

How to Represent Yourself at an Unemployment Benefits Hearing

I was denied unemployment benefits. Can I appeal?

Yes. After you have filed a claim and given information to the Employment Security Department, you will get a written notice by mail that will allow or deny you unemployment benefits. This letter is called a Determination Notice.

If you are denied benefits, you have a right to appeal. If you are allowed benefits, your former employer has the same right to appeal.

No matter who appeals, you will have a hearing with an administrative law judge.

How do I file an appeal?

You have thirty days from the date of the determination to send in an appeal. Write a letter stating: "I want to appeal the denial of unemployment benefits because I disagree with the decision. I want a hearing." Include your name, address, phone number, and social security number. Sign the letter. Keep a copy of what you send.

Send the letter to the address on the determination. Or fax it to the Telecenter using the number provided on the written decision that denied you benefits.

Should I continue to file for unemployment benefits while I appeal?

Yes. If you win at your hearing, you will only get benefits for the weeks you filed and are otherwise eligible.

You must keep a record of all the places you have looked for work. If you have not been doing this, start now. Then try to remember and write down all the job contacts you have made.

Contact at least three different potential employers each week. Use all the job search methods available. You will need to be able to tell the judge at the hearing about your efforts to get work. If you were offered a job and did not take it, you will need to prove to the judge that the job was not suitable for you.

I filed an appeal. Now what?

You will get a confirmation letter called "Notice: Appeal Filed." If you do not get this within ten days, call the Employment Security Department to check and also resubmit your appeal.

After you get confirmation that your appeal was filed, you will get a notice of the date and time of your hearing from the Office of Administrative Hearings (OAH). The OAH provides a judge to resolve disputes between people and state agencies.

You must fix your schedule so you can go to the hearing. If you cannot do so, call the OAH listed on the notice. Ask to reschedule. Explain why you need to postpone your hearing. Be sure to get a clear confirmation from the hearing office that the hearing was postponed. If you miss your hearing, the OAH will enter a default order and dismiss your case.

I was allowed benefits. My employer is appealing. Why?

Employers pay taxes into the unemployment system. These taxes generally go up if they have former employees on unemployment. Employers try to avoid this higher tax by appealing your benefits.

Getting Ready for Your Hearing

Your hearing is the only chance you will have to tell your side of the story. Once it is over, you will typically not be able to give any more information to the judge. You must be ready.

Understand the law.

Generally you will not get benefits if the judge decides that you quit your job without a good reason (“good cause”). If you were fired, you will not get benefits if the judge decides what you did is “misconduct.”

1. If you quit your job:

You can get benefits if you had “good cause” to quit. The law explains what “good cause” is at [RCW 50.20.050](#).

Washington law only recognizes twelve specific “good cause” reasons to quit. What might seem like a good cause to you may not be a good cause to quit under the law. If you quit your job, you will need to convince the judge that you quit for one of these twelve good cause reasons:

- **You were offered and accepted other work:** You must have been offered the job by someone with authority, have a definitive start date, and work at your old job as long as possible.
- **You or an immediate family member became disabled or sick. That kept you from working:** You must show that you took every possible step to keep your job, including notifying your employer of your issue, asking for an accommodation or a leave of absence, and asking for work once you were able to work again. Sometimes a doctor’s note advising you to quit can help prove you quit for a medical reason. Also, you may be denied benefits if you are not able to work. You will need to show that you are able to work, but you were not able to do the job you left.
- **You had to quit because your spouse or registered domestic partner had to relocate for their job:** The transfer has to be to an area outside of where you currently live. You have to have stayed at your job as long as you reasonably could before moving.
- **You had to protect yourself or a member of your immediate family from domestic violence or stalking:** Some people need to quit their job because their abuser knows where they work, or they need to protect a family member from further abuse.
- **Your usual pay from your job goes down by at least 25%:** This generally does not include commissioned employees. If you worked under the reduced pay, a judge may find that you accepted the changes. Be ready to show the reduction with pay stubs, bank deposits, or some other proof.

- **Your usual hours went down by 25%:** Be ready to prove this reduction. .
- **Your worksite changed and it made commuting hard:** The change must have made the length or difficulty of your commute much more than your original commute AND the commute must be more than is usual for people who work in your line of work and who work in your area.
- **Your worksite became unsafe:** You must have reported the safety issues to your employer AND they must have failed to do anything about it within a reasonable amount of time.
- **There were illegal activities at your worksite:** You must have reported these activities to your employer AND they must have failed to do anything about it within a reasonable amount of time. Illegal things may include:
 - You were not being paid your correct wages. Your employer was not paying you at all; they were not paying you minimum wage; or they were not paying you for overtime.
 - You were not being allowed your legal breaks.
 - Your employer violated safety codes or regulations.
 - Your employer illegally discriminated against you or employees in general.
- **Your work changed. It violated your religious beliefs or sincere moral beliefs:** Explain to the judge how

this change violated your beliefs or morals. Violation of religious beliefs could include your employer forcing you to work on a holy day, not allowing you to use your break time for prayer, or adopting a policy that directly conflicts with one of your religion's beliefs. Violation of moral beliefs could include your employer forcing you to do things that would cheat a customer, or other things that you think are unethical or would violate your religion.

- **You quit so you could enter an approved apprentice program:** The program must be approved by the Washington State Apprenticeship Training Council.
- You worked both a full-time and a part-time job. You quit the part-time job. Then you lost the full-time job: Before you quit the part-time job, you must not have known that you would be let go from the full-time job.

If you quit because of medical reasons, safety hazards, or illegal activities, you also have to prove that you took reasonable steps to keep your job before you quit. This could include:

- Letting the employer know about a safety hazard and giving them time to fix it
- Letting the employer know that you are not getting paid correctly and allowing them time to fix that or
- Letting the employer know that you are having medical issues and need some help from them to help you keep your job.

State law recognizes that there are some situations where doing these things would be futile. Your case will be better if you can show that you tried more than one way to work with your employer.

2. If you were fired from your job:

Your employer has the burden of showing that you were fired because of your misconduct. The law, at [RCW 50.04.293](#) and [.294](#), describes misconduct as including, but not limited to:

- Willful or wanton disregard of the interests of the employer or a fellow employee
- Deliberate violations or disregard of standards of behavior the employer has the right to expect of you
- Carelessness or negligence that causes or would likely cause serious bodily harm to the employer or another employee
- Careless or negligence of such a degree or recurrence that shows an intentional or substantial disregard of the employer's interest

◆ Examples of what IS NOT misconduct:

If you were not able to do the job to the employer's satisfaction. You tried your best. That will not be considered misconduct.

Honest mistakes generally will not be considered misconduct.

◆ Examples of what IS misconduct:

Insubordination - This is when you refuse to do something that the employer asks you to do. What they asked you to do was reasonable. You could be denied benefits because you were insubordinate.

Repeated unexcused tardiness or absences. If you continue to be late or miss work without a good reason after your employer has warned you about your behavior, this could be considered misconduct.

You continue to violate an employer's rules after being warned.

You deliberately engaged in violence or fought with someone on the job.

You stole from your employer or lied.

Now I know the law. How do I get ready for my hearing?

Before the hearing, figure out how to explain to the judge why you either quit for one of the twelve good cause reasons, or why you were not fired for misconduct.

If you quit:

- Think about all the reasons you quit. Write them down. Where and how do they fit in with the good cause reasons? How will you explain this to the judge?

- Are there any other reasons you quit that are not good cause under the law? How will you explain that one of the good cause reasons was the real or main reason you quit?
- What will your employer say about why you quit? How will they argue that what they did was reasonable, or that you did not quit for good cause? How will you explain to the judge that this is not what happened?

If you were fired:

- Think about exactly what led up to you being fired. Think about the final event that led to your being fired. Write it all down.
- Did you know that what you did was wrong? Did you have a copy of the employer's rules? Did you have a chance to read them? Did the employer tell you that you were doing something wrong?
- Did your employer give you a chance to fix what was wrong? Did they ask you for an explanation?
- Did your actions harm the employer?
- How is the employer going to argue that what you did is misconduct? How will they prove it?

You can write up a list of things to tell the judge. This will help you remember everything. You can bring this list into your hearing.

You may also practice explaining your story to family or friends. This may help you be less nervous at the hearing.

Whatever you can do to be organized and present your case in a clear, concise way will help you at your hearing.

I have documents or other evidence that may help me with my case. What do I do with them?

You can submit your documents, including paper documents, recordings, or video for your hearing. You must send a copy to all parties. Send the judge's copies to the contact information for the OAH given on your hearing notice. Send your employer's copies to the address on the notice.

If you are submitting written statements from other people about what they saw or heard, ask these people if they can come to the hearing. In-person testimony of firsthand knowledge is stronger than a written statement.

I know people who can help me by testifying at the hearing. How do I get them to do that?

If you have people who directly saw or heard things on the job that relate to your case, ask them to come to the hearing. They should have actual knowledge of what happened because they saw or heard the incident. It usually is not helpful to have witnesses who can only testify that you are a good person. That is not the point of the hearing.

◆ Your former employer will also get to ask your witnesses questions.

You must make sure your witnesses call into the hearing. Tell them the date and time of the hearing and give them the call in instructions.

I do not speak English, or I am hearing or speech impaired. What can I do?

Contact the OAH on your Hearing Notice immediately. Ask for an interpreter. An interpreter will be provided for free. You cannot use family members or friends as an interpreter in your hearing.

Hearings are usually held by phone. A judge may allow an in-person hearing if a disability or other circumstances would make it hard for you to have a hearing over the phone.

How do I call in to the hearing?

Follow the instructions on the Hearing Notice. If you use a cell phone, make sure it is fully charged and you have good reception. If you do not have access to a phone, you may arrange to use a phone at your local ESD WorkSource office. You must do this well before the hearing.

Who will be at the hearing from my former employer?

It depends. Your former boss may be there. There may also be someone from Human Resources. Your employer may also have an outside representative there for them: an attorney, or some other hired representative. Try not to be intimidated if the employer sends an attorney or other representative. The judge will make sure that your side of the story is heard and that you get a fair hearing.

What do I do with the documents I brought to the hearing?

Make sure you have all the paperwork that came from ESD or the employer, plus any documents you sent in to be used at the hearing. Everyone will go over what they

have to make sure no one is missing any documents. If you do not have a document, let the judge know.

If your former employer tries to bring in documents for the first time at this point, you can object to them. You did not have a chance to look at them before the hearing. Tell the judge you object to these documents being used as exhibits because the employer did not submit them before the hearing. The judge will decide whether to allow the employer to use the documents in the hearing.

Who testifies first?

Generally –

If you quit your job: You will testify first. You have to show that you had good cause to quit.

If you were fired: Your employer will go first. They have to show that you committed misconduct.

How do I testify?

The judge will start by asking you questions. They may be easy questions at first about your job:

- what you did
- how long you worked there
- your rate of pay

Or the judge may first ask why you quit or were fired. The judge could also start with questions about your job search.

Whatever the judge asks, you must tell the truth. Answer the question the judge asks you. If you do not understand the questions, say so. The judge will try to rephrase the question.

After the judge's questions, your former employer or their representative can ask you questions. This is sometimes called "cross-examination." The employer may try to make your case seem less believable. Be ready for hard questions. Try not to be intimidated if your employer's representative seems like they are being mean or rude. Answer their questions the best you can.

If you think that the employer or their representative was not fair in their questions and made your story sound untrue, ask the judge if you can clarify what you said.

What happens when my employer testifies?

The process is generally the opposite of the above. The judge may ask them questions directly if they do not have a representative. If there is a representative, s/he may ask the employer questions. If you disagree with what the employer says, do not interrupt. You will have a chance to ask the employer about it later if you want.

After the employer finishes testifying, you will have the chance to ask them questions or "cross-examine" them. You do not have to question your employer. You can ask the judge to just give statements in response instead, or as well as, questioning your employer.

Cross-exam can be tricky. You may accidentally give your former employer a chance to make their case better. Do not to ask a question in cross-exam that you do not know the answer to.

Here are some common cross-exam situations, and our suggestions for how to handle them:

- You think (or know) that the employer or their witness is lying: People rarely admit to lying unless they are clearly "caught." Unless you have a definite way of showing that your employer is lying, you should leave the lie alone. Focus on proving to the judge that your side of the story is right. The judge will decide who appears to be telling the truth.
- You think you know something that the employer is hiding. You do not have proof: The employer or their witness may not know what you are talking about. Even worse, you may be wrong in your suspicion. The employer may answer in a way that makes your case worse.

◆ If you ask a question, it may open the door for the employer to make their case better. You may find that it is better to reinforce your side of the story in your closing argument.

Will the judge ask me about my job search?

Yes. To get benefits, you must be:

- Available for work,
- Actively seeking work, and
- Able to work.

The ALJ will ask questions to determine if you meet these requirements. Some of these questions may be confusing if you do not know what the judge is getting at.

- If the judge asks if you have reliable transportation: You need to have some way to get to work if you are offered a job. This could include taking the bus, biking, walking, or finding some other way to get to work.
- If the judge asks if you have to take care of children or family members: The judge is trying to figure out if your family commitments will keep you from taking a job. If you can find child care or alternate caretakers for your family members, tell that to the judge.
- If the judge asks if you are going to school or other training: If you are, you may need to be willing to quit school if you are offered a job.
- If the judge asks if you have any health problems that would keep you from working: If you cannot work at all, that may keep you from getting benefits.
- If the judge asks if you were out of town or sick during the time you filed for benefits: If you were, you may not be able to get benefits for those weeks.
- If the judge asks where you have looked for work: Have your job search log with you.

What is a closing statement?

It is where you sum up all the facts that make your case. You tell the judge how you are eligible for benefits. If your former employer made your case look worse or explained the situation wrong, you need to add force to your side of the story. Make

your statement only as long as it needs to be. Try to be as clear as possible.

How do I object to evidence that I think the employer should not be able to get in?

You can object to some things that that your employer or their witnesses say. Administrative hearings are much less formal than court hearings. The standards for appropriate evidence sometimes have confusing legal names. But they come from basic common sense.

- Relevance: All evidence and testimony you offer must relate to what the hearing is about. Example: You quit your job because your hours were cut in half. If your employer starts to bring up the fact that you were late a couple times last month, that probably has nothing to do with why you quit. So it is irrelevant. You could say to the judge, “Your Honor I do not see how this relates to why I quit.” Or say that you object because of relevance.
- Hearsay: This is second-hand testimony. Example: You were fired for supposedly stealing from the cash register. Your employer brings a witness that can only testify that someone else told her that you stole. That is hearsay. The judge might find that your employer’s story is not reliable. They did not bring the person accusing you to the hearing.

You can object to hearsay. Judges prefer first-hand knowledge. The judge may still allow hearsay to be heard. However, the judge cannot

make a decision based only on hearsay.

- **Asked and Answered:** This means that you have already been asked that question and provided an answer. Sometimes an employer will continue to ask you the same question over and over just to make a point they think will help them. You can say that you have been asked that question and answered it already.

What else might happen at the hearing?

- **The employer or their representative may say something that makes you angry or upset:** You must remain calm, even if what is said is a lie or an insult. The judge will try to keep the hearing fair and calm.
- **Be respectful to everyone:** Do not interrupt the judge, your former employer or the employer representative, or any witnesses. Call the judge “Your Honor.”
- **Try to be clear and to the point:** The judges are generally on a tight schedule. They will appreciate anything you can do to keep the hearing running smoothly. A judge may interrupt you or someone else if the testimony is rambling or unfocused. If you feel like you are not being allowed to testify about something important, respectfully ask the judge if you can do so.

If you do not understand what is going on or what you are supposed to do next, ask the judge: If you are feeling lost or

confused, politely ask the judge for an explanation.

How long do I have to wait after the hearing to get a decision?

You should get a decision, called an Initial Order, from the judge within a few weeks. You may file a Petition for Review to the Commissioner. This appeal is a letter, no more than five pages. Explain in detail why you disagree with the judge’s decision.

You must file this Petition within 30 days of the date of the judge’s decision.

Instructions on where to send the Petition will be on your Initial Order.

I won. Can my employer appeal?

Yes. If they do, you will get a copy of their appeal. You have fifteen days to respond to their appeal.

Your response letter should say that it is a Response to a Petition for Review. It should list your name, address, docket number of the decision. You should sign the Response. The Response cannot be longer than five pages. Explain in the Response why the judge was right in granting you benefits.

◆ Instructions on where to send the Response will be in with the employer’s appeal.

I was denied. Now I have an overpayment. What can I do?

The Employment Security Department will let you know if you are overpaid. Try to arrange a payment plan with them to avoid being sent to a collections agency.

If you are denied benefits, you may be eligible for a waiver. If you get a waiver, you

will not have to pay back the overpayment. Waivers are only considered when you are found to not be at fault for causing the overpayment. They are not possible if you

were denied for misconduct. Call the Employment Security Department at 360-486-5817 to ask for a waiver form.

This document was prepared by the Northwest Justice Project and the Unemployment Law Project, Seattle, Washington. For more information, see www.unemploymentlawproject.org or call 888-441-9178.

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