

**35A-4-508 Review of decision or determination by division -- Administrative law judge -- Division of adjudication -- Workforce Appeals Board -- Judicial review by Court of Appeals -- Exclusive procedure.**

- (1)
  - (a) A review of a decision or determination involving contribution liability or applications for refund of contributions shall be made by the division in accordance with the provisions of this chapter.
  - (b) The division in conducting the review may in its discretion:
    - (i) refer the matter to an administrative law judge;
    - (ii) decide the application for review on the basis of any facts and information as may be obtained; or
    - (iii) hear argument or hold an informal hearing to secure further facts.
  - (c) After the review, notice of the decision shall be given to the employing unit.
  - (d) The decision made pursuant to the review is the final decision of the division unless, within 10 days after the date of notification or mailing of the decision, a further appeal is initiated under the provisions of this section.
- (2)
  - (a) Within 10 days after the mailing or personal delivery of a notice of a determination or decision rendered following a review under Subsection (1), an employing unit may appeal to the Division of Adjudication by filing a notice of appeal.
  - (b) The administrative law judge shall give notice of the pendency of the appeal to the division and any parties entitled to notice as provided by department rule. The administrative law judge shall receive into the record of the appeal any documents or other records provided by the division, and may obtain or request any additional documents or records held by the division or any of the parties that the administrative law judge considers relevant to a proper determination of the appeal.
  - (c) After affording the parties reasonable opportunity for a fair hearing, the administrative law judge shall make findings and conclusions and on that basis affirm, modify, or reverse the determination of the division.
  - (d) The parties and the division shall be promptly notified of the administrative law judge's decision and furnished a copy of the decision and findings.
  - (e) The decision of the administrative law judge is considered to be a final order of the department unless within 30 days after the date the decision of the administrative law judge is issued further appeal is initiated under this section and Chapter 1, Part 3, Adjudicative Proceedings.
- (3)
  - (a) The director of the Division of Adjudication shall assign an impartial, salaried administrative law judge selected in accordance with Subsection 35A-4-502(4)(a) to hear and decide referrals or appeals relating to claims for benefits or to make decisions affecting employing units under this chapter.
  - (b) 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 on review.
- (4) The Workforce Appeals Board may review and decide an appeal from a decision of an administrative law judge issued under this chapter.
- (5)
  - (a) The manner in which disputed matters are presented, the reports required from the claimant and employing units, and the conduct of hearings and appeals shall be in accordance with

rules prescribed by the department for determining the rights of the parties, whether or not the rules conform to common-law or statutory rules of evidence and other technical rules of procedure.

- (b) When the same or substantially similar evidence is relevant and material to the matters in issue in more than one proceeding, the same time and place for considering each matter may be fixed, hearings jointly conducted, a single record of the proceedings made, and evidence introduced with respect to one proceeding considered as introduced in the others, if in the judgment of the administrative law judge having jurisdiction of the proceedings, the consolidation would not be prejudicial to any party.
- (6)
- (a) Except for reconsideration of any determination under Subsection 35A-4-406(2), any right, fact, or matter in issue, directly passed upon or necessarily involved in a determination or redetermination that has become final, or in a decision on appeal under this section that has become final, is conclusive for all the purposes of this chapter as between the division, the claimant, and all employing units that had notice of the determination, redetermination, or decision. Subject to appeal proceedings and judicial review as provided in this section, any determination, redetermination, or decision as to rights to benefits is conclusive for all the purposes of this chapter and is not subject to collateral attack by any employing unit, irrespective of notice.
  - (b) Any findings of fact or law, judgment, conclusion, or final order made by an unemployment insurance hearing officer, administrative law judge, or any person with the authority to make findings of fact or law in any action or proceeding before the unemployment insurance appeals tribunal, is not conclusive or binding in any separate or subsequent action or proceeding, between an individual and the individual's present or prior employer, brought before an arbitrator, court, or judge of this state or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts.
- (7)
- (a) Any decision in the absence of an appeal as provided becomes final upon issuance and judicial review may be permitted only after any party claiming to be aggrieved has exhausted the party's remedies before the department as provided by this chapter.
  - (b) The division is a party to any judicial action involving any decisions and shall be represented in the judicial action by any qualified attorney employed by the department and designated by it for that purpose or at the division's request by the attorney general.
- (8)
- (a) Within 30 days after the decision of the Workforce Appeals Board is issued, any aggrieved party may secure judicial review by commencing an action in the court of appeals against the Workforce Appeals Board for the review of its decision, in which action any other party to the proceeding before the Workforce Appeals Board shall be made a defendant.
  - (b) In that action a petition, that shall state the grounds upon which a review is sought, shall be served upon the Workforce Appeals Board or upon that person the Workforce Appeals Board designates. This service is considered completed service on all parties but there shall be left with the party served as many copies of the petition as there are defendants and the Workforce Appeals Board shall mail one copy to each defendant.
  - (c) With its answer, the Workforce Appeals Board shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter together with its findings of fact and decision, in accordance with the requirements of the Utah Rules of Appellate Procedure.

- (d) The Workforce Appeals Board may certify to the court questions of law involved in any decision by the board.
- (e) In any judicial proceeding under this section, the findings of the Workforce Appeals Board as to the facts, if supported by evidence, are conclusive and the jurisdiction of the court is confined to questions of law.
- (f) It is not necessary in any judicial proceeding under this section to enter exceptions to the rulings of the division, an administrative law judge, Workforce Appeals Board and no bond is required for entering the appeal.
- (g) Upon final determination of the judicial proceeding, the division shall enter an order in accordance with the determination. In no event may a petition for judicial review act as a supersedeas.
- (9) The procedure provided for hearings and decisions with respect to any decision or determination of the division affecting claimants or employing units under this chapter is the sole and exclusive procedure notwithstanding any other provision of this title.

Amended by Chapter 13, 1998 General Session