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How to Prepare for an Appeal Hearing, 2005

Maine Department of Labor

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MAINE DEPARTMENT OF LABOR

How to Prepare for an Appeal Hearing

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An appeal is your right by federal and state law if you disagree with an initial unemployment Deputy's Decision to grant or deny unemployment benefits. You can appeal this decision through an appeal hearing. This pamphlet, along with the Maine Department of Labor's video entitled *Preparing for an Appeal Hearing*, will give you basic information regarding your right to appeal and the appeals process. By watching this brief video and reading this pamphlet, you will be prepared for your hearing. The video can be found at the CareerCenters, local libraries or from the Division of Administrative Hearings.

The Structure of a Hearing

An unemployment compensation appeal hearing is conducted by an impartial Administrative Hearing Officer. The purpose of the hearing is to decide whether unemployment benefits should be granted or denied. Anyone with an interest in the outcome of the hearing is a "party" to the hearing. Parties to hearings are typically the claimant and employer. It is the Hearing Officer's job to see to it that all parties receive a fair hearing. A fair hearing means an impartial Hearing Officer will decide your case after considering the testimony of all witnesses and other evidence. The Hearing Officer will make sure you understand the proceedings and have the time you need to present information relevant to your case. The hearing will result in a written decision by the Officer affirming, modifying, or setting aside the initial decision of the deputy.

Present at an appeal hearing will be a Hearing Officer (center) and usually the employer and the claimant.

All parties will have the opportunity to present their case before the Hearing Officer in a formal but relaxed atmosphere.



Filing for an Appeal

Time Limits -You have 15 Days to Appeal

You must file your appeal within 15 days after the Deputy's Decision was **mailed to you**. You may be allowed a 15-day extension to file if you can show "*good cause*" for filing the appeal late. "*Good cause*" generally exists when you were prevented from making the deadline by circumstances beyond your control and which you could not have reasonably anticipated. "*Good cause*" is difficult to prove so it is very important that you file your appeal within the first 15 days.

Scheduling a Hearing - You Must Attend

Within three weeks of the filing of an appeal, you will receive a **Notice of Appeals Hearing** stating when and where the hearing will take place. Your hearing may be held by telephone (see page 9). Carefully note the **DATE, TIME, and LOCATION** of the hearing. With the notice, you will receive a copy of the Deputy's Decision and all of the documents in your file.

You must make every effort to attend the hearing. If you have a very serious conflict and cannot make it, let us know immediately. Only if you have a commitment which is both very important and absolutely cannot be changed should you request a postponement. Generally, hearings will **not** be postponed for personal reasons, vacations, plant shut downs, or business appointments. **Only written confirmation from the Division of Administrative Hearings can postpone a scheduled hearing.**

Preparing for the Hearing

Gather Your Evidence

This appeal hearing may be your last opportunity to present your case, so be prepared to do it thoroughly.

Unemployment compensation appeal hearings are said to be “*de novo*,” Latin for afresh or anew. This is done to keep your hearing impartial and independent of your Deputy’s Decision to grant or deny benefits. Therefore, the Hearing Officer who conducts the hearing is not bound by the Deputy’s Decision and will base their decision only on the evidence and testimony presented at the appeal hearing.

If papers, letters, statements, or other evidence were presented previously to the unemployment insurance deputy, and could be helpful to your case, you must take responsibility for **presenting this information again** at your appeal hearing.

If there are direct witnesses to the circumstances surrounding your separation from work, make sure they will attend your hearing to present their information.

Obtaining Testimony and Documents; Power to Subpoena

You may need witnesses to present the facts that are favorable to your case. If you ask someone to appear as a witness and they refuse, you may request that they be subpoenaed. This means they will be required by law to appear. You also have the same right to request a subpoena for written documents or other evidence that you cannot obtain on your own. **If you need a subpoena**, write or fax your request immediately to the Division of Administrative Hearings with the names and addresses of witnesses or possessors of necessary documents.

Important: Witnesses who are subpoenaed to testify at an administrative hearing can not be penalized for their testimony. Maine's 'Whistleblower's Protection Act' protects them.

The Hearing

Be Prompt

It is important that you arrive promptly. You are advised to arrive at least 15 minutes before the scheduled time of your hearing. If you do not appear and you are the appealing party, your appeal will be dismissed. If you do not appear and you are the nonappealing party, the hearing will continue without you and facts favorable for you may not be considered. **Your failure to appear may result in a denial of all further rights of appeal.**

In consideration of people with chemical sensitivities, we kindly request that you not wear fragrances to the hearing.

The Procedure of the Hearing

The hearing is a fact-finding process. It is like a trial, but not as formal. The appeal hearing is carefully controlled by the Hearing Officer. This is done to make sure each person has the same opportunity to present his/her case.

The hearing will begin with the Hearing Officer making an opening statement about what will happen during the hearing. The Hearing Officer will answer any questions you might have about the hearing process. The Hearing Officer will only use information presented at the hearing in reaching his/her decision. All testimony is given under oath and is recorded.

The Hearing Officer will begin receiving testimony by swearing in the first witness, usually either the claimant or employer. The party carrying the burden of proof usually presents their case first. In a separation, the burden of proof varies depending on the issue. If the claimant left work voluntarily it will be the claimant's burden to show that they had "good cause" for leaving. If the employer dismissed the claimant, it will be the employer's burden to prove that the claimant was dismissed due to the misconduct of the claimant.

The Hearing Officer will usually question the witness first and allow them to tell their story. After answering all of the Hearing Officer's questions, the witness will then be allowed to give additional relevant information. The party who requested the witness's testimony will then have the opportunity to ask their own questions. Finally, the opposing party will be given the opportunity to "cross examine," or question the witness. The next witness is then called and the same procedure is followed.

When one side has finished presenting their case, the opposing side will then be given the opportunity to present his/her case. The Hearing Officer will close the hearing when neither side has any additional information or evidence to present. Most hearings involving a separation last between 30 and 60 minutes.



All testimony given at the hearing is taken under oath and recorded as part of the record.

If you need clarification or have questions at any time during the hearing, **ask the Hearing Officer for assistance.** Finally, it is important to remember that the hearing is held to gather facts, not to get into an argument. Arguing, or getting angry during a hearing, prevents you from clearly stating the facts of your case. You will give a much better presentation if you stay calm and do not allow emotions to cloud the issues.

Evidence Considered

Only evidence presented at the hearing will be considered; therefore, you should **bring any documents or witnesses that can directly help your case.** Carefully think through your case. Ask yourself what information, documents, or witnesses will help to establish the facts in your favor.

Choose witnesses who have firsthand information: a person who directly saw or heard the event to which they are testifying.

Someone who testifies about what someone else said, saw or heard is giving hearsay; therefore, he/she can only have limited knowledge of that event. A witness with firsthand information is generally considered more reliable than hearsay evidence since he or she can be cross-examined.

Some hearsay is admissible as evidence. However, it is generally not as reliable as testimony from someone who has firsthand information. Testimony given at the hearing, under oath and subject to cross-examination, is often given more weight than hearsay statements.

If you are an employer, bring the claimant's supervisor or someone who saw and heard what happened to cause the firing; in addition, bring your personnel director. If you are the claimant, bring a witness to key events, someone who can directly help support your case.

Attorney Representation

You have the right to hire an attorney or other person familiar with unemployment law to represent you at your hearing. However, most parties do not have an attorney or other representative at their appeal. The Hearing Officer will make sure all parties are given an opportunity to present their case. It is the Hearing Officer's job to make sure each party receives a fair and unbiased hearing, whether or not he/she chooses to have representation. If you believe your case is complicated, or you think you may be uncomfortable presenting your case, you can hire a lawyer or representative of your choice to present your case. Your attorney or representative will be given an opportunity to question the witnesses.

If you choose to have legal representation, contact your attorney immediately to allow them ample time to prepare for the hearing. It is your responsibility to notify them of the time and place of the hearing and to pay any fees charged for such representation. If you cannot afford an attorney, you may write or call the:

**VOLUNTEER LAWYER'S PROJECT
PO BOX 547
PORTLAND, ME 04112**

Telephone: (800) 442-4293 in Maine
(207) 774-4348

Accommodations

If you need special services, such as accommodations for people with disabilities or an interpreter to present your facts at the hearing, contact us in advance so we can make the necessary arrangements for your hearing.

Telephone Hearings

Telephone hearings allow you to participate in a hearing without the expense, time or possible hazard of traveling to a central hearing site.

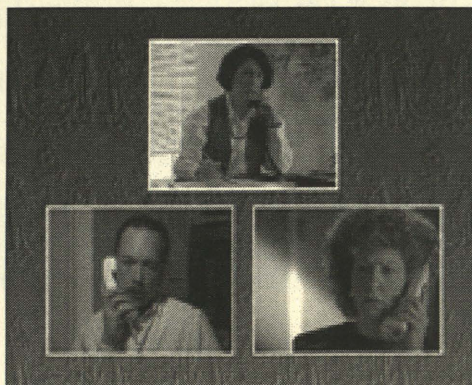
Telephone hearings are scheduled by the Division of Administrative Hearings based on many considerations, including, the number of witnesses and documents, the length of the hearing, the distance to a central hearing site, and the safety of the participants.

In a telephone hearing, your testimony and that of your witness is taken, under oath, by phone. The Hearing Officer conducts the hearing in the same manner as an in-person hearing, using the same question and answer format. You will have the same opportunity to present your case and question the other people involved. If your hearing is to take place by telephone, it will be clearly marked as a **Telephone Hearing** on the official **Notice of Appeals Hearing**.

If you have a witness, it is recommended that a second telephone or extension be available for you to hear the testimony given by your witness.

Automated voice machines and cell phones will not be allowed. An open line must be dedicated for the telephone hearing.

Some hearings take place by telephone via a "conference call," rather than in-person.



The Hearing Officer will call you at the number listed below your name on the **Notice of Appeals Hearing**. **If this number is not correct, or if no number is listed, you must call the Division of Administrative Hearings at least 30 minutes before your hearing.**

The Hearing Officer will call you at the time stated on the **Notice of Appeals Hearing**. Be near your telephone 15 minutes before your scheduled hearing time in order to avoid delay. However, also **be prepared for a delay** in the event the Hearing Officer has difficulty placing the call.

Important: If your hearing will be by telephone, any documents or other similar types of evidence you would like to present must be mailed to the Division of Administrative Hearings in time to distribute it to the opposing party before the hearing.

After the Hearing

You will receive a written decision, by mail, from the Hearing Officer **approximately 10 days after** the hearing. This decision will either affirm, modify, or set aside the original Deputy's Decision. The claimant should continue to file their claim cards each week while awaiting the decision in their case.

If you do not agree with the decision of the Hearing Officer, you can appeal that decision to the Unemployment Insurance Commission. The appeal must be filed within 15 days by writing to: **Unemployment Insurance Commission, 57 State House Station, Augusta, ME 04333-0057. Telephone number: (207) 287-4547, FAX (207) 287-4554.** The Commission may or may not grant you another hearing.

Review Tips

- ❑ Watch the video 'Preparing for an Appeal Hearing' — available on cassette at the Maine Department of Labor offices, CareerCenters and local libraries.
- ❑ Prepare yourself for the appeal hearing.
- ❑ Think about your case and ask yourself what information, documents, or witnesses will help establish the facts in your favor.
- ❑ Choose witnesses who have direct, personal knowledge of events about your case.
- ❑ Stick to the facts. Emotions usually cloud the issue and prevent you from presenting your case effectively.
- ❑ Organize your facts on paper. Make a list of the important points you would like to present at the hearing.
- ❑ Make another list of the points you think the opposing party may make. Consider what you will say or ask in response.
- ❑ When submitting documents, remember to retain copies for your records. Documents submitted to the Hearing Officer become part of the permanent record and cannot be returned at the hearing. Copies submitted must be clear and legible.
- ❑ If you need a subpoena, an interpreter, or have other special needs, write or call the Division of Administrative Hearings at (207) 624-5900.
- ❑ If you have questions about this booklet or the video, call the Division of Administrative Hearings.

For More Information Write or Call:

Maine Department of Labor
Division of Administrative Hearings
2 Anthony Avenue, Suite # 1
Augusta, ME 04330-9477

TEL: (207) 624-5900

FAX: (207) 624-5903

TTY: (800) 794-1110

Web site: www.Maine.gov/labor/appeals/

E-mail: Admin.Hearings@Maine.gov



“Our goal is that all appeals conclude with the parties feeling they had a fair opportunity to present their case.”

*The Maine Department of Labor provides equal opportunity in employment and programs.
Auxiliary aids and services are available upon request to individuals with disabilities.*