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Dept of Labor and Industry
Division of Employment Security
Board of Review

RULES

of the

BOARD OF REVIEW

governing appeals before the

BOARD OF REVIEW

and

APPEAL TRIBUNALS

The Unemployment Compensation Law (R. S. 43:21-6(f)) provides:

"The manner in which disputed benefit claims, and appeals * * * shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with rules prescribed by the board of review for determining the rights of the parties, whether or not such rules conform to common law or statutory rules of evidence and other technical rules of procedure * * *."

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Hereinafter, "Division" refers to Division of Employment Security and "Director" to the Director of that Division.

RULE BR-1—ORGANIZATION OF THE BOARD OF REVIEW

BR-1.01 Membership: The Board of Review shall consist of three members appointed by the Director subject to the provisions of Title 11 (Civil Service) of the Revised Statutes of New Jersey, 1937, and the supplements and amendments thereto, from Civil Service eligible lists.

(a) The Board of Review shall elect one of its members as chairman and one as vice-chairman and may appoint a secretary.

BR-1.02 Duties:¹

(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 Subsection 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 chairman of the Board of Review shall convoke and preside at all meetings of the Board of Review.

(c) The secretary of the Board of Review shall keep a stenographic record of all proceedings at meetings of the Board of Review and shall present same duly transcribed to the Board of Review for its approval at its next meeting; and shall perform all other duties usually required of a secretary.

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

(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. He shall be charged with the supervision of all administrative work of the Board of Review.

BR-1.03 Quorum: A quorum of the Board of Review shall consist of two members of the Board. No decision, determination, or opinion shall be rendered by the Board of Review except with the approval of a majority thereof.

RULE BR-2—ORGANIZATION OF APPEAL TRIBUNALS

BR-2.01 Membership:

(a) Appeal tribunals shall consist either of a single member, a

¹ Revised 2-28-55 (A.O.—22)

salaried examiner appointed by the Director subject to the provisions of Title 11 (Civil Service) of the Revised Statutes of New Jersey, 1937, and the supplements and amendments thereto, from Civil Service eligible lists; or

(b) A body consisting of three members, one of whom shall be selected in accordance with paragraph (a) of this rule, who shall serve as chairman. Of the others, one shall be a representative of employees, and the other a representative of employers.

BR-2.02—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 Subsection 43:21-16(d) of the Unemployment Compensation Law of New Jersey.

(a) The chairman of an appeal tribunal shall in all cases be a salaried examiner appointed by the Director in accordance with paragraph (a) of Rule BR-2.01. It shall be the duty of the chairman to convoke and to preside at all meetings of the appeal tribunal, to preside at all hearings, and to issue all orders and subpoenas in cases appealed to the tribunal.

BR-2.03 Appeals in Which Three-Member Appeal Tribunals Shall Be Used: The Board of Review may, in its discretion, order any case pending before an appeal tribunal to be heard by a three-member appeal tribunal and may designate two appeal tribunal members to sit with the chairman in such case.

The chairman shall act alone in the absence or disqualification of any other member and his alternates.

BR-2.04 Disqualification of Members of Appeal Tribunals: No member of an appeal tribunal shall participate in the hearing of any appeal in which he has an interest. Challenges to the interest of any member of an appeal tribunal, other than the chairman, may be heard and decided by the chairman of the appeal tribunal, or, in his discretion, referred to the Board of Review; challenges to the chairman shall be heard and decided by the Board of Review.

RULE BR-3—APPEALS TO APPEAL TRIBUNALS

BR-3.01 Presentation of Appealed Claims: All hearings shall be scheduled promptly.¹

(a) Any written statement, filed within the time for appeal allowed by law, which sets forth the fact that a party to a determination made by the Division of Employment Security is aggrieved thereby or dissatisfied therewith shall be deemed to be an appeal. When such appeal is not filed on Form BR-1W (claimant's appeal) or Form BR-1E

¹ Revised 2-28-55 (A.O.—22)

(employer's appeal) the appellant shall forthwith be furnished with the proper form and shall be notified to complete and return said form. In the event that the appellant shall fail to complete and return the said form within ten days of the date of said notification, the appeal may be dismissed. Additional time for filing the said form may be granted by order of the Board of Review for good cause shown.

Where such demand is deemed to be unnecessary the Board of Review may prepare the required form on behalf of the appellant.

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.

(b) 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. However, no case will be scheduled for hearing until an individual appeal on the prescribed appeal form has been filed with the Clerk of the Appeal Tribunal. Following the filing of the blanket appeal, a reasonable time will be allowed for preparation of the individual appeals.

(c) 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 hearing, specifying the place and time of the hearing.

(d) Notice of appeal filed in the local office shall be transmitted immediately to the Clerk of the Appeal Tribunal and a copy shall be forwarded to the Chief of Unemployment Benefits for his information. 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.

BR-3.02 Hearing of Appeals:

(a) Conduct of Hearing: The proceedings shall be fair and impartial and shall be conducted in such manner as may be best suited to determine the claimant's benefit rights. Hearings shall, in the absence of a showing of sufficient cause for a closed hearing, be open to the public. The examiner shall open the hearing by ascertaining and summarizing the issue or issues involved in the appeal. The parties or their attorneys 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 by counsel, the tribunal shall give him every assistance that does not interfere with the impartial

discharge of its official duties. The tribunal 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 and kept.

An appeal tribunal 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.

(b) The parties to an appeal, with the consent of the appeal tribunal, may stipulate in writing the facts involved. The appeal tribunal 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.

BR-3.03 Adjournment of Hearing :

(a) The chairman of an appeal tribunal shall use his 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.

If no appellant appears at the hearing, the appeal tribunal may proceed to make its decision on the record or may dismiss the appeal on the ground of non-appearance unless it appears that there is good cause for adjournment.

BR-3.04 Decision of Appeal Tribunals :

(a) If the decision of an appeal tribunal 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.

(b) Copies of all decisions and the reasons therefor shall be mailed to the claimant and to all other parties to the appeal.

(c) The decision shall be in the following form: 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.

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.

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

The fourth section shall contain the "Decision." This shall be followed by the signature of the examiner. In the event the case is heard by a three-member tribunal, the decision shall contain the signatures of all members. Each decision shall also indicate the date of hearing and decision.

(d) Every decision of an appeal tribunal shall, immediately upon

issuance, be transmitted to the Executive Secretary of the Board of Review, who shall present it to the Board of Review for consideration. The Board shall forthwith determine whether or not the decision shall be allowed to stand. The Board may, by majority vote, set aside any decision of an appeal tribunal and may either remand the case to another appeal tribunal for new hearing and decision or withdraw the case to itself. A case so withdrawn may be decided by the Board on the basis of the appeal tribunal record or may be remanded to the same or another appeal tribunal for the taking of evidence upon which the Board may act. The Board of Review may also, if it so desires, hold a new hearing itself in any such case.

RULE BR-4—APPEALS TO THE BOARD OF REVIEW

BR-4.01 Conduct of Hearing: The conduct of hearings and procedures before the Board of Review shall be in the manner prescribed for the appeal tribunals.

BR-4.02 Presentation of Appeals to the Board of Review:

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

Copies of the notice of appeal shall be transmitted to the claimant, to the Chief of Unemployment Benefits, and to all other parties to the appeal.

(c) Notice of appeal filed in the local office shall be transmitted immediately to the Executive Secretary of the Board of Review and a copy shall be forwarded to the Chief of Unemployment Benefits for his information. 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.¹

(d) A request for reopening of a Board of Review decision shall not act as a stay of proceedings in the case unless the request is granted. Failure of the Board of Review to act upon a request for reopening within forty-five days of the date of filing of said request shall constitute a denial thereof as of the expiration of that period.²

BR-4.03 Hearing of Appeals:

(a) All appeals to the Board of Review may be heard upon the

¹ Revised 2-28-55 (A.O.—22)

² Revised 5-13-55 (A.O.—24)

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 Clerk of 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 a 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.

BR-4.04 The Hearing of Appeals by the Board of Review on Its 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 withdraw such decision to itself and may either decide the case on the record below or may 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.

BR-4.05 Hearing of Appeals by the Board of Review on Cases Ordered Removed to It from an Appeal Tribunal:

(a) Hearings on any claim before an appeal tribunal ordered by the Board of Review to be removed to itself shall be presented, heard, and decided by the Board of Review in the manner prescribed for the conduct of hearings before the Board of Review.

(b) The Board of Review may, on its own motion, transfer any case pending before an appeal tribunal to another tribunal for hearing and decision.

BR-4.06 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 shall be mailed by the Board of Review to the claimant and to all other parties to the appeal.

RULE BR-5—GENERAL RULES FOR BOTH APPEAL STAGES

BR-5.01 Issuance of Subpoenas:

(a) 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 chairman of an appeal tribunal, in cases appealed to an appeal tribunal, only upon the showing of the necessity therefor by the party applying for the issuance of such subpoena.

(b) Witness fees at the rate of fifty cents (\$.50) for each day of attendance upon a hearing in response to a subpoena to testify and mileage at the rate of seven cents (\$.07) per mile from the residence of the witness to the place of hearing and return, shall be paid upon presentation of a voucher signed by the individual entitled thereto and properly certified by a member of the appellate body before whom the individual appeared as a witness.

(c) Witness fees at the rate of one dollar (\$1.00) for each day of attendance upon a hearing in response to a subpoena duces tecum and mileage at the rate of seven cents (\$.07) per mile from the residence of the witness to the place of hearing and return, shall be paid upon presentation of a voucher signed by the individual entitled thereto and properly certified by a member of the appellate body before whom the individual appeared as a witness.

BR-5.02 Orders for Supplying Information from the Records of the Division:

(a) Orders for supplying information from the records of the Division to a party in interest or his representative to the extent necessary for the proper presentation of a claim shall issue only upon

written application therefor to the Board of Review, setting forth the information required and the reasons therefor.

(b) In all cases where an application to supply a party or his representative with information from the records of the Division is granted, the party shall be furnished with a copy of such information.

BR-5.03 Representation Before Appeal Tribunals and the Board of Review:

(a) Any individual may appear for himself in any proceedings before an appeal tribunal or before the Board of Review.

(b) Appearances for and on behalf of interested parties other than the Division at formal hearings before the appeal tribunals and the Board of Review shall be limited to accredited members of the New Jersey Bar; this rule, however, shall not apply to informal hearings, conferences, or proceedings not subject to judicial review.

(c) In any proceeding on an appeal before an appeal tribunal or the Board of Review, all fees for persons representing claimants in accordance with Subsection (b) of this rule shall be approved by the Board of Review.

The amount of fees awarded to counsel shall be discretionary with the Board of Review.

(d) The Board of Review or any appeal tribunal, in its discretion, may refuse to allow to appear before it any person who misconducts himself 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.

BR-5.04 Inspection of Decisions of the Appeal Tribunals and the Board of Review: 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.