

APPEALS & HEARINGS



LEVEL 1

APPEALING AN INITIAL DETERMINATION

You will find important information about your rights under the Employment Security Law. This pamphlet explains the process for appealing an initial determination regarding qualification and eligibility to receive unemployment insurance benefits. Lower authority appeals (Level 1) evidentiary hearings are conducted by Appeals Referees in the North Carolina Department of Commerce, Division of Employment Security's (DES) Appeals Section.

Hearings involving former DES employees, monetary eligibility for UI benefits, the legal relationship between a claimant and an employer, or an employer's tax liability status are conducted by the North Carolina Department of Commerce, Board of Review.

For claims filed on or after June 30, 2013, claimants are subject to repayment of overpayment of benefits resulting from any decision that is later reversed on appeal. N.C. Gen. Stat. § 96-18(g)(2).

The hearing is usually your only chance to give all information about the case that has been appealed. For more "Frequently Asked Questions" (FAQs) about appeals, visit the DES website at www.des.nc.gov.

Usted puede obtener una copia de este folleto en español en la oficina de l Departamento de Comercio, División del Desempleo de Carolina del Norte .

Where and how may I file an appeal?

Determinations are made in different work units of DES, depending on the issue. Each determination has instructions for filing an appeal. You must file your appeal at the address provided with the determination and according to the instructions included in the determination.

By what date must my appeal be filed?

The determination will tell you the deadline for filing your appeal. The date listed in the document that you are appealing controls your deadline. If the appeal deadline falls on a weekend or a legal state holiday, the appeal period ends on the next work day.

What should I say if I appeal a determination that is not in my favor?

DES cannot tell you what to say in your appeal. However, your appeal must be written. There is no special form to file an appeal. You must state your desire to appeal and explain your reasons for disagreeing with the determination. Include the docket or issue identification number of the determination being appealed, the claimant's identification number, the names of the claimant and employer, the name of the individual filing the appeal, the official position of an individual filing the appeal on behalf of the party, and a telephone number.

What happens if I file an appeal from an initial determination?

DES will schedule a hearing on your appeal. A Notice of Hearing containing such information as the date, time, contact information for the designated Appeals Referee, and the issue to be decided will be provided to you.

Am I required to have legal representation to appeal an initial determination?

You may, but are not required to have legal representation in administrative hearings. Claimants or employers may file their own appeals and represent themselves (pro se) throughout the administrative appeal process, or have a legal representative represent them. Legal representatives should be obtained before the hearing.

Who can be a legal representative?

A legal representative must be a licensed attorney, or a person supervised by a licensed attorney pursuant to N.C. Gen. Stat. § 96-17(b).

Where can I find an attorney?

You may call the North Carolina Bar Association's Lawyer Referral Service at

(800) 662-7660, Legal Aid of North Carolina toll-free at (866) 219-5262, or check your local telephone directory.

Do I have to tell DES that I have a legal representative?

Yes. Notices or certification of representation must be in writing and provided to the Appeals Referee to become part of the official hearing record.

As a claimant, what should I do if my mailing or email address has changed?

DES generally sends all correspondence to your last known address. You must notify DES in writing within 7 days after the effective date of any address change. You must send notice of your new address to the Customer Call Center, Post Office Box 25903, Raleigh, NC 27611; fax (919) 250-4315, or email to des.us.customerservice@ncommerce.com. You may also update your address in SCUBI. "Last known address" means the most recent address that you provided to DES. DES updates addresses in its records with data from the United States Postal Service (USPS) National Change of Address (NCOA) database. If your last known address in DES's records match a taxpayer's name and previous mailing address in the NCOA database, the new address in the NCOA database is your last known address. If you elect to receive communications from DES by electronic transmission, you are responsible for providing and maintaining a current, valid, email address with DES. If you have an appeal pending, please notify the section handling your appeal.

As an employer, what should I do if my address or email address has changed?

You must notify DES in writing within 7 days after the effective date of the address change. Employers must send notice of a change in address to DES's Tax Administration Section, Attn: Address Change, Post Office Box 26504, Raleigh, North Carolina, 27611; fax to (919) 715-7194; or email to des.tax.customerservice@ncommerce.com. If you have an appeal pending, please notify the section handling your appeal.

What should I do if someone tells me to file an appeal in a way that is different from the information provided to me in the determination?

You are responsible for following the written instructions provided with your determination.

What should I do if I receive documents from DES that seem to conflict with each other?

Read each document carefully, and contact DES immediately. Contact numbers for DES will be provided with the documents, or you can call the main number listed on Panel 8 of this pamphlet, depending on whether you are a claimant or employer. Have the documents with you so that you can show or describe them to a representative. Do not assume that the most recent document cancels the information contained in an earlier correspondence. Keep notes of your contact with DES.

If my notice says that the hearing will be conducted by telephone conference call, how can I get an in-person hearing?

You may request an in-person hearing when the appeal is filed, or by filing a written request with the Appeals Referee listed in your hearing notice. In-person hearings are held at local Division of Workforce Solutions (DWS) or public employment offices throughout the state.

What will happen at the hearing?

The Appeals Referee will preside over the hearing, identify each person present, and explain the purpose of the hearing. In addition to asking questions, the Appeals Referee will also identify and admit evidence, and rule on motions and objections. You and your witnesses will be allowed to testify, offer evidence, and ask questions about any testimony or evidence offered by the other party.

If I cannot appear at the hearing as scheduled, can I get the date and/or time changed?

Maybe. To reschedule a hearing, you must contact the Appeals Referee and give the specific reasons for the request. You must show a legally sufficient reason for wanting to reschedule the hearing. Be prepared to provide documentation to support your reasons. The request will either be granted or denied. Some reasons why the Appeals Referee may grant a request to reschedule a hearing include a party's illness, death in the immediate family, the need for a translator, jury duty, and active military duty. If there is no response to your request by the hearing date, you must be prepared to go forward with the hearing.

What will happen if I do not appear at the hearing?

If you appealed the determination, your appeal will be dismissed. If you are not the appealing party, and you do not appear, the hearing will be held without you. The Appeals Referee will make a decision based on the evidence given by the party attending the hearing. You should attend the hearing even if the de-

termination was in your favor.

What should I do to prepare for the hearing?

Read the hearing notice carefully. Read all documents that came with the hearing notice. This will help you decide which witnesses should testify in the hearing. Gather all documents, recordings, and other evidence that support your case. If the hearing will be held by phone, you must provide copies of your evidence to the Appeals Referee and to each party before the hearing date. For in-person hearings, make enough copies to give to each party and the Appeals Referee. If you do not provide copies to the other party and the Appeals Referee, the Appeals Referee may not take that evidence into consideration when making a decision in the case. Choose your witnesses and arrange for them to be available for the hearing. For telephone hearings, provide your witnesses' names and phone numbers by contacting the Appeals Referee, or by completing and returning the Telephone Hearing Questionnaire that came with your hearing notice.

What evidence should I present at the hearing?

Eyewitness and first-hand testimony is always the best evidence. First-hand testimony includes witnesses who themselves smelled, felt, saw, or heard what was said or done. If there is a recording of alleged conduct, the recording is the best evidence, not a witness's testimony about what he or she saw or heard on a recording that is not offered as evidence. If there is an allegation that a party signed documents or submitted something in writing that you believe is relevant to the case, you may submit this evidence, but you must provide a copy of the documents to the Appeals Referee and the other party.

If I ask a witness to testify voluntarily in the hearing, or to provide documents or recordings that are relevant to my case, and the witness refuses, how can the witness be made to comply?

You should contact the Appeals Referee listed in your hearing notice and request that a subpoena be issued for the witness and/or other evidence. Subpoena requests must be in writing and comply with 04 N.C. Admin. Code 24C .0401.

Are there special requirements for cases involving separation from employment caused by the results of drug or alcohol testing?

Yes. There must be evidence to prove or disprove any test and its results. Evidence should also include work rules and/or policies. The Controlled Substance

Examination Regulation Act (CSERA), N.C. Gen. Stat. 95 §§ 230-235, requires that tests comply with its procedural requirements, unless the test was administered by the U.S. Department of Transportation or Nuclear Regulatory Commission. An employer must establish: (1) that an employee tested positive for a controlled substance; (2) the chain of custody of the drug-testing sample; (3) the reliability of the controlled substance examination; and (4) exactly how the employee violated the employer's policy. Instead of live testimony from a laboratory representative at a hearing, an affidavit from the lab's authorized representative may be presented to prove controlled substance examination results, chain of custody and compliance with applicable testing and retesting required by law. A positive result from a controlled substance examination constitutes misconduct connected with work if an employer shows compliance with CSERA. Similarly, an employee's refusal to comply with a reasonable and properly implemented drug testing policy, without good cause, constitutes misconduct. The results of a controlled substance examination and compliance with statutory or regulatory procedural requirements may be deemed proven if the claimant admits or stipulates to them during the hearing, or by affidavit. See N.C. Gen. Stat. § 96-14.6.

Should I continue to file claims for benefits until all appeals have been decided?

Yes. If you are unemployed, you should continue to file your weekly certification until all appeals have been decided. Benefits will not be paid for weeks not claimed. See N.C. Gen. Stat. §§ 96-14.9 and 96-15(b)(2).

Where can I find answers if I have questions before the hearing?

You may visit the "Frequently Asked Questions" section of the DES website at www.des.nc.gov, review Title 4, Chapter 24 of the North Carolina Administrative Code online, or contact the Appeals Referee listed in your hearing notice. The Appeals Referee cannot discuss the facts of the case, your side of the story, or what the outcome of the case may be. Each party must be present for discussions about the facts of the case. The Appeals Referee can only answer questions about hearing procedures. **Note:** Pursuant to 04 N.C. Admin. Code 24C .0209, the Appeals Referee cannot discuss the case with any party or witness after the hearing is over.

Where can I get a copy of the Employment Security Law?

The Employment Security Law is found in Chapter 96 of the North Carolina General Statutes. DES's administrative rules can be found in Title 4, Chapter 24 of the North Carolina Administrative Code. You can access a copy of the governing law on the DES website at www.des.nc.gov, the Office of

DES MAIN CONTACT NUMBERS

Customer Call Center (Claimants) - 888-737-0259

Employer Call Center - 866-278-3822

If the determination that you are appealing lists the name and number of a different DES work unit, contact that unit before trying to get information from the Appeals Section.

Appeals Section

Division of Employment Security
North Carolina Department of Commerce

Post Office Box 25903

Raleigh, NC 27611-5903

Telephone: 919-707-1060

Facsimile: 919-733-1228

Email: des.public.appeals@nccommerce.com

Website: www.des.nc.gov



Published by the North Carolina Department of Commerce

For more information visit www.des.nc.gov

Form NCDES 568-E (Rev.. 4/2017)

Administrative Hearings website at www.oah.state.nc.us/rules, or at <http://reports.oah.state.nc.us/ncac.asp>.

LEVELS OF APPEALS - CLAIMS

