

DEPARTMENT OF LABOR
DIVISION OF UNEMPLOYMENT INSURANCE

Statutory Authority: 19 Delaware Code, Section 3321(a) and 29 Delaware Code, Section 10113(b)(2) and (b)(4) (19 **Del.C.** §3321(a) and 29 **Del.C.** §10113(b)(2) & (b)(4))
19 **DE Admin. Code** 1201

FINAL

REVISED ORDER

1201 Unemployment Insurance Appeal Board Regulations

I. SUMMARY OF THE EVIDENCE

Pursuant to 19 **Del.C.** §3321(a), 29 **Del.C.** §§10113(b)(2) and 10113(b)(4), the Unemployment Insurance Appeal Board ("Board") proposes the adoption of 19 **DE Admin. Code** 1201 Board Procedures. The proposed regulation sets forth rules of the practice and procedure of the Board. The Board is simultaneously proposing to repeal existing sections from 19 **DE Admin. Code** 1201 Regulation and add new sections based on the Board's current practice and hearing procedures.

The adoption of this regulation is exempt from the requirement of public notice and comment and is adopted informally in accordance with 29 **Del.C.** §§10113(b)(2) and 10113(b)(4).

II. FINDINGS OF FACTS

On November 9, 2022 and revised on November 18, 2022, the Board finds that the proposed regulations relate to its current practice and procedures and is necessary to clarify the expectations of parties before the Board. The Board finds that it is appropriate to adopt 19 **DE Admin. Code** 1201 Unemployment Insurance Appeal Board Regulations.

III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Board concludes that it is appropriate to adopt 19 **DE Admin. Code** 1201 Unemployment Insurance Appeal Board Procedures. Therefore, pursuant to 19 **Del.C.** § 3321(a) and 29 **Del.C.** §§10113(b)(2) and 10113(b)(4), the 1201 Unemployment Insurance Appeal Board Regulations, attached as Exhibit A, is hereby adopted.

IV. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten days from the date this Order is published in the *Register of Regulations*.

IT IS SO ORDERED the 18th day of November, 2022.

Elmer L. Newlin, Chairman	Drew A. Dorak, Member
Vance G. Daniels, Sr., Member	William F. Tobin, Jr., Member
Beverly G. Bell, Member	

Unemployment Insurance Appeal Board Members

1201 Unemployment Insurance Appeal Board Regulations

1.0 Definitions

~~As used in these Rules and Regulations, the following definitions shall apply:~~ The following words and terms when used in this regulation, have the following meaning:

"Board" shall mean the Unemployment Insurance Appeal Board.

~~"Chairman"~~ **"Chair"** shall mean the ~~Chairman~~ Chair of the Board.

"Hearing Officer" shall mean the Appeals Referee or ~~his or her~~ the Appeals Referee's designate who heard the initial appeal.

"Hearsay Evidence" shall be such evidence so designated by the Delaware Rules of Evidence (D.R.E.).

"Relevant Evidence" shall mean evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without this evidence, as set forth in D.R.E. 401.

6 DE Reg. 887 (01/01/03)

2.0 Location of Unemployment Insurance Appeal Board

- 2.1 All correspondence or other papers or documents filed with the Board shall be filed, either by mail or by hand delivery, at the following address: Unemployment Insurance Appeal Board, Department of Labor, 4425 North Market Street, Wilmington, DE 19802. The Board phone number is (302) 761-8370 and the Board's fax number is (302) 761-6635.
- 2.2 Notices of Appeal to the Board may be filed, by mail or personal delivery, at any local Unemployment Office or at the Board Office listed at Rule subsection 2.1. All ~~notices~~ Notices of Appeal must be in writing.

6 DE Reg. 887 (01/01/03)

3.0 Commencement

- 3.1 A hearing before the Board may be initiated by:
 - ~~3.1~~ 3.1.1 Either party to the action heard by the Hearing Officer upon filing a timely Notice of Appeal with the ~~Board;~~ Board. Any request for appeal by a corporation or other artificial entity must be filed by an owner, officer, or employee of the entity or by an attorney-at-law duly admitted to practice law in the State of Delaware.
 - ~~3.2~~ 3.1.2 A party whose appeal was dismissed by the Hearing Officer for failure of that party to appear at the scheduled hearing before the Hearing Officer, upon filing of a timely Notice of Appeal with the Board, in which case the Board may, at its sole discretion, remand the case to the Hearing Officer for a prompt hearing to make a full and complete record; or
 - ~~3.3~~ 3.1.3 The Board *sua sponte* with notice to the parties below or their counsel.

6 DE Reg. 887 (01/01/03)

4.0 Hearings

- 4.1 Purpose. The purpose of a hearing before the Board is to examine the factual and legal bases for the decision rendered by the Hearing Officer. The parties shall not re-litigate the case presented to the ~~Referee~~ Hearing Officer, but may present additional evidence and legal arguments. Both the ~~referee's~~ Hearing Officer's record and any new evidence presented to the Board shall be considered by the Board in making its decision.
- 4.2 Presence of parties required. All parties to the appeal and any witnesses shall be present in-person at the Board's hearing. Failure to appear within 10 minutes of the time indicated on the Notice may result in the Board hearing the appeal in absence of the delinquent party or, if the delinquent party is the appellant, dismissal of the appeal.
 - ~~4.2.1~~ The Board may consider conducting hearings telephonically, when it believes it would be practicable and efficient to do so and will promptly consider any written request by a party to change a hearing from being held in-person to a telephonic hearing. Absent any written request by a party, the Board may, on its own initiative, change a hearing from being in-person to a telephonic hearing. Parties and witnesses are not permitted to use any cell phones, smart watches, recording devices, or other electronics in the hearing room. This prohibition does not apply to State employees who appear on official business and attorneys.
 - 4.2.2 Parties and witnesses are not permitted to have large bags or backpacks in the hearing room.
- 4.3 Representation.
 - 4.3.1 At any hearing, a party may ~~appear pro se~~ represent themselves (appear pro se) or may be represented by an attorney-at-law duly admitted to practice law in the State of Delaware. A corporation or other artificial entity ~~desiring legal representation~~ must be represented by an owner, officer, or employee of the entity or by an attorney-at-law duly admitted to practice law in the State of Delaware.
 - 4.3.1.1 Attorneys-at-law should enter their appearance with the Board's secretary prior to the hearing.
 - 4.3.1.2 Only an attorney-at-law may directly question a witness on behalf of a party.
 - 4.3.2 The Board or its attorney may examine any ~~witnesses,~~ witnesses and move the admissions of documents and things into evidence.
- 4.4 ~~Continuances and Postponements.~~ Continuances, Postponements, and Withdrawals.
 - 4.4.1 Request for continuances or postponements. All request for continuances or postponements are within the discretion of the Chair of the Board.
 - 4.4.1.1 Timing of requests. Applications for a continuance or postponement of any hearing shall be made in writing to the ~~Board office~~ Board's secretary no later than ~~6 days~~ 12:00 p.m. the day prior to the hearing. The request shall state the reasons for which the continuance or postponement is requested. ~~The grant or denial of any request for continuance or postponement is within the discretion of the Board Chairman or his or her designee.~~

- 4.4.1.2 Multiple requests. In the case of multiple requests for continuances or postponements, it is generally the Board's practice to allow each party to make a first request for continuance or postponement based on need so long as the request is made before 12:00 p.m. the day prior to the hearing. Any subsequent requests must include a showing of unanticipated emergency circumstances, e.g., death in the family or severe illness, which must be supported by documentation, and are very rarely granted.
- 4.4.1.3 Requests not granted. Any requests for continuances or postponements that are not granted may be renewed in person at the Board hearing by a party or its representative. The grant or denial of any requests for continuances or postponements made in person at the Board hearing is within the discretion of the Board.
- 4.4.1.4 Rescheduling of cases. All cases that are continued or postponed at a party's request will be rescheduled for the next available Board hearing date. Cases will not be rescheduled around a party's availability.
- 4.4.2 ~~Applications for any continuance or postponement of any hearing made less than 6 days prior to the hearing shall set forth with specificity the reason(s) for the continuance or postponement, and shall typically be granted only for reasons of unanticipated emergencies. Untimely request for continuances or postponements. The Board does not accept any requests for continuances or postponements received after 12:00 p.m. the day before the hearing date.~~
- 4.4.3 Withdrawal of appeals. An appealing party may request to withdraw its appeal at any time prior to hearing. All requests for withdrawal must be made in writing.
- 4.5 Length of hearing. Hearings are scheduled to last 20 minutes from the time the presiding member calls the case, except that the Board may extend the length of the hearing at its discretion. Hearings where one or both parties are represented by an attorney are scheduled for 40 minutes. Extensions of time are rarely granted.
- 4.6 Record. A record shall be made of all hearings before the Board. The record may be made either by a stenographic record or by audio recording. The record does not need to be transcribed unless and until an appeal is taken to Superior Court of the State of Delaware from the Board's decision.
- 4.7 Evidence.
- 4.7.1 The Board follows the Delaware Rules of Evidence. The Board may admit and consider hearsay evidence, however, the Board shall not base its decision solely on hearsay or other evidence not admissible under the Rules of Evidence.
- 4.7.2 The Board may consider any relevant evidence relating to any issue raised below, whether or not that issue was decided by the Hearing Officer.
- 4.7.3 The admissibility of evidence and determinations of the weight to be given evidence and the credibility of witnesses shall be within the sound discretion of the Board.
- 4.7.4 ~~The Prior to the hearing, the Board may receive into evidence any new testimony or document offered by means of a telephone by mail, email, or other electronic or electromagnetic device, and the Board may review testimony contained within the record of the proceedings below that was offered by means of a telephone or other electronic or electromagnetic device means. Evidence must be submitted to the Board and any other parties to the hearing at least 7 days prior to the scheduled hearing.~~
- 4.7.5 The Board does not permit electronic evidence, such as video or audio, to be submitted or entered into evidence at a hearing.
- 4.7.6 The Board cannot review evidence submitted by USB drive, CD, or other external electronic devices.
- 4.7.7 The Board or its attorney may review testimony contained within the record of the proceedings below that was offered by telephone or other electronic means.
- 4.8 Subpoenas.
- 4.8.1 A party may request subpoenas to compel a witness or witnesses to appear at a hearing or to compel the production of documents at or prior to a hearing. Such a request shall be in writing, be received by the Board at least 7 days prior to the hearing, and state the full name and address of the ~~person(s)~~ person or persons to be subpoenaed ~~and~~ or a detailed description of the documents to be produced and the custodian of the documents and the address where the documents are located. The issuance of ~~such subpoena(s)~~ any subpoenas shall be at the sole discretion of the Board and its attorney. The Board limits witness subpoena requests to two witnesses per party.
- 4.8.2 The Board *sua sponte* may issue subpoenas to compel witnesses to appear at a hearing or documents to be produced at or prior to a hearing.
- 4.9 ~~Exhibits. Any party offering any document into evidence at a hearing shall provide at least 4 copies of such document at the time of the hearing.~~

4.10 ~~4.9~~ Written Submissions. The Board or its attorney may at their discretion request written submissions from the parties prior to or following the hearing.

6 DE Reg. 887 (01/01/03)

21 DE Reg. 496 (12/01/17)

24 DE Reg. 286 (09/01/20)

24 DE Reg. 800 (02/01/21)

5.0 Remand

The Board may remand any case to ~~the~~ a Hearing Officer at any time and for any purpose at its sole discretion.

6 DE Reg. 887 (01/01/03)

6.0 Decisions

6.1 The Board shall render its decision promptly, ~~usually within 14 days after the hearing~~ and issue its decision by mail.

6.2 The Board may affirm, modify, or reverse, in whole or in part, the decision of the ~~Appeals Referee~~ Hearing Officer.

6.3 The Board may *sua sponte* affirm, modify or set aside any decision of an appeal tribunal on the basis of evidence previously submitted, without further hearing, or direct the taking of additional evidence or may permit any of the parties to the decision to initiate further appeal before it.

6.4 Final decisions shall be accompanied by a notice of the right to appeal the Board's decision to Superior Court of the State of Delaware pursuant to 19 ~~Del.C. §3323~~ §3323(a).

6 DE Reg. 887 (01/01/03)

7.0 Rehearing

At any time subsequent to a Board decision but prior to the Board's decision becoming final, any party to the appeal may request by motion, with notice to all parties, a rehearing before to Board. The motion shall set forth briefly and distinctly the grounds for the motion. The Board shall promptly consider the motion for reconsideration. A copy of the Board's decision on the motion for rehearing shall be mailed to all parties or their counsel if represented by an attorney.

7.1 The grant or denial of a motion for rehearing is solely within the discretion of the Board.

7.2 The Board shall not consider any motion for rehearing filed after the Board's decision has become final.

7.3 The Board shall not consider any motion for rehearing of the Board's denial of a prior motion for rehearing.

6 DE Reg. 887 (01/01/03)

21 DE Reg. 496 (12/01/17)

24 DE Reg. 286 (09/01/20)

24 DE Reg. 800 (02/01/21)

26 DE Reg. 487 (12/01/22) (Final)