

D15-06
Appeals Modernization
(WITH CHANGES REQUESTED BY UIAC MANAGEMENT MEMBERS)
(Jan. 2016 Version with requested edits made on 1/7/16 1:00pm ver)

1. Proposed Statutory Language

TO AMEND

108.09 (2) (a) The department shall promptly issue a computation setting forth the employee's potential benefit rights based on reports filed by an employer or employers under s. 108.205, or on the employee's statement and any other information then available. The results of the computation, a recomputation, or pertinent portion of either, shall be delivered electronically ~~to,~~ or mailed to the last-known address of ~~;~~ each party. The department may recompute an employee's potential benefit rights at any time on the basis of subsequent information or to correct a mistake, including an error of law, except that a party's failure to make specific written objection, received by the department within 14 days after the above electronic delivery or mailing, as to a computation or recomputation is a waiver by such party of any objection thereto. Any objections to a computation which are not satisfactorily resolved by recomputation shall be resolved by a determination under par. (b).

108.09 (2) (d) A copy of each determination shall be delivered electronically ~~to,~~ or mailed to the last-known address of ~~;~~ each of the parties party, except that a party's copy of any determination may be given to such party instead of being electronically delivered or mailed.

108.09 (2r) HEARING REQUEST. Any party to a determination may request a hearing as to any matter in that determination if such request is made in accordance with procedure prescribed by the department and is received by the appeal tribunal or postmarked within 14 days after a copy of the determination was delivered electronically, mailed, or given to such party, whichever first occurs.

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108.09 (4) (d) *Appellant's failure to appear.* 1. If the appellant fails to appear at a hearing

held under this section and due notice of the hearing was electronically delivered or mailed to the appellant's last-known address, the appeal tribunal shall issue a decision dismissing the request for hearing unless subd. 2. applies.

2. If the appellant ~~delivers or transmits~~ submits a written explanation for failing to appear at a hearing to the department, which is received before a decision under subd. 1. is

electronically delivered or mailed under subd. 1., an appeal tribunal shall review the, the

~~department may so notify each party and schedule a hearing concerning whether there was good~~

~~cause for the appellant's explanation of the failure to appear.~~ The department shall electronically

deliver or mail a copy of the appellant's explanation for failing to appear to the respondent. The

respondent may deliver or transmit submit a written response to the appellant's explanation for

failing to appear at the hearing to the department within 7 days of the department electronically

delivering or mailing the appellant's explanation to the respondent. ~~The department may also~~

~~provisionally schedule a hearing concerning any matter in the determination. If, after hearing~~

~~testimony, If the appeal tribunal finds that the appellant's explanation for failing to appear, when~~

taken as true and construed most favorably to the appellant, does not establish good cause for the

failure to appear, the appeal tribunal ~~shall issue a~~ may dismiss the appeal without a hearing and

acknowledge receipt of the explanation in its decision. ~~containing this finding and dismissing the~~

~~appeal. If, after hearing testimony, the appeal tribunal finds that the appellant's~~ If that

explanation, when taken as true and construed most favorably to the appellant, establishes good

cause for the failure to appear, the appeal tribunal ~~shall~~ may issue a decision containing this

finding without a hearing. The same or another appeal tribunal established by the department for

this purpose shall then issue a decision under sub. (3) (b) after conducting a hearing concerning

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any matter in the determination. If such a hearing is held concerning any matter in the determination, the appeal tribunal shall only consider testimony and other evidence admitted at that hearing in making a decision.

3. If the appellant ~~delivers or transmits~~ submits a written explanation for nonappearance to the ~~department~~ appeal tribunal, which is received within 21 days after a decision under subd. 1. is electronically delivered or mailed, an appeal tribunal shall review the appellant's explanation for the failure to appear. The department shall electronically deliver or mail a copy of the appellant's explanation for failing to appear to the respondent. The respondent may submit a written response to the appellant's explanation for failing to appear at the hearing to the department within 7 days of the department electronically delivering or mailing the appellant's explanation to the respondent. If the appeal tribunal finds that the appellant's explanation does not establish good cause for failing to appear, the appeal tribunal may issue a decision containing this finding without a hearing. If the appeal tribunal finds that the appellant's explanation establishes good cause for failing to appear, the appeal tribunal shall issue a decision containing this finding. The same or another appeal tribunal established by the department for this purpose shall then issue a decision under sub. (3) (b) after conducting a hearing concerning any matter in the determination. If such a hearing is held concerning any matter in the determination, the appeal tribunal shall only consider the testimony and other evidence admitted at that hearing in making a decision. ~~the appeal tribunal may set aside the decision dismissing the appeal and the department may schedule a hearing concerning whether there was good cause for the appellant's nonappearance. The department may also provisionally schedule a hearing concerning any matter in the determination. If, after hearing testimony, the appeal tribunal finds that the appellant's explanation does not establish good cause for nonappearance, the appeal tribunal shall~~

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~~issue a decision containing this finding and reinstating the dismissal. If, after hearing testimony, the appeal tribunal finds that the appellant's explanation establishes good cause for nonappearance, the appeal tribunal shall issue a decision containing this finding.~~

108.09 (4)(e) Respondent's failure to appear. 1. If the respondent fails to appear at a hearing held under this section but the appellant is present, and due notice of the hearing was electronically delivered or mailed to the respondent's last-known address, the appeal tribunal shall hold the hearing and consider records and information already submitted to the department by the appellant and the respondent regarding the determination or the appeal and taking take the testimony of the appellant and any witnesses, and shall issue a decision under sub. (3) (b) unless subd. 2. applies.

2. If the respondent ~~delivers or transmits~~ submits a written explanation for failing to appear at the hearing to the appeal tribunal, which is received before a decision favorable to the respondent is electronically delivered or mailed under subd. 1., the appeal tribunal shall acknowledge receipt of the explanation in its decision but shall take no further action concerning the explanation at that time. If the respondent ~~delivers or transmits~~ submits a written explanation for nonappearance to the appeal tribunal which is received before a decision unfavorable to the respondent is electronically delivered or mailed under subd. 1., an appeal tribunal shall review the respondent's explanation of the failure to appear at the hearing. The department shall electronically deliver or mail a copy of the respondent's explanation for failing to appear to the appellant. The appellant may deliver or transmit submit a written response to the respondent's explanation for failing to appear at the hearing to the department within 7 days of the department electronically delivering or mailing the appellant's explanation to the appellant. If the appeal tribunal finds that the respondent's explanation does not establish good cause for the failure to

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appear, the appeal tribunal may issue a decision containing this finding without a hearing. the department may so notify each party and may schedule a hearing concerning whether there was good cause for the respondent's nonappearance. The department may also provisionally schedule a hearing for further testimony concerning any matter in the determination. If, after hearing testimony, the appeal tribunal finds that the respondent's explanation does not establish good cause for nonappearance, the appeal tribunal shall issue a decision containing this finding. The same or another appeal tribunal established by the department for this purpose shall also issue a decision based on the testimony and other evidence presented at the hearing at which the respondent failed to appear. If, after hearing testimony, the appeal tribunal finds that the respondent's If the respondent establishes good cause for failing to appear, the appeal tribunal shall may issue a decision containing this finding without a hearing. The same or another appeal tribunal established by the department for this purpose shall then issue a decision under sub. (3) (b) after conducting a hearing concerning any matter in the determination. If such a 2nd hearing is held concerning any matter in the determination, the appeal tribunal shall only consider testimony and other evidence admitted at that hearing in making a decision.

3. If the respondent ~~delivers or transmits~~ submits a written explanation for failing to appear at the hearing to the appeal tribunal which is received within 21 days after a decision favorable to the respondent is electronically delivered or mailed under subd. 1., the appeal tribunal shall notify the respondent of receipt of the explanation and that since the decision was favorable to the respondent no further action concerning the explanation will be taken at that time. If the respondent ~~delivers or transmits~~ submits a written explanation for failing to appear at the hearing to the appeal tribunal which is received within 21 days after a decision unfavorable to the respondent is electronically delivered or mailed under subd. 1., an appeal tribunal shall

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review the respondent's explanation of the failure to appear. If the appeal tribunal finds that the respondent's explanation does not establish good cause for failing to appear, the appeal tribunal may issue a decision containing this finding without a hearing. If the respondent establishes good cause for failing to appear, the appeal tribunal may issue a decision containing this finding without a hearing. The appeal tribunal may set aside the original decision and the department may schedule a hearing concerning whether there was good cause for the respondent's nonappearance. The department may also provisionally schedule a hearing concerning any matter in the determination. If the original decision is not set aside, the appeal tribunal may, on its own motion, amend or set aside that decision within 21 days after the decision concerning whether there was good cause for the respondent's failure to appear under subd. 1. ~~If, after hearing testimony, the appeal tribunal finds that the respondent's explanation does not establish good cause for nonappearance, the appeal tribunal shall issue a decision containing this finding and, if necessary, reinstating the decision which was set aside. If, after hearing testimony, the appeal tribunal finds that the respondent's explanation establishes good cause for nonappearance, the same or another appeal tribunal established by the department for this purpose shall issue a decision containing this finding.~~ The same or another appeal tribunal established by the department for this purpose shall then issue a decision under sub. (3) (b) after conducting a hearing concerning any matter in the determination. If such a ~~2nd~~ hearing is held concerning any matter in the determination, the appeal tribunal shall only consider the testimony and other evidence admitted at that hearing in making a decision.

108.09 (4) (f) 1. Except as provided in par. (e) 3., within 21 days after its decision was electronically delivered or mailed to the parties, the appeal tribunal may, on its own motion, amend or set aside its decision and may thereafter make new findings and issue a decision on the

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basis of evidence previously submitted in such case, or the same or another appeal tribunal may make new findings and issue a decision after taking additional testimony.

108.09 (4) (f) 2. (intro.) Unless a party or the department has filed a timely petition for review of the appeal tribunal decision by the commission, the appeal tribunal may set aside or amend an appeal tribunal decision, or portion thereof, at any time if the appeal tribunal finds that:

108.09 (4) (f) 3. Unless a party or the department has filed a timely petition for review of the appeal tribunal decision by the commission, the appeal tribunal may, within 2 years after the date of the decision, reopen its decision if it has reason to believe that a party offered false evidence or a witness gave false testimony on an issue material to its decision. Thereafter, and after receiving additional evidence or taking additional testimony, the same or another appeal tribunal may set aside its original decision, make new findings and issue a decision.

108.09 (5) (b) All testimony at any hearing under this section shall be ~~taken down by a stenographer, or recorded by a reording machine~~ electronic means, but need not be transcribed unless either of the parties requests a transcript ~~prior to~~ before expiration of that party's right to further appeal under this section and pays a fee to the commission in advance, the amount of which shall be established by rule of the commission . When the commission provides a transcript ~~is thus furnished~~ to one of the parties upon request, the commission shall provide a copy of the transcript ~~shall be furnished to~~ to all other party parties free of charge. The transcript fee ~~thus~~ collected shall be paid to the administrative account.

108.09 (5) (d) In its review of the decision of an appeal tribunal, the commission shall use the electronic recording of the hearing or a written synopsis of the testimony, and other evidence taken at ~~a~~ the hearing, or a transcript of the hearing prepared, under the direction of the department or commission, ~~by an employee of the department, an employee of the commission~~

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~~or a contractor. If a party shows to the commission that a synopsis is not sufficiently complete and accurate to fairly reflect the relevant and material testimony and other evidence taken, the commission shall direct the preparation of a transcript. If a transcript is prepared, the transcript shall indicate the transcriber's name and whether the transcriber is an employee of the department, an employee of the commission, or a contractor.~~

108.09 (6) (a) The department or any party may petition the commission for review of an appeal tribunal decision, pursuant to commission rules promulgated by the commission, if such petition is received by the ~~department or commission~~ or postmarked within 21 days after the appeal tribunal decision was electronically delivered to the party or mailed to the party's last-known address. The commission shall dismiss any petition if not timely filed unless the petitioner shows good cause that the reason for having failed to file the petition timely was beyond the control of the petitioner. If the petition is not dismissed, the commission may take action under par. (d).

108.09 (6) (b) Within 28 days after a decision of the commission is electronically delivered or mailed to the parties, the commission may, on its own motion, set aside the decision for further consideration and take action under par. (d).

108.09 (6) (d) In any case before the commission for action under this subsection, the commission may affirm, reverse, modify, or set aside the decision on the basis of the evidence previously submitted, ~~may~~ order the taking of additional evidence as to such matters as it may direct, ~~or it may~~, or remand the matter to the department for further proceedings.

108.095 (2) The department shall investigate whether any person has obtained benefits that were payable to another person by means of any false statement or representation, and may issue an initial determination concerning its findings. The department shall electronically deliver

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~~a copy of the determination to,~~ or mail a copy of the determination to the last-known address of each part affected thereby. Unless designated by a determination under this section, an employing unit is not a party to the determination. The department may set aside or amend the determination at any time prior to a hearing concerning the determination under sub. (5) on the basis of subsequent information or to correct a mistake, including an error of law.

108.095 (3) Any party to a determination may appeal that determination by requesting a hearing concerning any matter in that determination if the request is received by the appeal tribunal or postmarked within 14 days after the electronic delivery or mailing.

108.095 (7) Any party may commence an action for judicial review of a decision of the commission under this section, after exhausting the remedies provided under this section, by commencing the action within 30 days after the decision of the commission is delivered electronically to, or mailed to the department and the last-known address of each other party. The scope and manner of judicial review is the same as that provided in s. 108.09 (7).

108.10 (1) The department shall investigate the status, and the existence and extent of liability of an employing unit, and may issue an initial determination accordingly. The department may set aside or amend the determination at any time prior to a hearing on the determination on the basis of subsequent information or to correct a mistake, including an error of law. The department shall electronically deliver a copy of each determination to, or mail a copy of each determination to the last-known address of the employing unit affected thereby. The employing unit may request a hearing as to any matter in that determination if the request is received by the department or postmarked within 21 days after the electronic delivery or mailing and in accordance with such procedure as the department prescribes by rule.

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108.10 (2) Any hearing duly requested shall be held before an appeal tribunal established as provided by s. 108.09 (3), and s. 108.09 (4) and (5) shall be applicable to the proceedings before such tribunal. The department may be a party in any proceedings before an appeal tribunal under this section. The employing unit or the department may petition the commission for review of the appeal tribunal's decision under s. 108.09 (6).

108.10 (6) Any determination by the department or any decision by an appeal tribunal or by the commission is conclusive with respect to an employing unit unless ~~it~~ the department or the employing unit files a timely request for a hearing or petition for review as provided in this section. A determination or decision is binding upon the department only insofar as the relevant facts were included in the record ~~which~~ that was before the department at the time the determination was issued, or before the appeal tribunal or commission at the time the decision was issued.

TO REPEAL 108.09 (2) (cm)

~~(cm) Unless a party has filed a timely request for review of the decision of an appeal tribunal by the commission or has commenced a timely action for the judicial review of the decision of the commission, the department may set aside or amend any appeal tribunal decision adverse to a claimant that has been issued under s. 108.09, 1995 stats., within the 4 year period immediately preceding January 4, 1998, or may reverse, modify or set aside any decision of the commission adverse to a claimant that has been issued under s. 108.09, 1995 stats., within the 4 year period immediately preceding January 4, 1998, if the department finds that the benefits paid or payable to the claimant have been affected by wages earned by the claimant which have not been paid, and the department is provided with notice from the appropriate state or federal court or agency that a wage claim for those wages will not be paid in whole or in part.~~

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TO AMEND DWD 140.13

DWD 140.13 Parties who fail to appear; general provisions. All parties who are required to appear in person shall appear at the hearing location no later than the starting time listed on the notice of hearing. If the appellant does not appear within ~~15~~10 minutes after the scheduled starting time of the hearing, the administrative law judge may dismiss the appeal. If the respondent does not appear within ~~5~~10 minutes after the scheduled starting time of the hearing and the appellant is present, the administrative law judge may commence the hearing. The provisions of s. 108.09 (4), Stats., apply as to the rights of the parties and procedures to be followed with regard to the failure of either party to appear at a hearing under this chapter.

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TO CREATE 108.09 (4) (em)

(em) For the purposes of this section, "good cause" means a compelling reason that would give the party no alternative but to fail to appear.