

ADMINISTRATIVE LAW

LABOR AND WORKFORCE DEVELOPMENT

OFFICE OF ADMINISTRATIVE LAW

Special Hearing Rules

Department of Labor and Workforce Development Hearings

**Unemployment Benefit and State Plan Temporary Disability Insurance and Family
Leave Insurance Cases; Private Plan Temporary Disability Insurance and Family
Leave Insurance Cases**

Joint Proposed Amendments: N.J.A.C. 1:12-2.1, 9.1, 9.2, 14.4, and 18.4

Joint Proposed New Rules: N.J.A.C. 1:12-14.4 and 14.11

Authorized By: Barry E. Moscovitz, Acting Director and Chief Administrative Law Judge,
Office of Administrative Law, and Robert Asaro-Angelo, Commissioner, Department of
Labor and Workforce Development.

Authority: N.J.S.A. 34:1A-3.e; 43:21-6.d, e, and f; 43:21-10; 43:21-25 et seq.; and
52:14F-5.e, f, and g.

Calendar Reference: See Summary below for explanation of exception to calendar
requirement.

Proposal Number: PRN 2023-108.

Submit written comments by January 5, 2024, to:

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The agency joint proposal follows:

Summary

The Office of Administrative Law (OAL) and the Department of Labor and Workforce Development (Department) are proposing new rules at N.J.A.C. 1:12-14.4 and 14.11 and amendments at N.J.A.C. 1:12-2.1, 9.1, 9.2, 14.4, and 18.4 to memorialize, in rule, an existing Department practice, whereby parties with a matter before an “appellate body” (defined at N.J.A.C. 1:12-2.1 as either the appeal tribunal, Board of Review or hearing officer (who is conducting a benefit appeal proceeding)) are required to register for a hearing at the time and in the manner prescribed in the notice of hearing. The proposed new rules and amendments would also address those circumstances when a party fails to register for a hearing before the appellate body at the time and in the manner prescribed in the notice of hearing.

Specifically, the OAL and the Department are proposing an amendment at N.J.A.C. 1:12-9.1, which would state that the written notice of hearing provided to each

party prior to the hearing must contain, not only notice of the time and place of the hearing and instructions as to how the hearing will be conducted, but also notice: (1) that in order to participate in a hearing, each party must first register with the appellate body in advance of the hearing; and (2) how and when the party must register with the appellate body.

The OAL and the Department are also proposing new N.J.A.C. 1:12-14.4, Failure to register, which would state that if an appellant (as opposed to a non-appellant party) fails to register for a hearing at the time and in the manner prescribed in the notice of hearing, the appellate body shall dismiss the appeal on the ground of failure to register, unless the appellate body determines, pursuant to N.J.A.C. 1:12-9.2 and 14.11, that there is good cause for an adjournment. As to the non-appellant party who fails to register for a hearing at the time and in the manner prescribed in the notice of hearing, proposed new N.J.A.C. 1:12-14.4 would state that the appellate body shall proceed with the hearing as scheduled without the participation of the non-appellant party, unless the appellate body determines, pursuant to N.J.A.C. 1:12-9.2 and 14.11, that there is good cause for an adjournment. In the Department's view, an appellant (whether that appellant is a benefits claimant challenging the denial of their benefits claim, or a chargeable employer challenging a decision that granted benefits to a former employee) is under an affirmative obligation to prosecute their appeal and their failure to prosecute the appeal through their failure to register for the appeal hearing, absent good cause for an adjournment, should result in the dismissal of the appeal; whereas, when a non-appellant party fails to register, it is appropriate for the hearing to proceed as scheduled without the participation of the non-appellant party, since, in that event, the appellant

must still satisfy their burden of establishing, to the satisfaction of the appellate body, that the challenged decision should be reversed and the hearing must go forward for that purpose.

In addition, the Department is proposing the following technical amendments and new rule, each of which is either necessitated by, or related to, the above-described amendments and new rule:

1. Amendments at N.J.A.C. 1:12-2.1, adding definitions for the terms, “appellant,” “deputy,” “non-appellant party,” “party,” and “written”;

2. An amendment at N.J.A.C. 1:12-9.2, regarding adjournments, to change the standard for granting adjournments to good cause;

3. Amendments at N.J.A.C. 1:12-14.4 (recodified as N.J.A.C. 1:12-14.5), regarding failure to appear, to ensure consistency between the appellate body’s approach to the failure of a party to register for a hearing and failure of a party to appear for a hearing;

4. Proposed new N.J.A.C. 1:12-14.11 would define the term “good cause” for the purpose of determining whether a party has presented “good cause” for an adjournment, failure to register, or failure to appear; and

5. Amendments at N.J.A.C. 1:12-18.4, regarding the reopening of appeal tribunal decisions, to add, among the reasons a request for reopening may be filed, that the party did not register for the appeal tribunal hearing for good cause shown. Regarding the latter, N.J.A.C. 1:12-18.4 already includes, among the reasons a request for reopening may be filed, that the party did not appear at the appeal tribunal hearing for good cause shown. It, therefore, follows that with the addition of “failure to register” as

a potential cause for an appeal tribunal hearing to be dismissed (as against an appellant who fails to register) or for an appeal tribunal hearing to proceed without the participation of a party (as against a non-appellant party who fails to register), the rule regarding reopening of an appeal tribunal hearing should be amended in the manner proposed; that is, to include the circumstance where a party seeks reopening of an appeal tribunal decision based on a showing of good cause why he or she failed to register.

The Department is also proposing amendments at N.J.A.C. 1:12-9.1 and 18.4, which would replace references to “parties” with references to “each party.” It is more precise to refer to rights or obligations applying to “each party,” rather than to the “parties.” For example, at existing N.J.A.C. 1:12-9.1, it states that the written notice of time and place of any hearing shall be mailed to “the parties” at least five days before the date of the hearing, it is more precise to say that written notice of time and place of any hearing shall be mailed to “each party” at least five days before the date of the hearing. Finally, since correspondence may now, or in the future, occur in ways other than by mail (for example, by email), the Department and OAL are proposing to replace the mailing requirement to require “issuance” of the notice.

As the Department and the OAL have provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirement at N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments and new rules would have a positive social impact in that they would improve the efficiency of the appeals tribunal and the Board of Review

in scheduling and hearing benefit appeals. That is, requiring each party to register in advance of the hearing and announcing that failure of a party to register will result either in the appeal being dismissed or the appeal hearing being conducted without participation of the party who has failed to register, will facilitate the scheduling of hearings with a much higher degree of certainty and predictability. This, in turn, will allow more appeals to be heard in a given day, week, month, and year. The United States Department of Labor (USDOL), which provides funding to states, including New Jersey, to administer their unemployment compensation systems, requires that benefit appeal hearings be heard and decided with "... the greatest promptness that is administratively feasible." 20 CFR 650.1(b). Codifying the requirement that each party to a benefit appeal register in advance of the hearing will better position the Department to meet Federal standards regarding promptness. Ensuring that benefit appeals truly are heard and decided promptly will not only satisfy those in the Federal government conducting oversight of the Department's unemployment compensation system, including its appeal hearing function, but will also inure to the benefit of all parties to benefit appeals, claimants, and employers alike, who will enjoy an improvement in the timeliness of claims adjudications.

Economic Impact

The proposed amendments and new rules should have an overall positive economic impact upon both benefit claimants and chargeable employers. As referenced in the Social Impact above, the proposed amendments and new rules should result in the disposition of benefit appeals more efficiently, thereby delivering benefits, to which claimants are entitled, more quickly into their hands. The proposed amendments

and new rules would also streamline the appeal hearing process, which should yield an economic benefit to both claimants and chargeable employers who would, it is hoped, be required to expend fewer resources in pursuing or defending their claims before the appeal tribunal and the Board of Review as a result of the proposed amendments and new rules.

Federal Standards Statement

The proposed amendments and new rules would not exceed standards or requirements imposed by Federal law. Specifically, the proposed amendments and new rules would not be inconsistent with the Federal Unemployment Tax Act, 26 U.S.C. §§ 3301 et seq. Consequently, no Federal standards analysis is required.

Jobs Impact

The proposed amendments and new rules would have no impact on either the generation or loss of jobs in the State.

Agriculture Industry Impact

The proposed amendments and new rules would have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The proposed amendments and new rules would impose no recordkeeping, reporting, or compliance requirements on small businesses as that term is defined within the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Rather, the proposed amendments and new rules are procedural, pertaining to the conduct of benefit appeals

before the Department's appeal tribunal and Board of Review, and only apply to individuals.

Housing Affordability Impact Analysis

It is not anticipated that the proposed amendments and new rules would evoke a change in the average costs associated with housing, nor would they have any impact on the affordability of housing in the State. The basis for this finding is that the proposed amendments and new rules address the conduct of benefit appeal hearings before the Department's appeal tribunal and Board of Review and have nothing to do with housing.

Smart Growth Development Impact Analysis

The proposed amendments and new rules would not evoke a change in the housing production within Planning Areas 1 and 2, or within designated centers, pursuant to the State Development and Redevelopment Plan. The basis for this finding is that the proposed amendments and new rules address the conduct of benefit appeal hearings before the Department's appeal tribunal and Board of Review and do not pertain to housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere else in the State of New Jersey.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department and the OAL have evaluated this rulemaking and determined that it would not have an impact on pretrial detention, sentencing, probation, or parole

policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 2. DEFINITIONS

1:12-2.1 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

...

“Appellant,” for the purpose of hearings before the appeal tribunal, means the party, whether the claimant or the employer, who is appealing a lower-level administrative determination to the appeal tribunal. “Appellant,” for the purpose of hearings before the Board of Review, means the party, whether the claimant, the employer, or a Deputy of the Division of Unemployment Insurance, who is appealing an appeal tribunal determination to the Board of Review.

...

“Deputy” shall have the same meaning as at N.J.A.C. 12:17-2.1.

“Non-appellant party,” for the purpose of hearings before the appeal tribunal, means the party, whether the claimant or the employer, who is responding before the appeal tribunal to the appeal of a lower-level administrative determination filed by the appellant. “Non-appellant party,” for the purpose of

hearings before the Board of Review, means the party, whether the claimant, the employer, or a Deputy of the Division of Unemployment Insurance, who is responding before the Board of Review to the appeal of an appeal tribunal determination filed by the appellant.

“Party” means either the claimant, the employer, or the Deputy of the Division of Unemployment Insurance who is a party to the unemployment benefit, State plan temporary disability benefit, or State plan family leave insurance benefit matter that is before the appellate body.

“Written” means handwritten or typed, hardcopy, or electronic.

SUBCHAPTER 9. SCHEDULING

1:12-9.1 Notice of hearing

(a) Written notices of the time and place of any in-person or telephone hearing shall be [mailed to the parties in interest] **issued to each party** at least five days before the date of **the** hearing but a shorter notice may be given if not prejudicial to the parties.

(b) The notice of hearing shall contain at least the following information:

1. That [the parties have] **each party has** a right to object to an in-person or telephone hearing, whichever is scheduled; [and]

2. Written instructions as to how the hearing shall be conducted[.];

3. Written notification of the requirement that in order to participate in a hearing, each party must register with the appellate body in advance of the hearing in accordance with instructions provided to the party by the appellate body within the notice of hearing; and

4. Written instructions as to how and when the party must register with the appellate body to participate in the hearing.

1:12-9.2 Adjournments

(a) Adjournments shall be granted only [in exceptional situations which could not have been reasonably foreseen or prevented] **where the requesting party is able to show good cause.**

(b)-(d) (No change.)

SUBCHAPTER 14. CONDUCT OF CASES

1:12-14.4 Failure to register

(a) If an appellant fails to register for a hearing before the appellate body at the time and in the manner prescribed in the notice of hearing, the appellate body shall dismiss the appeal on the ground of failure to register, unless the appellate body determines pursuant to N.J.A.C. 1:12-9.2 and 14.11 that there is good cause for adjournment.

(b) If a non-appellant party fails to register for a hearing before the appellate body at the time and in the manner prescribed in the notice of hearing, the appellate body shall proceed with the hearing as scheduled without the participation of the non-appellant party, on the ground of failure to register, unless the appellate body determines pursuant to N.J.A.C. 1:12-9.2 and 14.11 that there is good cause for an adjournment.

1:12-[14.4]**14.5 Failure to appear**

(a) If [the] **an** appellant fails to appear for a hearing before [an appeal tribunal] **the appellate body at the time and in the manner prescribed in the notice of hearing,** the [appeal tribunal may proceed to make its decision on the record or may] **appellate body shall** dismiss the appeal on the ground of [nonappearance] **failure to appear,** unless [it appears] **the appellate body determines pursuant to N.J.A.C. 1:12-9.2 and 14.11** that there is good cause for an adjournment.

[(b) If an appeal tribunal issued an order of dismissal for nonappearance of the appellant, the chief appeals examiner shall, upon application made by an such appellant, within six months after the making of such order of dismissal, and for good cause shown, set aside the order of dismissal and shall reschedule such appeal for hearing in the usual manner. An application to reopen an appeal made more than six months after the making of such order of dismissal may be granted at the discretion of the chief appeals examiner.]

(b) If a non-appellant party fails to appear for a hearing before the appellate body at the time and in the manner prescribed in the notice of hearing, the appellate body shall proceed with the hearing as scheduled without the participation of the non-appellant party, on the ground of failure to appear, unless the appellate body determines pursuant to N.J.A.C. 1:12-9.2 and 14.11 that there is good cause for an adjournment.

Recodify existing N.J.A.C. 1:12-14.5 through 14.9 as **14.6 through 14.10** (No change in text.)

1:12-14.11 Good cause

(a) For the purpose of determining whether a party has presented “good cause” for an adjournment pursuant to N.J.A.C. 1:12-9.2, for failure to register pursuant to N.J.A.C. 1:12-14.4, or for failure to appear pursuant to N.J.A.C. 1:12-14.5, the term “good cause” shall mean that the failure to register, the failure to appear, or the reason for the adjournment request, is due to circumstances either:

1. Beyond the control of the party; or
2. Which could not have been reasonably foreseen or prevented.

SUBCHAPTER 18. DECISIONS

1:12-18.4 Reopening Appeal Tribunal decisions

(a) In the absence of jurisdiction by the Board of Review, a party to a benefit claim may file a request for reopening of an Appeal Tribunal decision if:

1. (No change.)
2. **The party did not register for the Appeal Tribunal hearing for good cause shown;**

Recodify existing 2.-4. as **3.-5.** (No change in text.)

(b) (No change.)

(c) The Appeal Tribunal shall notify [all interested parties] **each party** of the request for reopening. [The parties] **Each party** shall have 10 days to submit written arguments.

After reviewing the matter, the Appeal Tribunal will schedule a hearing, issue an amended decision, or deny the request in an order explaining the reasons. [All

interested parties] **Each party** will be notified by the Appeal Tribunal of any subsequent decision or order which shall contain appeal rights to the Board of Review.