How to Represent Yourself at an Unemployment Benefits Hearing

If I am denied unemployment benefits, can I appeal?

Yes. After you have filed a claim and provided information to the Employment Security Department (ESD) you will receive 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. If either you or your employer 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, the due date is on the letter. All you need to do is write a letter stating: "I want to appeal the denial of unemployment benefits because I disagree with the decision. I want a hearing." You must include your name, address, phone number, and social security number. Send the letter to the address on the determination or fax it to the ESD at 1-800-301-1795. Make sure you sign the letter and keep a copy of what you send. You may also be able to file an appeal online by logging into eServices on the Employment Security Department's website.

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

Yes. If you decide you are going to appeal the decision, you should continue to file your weekly claims. If you win at your hearing, you will only receive benefits for the weeks you filed and are otherwise eligible.

To collect benefits, you must be able to work, available for work, and actively seeking work for each week that you file. Make sure you accurately report information to the ESD when you file your claim each week, and keep a record of your job searches.

What happens after I file an appeal?

After you have sent in your appeal you will receive a notice of the date and time of your hearing from the Office of Administrative Hearings (OAH). The OAH is an independent state agency that provides a judge to resolve disputes between people and state agencies. You should receive the notice of your hearing date about three weeks after you file your appeal. Make every attempt to rearrange your schedule so you can attend the hearing. If you cannot do so, call the OAH listed on the notice and ask to reschedule. Explain why you need to postpone your hearing. Do not assume your hearing was postponed when you made a request. Be sure to get a clear confirmation from the hearing office that the hearing was postponed. Remember, if you miss your hearing, the OAH will enter a default order and dismiss your case.

I was allowed benefits but my employer is appealing. Why?

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

Preparing For Your Hearing

Your hearing is the only chance you will have to tell your side of the story and once it is over you will typically not be able to submit any more information to the judge. It is important to be prepared.

Understand the law:

Generally you will not receive benefits if the judge decides that you quit your job without a good reason, known as "good cause." If you were fired, you will not receive benefits if the judge decides what you did is "misconduct."

1. If you quit your job…

The law does allow benefits in situations where an employee has "good cause" to quit. These reasons can be found in RCW 50.20.050. HOWEVER, Washington law only recognizes 12 specific "good cause" reasons to quit, and 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 the 12 good cause reasons listed below:

- **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 and that kept you from working:** It is important to 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 be helpful to demonstrate you quit for a medical reason. Also, be aware that you may be denied benefits if you are not able to work, so you will need to show that you are able to work, but you weren't 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 reside, and 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 compensation from your job is permanently reduced 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. You should be prepared to show the reduction with pay stubs, bank deposits, or some other form of documentation.

- **Your usual hours were permanently reduced by 25%:** As above, you should be prepared to show this reduction with documentation.
- **Your worksite changed and it made commuting difficult**: 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 and 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 to 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, and later 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 informing the employer of a safety hazard and giving them time to fix it, informing the employer that you aren't getting paid correctly and allowing them time to fix the problem, or informing the employer that you are having medical issues and need some assistance from them to help you keep your job. The law recognizes that there are some situations where doing these things would be futile and will excuse you from not taking these steps, but the more attempts to work with your employer you can show, the better your case will be.

2. If you were fired from your job…

If you were fired, your employer has the burden of showing that the reason you were fired was misconduct. The law, as seen in RCW 50.04.494, 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 weren't able to do the job to the employer's satisfaction and you tried your best, that won't be considered misconduct.
- If you made honest mistakes, that generally won't be considered misconduct.

Examples of what **IS** misconduct:

- Insubordination. If you refuse to do something that the employer asks you to do and 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, that 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 were dishonest.

Now that I know the law, how do I develop my case?

Before the hearing, you will need to figure out how to explain to the judge why you either quit for one of the 12 good cause reasons, or why you were not fired for misconduct.

<u>If you quit:</u>

- Think about and write down all the reasons you quit. 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 aren't considered good cause? 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 and write down exactly what led up to you being fired and the final incident that led to your being fired was.
- 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 cause harm to the employer?
- How is the employer going to argue that what you did is misconduct? How will they prove it?

Many people go into hearings with a written list of things they want to tell the judge, just to make sure they don't forget something. Some people even practice explaining their story to family or friends because they know they may be nervous during the hearing. Whatever you can do to be organized and present your case in a clear, concise way will be helpful during your hearing.

What if I have documents or other evidence that may help me with my case?

You can submit additional 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 and 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, consider asking these people if they can attend the hearing. In-person testimony of firsthand knowledge is always stronger than a written statement.

What if I know people who can help me by testifying at the hearing?

If you have people who directly saw or heard things on the job that relate to your case, you can request that they attend the hearing. These people should have actual knowledge of what happened because they saw or heard the incident. It usually isn't helpful to have witnesses who can only testify that you are a good person because that's not the point of the hearing. Also remember that your former employer will get to ask witnesses questions as well. It is your responsibility to make sure they call into the hearing; tell them the date and time of the hearing and give them the call in instructions.

What if I don't speak English or am hearing or speech impaired?

Contact the OAH on your Hearing Notice immediately and request an interpreter. An interpreter will be provided free of charge. You cannot use family members or friends as an interpreter in your hearing. Hearings are usually held by telephone; however, a judge may permit an in-person hearing if a disability or other circumstances would make it difficult for the hearing to be held over the telephone.

The Unemployment Hearing

Calling in to the hearing:

To call in, follow the instructions given 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 telephone at your local ESD WorkSource office, but make sure to do this before your hearing.

Who will be at the hearing from my former employer?

Your employer may select any number of people to be present for their side. Your former boss may be there. There may be a representative from Human Resources as well. Your employer may also have an outside representative there for them – either an attorney, or some other hired representative. Try not to be intimidated if the employer sends an attorney or other representative; the judge has a responsibility to ensure that your side of the story is heard and that you get a fair hearing.

You will be sworn in:

The judge will ask everyone to affirm or swear to tell the truth.

Everyone will go over the documents to be used at 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 nobody is missing any documents. If you don't have a document, let the judge know. If your former employer tries to bring in documents at this point, you have a right to object to them because you didn't have a chance to look at them before the hearing. All you have to do is tell the judge you object to these documents being used as exhibits because they were not submitted before the hearing. Ultimately, it is up to the judge to decide whether or not to allow the documents to be used in the hearing.

Who testifies first?

Generally if you quit your job, you will testify first because you have to show that you had good cause to quit. If you were fired, your employer will go first because they have to show that you committed misconduct.

When you testify:

The judge will start by asking you questions. They may begin with easy questions about your job, like what you did, how long you worked there, and your rate of pay. The judge could also begin by immediately asking about why you quit or were fired. The judge could also begin with questions about your job search. Whatever the judge asks you, tell the truth and remember to answer the question the judge asks you. If you don't understand the questions, just say so and the judge will try to rephrase the question.

After the judge asks you questions, your former employer or their representative can ask you questions. This may be referred to as "cross-examination." This is the employer's opportunity to try to make your case seem less believable, so be prepared for hard questions. Try not to be intimidated if your employer's representative seems like they're being mean or rude, just answer their questions the best you can.

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

When your 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, or the representative 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 to.

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

Cross-examination can be tricky because you may accidentally give your former employer an opportunity to make their case better. Because of this, attorneys often say "do not to ask a question in cross-examination that you do not know the answer to." Keep this in mind as you are thinking about what to ask your former employer. Here are some common situation, and some thoughts on how to handle them:

- <u>You think (or know) that the employer or their witness is lying:</u> People rarely admit to lying unless they are clearly "caught" so unless you have a definite way of showing that your employer is lying, it is probably best to leave the lie alone and focus on persuading the judge that your version of what happened is correct. The judge will determine who appears to be telling the truth.
- <u>You think you know something that the employer is hiding, but do not have proof:</u> The employer or their witness may not know what you are talking about, or even worse, you may be incorrect in your suspicion and the employer may answer in a way that makes your case worse.

This is not to say that you shouldn't ask your employer any questions, but just remember that 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.

The judge will also ask you about your job search:

To receive benefits you must be available for work, actively seeking work, and able to work. The ALJ will ask you questions to determine if you meet the requirements. Some of these questions may be confusing if you don't know what the judge is trying to find out:

- The judge may ask if you have reliable transportation: You do not have to have a car, but you need to have a 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.
- The judge may ask if you have to take care of children or family members: The judge is trying to figure out if your family commitments will prevent you from taking a job. If you can find child care or alternate caretakers for your family members, tell that to the judge.
- The judge may ask if you are attending school or other training: If you are, you may need to be willing to quit school if you are offered a job.
- The judge may ask if you have any health problems that would keep you from working: If you cannot work at all, that may prevent you from getting benefits.
- The judge may ask 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 the weeks you were not available.
- The judge may ask about where you looked for work: Have your job search log with you so you can respond if the judge asks which places you applied for jobs.

You will have the opportunity to make a closing statement:

This is where you summarize all the facts that make your case and emphasize to the judge that you are eligible for benefits. If your former employer made your case look worse or mischaracterized the situation, reinforce your side of the story. Make your statement only as long as it needs to be and try to be as clear as possible with your argument.

During the hearing - how to object to inappropriate evidence:

Administrative hearings are much less formal than court hearings, but you can still object to certain things that that your employer or their witnesses say. While the standards for appropriate evidence sometimes have confusing legalistic names, they come from basic common sense.

Relevance: All evidence and testimony offered must have some relation to what the hearing is about. For example, if you quit your job because your hours were cut in half and 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, and is irrelevant. You could say to the judge "Your Honor I don't see how this relates to why I quit," or you could just say that you object because of relevance.

Hearsay: Hearsay is testimony that is second hand. For example, if you were fired for supposedly stealing from the cash register and 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 because they did not bring the person accusing you to the hearing. You can object to hearsay, but be aware that despite a preference for first-hand knowledge, judges will still allow hearsay to be heard. However, the judge cannot make a decision based solely on hearsay.

Asked and Answered: This just means that you've 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 just say that you've been asked that question and answered it already.

Other things that might happen at the hearing & general hearing tips:

The employer or their representative may say something that makes you angry or upset: It is very important for you to remain calm even if what is said is a lie or an insult. If someone is going to lose his or her temper, let it be your former employer. The judge will try to keep the hearing fair and calm.

Always be respectful to everyone at the hearing: Do not interrupt the judge, your former employer or the employer representative, or any witnesses. Be respectful of the judge. You can call the judge "Your Honor."

Try to be clear and concise: The judges are generally on a tight schedule and anything you can do to keep the hearing running smoothly will be appreciated. Do not be surprised if a judge interrupts you or another participant if the testimony is rambling or unfocused. But 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're feeling lost or confused, **politely** ask the judge for an explanation.

After the Hearing

How long does it take to get a decision, and what do I do if I am denied again?

You should receive a decision, called an Initial Order, from the judge within a few weeks of the hearing. Call the hearing office if it has been more than two weeks and you have not received a decision. If you are denied, you have the opportunity to file a Petition for Review to the Commissioner. This appeal is a letter no more than five pages stating 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.

If I win, can my employer appeal?

Yes. If they do, you will receive a copy of their appeal. You have 15 days to respond to their appeal. Your response letter should say that it is a Response to a Petition for Review and list your name, address, docket number of the decision and you should sign the Response. The Response cannot be longer than 5 pages. You should explain why the judge was right in granting you benefits. Instructions on where to send the Response will be included with the employer's appeal.

What if I am denied and have an overpayment?

The Employment Security Department will notify you 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. Waivers are only considered when you are found to not be at fault for causing the overpayment, and are not possible if you were denied for misconduct. You can call the Employment Security Department at 360-486-5817 to request a waiver form.

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