

Enrolled
House Bill 2202

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Employment Department)

CHAPTER

AN ACT

Relating to unemployment insurance hearings; amending ORS 657.270 and 657.275.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 657.270 is amended to read:

657.270. (1) When a request for hearing upon the claim has been filed, as provided in ORS 657.266 to 657.269, an administrative law judge from the Office of Administrative Hearings established under ORS 183.605 shall be assigned to conduct such hearing. The Director of the Employment Department shall notify the parties, in plain language, of their right, upon their request, to receive *[by mail]* copies of all documents and records in the possession of the Employment Department relevant to the decision of the authorized representative, including any statements of the claimant, employer or employer’s agents.

(2) When the hearing is conducted by telephone, the director shall *[mail]* **provide to** all parties copies of all documents and records in the possession of the director that will be introduced at the hearing as exhibits, including any statements of the claimant, employer or employer’s agents, and all jurisdictional documents, at least seven days prior to the hearing. A party may request that the hearing be continued in order to receive copies of and respond to documentary evidence introduced at the hearing and not *[mailed]* **provided** to the party prior to the hearing.

(3)(a) When the claimant or the employer is unrepresented at the hearing, the administrative law judge shall explain the issues involved in the hearing and the matters that the unrepresented claimant or the employer must either prove or disprove. The administrative law judge shall ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the administrative law judge in the case.

(b) As used in this subsection, “unrepresented” means the claimant or the employer is not represented by an attorney, paralegal worker, legal assistant, union representative or person otherwise qualified by experience or training.

~~[(3)]~~ (4) After the administrative law judge has given all parties reasonable opportunity for a fair hearing, the administrative law judge shall promptly affirm, modify or set aside the decision of the authorized representative with respect to the claim. The administrative law judge promptly shall notify all parties entitled to notice of the decision of the authorized representative, as set forth in ORS 657.266 to 657.269, of the administrative law judge’s decision, including a dismissal of the request for hearing as provided in subsection ~~[(6)]~~ (7) of this section, and reasons therefor. The administrative law judge may address issues raised by evidence in the record, including but not limited to the nature of the separation[,] **and continued claims filed subsequent to issuance of a deci-**

sion under ORS 657.267, notwithstanding the scope of the issues raised by the parties or the arguments in a party's request for hearing.

(5) Following issuance of a written decision by an administrative law judge, any party may file a request to reopen the hearing. The administrative law judge's decision whether to grant the request to reopen the hearing shall be in writing and shall be mailed to the parties. The administrative law judge may reopen the hearing if:

(a) Any party that is requesting the reopening failed to appear at the hearing;

(b) The party files the request within 20 days after the issuance of the written decision by the administrative law judge; and

(c) The cause of the failure to appear was beyond the control of the requesting party.

[(4)] **(6)** Except as provided in subsection [(6)] **(7)** of this section, unless the director or any other party to the hearing, within 20 days after the delivery of [such notification] **the notice under subsection (4) of this section**, or if mailed, within 20 days after the [same] **notice** was mailed to the party's last-known address, files with the Employment Appeals Board an application for review, [such] **the decision of the administrative law judge** shall be final.

[(5) *When the claimant or the employer is unrepresented at the hearing, the administrative law judge shall explain the issues involved in the hearing and the matters that the unrepresented claimant or the employer must either prove or disprove. The administrative law judge shall ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the administrative law judge in the case. As used in this section, a claimant or employer is "unrepresented" if not represented by an attorney, paralegal worker, legal assistant, union representative or person otherwise qualified by experience or training.*]

[(6)(a)] **(7)(a)** The administrative law judge may dismiss a request for hearing under subsection (1) of this section when:

(A) The request for hearing is withdrawn by the requesting party;

(B) In response to a request by the administrative law judge or the administrative law judge's designee, the requesting party fails to provide, in a timely manner, the information necessary to allow the matter to be scheduled for hearing;

(C) The requesting party fails to appear at the time of the hearing;

(D) The issues are resolved by cancellation or amendment of the decision that is the subject of the hearing request;

(E) The requesting party fails to file the request for hearing within the time allowed by statute or rule and fails to show good cause for the delay;

(F) The request for hearing is filed prior to the date of the written decision or written determination that is the subject of the request; or

(G) The request for hearing is made by a person who is not entitled to a hearing or is not the authorized representative of a party who is entitled to a hearing.

(b) A dismissal by the administrative law judge under this subsection is final unless the party whose request for hearing has been dismissed files, within 20 days after the dismissal notice was mailed to the party's last-known address, an application for review as provided under this chapter.

[(c) *Notwithstanding paragraph (b) of this subsection, a requesting party whose request has been dismissed because that party failed to appear as provided in paragraph (a)(C) of this subsection may file a request to reopen the hearing.*]

SECTION 2. ORS 657.275 is amended to read:

657.275. (1) If the Director of the Employment Department or any interested party files with the Employment Appeals Board a timely application for review, the board shall promptly affirm, modify or set aside the decision of the administrative law judge. The board shall promptly notify the claimant and any other interested party of its decision. If the board finds that additional evidence is required to reach a decision, it may remand the matter to the administrative law judge to conduct a hearing to obtain additional evidence in the matter. The board shall promptly notify the claimant and any other interested party of such action. The administrative law judge may either make a new decision based on the additional and original evidence or forward the additional evidence to the

board for a decision. If the administrative law judge issues a new decision, it shall be subject to review in accordance with the provisions of ORS 657.270 [(4)] (6).

(2) The board shall perform de novo review on the record. The board may address issues raised by evidence in the record, including but not limited to the nature of a separation, notwithstanding the scope of the issues raised by the parties, the arguments set forth in a party's application for review or the parties' written or oral arguments. The board may enter its own findings and conclusions or may adopt the findings and conclusions of the administrative law judge, or any part thereof. When there is evidence in the record both to make more probable and less probable the existence of any basic fact or inference, the board need not explain its decision to believe or rely on such evidence unless the administrative law judge has made an explicit credibility determination regarding the source of such facts or evidence. The board is not required to give any weight to implied credibility findings. The decision of the board shall become the final order unless a petition for judicial review is filed in accordance with ORS 657.282.

Passed by House February 4, 2009

.....
Chief Clerk of House

.....
Speaker of House

Passed by Senate February 25, 2009

.....
President of Senate

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 2009

.....
Secretary of State