

**RULES
OF
TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF EMPLOYMENT SECURITY
BUREAU OF UNEMPLOYMENT INSURANCE
APPEALS TRIBUNAL AND BOARD OF REVIEW**

**CHAPTER 0800-11-04
GENERAL REGULATIONS FOR BOTH APPEAL STAGES**

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0800-11-04-.01 ORDER OF PROCEEDINGS.

- (1) In appeals properly before the Appeals Tribunal or the Board of Review, the order of proceedings is as follows:
 - (a) The Appeals Referee, Board Member or Special Master may confer with the parties prior to a hearing to explain the order of proceedings, admissibility of evidence, number and order of witnesses and other preliminary matters.
 - (b) The Appeals Referee, Board Member or Special Master then presiding calls the hearing to order and turns on the mechanical recording device.
- (2) The Appeals Referee, Board Member or Special Master introduces self and gives a very brief statement of the nature of the proceedings. This statement includes a statement that the hearing will be fair and impartial and that the Appeals Tribunal or the Board of Review will be the sole judges of the facts.
- (3) The Appeals Referee, Board Member or Special Master then calls, respectively, on the appellant and on the respondent and asks if they are represented by counsel. If the appellant and or respondent are represented by counsel, the counsel is introduced and the counsel's presence noted for the record. Witnesses for the appellant and for the respondent are introduced and their presence noted at this time.
- (4) The Appeals Referee, Board Member or Special Master identifies the issues as set out in the notice of hearing and gives references to the sections of the Tennessee Employment Security Law involved.
- (5) If either the appellant or the respondent notes exceptions to the issues as outlined by the Appeals Referee, Board Member or Special Master, appropriate time is allowed for discussion and necessary changes may be made to the satisfaction of the parties.
- (6) The Appeals Referee, Board Member or Special Master swears all parties and witnesses that are to be called upon to testify at the hearing; however, a solemn affirmation may be accepted in lieu of oath.

(Rule 0800-11-04-.01, continued)

- (7) Upon request by either the appellant or the respondent, all witnesses who are not to testify immediately are excluded from the hearing room so that no witness may hear the other testimony.
- (8) Any preliminary motions or stipulations are entertained. By agreement, the parties to the appeal may stipulate the facts involved in writing. The Appeals Referee, Board Member or Special Master may then:
 - (a) limit the parties to oral argument, or
 - (b) limit the parties to the filing of written argument within ten days, or
 - (c) in the Appeals Referee's, the Board Member's or the Special Master's discretion, may proceed with the hearing and take such further evidence as the Appeals Referee, the Board Member or the Special Master deems necessary to fully enable the Appeals Referee, the Board Member or the Special Master to determine the issues.
- (9) Opening statements are allowed by both the appellant and the respondent, respectively.
- (10) The appellant calls the appellant's witnesses and the questioning proceeds as follows:
 - (a) Appellant questions.
 - (b) Respondent cross-examines.
 - (c) Appeals Referee, Board Member or Special Master questions.
- (11) Respondent calls the respondent's witnesses and the questioning proceeds as follows:
 - (a) Respondent questions.
 - (b) Appellant cross-examines.
 - (c) Appeals Referee, Board Member or Special Master questions.
- (12) Appellant and respondent may call appropriate rebuttal and rejoinder witnesses after sufficient showing of the need therefor to the Appeals Referee, Board Member or Special Master presiding.
- (13) Closing arguments are allowed by both the appellant and the respondent, respectively.
- (14) The Appeals Referee, Board Member or Special Master advises all parties of the procedures used in reaching a decision on the appeal. The Appeals Referee, Board Member or Special Master further advises that copies of such decision shall be mailed to all interested parties.
- (15) Subparagraphs (1) through (14) of this rule are intended to be merely a general outline as to the conduct of an administrative proceeding before the Department of Labor and Workforce Development Appeals Tribunal and Board of Review. A departure from the literal form or substance of this outline, in order to expedite or insure the fairness of proceedings, would not be in violation of this rule.

Authority: T.C.A. §§50-7-601, 50-7-602, and 50-7-603. **Administrative History:** Original rule certified May 17, 1974. Amendment filed May 9, 1979; effective June 25, 1979. Repeal and new rule filed January 22, 1996; effective May 30, 1996. Amendment filed May 22, 2001; effective September 28,

(Rule 0800-11-04-.01, continued)

2001. August 15, 2009, the Secretary of State transferred 0560-03-04 to 0800-11-04 per Chapter 520 of Public Acts of 1999 and T.C.A. 4-5-221(a)(1).

0800-11-04-.02 DEFAULT.

- (1) Failure of a party to appear at a scheduled hearing before an Appeals Referee, Board Member or Special Master will not result in a decision being automatically rendered against such party.
 - (a) If a party fails or refuses to appear at the time a hearing is scheduled after due notice thereof, or within fifteen (15) minutes thereafter, the Appeals Referee, Board Member, or Special Master shall proceed with the hearing.
 - (b) In such cases as described in subparagraph (a), the Appeals Referee, Board Member or Special Master shall render a decision on the basis of whatever evidence is properly before the Appeals Referee, Board Member or Special Master.
- (2) If at the hearing a party fails or refuses to comply with any lawful order of the Appeals Referee, Board Member or Special Master, necessary to maintain the orderly conduct of such hearing, the Appeals Referee, Board Member or Special Master may close the hearing. In such cases the Appeals Referee, Board Member or Special Master shall render a decision on the basis of whatever evidence is properly before the Appeals Referee, Board Member or Special Master.

Authority: T.C.A. §§50-7-601, 50-7-602, and 50-7-603. **Administrative History:** Original Rule certified May 17, 1974. Repeal and new filed May 9, 1979; effective June 25, 1979. Repeal and new rule filed January 22, 1996; effective May 30, 1996. Amendment filed May 22, 2001; effective September 28, 2001. August 15, 2009, the Secretary of State transferred 0560-03-04 to 0800-11-04 per Chapter 520 of Public Acts of 1999 and T.C.A. 4-5-221(a)(1).

0800-11-04-.03 DISCOVERY.

- (1) Prior to the scheduled date and time of hearing before an Appeals Referee, Board Member or Special Master, interested parties of record to such hearing, or their attorneys, may make written application for, and shall then be supplied with, information from the records of the Department of Labor and Workforce Development directly related to the issues therein contested at such hearing, subject to the provisions of T.C.A. Section 50-7-701.

Authority: T.C.A. §§50-7-601, 50-7 602, and 50-7-603. **Administrative History:** Original rule certified May 17, 1974. Repeal and new filed May 9, 1979; effective June 25, 1979. Repeal and new rule filed January 22, 1996; effective May 30, 1996. Amendment filed May 22, 2001; effective September 28, 2001. August 15, 2009, the Secretary of State transferred 0560-03-04 to 0800-11-04 per Chapter 520 of Public Acts of 1999 and T.C.A. 4-5-221(a)(1).

0800-11-04-.04 ISSUANCE OF SUBPOENAS, WITNESS FEES, PER DIEM, AND MILEAGE.

- (1) The Chief of the Appeals Tribunal and the Special Master or Chairperson of the Board of Review shall issue subpoenas for witnesses or shall issue subpoenas duces tecum to compel the production of books, records, papers, or other objects upon written request by the claimant or the employer. Such written request must state:
 - (a) why the information or witness is needed, and
 - (b) the name and address of the witness, or the location and description of the object sought.

(Rule 0800-11-04-.04, continued)

- (2) Such subpoenas may be served or certified by mail or in any manner prescribed by law for the service of subpoenas in a civil action.
- (3) The Chief of Appeals Tribunal and Chairperson of the Board of Review may, where necessary, issue subpoenas or subpoenas duces tecum upon their own motion in order to secure all evidence needed to provide a fair hearing to all parties of interest.
- (4) The right to subpoena witnesses and to compel the production of records shall be subject to the limitation that no subpoena shall be issued if the Chief of the Appeals Tribunal or Chairman of the Board of Review finds, on the basis of specific facts, that issuance of the subpoena would result in an abusive and oppressive imposition, or would delay the proceedings unnecessarily.
 - (a) In determining whether a subpoena is abusive, oppressive, or would delay the proceedings unnecessarily, the Chief of the Appeals Tribunal or Chairperson of the Board of Review shall consider:
 1. the relevance of the expected testimony to the case, and
 2. the proximity of the prospective witness's information to the issues at stake, and
 3. the possible duplication of testimony among witnesses, and
 4. any other factors which are material to the case.
 - (b) If a subpoena is denied, an offer of proof may be made at the hearing concerning the evidence sought. If, after hearing the available evidence, the hearing officer determines that the proposed evidence could materially affect the outcome of the case, the hearing officer shall continue the hearing for the purpose of issuing the subpoena.
- (5) In case of disobedience to any subpoena issued and served under this section, the Department or any party may apply to the Circuit or Chancery Court of the county of residence of the agency, party or witness, or to any judge or chancellor thereof, for an order to compel compliance with the subpoena.
 - (a) The court shall cite the respondent to appear and shall hear the matter as expeditiously as possible. If the refusal is found to be unlawful, the court shall enter an order requiring compliance.
 - (b) Disobedience of such order shall be punished as contempt of court in the same manner and by the same procedure as is provided for like conduct committed in the course of judicial proceedings.
- (6) A witness appearing before the Appeals Tribunal or the Board of Review under subpoena shall be reimbursed in accordance with T.C.A. Sections 24-4-101, 24-4-102 and 24-4-104 if such witness makes known the witness's purpose to claim such compensation on the record before such witness is dismissed as a witness by the Appeals Referee, Board Member or Special Master presiding.

Authority: T.C.A. §§50-7-602 and 50-7-603. **Administrative History:** Original rule certified May 17, 1974. Repeal and new filed May 9, 1979; effective June 25, 1979. Amendment filed December 2, 1985; effective March 17, 1986. Repeal and new rule filed January 22, 1996; effective May 30, 1996. Amendment filed May 22, 2001; effective September 28, 2001. August 15, 2009, the Secretary of State transferred 0560-03-04 to 0800-11-04 per Chapter 520 of Public Acts of 1999 and T.C.A. 4-5-221(a)(1).

0800-11-04-.05 REPRESENTATION BEFORE THE APPEALS TRIBUNAL AND THE BOARD OF REVIEW.

- (1)
 - (a) Any individual may appear for such individual in any proceeding before the Appeals Tribunal or the Board of Review and such individual may be assisted in such appearance by such individual's duly authorized agent.
 - (b) Any partnership may appear by any of its partners or employees and may be assisted in such appearance by a duly authorized agent.
 - (c) Any corporation or association may appear by an officer or employee of such corporation or association and may be assisted in such appearance by a duly authorized agent.
- (2) Any party may appear and be represented by an attorney at law admitted to practice by the highest court of this State, or the highest court of any State or Territory of the United States.
 - (a) An Appeals Referee, Board Member or Special Master, in the Appeals Referee's, Board Member's or Special Master's discretion, may refuse to allow any attorney or any other person to continue in the representation or assistance of another in any proceeding before the Appeals Referee, Board Member or Special Master if the Appeals Referee, Board Member or Special Master finds said attorney or other person guilty of disorderly, disruptive or unethical conduct during the course of the hearing.
 - (b) Any attorney seeking to appear for or to represent a party to any proceeding before the Appeals Tribunal or the Board of Review or any other person seeking to assist in the appearance of a party to such a proceeding shall cause to be filed, not later than the hearing on the merits, a written notice of appearance. Such written notice of appearance should specify sufficient information necessary to identify the particular proceeding involved and which must include, at least:
 1. the name and social security account number of the claimant
 2. the name and address of the employer,
 3. the name and address of the attorney or other person filing the notice of appearance, and
 4. the name of the party on whose behalf the notice is filed, countersigned by said party.
- (3) All notices of appearance shall be delivered to any Appeals Referee, Board Member or Special Master or mailed to:

Appeals Tribunal or the Board of Review
Tennessee Department of Labor and Workforce Development
Division of Employment Security
7th Floor
500 James Robertson Parkway
Nashville, Tennessee, 37245
- (4) Any notice of appearance received by the Appeals Tribunal shall be deemed as having been filed for the purpose of any further proceeding in the same manner before the Board of Review.

(Rule 0800-11-04-.05, continued)

- (a) After the expiration of three (3) days from the date of receipt of a notice of appearance, any notice of hearing or decision subsequently mailed to a party by the Appeals Tribunal or Board of Review shall also be mailed to the attorney or other person who has on file a properly executed notice of appearance.
- (5) Any requests for copies of other documents in any pending matter before the Appeals Tribunal or the Board of Review shall be subject to a reasonable copy fee and the provisions of T.C.A. Section 50-7-701.

Authority: T.C.A. §§50-7-601, 50-7-602, and 50-7-603. **Administrative History:** Original rule certified May 9, 1979; effective June 25, 1979. Amendment filed January 4, 1983; effective February 3, 1983. Repeal and new rule filed January 22, 1996; effective May 30, 1996. Amendment filed May 22, 2001; effective September 28, 2001. August 15, 2009, the Secretary of State transferred 0560-03-04 to 0800-11-04 per Chapter 520 of Public Acts of 1999 and T.C.A. 4-5-221(a)(1).

0800-11-04-.06 SCOPE OF EXAMINATION AND RULES OF EVIDENCE.

- (1) In any hearing before the Appeals Tribunal or the Board of Review, witnesses may be examined regarding any matter, not privileged, which is relevant and material to the issues to be determined at such hearing. The rules of evidence applicable at such hearing shall be as provided for in T.C.A. Section 4-5-313.
- (2) The Appeals Referee, Board Member or Special Master assigned to hear the appeal may rule on and decide any question concerning the admissibility of evidence or procedural questions of law.
 - (a) It shall not be ground for objection that testimony will be inadmissible at the hearing if, in the discretion of the Appeals Referee, Board Member or Special Master presiding, the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence.
- (3) If an objection to proffered evidence is sustained by the Appeals Referee, Board Member or Special Master, the examining party or attorney may make a specific offer of what the examining officer or attorney expects to prove by that evidence.
- (4) Repealed.

Authority: T.C.A. §§50-7-601, 50-7-602, and 50-7-603. **Administrative History:** Original rule certified May 17, 1974. Amendment filed May 9, 1979; effective June 25, 1979. Repeal and new rule filed January 22, 1996; effective May 30, 1996. Amendment filed May 22, 2001; effective September 28, 2001. August 15, 2009, the Secretary of State transferred 0560-03-04 to 0800-11-04 per Chapter 520 of Public Acts of 1999 and T.C.A. 4-5-221(a)(1).

0800-11-04-.07 BURDEN OF PROOF.

- (1) The burden of proof is on the claimant for benefits so long as such claimant is asserting the affirmation of the issue involved. Cross Reference: Clinton vs. Hake, 206 S.W. 2d 889 (Tennessee Supreme Court).

Authority: T.C.A. §§50-7-601, 50-7-602, and 50-7-603. **Administrative History:** Original rule certified May 17, 1974. Amendment filed May 9, 1979; effective June 25, 1979. Repeal and new rule filed January 22, 1996; effective May 30, 1996. Amendment filed May 22, 2001; effective September 28, 2001. August 15, 2009, the Secretary of State transferred 0560-03-04 to 0800-11-04 per Chapter 520 of Public Acts of 1999 and T.C.A. 4-5-221(a)(1).

0800-11-04-.08 CONTINUANCES.

- (1) All requests for continuances shall be made in writing as soon as reasonably practicable and shall, except in the event of an unforeseen emergency, be received no later than 48 hours prior to the scheduled date and time of hearing. Such requests may be granted at the discretion of the Appeals Tribunal or the Board of Review. In addition, an Appeals Referee, Board Member, or Special Master may grant a continuance during the course of a hearing in order to secure all of the evidence the Appeals Referee, Board Member or Special Master deems necessary for a fair hearing to all parties of interest or at any time for other good cause shown.

Authority: T.C.A. §§50-7-601, 50-7-602, and 50-7-603. **Administrative History:** Original rule certified May 17, 1974. Amendment filed May 9, 1979; effective June 25, 1979. Repeal and new rule filed January 22, 1996; effective May 30, 1996. Amendment filed May 22, 2001; effective September 28, 2001. . August 15, 2009, the Secretary of State transferred 0560-03-04 to 0800-11-04 per Chapter 520 of Public Acts of 1999 and T.C.A. 4-5-221(a)(1).

0800-11-04-.09 INSPECTION OF DECISIONS OF THE APPEALS TRIBUNAL AND THE BOARD OF REVIEW.

- (1) Copies of all decisions of the Appeals Tribunal and the Board of Review shall be kept on file for three (3) years at the office of the Department of Labor and Workforce Development at Nashville, Tennessee. Such decisions shall be open for public inspection subject to the provisions of T.C.A. Section 50-7-701 and without, in any manner, revealing the identity of any of the parties or witnesses involved.

Authority: T.C.A. §§50-7-601, 50-7-602, and 50-7-603. **Administrative History:** Original rule filed May 9, 1979; effective June 25, 1979. Repeal and new rule filed January 22, 1996; effective May 30, 1996. Amendment filed May 22, 2001; effective September 28, 2001. August 15, 2009, the Secretary of State transferred 0560-03-04 to 0800-11-04 per Chapter 520 of Public Acts of 1999 and T.C.A. 4-5-221(a)(1).