

How to Appeal a Denial of Unemployment Benefits to Superior Court

This publication is about Superior court review of an administrative decision relating to unemployment benefits.

INTRODUCTION

If you lose your claim at the administrative hearing, you have another level of administrative review, called a "Petition for Review." This first appeal does not go to Superior Court, but to the Commissioner of the state Employment Security Department. Instructions to appeal a decision to the Commissioner's office should be included with the unfavorable decision from the Office of Administrative Hearings.

If you disagree with the Commissioner's Decision, you may appeal your case to a state Superior Court. The appeal form that initiates the case is also called a "Petition for Review." It can be filed in either the Superior Court of the county where you live or in Thurston County Superior Court in Olympia. There should be no charge for filing a petition for review from an administrative decision regarding a claim for unemployment compensation benefits (see RCW 74.08.080(3)).

This publication explains when and how you can petition the court for review of the Commissioner's decision. This is not an easy process. Do not get discouraged. You may need to read this several times or ask someone about it. The laws regarding petition for judicial review can be found in RCW 34.05.510 through .598. The laws governing unemployment insurance are found in RCW Title 50 and Washington Administrative Code Title 192. See Preparing your argument, below, for information on how to find copies of these laws.

This publication includes a Petition for Review form for you to use.

WHAT IS THE DEADLINE FOR FILING A PETITION FOR REVIEW?

This is extremely important!!!! **A petition for review must be filed and served within thirty (30) days of the final administrative review decision** or the Commissioner's decision. If the petition for review is not received by all parties by the 30th day, it cannot be considered even if there is a good reason for it being late. The instructions below explain what the Petition must say, how and where to file it, who must receive copies of the petition (service), and how to serve it.

WHAT ARE THE GENERAL RULES ABOUT PETITIONS FOR REVIEW?

As a general rule, you can only raise issues and arguments in your petition that you raised at the administrative hearing. There are a few exceptions to this rule, including new facts that you could not have discovered before, if you are challenging an

Employment Security Department (ESD) rule or WAC or if you were not notified of the fair hearing or judicial review process that the decision came from. For more information about raising new issues, see RCW 34.05.554.

Similarly, you cannot put new facts into the record except in very limited circumstances. Generally, the "record", i.e. the facts the Judge reviews, is limited to testimony and documents filed as part of the administrative hearing or review. You can sometimes add new facts if they are facts you could not have discovered earlier, or if the judge or DSHS improperly kept the facts out of the record. If important facts are missing, the court can "remand (send back) the case to get those facts. For more information on new evidence, see RCW 34.05.562.

If you are arguing that an ESD rule is invalid, you must prove specific reasons for that. See RCW 34.05.570(2).

The burden will be on you to prove your case. The court will change the decision for limited reasons only. Those reasons are listed on the attached form petition for review.

STEPS TO TAKE IN PREPARING THE PETITION FOR REVIEW

The petition must include the following information. If at all possible, you should type your petition. If not, print neatly. We have put as much of this information as we could on the attached Petition form.

1. On the sample form attached, fill in the name of the county in which you are filing your appeal. See the discussion above regarding where to file the appeal.
2. Print or type in your name as the Petitioner in the blank space in the box to the left of the space stating "Petition for Review." Also fill your name in the space in the first sentence which states petitioner.
3. In the first paragraph, you must:
 - Insert the name of the Review Judge or Commissioner from the state Employment Security Department who made your decision. This can be found at the end of the decision and on the letter informing you of your right to appeal.
 - You must also enter the review number assigned to your appeal at the Commissioner's office and this too can be found on both the decision and the letter advising you of your right to appeal. The number is a sequence such as 2002-1234.
 - Lastly, the form requires you to insert a summary of the issue. If you were terminated for misconduct, which you dispute, then you would write something like "At issue is ESD's decision to deny my claim for unemployment benefits on the erroneous basis that I engaged in misconduct."
4. Next, the form requires you to attach a copy of the Review Judge or Commissioner's decision. You must do this.

5. The following paragraph asks you to once again enter your name as the petitioner and to enter the name of your employer. If your employer was represented at the administrative hearing, then you must also write in the name of the employer's representative.
6. The form then proceeds to list a number of bases on which the Superior Court could find error with the Commissioner's decision. In most cases, you will check numbers d, e, h, and i. After this portion, you will see an instruction to write why your case entitles you to relief under the legal reasons checked above. Write a brief summary of one paragraph as to the gist of your case. An example might be: "I had good cause in leaving my job of seven years as a new manager came in and reduced my work hours and my pay rate such that I could no longer earn a living. I was justified in quitting and am entitled to unemployment benefits."
7. In the final paragraphs, you must again write in the ESD Review No. or case number found on the Commissioner's Decision.
8. Date and sign your name at the end of the Petition for Review form.

HOW TO FILE THE PETITION

Make a total of 4 copies of the Petition and the Commissioner's Decision. Attach a copy of your Commissioner's Decision to each copy of the Petition. Next, file the original Petition for Review with the Superior Court Clerk's Office in your own county or Thurston County. If you are filing in King County, use the Case Indexing Cover Sheet which is included with this publication and check "administrative law review" for the type of the case. And if you are filing in King County, you must also now fill out the form which indicates whether you live north or south of the I-90 bridge line. Cases north of this line will be heard at the courthouse in downtown Seattle and cases south of this line will be held at the Kent Regional Justice Center.

Most cases involve a filing fee but in this type of appeal, the filing fee is waived. Usually this goes smoothly but occasionally a clerk will not understand this and try and charge a fee. Insist that the law provides for a waiver of filing fees in appeals of Employment Security cases. RCW 74.08.080(3).

When you file the petition with the clerk, the Clerk will date stamp the record and stamp it with a case number. Use the case number stamp and date stamp to stamp all of your other copies with the case number and date to show it was filed with the court on this day. Note: practice with the number stamp before you put it on your copies as it's a little tricky to get it right.

HOW TO SERVE THE PETITION FOR REVIEW

You can "serve" the Petition for Review either in person or by mail. If you want to do it in person, it must be done by anyone other than yourself who is over eighteen years or by legal messenger. If you do it by legal messenger, you will have to pay for this service. It must be delivered to the Employment Security department address below.

Or you can mail it to the office below. If you mail the petition, you must use **certified mail, return receipt requested** and send it to each of the following:

Commissioner Employment Security Department Attn: Agency Records Center Manager 212 Maple Park, P.O. Box 9046 Olympia, WA 98507-9046	Office of the Attorney General Licensing/Administrative Law Division 1125 Washington Street S.E. P.O. Box 40110 Olympia, WA 98504-0110	Your Employer: [You will find their address on the first page of the Commissioner's Decision.]
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Keep one copy for your files. WHEN YOU RECEIVE THE RECEIPTS FROM THE MAILINGS TO THE ATTORNEY GENERAL, THE DEPARTMENT, AND YOUR EMPLOYER, BE SURE TO KEEP THEM IN YOUR FILE. THEY WILL BE USED TO SHOW PROOF OF SERVICE IF NECESSARY.

You must be sure that you have filed the case with the Superior Court and had a copy delivered to the Employment Security Department, the Attorney General and the employer before the due date. Mailing the copies by the due date is not enough. **The copies must be received by all parties by the due date.** If you fail to do these things, you will lose your right to appeal.

WHAT HAPPENS AFTER YOU FILE THE PETITION FOR REVIEW

1. The record

If you filed your appeal in King or Thurston counties, you will be mailed a copy of the documents and decisions from your hearing and the review. This will include a transcript (a typed-out version of the hearing itself including testimony of the witnesses). If you filed your appeal in any other county, you will need to request a copy of the transcript from either the court clerk or the assistant attorney general who will be assigned to your case (see below). It is a good idea to get the transcript if you think that the facts are not correctly stated in the decision. You may not need it if you agree with the facts as written.

2. Employment Security Department's representative

An assistant attorney general (AAG) will represent the Employment Security Department Commissioner and will send you a "Notice of Appearance" that tells you who the AAG is and their address and telephone number. After you have received this notice of appearance, you must send a copy of any further papers that you file with the court to this AAG. The AAG represents ESD and cannot give you legal advice.

3. Setting your case for trial

If you live in King County, you will receive a Case Schedule when you file your Petition for Review. If you file your Petition in a county that does not automatically generate a

schedule, then you will need to ask your county's court Clerk how it is done there. Go to the Clerk of the Superior court where you filed your case and tell the Clerk that you want to set your case for hearing by a judge. The paper that you will need to complete will probably be called a "note" (or Notice for Trial Setting.) The Clerk will have the proper form. You need to complete the form and mail a copy of this completed document to the AAG who is representing ESD, and to the employer if they are represented. Remember, always file the original with the Clerk of the court and send a copy to the other party or parties and keep a copy for yourself.

4. Settlement negotiations

You may try to settle your case, if you want to, before or after setting the case for trial, by contacting the AAG and discussing it. If you are able to negotiate a settlement that is satisfactory to you, be sure that it is put into writing so the agreement can be signed by both of you and filed in the court file. If you are able to settle the matter, your written agreement should tell the Court that the matter is resolved and that your case should be dismissed.

5. Preparing your argument or the "Brief"

The court will give you a trial date and probably also a "briefing schedule". A brief is a written document which outlines the facts of the case and your legal argument, or reasons why you believe you are entitled to benefits and why the decision is wrong. It is a good idea to submit a brief or summary of your position; you should title it "Petitioner's Trial Brief." File this with the court clerk by the date set by the court and remember to send a copy of this to the AAG. To make a legal argument, start with the laws cited in your decision. Find them and then look them up. The laws governing unemployment insurance are found at RCW Title 50 and Title 192 of the Washington Administrative Code. You can find these laws at county law libraries, public law schools or on the internet at www.wa.gov/esd and then click on unemployment insurance and then on Title 50 laws and WAC rules. Once you have reviewed the laws that were applied in your case, then you will better understand the decision and how to mount a counter-argument. If you look up the law in a copy of the Revised Code of Washington Annotated, found at law libraries, you can read brief summaries of cases that have interpreted that specific provision of the law. This can be helpful as you will see cases with various fact patterns and you can compare yours to those in the cases.

Once you have filed your brief, the AAG will file a "Respondent's Trial Brief" and send a copy to you. Read this so you understand the state's position as to why the decision should be affirmed. And again, review the laws and cases cited by the assistant attorney general. Be prepared to explain why your arguments are better and why you should win.

6. The Trial: What to Expect

On the day of the scheduled trial, go to the court and tell the judge why you think that you should get the relief you've asked for. The burden is on you to prove that the ESD Commissioner's decision is wrong. Again, review the laws that apply to your case. See #5, above. Tell the judge why you believe the law and/or rules support your claim. You will not be able to bring witnesses or introduce new evidence. Explain to the judge the facts of the case and set out your arguments. This should take about 15 minutes or less. If the judge interrupts you and asks questions, answer them as best as you can. Next, the AAG will be given an opportunity to respond. Do not interrupt the AAG while he or she is talking; they have the right to set forth their position on the case. Once the AAG is finished, you will be given a short time to reply to the AAG's arguments.

The Superior Court judge's decision will be based on the evidence that was presented at the administrative hearing by both you and ESD and the reasons that you've given the judge as to why you believe you should win. A judge will usually announce his or her decision at the end of the proceeding and will enter an order which is written confirmation of the decision. If you are awarded benefits, be sure that the order plainly sets forth the terms of this decision, as it will go back to ESD for further action. The entire trial will take about an hour.

Best of luck!!! Remember, cases are won by persuasive arguments made at a trial. Be prepared. Know the key facts of your case and stick to them. Understand the laws that apply to your case, and why you think the law allows you to receive benefits. Be brief, clear, respectful and organized.

-----Section Break (Next Page)-----

CASE TYPE 2

COUNTY SUPERIOR COURT

CASE INFORMATION COVER SHEET

Case Number _____ Case Title _____

Attorney Name _____ Bar Membership Number _____

Please check one category that best describes this case for indexing purposes. Accurate case indexing not only saves time in docketing new cases, but helps in forecasting needed judicial resources. Cause of action definitions are listed on the back of this form. Thank you for your cooperation.

APPEAL/REVIEW

- Administrative Law Review (ALR 2)
- Appeal of a Department of Licensing Revocation (DOL 2)
- Civil, Non-Traffic (LCA 2)
- Civil, Traffic (LCI 2)

CONTRACT/COMMERCIAL

- Breach of Contract (COM 2)
- Commercial Contract (COM 2)
- Commercial Non-Contract (COL 2)
- Third Party Collection (COL 2)

MERETRICIOUS RELATIONSHIP

- Meretricious Relationship (MER 2)

DOMESTIC VIOLENCE/ANTIHARASSMENT

- Civil Harassment (HAR 2)
- Domestic Violence (DVP 2)
- Foreign Protection Order (FPO 2)
- Vulnerable Adult Protection (VAP 2)

JUDGMENT

- Abstract Only (ABJ 2)
- Foreign Judgment (FJU 2)
- Judgment, Another County (ABJ 2)
- Judgment, Another State (FJU 2)
- Tax Warrant (TAX 2)
- Transcript of Judgment (TRJ 2)

OTHER COMPLAINT/PETITION

- Action to Compel/Confirm Private Binding Arbitration (MSC 2)
- Change of Name (CHN 2)
- Deposit of Surplus Funds (MSC 2)
- Emancipation of Minor (EOM 2)
- Injunction (INJ 2)
- Interpleader (MSC 2)
- Malicious Harassment (MHA 2)

- Minor Settlement (No guardianship) (MST 2)
- Petition for Civil Commitment (Sexual Predator)(PCC 2)
- Seizure of Property from Commission of Crime (SPC 2)
- Seizure of Property Resulting from a Crime (SPR 2)
- Subpoenas (MSC 2)

PROPERTY RIGHTS

- Condemnation (CON 2)
- Foreclosure (FOR 2)
- Land Use Petition (LUP 2)
- Property Fairness (PFA 2)
- Quiet Title (QTI 2)
- Unlawful Detainer (UND 2)

TORT, MEDICAL MALPRACTICE

- Hospital (MED 2)
- Medical Doctor (MED 2)
- Other Health Care Professional (MED 2)

TORT, MOTOR VEHICLE

- Death (TMV 2)
- Non-Death Injuries (TMV 2)
- Property Damage Only (TMV 2)

TORT, NON-MOTOR VEHICLE

- Asbestos (PIN 2)
- Other Malpractice (MAL 2)
- Personal Injury (PIN 2)
- Products Liability (TTO 2)
- Property Damage (PRP 2)
- Wrongful Death (WDE 2)

WRTI

- Habeas Corpus (WHC 2)
- Mandamus (WRM 2)
- Restitution (WRR 2)
- Review (WRV 2)

IF YOU CANNOT DETERMINE THE APPROPRIATE CATEGORY, PLEASE DESCRIBE THE CAUSE OF ACTION BELOW

APPEAL/REVIEW

Administrative Law Review-Petition to the superior court for review of rulings made by state administrative agencies.

Appeal of a Department of Licensing Revocation-Appeal of a DOL revocation (RCW 46.20.308(9)).

Lower Court Appeal-Civil-An appeal for a civil case; excludes traffic infraction and criminal matters.

Lower Court Appeal-Infractions-An appeal for a traffic infraction matter.

CONTRACT/COMMERCIAL

Breach of Contract-Complaint involving monetary dispute where a breach of contract is involved.

Commercial Contract-Complaint involving monetary dispute where a contract is involved.

Commercial Non-Contract-Complaint involving monetary dispute where no contract is involved.

Third Party Collection-Complaint involving a third party over a monetary dispute where no contract is involved.

MERETRICIOUS RELATIONSHIP

Meretricious Relationship-Petition for distribution of property from a meretricious relationship (i.e., a stable, marital-like relationship where both parties cohabit with knowledge that a lawful marriage between them does not exist).

DOMESTIC

VIOLENCE/ANTIHARASSMENT

Civil Harassment-Petition for protection from civil harassment.

Domestic Violence-Petition for protection from domestic violence.

Foreign Protection Orders-Any protection order of a court of the United States, or of any state or territory, which is entitled to full faith and credit in this state.

Vulnerable Adult Protection-Petition for protection order for vulnerable adults, as those persons are defined in RCW 74.34.020.

JUDGMENT

Abstract Only-A certified copy of a judgment docket from another superior court, an appellate court, or a federal district court.

Foreign Judgment-Any judgment, decree, or order of a court of the United States, or of any state or territory, which is entitled to full faith and credit in this state.

Judgment, Another County-A certified copy of a judgment docket from another superior court within the state.

Judgment, Another State-Any judgment, decree, or order from another state which is entitled to full faith and credit in this state.

Tax Warrant-A notice of assessment by a state agency creating a judgment/lien in the county in which it is filed.

Transcript of Judgment-A certified copy of a judgment from a court of limited jurisdiction to a superior court in the same county.

OTHER COMPLAINT/PETITION

Action to Compel/Confirm Private Binding Arbitration-Petition to compel or confirm private binding arbitration.

Change of Name-Petition for a change of name. If change is confidential due to domestic violence/antiharassment see case type 5 instead.

Deposit of Surplus Funds-Deposit of money or other item with the court.

Emancipation of Minor-Petition by a minor for a declaration of emancipation.

Injunction-Complaint/petition to require a person to do or refrain from doing a particular thing.

Interpleader-Petition for the deposit of disputed earnest money from real estate, insurance proceeds, and/or other transaction(s).

Malicious Harassment-Suit involving damages resulting from malicious harassment.

Minor Settlements-Petition for a court decision that an award to a minor is appropriate when no letters of guardianship are required (e.g., net settlement value \$25,000 or less).

Petition for Civil Commitment (Sexual Predator)-Petition for the involuntary civil commitment of a person who 1) has been convicted of a sexually violent offense whose term of confinement is about to expire or has expired, 2) has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial who is about to be released or has been released, or 3) has been found not guilty by reason of insanity of a sexually violent offense and who is about to be released or has been released, and it appears that the person may be a sexually violent predator.

Seizure of Property from the Commission of a Crime-Seizure of personal property which was employed in aiding, abetting, or in the commission of a crime, from a defendant following criminal conviction.

Seizure of Property Resulting from a Crime-Seizure of tangible or intangible property which is the direct or indirect result of a crime, from a defendant following criminal conviction (e.g., remuneration for, or contract interest in, a depiction or account of a crime).

Subpoenas-Petition for a subpoena.

PROPERTY RIGHTS

Condemnation-Complaint involving governmental taking of private property with payment, but not necessarily with consent.

Foreclosure-Complaint involving termination of ownership rights when a mortgage or tax foreclosure is involved, where ownership is not in question.

Land Use Petition-Petition for an expedited judicial review of a land use decision made by a local jurisdiction (RCW 36.70C.040).

Property Fairness-Complaint involving the regulation of private property or restraint of land use by a government entity brought forth by Title 64 RCW.

Quiet Title-Complaint involving the ownership, use, or disposition of land or real estate other than foreclosure.

Unlawful Detainer-Complaint involving the unjustifiable retention of lands or attachments to land, including water and mineral rights.

TORT, MEDICAL MALPRACTICE

Hospital-Complaint involving injury or death resulting from a hospital.

Medical Doctor-Complaint involving injury or death resulting from a medical doctor.

Other Health Care Professional-Complaint involving injury or death resulting from a health care professional other than a medical doctor.

TORT, MOTOR VEHICLE

Death-Complaint involving death resulting from an incident involving a motor vehicle.

Non-Death Injuries-Complaint involving non-death injuries resulting from an incident involving a motor vehicle.

Property Damage Only-Complaint involving only property damages resulting from an incident involving a motor vehicle.

TORT, NON-MOTOR VEHICLE

Asbestos-Complaint alleging injury resulting from asbestos exposure.

Other Malpractice-Complaint involving injury resulting from other than professional medical treatment.

Personal Injury-Complaint involving physical injury not resulting from professional medical treatment, and where a motor vehicle is not involved.

Products Liability-Complaint involving injury resulting from a commercial product.

Property Damages-Complaint involving damage to real or personal property excluding motor vehicles.

Wrongful Death-Complaint involving death resulting from other than professional medical treatment.

WRIT

Writ of Habeas Corpus-Petition for a writ to bring a party before the court.

Writ of Mandamus-Petition for a writ commanding the performance of a particular act or duty.

Writ of Restitution-Petition for a writ restoring property or proceeds; not an unlawful detainer petition.

Writ of Review-Petition for review of the record or decision of a case pending in the lower court; does not include lower court appeals or administrative law reviews.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF _____

Petitioner,

vs.

STATE OF WASHINGTON DEPARTMENT
OF EMPLOYMENT SECURITY,

Respondent.

No.

PETITION FOR REVIEW

NO FILING FEE REQUIRED
RCW 50.32.110

Petitioner, _____ [Name], _____

_____ [Address], petitions the court, pursuant to RCW 34.05.570 et seq.

And RCW 50.32.160, for review of the decision of the Respondent, Department of Employment

Security, Review Judge _____ [Name], entered against the Petitioner on

_____ [Date], Review No. _____. At issue is ESD decision to

_____ (A duplicate copy of the Agency's final action is attached.)

1 The parties involved in the adjudicative proceedings are now: Petitioner, _____
2 _____ [Name], Pro Se, and Respondent ESD, represented by Attorney General
3 and Employer, _____
4 _____ [Name and Address].

5 Petitioner is entitled to relief pursuant to 34.05.570(3) because:

- 6 a.) The order, or the statute or rule on which the order is based is in violation of
7 constitutional provisions on its face or as applied;
- 8 b.) The order is outside the statutory authority or jurisdiction of the agency conferred by
9 any provision of law;
- 10 c.) The agency has engaged in unlawful procedure or decision-making process, or has
11 failed to follow a prescribed procedure;
- 12 d.) The agency has erroneously interpreted or applied the law;
- 13 e.) The order is not supported by evidence that is substantial when viewed in light of the
14 whole record before the court, which includes the agency record for the judicial review,
15 supplemented by any additional evidenced received by the court under this chapter;
- 16 f.) The agency has not decided all issues requiring resolution by the agency;
- 17 g.) A motion for disqualification under RCW 34.05.425 or 34.12.050 was made and was
18 improperly denied or, if not motion was made, facts are show to support the grant of such
19 a motion that were not known and were not reasonably discoverable by the challenging
20 party at the appropriate time for making such a motion;
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h.) The order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency; or

i.) The order is arbitrary or capricious;

Additionally, the petitioner has standing, has exhausted all available administrative remedies and has timely filed this Petition for Review.

(Write why your case entitles you to relief under legal reasons checked above)

Petitioner, also pursuant to RCW 35.05.510 et seq., asks that this matter be set for oral argument and that Petitioner be allowed to submit a written brief at the time of the hearing.

WHEREFORE, Petitioner asks for judgment:

1. Reversing Respondent's decision contained in ESD Review No. _____
_____.
2. Awarding costs and reasonable attorney's fees as provided in RCW 50.32.160.
3. Awarding any further relief this court deems proper.

DATED: _____

Petitioner, Pro Se

