

Part 3

Adjudicative Proceedings

35A-1-301 Presiding officers for adjudicative proceedings -- Subpoenas -- Independent judgment -- Consolidation -- Record -- Notice of order.

- (1)
 - (a) The executive director shall authorize the Division of Adjudication to call, assign a presiding officer, and conduct hearings and adjudicative proceedings when an application for a proceeding is filed with the Division of Adjudication under this title.
 - (b) The director of the Division of Adjudication or the director's designee may issue subpoenas. Failure to respond to a properly issued subpoena may result in a contempt citation and offenders may be punished as provided in Section 78B-6-313.
 - (c) Witnesses subpoenaed under this section are allowed fees as provided by law for witnesses in the district court of the state. The fees shall be paid as follows:
 - (i) The witness fees shall be paid by the state unless the witness is subpoenaed at the instance of a party other than the department.
 - (ii) Notwithstanding Subsection (1)(c)(i), if the subpoena is issued under Chapter 4, Employment Security Act, the fees are part of the expense of administering that chapter.
 - (d) A presiding officer assigned under this section may not participate in any case in which the presiding officer is an interested party. Each decision of a presiding officer shall represent the presiding officer's independent judgment.
- (2) In the judgment of the presiding officer having jurisdiction of the proceedings the consolidation would not be prejudicial to any party, when the same or substantially similar evidence is relevant and material to the matters in issue in more than one proceeding:
 - (a) the presiding officer may fix the same time and place for considering each matter;
 - (b) jointly conduct hearings;
 - (c) make a single record of the proceedings; and
 - (d) consider evidence introduced with respect to one proceeding as introduced in the others.
- (3)
 - (a) The director shall keep a full and complete record of all adjudicative proceedings in connection with a disputed matter.
 - (b) All testimony at any hearing shall be recorded but need not be transcribed unless the disputed matter is appealed. If a party requests transcription, the transcription shall be provided at the party's expense.
 - (c) All records on appeals shall be maintained in the offices of the Division of Adjudication. The records shall include an appeal docket showing the receipt and disposition of the appeals.
- (4) A party in interest shall be given notice of the entry of a presiding officer's order or any order or award of the department. The mailing of the copy of the order or award to the last-known address in the files of the department of a party in interest and to the attorneys or agents of record in the case, if any, is considered to be notice of the order.
- (5) In any formal adjudication proceeding, the presiding officer may take any action permitted under Section 63G-4-206.

Amended by Chapter 3, 2008 General Session
Amended by Chapter 382, 2008 General Session

35A-1-302 Review of administrative order -- Finality of Workforce Appeals Board's order.

- (1) An order entered by an administrative law judge under this title is the final decision of the department unless a further appeal is initiated under this title and in accordance with the rules of the department governing the review.
- (2) The order of the Workforce Appeals Board on review is final, unless set aside by the court of appeals.
- (3) If an order is appealed to the court of appeals after the party appealing the order has exhausted all administrative appeals, the court of appeals has jurisdiction to review, reverse, or annul any order of the Workforce Appeals Board, or to suspend or delay the operation or execution of the order of the Workforce Appeals Board being appealed.

Amended by Chapter 375, 1997 General Session

35A-1-303 Rulemaking.

- (1)
 - (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules governing adjudicative procedures including the forms of notices and the manner of serving notice in all claims.
 - (b) Except as provided in this title and Title 63G, Chapter 4, Administrative Procedures Act, the rules made under this section are not required to conform to common law or statutory rules of evidence or other technical rules of procedure.
- (2) The rules made under this section shall include procedures to dispose of cases informally, or to expedite claims adjudication, narrow issues, and simplify the methods of proof at hearings.
- (3) Any rule made concerning proceedings before the Workforce Appeals Board shall be made in consultation with the Workforce Appeals Board.

Amended by Chapter 382, 2008 General Session

35A-1-304 Review authority of the Workforce Appeals Board.

- (1)
 - (a) In accordance with this title and Title 63G, Chapter 4, Administrative Procedures Act, the Workforce Appeals Board may allow an appeal from a decision of an administrative law judge if a motion for review is filed with the Division of Adjudication within the designated time by any party entitled to the notice of the administrative law judge's decision.
 - (b) An appeal filed by the party shall be allowed as of right if the decision of the administrative law judge did not affirm the department's prior decision.
 - (c) If the Workforce Appeals Board denies an application for appeal from the decision of an administrative law judge, the decision of the administrative law judge is considered a decision of the Workforce Appeals Board for purposes of judicial review and is subject to judicial review if further appeal is initiated under this title.
- (2) On appeal, the Workforce Appeals Board may on the basis of the evidence previously submitted in the case, or upon the basis of any additional evidence it requires:
 - (a) affirm the decision of the administrative law judge;
 - (b) modify the decision of the administrative law judge; or
 - (c) reverse the findings, conclusions, and decision of the administrative law judge.
- (3) The Workforce Appeals Board shall promptly notify the parties to any proceedings before it of its decision, including its findings and conclusions, and the decision is a final order of the department unless within 30 days after the date the decision of the Workforce Appeals Board is issued, further appeal is initiated under this title.

Amended by Chapter 116, 1998 General Session

35A-1-305 Independence of Workforce Appeals Board.

A member of the Workforce Appeals Board may not participate in any case in which the member is an interested party. Each decision of a member of the Workforce Appeals Board shall represent the member's independent judgment.

Amended by Chapter 375, 1997 General Session

35A-1-306 Electronic or similar methods.

The department may by rule permit hearings or other adjudicative hearings to be conducted, recorded, or published by means of electronic devices or other similar methods.

Enacted by Chapter 240, 1996 General Session

35A-1-307 Scope of part.

This part does not apply to adjudication under:
(1)Chapter 3, Employment Support Act; or
(2)Chapter 5, Part 1, Job Training Coordination Act.

Repealed and Re-enacted by Chapter 375, 1997 General Session