

State of Vermont Unemployment Benefit – Appeals Process

Appeals of unemployment benefits generally begin with a review of a determination made by Department staff. Most appeals involve a question of eligibility on a claim for benefits made by an unemployment claimant.

In other cases Department staff, make determinations that affect an employer's liability to pay unemployment taxes, either as a new, or successor employer, and/or the requirement to provide unemployment coverage to an individual or individuals the employer may have considered to be "independent contractors."

Participating in the Appeals Process

Participation in the appeals process is the best way to ensure that your interests are protected.

Administrative law judges make decisions based on the information presented during the hearing. If only one party participates, the law judge will likely have no option but to rule in favor of the party that participates.

What are the Steps in the Appeal Process?

There are three levels or steps in the appeal process.

1. Appeal to an administrative law judge
2. Appeal to the Employment Security Board
3. Appeal to Vermont Supreme Court

There are specific time limits in order to be considered timely for the filing of an appeal in each of the above steps.

The time limits are outlined in writing at the end of the determination or decision.

Hearing Before the Administrative Law Judge

The first and most important step is a hearing before an administrative law judge.

This is the **ONLY** step you can submit evidence, so it's very important to both participate and provide all your evidence at this time.

If the issue under appeal is a separation from work, the refusal of an offer of suitable work, or some matter involving an employer's liability as an employer under the unemployment statute, you should definitely participate in the hearing.

Despite the fact that you may have submitted documents and have spoken to staff of this department, the appeal hearing will be your **ONLY** opportunity to present sworn testimony and introduce documents as exhibits.

More likely than not, your failure to participate in the hearing will cause you to lose.

Do I Need a Lawyer?

Hearings are designed to permit anyone to represent himself or herself or another party.

If the issues are complex, the other party has an attorney, or you think you may have difficulty presenting your case, you may wish to consult an attorney.

If you intend to have an attorney represent you in the hearing, the attorney should file a notice of appearance letter with the appeals office.

You should contact the appeals office as soon as you know you'll have an attorney to avoid scheduling delays.

Limited English Proficiency (LEP) and Sign Language Interpreters

If any party needs language translation assistance, or a sign language interpreter, notify the appeals office immediately. The Department uses a telephone based language interpretation service for non-English speaking parties. If a sign language interpreter is needed the Department will make arrangements for the interpreter to participate with either party (or both) at one of the Career Resource Centers.

Americans with Disabilities Act

This Department complies with the Americans with Disability Act. If you require special assistance due to a disability, as defined in the Act, please contact the appeals office as soon as possible.

Notice of Hearing

The Notice of Hearing will provide you with important information about the time and date of the appeal hearing, which will be conducted by a telephone conference. Try to have all witnesses available at ONE location.

As soon as you receive the Notice of Hearing, MAIL or FAX (802-828-4289) to the appeals office, any documents you want considered as evidence. If you don't send a copy to all parties, your exhibits will NOT be entered into the record, and will NOT be considered in making the decision.

If you're an employer appealing your liability or some other issue related to unemployment insurance taxes, the appeals office will provide a copy to the department staff prior to the hearing.

Evaluate and Prepare Your Evidence

The first level of appeal is a de novo review. The administrative law judge reviews the case as if no prior decision had been made.

The administrative law judge is not bound by earlier findings or determinations made by the Department. Since this will be your only opportunity to present your evidence, and further appeals only review testimony and other evidence introduced at this hearing, you should be ready to submit your side of the story.

Which Party Has the Burden of Proof?

Having the burden of proof generally means that unless the party, which owns the burden, can demonstrate on a factual basis that certain events happened, or in some cases, did not happen, the decision will be made contrary to the interests of the party, which owns the burden.

If you have the burden of proof, and for any reason fail to present evidence to support the decision made, you are likely to lose the appeal. Unlike proceedings in a criminal case, the standard of proof is not “beyond a reasonable doubt;” rather, the standard of proof is “preponderance of credible evidence,” which is the lower civil case standard.

Further information on who has the [burden of proof](#) is available for your convenience.

What Goes on at the Hearing Before the Administrative Law Judge?

Testimony is taken under oath and tape recorded. The appeal is heard by an administrative law judge. The administrative law judge will try to bring out the important and relevant facts in the case through questioning of the parties. The Judge will first determine which records, if any, will be made part of the record. Depending on which party has the burden of proof, that party will go first in presenting its side of the dispute, including presenting witnesses, if any.

Next, the other side is given an opportunity to present its side of the dispute, including presenting witnesses, if any.

Following that, both parties, in turn, will be given the opportunity to ask relevant questions of the other.

Relevant information is information directly related to the issues being considered, including the credibility of witnesses and parties.

While these proceedings are administrative in nature, and don't follow the same rules as one would find in a court of law, but the Judge may rule evidence and testimony out of order.

What to do before and during the hearing

- Prepare in advance.
- Make a list of your key points.
- Be prepared to address all issues raised in the determination under appeal.
- Stay calm.

- Don't be defensive or aggressive – Your actions and conduct will be important factors in the Judge's assessment of the credibility of your testimony.
- Make written notes of anything the other party says which you disagree – Your notes can be used to refresh your memory of certain events, but don't read from these notes word for word. Notes read into the record are hearsay evidence, and may be less believable or credible.

Did You Personally Observe the Incident?

One of the biggest mistakes made in presenting cases to the Judge is a party presenting second hand, or hearsay testimony, on the events that occurred.

The Importance of Witnesses & Subpoenas

It's extremely important to have relevant witnesses available, but interview them before the hearing, so you know how useful they'll be.

If you're unable to have a witness participate, your next best option is to obtain a sworn (notarized) written statement from them. While a sworn (notarized) statement carries more evidentiary weight than an unsworn statement, it is important for you to understand that statements, in general, are less persuasive and have less evidentiary weight than the credible direct testimony of witnesses at the hearing.

If you wish to have a witness subpoenaed, please contact the appeals office. The administrative law judge will determine whether a subpoena is necessary, and if the testimony is relevant to the issues under appeal.

Contacts with the Administrative Law Judge Outside of the Hearing

The administrative law judge generally will have no contact with you, or any party outside of the hearing to avoid the appearance of unfairness, or of accepting evidence outside the hearing. Other members of the appeals office will advise, or assist you with procedural questions. Appeal Hearings are CONFIDENTIAL and not open to the public.

Postponement of a Hearing

You should make every attempt to participate in the Appeal Hearing when scheduled. Either party may request a postponement, but it must be for good cause. The administrative law judge will determine if your reason is for good cause on a case-by-case basis. If you wish to have a postponement, you should immediately call the Appeals office to request one.

Withdrawal of an Appeal

You may withdraw your appeal by a written statement. You should notify the Appeals office as soon as possible before the date of your hearing. If the appeal is withdrawn, the initial determination or decision becomes final and cannot be changed. If you choose to withdraw your appeal you cannot reappeal.

Appeals to the Employment Security Board

If you do not prevail with the administrative law judge, you can file an appeal to the Employment Security Board. This Board generally reviews only the record created by the administrative law judge and does not accept new testimony.

The Employment Security Board will schedule a hearing, which is conducted in person, and only in Montpelier. The Board will review hearing transcript and all documents entered into the record before the administrative law judge.

The Board can sustain, modify or reverse the decision of the administrative law judge, or in some cases will remand the case for further hearings.

Being unavailable for the hearing before the administrative law judge is not considered “good cause” to remand a case back to the administrative law judge.

The Board will make its decision and issue it in writing.

Appeals to the Supreme Court

The last step in the appeals process is to file an appeal with the Vermont Supreme Court. The Court may ask the parties to file a legal brief in support of their position, and may schedule oral arguments before the bench.

Although there is no requirement to be represented by an attorney, you should probably consult with one before proceeding to the Supreme Court.

The Court will only review the record that was reviewed by the Employment Security Board.

While the Court will generally defer to the judgment of the Board, it can also reverse the decision of the Board or remand a case for further hearing.