

How To Represent Yourself At An Unemployment Compensation Benefits Hearing

May I appeal a denial of unemployment benefits?

After your initial interview with the Claims Telecenter, you will receive a written notice by mail that will allow or deny you unemployment benefits. If you have been denied benefits, you have a right to appeal. If you have been allowed benefits, your former employer has the same right to appeal. If either you or your employer appeals, you will have a hearing with an administrative law judge.

How do I file an appeal?

You have thirty days from the date on the decision to send in an appeal. If you write a letter, state: "I want to appeal the denial of unemployment benefits because I disagree with the decision. I want a hearing, and I want a copy of my file." Include your name and address and your employer's name and address. Send the form or the letter to the address on the notice or fax it to the Telecenter using the number provided on the written decision that denied you benefits. Make sure you keep a copy of what you send. If you need help with your appeal, the Unemployment Law Project may be able to help you. Their phone number is (206) 441-9178 or (888) 441-9178.

Should I continue to file for unemployment benefits while I appeal?

If you decide you are going to appeal the decision, you should continue to file your claims. If you win at your hearing, you will receive benefits for each of the weeks for which you filed. If you lose at your hearing, and you had been receiving benefits before the hearing, the Employment Security Department will try to get these benefits back from you.

You must keep a record of all the places you have looked for work. If you have not been doing this, start now. Also, write down all the prior contacts you can remember. Contact at least three different potential employers each week, using work search methods that are customary in your line of work. These contacts can include calling or going to the personnel office of a potential employer to see if there are any jobs available, or filling out and returning a job application. You will need to be able to tell the judge at the hearing about your efforts to get work. If you were offered a job and didn't take it, you will have to prove to the judge that the job was not suitable for you.

What happens next?

After you have sent in your Notice of Appeal, you will receive a notice of the date and time of your hearing. Your hearing may be by telephone or in person. If you cannot come to the hearing on that date, you must call the Office of Administrative Hearings. The number to call can be found in the Notice of Hearing. The OAH has offices in Seattle, Olympia, Vancouver, Yakima and Spokane. Make sure you call the right office.

Your Notice of Appeal will also state whether the hearing will be in person or by telephone. If you are scheduled for a telephone hearing and you feel you would be at a disadvantage if the hearing were not in person, you should call the administrative law judge and ask for a change.

For example, if you and your employer are saying two different things about what happened, it may be better to have a judge listen to you in person. If you are scheduled for an in-person hearing and you have a condition that would make it difficult for you to attend the hearing in person, you should also call the judge. The judge will listen to your reasons for wanting to change the way the hearing is conducted and decide whether to agree to the change.

How should I prepare for the hearing?

KNOW THE LAW:

The Legislature passed a new law that affects those claims that have a Benefit Year Ending (BYE) of January 1, 2005 or later.

Generally, you will not receive benefits if the judge decides that you quit your job without a good reason, known as "good cause." If you were fired, you will not receive benefits if you did something on the job that the judge thinks is "misconduct." We will describe below what is good cause and what is misconduct. If you quit, think about how you would show that it was for good cause. If you were fired, think about how you would show that it was not because of misconduct. Write down what you want to tell the judge about good cause or misconduct and bring these notes to your hearing.

IF YOU QUIT YOUR JOB . . .

RCW 50.20.050(2) is where the new law on quits can be found. If you quit your job with good cause, you are eligible for unemployment benefits. The burden is on you to prove good cause. Under the new law, you show good cause if you can show that you quit for one or more of the following reasons:

1. acceptance of other work (bona fide offer of bona fide work)
2. your illness or disability, or the illness, disability or death of someone in your immediate family
3. relocation of your spouse due to a mandatory military transfer
4. your protection or the protection of a member of your immediate family from domestic violence or stalking
5. reduction of your usual income by at least 25 percent
6. reduction of your usual hours of at least 25 percent
7. a change in your worksite that caused a problem with commuting
8. a deterioration of worksite safety
9. the existence of illegal activities in the worksite
10. a change in your usual work which violated your religious convictions or sincere moral beliefs

You also need to show that before you actually quit, you tried to solve the problems you were having at your job. For example, if you talked with your supervisor and asked him for a different job or a different shift, you should tell the judge that. If you did not do this, you need to explain why you felt it would have been completely useless to try to change things that way.

There are some situations where the judge may find that you most likely did not have good cause to quit. For example, if you quit because you were no longer satisfied with the work, or the reduction in hours and pay were a result of something you had control over, or the new job offer was a sham, or you knew of the worksite safety issues before taking the job, but took the job anyway, the judge might find that you have not shown good cause.

IF YOU WERE FIRED FROM YOUR JOB . . .

RCW 50.04.294 is where the new law on misconduct can be found. Generally, you are eligible for unemployment benefits if you were discharged or fired from your job, unless the employer can show that something you did was misconduct. Whether something is misconduct or not is up to the judge to determine. The judge will listen to your employer's story and your version before he/she will decide. The employer has the burden to prove that you were fired or suspended for misconduct or gross misconduct.

The new law describes misconduct as including, but not limited to:

1. willful or wanton disregard of the interests of the employer or a fellow employee
2. deliberate violations or disregard of standards of behavior the employer has the right to expect of you
3. carelessness or negligence that causes or would likely cause serious bodily harm to the employer or a fellow employee
4. carelessness or negligence of such degree or recurrence to show an intentional or substantial disregard of the employer's interest

Examples of misconduct or willful or wanton disregard of the employer's interests include, but are not limited to: insubordination, repeated and inexcusable tardiness after warnings, dishonesty related to employment, repeated and inexcusable absences, deliberate and illegal acts, deliberate acts that provoke violence or a violation of the law or collective bargaining agreement, violation of reasonable company rules, and violations of the law while acting within the scope of employment.

The new law describes gross misconduct as a criminal act in connection with your work for which you have been convicted in a criminal court, or has admitted committing, OR conduct connected with your work that demonstrates a flagrant and wanton disregard of the interests of your employer or a fellow employee.

The new law also describes what is NOT misconduct. They include inefficiency, unsatisfactory conduct, or failure or perform well as the result of inability or incapacity; inadvertence or ordinary negligence in isolated instances, or good faith errors in judgment or discretion.

Your Employer Will Try To Show:

- 1) that you were warned about something you were doing that was against company policy and you did not make efforts to stop what you were doing. For example, if the company manual said you have to lock up a tool cabinet at the end of your shift, and you continued to leave it unlocked after repeated warnings from your supervisor, that might be misconduct.

- 2) that you did not do something your boss asked you to do, which was reasonable and part of your job. For example, if you worked as a janitor and your boss asked you to mop the floor and you refused to do it, that might be misconduct.

You Should Try To Explain:

- 1) You were fired because your employer thought your work wasn't good enough, but you had tried your best to do it right. For example, if you made several mistakes while operating the cash register, but did not mean to make those mistakes, it would probably not be misconduct.
- 2) You didn't know what you were doing was wrong because no one had told you or warned you about it. For example, if you were not warned by your supervisor that you should lock the tool cabinet, and you didn't know it was a rule, it would probably not be misconduct.
- 3) You refused to do a dangerous job after you told your employer about the danger. For example, if your employer wanted you to work on a machine without safety glasses and you told him or her that you refused to do it because you thought it was too dangerous, it would probably not be misconduct.
- 4) You were fired for reasons that were not related to how you do your job. One example is if your employer fired you because you got a traffic ticket and driving is not part of your job. Getting a traffic ticket would probably not be misconduct because it has nothing to do with your job.

Look at Your Unemployment File

When you file an appeal, you have a right to a copy of everything in your unemployment file. If you will be having an in-person hearing, you should call the Office of Administrative Hearings number that is listed in the Notice of Appeal Filed or Notice of Hearing and ask for a copy of your file if you have not already received your file from the Claims Telecenter. If your hearing is by telephone, you will receive copies of the documents in the mail. Look at these documents carefully. If there are no statements from your employer in the file, talk to someone at the OAH and tell them you want everything in the file, including the statements of other people. Look closely at your employer's statement and see if you think it is true. If it is not true, think of ways you can show it is wrong. Also, look closely at any written statements that are attributed to you. These statements may be inaccurate. Make sure you tell the judge if you disagree with anything in the file.

Consider Looking at Your Employer's Records

Your employer is required by law to keep records showing the hours you worked each day and each week and the reason you left your job. You can also have access to letters of warning and other records of discipline. If you wish to receive copies of any of these records, ask the Administrative Law Judge at OAH well before the hearing.

Consider Using Documents or Witnesses to Support Your Case

If a co-worker saw or heard what you or your employer did or said, you could ask the worker to be a witness at your hearing. A witness who is unable to attend the hearing can telephone in. It is your responsibility to make sure your witness comes to the hearing or is at the phone at the right time.

If you cannot get someone whom you are sure will help your case to agree to come to the hearing, you may ask the judge to subpoena that person. A subpoena legally requires a person to come to the hearing. If a witness needs an excuse to be out of work during the hearing, or is fearful of being punished for volunteering to testify, it may also be helpful to subpoena that person. You may want to tell the witness in advance that you will be sending a subpoena.

Documents That You Could Submit

You are allowed to submit documents to the administrative law judge to help to prove your claim. Some things that may be helpful include: 1) your medical records; 2) a letter from your doctor or mental health care professional; 3) an affidavit or sworn statement from someone who saw what you or your employer did or said if that person cannot be present at the hearing in person or by phone¹; 4) any other document that you think would support what you are saying happened.

Prior to an in-person or telephone hearing, you will be mailed documents that will be used at the hearing. If you want to submit additional documents, you should mail or fax copies to the judge and to your former employer (or to any other parties listed on the Notice of Hearing) before the hearing. The address and any fax numbers are listed on your hearing notice. The judge may also require that you submit documents before an in-person hearing. Make sure that you read all the information sent to you from the OAH.

What if I can't read or speak English very well?

If you speak little or no English or are hearing impaired, you should immediately contact the Claims Telecenter or the Office of Administrative Hearings and an interpreter should be provided to help you at no cost.

May I request a delay to the hearing?

If you are still collecting documents, you may request that the hearing be delayed to a later date. However, if you are the one who appealed, this may also delay your benefits. If you have a doctor's appointment or a job interview or will be on vacation the day of the hearing, you may request to delay the hearing. You will need to call the judge to request a postponement.

What should I do at an in-person hearing?

Be sure to be on time for your hearing. If you will be late, contact the Office of Administrative Hearings (OAH) immediately. If you are late or do not appear for your hearing, the judge may declare a default. Make sure your witness(es) are also on time for the hearing, or are ready to call in to the hearing. Bring several copies of all your documents with you, including a list of jobs you have applied for. Bring a list of points you want to bring up at the hearing and paper and pen for taking notes. You may read from your list during the hearing if you feel comfortable doing that.

You will go into a room with the judge, the employer's witnesses or representatives, and your own documents and witnesses. The judge will tape-record the hearing. You will take an oath

¹ However, there is a chance the judge will not allow these documents into evidence. See the section "How do I make objections?"

that you will tell the truth. When you testify, try to be clear and tell the story in the order it happened. You must tell the judge everything that you want him or her to know. The judge may ask you some questions, and the employer's representative may also ask questions. The employer's witnesses may testify, too, and the employer may bring documents. You may question the witnesses, including your employer. If at any point you are confused about what is happening during the hearing, you should ask the judge to explain it to you.

How do I take part in a telephone hearing?

If you are scheduled for a telephone hearing, you must call the Office of Administrative Hearings at the telephone number found on the Notice of Hearing on the time and date indicated.

Leave your telephone number with the person who answers. The judge will call you back when the hearing begins. Do not call from a pay phone or from a cellular phone. The hearing procedure will be the same as the in-person hearing. If you cannot hear, be sure to let the judge know. You will need to have your work search log with you as the judge may ask you about the employers you have contacted to seek work.

Do I have the right to a qualified interpreter at my hearing?

Yes. You should call the Office of Administrative Hearings as soon as you get your Notice of Hearing and tell them you need an interpreter. If no interpreter is provided, you have a right to reschedule your hearing. If the interpreter is speaking too fast, you can ask him or her to slow down. If s/he is not doing a good job, say so. You can also ask for a different interpreter. Be sure that you do this while the tape-recorder is running.

How do I make objections?

You have the right to "object" to witnesses or documents the employer uses. The judge may still listen to the testimony or read the documents, but it is still a good idea to object because you may not be able to do it later on if you appeal.

The employer's witnesses can only testify about what they saw, said, or heard. If one witness talks about something that another person said happened, that is called "hearsay." You may object to the employer using hearsay. For example, if the manager of the store is testifying, and he wasn't employed at the store at the time he said you were late for work, he would be talking about what another employee said about what time you came in on a particular day. In this case, you should say: "I object. That is hearsay. I should be able to question this person myself about what happened and show that he is not telling the truth. Please do not rely on this information in making a decision about my employment." This is because the manager doesn't know himself whether or not you were late and is relying only on the word of someone who is not at the hearing. Always make your objections while the tape recorder is running.

You may also object to documents that your employer presents at the hearing. If the document contains information from someone who is not at the hearing, and it is a document that isn't a form or record produced regularly at your work, you should object. For example, if your employer tries to present a written statement from another employee who is not at the hearing, you should object. You should say: "I object. This is hearsay. I should be able to question this person myself about what happened and show that he is not telling the truth. Please do not rely on this information in making a decision about my employment." Try not to request the testimony of your supervisor who still works for the employer.

If the employer tries to use documents that you asked for but were not provided to you, you should object. This is because you have the right to see all of the documents before the hearing. If, at the end of the hearing, you think you need the testimony of another person, ask to have another time set to come back with your witness. At the end of the hearing, ask for a copy of the hearing tape.

How do I appeal the judge's decision?

You will get your decision in the mail within a few weeks after your hearing. If you don't agree with the decision, you may appeal by filing a "Petition for Review." You must file the Petition for Review within 30 days of the mailing date listed on the Office of Administrative Hearings (OAH) decision. A Petition for Review is really just a letter. If you have not already done so, call the Agency Records Center at 360-753-5134 for a copy of the hearing tape. Listen to the tape and find the parts in the tape that help show that you quit for good cause or were not fired for misconduct. In the letter, you should explain why you think the judge's decision was wrong, using examples from the tape. Be as organized and specific as possible. The letter must be no longer than five pages and signed by you. At the top of the letter, you should write "Petition for Review," and include your name and address, your social security number, and the Docket Number on the decision.

How do I respond to my employer's appeal?

If the employer appeals the decision, you will receive a copy of the Petition for Review with an Acknowledgment. The Commissioner's Review Office needs to receive your Response within fifteen days of the date of the Acknowledgment. In a Response letter, you should say it is a Response to a Petition for Review and list your name, address, Social Security Number and the Docket Number of the decision. You should explain why you think the judge was right when s/he determined you should have benefits and explain why you think the employer's arguments are wrong. If possible, use examples from the hearing tape. The response letter must be no more than five pages and must be signed by you.

Where should I send the Petition for Review or the Response?

The address to which you should send the Petition for Review, certified mail, return receipt requested, is:

Agency Records Center
MS - 6000
P.O. Box 9046
Olympia, WA 98507-9046

The address to which you should send the Response to the Petition for Review, certified mail, return receipt requested, is:

Commissioner's Review Office
P.O. Box 9046
Olympia, WA 98507-9046

You should always check your decision to verify that this is the correct address. You should write on your Petition for Review or your Response letter that you sent a copy of it to your former employer or its representative, and then you should do so.

How do I appeal the agency's final decision?

If you disagree with anything in the final decision issued by the Commissioner, you have the right to file a Petition for Judicial Review in Superior Court within thirty (30) days. If you have a very low-income, you should contact CLEAR at 1-888-201-1014 as soon as possible if you are interested in possibly filing an appeal to Superior Court. You may also wish to contact a private attorney because the state is required to pay the attorney's fees to claimants who win their appeal.

If you are unable to find an attorney who is willing to take your case, you may file an appeal yourself. You can also contact the Unemployment Law Project at 206-441-9178 or 1-888-441-9178.

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