

CHAPTER 12**UNEMPLOYMENT BENEFIT AND STATE PLAN
TEMPORARY DISABILITY 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.2005 d.107, effective April 4, 2005.
See: 36 N.J.R. 3957(a), 37 N.J.R. 1015(b).

Chapter Expiration Date

Pursuant to Executive Order No. 1(2010), the chapter expiration date is extended from April 4, 2010 until the completion of the review of administrative regulations and rules by the Red Tape Review Group, and until such time as the extended regulation or rule is readopted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. See: 42 N.J.R. 2170(a).

Chapter Historical Note

Chapter 12, 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 12, Unemployment Benefit and State Plan Temporary Disability Cases, was readopted as R.1999 d.291, effective July 29, 1999. See: 31 N.J.R. 1550(a), 31 N.J.R. 2603(a). Chapter 12, Unemployment Benefit and State Plan Temporary Disability Cases, expired on January 25, 2005.

Chapter 12, Unemployment Benefit and State Plan Temporary Disability Cases, was adopted as new rules by R.2005 d.107, effective April 4, 2005. See: Source and Effective Date.

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SUBCHAPTER 1. HEARING APPLICABILITY**1:12-1.1 Applicability**

The rules in this chapter shall apply to unemployment benefit cases and State plan temporary disability 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 cases heard by hearing officers of the Department of Labor pursuant to N.J.S.A. 43:21-50(a) shall be conducted in accordance with N.J.A.C. 1:12A.

Administrative change.
See: 37 N.J.R. 1511(a).

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 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 claim determinations made by an appeal tribunal. In so doing, the Board of Review acts as agency head.

Amended by R.1999 d.291, effective September 7, 1999.
See: 31 N.J.R. 1550(a), 31 N.J.R. 2603(a).
Deleted “Division”.

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 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 the division, or the rules of the Board of Review.

Amended by R.2005 d.107, effective April 4, 2005.
See: 36 N.J.R. 3957(a), 37 N.J.R. 1015(b).
Rewrote the section.

SUBCHAPTERS 6 THROUGH 8. (RESERVED)

SUBCHAPTER 9. SCHEDULING

1:12-9.1 Notice of hearing

(a) Written notices of the time and place of any in-person or telephone 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.

(b) The notice of hearing shall contain at least the following information:

1. That the parties have a right to object to an in-person or telephone hearing, whichever is scheduled; and
2. Written instructions as to how the hearing shall be conducted.

Amended by R.2005 d.107, effective April 4, 2005.
See: 36 N.J.R. 3957(a), 37 N.J.R. 1015(b).
Rewrote the section.

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.

Recodified from N.J.A.C. 1:12-9.3 by R.2005 d.107, effective April 4, 2005.

See: 36 N.J.R. 3957(a), 37 N.J.R. 1015(b).
Former N.J.A.C. 1:12-9.2, Notice of telephone hearing, repealed.

1:12-9.3 (Reserved)

Recodified to N.J.A.C. 1:12-9.2 by R.2005 d.107, effective April 4, 2005.

See: 36 N.J.R. 3957(a), 37 N.J.R. 1015(b).
Section was “Adjournments”.

SUBCHAPTER 10. DISCOVERY

1:12-10.1 Inspection of Division files

(a) In cases involving unemployment compensation benefit appeals and State plan temporary disability 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.

Amended by R.1999 d.291, effective September 7, 1999.
See: 31 N.J.R. 1550(a), 31 N.J.R. 2603(a).

In (a) through (d), substituted references to the Division of Unemployment Insurance and the Division of Temporary Disability Insurance for references to the Division; and in (i), changed N.J.A.C. reference.

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 THROUGH 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.

Amended by R.1999 d.291, effective September 7, 1999.
See: 31 N.J.R. 1550(a), 31 N.J.R. 2603(a).

In (d), substituted a reference to the Division of Unemployment Insurance and the Division of Temporary Disability Insurance for a reference to the Division.

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.

Amended by R.1999 d.291, effective September 7, 1999.
See: 31 N.J.R. 1550(a), 31 N.J.R. 2603(a).

Inserted (b)4 and (f)4.

Amended by R.2005 d.107, effective April 4, 2005.
See: 36 N.J.R. 3957(a), 37 N.J.R. 1015(b).

Rewrote the section.

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.

Amended by R.1999 d.291, effective September 7, 1999.

See: 31 N.J.R. 1550(a), 31 N.J.R. 2603(a).

In (d), inserted a reference to all other interested parties in the introductory paragraph.

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.

Amended by R.2005 d.107, effective April 4, 2005.

See: 36 N.J.R. 3957(a), 37 N.J.R. 1015(b).

Rewrote the section.

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 THROUGH 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 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 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.

New Rule, R.2005 d.107, effective April 4, 2005.

See: 36 N.J.R. 3957(a), 37 N.J.R. 1015(b).

Former N.J.A.C. 1:12-18.4, Reopening Board of Review decisions, recodified to N.J.A.C. 1:12-18.5.

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.

Recodified from N.J.A.C. 1:12-18.4 by R.2005 d.107, effective April 4, 2005.

See: 36 N.J.R. 3957(a), 37 N.J.R. 1015(b).