
Rules of
Department of Labor and
Industrial Relations
Division 10—Division of Employment Security
Chapter 5—Appeals

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**Title 8—DEPARTMENT OF
LABOR AND
INDUSTRIAL RELATIONS**

**Division 10—Division of
Employment Security
Chapter 5—Appeals**

8 CSR 10-5.010 Appeals to an Appeals Tribunal

PURPOSE: This rule prescribes procedures where interested parties may appeal determinations made by the Division of Employment Security. This rule implements section 288.190, RSMo.

(1) The provisions of this chapter will apply to any appeal, petition for reassessment or other type of request for hearing conducted by an appeals tribunal unless specifically provided otherwise by state or federal law or regulation.

(2) For purposes of these regulations, the following definitions apply:

(A) Agent—The person authorized to act in a representative capacity for a claimant pursuant to Missouri Supreme Court Rule 5.29 and these regulations;

(B) Appear means that the participants—

1. Arrive at the physical location of the hearing at the time and location set forth on the notice of hearing; or

2. Provide telephone numbers as instructed on the notice of hearing within the designated time frame and answer at the time of the hearing;

(C) Good cause—For the purposes of sections 288.070.8 and 288.130.5, RSMo, and of this chapter, good cause shall be those circumstances in which the party acted in good faith and reasonably under all the circumstances;

(D) Hearing officer—The person responsible for ruling on procedural matters, conducting the hearing, and preparing a final appealable judgment from evidence presented in the hearing. The term hearing officer shall include the terms “Referee” and “Appeals Tribunal” as defined in section 288.030.1, RSMo;

(E) Party—The individual, agency or business entity which has taken action to become an interested party pursuant to 288.070, 288.130, and 288.160, RSMo;

(F) Representative—Any person acting in a representative capacity with regard to unemployment appeals as authorized by Chapter 288, RSMo, Missouri Supreme Court Rules, and these regulations. Depending on the context, the word is used to refer both to employer representatives and all persons authorized

to act in a representative capacity in these matters;

(G) Split hearings—Those appeals hearings in which some parties and their witnesses may appear in person and others by telephone, by prearrangement with the hearing officer;

(H) Telephone hearing—An appeals hearing in which all participants appear by telephone;

(I) Witness—A person who is presented for testimony at a hearing by a party to an appeal.

(3) Appeal to be Written.

(A) Any signed, legible written notice filed by a party in accordance with these regulations, which expresses disagreement with or otherwise indicates a desire to appeal a determination or redetermination, in the absence of a reconsideration by the deputy, shall constitute an appeal. An appeal must be signed by the claimant, the claimant’s authorized agent, the employing unit (including any officer or employee of it), or by a licensed attorney representing either the claimant or employing unit. A person acting as a claimant’s authorized agent shall submit an authorization signed by the claimant as soon as that authorization occurs. The authorization must include the name, social security number and signature of the claimant and a statement that the named agent is acting on behalf of the claimant.

(B) Any party may file an appeal by using a printed appeal form available from the Division of Employment Security. Use of the form is not mandatory; however, whatever instrument is used, it should also include the following information:

1. Name and Social Security account number of each claimant, if any, involved;

2. Name of the employer, if any, involved;

3. Date, issue number and subject matter of the determination;

4. Statement of the reasons for disagreement with the determination; and

5. Signature of the appellant.

(C) Failure to include all of the information listed in subsection (3)(B) may result in invalidation of the purported appeal or unnecessary delay in processing the appeal and scheduling the hearing.

(D) Any signed, legible written notice filed by a party in accordance with these regulations, which sets forth specifically and in detail the grounds upon which it is claimed the assessment is erroneous shall constitute a petition for reassessment. A petition for reassessment must be signed by the claimant, if any, the claimant’s authorized agent, the

employing unit (including any officer or employee of it), or by a licensed attorney representing either the claimant or employing unit.

(4) Appeals to benefit or tax-related matters and petitions for reassessment may be filed by mail or facsimile transmission directed to the address set forth on the determination or petition. All appeals and petitions for reassessment must be signed by the appellant/petitioner or designated representative.

(5) Time Limit for Appeal.

(A) An appeal to a determination or redetermination under section 288.070.4, RSMo shall be filed within thirty (30) calendar days of the date the determination or redetermination was delivered in person or mailed to the appellant’s last known address.

(B) An appeal to an *ex parte* determination or redetermination under section 288.130.4, RSMo shall be filed within thirty (30) calendar days of the date of the mailing of the determination or redetermination to the party’s last known address or, in the absence of mailing, the date of personal service to the party.

(C) A petition for reassessment shall be filed within thirty (30) days of the date the assessment was mailed to the petitioner in accordance with section 288.160, RSMo or, in the absence of mailing, the date of personal service to the petitioner.

(D) An appeal or petition for reassessment shall be deemed to have been filed as of the date endorsed by the United States Post Office. In the absence of an endorsement by the United States Post Office, the appeal or petition for reassessment shall be deemed to have been filed on the date received by the division.

(E) Fax transmissions of appeals and petitions for reassessment that are received on a regular workday will be considered as filed on the date of receipt. A fax transmission received on a Saturday, Sunday or legal holiday will be considered filed on the next regular division workday. Date and time of receipt will be determined by the division’s receiving fax machine. Persons filing by fax transmission must retain the receipt with the original document for reference by the hearing officer if so requested.

(F) In computing any period of time prescribed or allowed by these rules, the date of the issuance of a determination, redetermination, assessment, order or decision shall not be counted. The last day of the period shall be counted unless it is a Saturday, Sunday or legal holiday; in which event, the period shall run until the end of the next day that is not a



Saturday, Sunday or legal holiday. For the purpose of these rules and Chapter 288, RSMo, legal holiday means:

1. Those dates designated public holidays by Chapter 9, RSMo; and
2. Any other day designated a public or legal holiday by the governor.

AUTHORITY: sections 288.190 and 288.220.5, RSMo 2000.* Original rule filed Sept. 30, 1946, effective Oct. 10, 1946. Amended: Filed June 20, 1951, effective July 1, 1951. Amended: Filed Nov. 9, 1954, effective Nov. 19, 1954. Amended: Filed Jan. 19, 1962, effective Jan. 29, 1962. Amended: Filed Nov. 21, 1975, effective Dec. 1, 1975. Rescinded and readopted: Filed Dec. 14, 1982, effective March 13, 1983. Amended: Filed July 17, 1985, effective Nov. 11, 1985. Amended: Filed Oct. 17, 1988, effective March 26, 1989. Amended: Filed Aug. 31, 1989, effective Nov. 26, 1989. Emergency amendment filed July 31, 1990, effective Aug. 10, 1990, expired Dec. 8, 1990. Emergency amendment filed Nov. 13, 1990, effective Dec. 6, 1990, expired April 4, 1991. Amended: Filed Aug. 31, 1990, effective Dec. 31, 1990. Amended: Filed Dec. 9, 1991, effective May 14, 1992. Amended: Filed Nov. 16, 1992, effective June 7, 1993. Emergency amendment filed July 25, 1996, effective Aug. 28, 1996, expired Feb. 23, 1997. Amended: Filed July 25, 1996, effective Jan. 30, 1997. Emergency amendment filed Dec. 11, 1996, effective Jan. 2, 1997, expired June 30, 1997. Amended: Filed Dec. 11, 1996, effective July 30, 1997. Amended: Filed Sept. 9, 1998, effective March 30, 1999. Amended: Filed April 5, 2002, effective Oct. 30, 2002.

*Original authority: 288.190, RSMo 1951, amended 1972, 1979, 1984, 1996 and 288.220.5, RSMo 1951, amended 1955, 1961, 1963, 1967, 1971, 1995.

8 CSR 10-5.015 Appeal Hearings and Procedures

PURPOSE: This rule establishes procedures for the disposition of preliminary matters and for the conduct of hearings before an appeals tribunal.

- (1) Copy of Appeal. Upon the division's receipt of an appeal, the appeal shall be acknowledged and the parties shall be provided with a copy of the division's informational pamphlet concerning hearings and copies of the documents from the appeals file upon which the determination was based.
- (2) A hearing officer upon his/her own motion, or at the request of a party, in the

hearing officer's discretion may direct the parties to appear at a specified time and place for a conference to consider—

- (A) The simplification of the issues;
- (B) The possibility of obtaining stipulations, admission of facts or of documents;
- (C) The limitation of witnesses; and
- (D) Other matters as may aid the disposition of the proceedings.

(3) In any proceeding pending before a hearing officer, claimants, employing units, or their representatives, shall, upon written request, be supplied with information from division records to the extent division records are available to the hearing officer, as necessary for the proper preparation and presentation of any claim for unemployment benefits or appeal of employer liability.

(4) Hearings may be conducted in-person, by telephone, or by a combination of telephone and in-person attendance referred to as a split hearing in this regulation.

(A) Hearings shall be conducted by telephone unless:

1. A party requests an in-person hearing; or
2. A hearing officer, on his/her own motion, schedules an in-person hearing.

(B) Any party shall have an absolute right to an in-person hearing.

1. A request for an in-person hearing shall be delivered to the hearing officer as soon as possible in the appeals process but, in any event, no later than two (2) days prior to the date of the hearing.

2. Requests may be made via fax, telephone, or delivered to the appeals section in written form.

3. Requests for in-person hearings made later than two (2) days prior to the date of the hearing shall be referred to the chief appeals referee or his/her designee(s) for disposition.

4. A request for an in-person hearing may only be withdrawn upon a showing of extreme circumstances precluding the requesting party's in-person attendance.

(C) The hearing officer may, on the hearing officer's own motion or the motion of a party, schedule a matter for an in-person hearing or adjourn any split or telephone hearing in progress for an in-person hearing, if, in the hearing officer's opinion, conducting any part of the hearing by telephone is unsatisfactory.

(D) A split hearing, with the parties present at different locations at the same time, may be scheduled only if an in-person or telephone hearing is not possible or the parties agree to or request a split hearing.

(5) Notices of Hearing.

(A) Notice of Hearing shall be mailed, by regular United States mail, to the address of record in the appeal file of each party, attorney who has entered an appearance, and others appearing in a representative capacity who have filed notice of intent to represent. Notices shall be mailed at least seven (7) days prior to the date of the hearing. These notices shall specify the date, time and place or method of hearing and shall set forth the address of the office to which all requests or other correspondence concerning the hearing should be directed.

(B) The hearing officer or the designated appeals' clerk shall complete a certification that the Notice of Hearing was mailed to each of the parties and representatives of record at the addresses listed in the official file.

(6) Postponements.

(A) The hearing officer, upon request of a party or upon his/her own motion, may postpone a hearing. Postponements may be granted if—

1. The request is promptly made after the party receives the Notice of Hearing or after the circumstance requiring postponement arises; and

2. The party has good cause for not attending the hearing at the time and date set. Good cause exists when the circumstances causing the request are beyond the reasonable control of the requesting party and failure to grant the postponement would result in undue hardship for the requesting party.

(B) A postponement shall not be granted to a representative who agrees to represent when the appeal has already been set for hearing knowing that the setting conflicts with a prior obligation of that representative. Representatives shall include attorneys, agents, or employer representatives.

(C) No party may presume that a postponement is granted unless duly notified of the granting by the appeals tribunal.

(D) Any further requests for a postponement by a party will be denied except in extraordinary circumstances.

(7) Continuances and Additional Evidence.

(A) Any hearing may be continued from time-to-time or place-to-place at the discretion of the hearing officer.

(B) All parties shall be prepared to introduce all of their evidence when the case is set for hearing as continuances for additional evidence will be granted only when the hearing officer is satisfied that the additional evidence is necessary to a full and complete hearing and was unavailable at the original setting because of surprise or because the party was

unable to obtain the evidence after diligent and good faith efforts to obtain such evidence.

(C) Hearings rescheduled as a result of insufficient time to complete the hearing at the first setting will not include, at the second or subsequent setting, any witnesses or evidence not available at the original setting subject to subsection (B) of this section.

(D) If subsequent to hearing, but prior to mailing of the decision, the hearing officer decides that an additional hearing is necessary, the parties shall be advised in writing.

(8) Subpoenas.

(A) Subpoenas to compel the attendance of witnesses or the production of books, papers, correspondence, memoranda and other records or items either in-person or by telephone may be issued by a hearing officer—

1. Upon his/her own motion; or

2. At his/her discretion, upon the request of a party who has—

A. Demonstrated that the evidence sought to be procured is relevant and necessary; and

B. Made a good faith effort to obtain the attendance of the witness or the production of the documents but has been unable to do so.

(B) The subpoena request shall be submitted to the hearing officer in sufficient time before the hearing to permit preparation and service of the subpoena before the hearing.

(C) Service of a subpoena may be by certified mail or personal service. If service is to be by certified mail, the request shall include a current address of the person to be served and specify that service is being requested to be by certified mail.

(D) A subpoena shall be served by delivering a copy of the subpoena to the person named therein no later than forty-eight (48) hours before the time for the appearance set forth in said subpoena.

(E) Witnesses subpoenaed for any hearing before a hearing officer shall be paid witness and mileage fees in the same amounts as paid in civil actions before the circuit courts of this state, provided the witness and mileage fees are claimed within five (5) days of the date of the hearing and certified to by the witness and approved by the hearing officer. Approved payment shall be made out of the Unemployment Compensation Administration Fund. Under no circumstances shall parties to the case be granted witness or mileage fees.

(F) A person served with a subpoena or a subpoena *duces tecum* may object to its terms by making a motion to quash as soon as possible after service. The hearing officer shall

resolve the objection and may make an order appropriate to protect the parties or the witnesses from unreasonable or oppressive demands. If a party, or any person or organization within the control of a party, fails to obey a subpoena of a hearing officer, the hearing officer shall treat the evidence requested but not produced as establishing an inference favorable to the position of the party who subpoenaed the item subject to the opposing party's right to seek an order quashing or limiting the scope of the subpoena.

(9) Participation and Representation at Hearings.

(A) A claimant may represent him/herself or be represented by a duly authorized agent, who may not charge a fee for the representation.

(B) A party, which is a corporation, partnership or other business entity authorized by law may be represented by an officer or a person employed full-time in a managerial capacity. For purposes of this regulation, managerial capacity includes any person who has managerial or supervisory duties as defined by the party.

(C) An employee of a corporation, partnership, or other business entity authorized by law who is not an officer or full-time managerial employee may appear, testify and offer exhibits in hearings in which the business entity is a party. The employee's participation at the hearing is limited to testifying and offering exhibits.

(D) Any party may be represented by a licensed Missouri attorney, a nonresident attorney appearing in compliance with Supreme Court Rule 9, or an eligible law student complying with Supreme Court Rule 13.

(E) All persons who will be acting in a representative capacity on behalf of a party before the hearing officer shall file notice of their intent to represent the party as soon as possible after being retained or chosen. Attorneys shall file an entry of appearance, agents shall file an authorization signed by the claimant, and representatives shall file a statement of intent to act on behalf of the entity.

(F) No subsequent entry of appearance or notice of intent to represent shall be honored absent written withdrawal by the previous representative.

(G) In order to protect the integrity and fairness of the appeals process, the hearing officer requires all parties and persons acting in a representational capacity to comply with the following rules of conduct:

1. All participants shall appear for the hearing and be ready to proceed no later than the starting time listed on the notice of hearing;

2. All participants shall comply with all directions given by a hearing officer during a hearing;

3. Participants may not use dilatory tactics prior to or during a hearing;

4. Participants may not engage in abusive conduct, harass, intimidate, threaten or cause physical harm to any hearing officer, party, witness or member of the public in attendance;

5. Participants may not act in a manner disruptive or disrespectful to the operations of the appeals' process;

6. All participants shall act in good faith and with integrity during the representation of a party and shall adhere to reasonable standards of orderly and ethical conduct;

7. The representative shall, to the extent reasonably possible, restrain the party represented by that individual from improprieties in connection with the hearing; and

8. Any individual who fails to follow these rules will be excluded from the hearing.

(10) Conduct of Hearings.

(A) All hearings shall be open public hearings and shall be conducted in an orderly manner. The hearing officer shall review the issues presented and set forth the procedures to be followed during the hearing. Persons whose presence would be detrimental to the proper conduct of the hearing may be excluded from the hearing by the hearing officer. The hearing officer may examine all parties and witnesses and shall determine the order of testimony and procedure for each hearing. Upon the motion of any party or the hearing officer, witnesses may be sequestered.

(B) In any hearing before a hearing officer, the following shall be the applicable rules of evidence and procedure:

1. Oral evidence shall only be taken by oath or affirmation;

2. Subject to this chapter's restrictions regarding representation, each party has the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not a subject of the direct examination, to impeach any witness, regardless of which party first called the witness to testify, and to rebut the evidence against him/her;

3. A party who does not testify in his/her own behalf may be called and examined as if under cross-examination;

4. The hearing need not be conducted according to the common law or statutory rules of evidence or the technical rules of



procedure. Hearsay evidence is generally admissible. Evidence is admissible if it is not irrelevant, immaterial, privileged or unduly repetitious. Hearsay which is timely objected to shall not constitute competent evidence which, by itself, will support a finding of fact. A party or his/her attorney may advise the hearing officer of a defect in the character of any evidence introduced by voicing an objection. The hearing officer shall rule on the admissibility of all evidence. Any evidence received without objection which has probative value shall be considered by the hearing officer along with other evidence in the case;

5. Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of an act, transaction, occurrence or event, shall be admissible as evidence of the act, transaction, occurrence or event, if it was made in the regular course of any business and that it was the regular course of the business to make the memorandum or record at the time of the act, transaction, occurrence, or event or within a reasonable time thereafter. All other circumstances of the making of the writing or record, may be shown to affect the weight of the evidence, but the showing shall not affect its admissibility. The term business shall include business, profession, occupation and calling of every kind; and

6. All documents introduced as evidence shall be marked as exhibits. A photocopy may be substituted for an original document. Whenever practicable, demonstrative and physical evidence also shall be marked and placed in the record; otherwise, it shall be described in detail on the record.

(C) If the hearing officer believes that the deputy's determination did not apply the correct provision(s) of law to the factual situation presented, the hearing officer, after informing the parties, may expand or otherwise alter the hearing to include the correct issues involved. If one (1) or more parties object to the change in the hearing, the hearing officer shall continue the hearing to allow the parties time to prepare for the proper issues.

(11) Reassignment of Hearing Officer. A hearing officer may be reassigned under the following conditions:

(A) If for any reason, a hearing officer cannot complete disposition of an appeal, the case shall be assigned to another hearing officer;

(B) A hearing officer shall not conduct a hearing in which he/she may have a personal interest or conflict of interest or in which he/she would have a personal bias towards or against any of the parties;

(C) Any party to a proceeding before a hearing officer may request the disqualification of the hearing officer assigned to the proceeding by filing with the chief referee a signed, written statement detailing the reasons why the disqualification is necessary. This request must be filed no later than five (5) days prior to the scheduled hearing date. The chief referee, or designee, shall issue a written ruling on the request. The written ruling shall be interlocutory but may be specified as a grounds for appeal following the issuance of the decision of the hearing officer; and

(D) If the chief referee, or designee, rules that a hearing officer shall not conduct a scheduled hearing, another hearing officer shall be assigned to hear the case.

AUTHORITY: sections 288.190 and 288.220.5, RSMo 2000. Original rule filed Dec. 14, 1982, effective March 13, 1983. Amended: Filed July 17, 1985, effective Nov. 11, 1985. Amended: Filed Oct. 17, 1988, effective March 26, 1989. Emergency amendment filed July 31, 1990, effective Aug. 10, 1990, expired Dec. 8, 1990. Emergency amendment filed Nov. 13, 1990, effective Dec. 6, 1990, expired April 4, 1991. Amended: Filed Aug. 31, 1990, effective Dec. 31, 1990. Amended: Filed Nov. 1, 1995, effective April 30, 1996. Emergency amendment filed Dec. 11, 1996, effective Jan. 2, 1997, expired June 30, 1997. Amended: Filed Dec. 11, 1996, effective July 30, 1997. Emergency amendment filed Jan. 22, 1997, effective Feb. 1, 1997, expired July 30, 1997. Amended: Filed Jan. 22, 1997, effective July 30, 1997. Amended: Filed Sept. 9, 1998, effective March 30, 1999. Amended: Filed April 5, 2002, effective Oct. 30, 2002.*

**Original authority: 288.190, RSMo 1951, amended 1972, 1979, 1984, 1996 and 288.220.5, RSMo 1951, amended 1955, 1961, 1963, 1967, 1971, 1995.*

8 CSR 10-5.020 Delivery of Notice and Periods for Filing Protests and Appeals
(Rescinded March 13, 1983)

AUTHORITY: section 288.220, RSMo 1978. Original rule filed Aug. 30, 1974, effective Sept. 9, 1974. Amended: Filed Nov. 21, 1975, effective Dec. 1, 1975. Rescinded: Filed Dec. 14, 1982, effective March 13, 1983.

8 CSR 10-5.030 Telephone Hearings Before a Hearing Officer

PURPOSE: This rule establishes procedures for conducting due process hearings by tele-

phone conference under section 288.190, RSMo.

(1) Exhibits.

(A) Copies of the contents of the appeal file upon which the determination is based which may be used as exhibits shall be mailed to the parties to telephone hearings and split hearings prior to the hearing date.

(B) Parties to split or telephone hearings shall mail copies of potential exhibits to the hearing officer and any other named party in sufficient time for the exhibit to reach those locations prior to the hearing.

(C) Mailing of exhibits shall be to the address of the party shown on the Notice of Hearing. The item(s) shall be designated as a potential exhibit and paginated.

(2) Participation.

(A) Election of an in-person hearing by a party must be conveyed to the hearing officer at least two (2) days prior to the hearing and acknowledged by the hearing officer. Absent acknowledgement, a party may not assume that its appearance is scheduled in-person.

(B) Election by a party not to participate by telephone shall not be binding on other parties to the proceeding who may, at the discretion of the hearing officer, present evidence by telephone.

(C) If a hearing officer is unable to contact a party who has provided a number to participate as scheduled by telephone due to land based telephone technical difficulties, the hearing shall not be dismissed but must be rescheduled. For purposes of this regulation, technical difficulties shall not include use of the telephone by the party for other calls, failure of battery powered, digital, or cellular phones due to location or failure of power, or failure to provide access or security codes.

(D) Whenever a party does not have access to a telephone the party may appear by telephone from any Workforce Development office. In that event, the telephone number at that location shall be provided by the participant in accordance with instructions included on the Notice of Hearing.

(3) Testimony.

(A) Witnesses must testify from their own recollection.

(B) A witness may use notes or records to refresh his/her memory so long as copies of the records or items used for that purpose have been mailed, faxed, or otherwise delivered to the other participants by the time of the hearing in order to allow cross-examination of the witness on that basis.

(C) The hearing officer may make such inquiry on the record as she/he deems appropriate to ascertain the identity of the individuals participating by telephone.

(D) Telephone hearings are judicial evidentiary proceedings and shall not be subject to interruptions. If a party leaves the phone for any reason, such action shall be considered voluntary and the hearing shall proceed without such party.

AUTHORITY: section 288.220, RSMo 2000.* Original rule filed Dec. 14, 1982, effective March 13, 1983. Emergency amendment filed July 12, 1984, effective Aug. 13, 1984, expired Dec. 10, 1984. Amended: Filed July 12, 1984, effective Oct. 11, 1984. Amended: Filed Oct. 17, 1988, effective March 26, 1989. Emergency amendment filed Dec. 11, 1996, effective Jan. 2, 1997, terminated March 31, 1997. Rescinded and readopted: Filed April 30, 2002, effective Oct. 30, 2002.

*Original authority: 288.190, RSMo 1951, amended 1972, 1979, 1984 and 288.220.5, RSMo 1951, amended 1955, 1961, 1963, 1967, 1971.

8 CSR 10-5.035 Appeal Hearings for Interstate Claimants

PURPOSE: This rule governs the conduct of hearings by an appeals tribunal for interstate claimants.

(1) The definitions found in 8 CSR 10-3.040, unless the context clearly requires otherwise, shall apply to this rule.

(2) An appeal made by an interstate claimant shall be deemed filed on the date endorsed by the United States Post Office. In the absence of an endorsement by the United States Post Office, the appeal shall be deemed to have been filed on the date received by any qualified officer of the agent state or by the division.

(3) Except when an in-person hearing is appropriate, the appeals tribunal shall apply the telephone hearing procedures set out in 8 CSR 10-5.030 to appealed interstate benefit claims.

(4) The appeals tribunal shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims when so requested by a liable state.

AUTHORITY: sections 288.220, RSMo 1986.* Original rule filed Aug. 31, 1990, effective Dec. 31, 1990.

*Original authority: 288.220, RSMo 1951, amended 1955, 1961, 1963, 1967, 1971.

8 CSR 10-5.040 Orders of a Hearing Officer

PURPOSE: This rule establishes procedures for dismissal of certain appeals.

(1) Timeliness of Appeals. If it appears to the hearing officer, upon examination of the file, that an appeal was not filed within the time allowed by statute, the hearing officer may:

- (A) Dismiss the appeal; or
- (B) Set the matter for hearing to include consideration of the merits of the appeal in addition to the timeliness of the appeal. If it is found that no timely appeal was filed, the hearing officer shall dismiss the appeal without ruling on the merits.

(2) Failure to Appear for Hearings.

(A) If the appellant fails to appear at a hearing at the scheduled time or location, the appeal shall be dismissed.

(B) If such dismissal is set aside, the matter shall be scheduled for hearing. The threshold issue shall be whether the appellant had good cause for failing to appear for the prior setting. The merits of the appeal may also be heard. If good cause is not found, the hearing officer shall reinstate the order of dismissal. If good cause is found, the hearing officer shall rule on the merits of the appeal.

(3) Dismissal of Appeals.

(A) An order of dismissal shall recite the essential facts, which establish the failure to file the appeal within the time allowed by statute or the failure of the appellant to appear at the scheduled time, and the order dismissing the appeal.

(B) Copies of the order of dismissal shall be mailed to all parties.

(C) Upon written request of the appellant, or upon its own motion, a hearing officer may set aside an order of dismissal and have the appeal reset for hearing if the request and set aside occur within thirty (30) days of the dismissal.

(4) Withdrawal of Appeals. An appellant, subject to the approval of the hearing officer, may withdraw an appeal prior to the mailing of the decision. The withdrawal request must be in writing and signed by either the appellant or the appellant's representative, or entered orally on the record. If approved, the hearing officer shall issue a written order of withdrawal.

(5) Application for Review.

(A) When a written request to reconsider or set aside an order of dismissal is not granted, the request shall be considered an application for review to the Labor and Industrial Relations Commission.

(B) Any written request by the appellant to set aside an order of withdrawal shall be considered an application for review to the Labor and Industrial Relations Commission.

AUTHORITY: sections 288.190 and 288.220.5, RSMo 2000.* Original rule filed Dec. 14, 1982, effective March 13, 1983. Emergency amendment filed July 12, 1984, effective Aug. 13, 1984, expired Dec. 10, 1984. Amended: Filed July 12, 1984, effective Oct. 11, 1984. Amended: Filed Oct. 17, 1988, effective March 26, 1989. Emergency amendment Filed July 25, 1996, effective Aug. 28, 1996, expired Feb. 23, 1997. Amended: Filed July 25, 1996, effective Jan. 30, 1997. Rescinded and readopted: Filed April 30, 2002, effective Oct. 30, 2002.

*Original authority: 288.190, RSMo 1951, amended 1972, 1979, 1984 and 288.220.5, RSMo 1951, amended 1955, 1961, 1963, 1967, 1971, 1995.

On May 13, 1998, the Missouri Court of Appeals, Western District held that 8 CSR 10-5.040(4), effective March 26, 1989, was invalid as it applies to cases brought under section 288.130.4 because it is plainly inconsistent with the legislature's intention and is an unreasonable restriction of an employer's statutory right to an extension to the 15-day period for filing an appeal from the deputy's determination. Pharmflex, Inc. vs. Division of Employment Security, Case No. WD 53233 (Mo. App. 1998).

8 CSR 10-5.050 Decisions of an Appeals Tribunal

PURPOSE: This rule establishes the decision activities which follow the conclusion of the appeals tribunal hearing including preparation, notification and request for review.

(1) Upon conclusion of the hearing, the hearing officer shall prepare a written decision. The decision shall be based solely upon competent and substantial evidence contained in the official record.

(2) The decision may include, but shall not be limited to, the following:

(A) Findings of fact necessary for resolution of the issues, findings based upon stipulation of the parties or matters officially noticed by the hearing officer shall be so designated;



(B) Conclusions of law accompanied by reference to the operative findings of fact and the specific provisions of the statutory law from which the conclusions were drawn; and

(C) The ultimate decision which sets forth the action to be taken.

(3) Notification of the decision shall include the following procedure:

(A) A copy of the decision shall be mailed to the address of record of the parties and attorneys of record, if any, by regular United States mail. Information accompanying the decision shall advise the parties of their right to, and the means by which, an application for review of the decision may be filed with the Labor and Industrial Relations Commission; and

(B) The hearing officer or his/her designated clerk shall complete a certification that the decision was mailed to each of the parties and attorneys of record at the addresses listed in the official file.

(4) At any time up to thirty (30) days from the date of a decision and prior to an application for review, a hearing officer may issue a corrected decision to eliminate any errors. This section does not supersede the provisions of this chapter regarding orders of dismissal.

(5) If the hearing officer receives a signed written communication from a party which expresses disagreement with a decision or order, or which otherwise indicates a desire to file an application for review, the hearing officer shall forward it to the Labor and Industrial Relations Commission. This section does not supersede the provisions of this chapter regarding orders of dismissal.

AUTHORITY: sections 288.190 and 288.220.5, RSMo 2000. Original rule filed Oct. 17, 1988, effective March 26, 1989. Emergency amendment filed July 25, 1996, effective Aug. 28, 1996, expired Feb. 23, 1997. Amended: Filed July 25, 1996, effective Jan. 30, 1997. Amended: Filed April 5, 2002, effective Oct. 30, 2002.*

**Original authority: 288.190, RSMo 1951, amended 1972, 1979, 1984 and 288.220.5, RSMo 1951, amended 1955, 1961, 1963, 1967, 1971, 1995.*