority.

(c) Copies of all decisions concerning unemployment compensation benefits and State plan temporary disability or State plan family leave insurance claims shall be mailed by the Board of Review to the claimant and to all other parties to the appeal and shall include or be accompanied by a notice specifying the appeal rights of the parties. The notice of appeal rights shall state clearly the place and manner for taking an appeal from the decision and the period within which an appeal may be taken.

1:12-18.3 Correction of determination

On application duly made or on its own motion, the appellate body may revise a determination of facts and the order, for the purpose of correcting clerical or typographical errors.

1:12-18.4 Reopening Appeal Tribunal decisions

(a) In the absence of jurisdiction by the Board of Review, a party to a benefit claim may file a request for reopening of an Appeal Tribunal decision if:

1. The party's appeal to the Board of Review was dismissed as late without good cause;

2. The party did not appear at the Appeal Tribunal hearing for good cause shown;

3. The party is seeking to amend the Appeal Tribunal decision due to a mistake in law or computation thereby affecting the legal conclusion of the Appeal Tribunal; or

4. The party has new or additional evidence.

(b) Such request shall be submitted as promptly as possible, shall not act as a stay of proceedings in the case, and shall not suspend the payment of benefits. Additional time for such request may be granted where fraud, newly discovered evidence, or other good cause is shown.

(c) The Appeal Tribunal shall notify all interested parties of the request for reopening. The parties shall have 10 days to submit written arguments. After reviewing the matter, the Appeal Tribunal will schedule a hearing, issue an amended decision, or deny the request in an order explaining the reasons. All interested parties will be notified by the Appeal Tribunal of any subsequent decision or order which shall contain appeal rights to the Board of Review.

1:12-18.5 Reopening Board of Review decisions

(a) A party to a benefit claim may file a request for reopening of a Board of Review decision within 10 days after the day of mailing of such decision. The requesting party shall notify all other parties of such a request for reopening. Such request shall not act as a stay of proceedings in the case

and shall not suspend the payment of benefits. Failure of the Board of Review to act upon a request for reopening within 20 days of the date on which it is filed shall constitute a denial thereof as of the expiration of that period. Additional time may be granted where fraud, newly discovered evidence, or other good cause is shown.

(b) Any party, including the appellant whose appeal resulted in any affirmation of the appeal tribunal decision on the record made by the appeal tribunal, may apply for reopening of the Board's decision. If such application is granted all parties will be notified if a new hearing is scheduled.

Administrative change.
See: 31 N.J.R. 2624(a).
Administrative correction.
See: 40 N.J.R. 2477(a).
Administrative change.
See: 43 N.J.R. 1881(a).

Cross Reference

For full chapter history of and section annotations to text incorporated as N.J.A.C. 12:20 Appendix, see N.J.A.C. 1:12.