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# Office of Administrative Hearings

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## **Y**OUR EMPLOYMENT DEPARTMENT HEARING . . .

### How to Prepare & Present Your Case

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## **WHAT IS A HEARING?**

A hearing is a fact-finding process. Usually the purpose of the hearing is to decide whether unemployment benefits should be paid. In a hearing, the people involved in the matter—usually the claimant, the employer, and someone from the Employment Department—give information about the case. Most of the information is given by testimony. All testimony is taken under oath. The information is given to an Administrative Law Judge (ALJ). The ALJ is an employee of the Office of Administrative Hearings (OAH). The ALJ's job is to get the facts of the case and make a decision. The ALJ must make sure that all parties get a fair hearing. The hearing is the only chance the parties will have to tell their side of the case. If you want your information to be considered, you must appear at the hearing.

## **WHAT HAPPENS AT A HEARING?**

The ALJ starts the hearing by explaining what will happen during the hearing and will answer your questions.

The ALJ will then swear in the first witness, usually the claimant or the employer. The ALJ will ask questions and allow the party to ask questions of his or her witnesses on the issue. Then other interested parties may ask questions of the witness. Then the next witness is called and the same process is followed. The process continues until all witnesses have given their statements.

Each party is expected to have his or her evidence and witnesses available at the time of the hearing.

**IMPORTANT:** If you have written evidence you want to use in the hearing, such as time cards, medical records, etc. you **MUST** provide it to the ALJ (not your local employment office) before the hearing. You **MUST** also provide copies to the other parties involved in the hearing before the time set for the hearing. Their names and addresses are shown on the Notice of Hearing. If you fail to provide copies of your written evidence to the other party or parties before the hearing, the ALJ may decide not to consider your evidence.

## **WHAT MUST I PROVE AT MY HEARING?**

In a discharge case, before the Employment Department can disqualify a claimant from receiving unemployment insurance benefits, the employer has the burden to establish that the claimant committed work-related misconduct. *Misconduct* means a willful or wantonly negligent violation of the employer's standards of behavior for its employees or disregard of the employer's interest. The employer must show specific details about how and when the claimant violated the employer's standards of behavior or disregarded its interest. The claimant needs to explain why he or she believes his or her conduct did not violate the employer's standards of behavior or did not disregard the employer's interest.

In a voluntary quit case, the claimant must show good cause to quit. *Good Cause* means a grave or serious situation that would cause a reasonable and prudent person to quit a job. The claimant must provide details about what caused him or her to quit. The claimant needs

to show that he or she had no reasonable alternative but to quit his or her job. The employer may dispute that the claimant faced a grave or serious situation or that the claimant did not have any alternative to quitting his or her job.

Your legal issue is shown on your Notice of Hearing. If your case does not involve a discharge or voluntary quit as shown above, the ALJ will explain at the hearing what you must prove.

After all the evidence has been presented, the ALJ will close the hearing. A written decision will be mailed to the parties after the hearing.

## **H**OW WILL I KNOW WHEN MY HEARING IS SCHEDULED?

Approximately ten days before the hearing, a *Notice of Hearing* will be mailed to you. The notice will give the date, time, and place of the hearing. The notice will also tell you the issue to be considered at the hearing.

## **W**HAT IS A TELEPHONE HEARING?

Most hearings are held by telephone. The parties talk to each other by conference call. A conference call allows you to hear everything everyone is saying, and allows them to hear you.

Your notice of hearing will tell you whether the judge will call you, or that you need to call a local or toll free number at the time of the hearing and enter an access code. Be sure to use a telephone that has good reception. The use of cell or cordless telephones for the hearing is not recommended. If you

use a cell or cordless phone & it fails during the hearing, you may lose your opportunity to participate fully in the hearing. If you have witnesses, tell the ALJ at the beginning of the hearing, and give the ALJ their telephone number. Your witnesses may be at a telephone number different than yours and still be included in the conference call. Tell your witnesses to be on stand-by throughout the hearing. The ALJ will call them at the time their testimony is needed. **Do not** give the hearing telephone number and access code to your witnesses.

If you do not have a telephone and cannot use a public phone or a friend's phone, contact the Office of Administrative Hearings for assistance.

**PLEASE NOTE:** Please be sure that any call blocking feature, security screening or any other filtering feature on the telephone that you intend to use for the hearing is disabled prior to the hearing, so that the ALJ can telephone you if necessary. Be sure to use a telephone that has good reception. We do not recommend using a cell or cordless telephone.

## **WHAT IF I HAVE SPECIAL NEEDS?**

If you have special needs due to a physical impairment, let the Office of Administrative Hearings know immediately so that accommodations can be made for you.

## **HOW DO I GET A WITNESS OR SUBPOENA?**

Before you ask witnesses to appear at the hearing, be sure their testimony is necessary. Talk to them first. Find out what they know. Generally, you will want witnesses who have

first-hand knowledge of the facts of your case. If a witness will simply repeat what others will say, or they don't know anything about your case, the ALJ might not allow them to testify.

If you need witnesses to help you explain your case, contact them as soon as possible. Be sure they are available at the time set for the hearing.

If they are not willing to appear at the hearing, but their testimony is necessary, ask the Office of Administrative Hearings for a subpoena. A subpoena orders the person to appear at the hearing.

## **D** O I NEED **OTHER EVIDENCE?**

In addition to the documents you receive with your Notice of Hearing, you may need other written evidence to help your case. Written evidence includes letters, timecards, medical reports, etc. You may also want to use photos, maps, charts, etc., if they help explain the facts of your case. Make sure that you are able to explain who prepared the written evidence, its purpose, and how it helps your case. If you need records that are not available to you, ask the Office of Administrative Hearings for a subpoena.

If you use written statements or letters at your hearing instead of first-hand testimony from those individuals, those written statements or letters may not be as persuasive to the ALJ as first-hand testimony.

**IMPORTANT:** If you have written evidence you want to use in the hearing, you must provide it to the ALJ (not your local employment office) before the hearing. You must also provide copies to the other parties involved in the hearing before the time set for the

hearing. Their names and addresses are shown on the Notice of Hearing. If you fail to provide copies of your written evidence to the other party or parties before the hearing, the ALJ may decide not to consider your evidence.

## **M**AY I LOOK AT THE HEARINGS FILE BEFORE THE HEARING?

The contents of the Hearings file will be sent to all parties with the Notice of Hearing. Any additional documents submitted to the ALJ must also be submitted to all other parties prior to the hearing.

## **D**O I NEED AN INTERPRETER?

Hearings are conducted in English. If your knowledge of English is limited, or if you are hearing or speech impaired, or if you are reading this for a person whose knowledge of English is limited, contact the Office of Administrative Hearings immediately. We will arrange an interpreter for the hearing. There is no charge to you for this service.

## **D**O I NEED A LAWYER?

You can have a lawyer or another individual help you with the hearing. The ALJ will help you present your case. But if the facts in your case are complicated or you just don't feel comfortable doing it alone, you may have someone help you prepare and present your case.

The Employment Department usually does not have a lawyer represent it. If the Office of Administrative Hearings knows prior to the time the Notice of

Hearing is mailed, that a lawyer will represent the employer, the claimant, or the Employment Department, the lawyer's name will be included on the Notice of Hearing.

If you are going to hire a lawyer, do so right away. Your lawyer will need time to prepare your case. If you hire a lawyer, inform the Office of Administrative Hearings so that we can advise your lawyer of the date and time for the hearing. A hearing is not automatically postponed because your lawyer may have a scheduling conflict.

If during the hearing you find you need a lawyer, you may ask the ALJ for time to get one. The ALJ then will decide whether to allow your request.

## **WHAT IF I DON'T PARTICIPATE IN THE HEARING?**

If you asked for the hearing and you don't answer your telephone or don't participate in the hearing, your request for hearing will be dismissed. The administrative decision will remain unchanged.

If you did not ask for the hearing, but you are one of the people listed on the Notice of Hearing, you must participate in the hearing in order to present your side of the case. Only evidence given at the hearing can be used by the hearing ALJ in reaching a decision.

## **WHAT IF I CHANGE MY MIND ABOUT WANTING A HEARING?**

If you ask for a hearing, then later decide you don't want it, you can withdraw your request. If you decide to withdraw your request, please tele-

phone the Office of Administrative Hearings as soon as possible.

## **W**HEN WILL I GET A DECISION?

In most cases, a decision will be mailed to you within two weeks. The decision will give the facts of the case as determined by the ALJ and tell why the ALJ reached the result.

## **W**HAT ARE TIPS THAT CAN HELP ME IN THE HEARING?

- Before the hearing, write down the points you want to cover at the hearing. Also write down questions that you want to ask witnesses.

- Use the list to prepare your case, and use it at the hearing to make sure that you cover everything.

- **IMPORTANT:** If you have written evidence you want to use in the hearing, you must provide it to the ALJ (not your local employment office) and the other parties involved in the hearing before the time set for the hearing.

- Talk to your witnesses as soon as possible to be sure they will be available to testify and that their testimony is necessary.

- If your case is complicated, you may want a representative or a lawyer. If you want a representative or a lawyer, get one immediately.

- Testify only when it is your turn. Do not interrupt. You will be provided an opportunity to speak and ask questions.

- Testify to what you know—don't guess. If you don't know the answer to a question, say that you don't know.

- Don't repeat what has already been said.
- Make your questions short and to the point. Ask only one question at a time.
- Make sure your evidence is necessary to your case.
- Don't argue or get angry during the hearing. You will do a much better job of presenting your case if you stay calm.
- If you are not sure what to do during the hearing, ask the ALJ.

You may obtain further information on the Office of Administrative Hearings website: <http://oah.state.or.us>

## **W**HERE DO I SUBMIT EVIDENCE OR CALL IF I HAVE QUESTIONS?

Office of Administrative Hearings  
PO Box 14020  
Salem, Oregon 97309-4020  
Phone: (503) 947-1515  
1-800-311-3394  
Fax: (503) 947-1531

## **W**HAT IF I DISAGREE WITH THE HEARING DECISION?

If a hearing decision goes against you, you have the right to file an application for review with the Employment Appeals Board. The Employment Appeals Board is a three-person panel appointed by the Governor to provide independent review of unemployment insurance hearing decisions.

You have 20 days to file an application for review after the date the hearing decision is mailed to you. The hearing decision will have a *decision final* date in the upper right-hand corner of the first page. Your application for review to the Board **must be postmarked or faxed to the Employment Appeals Board, or personally delivered to an Employment Department Office by that date.**

You must submit your application for review in writing, either by letter or on a form available at any Employment Department office. You must state that you are making *an application for review* of the hearing decision. If you are an employer, you should list the name of the claimant involved in the case and all parties should provide the hearings decision reference number. Also state whether you intend to file a written argument.

**EMPLOYMENT  
APPEALS BOARD (EAB)**

875 Union Street, NE  
Salem, Oregon 97311  
Phone: (503) 378-2077  
1-800-734-6949  
Fax: (503) 378-2129

Information about how you can file an application for review will be sent to you with the hearing decision. If you have questions, you may telephone the Employment Appeals Board.

**If you are a claimant and an application for review is filed from the hearing decision, continue to report on your claim each week until the appeal is decided.**

## **WHAT DOES THE EMPLOYMENT APPEALS BOARD DO?**

The Employment Appeals Board does not hold new hearings. It reviews only the evidence presented at the hearing conducted by the ALJ. The evidence consists of testimony given at the hearing and any written or physical evidence presented at the hearing.

The Employment Appeals Board will also consider written arguments you may want to present. Written arguments are not required, but if you want to provide written argument, you should say so in your *application for review*.

After reviewing the case, the Employment Appeals Board will issue a decision to affirm, set aside, or modify the hearing decision. The Employment Appeals Board may also send your case back to the hearing ALJ if there is insufficient evidence to make a decision.

## Notes



Office of Administrative Hearings  
[www.oregon.gov/OAH](http://www.oregon.gov/OAH)  
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