

Legal Assistance of Western New York, Inc. ®



We provide free legal aid to people with civil legal problems in western New York.

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If You Lose Your Unemployment Benefits Hearing

Did you lose your hearing for New York State unemployment insurance benefits? If you disagree with a hearing decision from the Administrative Law Judge, you may appeal it to the Unemployment Insurance Appeal Board. The appeals process is difficult, and you may want legal assistance. However, if you want to appeal on your own, it is important to follow the steps below. ***Please read the entire article before starting the appeal process.***

Requesting the Appeal:

- After your hearing, but within **20 days** of the date of the decision, send a copy of your decision and a letter to the Appeal Board saying that you want to appeal.
- The Appeal Board's address and appeal information are included in the decision.
- Include your ALJ case number on all appeal paperwork.

Notice of Receipt of Your Request:

- The Board will send you confirmation that it has received your appeal request. It will also send you an Appeal Board case number.
- Read the back of the confirmation carefully for information about your rights and time limits. ***Time limits are very important in the appeals process.***
- You and your employer have **7 days** from the date of the confirmation notice to act.
- Before the end of the 7-day deadline, you can submit an appeal letter in support of your position **OR** you can request a copy of the hearing transcript.
- If at any point you miss a deadline, you may write to the Appeal Board and ask for an extension of time to submit paperwork. You will need to explain why you missed the deadline. The Board will decide whether to give you an extension.

Requesting a Transcript:

- **Before you send an appeal letter, you can request a transcript of the hearing.**
- A transcript is a written record of what was said at the hearing.
- The transcript may be helpful because it will show all the facts presented.
- You could use the hearing testimony to support your argument in the appeal letter.
- You have to request the transcript within **7 days** of the date of the confirmation notice. You can ask for the transcript before you send your appeal letter.
- You can provide your email address on your request and ask that the transcript be sent to you electronically.
- If the Appeal Board does not email you a copy of the hearing transcript, you may have to go to your local Department of Labor to review, borrow, and/or make a copy of the transcript.
- When the transcript is available to review, the Appeal Board will send you a notice. You have **20 days** to look at the transcript and submit your appeal letter.

Written Statements:

- Both you, your former employer, and the Department of Labor can submit a written statement to the Appeal Board.
- You should say in your appeal letter that you want the previous decision to be reversed, or that you should be given a new hearing.
- Your appeal letter should say why you disagree with the decision.
- You should include the facts that you feel the Judge did not focus on, and any new information that you feel should be considered.
- If you want the Appeal Board to look at any information that was not part of the original hearing packet, you will have to explain why it was not submitted at the hearing. You will also have to include a statement about why it should be considered on appeal.
- Please note that, as it is discussed below, the Appeal Board may not look at your new paperwork.
- You have to provide copies of your appeal statement to the opposing party. This will likely be either your former employer or the Department of Labor, or both.
- If the opposing party submits an appeal statement, they should send you a copy of the statement.
- You will have **12 days** to respond to the statement of the opposing party, and the opposing party will have **12 days** to respond to your statement. You may have to submit an appeal statement without having yet received the opposing party's statement.

What the Appeal Board will Consider:

- Usually, the Appeal Board will make a decision without a new hearing.
- The Appeal Board will usually only look at evidence that was presented at the hearing. In your appeal statement, you should focus on evidence that was discussed at the hearing.
- The Appeal Board will not look at new evidence unless all parties agree, or it has been

made part of the record in another hearing.

- The Appeal Board may decide to hold a new hearing if it feels that new evidence should be considered, or if it feels that the hearing record is somehow incomplete.

The Appeal Board's Decision:

- The appeal process may take longer than the hearing process.
- The Appeal Board decision will do one of the following: it will agree with the ALJ's decision, disagree with the decision, or remand the case for a new hearing.
- ***Generally, appeals are more likely to be upheld than they are to be reversed or remanded.*** This is because there is a different standard of review at an appeal. Because it is difficult to win on appeal, we suggest seeking legal counsel before your hearing.
- The Board should only reverse the decision or remand the case for a new hearing if it finds new or additional information is needed, an abuse of discretion by the ALJ, or a decision that is clearly wrong.

What to do if you Disagree with the Appeal Board's Decision:

- You may appeal the Appeal Board's decision to the Appellate Division of the State Supreme Court, Third Department.
- An appeal request must be submitted in writing within **30 days** of the Appeal Board's decision.
- If you have questions, you may contact the Appeal Board:
 - Unemployment Insurance Appeal Board
 - PO Box 15126
 - Albany, NY 12212-5126
 - phone number (518) 402-0205
 - fax number is (518) 402-6208

Helpful Links:

Claimant Handbook:

http://www.labor.state.ny.us/formsdocs/ui/TC318_3e.pdf

The Hearing Process - Frequently Asked Questions:

<http://www.labor.state.ny.us/ui/claimantinfo/hearingfaq.shtm>

Unemployment Insurance Division Homepage

http://www.labor.state.ny.us/ui/ui_index.shtm

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This article provides general information about this subject. Laws affecting this subject may have changed since this article was written. For specific legal advice about a problem you are having, get the advice of a lawyer. Receiving this information does not make you a client of our office.

Last Review Date: January 2016

Printed: May 16, 2022

<http://www.lawny.org/node/4/if-you-lose-your-unemployment-benefits-hearing>

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