

HOW TO APPEAL A DENIAL OF UNEMPLOYMENT TO SUPERIOR COURT

This publication is about Superior court review of an administrative decision relating to unemployment benefits.

After a hearing, a decision is issued called an “Initial Order.” These orders can be appealed to the Commissioner’s Review Office. Instructions for how to do this appear near the end of the Initial Order.

If you disagree with the Commissioner’s Decision, you may appeal your case to a state Superior Court. The appeal form that initiates the case is called a “Petition for Review.” It can be filed in either the Superior Court of the county where you live or in Thurston County Superior Court in Olympia. There should be no charge for filing a petition for review from an administrative decision regarding a claim for unemployment compensation benefits (see RCW 50.32.110).

This publication explains when and how you can petition the court for review of the Commissioner’s decision. This is not an easy process. Do not get discouraged. You may need to read this several times or ask someone about it. The laws regarding petition for judicial review can be found in RCW 34.05.510 through .598. The laws governing unemployment insurance are found in RCW Title 50 and Washington Administrative Code Title 192. See "Preparing Your Argument", below, for information on how to find copies of these laws. This publication includes a Petition for Review form for you to use. If you decide that you will not be able to proceed on your own, you should contact a private attorney who handles unemployment compensation appeals as soon as possible.

What is the deadline for filing a Petition for Review?

A Petition for Review must be filed and served within thirty (30) days of the final administrative review decision or the Commissioner’s decision. If all parties have not received the Petition for Review by the 30th day, it cannot be considered even if there is a good reason for it being late.

What are the general rules about Petitions for Review?

You may only raise issues and arguments in your petition that you raised at the administrative hearing. There are a few exceptions to this rule; for information about raising new issues, see RCW 34.05.554.

Similarly, you may not put new facts into the record except in very limited circumstances. Generally, the “record”, i.e. the facts the Judge reviews, is limited to testimony and documents filed as part of the administrative hearing or review. You may sometimes add new facts if they are facts you could not have discovered earlier, or if the judge or DSHS improperly kept the facts out of the record. If important facts are missing, the court can “remand” (send back) the case to get those facts. For more information on new evidence, see RCW 34.05.562.

If you are arguing that an ESD rule is invalid, you must provide specific reasons to support your argument. See RCW 34.05.570(2).

The burden will be on you to prove your case. The court will change the decision for limited reasons only. Those reasons are listed on the attached form petition for review.

What steps should I take in preparing the Petition for Review?

The petition must include the following information. If at all possible, you should type your petition. If not, print neatly. We have put as much of this information as we could on the attached Petition form.

1. On the sample form attached, fill in the name of the county in which you are filing your appeal. File in your county of residence or Thurston County.
2. Print or type your name as the Petitioner in the blank space in the box to the left of the space stating "Petition for Review." Also fill your name in the space in the first sentence which states petitioner.
3. In the first paragraph, you must:
 - Insert the name of the Review Judge or Commissioner from the state Employment Security Department who made your decision. This can be found at the end of the decision and on the letter informing you of your right to appeal.
 - You must also enter the review number assigned to your appeal at the Commissioner's office; this number can be found on the Commissioner's Decision. The number is a sequence such as 2018-1234.
 - Last, the form requires you to insert a summary of the issue. If you were terminated for misconduct, which you dispute, then you would write something like "At issue is ESD's decision to deny my claim for unemployment benefits on the erroneous basis that I engaged in misconduct."
4. Next, the form requires you to attach a copy of the Commissioner's decision. You must do this.
5. The following paragraph asks you to once again enter your name as the petitioner and to enter the name of your employer. If your employer was represented at the administrative hearing, then you must also write in the name of the employer's representative.
6. The form then proceeds to list a number of bases on which the Superior Court could find error with the Commissioner's decision. In most cases, you will check numbers d, e, h, and i. If you believe that a, b, c or f might apply, you should check those boxes or consult with a private attorney who does unemployment compensation appeals. After this portion, you will see an instruction to write why your case entitles you to relief under the legal reasons checked above. Write a brief summary, about one paragraph, of your case. An example might be: "I had good cause in leaving my job of seven years because a new manager came in and reduced my work hours and my pay rate so that I could no longer earn a living. I was justified in quitting and am entitled to unemployment benefits."
7. In the final paragraphs, you must again write in the ESD Review No. or case number found on the Commissioner's Decision.
8. Date and sign your name at the end of the Petition for Review form.

How do I file the petition?

Fill out the attached cover sheet. Make a total of 4 copies of the cover sheet, your Petition for Review, and the attached Commissioner's Decision.

Next, file the original Petition for Review with the Superior Court Clerk's Office in your own county or Thurston County. You do this at the clerk's office.

If you are filing in King County, a separate cover sheet is available at the court house. Select "administrative law review" for the type of the case. And if you are filing in King County, you must also now fill out the form which indicates whether you live north or south of the I-90 bridge line. Cases north of this line will be heard at the courthouse in downtown Seattle and cases south of this line will be held at the Kent Regional Justice Center.

Most cases involve a filing fee but in this type of appeal, the filing fee is waived. Usually this goes smoothly but occasionally a clerk will not understand this and try and charge a fee. Insist that RCW 50.32.110 provides for a waiver of filing fees in appeals of Employment Security cases.

When you file the petition with the clerk, the Clerk will date stamp the record and stamp it with a case number. Use the case number stamp and date stamp to stamp all of your other copies with the case number and date to show it was filed with the court.

How do I serve the Petition for Review?

You may "serve" the Petition for Review either in person or by mail. If you want to do it in person, it must be done by anyone other than yourself who is at least eighteen years old or by legal messenger. If you do it by legal messenger, you will have to pay for this service. It must be delivered to all parties. You can also mail your address to the listed parties. If you mail the petition, you must use certified mail so that you have proof it was delivered on time. Your petition must be sent to the following:

- **Commissioner of the Employment Security Department** – check for the correct address in the Judicial Review section of your Decision of Commissioner.
- **Office of the Attorney General** – again, check for the address in the Judicial Review section of your Decision of the Commissioner.
- **All Other Parties** listed in your Decision of Commissioner – this is usually just your former employer.

Keep one copy for your files. Keep a copy of your mailing receipts and the confirmation via certified mail that they were delivered BEFORE the deadline in case you are asked for them later.

You must be sure that you have filed the case with the Superior Court and had a copy delivered to the Employment Security Department, the Attorney General and any other parties before the due date. Mailing the copies by the due date is not enough. **The copies must be received by all parties by the due date.** If you fail to do these things, you will lose your right to appeal.

What happens after I file the Petition for Review?

1. The record

If you filed your appeal in King or Thurston counties, you will be mailed a copy of the documents and decisions from your hearing and the review. This will include a transcript (a typed-out version of the hearing itself including testimony of the witnesses). If you filed your appeal in any other county, you will need to request a copy of the transcript from either the court clerk or the assistant attorney general who will be assigned to your case (see below). It is a good idea to get the transcript if you think that the facts are not correctly stated in the decision. You may not need it if you agree with the facts as written.

2. Employment Security Department's representative

An assistant attorney general (AAG) will represent the Employment Security Department Commissioner and will send you a "Notice of Appearance" that tells you who the AAG is and their address and telephone number. After you have received this notice of appearance, you must send a copy of any further papers that you file with the court to this AAG. The AAG represents ESD and cannot give you legal advice.

3. Setting your case for trial

If you live in King County, you will receive a Case Schedule when you file your Petition for Review. If you file your Petition in a county that does not automatically generate a schedule, then you will need to ask your county's court Clerk how it is done there. Go to the Clerk of the Superior court where you filed your case and tell the Clerk that you want to set your case for hearing by a judge. The paper that you will need to complete will probably be called a "note" (or Notice for Trial Setting.) The Clerk will have the proper form. You need to complete the form and mail a copy of this completed document to the AAG who is representing ESD, and to the employer if they are represented. Remember, always file the original with the Clerk of the court and send a copy to the other party or parties and keep a copy for yourself.

4. Settlement negotiations

You may try to settle your case before or after setting the case for trial, by contacting the AAG and discussing it. If you are able to negotiate a settlement that is satisfactory to you, be sure that it is put into writing so the agreement can be signed by both of you and filed in the court file. If you are able to settle the matter, your written agreement should tell the Court that the matter is resolved and that your case should be dismissed.

5. Preparing your argument or the "Brief"

The court will give you a trial date and probably also a "briefing schedule". A brief is a written document which outlines the facts of the case and your legal argument, or reasons why you believe you are entitled to benefits and why the decision is wrong. It is a good idea to submit a brief or summary of your position; you should title it "Petitioner's Trial Brief." File this with the court clerk by the date set by the court and remember to send a copy of this to the AAG. To make a legal argument, start with the laws cited in your decision. Find them and then look them up. The laws governing unemployment insurance are found at RCW Title 50 and Title 192 of the Washington Administrative Code. You will find these laws at county law libraries, public law schools or on the internet at www.wa.gov/esd (click

on unemployment insurance and then on Title 50 laws and WAC rules). Once you have reviewed the laws that were applied in your case, then you will better understand the decision and how to mount a counter-argument. If you look up the law in a copy of the Revised Code of Washington Annotated, found at law libraries, you will find brief summaries of cases that have interpreted that specific provision of the law. These cases may be helpful because you will see cases with various fact patterns which may then be compared to your case.

Once you have filed your brief, the AAG will file a “Respondent’s Trial Brief” and send a copy to you. Read this so you understand the state’s position as to why the decision should be affirmed. And again, review the laws and cases cited by the assistant attorney general. Be prepared to explain why your arguments are better and why you should win.

6. The Trial: What to Expect

On the day of the scheduled trial, go to the court and tell the judge why you think that you should get the relief you’ve asked for. The burden is on you to prove that the ESD Commissioner’s decision is wrong. Again, review the laws that apply to your case. Tell the judge why you believe the law and/or rules support your claim. You will not be able to bring witnesses or introduce new evidence. [Explain to the judge the facts of the case and set out your arguments. This should take about 15 minutes or less. If the judge interrupts you and asks questions, answer them as best as you can. Next, the AAG will be given an opportunity to respond. Do not interrupt the AAG while he or she is talking; they have the right to set forth their position on the case. Once the AAG is finished, you will be given a short time to reply to the AAG’s arguments.

The Superior Court judge’s decision will be based on the evidence that was presented at the administrative hearing by both you and ESD and the reasons that you’ve given the judge as to why you believe you should win. A judge will usually announce his or her decision at the end of the proceeding and will enter an order which is written confirmation of the decision. If you are awarded benefits, be sure that the order plainly sets forth the terms of this decision, as it will go back to ESD for further action. The entire trial will take about an hour.

Best of luck! Remember, cases are won by persuasive arguments made at a trial. Be prepared. Know the key facts of your case and stick to them. Understand the laws that apply to your case, and why you think the law allows you to receive benefits. Be brief, clear, respectful and organized.

This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice. This information is current as of the date of its printing, September 2018.

STATE OF WASHINGTON

_____ COUNTY SUPERIOR COURT

_____ [Name],

Petitioner,

vs.

STATE OF WASHINGTON,
EMPLOYMENT SECURITY DEPARTMENT

Respondent.

No.

PETITION FOR REVIEW

NO FILING FEE REQUIRED

RCW 50.32.110

Petitioner, _____ [Name], petitions the court, pursuant to
RCW 34.05.570 et seq. and RCW 50.32.160, for review of the decision of the
Respondent, Employment Security Department Review Judge _____
[Judge's Name], entered against the Petitioner on _____ [Date], Review No.
_____. At issue is ESD decision to _____

_____. (A duplicate
copy of the Agency's final action is attached.)

The parties involved in the adjudicative proceedings are now: Petitioner, _____

[Name], Pro Se; Respondent ESD, represented by the
Attorney General; and, _____

[Other Party Name and Address].

Petitioner is entitled to relief pursuant to 34.05.570(3) because:

- a.) The order, or the statute or rule on which the order is based is in violation of constitutional provisions on its face or as applied;
- b.) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;
- c.) The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;
- d.) The agency has erroneously interpreted or applied the law;
- e.) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for the judicial review, supplemented by any additional evidenced received by the court under this chapter;
- f.) The agency has not decided all issues requiring resolution by the agency;
- g.) A motion for disqualification under RCW 34.05.425 or 34.12.050 was made and was improperly denied or, if not motion was made, facts are show to support the grant of such a motion that were not known and were not reasonably discoverable by the challenging party at the appropriate time for making such a motion;

- h.) The order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency; or
- i.) The order is arbitrary or capricious;

Additionally, the petitioner has standing, has exhausted all available administrative remedies and has timely filed this Petition for Review.

(Write why your case entitles you to relief under legal reasons checked above)

Petitioner, also pursuant to RCW 35.05.510 et seq., asks that this matter be set for oral argument and that Petitioner be allowed to submit a written brief at the time of the hearing.

WHEREFORE, Petitioner asks for judgment:

1. Reversing Respondent's decision contained in ESD Review No. _____
_____.
2. Awarding any further relief this court deems proper.

DATED: _____

Petitioner, Pro S

CIVIL

_____ COUNTY SUPERIOR COURT

Case Information Cover Sheet (CICS)

Case Number _____ Case Title _____

Attorney Name _____ Bar Membership Number _____

Alternate Email Address: _____

(New Case Number will be Sent to this Email Address)

Please check one category that best describes this case for indexing purposes. Accurate case indexing not only saves time in docketing new cases, but helps in forecasting needed judicial resources. Cause of action definitions are listed on the back of this form. Thank you for your cooperation.

- | | | | | | |
|-------------------------------------|-------|--------------------------------------------------------|--------------------------|-----|---------------------------------------------|
| <input type="checkbox"/> | ABJ | Abstract of Judgment | <input type="checkbox"/> | PRG | Property Damage – Gangs |
| <input checked="" type="checkbox"/> | ALR | Administrative Law Review | <input type="checkbox"/> | PRP | Property Damages |
| <input type="checkbox"/> | ALRJT | Administrative Law Review-Jury Trial (L&I) | <input type="checkbox"/> | QTI | Quiet Title |
| <input type="checkbox"/> | CRP | Petition for Certificate of Restoration of Opportunity | <input type="checkbox"/> | RDR | Relief from Duty to Register |
| <input type="checkbox"/> | CHN | Non-Confidential Change of Name | <input type="checkbox"/> | RFR | Restoration of Firearm Rights |
| <input type="checkbox"/> | COL | Collection | <input type="checkbox"/> | SDR | School District-Required Action Plan |
| <input type="checkbox"/> | CON | Condemnation | <input type="checkbox"/> | SPC | Seizure of Property-Commission of Crime |
| <input type="checkbox"/> | COM | Commercial | <input type="checkbox"/> | SPR | Seizure of Property-Resulting from Crime |
| <input type="checkbox"/> | DOL | Appeal Licensing Revocation | <input type="checkbox"/> | STK | Stalking Petition |
| <input type="checkbox"/> | DVP | Domestic Violence | <input type="checkbox"/> | SXP | Sexual Assault Protection |
| <input type="checkbox"/> | EOM | Emancipation of Minor | <input type="checkbox"/> | TAX | Employment Security Tax Warrant |
| <input type="checkbox"/> | FJU | Foreign Judgment | <input type="checkbox"/> | TAX | L & I Tax Warrant |
| <input type="checkbox"/> | FOR | Foreclosure | <input type="checkbox"/> | TAX | Licensing Tax Warrant |
| <input type="checkbox"/> | FPO | Foreign Protection Order | <input type="checkbox"/> | TAX | Revenue Tax Warrant |
| <input type="checkbox"/> | HAR | Unlawful Harassment | <input type="checkbox"/> | TMV | Tort – Motor Vehicle |
| <input type="checkbox"/> | INJ | Injunction | <input type="checkbox"/> | TRJ | Transcript of Judgment |
| <input type="checkbox"/> | INT | Interpleader | <input type="checkbox"/> | TTO | Tort – Other |
| <input type="checkbox"/> | LCA | Lower Court Appeal – Civil | <input type="checkbox"/> | TXF | Tax Foreclosure |
| <input type="checkbox"/> | LCI | Lower Court Appeal – Infractions | <input type="checkbox"/> | UND | Unlawful Detainer – Commercial |
| <input type="checkbox"/> | LUPA | Land Use Petition Act | <input type="checkbox"/> | UND | Unlawful Detainer – Residential |
| <input type="checkbox"/> | MAL | Other Malpractice | <input type="checkbox"/> | VAP | Vulnerable Adult Protection Order |
| <input type="checkbox"/> | MED | Medical Malpractice | <input type="checkbox"/> | VVT | Victims of Motor Vehicle Theft-Civil Action |
| <input type="checkbox"/> | MHA | Malicious Harassment | <input type="checkbox"/> | WDE | Wrongful Death |
| <input type="checkbox"/> | MSC2 | Miscellaneous – Civil | <input type="checkbox"/> | WHC | Writ of Habeas Corpus |
| <input type="checkbox"/> | MST2 | Minor Settlement – Civil (No Guardianship) | <input type="checkbox"/> | WMW | Miscellaneous Writs |
| <input type="checkbox"/> | PCC | Petition for Civil Commitment (Sexual Predator) | <input type="checkbox"/> | WRM | Writ of Mandamus |
| <input type="checkbox"/> | PFA | Property Fairness Act | <input type="checkbox"/> | WRR | Writ of Restitution |
| <input type="checkbox"/> | PIN | Personal Injury | <input type="checkbox"/> | WRV | Writ of Review |
| <input type="checkbox"/> | PRA | Public Records Act | <input type="checkbox"/> | XRP | Extreme Risk Protection Order |

IF YOU CANNOT DETERMINE THE APPROPRIATE CATEGORY, PLEASE DESCRIBE THE CAUSE OF ACTION BELOW.

Please Note: Public information in court files and pleadings may be posted on a public Web site.