

CHAPTER 300-2-5 APPEALS

300-2-5-.01	Employer Tax Liability Appeals	300-2-5-.05	Repealed
300-2-5-.02	Benefit Appeals to an Administrative Hearing Officer	300-2-5-.06	Repealed
300-2-5-.03	Appeals to the Board of Review	300-2-5-.07	Repealed
300-2-5-.04	General Rules for Appeals to an Administrative Hearing Officer and Board of Review Appeals		

300-2-5-.01 Employer Tax Liability Appeals. Amended.

(1) Pursuant to the provisions of O.C.G.A. Section 34-8-70 the determination as to the unemployment insurance tax liability of any employing unit shall be based upon the information contained in a properly executed Form DOL-1 or Form DOL-1A, "Employer Status Report", or Form DOL-1G, "Registration of Governmental Organizations", together with other available information and reports of investigations.

(a) For the purpose of determining liability of any employing unit as defined in O.C.G.A. Section 34-8-33, "week" means a period of seven (7) consecutive calendar days beginning with the first day of the calendar week and ending at midnight on the last day of such calendar week during a calendar year. Except, if any such week includes December 31 and January 1, the days up to January 1 shall be deemed one calendar week and the days beginning January 1 another such week.

(b) The employing unit shall be promptly notified of the determination and the reasons thereof.

(2) Appeals from determination of tax liability. Any interested party who claims to be aggrieved by a determination of unemployment insurance tax liability may protest the findings contained in the determination and such protest, in writing, shall be deemed as an appeal from such determination.

(a) The protest shall set forth the specific grounds for the protest and shall be filed with the unit in the department which released the determination within fifteen (15) days of the date of mailing of the liability determination. An appeal shall be considered timely filed with the department if it is postmarked or hand delivered within fifteen days of the mailing date of the determination of liability. For purpose of these rules, a postal meter mark will not be considered to be a postmark. Determinations which are appealed via alternative means of delivery such as private courier, facsimile transmittal, or otherwise in parcels lacking physical evidence of delivery by the U.S. Postal Service shall be deemed filed the date the appeal is received by the department pursuant to Official Code of Georgia Annotated Section 50-13-23.

(b) The department shall promptly compile sufficient copies of the record and forward them with the appeal to the Office of State Administrative Hearings (OSAH) where it will be processed in accordance with the Georgia Administrative Procedures Act (O.C.G.A. Section 50-13-1 et seq.).

(c) In preparation for a hearing before the Office of State Administrative Hearings, any interested party shall be allowed to examine or review confidential department records in addition to those filed with the record and appeal to the Office of State Administrative Hearings. A written request for such examination or review must be received by the department in reasonable advance of the scheduled hearing. The request must be consistent

with the disclosure provisions of the Employment Security Law at Official Code of Georgia Annotated 34-8-120 et seq.

(3) Appeals from the employer tax liability determination rendered by the Administrative Law Judge shall be made directly to Superior Court and not to the board of review. The decision of the Administrative Law Judge shall become final and binding thirty (30) days from the date the Administrative Law Judge's final order is dated and filed with the Office of State Administrative Hearings unless, prior to the expiration of the thirty (30) day period, a petition for judicial review is filed with the Superior Court as provided by Official Code of Georgia Annotated Section 50-13-19. No stay shall operate after the expiration of the thirty (30) day appeal rights to Superior Court. The Commissioner shall be a party at interest to such decision.

(a) A party at interest who has filed an appeal for judicial review to the Superior Court, may, upon request, be supplied information from the records of the department to the extent necessary for the proper presentation of an appeal to the Superior Court. The request must be consistent with the confidentiality provisions of O.C.G.A. Section 34-8-120 et seq.

(b) Service. A petition for judicial review to Superior Court must join the Commissioner as a party at interest in the action. Timely service may be perfected upon the Commissioner either personally or by mail at the Georgia Department of Labor, 148 International Boulevard, N.E., Atlanta, Georgia 30303-1751. Service by facsimile transmission shall not be sufficient.

Authority O.C.G.A. Secs. 34-8-70, 34-8-174.

300-2-5-.02 Benefit Appeals to an Administrative Hearing Officer.

(1) The appeal.

(a) Any party of interest dissatisfied with an administrative determination may file in writing a notice of appeal with the department, setting forth the name of the claimant and the social security number contained on the determination and the date of such determination.

(b) A determination establishing a right to draw benefits shall be deemed final unless a written appeal is filed within fifteen (15) days after the determination is handed to or mailed to an interested party. An appeal will be considered timely if postmarked, delivered or filed in person within fifteen (15) days of the mailing date of the determination. For purposes of these rules, a postal meter mark will not be considered to be a postmark.

(c) An employer who is liable for the payment of unemployment insurance tax, is reimbursable or is a governmental agency; who has paid that individual insured wages for services; and who is entitled to notice of claim filed by that individual as the most recent employer, as defined by O.C.G.A. Section 34-8-43, shall be deemed to be an interested party to the administrative determination of such claim.

(2) The notice of hearing.

(a) Claimant benefit hearings shall be scheduled promptly and may be conducted in whole or in part by telephone. The Chief Administrative Hearing Officer shall determine the time, place,

and manner in which appeals shall be conducted. The record of a telephone hearing must reflect the consent of the parties to the transacting of the hearing by telephone and that the use of telephonic communications has not jeopardized the rights of any party. In the absence of such consent, an in-person hearing will be scheduled. If any party anticipates a conflict with any possible hearing dates within the next four weeks after the receipt of notice from the department that an appeal has been filed, that party should immediately notify the appeals tribunal of the date(s) of unavailability. Once a hearing has been scheduled, postponement or continuation of the hearing is within the discretion of the Chief Administrative Hearing Officer.

(b) All in-person appeals, except where waiver is given, shall be heard by an administrative hearing officer at the earliest possible date, but no earlier than seven (7) days after written notice of the time and place is mailed to the interested parties. Hearings conducted telephonically, except where waiver is given, shall be heard by an administrative hearing officer no earlier than ten (10) days after written notice of the time and place is mailed to the interested parties.

(c) The notice of hearing shall cite the sections of law pertinent to the appeal and include a general statement of the issues involved.

(3) The hearing.

(a) The administrative hearing officer shall administer the oath to all witnesses prior to accepting testimony and shall conduct the hearing in an orderly manner, maintaining control and preventing any disruption of the hearing process. The administrative hearing officer shall develop the record by conducting appropriate inquiries and shall allow each party an opportunity to examine and cross-examine witnesses on all matters pertinent to the issues. No testimony shall be taken that does not permit the parties of interest an opportunity for cross-examination. Any individual who disrupts the procedures, after warning, may be ejected and denied any further participation in the hearing.

(b) Issuance of subpoenas. Subpoenas to compel the attendance of witnesses and the production of records pertinent to any hearing of an appeal shall be issued by the Chief Administrative Hearing Officer upon request therefor from a party of interest. The party requesting said subpoenas must show the necessity therefor and shall have the responsibility of serving said subpoenas.

(c) A witness fee of \$10.00 per day shall be paid upon request to a subpoenaed person in attendance; other than an employee of an employer subpoenaed by that employer. The total fee shall not exceed \$30.00 and shall be mailed to the address of the subpoenaed witness. In addition, an allowance of \$.20 per mile shall be paid, up to a maximum of \$20.00, for attendance of a witness at a hearing.

(d) Appeals involving multi-claimants or a labor dispute may be heard by a three-person tribunal consisting of an administrative hearing officer, as chairman, and two other members appointed by the Commissioner for that purpose, except when the administrative hearing officer is designated to hear the matter alone. When heard by a three-person tribunal, the decision of two-members of the tribunal shall constitute the decision of the tribunal. The other member may file a dissenting report giving reasons for not agreeing with the decision.

(e) Appeals involving multi-claimants or involving a labor dispute may be heard at any place designated by the chairman of the three-person tribunal or the designated administrative

hearing officer hearing these appeals.

(4) Form and contents of decision. The administrative hearing officer shall observe the suggestions of the Employment and Training Administration, United States Department of Labor in regard to the form and contents of benefit decisions.

(5) A postponement of the hearing may be granted upon request showing providential cause will prevent the attendance of a party or essential witnesses. A request for postponement must be made at the earliest practical time and must be made in writing or by facsimile transmission. In the absence of very unusual circumstances, a business engagement will not constitute good cause for postponement. Such requests may be granted or denied at the discretion of the Chief Administrative Hearing Officer.

(6) Requests for resetting of a hearing. Any interested party who fails to appear may request a resetting of the hearing within fifteen (15) days after the administrative hearing officer's decision is issued. The petition shall state fully the ground upon which the request for a resetting of the hearing is sought, giving complete details for the failure to appear as scheduled. A new hearing will then be scheduled to cover the issue of the party's failure to appear as scheduled and may also include the issues raised on the initial appeal. In the absence of very unusual circumstances a business engagement will not constitute good cause for resetting the hearing. The petition to reset the hearing may be granted upon a showing of providential cause for failure to attend or failure to give timely notice of inability to attend the original hearing.

(7) Correction of error and augmentation of the record. Any party may request correction of an administrative hearing officer or the board of review decision if the request is made in writing and filed or mailed within fifteen (15) calendar days of the date of the decision. The administrative hearing officer or the board of review retains jurisdiction to reopen the hearing, amend or correct any decision which is not final, or exercise continuing jurisdiction as provided by the rules pertaining to O.C.G.A. Section 34-8-220 unless the board of review has accepted an appeal. Whenever a request for correction is submitted to the administrative hearing officer or the board of review, a decision will be issued and new appeal rights will be established.

(8) Requests for removal of an administrative hearing officer from a case. A party may request that an administrative hearing officer remove himself or herself from a case on the basis of partiality, interest or prejudice. The request for removal must be made in writing prior to the hearing, unless the reason for the request was not or could not have been known prior to the hearing. The request must state specific facts which are alleged to establish cause for removal. If the administrative hearing officer agrees that he or she should be reassigned, another administrative hearing officer will be assigned to the case. However, if the administrative hearing officer finds no reason to remove himself or herself, he or she will rule on the request verbally during the hearing and explain the basis for the ruling. Challenges to the partiality of the administrative hearing officer will not result in a delay of the hearing. Appeals pertaining to the partiality of the administrative hearing officer may be filed consistent with the time limitations for appealing the decision.

Authority O.C.G.A. Secs. 34-8-70, 34-8-172, 34-8-174.

(1) The appeal. Any party authorized by the Employment Security Law to appeal to the board of review may do so in person by filing with the local office of the department where the claim was filed, a "Notice of Appeal", on Form DOL-423, setting forth the information required, or by writing to the department.

(2) The review.

(a) All appeals to the board of review shall be decided upon the evidence in the record made before the administrative hearing officer.

(b) In the review of an appeal, the board of review may limit the parties to oral argument, or to filing of written briefs or both.

(c) If, in the discretion of the board of review, additional evidence is deemed necessary to enable it to determine the appeal, the board on its own motion, shall remand the case to the Chief Administrative Hearing Officer for the taking of such additional evidence and the parties shall be notified as to the time and place such evidence shall be taken. Any party to any proceeding in which testimony is to be taken may present and cross-examine whatever evidence may be deemed pertinent to the issues on which the board of review has directed the taking of additional evidence. Upon the completion of the taking of evidence by the administrative hearing officer, the appeal shall be returned to the board of review, unless the administrative hearing officer is directed to render a new decision in the light of the additional evidence.

(3) The decision.

(a) Following the conclusion of a review on an appeal, or the return of a case to the board following a remand for the taking of additional evidence, the board of review shall promptly announce its decision with respect to the appeal. The decision shall be in writing and shall be signed by members of the board of review and shall adhere to such form and content for such decisions as may be prescribed from time to time by the Employment and Training Administration of the United States Department of Labor.

(b) If a decision of the board of review is not unanimous, the decision of the majority shall control, provided, however, when a member is unable or unwilling to participate in a decision and a majority vote is not obtainable, the hearing officer decision shall stand affirmed. Any member of the board of review may file a dissenting opinion in the case setting forth the reasons why the member fails to agree with the majority.

(c) Copies of the decision, together with findings of law and fact, shall be mailed by the secretary of the board of review to the parties at interest.

(4) Rehearing.

(a) Any interested party who might be aggrieved by any decision of the board of review may move for a reconsideration of any such decision at any time prior to the end of the fifteen (15) day period fixed by OCGA Section 34-8-223 for the board's decision to become final. The term "interested party" means the parties to the appeal and shall include the Commissioner.

(b) Any party moving for reconsideration hereunder shall file with the board of review the grounds therefor, and shall furnish the board a sufficient number of copies to enable it to

furnish one such copy to each of the parties at interest.

(c) The board of review in its discretion may grant or deny any motion for reconsideration, either ex parte or after hearing. It may, in its discretion, notify the parties to appear before it at a specified time and place for argument on the motion. The board of review shall promptly issue its order on said motion.

(d) In any case in which a new hearing is granted, the board shall enter an order providing for such rehearing and shall fix in said order the time and place for rehearing, which shall be as soon after the issuance of the order as is deemed practicable by the board.

(e) No order of the board of review allowing a motion for reconsideration shall operate to stay payment of benefits previously allowed.

Authority O.C.G.A. Secs. 34-8-70, 34-8-174.

300-2-5-.04 General Rules for Appeals to an Administrative Hearing Officer and Board of Review Appeals. Amended.

(1) Attorney fees. Counsel for claimant shall, upon application and approval by the board of review, be authorized to charge and receive from the claimant, for an appearance before either an appeals tribunal or the board of review, a fee in an amount not to exceed \$ 300.00 for each appearance; provided that for an appearance before the board of review which required counsel to travel a distance of more than twenty-five (25) miles, an additional amount may be authorized by the board. Provided, further, that the total allowance authorized on any claim shall not be in excess of fifty percent (50%) of the amount involved in the claim. Only for good cause shown to the satisfaction of the board of review may an allowance in excess of these amounts be approved.

(2) Supplying information from the department. Information from the records of the department to the extent necessary for the proper presentation of a claim before an administrative hearing officer or the board of review shall be available to the interested parties upon request. Any interested party may have access to the information in the records pertinent to the claim or claims to the extent of reviewing the file or files. The department shall release the entire file whenever a case is taken to court, but shall not be compelled to release a copy or permit the copying of any confidential or privileged communications prior to such proceedings in a court of record. Copies may be obtained only as otherwise provided in Section 300-2-6-.02 of these rules.

(3) Representation before appeals tribunals and board of review.

(a) Any individual may appear in person in any proceeding before any appeals tribunal or before the board of review. A partnership may be represented by any member. A corporation or association may be represented by any of its officers or agents. Any party may be represented by counsel or any agent of their choice, as provided in OCGA Section 34-8-251.

(b) Appearance before the board of review on behalf of the department shall be limited to members of the staff designated by the Commissioner.

(4) Excused for cause. No administrative hearing officer, member of a three-person tribunal or

member of the board of review shall participate in a hearing to determine the issues in any appeal in which that individual has an interest in the outcome.

(5) An appeal shall be considered to be timely filed if the appeal is filed on the next day the office of the department is open and the last day for filing the appeal fell on a Saturday, Sunday, official holiday for which the department's offices were closed or the department's office was closed due to a temporary emergency. An appeal shall be considered to be filed on the same date as the postmark cancellation date shown on its envelope, or the actual date of receipt by the department if there is no postmark cancellation date or if the date on the envelope is illegible. A postage meter date shall not be considered for purposes of timeliness. An appeal may be filed in person, by mail or by facsimile transmittal ("FAX") sent to the office of the department where the claim was initially filed or was transferred by the department. For purposes of these rules, a postal meter mark will not be considered to be a postmark.

(6) Ex parte communications. No parties will be permitted to discuss the merits or facts of any pending case with the administrative hearing officer assigned to the case or the board of review either before or after the hearing, prior to the issuance of the decision, unless all other parties to the case have been given notice and opportunity to be present. Any discussions between the parties and the administrative hearing officer or the board of review on procedural issues or inadvertent ex parte information regarding the merits of the case will be reported to the parties at the time of the hearing and made a part of the record. Discussions with department employees who are not designated to represent the department on the issue or who do not provide factual information and are not expected to participate in the hearing of the case, are not ex parte communications and do not need to be made a part of the record.

Authority O.C.G.A. Secs. 34-8-6, 34-8-8, 34-8-70, 34-8-174.

300-2-5-.05 Repealed.

300-2-5-.06 Repealed.

300-2-5-.07 Repealed.