

CHAPTER 20
BOARD OF REVIEW

Authority

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

Source and Effective Date

R.1994 d.408, effective July 18, 1994.
See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

Executive Order No. 66(1978) Expiration Date

Chapter 20, Board of Review, expires on July 18, 1999.

Chapter Historical Note

Chapter 20, Board of Review, was filed and became effective prior to September 1, 1969. Revisions became effective March 31, 1978 as R.1978 d.116. See: 10 N.J.R. 117(a), 10 N.J.R. 202(a). Revisions became effective November 5, 1984 as R.1984 d.516. See: 16 N.J.R. 2237(a), 16 N.J.R. 3046(a). Revisions became effective August 4, 1986 as R.1986 d.312. See: 18 N.J.R. 544(b), 18 N.J.R. 1611(a). Pursuant to Executive Order No. 66 (1978), Chapter 20 was readopted with amendments as R.1989 d.473. See: 21 N.J.R. 1496(a), 21 N.J.R. 2797(a). Chapter 20 was readopted with amendments as R.1994 d.408. Added Appendix by R.1994 d.406, effective August 1, 1994. See: 26 N.J.R. 2174(a), 26 N.J.R. 3154(a).

Subchapter 6, Telephone Hearings, was adopted by R.1989 d.474, effective September 5, 1989. See: 21 N.J.R. 1644(a), 21 N.J.R. 2798(a). Subchapter 6 was repealed by R.1994 d.408. See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

See section annotations for specific rulemaking activity.

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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.

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.*

12:20-2.3 (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, 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 Division of Employment Security 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 on the prescribed appeal form 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 days of delivery. 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).

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 at 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."

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 ten calendar days after the date of notification or mailing of the decision which is being appealed.

(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 Division of Employment Security authorized to accept appeals.

(d) A party appealing from a decision of an appeal tribunal shall file in triplicate at the office where the claim was filed or with the Board of Review a notice of appeal to the Board of Review, setting forth the information required thereby.

(e) Notice of appeal filed in the local office 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."

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 appendixd at 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."

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.