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**OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF
THE STATE OF NEW YORK
TITLE 12. DEPARTMENT OF LABOR
CHAPTER VII. DIVISION OF UNEMPLOYMENT INSURANCE
SUBCHAPTER A. PRACTICE AND PROCEDURE BEFORE
ADMINISTRATIVE LAW JUDGES AND
APPEAL BOARD
PART 460. DEFINITIONS; GENERAL PROVISIONS
Current through September 30, 2019**

Section 460.1. Application of definitions.

Whenever used in this Subchapter:

(a) The term law means the Unemployment Insurance Law, as found in article 18 of the Labor Law of the State of New York at present, in the past or in the future.

(b) The term commissioner means the Commissioner of Labor of the State of New York, Department of Labor as of September 30, 2019 or in the future, who is a party to all matters before administrative law judges and the Appeal Board.

(c) The board means the Unemployment Insurance Appeal Board of the State of New York, established under Section 534 of the Labor Law of the State of New York.

(d) The term administrative law judge means any person appointed by the commissioner as a referee to hear and decide disputes under article 18 of the law and to conduct other hearings as assigned by the board.

(e) The term department means the Department of Labor of the State of New York.

(f) Any word or term which is defined in the law shall have the same meaning when used in this Subchapter.

Section 460.2. Board sessions.

An executive session of the board shall be held on a day chosen by the chair. A special session may be called at the request of any member, if notice was given to each member at least one business day before the time set. A special session may be held without notice when all members are present. The chair of the board shall preside at all sessions or may choose any member of the board to preside and perform the duties of the chair in his/her absence at that session(s). A quorum shall consist of a majority of the board.

Section 460.3. Action by individual board member.

Any hearing, inquiry or investigation required or permitted by the board may be conducted or made by any individual member, and the order, decision or determination of that member shall be the order, decision or determination of the board from the date it is filed at the board unless the board, on its own motion, or on application made to it, changes or cancels the order, decision or determination. The chair may choose any member to oversee at any hearing or conduct any investigation or inquiry for the board.

Section 460.4. Subpoenas and depositions.

(a)(1) A board member, the chief administrative law judge, a principal administrative law judge, a senior administrative law judge or an administrative law judge may issue subpoenas, whenever necessary, to require the attendance of witnesses or the production of documents or other evidence.

(2) Any party to a case before the board who requests a subpoena to produce a witness, document or other evidence must show it is necessary. All subpoenas shall be issued under the seal of the state.

(3) A lawyer who has filed a notice of appearance with the board on behalf of any party may issue and cause to be served, subpoenas to require the attendance of witnesses under sections 2302 and 2303 of the Civil Practice Law and Rules of the State of New York.

(4) Witnesses subpoenaed for any hearing shall be paid or offered witness and mileage fees in advance under section 2303 of the Civil Practice Law and Rules of the State of New York.

(5) A request to withdraw, cancel or change a subpoena shall be made promptly to the board or to the senior administrative law judge or administrative law judge who issued the subpoena.

(b) A board member, the chief administrative law judge, a principal administrative judge, a senior administrative law judge or the administrative law judge, whenever necessary, shall take or cause to be taken, depositions of witnesses residing within or without the State.

Section 460.5. List of authorized agents and attorneys.

(a) The board shall maintain lists of lawyers and registered non-lawyer representatives who are available to represent claimants and of agents who represent employers. A lawyer, who is available to represent claimants, shall be included on this list after he/she provides to the board his/her name, business address, telephone number, and email address. A registered non-lawyer representative may represent claimants for a fee and be included on this list when the board confirms that [the individual] he/she has fulfilled the requirements stated in this section for registration. Lawyers and registered non-lawyer representatives for claimants shall remain on the list[ed] until the board suspends or cancels their registration under this section of the rules, or until the lawyer or registered non-lawyer representative requests, in writing, that his/her listing be cancelled. No individual may be listed while employed by the board or the department.

(b) The board shall maintain the lists at its offices. Copies of these lists shall be made available at all the offices of the board and on its website. The list shall be made available at these locations to any claimant requesting information or assistance with regard to obtaining representation at any hearing before the board or before an administrative law judge.

- (i) No person shall be registered as a non-lawyer representative to represent claimants for a fee, unless he or she shall have met the following requirements:
- (ii) he or she is a high school graduate or has received a high school equivalency diploma recognized by the Education Department of the State of New York;

- (iii) he or she has, as a minimum, at least 16 hours of experience, either for pay or as a volunteer, in legal or administrative proceedings, or successfully completed an equivalent number of appropriate college credit hours in courses such as administrative law, administrative procedure, labor law, unemployment insurance, or civil practice and procedure including evidence; and
- (iv) [in addition, the board, in its discretion, as a condition for registration or for continued registration, may administer examinations to non-attorneys to establish their competence as representatives; and] he or she is of good moral character;

(2) In addition, the board, as a condition for registration or for continued registration, may give examinations to non-lawyers to establish their competence as non-lawyer representatives.

(3) An applicant for registration as a non-lawyer representative for claimants shall file with the board an application, properly signed under oath or affirmation. The board may require the applicant to file any additional information it considers necessary.

(4) The board, if it denies an application for registration, shall inform the applicant, in writing, as to the reason(s) for the denial. The applicant may, within 15 days after the mailing of the notice of denial, file a written appeal stating the reasons for the appeal, by mailing, faxing or emailing it to the board. Upon receipt of such appeal, the chair of the board shall choose a member of the board, or an administrative law judge, or any other person to hold a hearing to consider the appeal from the notice of denial. If someone other than a member of the board holds the hearing, he or she shall conduct the hearing and submit a report to the board, including the recommendation. After reviewing the report and recommendation, the board shall issue a decision which will be [deemed] the decision of the board when signed by at least one member of the board and when mailed and filed at the board.

(5) If the board approves an application, the applicant shall be registered when he or she submits to the board a corporate surety bond in the amount of \$500, in a form approved by the board, for the benefit of claimants. Upon such registration, the board shall add the registered representative's contact information to the list of non-lawyer representatives which it maintains.

- (i) The board, after notice and opportunity for hearing, may suspend or cancel the registration of any non-lawyer representative shown to be incompetent, dishonorable or who refuses to observe these rules and regulations or who shall, with intent to defraud, in any manner willfully and knowingly deceive, mislead or threaten a claimant or prospective claimant orally or in writing.
- (ii) Dishonorable conduct for which the registration of a non-lawyer representative may be suspended or revoked includes, but is not limited to:
 - (a) conviction of any criminal offense under the laws of the United States, or of any state or territory, involving dishonesty or breach of trust;
 - (b) knowingly giving false or misleading information or participating in any way in the giving of false or misleading information to the board or the department, or any officer or employee of the board or department, in connection with any matter pending or likely to be pending before them. The term information includes anything contained in testimony, applications for registration, affidavits, declarations, reports, records kept in compliance with these rules and regulations, or any other document or statement, written or oral;
 - (c) the use of false or misleading representations with intent to deceive a client or prospective client to enter into an agreement for representation implying that the registered non-lawyer representative is able improperly to obtain special consideration or action from the board or the department or any officer or employee of the board or department;
 - (d) misuse of or failure to properly and promptly return funds received from a client to pay taxes or other obligations due under the law;

- (e) directly or indirectly attempting to influence, or offering or agreeing to attempt to influence the official action of the board, the department or any officer or employee of the board or the department by using threats, false accusations, duress or coercion;
 - (f) cancellation or suspension of any admission to practice, license, registration, or enrollment by an agency or authority of any state, possession, territory, commonwealth, the District of Columbia, any Federal or State court of record, or any Federal or State agency, body or board; and
 - (g) such conduct at a hearing before the board or an administrative law judge which, if committed in a court of record, would be contempt of court.
- (iii) Complaints of conduct by a registered non-lawyer representative, which could be the basis for a cancellation or suspension of the registration may be filed, in writing, with the board, by any member of the board, any member of its staff, an employee of the department, a claimant, or any other person having an interest in the matter. The complaint shall refer to the specific facts upon which it is based. When such a complaint is received, the board shall consider it and in its discretion, may conduct an investigation. If the board finds no basis for action, it shall inform the party that filed the complaint, in writing, of that fact and the reason(s) for that finding. If the board finds that there might be merit to the complaint, it shall schedule a hearing on notice to all parties. The chair of the board shall choose a member of the board or an administrative law judge, or any other person to hold the hearing. If the hearing is held before someone who is not a member of the board, that person shall conduct the hearing and submit a report to the board including his or her recommendation. The board shall then issue a decision which shall include:
- (a) a statement of findings, conclusions and reasons; and
 - (b) an order of cancellation, suspension, or reprimand or an order of dismissal of the complaint. That order shall be the order of the board when signed by at least one member of the board and when mailed to all parties and filed at the board.
 - (iv) In case the final order against the non-lawyer representative is for a cancellation of the registration, the non-lawyer representative shall not afterwards be permitted to practice before the board or its administrative law judges unless and until authorized to do so by the board. In case the final order against the non-lawyer representative is for suspension, that person shall not be permitted to practice before the board or its administrative law judges during the period of suspension.
 - (v) When there is a final order of cancellation or suspension, the board shall revise its lists and shall notify all locations where copies of the list are kept. The board may give notice of its action to courts or governmental departments or agencies by which the non-lawyer representative had also been admitted to practice, licensed, registered or enrolled.
 - (vi) The board may consider an application for reinstatement after five years from any person whose registration had been cancelled. Reinstatement may not be granted unless the board is satisfied that the applicant is not likely to conduct him/herself contrary to these rules and regulations, and that granting reinstatement would be in the public interest.

(d) All lawyers and registered non-lawyer representatives shall keep records as the board may require. Such records shall include, but not be limited to, claimant's name, the case number(s), the benefits allowed, if any, the fee requested, and the fee approved. All lawyers and registered non-lawyer representatives shall submit other reports as the board may require. Each lawyer and registered non-lawyer representative shall file a Notice of Appearance, in a form as required by the board, for each claimant whom he or she represents.

Section 460.6 Attorney and Registered Representative fee procedure.

(a) *Requirement to apply for a fee.*

(1) A fee for services to a claimant in connection with any claim under Article 18 of the Labor Law shall be permitted only for a lawyer or non-lawyer representative who is registered with the appeal board.

(2) Each lawyer and registered non-lawyer representative who represents a claimant on a fee basis in connection with a claim under Article 18 of the Labor Law shall complete a retainer agreement stating the terms of representation and the fee arrangement.

(3) When a lawyer or other representative represents a claimant in connection with any claim arising under Article 18 of the Labor Law, the board or administrative law judge shall determine whether that person is appearing for the claimant on a fee basis and advise the claimant that any fee must be approved by the board and is payable by the claimant.

(4) Following the mailing of a final decision, the lawyer or registered non-lawyer representative who requests a fee for representation shall provide the claimant with an itemized bill which details the work performed on behalf of the claimant for which the lawyer or registered non-lawyer representative requests a fee. The itemized bill shall include:

(i) the actual time spent in preparing for and providing representation;

(ii) the number of hearings held in the matter;

(iii) the lawyer or registered non-lawyer representative's costs and expenses as described in subdivision (c) (2) below;

(iv) the hourly rate or method used to determine the amount of fee requested which must be consistent with the fee arrangement specified in the retainer agreement; and

(v) the total amount of fee requested.

(b) *Applications for fee approvals.* Lawyers and registered non-lawyer representatives appearing on a fee basis must apply to the board for approval of such fees according to the procedures below.

(1) Each application for a fee approval shall consist of the following:

(i) a copy of the fully executed retainer agreement required by paragraph 2 of subdivision a of this section;

(ii) a copy of the itemized bill required by paragraph 4 of subdivision a of this section;

(iii) a statement identifying additional factors to be considered by the board in reviewing the application; and

(iv) a signed certification, on a form provided by the board, swearing to or affirming the accuracy of the itemized bill; that benefits were allowed in a final decision in connection with the representation; and that copies of the itemized bill, retainer agreement and any statement of additional factors have been given to the claimant.

(c) *Factors to be considered by the board.* (1) Claims for services to a claimant by a lawyer or registered non-lawyer representative shall not be enforceable unless approved by the board and shall not exceed the total benefit allowed. In approving any such fee, the board shall consider the following factors:

- (i) the total benefits allowed;
- (ii) the time spent in providing representation;
- (iii) the legal and factual complexities involved;

(iv) the extent to which the hourly rate or other basis for the fees billed is consistent with the terms of the retainer agreement;

(v) any other factors as the board may deem relevant.

(2) *Standards for approving costs and expenses.* The board shall approve costs and expenses as follows:

- (i) Reasonable travel time and costs;
- (ii) Actual costs of copy charges;
- (iii) Witness fees in accordance with section 2303 of the Civil Practice Law and Rules; and
- (iv) Other reasonable costs or expenses.

(d) *Board action on applications.* The board shall accept for filing every application that complies with the requirements of subdivision b of this section. The application shall be reviewed for reasonableness of the requested amount considering the factors stated in subdivision c of this section. If the requested amount is denied, in whole or in part, the board shall notify the parties of the amounts denied, and the reasons for denial, and shall approve the balance requested.

(1) Applications for up to \$600.00 in fees and expenses shall be expedited and may be decided by the executive secretary or someone assigned by the executive secretary on behalf of the board.

(2) Applications for more than \$600.00 in fees and expenses shall be decided by individual board members on behalf of the board.

(3) Any fee awarded to a lawyer or registered non-lawyer representative shall not exceed the total benefit allowed.

(e) *Prohibited payments.* No lawyer, registered non-lawyer representative or other person or firm shall ask for or receive any fees, expenses or other money from a claimant, directly or indirectly, for representation in connection with a claim under Article 18 of the Labor Law unless and until an amount has been approved by the board under this section, except as follows:

(1) A lawyer may solicit and receive an amount up to \$600.00 as a retainer to be immediately deposited in an Interest on Lawyers Account (IOLA). Such amount remains the property of the claimant until and unless the board has approved an amount as a fee; and

(2) A lawyer or registered non-lawyer representative may obtain a pre-approved credit card authorization for an amount up to \$600.00 from a claimant but shall not process the authorization for payment until after the fee has been approved under the procedures described in this rule.

(f) *Repayment.* If a lawyer, registered non-lawyer representative or other person or firm receives a payment for representation of a claimant in violation of these provisions, the claimant may apply to the board for an order of repayment stating the reasons for the request.

(1) The chair of the board shall then choose a member, or an administrative law judge, to hold a hearing, upon notice to all parties including the corporate surety (see §460.5 of these regulations), to consider the matter.

(2) If the hearing is held before an administrative law judge, the judge shall conduct the hearing and submit a report to the board, including a recommendation on the matter.

(3) After reviewing the report and recommendation, the board shall issue an order that will be the order of the board when signed by any member, mailed to all parties including the corporate surety and filed at the board.

(g) *Reconsideration.* A lawyer, registered non-lawyer representative or claimant who is dissatisfied with the approved fee may file an application with the board for reconsideration of the fee. Such application must be made in writing within 15 days of the mailing of the notice of the fee approval with a proof of service of the application on the other party. As soon as feasible after receipt of the application for reconsideration, the board shall issue a decision stating the fee awarded and the reason(s) for the decision. In the board's discretion, a hearing may be held on the issue of reconsideration of the fee.

(h) *Violations.* If the lawyer or registered non-lawyer representative violates this section or fails to repay as ordered, the board may cancel the privilege of the lawyer or registered non-lawyer representative from practicing before the board after notice and an opportunity to be heard under the procedures described in paragraphs one through three of subsection (f) of this section.

Section 460.7. Record on appeal to the court.

The record on appeal shall consist of:

- (a) the transcripts of all hearings held in the case;
- (b) documents and exhibits properly accepted into the record under section 461.4, 463.2 or 463.3 of this Title; and
- (c) the documents which establish or indicate the Board's authority to decide the case.

If there is a dispute as to the contents of a record on appeal to the Appellate Division of the Supreme Court, Third Department, any party may cause the issue to be scheduled for a board hearing by serving a notice of settlement of the record upon the other party or parties. The board hearing shall be held not less than four days after service of the notice, before the board member who signed the board's decision. The successful party to an appeal to the court shall send the remitted decision to the board for action. The board may conduct further proceedings, within the authority of the remitted decision, and shall enter and file an order on each remitted decision.

Section 460.8. Rules and regulations.

- (a) Any rule or regulation established by the board governing practice and procedure before administrative law judges and the board may be changed or cancelled by the board at any time, in accordance with legal requirements.
- (b) A change or cancellation of any of these rules and regulations may be made by the board at any session, provided that all members are present, or written notice of the proposed change or cancellation was given to all members or was included in the notice of the meeting.
- (c) Notice of change or cancellation of any of these rules and regulations shall be given to the commissioner.
- (d) These rules and regulations shall be interpreted liberally to accomplish the purposes and provisions of the law.
- (e) These rules and regulations and any change or cancellation of them shall be filed in the offices of the Department of State and of the board and shall be available to the public at all offices of the board and on its website.

Section 461.1. Request for hearing under subdivision 1 of section 620 (claimant case).

- (a) A claimant who is dissatisfied with an initial determination of the commissioner, or any other party affected by the determination, may request a hearing before an administrative law judge, under subdivision 1 of section 620 of the law, within 30 days after the mailing or personal delivery of notice of the initial determination. A request for a hearing shall be timely if it is postmarked within 30 days of the party's receipt of the determination, or if there is other proof of submitting a request such as a fax acknowledgment, a certified mailing receipt, an electronic submission, a stamped receipt by staff of the commissioner, or proof of personal service on the commissioner or the commissioner's staff by a neutral party. Unless there is proof to the contrary, an initial determination of the commissioner shall be considered to have been mailed on the date stated on the initial determination and received by a party to whom it is addressed no later than five business days after the date on which it is mailed. The request for a hearing shall be filed at the address stated on the initial determination or online according to the instructions given on the department's website. The request should be in writing and should state the reasons for the request.
- (b) An affected party other than a claimant, who requests a hearing on an initial determination which has held the claimant eligible to receive benefits, must include a written statement describing the specific events which are the grounds for denying benefits to the claimant. This statement should inform the claimant of the events which will be discussed at the hearing. Prior to the hearing, a copy of this written statement must be sent to the claimant.

Section 461.2. Application for hearing by employer under subdivision 2 of section 620 (employer case).

Any employer who claims to be harmed by any determination, rule or order of the commissioner under any provision of the law may request a hearing before an administrative law judge, under subdivision 2 of section 620 of the law, within 30 days after the mailing or personal delivery of notice of the determination, rule or order. A request for a hearing shall be timely if it is postmarked within 30 days of the party's receipt of the determination, or if there is other proof of submitting a request, such as a fax acknowledgment, a certified mailing receipt, an electronic submission, a stamped receipt by the commissioner or the commissioner's staff, or proof of personal service on the commissioner or the commissioner's staff by a neutral party. Unless there is proof to the contrary, an initial determination of the commissioner shall be considered to have been mailed on the date stated on the determination, rule or order and received by a party to whom it is addressed no later than five business days after the date on which it is mailed. The request for a hearing shall be filed at the address stated on the determination or online according to the instructions given on the Department of Labor's website. The request should be in writing and should state the reasons for the request.

Section 461.3. Notice of hearing.

- (a) A hearing shall be scheduled promptly. The notice of hearing shall state the date, time, place and purpose of the hearing and shall be sent to the parties affected and to the commissioner at least five days before the date of hearing.
- (b) In the event that a lawyer or a non-lawyer representative, appears at an administrative law judge hearing on behalf of a party or files with the administrative law judge written notice that he or she appears for any party in a case, copies of all later written communications or notices shall be sent, at the same time, to the lawyer or non-lawyer representative.

Section 461.4. Conduct of hearing.

- (a) The hearing shall not be governed by formal rules of evidence or procedure. The administrative law judge shall conduct the hearing in an order and manner that are best suited to fairly decide the issues and protect the rights of the parties. The administrative law judge may examine the parties and their witnesses. All parties shall have a full opportunity to present testimony and to introduce written or other evidence that is relevant. At the start of the hearing, the administrative law judge shall identify all persons present and shall outline briefly the issues involved. No administrative law judge shall participate in any hearing in which the judge has a conflict of interest. Challenges to the interest of an administrative law judge shall be decided by a chief administrative law judge, a principal administrative law judge, or a senior administrative law judge.
- (b) All testimony shall be under oath or by affirmation and a word-for-word record of the hearing shall be made. The commissioner may be represented in person or submit written statements, records or other documents subject to subdivision (h) of this section. Those statements, records or documents shall not be the basis for the decision of the administrative law judge unless they have been received into the record under the provisions of subdivision (j) of this section. If all parties agree, evidence submitted after the hearing may be made part of the record.
- (c) Any party may appear in person or be represented by a lawyer or non-lawyer representative. The administrative law judge may require such appearances as determined to be necessary. All parties and their lawyer or non-lawyer representative shall have the right to call, question and cross-examine parties and witnesses. They have the right to offer relevant documents, records and other evidence which the administrative law judge may only accept into the record under the provisions of subdivision (j) of this section. Parties, or their lawyer or non-lawyer representative shall

have the right to request that subpoenas be issued to require the appearance of relevant witnesses or the production of relevant documents, records or other evidence. They have the right to request a postponement of the hearing for good cause shown. Interpretation services shall be provided to parties according to established legal requirements. When interpretation services are provided there shall be an interpretation of the entire hearing and of all relevant parts of documents introduced into evidence. At the end of the hearing, each party has the right to make a relevant statement to explain points which may not have been explained during the hearing.

- (d) In the interest of the speedy administration of justice for good cause shown and in the discretion of the administrative law judge, any issue in a case or any other related issue may be heard and decided, though not specifically stated in the notice of hearing. The administrative law judge must state on the record the reason for that action and must inform the parties that he or she will consider a new basis for denying or granting benefits, or consider an issue not specifically stated in the notice of hearing. The judge must inform the parties of their rights in this regard and must give them an opportunity to request a postponement to prepare for the new basis or issue.
- (e) Once the hearing has begun, a case assigned to an administrative law judge will continue before the same judge until a decision is made, unless the case is transferred under section 461.7 of this Part.
- (f) The chief administrative law judge, a principal administrative law judge, a senior administrative law judge or the administrative law judge may separate a case or may combine two or more cases in the interests of justice and where there will be no prejudice to the substantial rights of any party.
- (g) The parties, or their representatives, may agree in writing that one or more cases involving an issue affecting certain claimants in common be a test case(s). The agreement shall be filed with the chief or principal administrative law judge. Once that agreement is filed, the parties will be bound by the administrative law judge's decision in the test case(s), subject to the right of appeal.
- (h) Information from the department records and the case file shall be made available by the commissioner and by the administrative law judge to parties to the hearing or their representatives for the necessary preparation and presentation of the case. All parties shall have the right to call, examine and cross-examine other parties and witnesses about that information.
- (i) During the conduct of a hearing, any party may request that all or part of the hearing be closed to the public or request that documents or parts of documents be marked as confidential. When a request for closing a hearing or making documents confidential is made, all present at the hearing shall have an opportunity to speak about the request. When good cause is shown, the administrative law judge may close all or part of the hearing or mark all or part of a document(s) as confidential. The record and case file shall be marked to show that there is an order to close the hearing or mark a document(s) as confidential, and that order shall continue until otherwise determined by court review.
- (j) In reaching a decision the administrative law judge shall consider and rely on only the evidence introduced at the hearing that (1) the parties have had the opportunity to review, (2) the parties have had the opportunity to object to, and (3) has been accepted into the record, and those facts and law of which a court might take judicial notice.
- (k) Hearings may also be held by means of telephone or video conference calls when it is capable of being done and when it is in the interest of justice. A telephone or video conference hearing shall be conducted in a way which is consistent with the other provisions of this Part.

Section 461.5. Investigation.

Whenever an investigation, inquiry, payroll audit or other examination is necessary in deciding a case, the chief administrative law judge, a principal administrative law judge, a senior administrative law judge or the administrative law judge, upon notice to all parties, may request the investigation, inquiry, payroll audit or other examination to be made. A hearing may be postponed until receipt of the report of such investigation, inquiry, audit or examination. The provisions of section 461.4(h) of this Part shall apply to such report.

Section 461.6. Postponement of hearing.

- (a) A party requesting a postponement must establish good cause for the request. The administrative law judge may, on the judge's own motion and for good cause, postpone the hearing. Whenever a judge determines that a hearing is to be postponed, the judge shall state on the record the reason. When postponements are granted, the case shall be rescheduled as speedily as possible.
- (b) Notice of a postponed hearing shall be given under the provisions of section 461.3 of this Part. If a hearing is postponed because one or more parties do not appear, the notice of the postponed hearing shall state that if that party does not appear at the next hearing, the case may be closed and decided.

Section 461.7. Transfer of case.

- (a) In the absence, disability or disqualification of an administrative law judge or for other good cause, a case assigned to an administrative law judge may be transferred to another administrative law judge chosen by the chief administrative law judge, a principal administrative law judge or a senior administrative law judge.
- (b) By order of the chief administrative law judge, a principal administrative law judge, a senior administrative law judge or the administrative law judge, a case may be transferred from one place of hearing to another for the convenience of parties or witnesses and as the interests of justice may require.

Section 461.8. Reopening.

A party may apply to reopen a case after an administrative law judge's decision was made as a result of or following the non-appearance or failure to proceed by a party or following the withdrawal of a request for hearing. The application shall be made to the chief administrative law judge, a principal administrative law judge or a senior administrative law judge who shall then assign an administrative law judge to act on the application. If the party shows good cause for the failure to appear or proceed or for the withdrawal, the party shall be heard on the other issues at the same time the application is acted upon.

Section 462.1. Decisions: timing, content and revision.

- (a) The administrative law judge shall make the decision in writing within five days after the hearing. The decision shall contain a statement of the issues, the findings of fact, the conclusions and the reasons.
- (b) The administrative law judge may correct a decision if it has clerical, mathematical or typing errors. If the administrative law judge is absent, disabled, disqualified or no longer serving, the chief administrative law judge, a principal administrative law judge or a senior administrative law judge may make those corrections themselves or choose another administrative law judge to make them.

Section 462.2. Notice of right of appeal.

The decision shall include a notice of the right to appeal and the instructions for how to appeal.

Section 462.3. Transmittal and filing.

Copies of all decisions and corrected decisions shall be sent promptly to the commissioner and to all other parties affected and shall be filed promptly at the board.

Section 463.1. Notice of appeal to the board.

- (a) *Any type of appeal.* In any notice of appeal, the party appealing should state the reasons for the appeal.
- (b) *Appeal by the claimant.* A claimant may appeal, under section 621, subdivision 1 of the law, by mailing a notice of appeal to the board's address found on the administrative law judge's decision or by faxing a notice of appeal to the board's fax number found on the administrative law judge's decision. The appeal by the claimant to the board must be postmarked or faxed within 20 days after the mailing or personal delivery of the administrative law judge decision.
- (c) *Appeal by the employer in a claimant benefit case.* An employer may appeal in a claimant benefit case, under section 621, subdivision 1 of the law, provided the employer appeared at the administrative law judge hearing, by mailing a notice of appeal to the board's address found on the administrative law judge's decision or by faxing a notice of appeal to the board's fax number found on the administrative law judge's decision. The appeal by the employer to the board must be postmarked or faxed, within 20 days after the mailing or personal delivery of the administrative law judge decision.
- (d) *Appeal by the employer in an employer case.* An employer who disagrees with the decision of an administrative law judge on a disputed determination, rule or order of the commissioner, may appeal that decision under section 621, subdivision 2 of the law, provided the employer appeared at the administrative law judge hearing, by mailing a notice of appeal to the board's address found on the administrative law judge's decision or by faxing a notice of appeal to the board's fax number found on the administrative law judge's decision. The appeal by the employer in an employer case must be postmarked or faxed within 20 days after the mailing or personal delivery of the administrative law judge decision.
- (e) *By the commissioner.* The commissioner may appeal from the administrative law judge decision in any claimant or employer case, under section 621, subdivisions 1 and 2 of the law, whether or not the commissioner appeared or was represented at the administrative law judge hearing by mailing a notice of appeal to the board's address found on the decision or by faxing a notice of appeal to the board's fax number found on the administrative law judge's decision.

The appeal by the commissioner must be postmarked or faxed, within 20 days after the mailing or personal delivery of the administrative law judge decision.

- (f) *Notice of receipt of appeal.* The board shall send notice of receipt of appeal to the commissioner, the claimant, the employer and their chosen representatives. Each notice of receipt of appeal to the board shall include the following statement and the parties shall be granted the following rights:

- (1) All communications should cite the above appeal number.

- (2) The appeal board usually decides appeals without a new hearing. It relies on evidence taken at the administrative law judge hearing and the written arguments of the parties on appeal. The board will not consider any evidence not introduced at the administrative law judge hearing unless all parties consent, or it is made part of the record at a further hearing. In its discretion the board may hold an additional hearing.
- (3) Each of the parties may submit, in writing, requests to inspect the minutes of the hearing, or statements, documents or briefs to be considered in connection with this appeal. Two copies of such written requests, statements, documents or briefs must be mailed, within seven days from the date of this notice, addressed to the Unemployment Insurance Appeal Board, P.O. Box 15126, Albany, NY, 12212-5126. An attorney-at-law, or representative, must mail a copy of the statement, document or brief to each of the other parties, and their attorneys and representatives, and certify to the board that this has been done. Each party may submit such statement, document or brief only once. Subsequent statements, documents or briefs will be returned to the party.
- (4) Upon written request, arrangements may be made to inspect the minutes of the administrative law judge hearing or to borrow the minutes for the purpose of making a copy thereof at the party's expense. The request to make such arrangements must be made within seven days from the date of the notice of receipt of appeal. In such event, the time to submit written statements, documents or briefs shall be 20 days from the date when that party is sent notice that the transcript is available for inspection or copying.
- (5) If another party submits statements, documents or briefs on this appeal, you will receive copies and will have 12 days to reply in writing. The 12 days to reply is measured from the date when the copies were mailed to you. A party may submit a reply at only one time. Subsequent replies will be returned to the party.
- (6) Any party may make a written request for an extension of the above time limits to submit a statement document, brief or reply. The request must give the specific reasons why the time limit cannot be met. Extensions will only be granted if the request establishes good cause to excuse the delay. Unless an extension has been granted, any submission mailed after the times specified here shall be returned to the party.
- (7) Parties may be represented by lawyers or other persons of their choice on appeal before the appeal board. For representing a claimant, a lawyer or agent registered by the appeal board may charge a fee. Before the claimant pays the representative any fee, the fee must be approved by the appeal board. No other person may charge a fee for representing a claimant. If you do not have enough money to hire a lawyer, or registered agent, you may be able to get one free through your local Legal Aid Society or Legal Services Program.
- (8) If you have any questions, contact the board at the above address.

Section 463.2. Conduct of appeal.

- (a) The board shall not conduct the appeal according to formal rules of evidence or procedure and may conduct the appeal and any hearing in a way that is best suited to fairly decide the issues on appeal and protect the parties' rights.
- (b) The board may decide any case appealed to it based on the record and evidence submitted at the administrative law judge hearing or, in its discretion, may hold a further hearing. No member of the board shall participate in a hearing or decision of any appeal in which the member has a conflict of interest. Challenges as to the interest of any member shall be decided by the other members of the board.
- (c) In the interest of a fair and speedy appeal process that protects the rights of all parties and for good cause and in the discretion of the board, any issue in a case or any related issue may be decided though not stated in the notice of appeal or administrative law judge decision. However, the board must state its reason for such action. The board must inform the parties if it will consider a new basis for denying or granting benefits or will consider an issue not stated in the notice of appeal or administrative law judge decision.
- (d) The board may combine two or more appeals or may separate appeals where justice will be served.
- (e) The board shall send copies of statements, documents or briefs it receives from parties to the other parties to the appeal, if those have not already been sent. Any party may reply in writing within 12 days. Additional time will only be granted subject to 463.1 of this Part. Copies of any reply received will also be sent to opposing parties by the board, if the papers have not already been sent. Evidence that was not introduced at a board or administrative law judge hearing shall not be considered or relied on by the board unless all parties agree.
- (f) At any stage of an appeal the board may remand the case to an administrative law judge chosen by the chief administrative law judge or a principal administrative law judge or a senior administrative law judge. The board will inform the parties of the reasons for the remand. Remanded cases shall be promptly scheduled.
- (g) Information from the department records and the appeal file shall be made available by the commissioner and by the board to parties to the appeal or their representatives for the necessary preparation of the appeal.
- (h) In the interest of justice and for good cause, the board, on its own motion or on application by a party, may excuse a party's failure to appear or proceed at any stage of a case or appeal. If a party shows good cause for the failure to appear or proceed, the Board shall consider the case or appeal as if no failure had occurred.

Section 463.3. Board hearing.

- (a) Any party on the appeal may request a hearing before the board, stating the reasons for the request.
- (b) The notice of hearing shall state the purpose for the board hearing. At any hearing granted or directed by the board, the board may limit the parties to oral arguments or may permit further testimony or other evidence. Any party on the appeal may appear in person or be represented by a lawyer or other representative. The board may require appearances by parties or witnesses, or presentation of other evidence, that it finds necessary. All parties and their lawyer or other representative shall have the right to question and cross-examine parties and witnesses, and shall have the right to offer relevant documents, records and other evidence which the board may only accept into the record under the provisions of section 463.2 of this Title or subdivision (c) of this

section. Parties, or their lawyer or other representative, shall have the right, to request that subpoenas be issued for the appearance of relevant witnesses or the production of relevant documents, records or other evidence. They have the right to request a postponement of the hearing for good cause. Interpretation services shall be provided to parties according to established legal requirements. When interpretation services are provided there shall be an interpretation of the entire hearing and of all relevant parts of documents introduced into evidence. At the end of the hearing and within the limits set by the board each party has the right to make a relevant statement to explain points which may not have been explained during the hearing.

- (c) The board shall consider and rely on only the evidence introduced at a hearing before an administrative law judge or before the board and on those facts and law of which a court might take judicial notice.

For any document that the Board considers, relies on or refers to:

- (1) the parties must have had the opportunity to review the document,
 - (2) the parties must have the opportunity to object to it being made part of the record, and
 - (3) the document must be accepted into the record
- (d) All testimony shall be under oath or by affirmation and a word-for-word record of the hearing shall be made. The board may accept written statements, records or other documents submitted by parties or their representatives instead of testimony.
 - (e) A member of the board staff may assist the Board member in the conduct of a hearing.
 - (f) The hearing shall be held at an office of the board or at another location as the board may choose. In the discretion of the board, hearings may be held by telephone conference calls or videoconference when it is capable of being done and when it is in the interest of justice. A telephone or video conference hearing shall be conducted in a way which is consistent with the other provisions of this Part.
 - (g) A party requesting a postponement must show good cause for the request. The board may, on its own motion and for good cause, postpone the hearing. Whenever the board determines that a hearing is to be postponed, the board must state on the record the reason for the postponement.
 - (h) During a hearing before the board, any party may request that the hearing or parts of the hearing be closed to the public or request that documents or parts of documents be marked as confidential. When a request for closing a hearing or making documents confidential is made, all present at the hearing shall have an opportunity to speak about the request. Upon a showing of good cause, the board may close the hearing or mark a document(s) as confidential. If allowed, the record and case file shall be marked to show that there is an order to close the hearing or mark a document(s) as confidential, and that order shall continue in effect until otherwise determined as a result of court review.

Section 463.4. Notice of hearing.

- (a) The notice of hearing shall state the date, time, place and purpose of the hearing and shall be sent to the party appealing, to all other parties affected and to the commissioner at least five days before the date of hearing.
- (b) If a lawyer or other representative files a notice of appeal for any party, appears at a board hearing for a party, submits a statement for a party or files a written notice that he or she appears for a party, copies of all later written communications except subpoenas sent to that party shall be sent, at the same time, to the lawyer or other representative.

Section 463.5. Investigation.

The board on notice to all parties may request an investigation, inquiry, payroll audit or other examination that is necessary when deciding a case and shall order that a hearing be held. A hearing may be postponed while the report of the investigation, inquiry, audit or examination is being prepared. Section 463.2(g) of this Part shall apply to that report. All parties shall have the right to call, question and cross-examine other parties and witnesses regarding the report.

Section 463.6. Reopening.

- (a) On its own motion or on a party's written application the board, in its discretion, may reopen a decision.
- (b) On its own motion or on written application made to it, the board, under section 534 of the law, may change or cancel its order, decision or determination. If an application for reopening is not received by the board or postmarked within 30 days after an order, decision or determination, the application must contain an explanation for the delay. If good cause for the delay has not been established by the explanation, the board may, without further notice to the parties, deny the application by an order which shall be sent to all parties. If an application is not denied by an order of the board for this reason, notice of reopening or notice of receipt of the application to reopen shall be sent to all parties and their representatives. The notice shall advise the parties of their basic rights while the reopening is being decided. The parties shall have the same rights that are stated in sections 463.1 and 463.2 of this Part regarding an appeal. The board may decide to schedule a hearing for argument or to receive further evidence. The board may continue, change or cancel its prior decision or may deny the application to reopen.
- (c) On its own motion or on written application made to it, the board, under subdivision 3 of section 620 of the law, may change or cancel an administrative law judge decision, where no appeal was legally taken. If an application for a reopening is not received by the board or postmarked within 25 days after the administrative law judge decision, the application must contain an explanation for the delay. If good cause for the delay has not been established by the explanation, the board may hold a hearing, upon notice to all parties, regarding the timeliness of the request for the board to reconsider the administrative law judge decision. The board may, without further notice to the parties, dismiss the appeal or deny the application by an order which shall be sent to all parties. If an application is not dismissed or denied for this reason, notice of reopening or notice of receipt of the application to reopen shall be sent to all parties and their representatives. The notice shall advise the parties of their basic rights while the reopening is being decided. The parties shall have the same rights that are stated in sections 463.1 and 463.2 of this Part regarding an appeal. The board may choose to schedule a hearing for argument or to receive further evidence. The board may affirm, change or reverse the administrative law judge decision or may deny the application to reopen.
- (d) Whenever the board reopens a decision under this section, it shall state the reasons for the reopening in its decision.

Section 464.1. Board Decisions, content and revision.

- (a) The board shall make its decision in writing promptly. Where the decision is not unanimous, the majority shall control. The board may affirm, reverse, or change the appealed decision or make an order, decision or determination as may be necessary. The decision shall contain a statement of the issues, the findings of fact, the conclusions and the reasons.
- (b) On its own motion or on written application, the board may correct its order, decision or determination when it decides that correction is necessary.
- (c) The decision of the board shall be accompanied by a notice of the right to appeal to the Appellate Division of the Supreme Court, Third Department, under section 624 of the law.

Section 464.2. Transmittal and filing.

Copies of all decisions shall be sent promptly to all parties. Copies of the board decisions shall be kept at the board. The decisions shall be open to the public for inspection, at any of the board's locations or online, but without revealing the names or other identifying information of any of the parties or witnesses involved.

Section 465.1. Access to Board Records - Generally.

There is a strong public policy in this State for public access to judicial and administrative proceedings. The records in the case files of the board and of its administrative law judges that are available for inspection and copying under this Part are those described by section 87 of the Public Officers Law and not excluded by any other law.

Section 465.2. Records Access officer.

- (a) The board's executive secretary is the records access officer for the purposes of this Part.
- (b) The records access officer shall maintain an office for access in New York City or the Capital Region at an address that can be found on the Board's website. The records access officer has authority to establish other offices or locations where the public may request access to records.
- (c) The records access officer is responsible for managing the responses to requests for access to records and for ensuring that board staff:
 - (1) maintain an up-to-date subject matter list;
 - (2) assist the requester in identifying requested records, if necessary;
 - (3) when locating the records, take one of the following actions:
 - (i) make records available for inspection or copying; or
 - (ii) deny access to the records and explain in writing the reasons;
 - (4) when a request for copies of records is granted:
 - (i) makes a copy available upon payment or offer to pay established fees, if any unless waived; or
 - (ii) permit the requester to copy those records, provided that this does not jeopardize the preservation and safekeeping of the records;
 - (5) upon request, certify that a transcript or copy is a true copy of a record in the files of the board; and
 - (6) upon failure to locate records, certify that:
 - (i) the board does not keep the records; or
 - (ii) the records cannot be found after a reasonable search.

Section 465.3. Subject matter list.

- (a) A reasonably detailed current list, by subject matter, of all records in the possession of the board shall be kept at the board and on the board's website, whether or not available for public inspection and copying under the Freedom of Information or other law.
- (b) The subject matter list shall identify the category of the record sought.
- (c) The subject matter list shall be updated not less than twice per year. The most recent update shall appear on the first page of the subject matter list.

Section 465.4. Fees.

- (a) There shall be no fee charged for:
 - (1) inspection of records or emailing of records;
 - (2) search for record; or
 - (3) any certification under this Part.
- (b) A fee for copies of records may be charged provided that:
 - (1) the fee for copies shall be 25 cents per page for copies not larger than 8 1/2 x 14 inches; and
 - (2) the fee for CDs and/or DVDs shall be ten dollars per CD or DVD, and
 - (3) the fee for copying all other records shall not be greater than the average unit cost for copying a record, excluding staff salaries.

All requests for copies shall be made to the records access officer. Payment for copies shall be by check or money order, payable to the Department of Labor.

(c) The board shall supply a copy of the hearing transcript to any claimant who requires translation assistance to prepare the appeal to the board from a decision by the administrative law judge.

Section 465.5. Hours.

Requests for access to case files shall be accepted and files produced between 9 a.m. and 4 p.m. on regular business days on which the board's offices are open.

Section 465.6. Access.

- (a) The records shall be available to the public, subject to the limits set forth in this Part. Requests for access to records shall be in writing.
- (b) The records access officer may choose any office of the board as the place at which requests for access to records may be made.
- (c) The request for access to records should be detailed enough to clearly identify the record and the information requested. Where possible, the requester should supply the case number assigned to the file which contains the record.
- (d) The records access officer shall respond to a request for access to a record within five business days after receipt of the request. If, for any reason, more than five business days are required

to respond to such a request, notice of receipt of the request shall be sent within five business days along with the estimate of the date on which a reply will be made. When the requested record is available for access, the records access officer shall so advise the requester.

- (e) Other than hearing transcripts, no part of a case file may be removed by the requester from the location where access is granted unless permission is given.
- (f) When a record is made available for access, the requester shall be required to sign an acknowledgement that access was granted within any closure or confidentiality rulings which have been established.

Section 465.7. Denials and appeals.

- (a) The denial of access to records shall be in writing, giving the reasons for the denial and advising the requester of the right to appeal to the chair of the board.
- (b) If no response is made to a request for records within five business days after its receipt, the request shall be considered to have been denied. If access to records is neither granted nor denied within 10 business days after the date that the Board confirms the receipt of a request, this may be considered as a denial of access that may be appealed.
- (c) Any person denied access to a record may appeal within 30 days of a denial. An appeal shall be decided by the chair of the board or another member of the board who is chosen by the chair.
- (d) The time for deciding an appeal from a denial of access shall begin on the date when a written appeal is received.
- (e) The written appeal shall include:
 - (1) the date of the appeal;
 - (2) the date of the request for the record;
 - (3) the case number last assigned to the file which contains the record;
 - (4) a statement of whether the denial of access was in writing or by failure to provide the record promptly, as required by this Part; and
 - (5) the name and address of the requester.
- (f) The chair of the board or an individual chosen by the chair shall send the Committee on Open Government, Department of State, Albany, NY, copies of all appeals when they are received.
- (g) The requester shall be informed of the decision, in writing, within 14 business days of the receipt of a written appeal. The decision, whether made by the chair of the board or by a member of the board who has been chosen for that purpose, shall be the decision of the board when it is mailed to the requester and to the Committee on Open Government.
- (h) A final denial of access to a record, as provided in subdivision (g) of this section, shall be subject to court review, as provided in article 78 of the Civil Practice Law and Rules.

Section 465.8. Public notice.

A notice shall be posted on the website of the Board. The notice shall contain:

- (a) business address and business telephone number of the records access officer or; and
- (b) the principal location where records may be seen.

Section 465.9. Severability.

If any provision of this Part or of the application of this Part is ruled invalid by an appropriate court, that judgment shall not affect the legality of the other provisions of this Part or their application to other persons and situations.