

§ 320.12

(g) *Evidence provided by base-year employer(s) and most recent employer, if different.* In making a decision under paragraph (d) of this section, the Director of Unemployment and Sickness Insurance shall consider all evidence of record including any evidence submitted by the claimant's base-year employer(s) and the most recent employer, if different. Where a claimant has requested waiver the Director shall notify his or her base-year employer(s) and the most recent employer, if different, of the right to submit, within 30 days, any information which may be pertinent to the waiver decision.

[56 FR 65680, Dec. 18, 1991]

§ 320.12 Appeal to the Bureau of Hearings and Appeals.

Any party aggrieved by a decision under § 320.10 of this part or a claimant aggrieved by decision under § 320.11 of this part may appeal such decision to the Bureau of Hearings and Appeals. Such an appeal shall be made by filing the form prescribed by the Board. The appeal must be filed with the Bureau of Hearings and Appeals within 60 days from the date upon which the notice of the decision on reconsideration or waiver of recovery was mailed to either a claimant or the base-year employer(s). If no appeal is filed within the time limits specified in this section, the decision of the adjudicating office under § 320.10 or § 320.11 of this part shall be considered final and no further review of such decision shall be available unless the hearings officer finds that there was good cause for the failure to file a timely appeal as described in § 320.10 of this part.

[56 FR 65680, Dec. 18, 1991]

§ 320.18 Hearings officer.

Within a reasonable time after a party has filed a properly executed appeal, the Director of Hearings and Appeals shall appoint a hearings officer to act in the appeal. Such hearings officer shall not have any interest in the parties or in the outcome of the proceeding, shall not have directly participated in the initial determination from which the appeal is made, and shall not have any other interest in the matter which might prevent a fair and impar-

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tial hearing. In any case in which employee status or creditability of compensation is an issue, the hearings officer shall receive evidence and report to the Board thereon with recommendations. In all other cases, the hearings officer shall consider and decide the appeal; in each such case where the hearings officer determines that an issue of fact exists, the parties shall have the right to a hearing.

[56 FR 65680, Dec. 18, 1991]

§ 320.19 Election to participate.

(a) *Claimant files an appeal.* Where the claimant has filed an appeal under § 320.12 of this part the hearings officer shall notify the claimant's base-year employer(s) that such an appeal has been filed and shall provide the base-year employer with a statement of issues on appeal. The hearings officer shall inform the base-year employer(s) that such employer(s) shall have a right to be present at any hearing which is to be held under this part and the right to submit evidence with respect to the issues on appeal. Within 30 days of the date of such notice a base-year employer shall provide the hearings officer with a statement in writing which summarizes the evidence which such employer intends to present with respect to the issues on appeal, which indicates whether the employer wishes to be present at any hearing which may be held, and which designates who will represent the employer with respect to the appeal. An employer who fails to respond in the time prescribed shall be barred from further participation in the appeal and shall forfeit any further right to review as provided for in this part.

(b) *Base-year employer files an appeal.* Where a base-year employer files an appeal under § 320.12 of this part, the hearings officer shall notify the claimant that such an appeal has been filed and shall provide the claimant with a statement of issues on appeal. The hearings officer shall inform the claimant that he or she or a duly authorized representative shall have a right to be present at any hearing which is to be held under this part and the right to submit evidence with respect to the issues on appeal. Within 30 days of the date of such notice the claimant shall

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file with the hearings officer an election to participate in the appeal. A claimant who fails to file an election in the time prescribed shall be barred from further participation in the appeal and shall forfeit any right of review as provided for in this part.

[56 FR 65680, Dec. 18, 1991]

§ 320.20 Powers of hearings officer.

In the development of an appeal, the hearings officer shall have the power to hold hearings, require and compel the attendance of witnesses, administer oaths, take testimony, and make all necessary investigations.

§ 320.22 Notice of hearing.

(a) *Notification of parties.* In any case in which an oral hearing is to be held, the hearings officer shall schedule a time and place for the conduct of the hearing. The hearings officer shall promptly notify the party or parties to the proceeding by mail as to said time and place for the hearing. The notice shall include a statement of the specific issues involved in the case. The hearings officer shall make every effort to hold the hearing within 150 days after the date the appeal is filed.

(b) *Notice of objection.* A party to the proceeding may object to the time and place of the hearing, or as to the stated issues to be resolved, by filing a written notice of objection with the hearings officer. The notice of objection shall clearly set forth the matter objected to and the reasons for such objection, and, if the matter objected to is the time and place of the hearing, said notice shall further state that party's choice as to the time and place for the hearing. Said notice of objection shall be filed at the earliest practicable time, but in no event shall said notice be filed later than five business days prior to the scheduled date of the hearing.

(c) *Ruling on objection.* The hearings officer shall rule on any objection timely filed by a party under this section and shall notify the party of his or her ruling thereon. The hearings officer may for good cause shown, or upon his or her own motion, reschedule the time and/or place of the hearing. The hearings officer also may limit or expand

the issues to be resolved at the hearing.

(d) *Failure to appear or to file objection.* If neither a party nor his or her representative appears at the time and place scheduled for the hearing, that party shall be deemed to have waived his or her right to an oral hearing unless said party either filed with the hearings officer a notice of objection showing good cause why the hearing should have been rescheduled, which notice was timely filed but not ruled upon, or, within 10 days following the date on which the hearing was scheduled, said party files with the hearings officer a motion to reschedule the hearing showing good cause why neither the party nor his or her representative appeared at the hearing and further showing good cause as to why said party failed to file at the prescribed time any notice of objection to the time and place of the hearing.

(e) *Rescheduling the hearing.* If the hearings officer finds either that a notice of objection was timely filed showing good cause to reschedule the hearing, or that the party has within 10 days following the date of the hearing filed a motion showing good cause for failure to appear and to file a notice of objection, the hearings officer shall reschedule the hearing. If the hearings officer finds that the hearing shall not be rescheduled, he or she shall so notify the party in writing.

[53 FR 2488, Jan. 28, 1988]

§ 320.25 Hearing of appeal.

(a) *Manner of conducting hearing.* The hearing shall be informal, fair, and impartial, and shall be conducted in such manner as to ascertain the substantial rights of the parties.

(b) *Compilation of evidence.* Any party, or his duly authorized representative, shall be afforded full opportunity to present further evidence upon any controversial question of fact, orally or in writing, or by means of exhibits; to examine and cross-examine witnesses, and to present argument. If, in the judgment of the hearings officer, evidence not offered is available and relevant, and is material to the merits of the appeal, the hearings officer shall