

Enrolled
House Bill 2439

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., for Employment Department)

CHAPTER

AN ACT

Relating to hearings upon claims for unemployment insurance benefits; creating new provisions; amending ORS 657.270; and declaring an emergency.

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]* **the** hearing.

(2)(a) The Director of the Employment Department shall notify the parties **to the hearing requested under subsection (1) of this section**, in plain language, of their right, upon *[their]* request, to receive 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)] (b) When the hearing is conducted by telephone, the director shall 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 provided to the party prior to the hearing.

(3)*[(a)]* When the claimant or the employer is *[unrepresented]* **not represented** at the hearing **by an attorney, paralegal worker, legal assistant, union representative or person otherwise qualified by experience or training**, 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.]

(4)(a) 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.

(b) 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 (7) of this section, and **the reasons [therefor] for the administrative law judge's decision.** 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 decision 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)(a) Following issuance of a written decision by an administrative law judge, any party may file a request to reopen the hearing. **The party making the request must file the request with the Office of Administrative Hearings and simultaneously provide a copy to the Employment Department.**

(b) 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.

(c) The administrative law judge may reopen the hearing if:

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

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

[(c)] (C) The party shows good cause for failing to appear.

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

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

(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) The Director of the Employment Department may dismiss a request for hearing under subsection (1) of this section if the conditions described in paragraph (a)(A), (D), (F) or (G) of this subsection exist.

[(b)] (c) A dismissal by the administrative law judge under **paragraph (a) of 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.

(d)(A) A dismissal by the director under paragraph (b) of 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, a request for hearing regarding the dismissal.

(B) If the party files a timely request under subparagraph (A) of this paragraph, the hearing regarding the dismissal shall be assigned to an administrative law judge from the Office of Administrative Hearings under this section.

(C) The administrative law judge assigned under subparagraph (B) of this paragraph shall determine whether the dismissal was appropriately entered. If the dismissal was not appropriately entered, the administrative law judge shall decide the underlying issue upon which the hearing was requested.

SECTION 2. The amendments to ORS 657.270 by section 1 of this 2015 Act apply to requests for hearings and requests to reopen hearings filed on or after the effective date of this 2015 Act.

SECTION 3. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.

Passed by House March 9, 2015

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 4, 2015

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2015

Approved:

.....M,....., 2015

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2015

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Jeanne P. Atkins, Secretary of State