

## IEA Legal Department

### UNEMPLOYMENT APPEALS IN THE EDUCATION PROFESSION

The following are common questions that arise after the filing of a claim for unemployment benefits. These questions and any suggestions are not meant to comprise all possible situations or form a complete list. Whether or not you are eligible for unemployment benefits, particularly between academic terms/semesters, will depend on the facts of your particular case.

Persons employed in the education profession are presumed by the Department of Employment Security to have a reasonable assurance of continued employment in a subsequent semester. Be prepared to present any evidence that demonstrates a permanent termination or that it has been the pattern or practice of the educational employer not to recall individuals.

#### What Happens if an Employer Challenges an Initial Claim for Unemployment Benefits?

An employer may protest an unemployment claim for a variety of reasons. Reasons may include, among others: termination for misconduct; a voluntary quit without good cause; commission of a felony in connection with work; or an assurance of continued future employment. The initial determination of eligibility is made by a Claims Adjudicator.

#### **SUGGESTIONS:**

- Under Illinois law you have the right to review your personnel file. 820 ILCS 40/0.01-13. Make arrangement with the employer to do so following your termination.
- Documents sent to you from Employment Security will contain filing dates and instructions. Follow these directions.

#### What Happens if the Claims Adjudicator Decides Against Me?

Either the employer or claimant can file an **appeal** of the Claims Adjudicator's decision. The appeal must be in writing, dated, contain the claimant's social security number and must be signed. This appeal must be filed within 30 days of the date of the letter of denial. Appeals may be filed in person or if by letter, postmarked within the 30 days. A copy must go to all parties.

While there is a procedure in the rules to seek a reconsideration of the Adjudicator's decision, this is a rarely used step and could result in delay or missing the appeal deadline. The better approach is to proceed with a timely appeal to the Hearing Referee.

Upon appeal, the matter is then assigned to a Hearing Referee and both the claimant and employer will receive a form entitled Notice of Hearing. This notice will set the **hearing** date as well as the place and time. The form will also set out the issues to be considered at hearing. Be aware that most hearings are conducted by telephone.

**SUGGESTIONS:**

- Upon receipt of the hearing notice, advise the referee of your witnesses and their telephone numbers.
- Make sure that the grounds for denial of the initial claim are accurately set out in the Notice of Hearing and that each is addressed in the hearing.
- A Hearing Referee may consider any issues he/she feels are relevant to the case even if they are not listed on the notice of hearing.

You must serve any document that you wish to admit on both the Hearing Referee and your opponent prior to the hearing.

**SUGGESTIONS:**

- Maintain a proof of service (i.e., fax confirmation) for all documents.

The hearing is recorded by the referee. So that your argument is fully considered, be sure to speak clearly. If the employer's representative tries to "speak over" you, repeat your testimony. The hearing will be conducted under oath so, as always, tell the truth.

**SUGGESTIONS:**

- Before the hearing ask to review the hearing file. Make the request to review the file more than 2 days before the hearing.
- Before the hearing know all background information such as:
  1. First and last day worked;
  2. Ending pay rate;
  3. Spellings of necessary names including your supervisor;
  4. Job duties; and
  5. Reasons and documents demonstrating that you will not be recalled.
- At the hearing, be familiar with all documents that are admitted into evidence.
- Object to the admission of any document that your opponent has not served on you.
- Object to the admission of any document that has been omitted from, but should be in, your personnel file (i.e., disciplinary letters not in the file).
- Make sure each witness has firsthand knowledge of any pertinent facts. Notarized statements from absent witnesses in lieu of testimony carry less weight than actual testimony.

- Object to any hearsay testimony offered by any party. Hearsay may be any testimony of which the witness does not have first hand knowledge, such as what someone else may have said or had experienced. For example, “A student said Ms. Smith did a bad job.”

### What Happens if the Hearing Referee Rules Against Me?

You may file an **appeal** with the Board of Review within 30 days from the date of mailing of the Referee’s Decision. This date is set out on the decision.

During your appeal, continue to report to your local Department of Employment Security as directed. While your appeal is pending, you will be paid benefits only for those weeks for which you filed claims and met all eligibility requirements.

### What is an Appeal to the Board of Review?

If an employee or employer challenges a decision of the Hearing Referee, either can request an appeal of that decision by the Board of Review. The Board then reviews the record and either upholds the decision or sends it back to the Hearing Referee (or Claims Adjudicator) for further action.

### What is the Time for Filing an Appeal to the Board of Review?

An appeal of a hearing referee’s decision must be filed within 30 days after the mailing date of the Hearing Referee’s decision. This deadline starts to run from the mailing date stated in the decision, not from the postmark date or the date received.

### What is the Form of the Appeal?

There is no form for submitting the appeal. The process of an appeal to the Board of Review can commence with the submission of a signed and dated letter stating the reason for an appeal. This letter should state the parts of the Hearing Referee’s decision with which you disagree and the reasons why.

Every document that you file with IDES must contain your name, social security number, address, telephone number and the docket number from an appeal.

### Where is an Appeal Filed?

An appeal is filed with the Illinois Department of Employment Security Board of Review, 33 South State Street, 9<sup>th</sup> Floor, Chicago, IL 60603.

Appeals can also be filed by facsimile at 312-793-2373.

You must serve a copy of any document filed with the Board of Review on all parties (i.e., the employer). Service can be made in person or by mailing such document in a sealed, properly addressed envelope with postage prepaid. You must include a statement with your filing certifying that you served a copy on the other parties. The statement should be similar to this example:

I (name) do hereby certify that I served a copy of the above (identify document) by placing it in a postage paid envelope addressed to (identify addressee) and depositing it in the U.S. mail at (location of mailbox) at (time) on (date).

\_\_\_\_\_  
Signed Signature

### Will I Get to See the Transcript of the Referee's Hearing?

You may request a copy of the transcript or to inspect it (and other documents) within 30 days of filing an appeal to the Board of Review. You will be either allowed to inspect the transcript or it will be mailed to you. If the employer appeals, you have 20 days from the Notice of Pending Appeal to request the transcript.

### Is There a Cost for the Transcript?

The IDES charges .25 cents per page for the transcript or any other documents you request. If other documents beyond the transcript are requested, you may call within 10 days after the transcript is requested to obtain a copy. You may also review the transcript in person without making a copy.

The Board of Review will inform you of the cost of the transcript by letter or you may call 312-793-5176 to ask the cost or to obtain other documents.

The Board of Review will accept a check payable to the Illinois Department of Employment Security. Make the payment within 10 days of being informed of the transcript cost.

### Will I Get a Chance to File an Additional Argument or Present Additional Evidence?

You may file a written argument either 30 days after filing the appeal or 20 days after the mailing date (or inspection) of the transcript. If you want to present additional evidence, you must file such a request either within 20 days of the filing of the appeal or 20 days after mailing (or inspection) of the transcript. Serve a copy of the request on all other parties.

If the employer makes a written argument, you may respond within 15 days of when it was mailed. Should the employer file an additional argument, you may then reply within 7 days.

A request to file additional evidence must include a summary of the additional evidence sought to be filed and an explanation of matters outside of your control as to why such additional evidence was not provided before. Explain why such late filing is not your fault. A request to file additional evidence must be made within 20 days of filing an appeal or notification of the availability of the transcript.

#### May I Request an Oral Argument?

A request may be made, but is usually not granted. The requesting party must certify that it has informed the opposing party of the request. You must file a signed request for oral argument upon filing your appeal or within 10 days after the Board of Review mails you a Notice of Appeal.

#### When Will I Receive a Decision from the Board of Review?

The Board of Review is supposed issue a decision within 120 days, although most cases are decided before that time. If the Board of Review does not act within 120 days, there are other actions that may be taken that pertain to the filing of a lawsuit.

#### What if the Board of Review finds against me?

An action challenging the decision of the Board of Review must be filed in Circuit Court within 35 days of the mailing date of the Board's decision. Note that there are some very complex legal requirements when an action for Administrative Review is filed. You should immediately contact your UniServ Director if you contemplate such a filing.

#### If I Have Additional Questions, Where Can I Find Information?

You may review the applicable statutes at 820 ILCS 405/100-3200 and IDES Rules 56 Ill. Adm. Code 2720.160-345. You may visit the IDES website at [www.ides.state.il.us](http://www.ides.state.il.us) or telephone at (312)793-5176 or (800)821-3550.

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