

## **How to File a Petition for Review for Unemployment Second Appeal Process**

### **What is a Petition for Review?**

A Petition for Review (PFR) is an appeal of the Administrative Law Judge's (ALJ) decision at an administrative hearing. Typically these unemployment appeal hearings are over the phone and you receive an order in the mail shortly after the hearing. Usually this is called an Initial Order, however if you submitted an appeal and missed the hearing, you will receive a Default Order. In either case, if you disagree with the decision, you should file a PFR to appeal.

A Petition for Review is a letter no longer than five pages explaining why you disagree with the judge's decision. The Commissioner's Review Office does not hold new hearings. The Commissioner's office is completely separate from the Employment Security Department and the Office of Administrative Hearings. When you submit your PFR, the Commissioner's Review Office will mail you and the other parties in the case a copy of your appeal, to notify that it has been filed. If you do not receive this confirmation letter within a week of submitting your PFR, call the Commissioner's Review Office to confirm that they received your appeal. A copy of your PFR will be sent to all of the parties that were listed on the notice of hearing for your initial appeal hearing. If your former employer is a party to the case, they will have 15 days to write a response letter to your Petition for Review if they would like to.

A judge from the Commissioner's office will review your letter, your former employer's response (if there is one), the exhibits from the hearing, and the recording of the hearing. After reviewing everything, the judge will write and issue a decision, which you will receive about 30 days from the date your appeal was received.

### **How do I file a Petition for Review?**

Follow the instructions under "Petition for Review Rights" on your Initial Order. It will tell you when the appeal letter needs to be postmarked and where to send it. The appeal is due within 30 days of the date on the order. Usually the address to mail your appeal to is:

Commissioner's Review Office  
Employment Security Department  
PO Box 9555  
Olympia WA 98507

The letter can be a maximum of five pages. No new evidence or testimony will be accepted.

### **Can ULP write, review, or advise me on my Petition for Review?**

Unfortunately because we have a small staff and limited resources, we are unable to represent or advise for appeals that where we didn't represent at the administrative hearing. We are also unable to write a Petition for Review in many of the cases where we did represent at the administrative hearing. Keep in mind that your appeal can be written in any language and can be handwritten or typed. If you write your PFR in another language, note which language it is in at the top of your letter.

## What do I include in my Petition for Review?

Review the ALJ's Initial Order. The "Findings of Fact" explain the facts of the case as the ALJ understands them. The "Conclusions of Law" explain the legal reasons the judge is allowing or denying benefits. Usually the ALJ will cite the laws he or she is referring to when allowing or denying benefits. The "therefore it is ordered" section explains the final decision of why benefits are allowed or denied, and for what period of time.

You can request a recording of the hearing if you would like to review exactly what was said at the hearing. To do so, call the Agency Records Center at 360-407-4512 and request that they mail you a recording of your hearing. If you are missing the Initial Order or any exhibits from the hearing, you can request they send you those too. It can take a week or two for you to receive the hearing recording from Agency Records, so make your request as soon as possible.

After you've reviewed the Initial Order and the recording of the hearing (if applicable) make notes for what you disagree with and why. You can review the laws and/or cases the ALJ cites by searching for them online. If you would like to research the Revised Code of Washington, the Washington Administrative Code, or any case law, you can search online at [www.esd.wa.gov](http://www.esd.wa.gov), scroll to the bottom and click laws and regulations.

Your PFR is not required to be as formal as the attached sample. The sample letter is for a case about the claimant having good cause to quit. Since an attorney wrote this appeal on a client's behalf, it's written in the third person, but you can write yours in the first person. You can adapt yours to be about the issue you are appealing. Here is how ULP attorneys format their letters:

**Heading:** Includes today's date, Agency Records Center's address, your name, and your docket number. The docket number can be found on the top right of the Initial Order.

**Introduction:** The letter starts with "Dear Commissioner" and explains that the letter is a Petition for Review. It includes information about the initial hearing: the ALJ's name, the date the hearing decision was entered, and the issue discussed at the hearing (such as whether or not there was good cause to quit or whether or not misconduct occurred on the claimant's behalf) and requests the decision be set aside and benefits be granted.

**Background:** This section explains two things: the job separation (the sequence of events that led to the job separation) and the administrative decisions (what the Employment Security Department [ESD] decided in your determination notice that originally allowed or denied benefits and why; what the ALJ concluded after the hearing and why).

If you missed your hearing or are filing your Petition for Review after the 30 day filing period, you need to explain why. Keep in mind that failing to be at the hearing or file on time could mean your case will not be reviewed. You will want to explain the very compelling reason that made you unable to be at the hearing or file a timely appeal. Usually forgetting or calendaring the deadline incorrectly is not considered good cause for a late appeal or for missing a hearing.

**Issue on Appeal:** This draws the Commissioner's attention to what specifically you disagree with and why. You can list multiple arguments. This is the section where the notes you took after reviewing the Initial Order and hearing recording will be helpful. Usually our attorneys organize this section by separating out each argument for why benefits should be allowed.

**Conclusion:** This section reiterates your request for benefits to be allowed. Many times our attorneys include the statement that RCW Title 50 must be liberally interpreted in favor of the unemployed worker, therefore we respectfully request that benefits be allowed.

At the end, sign the letter. Send a copy to Agency Records Center and the other parties listed on your Initial Order. These parties can be found on the last page of the Initial Order under “Mailed to the following.” Be sure you have the correct address and postage. You do not want your appeal to be late because your letter was returned to you due to an incorrect mailing address or amount of postage because it might not be considered if it is late.

### **What if the ALJ believes my employer’s version of facts and not mine?**

This is a difficult situation. Sometimes when presented with conflicting information, the ALJ has to decide whose explanation of facts is more credible, meaning whose explanation seems like it would most likely have occurred. Usually the judge will include a sentence or two about why they find a certain explanation of facts more credible.

If this is the case, you can explain why your version of facts should be considered more credible. Keep in mind that PFRs that are not accusatory toward the ALJ and are not written in an angry tone tend to be more persuasive. Even if the ALJ or employer was rude to you or cut you off at the hearing, pointing these things out to the Commissioner will not make your case more persuasive.

If there is something that was vital to your case that you were not allowed to present at the hearing, you can explain in your PFR what it was that should have been allowed and why it was very important to your case.

### **What happens after I submit my Petition for Review?**

After you submit your PFR, you should receive a confirmation that it was received from the Commissioner’s Review Office. This is usually received within 10 days. If you haven’t received this document by the date your PFR is due, call the Commissioner’s Review Office at 360-570-6960 to confirm they received it. If they haven’t, re-mail your PFR.

The confirmation of your PFR will arrive in the mail and consists of a copy of your PFR letter along with a coversheet from the Commissioner’s Review Office. The cover sheet will say “Petition for Review” at the top and on the right in a gray box it will say “For Commissioner’s Review Office Use Only” and will list a Review Number and Acknowledgment Date. The back includes a “Notice to Interested Parties” that should explain how to submit a response. Your former employer is allowed to submit a response to your PFR within 15 days. When you get this confirmation, you don’t need to do anything, it’s just for your records.

### **What if I won at the administrative hearing and my former employer submits a Petition for Review?**

If your former employer submits a PFR, you will receive a copy of that letter along with a coversheet from the Commissioner’s Review Office. You are allowed to submit a response to your PFR. The cover sheet will say “Petition for Review” at the top and on the right in a gray box it will say “For Commissioner’s Review Office Use Only” and will list a Review Number and Acknowledgment Date. The back includes a “Notice to Interested Parties” that should explain how to submit a response. Usually it is due within 15 days of the acknowledgment date and needs to be submitted to the Commissioner’s Review Office.

Your response letter can be no longer than five pages and should explain why you think the ALJ's decision should stand and why your former employer's appeal should be disregarded. At the top of your letter, you should include a heading with your name, docket number, and the Review Number listed in the gray box of the PFR coversheet you received. You should also include an introduction explaining that you are responding to your former employer's Petition for Review.

### **How long will it take to get a decision and what will it say?**

Usually you will receive the Commissioner's written decision within about 30 days of submitting your PFR. The decision can:

- *Affirm* the ALJ's decision - meaning they agree with the ALJ's decision,
- *Set aside* the ALJ's decision - meaning they disagree with the ALJ's decision and are changing it,
- *Modify* the ALJ's decision – meaning they disagree with part of the ALJ's decision and are changing part of the decision, or
- *Remand* the decision - meaning they are sending the case back to the ESD to review the decision for another determination or to have a new hearing.

If you are denied by the Commissioner, you can submit a Judicial Review to Superior Court within 30 days of the Commissioner's decision.