

ALABAMA DEPARTMENT OF WORKFORCE
ADMINISTRATIVE CODE

CHAPTER 480-1-4
HEARINGS AND APPEALS

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480-1-4-.01 Repealed.
 Author:
 Statutory Authority:
 History:

480-1-4-.02 Authority Of A Hearing Officer.

In all matters entrusted to a hearing officer by the Director under applicable statute rule or policy, the power and authority to enter decisions and judgments as appropriate under the applicable statutes, rules or policies, shall be conferred.

Author: George Cocoris, C. Lamon Till
Statutory Authority: Code of Ala. 1975, §25-2-8.
History: Effective September 30, 1982.

480-1-4-.03 Duties And Disqualifications Of Hearing Officers.

(1) Duties. A Hearing Officer shall perform all duties generally required of an administrative hearings officer incidental to the conducting of assigned hearings and issuing decisions thereon.

(2) Disqualifications. No Hearing Officer shall perform duties relative to the conduct of hearings or making any decisions and shall withdraw from those cases where:

(a) The Hearing Officer has had any direct participation in the decision appealed from.

(b) The Hearing Officer has personal knowledge of disputed evidentiary facts concerning the proceeding.

(c) The Hearing Officer, spouse, or minor child or any person directly related to either has a pecuniary interest in the outcome of the proceeding.

(d) The Hearing Officer or spouse is directly related to a party to the proceeding or an officer, director or trustee of a party to the proceeding, or the representative of any party.

(e) The Hearing Officer, spouse or any person directly related to either is likely to be a witness in the proceeding.

(f) The Hearing Officer has any other bias, interest or prejudice which would impair an impartial hearing and decision.

(3) Motions for Disqualification. Interested parties to a proceeding may challenge the partiality, bias, interest or prejudice of the Hearing Officer. Such a challenge shall be made by a motion for disqualification. Such a motion shall be supported by appropriate affidavits asserting the basis for disqualification. The motion may be ruled upon ex parte by the Hearing Officer or by the Director of the Hearings and Appeals Division or his/her designee or in the alternative, a hearing may be scheduled upon the motion. Notice of a ruling on the motion shall be given to the parties at interest. Disqualification shall not occur unless partiality, bias, interest or prejudice is affirmatively shown.

Author: George Cocoris, C. Lamon Till, Venessa Watkins

Statutory Authority: Code of Ala. 1975, §25-2-8.

History: Effective September 30, 1992. **Amended:** Filed July 12, 2019; effective August 26, 2019.

480-1-4-.04 Conduct Of Hearings.

(1) The proceeding shall be fair and impartial and shall be conducted in such manner as the Hearing Officer may determine to be best suited to determine the rights, duties and obligations of the parties. The order in which evidence is to be presented shall rest within the sound discretion of the Hearing Officer. Hearings shall be open to the public except in those cases where, in the Hearing Officer's judgment, the nature of the testimony is

scandalous or lascivious to the extent that the presence of persons not a party to the proceeding would inhibit witnesses from testifying freely. All oral testimony shall be given under oath or affirmation. The Hearing Officer may examine any party or witness to the extent deemed necessary and shall afford all parties every assistance that does not interfere with the discharge of fairness and impartiality. Hearings shall be confined to evidence relevant and material to the issues involved.

(2) The Hearing Officer may refuse admittance to or expel any party, witness or person in attendance at a hearing whose conduct is disorderly. Subject to the discretion of the Hearing Officer, witnesses may be excluded from the hearing until called to testify. Those testifying shall be subject to direct and cross-examination by the parties or their representatives and the Hearing Officer. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. All parties shall, upon a timely request, be allowed to inspect and use any portion of the records necessary in the presentation of their case.

(3) Whenever necessary, the Hearing Officer may require the attendance at a hearing of those employees of the Department of Industrial Relations having knowledge of the facts involved in the proceeding or technical knowledge concerning the matters in issue.

(4) The Hearing Officer shall open the hearing by summarizing the issue or issues appearing to be in dispute and prescribing the order in which the hearing will proceed. The Hearing Officer shall consider and inquire fully into all issues involved regardless of whether the issues were set forth as a ground for appeal and shall receive in evidence the testimony of the parties and witnesses and any documents which are relevant and material to any issue. If new issues arise during the course of a hearing, the Hearing Officer shall apprise the parties that the new issue is being considered, shall explain the newly arisen issue, and inquire as to whether any interested party desires to enter a motion for a continuance. If no motion is entered, the Hearing Officer shall proceed. If such motion is entered, the Hearing Officer shall rule upon the motion and may, in the exercise of his discretion, continue the hearing to a later time.

(5) The parties may, subject to the approval of the Hearing Officer, enter into stipulations as to all or a portion of the facts involved in a proceeding. The Hearing Officer may make a decision on the basis of such stipulations or may set the matter down for hearing and take such further testimony or receive such further evidence as deemed necessary.

(6) The Hearing Officer may consolidate cases and conduct joint hearings thereon when the same or substantially the same evidence is relevant and material to the matters in issue. Notice of hearing shall be forwarded to all individuals or their

representatives whose cases have been consolidated for a joint hearing.

(7) Oral proceedings shall be recorded by the Hearing Officer either by mechanized means or by a qualified shorthand reporter but need not be transcribed unless an appeal is applied for or taken and a request is made by a party pursuant to Rule 480-1-2-.11. In order to maintain confidentiality and limit the use of oral testimony to the contest of a particular case, no other recording of the proceedings shall be made or allowed.

(8) The Hearing Officer may take official notice of facts commonly known in the community and facts of a general, technical or scientific nature known within the Department of Industrial Relations. Parties shall be notified during the hearing of facts officially noticed and shall be afforded an opportunity to contest these facts.

(9) Any official record of the Director, including reports submitted in connection with the administration of the Unemployment Compensation Law, may be introduced in evidence and, when so introduced, become part of the record; provided, however, that when so introduced the parties are given an opportunity to examine and rebut the same.

(10) In the hearing of a contested case, the Hearing Officer may announce that it shall not be necessary that objections be made during the hearing and upon such announcement it shall not be required or necessary that objection be made to any testimony or evidence which may be offered by either party and on the consideration of such cases, the Hearing Officer shall consider only such testimony and evidence as is relevant, material, competent and legal, and shall not consider any testimony or evidence which is irrelevant, immaterial, incompetent or illegal, whether objections shall have been made thereto or not, and whether such testimony be brought out on direct, cross or re-direct examination, or is hearsay. On appeal, the court shall consider only such testimony as is relevant material, competent and legal. Neither the Hearing Officer nor the Board of Appeals shall be required to point out what testimony or evidence should be excluded or not considered.

(11) The Hearing Officer may, upon his own motion or upon petition of any interested party, reopen the hearing for the receipt of relevant and material evidence which was not presented at the scheduled hearing at any time prior to the mailing of a decision.

(12) If an absent party to a contested case appears late while a hearing is in progress, the Hearing Officer shall, if time permits, interrupt the hearing, admit the late party, summarize the proceedings to that point, administer the oath and proceed. If time does not permit, the Hearing Officer may, in his discretion, continue the hearing until another time or may refuse to admit the

late party advising such party of the right to file a written petition to reopen the case. If an absent party arrives after the hearing has been adjourned, the Hearing Officer shall notify the late party that the hearing has been adjourned and that no evidence can be received in the absence of the other party. If the late party indicates a desire to offer evidence, the Hearing Officer may, in his discretion, reschedule the hearing with notice to all parties or may inform the late party of the right to file a written petition to reopen the case. Petitions to reopen by an absent party, may be ruled upon ex parte by the Hearing Officer, or the Chief of the Hearings and Appeals division or his designee and may be denied unless it is shown that the party was not given proper notice as required in these rules or was prevented from a timely appearance by an emergency or other unavoidable and unforeseen circumstance. All requests to present evidence received after the issuance of a decision must be made by a motion for rehearing pursuant to Code of Ala. 1975, §41-22-17.

(13) Any hearing may be adjourned or recessed when deemed appropriate by the Hearing Officer.

Author: George Cocoris, C. Lamon Till

Statutory Authority: Code of Ala. 1975, §25-2-8.

History: Effective September 30, 1982.

480-1-4-.05 Representation.

(1) In any proceeding before a Hearing Officer, any party or an intervenor may represent himself or be represented by an attorney at law or by any other person who is qualified to represent others in the matters under consideration. Any such duly appointed attorney or representative may appear at the hearing in a representative capacity or take any other action which the party might take under these rules. The Hearing Officer may, for lack of qualifications or other sufficient cause, bar any person from representing any party in which event the reasons therefor shall be set out in the record of the proceeding.

(2) A partnership may be represented by any of its members or other duly authorized representative. A corporation or association may be represented by an officer, employee or any other duly authorized representative. Any governmental agency may be represented by an officer or employee or any other authorized person.

Author: George Cocoris, C. Lamon Till

Statutory Authority: Code of Ala. 1975, §25-2-8.

History: Effective September 30, 1982.

480-1-4-.06 Subpoenas And Depositions.

(1) Upon a proper request by either party or an intervenor, the Hearing Officer may issue a subpoena to compel the attendance of a witness or witnesses or may command the person to whom it is directed to produce designated books, papers, documents or tangible things which constitute or contain matters within the scope of the examination. Whether a subpoena shall be issued shall rest within the sound discretion of the Hearing Officer and may be denied if it is frivolous or otherwise unnecessary or if the request is unreasonable or oppressive. Subpoenas for witnesses shall not exceed four (4) in number except upon an affirmative showing that a greater number is required for the proper presentation of a case. A request for a subpoena duces tecum shall set forth with particularity the documents or things to be produced and the identity of the custodian. All requests for subpoenas shall include addresses sufficient for personal service and service by certified mail.

(a) Subpoenas issued by the Hearing Officer shall be served by certified mail or by any authorized officer of the Department of Industrial Relations. No fee shall be allowed for such personal service.

(b) Subpoenas issued by the Hearing Officer shall be enforceable according to the provisions of Code of Ala. 1975, §25-4-97.

(2) Witnesses subpoenaed for any hearing before a Hearing Officer shall be paid witness and mileage fees by the Department of Labor in accordance with the following schedule: \$7.50 per day while in attendance and mileage reimbursement at the current rate for state mileage reimbursement per mile for each mile to and from their place of residence by the usually traveled routes. Under no circumstances shall a party to a hearing or an intervenor be granted witness fees.

(a) Witness fees and mileage shall be claimed no later than the time of hearing and shall be certified to by the witness and approved by the Hearing Officer.

Author: George Cocoris, C. Lamon Till, Venessa Watkins

Statutory Authority: Code of Ala. 1975, §25-2-8.

History: Effective September 30, 1982. **Amended:** Filed July 12, 2019; effective August 26, 2019.

480-1-4-.07 Withdrawals.

(1) Withdrawals. An appeal may be withdrawn by the appellant at any time prior to the issuance of a decision with approval of the Hearing Officer before whom the matter is pending. Requests for withdrawal of an appeal shall be stated in the record of the proceeding or shall be submitted in writing. Such a withdrawal shall be construed to be a consent to abide by the administrative determination from which the appeal is taken and such determination shall have such effect as if no appeal had been filed.

Author: George Cocoris, C. Lamon Till

Statutory Authority: Code of Ala. 1975, §25-2-8.

History: Effective September 30, 1982.

480-1-4-.08 Identification Of Interested Parties.

(1) In all cases coming before a Hearing Officer the Department of Industrial Relations shall be considered an interested party.

(2) In cases involving the circumstances of an individual's separation from employment, the interested parties shall be the claimant, the Department of Industrial Relations and the claimant's last employing unit.

(3) When the appeal involves an offer of work or a recall to work, the interested parties shall be the claimant, the Department of Industrial Relations and the employer making the offer or recall. In cases where the claimant was referred by the Alabama State Employment Service, the local Alabama State Employment Service employee making the referral shall be a witness at the hearing, if available.

(4) Where the case involves the determination of an overpayment established pursuant to Code of Ala. 1975, §25-4-91(e) and §25-4-145(a)(4) the interested parties shall be the claimant and the Unemployment Compensation Agency.

(5) Where the contested case involves a determination made pursuant to Code of Ala. 1975, §25-4-145(a)(3) which imposes a penalty resulting from alleged false statements or misrepresentations made by the claimant, the interested parties shall be the claimant and the Unemployment Compensation Agency.

(6) In all other cases, the Hearing Officer shall determine the identity of the interested parties and shall not proceed in the absence of proper notice as required by these rules.

Author: George Cocoris, C. Lamon Till.

Statutory Authority: Code of Ala. 1975 § 25-2-8.

History: Effective September 30, 1982.

480-1-4-.09 Scheduling And Notice Of Hearing.

(1) A party appealing from a determination of a claims examiner on a claim for benefits shall file with the Department of Labor, 649 Monroe Street, Montgomery, Alabama 36131, a notice of appeal. This notice shall be in writing and shall include the appellant's name, address, social security number and shall state the grounds upon which review is sought. Receipt of the appeal by the Agency within the time prescribed by the state shall constitute filing.

(2) An appeal to a hearing officer on an Unemployment Compensation benefit claim shall be promptly scheduled and heard using the teleconferencing method or at a regular hearing location most accessible to the claimant.

(3) Contested case hearings other than Unemployment Compensation benefit claims shall be promptly scheduled and heard by the hearing officer according to appropriate statute, rule or policy.

(4) Notice of hearing shall be sent to all parties to the proceeding at their last known address or place of business. It is the duty and responsibility of each party to inform the Hearing Officer of any change of address to which future notices and communications should be directed. Delivery of the notice by mail shall be effective upon the deposit of the notice in the United States mail, first class, postage prepaid. The notice on Unemployment Compensation benefit claims hearings shall be mailed at least 7 days before date of hearing except that a shorter notice period may be used if not prejudicial to the parties and shall include:

1. A statement of the time, place and nature of the hearing;
2. A statement of the legal authority and jurisdiction under which the hearing is to be held;
3. A reference to the particular sections of the statutes and rules involved;
4. A short and plain statement of the matter asserted.

If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved.

Thereafter upon application, a more definite and detailed statement shall be furnished.

Author: George Cocoris, C. Lamon Till, Venessa Watkins

Statutory Authority: Code of Ala. 1975, §25-2-8.

History: September 30, 1982. **Amended:** Filed July 12, 2019; effective August 26, 2019.

480-1-4-.10 **Postponements, Default, Consent Orders And Agreed Settlements.**

(1) Postponements. Any hearing may be postponed or continued by the Hearing Officer for good cause shown either upon the Hearing Officer's own motion or upon the request of an intervener or an interested party. Postponements shall be granted only when necessary to afford all parties a reasonable opportunity for a fair hearing and for the full presentation of evidence. No party shall be granted more than one postponement except in the case of extreme emergency or unusual hardship as determined by the Hearing Officer.

(2) Non Appearance of Parties. If after notice of hearing as provided by these rules a party fails to appear the Hearing Officer may proceed with the hearing and make a decision in the absence of the party. If the absent party is the appellant the Hearing Officer may in the exercise of discretionary power and authority conferred by this rule declare a default and make a disposition of the case on the basis of default.

(3) Consent Orders and Agreed Settlements. The Hearing Officer shall not make disposition of an appeal on an Unemployment Compensation benefit claim solely on the basis of consent or agreed settlement.

Author: George Cocoris, C. Lamon Till

Statutory Authority: Code of Ala. 1975, §25-2-8.

History: September 30, 1982.

480-1-4-.11 **Decision And Notice Of Decision.**

(1) In all contested cases the Hearing Officer shall render a decision in writing within 30 days after the hearing is concluded. The decision shall be in writing and shall be signed by the Hearing Officer. It shall set forth the Hearing Officer's findings of facts with respect to the matters appealed, the decision and the reasons therefor.

(2) A copy of the decision shall promptly be given or mailed to each party to the appeal.

(a) In Unemployment Compensation Benefit Claims appeals, the decision shall include the manner in which and the time within which an application for an appeal to the Board of Appeals may be filed.

Author: George Cocoris, C. Lamon Till

Statutory Authority: Code of Ala. 1975, §25-2-8.

History: September 30, 1982.

480-1-4-.12 **Filing Of An Appeal.**

(1) A party appealing from a determination of a claims examiner on a claim for unemployment compensation benefits shall file an appeal in writing with the Department of Labor, Montgomery, Alabama 36131.

(2) A party contesting in any other matter shall file with the Department of Labor, Hearing and Appeals Division, Montgomery, Alabama 36131 or as may be prescribed by statute or rule or as indicated upon official correspondence.

(3) The appeal shall be filed in writing and state the facts alleged and the grounds upon which a review is sought. Receipt of the appeal within the time prescribed by statute or rule shall constitute timely filing.

Author: Hoyt N. Russell, Division of Hearings and Appeals, Venessa Watkins

Statutory Authority: Code of Ala. 1975, §§25-2-8, 25-4-91; 41-22-12.

History: Effective September 30, 1982. **Amended:** Filed October 23, 2002; effective November 27, 2002. **Amended:** Filed July 12, 2019; effective August 26, 2019.

480-1-4-.13 **Telephone Hearings.**

(1) The Department of Labor, Hearing and Appeals Division, shall have the power to conduct unemployment compensation appeal hearings by use of a teleconferencing telephone system.

(2) In any proceeding before a hearing officer using the teleconferencing method, any party intending to submit documents for the hearing officer's consideration must submit the same to the Department of Labor, Hearings and Appeals Division, Montgomery, Alabama 36131.

(a) Documents must be received at least five days prior to the hearing.

(b) Copies of said documents shall be provided to the adverse party by the Agency prior to the hearing.

(3) All other rules governing the conduct of unemployment compensation appeals hearings shall apply when such are conducted by the teleconferencing method.

Author: George Cocoris, Coleman C. Scott, Venessa Watkins

Statutory Authority: Code of Ala. 1975, §25-2-8.

History: Effective September 30, 1982. **Amended:** Filed July 12, 2019; effective August 26, 2019.