

R994. Workforce Services, Unemployment Insurance.

R994-508. Appeal Procedures.

R994-508-101. Right to Appeal an Initial Department Determination.

(1) An interested party has the right to appeal an initial Department determination on unemployment benefits or unemployment contributions by filing an appeal with the Appeals Unit or at any Department employment center.

(2) The appeal must be in writing and either sent through the U.S. Mail, faxed, delivered to the Department, or submitted electronically through the Department's website.

(3) The appeal must be signed by an interested party unless it can be shown that the party has conveyed, in writing, the authority to another person or is physically or mentally incapable of acting on the party's own behalf.

(4) The appeal should give the date of the determination being appealed, the social security number of any claimant involved, the employer number, a statement of the reason for the appeal, and any information which supports the appeal. The failure of an appellant to provide the information in this subsection will not preclude the acceptance of an appeal.

(5) The scope of the appeal is not limited to the issues stated in the appeal.

(6) If the claimant is receiving benefits at the time the appeal is filed, payments will continue pending the written decision of the Administrative Law Judge (ALJ) even if the claimant is willing to waive payment. If benefits are denied as a result of the appeal, an overpayment will be established.

(7) Providing the correct Personal Identification Number (PIN) when filing an appeal through the Department's website will be considered a signed appeal.

R994-508-102. Time Limits for Filing an Appeal from an Initial Department Determination.

(1) The time permitted for an appeal is 15 calendar days from the date on the Department decision unless otherwise specified on the decision.

(2) In computing the period of time allowed for filing a timely appeal, the date as it appears in the determination is not included. The last day of the appeal period is included in the computation unless it is a Saturday, Sunday, or legal holiday when Department offices are closed. If the last day permitted for filing an appeal falls on a Saturday, Sunday, or legal holiday, the time permitted for filing a timely appeal will be extended to the next day when Department offices are open.

(3) An appeal sent through the U.S. Mail is considered filed on the date shown by the postmark.

(a) If the postmark date cannot be established because it is illegible, erroneous, or omitted, the appeal will be considered filed on the date it was mailed if the sender can establish that date by competent evidence and can show that it was mailed before the date of actual receipt.

(b) If the date of mailing cannot be established by competent evidence, the appeal will be considered filed on the date it is actually received by the Department as shown by the Department's date stamp on the document or other credible evidence such as a written notation of the date of receipt.

(c) "Mailed" in this subsection means taken to the post office or placed in a receptacle which is designated for pick up by an employee who has the responsibility of delivering it to the post office.

R994-508-103. Untimely Appeal.

If it appears that an appeal was not filed in a timely manner, the appellant will be notified and given an opportunity to show that the appeal was timely or that it was delayed for good cause. If it is found that the appeal was not timely and the delay was without good cause, the ALJ or the Board will not have jurisdiction to consider the merits unless jurisdiction is established in accordance with provisions of Subsection 35A-4-406(2). Any decision with regard to jurisdictional issues will be issued in writing and delivered or mailed to all interested parties with a clear statement of the right of further appeal or judicial review.

R994-508-104. Good Cause for Not Filing Within Time Limitations.

A late appeal may be considered on its merits if it is determined that the appeal was delayed for good cause. Good cause is limited to circumstances where it is shown that:

(1) the appellant received the decision after the expiration of the time limit for filing the appeal, the appeal was filed within ten days of actual receipt of the decision and the delay was not the result of willful neglect;

(2) the delay in filing the appeal was due to circumstances beyond the appellant's control; or

(3) the appellant delayed filing the appeal for circumstances which were compelling and reasonable.

R994-508-105. Response to an Appeal.

A respondent is not required to file a written response to an appeal. A respondent may file a response if it does not delay the proceedings.

R994-508-106. Notice of the Hearing.

(1) All interested parties will be notified by mail, at least seven days prior to the hearing, of:

(a) the time and place of the hearing;

(b) the right to be represented at the hearing;

(c) the legal issues to be considered at the hearing;

(d) the procedure for submitting written documents;

(e) the consequences of not participating;

- (f) the procedures and limitations for requesting a continuance or rescheduling; and
- (g) the procedure for requesting an interpreter for the hearing, if necessary.
- (2) When a new issue arises during the hearing, advance written notice may be waived by the parties after a full explanation by the ALJ of the issues and potential consequences.
- (3) It is the responsibility of a party to notify and make arrangements for the participation of the party's representative and/or witnesses, if any.
- (4) If a party has designated a person or professional organization as its agent, notice will be sent to the agent which will satisfy the requirement to give notice to the party.

R994-508-107. Department to Provide Documents.

The Appeals Unit will obtain the information which the Department used to make its initial determination and the reasoning upon which that decision was based and will send all of the Department's relevant documentary information to the parties with the notice of hearing.

R994-508-108. Discovery.

(1) Discovery is a legal process to obtain information which is necessary to prepare for a hearing. In most unemployment insurance hearings, informal methods of discovery are sufficient. Informal discovery is the voluntary exchange of information regarding evidence to be presented at the hearing, and witnesses who will testify at the hearing. Usually a telephone call to the other party requesting the needed information is adequate. Parties are encouraged to cooperate in providing information. If this information is not provided voluntarily, the party requesting the information may request that the ALJ compel a party to produce the information through a verbal or written order or issuance of a subpoena. In considering the requests, the ALJ will balance the need for the information with the burden the requests place upon the opposing party and the need to promptly decide the appeal.

(2) The use of formal discovery procedures in unemployment insurance appeals proceedings are rarely necessary and tend to increase costs while delaying decisions. Formal discovery may be allowed for unemployment insurance hearings only if so directed by the ALJ and when each of the following elements is present:

- (a) informal discovery is inadequate to obtain the information required;
- (b) there is no other available alternative that would be less costly or less intimidating;
- (c) it is not unduly burdensome;
- (d) it is necessary for the parties to properly prepare for the hearing; and
- (e) it does not cause unreasonable delays.

(3) Formal discovery includes requests for admissions, interrogatories, and other methods of discovery as provided by the Utah Rules of Civil Procedure.

R994-508-109. Hearing Procedure.

(1) All hearings will be conducted before an ALJ in such manner as to provide due process and protect the rights of the parties.

(2) The hearing will be recorded.

(3) The ALJ will regulate the course of the hearing to obtain full disclosure of relevant facts and to afford the parties a reasonable opportunity to present their positions.

(4) The decision of the ALJ will be based solely on the testimony and evidence presented at the hearing.

(5) All testimony of the parties and witnesses will be given under oath or affirmation.

(6) All parties will be given the opportunity to provide testimony, present relevant evidence which has probative value, cross-examine any other party and/or other party's witnesses, examine or be provided with a copy of all exhibits, respond, argue, submit rebuttal evidence and/or provide statements orally or in writing, and/or comment on the issues.

(7) The evidentiary standard for ALJ decisions, except in cases of fraud, is a preponderance of the evidence. Preponderance means evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. The evidentiary standard for determining claimant fraud is clear and convincing evidence. Clear and convincing is a higher standard than preponderance of the evidence and means that the allegations of fraud are highly probable.

(8) The ALJ will direct the order of testimony and rule on the admissibility of evidence. The ALJ may, on the ALJ's own motion or the motion of a party, exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(9) Oral or written evidence of any nature, whether or not conforming to the rules of evidence, may be accepted and will be given its proper weight. A party has the responsibility to present all relevant evidence in its possession. When a party is in possession of evidence but fails to introduce the evidence, an inference may be drawn that the evidence does not support the party's position.

(10) Official Department records, including reports submitted in connection with the administration of the Employment Security Act, may be considered at any time in the appeals process including after the hearing.

(11) Parties may introduce relevant documents into evidence. Parties must mail, fax, or deliver copies of those documents to the ALJ assigned to hear the case and all other interested parties so that the documents are received three days prior to the hearing. Failure to prefile documents may result in a delay of the proceedings. If a party has good cause for not submitting the documents three days prior to the hearing or if a party does not receive the documents sent by the Appeals Unit or another party prior to the hearing, the documents will be admitted after provisions are made to insure due process is satisfied. At his or her discretion, the ALJ can either:

- (a) reschedule the hearing to another time;

- (b) allow the parties time to review the documents at an in-person hearing;
 - (c) request that the documents be faxed during the hearing, if possible, or read the material into the record in case of telephone hearing; or
 - (d) leave the record of the hearing open, send the documents to the party or parties who did not receive them, and give the party or parties an opportunity to submit additional evidence after they are received and reviewed.
- (12) The ALJ may, on his or her own motion, take additional evidence as is deemed necessary.
- (13) With the consent of the ALJ, the parties to an appeal may stipulate to the facts involved. The ALJ may decide the appeal on the basis of those facts, or may set the matter for hearing and take further evidence as deemed necessary to decide the appeal.
- (14) The ALJ may require portions of the testimony be transcribed as necessary for rendering a decision.
- (15) All initial determinations made by the Department are exempt from the provisions of the Utah Administrative Procedures Act (UAPA). Appeals from initial determinations will be conducted as formal adjudicative proceedings under UAPA.

R994-508-110. Telephone Hearings.

- (1) Hearings are scheduled as telephonic hearings. Every party wishing to participate in the telephone hearing must call the Appeals Unit before the hearing and provide a telephone number where the party can be reached at the time of the hearing. If the party that filed the appeal fails to call in advance as required by the notice of hearing, the appeal will be dismissed and an order of default will be issued.
- (2) If a party requires an in-person hearing, the party must contact an ALJ and request that the hearing be scheduled as an in-person hearing. The request should be made sufficiently in advance of the hearing so that all other parties may be given notice of the change in hearing type and the opportunity to appear in person also. Requests will only be granted if the party can show that an in-person hearing is necessary to accommodate a special need or if the ALJ deems an in-person hearing is necessary to ensure an orderly and fair hearing which meets due process requirements. If the ALJ grants the request, all parties will be informed that the hearing will be conducted in person. Even if the hearing is scheduled as an in-person hearing, a party may elect to participate by telephone. In-person hearings are held in the office of the Appeals Unit unless the ALJ determines that another location is more appropriate. The Department is not responsible for any travel costs incurred by attending an in-person hearing.
- (3) The Appeals Unit will provide a toll-free telephone number that parties and their witnesses can call for confirming and participating in telephone hearings.

R994-508-111. Evidence, Including Hearsay Evidence.

- (1) The failure of one party to provide information either to the Department initially or at the appeals hearing severely limits the facts available upon which to base a good decision. Therefore, it is necessary for all parties to actively participate in the hearing by providing accurate and complete information in a timely manner to assure the protection of the interests of each party and preserve the integrity of the unemployment insurance system.
- (2) Hearsay, which is information provided by a source whose credibility cannot be tested through cross-examination, has inherent infirmities which make it unreliable.
- (3) Evidence will not be excluded solely because it is hearsay. Hearsay, including information provided to the Department through telephone conversations and written statements will be considered, but greater weight will be given to credible sworn testimony from a party or a witness with personal knowledge of the facts.
- (4) Findings of fact cannot be based exclusively on hearsay evidence unless that evidence is admissible under the Utah Rules of Evidence. All findings must be supported by a residuum of legal evidence competent in a court of law.

R994-508-112. Procedure For Use of an Interpreter at the Hearing.

- (1) If a party notifies the Appeals Unit that an interpreter is needed, the Unit will arrange for an interpreter at no cost to the party.
- (2) The ALJ must be assured that the interpreter understands the English language and understands the language of the person for whom the interpreter will interpret.
- (3) The ALJ will instruct the interpreter to interpret, word for word, and not summarize, add, change, or delete any of the testimony or questions.
- (4) The interpreter will be sworn to truthfully and accurately translate all statements made, all questions asked, and all answers given.

R994-508-113. Department a Party to Proceedings.

As a party to the hearing, the Department or its representatives have the same rights and responsibilities as other interested parties to present evidence, bring witnesses, cross-examine witnesses, give rebuttal evidence, and appeal decisions. The ALJ cannot act as the agent for the Department and therefore is limited to including in the record only that relevant evidence which is in the Department files, including electronically kept records or records submitted by Department representatives. The ALJ will, on his or her own motion, call witnesses for the Department when the testimony is necessary and the need for such witnesses or evidence could not have been reasonably anticipated by the Department prior to the hearing. If the witness is not available, the ALJ will, on his or her own motion, continue the hearing until the witness is available.

R994-508-114. Ex Parte Communications.

Parties are not permitted to discuss the merits or facts of any pending case with the ALJ assigned to that case or with a member of the Board prior to the issuance of the decision, unless all other parties to the case have been given notice and opportunity to be present. Any ex parte discussions between a party and the ALJ or a Board member 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 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.

R994-508-115. Requests for Removal of an ALJ from a Case.

A party may request that an ALJ be removed from a case on the basis of partiality, interest, or prejudice. The request for removal must be made to the ALJ assigned to hear the case. The request must be made 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 ALJ agrees to the removal, the case will be assigned to a different ALJ. If the ALJ finds no legitimate grounds for the removal, the request will be denied and the ALJ will explain the reasons for the denial during the hearing. Appeals pertaining to the partiality, interest, or prejudice of the ALJ may be filed consistent with the time limitations for appealing any other decision.

R994-508-116. Rescheduling or Continuance of Hearing.

- (1) The ALJ may adjourn, reschedule, continue, or reopen a hearing on the ALJ's own motion or on the motion of a party.
- (2) If a party knows in advance of the hearing that they will be unable to proceed with or participate in the hearing on the date or time scheduled, the party must request that the hearing be rescheduled or continued to another day or time.
 - (a) The request must be received prior to the hearing.
 - (b) The request must be made orally by calling the Appeals Unit. If the request is not received prior to the hearing, the party must show cause for failing to make a timely request.
 - (c) The party making the request must provide evidence of good cause for the request.
 - (3) Unless compelling reasons exist, a party will not normally be granted more than one request for a continuance.

R994-508-117. Failure to Participate in the Hearing and Reopening the Hearing After the Hearing Has Been Concluded.

- (1) If a party fails to appear for or participate in the hearing, either personally or through a representative, the ALJ may take evidence from participating parties and will issue a decision based on the best available evidence.
- (2) Any party failing to participate, personally or through a representative, may request that the hearing be reopened.
- (3) The request must be in writing, must set forth the reason for the request, and must be mailed, faxed, or delivered to the Appeals Unit within ten days of the issuance of the decision issued under Subsection (1). Intermediate Saturdays, Sundays and legal holidays are excluded from the computation of the ten days in accordance with Rule 6 of the Utah Rules of Civil Procedure. If the request is made after the expiration of the ten-day time limit, but within 30 days, the party requesting reopening must show cause for not making the request within ten days. If no decision has yet been issued, the request should be made without unnecessary delay. If the request is received more than 30 days after the decision is issued, the Department will have lost jurisdiction and the party requesting reopening must show good cause for not making a timely request.
- (4) If a request to reopen is not granted, the ALJ will issue a decision denying the request. A party may appeal a denial of the request to reopen to the Board within 30 days of the date of issuance of the decision. The appeal must be in writing and set forth the reason or reasons for the appeal. The appeal can only contest the denial of the request to set aside the default and not the underlying merits of the case except as provided in R994-508-118(2)(f).
- (5) The ALJ may reopen a hearing on his or her own motion if it appears necessary to take continuing jurisdiction or if the failure to reopen would be an affront to fairness.
- (6) If the request to reopen is made more than 30 days after the issuance of the ALJ's decision, the ALJ may consider the request or refer it to the Board to be treated as an appeal to the Board.

R994-508-118. What Constitutes Grounds to Reopen a Hearing.

- (1) The request to reopen will be granted if the party was prevented from appearing at the hearing due to circumstances beyond the party's control.
- (2) The request may be granted upon such terms as are just for any of the following reasons: mistake, inadvertence, surprise, excusable neglect, or any other reason justifying relief from the operation of the decision. The determination of what sorts of neglect will be considered excusable is an equitable one, taking into account all of the relevant circumstances including:
 - (a) the danger that the party not requesting reopening will be harmed by reopening;
 - (b) the length of the delay caused by the party's failure to participate including the length of time to request reopening;
 - (c) the reason for the request including whether it was within the reasonable control of the party requesting reopening;
 - (d) whether the party requesting reopening acted in good faith;
 - (e) whether the party was represented at the time of the hearing. Attorneys and professional representatives are expected to have greater knowledge of Department procedures and rules and are therefore held to a higher standard; and
 - (f) whether based on the evidence of record and the parties' arguments or statements, taking additional evidence might affect the outcome of the case.
- (3) Requests to reopen are remedial in nature and thus must be liberally construed in favor of providing parties with an opportunity to be heard and present their case. Any doubt must be resolved in favor of granting reopening.

- (4) Excusable neglect is not limited to cases where the failure to act was due to circumstances beyond the party's control.
- (5) The ALJ has the discretion to schedule a hearing to determine if a party requesting reopening satisfied the requirements of this rule or may, after giving the other parties an opportunity to respond to the request, grant or deny the request on the basis of the record in the case.

R994-508-119. Withdrawal of Appeal.

A party who has filed an appeal with the Appeals Unit may request that the appeal be withdrawn. The request must explain the reasons for the withdrawal and be made to the ALJ assigned to hear the case, or the supervising ALJ if no ALJ has yet been assigned. The ALJ may deny the request if the withdrawal of the appeal would jeopardize the due process rights of any party. If the ALJ grants the request, the ALJ will issue a decision dismissing the appeal and the initial Department determination will remain in effect. The decision will inform the parties of the right to reinstate the appeal and the procedure for reinstating the appeal. A request to reinstate an appeal must be made within ten calendar days of the decision dismissing the appeal, must be in writing, and must show cause for the request. A request to reinstate made more than ten days after the dismissal will be treated as a late appeal.

R994-508-120. Prompt Notification of Decision.

Any decision by an ALJ or the Board which affects the rights of any party with regard to benefits, tax liability, or jurisdictional issues will be mailed to the last known address of the parties or delivered in person. Each decision issued will be in writing with a complete statement of the findings of fact, reasoning and conclusions of law, and will include or be accompanied by a notice specifying the further appeal rights of the parties. The notice of appeal rights shall state clearly the place and manner for filing an appeal from the decision and the period within which a timely appeal may be filed.

R994-508-122. Finality of Decision.

The ALJ's decision is binding on all parties and is the final decision of the Department unless appealed within 30 days of date the decision was issued.

R994-508-201. Non-Attorney Representative Fees.

- (1) An authorized representative who is not an attorney may not charge or receive a fee for representing a claimant in an action before the Department without prior approval by an ALJ or the Board. The Department is not responsible for the payment of the fee, only the regulation and approval of the fee. The Department does not regulate fees charged to employers or attorney's fees.
- (2) Fees will not be approved in excess of 25 percent of the claimant's maximum potential regular benefit entitlement.

R994-508-202. Petition for Approval of Fee.

(1) If a fee is to be charged, a written petition for approval must be submitted by the claimant's representative to the ALJ before whom the representative appeared, or to the supervising ALJ if no hearing was scheduled. An approval form can be obtained through the Appeals Unit. Prior to approving the fee, a copy of the petition will be sent to the claimant and the claimant will be allowed ten days from the date of mailing to object to the fee. At the discretion of the ALJ, the fee may be approved as requested, adjusted to a lower amount, or disallowed in its entirety.

(2) If the case is appealed to the Board level, the claimant's representative must file a new petition with the Board if additional fees are requested.

R994-508-203. Criteria for Evaluation of Fee Petition.

The appropriateness of the fee will be determined using the following criteria:

- (1) the complexity of the issues involved;
- (2) the amount of time actually spent in;
 - (a) preparation of the case;
 - (b) attending the hearing;
 - (c) preparation of a brief, if required. Unless an appeal is taken to the Court of Appeals, fees charged for preparation of briefs or memoranda will not ordinarily be approved unless the ALJ requested or preapproved the filing of the brief or memoranda; and
 - (d) further appeal to the Board, the Court of Appeals, and/or the Supreme Court.
- (3) The quality of service rendered including:
 - (a) preparedness of the representative;
 - (b) organization and presentation of the case;
 - (c) avoidance of undue delays. A representative should make every effort to go forward with the hearing when it is originally scheduled to avoid leaving the claimant without income or an unnecessary overpayment; and,
 - (d) the necessity of representation. If the ALJ or the Board determines that the claimant was not in need of representation because of the simplicity of the case or the lack of preparation on the part of the representative, only a minimal fee may be approved or, in unusual circumstances, a fee may be disallowed.
- (4) The prevailing fee in the community. The prevailing fee is the rate charged by peers for the same type of service. In determining the prevailing fee for the service rendered, the Department may consider information obtained from the Utah State Bar Association, Lawyer's Referral Service, or other similar organizations as well as similar cases before the Appeals Unit.

R994-508-204. Appeal of Fee.

The claimant or the authorized representative may appeal the fee award to the Board within 30 days of the date of issuance of the ALJ's decision. The appeal must be in writing and set forth the reason or reasons for the appeal.

R994-508-301. Appeal From a Decision of an ALJ.

If the ALJ's decision did not affirm the initial Department determination, the Board will accept a timely appeal from that decision if filed by an interested party. If the decision of the ALJ affirmed the initial Department determination, the Board has the discretion to refuse to accept the appeal or request a review of the record by an individual designated by the Board. If the Board refuses to accept the appeal or requests a review of the record as provided in statute, the Board will issue a written decision declining the appeal and containing appeal rights.

R994-508-302. Time Limit for Filing an Appeal to the Board.

(1) The appeal from a decision of an ALJ must be filed within 30 calendar days from the date the decision was issued by the ALJ. This time limit applies regardless of whether the decision of the ALJ was sent through the U.S. Mail or personally delivered to the party. "Delivered to the party" means personally handed, faxed, or sent electronically to the party. No additional time for mailing is allowed.

(2) In computing the period of time allowed for filing a timely appeal, the date as it appears in the ALJ's decision is not included. The last day of the appeal period is included in the computation unless it is a Saturday, Sunday, or legal holiday when Department offices are closed. If the last day permitted for filing an appeal falls on a Saturday, Sunday, or legal holiday, the time permitted for filing a timely appeal will be extended to the next day when Department offices are open.

(3) An appeal sent through the U.S. Mail is considered filed on the date shown by the postmark.

(a) If the postmark date cannot be established because it is illegible, erroneous, or omitted, the appeal will be considered filed on the date it was mailed if the sender can establish that date by competent evidence and can show that it was mailed before the date of actual receipt.

(b) If the date of mailing cannot be established by competent evidence, the appeal will be considered filed on the date it is actually received by the Department as shown by the Department's date stamp on the document or other credible evidence such as a written notation of the date of receipt.

(c) "Mailed" in this subsection means taken to the post office or placed in a receptacle which is designated for pick up by an employee who has the responsibility of delivering it to the post office.

(4) If the appeal is faxed to the Board, the date of filing is the date recorded on the fax.

(5) If the appeal is submitted electronically, the date of filing is the date recorded by the electronic system.

(6) Appeals to the Board which appear to be untimely pursuant to Subsections R994-508-302(1) through (5) will be handled in the same way as untimely appeals to the ALJ in Sections R994-508-103 and R994-508-104.

R994-508-303. Procedure for Filing an Appeal to the Board.

(1) An appeal to the Board from a decision of an ALJ must be in writing and include:

(a) the name and signature of the party filing the appeal;

(b) the name and social security number of the claimant in cases involving claims for unemployment benefits;

(c) the grounds for appeal; and

(d) the date when the appeal was mailed or sent to the Department.

(2) The appeal must be mailed, faxed, delivered to, or filed electronically with the Department.

(3) An appeal which does not state adequate grounds, or specify alleged errors in the decision of the ALJ, may be summarily dismissed.

(4) Accessing the Department's website to file an appeal and providing a correct PIN will be considered a signed appeal.

R994-508-304. Response to an Appeal to the Board.

Interested parties will receive notice that an appeal has been filed and a copy of the appeal and will be given 15 days from the date the appeal was mailed to the party to file a response. Parties are not required to file a response. A party filing a response should mail a copy to all other parties and the Board.

R994-508-305. Decisions of the Board.

(1) The Board has the discretion to consider and render a decision on any issue in the case even if it was not presented at the hearing or raised by the parties on appeal.

(2) Absent a showing of unusual or extraordinary circumstances, the Board will not consider new evidence on appeal if the evidence was reasonably available and accessible at the time of the hearing before the ALJ.

(3) The Board has the authority to request additional information or evidence, if necessary.

(4) The Board may remand the case to the Department or the ALJ when appropriate.

(5) A copy of the decision of the Board, including an explanation of the right to judicial review, will be delivered or mailed to the interested parties.

R994-508-307. Withdrawal of Appeal to the Board.

A party who has filed an appeal from a decision of an ALJ may request that the appeal be withdrawn. The request must explain the reasons for the withdrawal by making a written statement to the Board explaining the reasons for the withdrawal. The

Board may deny such a request if the withdrawal of the appeal jeopardizes the due process rights of any party. If the Board grants the request, a decision dismissing the appeal will be issued and the underlying decision will remain in effect. The decision will inform the party of the right to reinstate the appeal and the procedure for reinstating the appeal. A request to reinstate an appeal under this subsection must be made within ten days of the decision dismissing the appeal, must be in writing, and must show cause for the request. A request to reinstate made more than 30 days after the dismissal will be treated as a late appeal.

R994-508-401. Jurisdiction and Reconsideration of Decisions.

(1) An initial Department determination or a decision of an ALJ or the Board is not final until the time permitted for the filing of an appeal has elapsed. There are no limitations on the review of decisions until the appeal time has elapsed.

(2) After a determination or decision has become final, the Department may, on its own initiative or upon the request of any interested party, review a determination or decision and issue a new decision or determination, if appropriate, if there has been a change of conditions or a mistake as to facts. The reconsideration must be made at, or with the approval of, the level where the last decision on the case was made or is currently pending.

(a) A change in conditions may include a change in the law which would make reconsideration necessary in fairness to the parties who were adversely affected by the law change. A change in conditions may also include an unforeseeable change in the personal circumstances of the claimant or employer which would have made it reasonable not to file a timely appeal.

(b) A mistake as to facts is limited to material information which was the basis for the decision. A mistake as to facts may include information which is misunderstood or misinterpreted, but does not include an error in the application of the act or the rules provided the decision is made under the correct section of the act. A mistake as to facts can only be found if it was inadvertent. If the party alleging the mistake intentionally provided the wrong information or intentionally withheld information, the Department will not exercise jurisdiction under this paragraph.

(3) The Department is not required to take jurisdiction in all cases where there is a change in conditions or a mistake as to facts. The Department will weigh the administrative burden of making a redetermination against the requirements of fairness and the opportunities of the parties affected to file an appeal. The Department may decline to take jurisdiction if the redetermination would have little or no effect.

(4) Any time a decision or determination is reconsidered, all interested parties will be notified of the new information and provided with an opportunity to participate in the hearing, if any, held in conjunction with the review. All interested parties will receive notification of the redetermination and be given the right to appeal.

(5) A review cannot be made after one year from the date of the original determination except in cases of fraud or claimant fault. In cases of fault or fraud, the Department has continuing jurisdiction as to overpayments. In cases of fraud, the Department only has jurisdiction to assess the penalty provided in Utah Code Subsection 35A-4-405(5) for a period of one year after the discovery of the fraud.

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