

LABOR COMMISSION - APPEALS BOARD

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: John L. Valentine

This act modifies the Utah Labor Code to provide for temporary appointments to the Appeals Board in cases where there is a vacancy on the Appeals Board. This act makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

34A-1-303, as enacted by Chapter 375, Laws of Utah 1997

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **34A-1-303** is amended to read:

34A-1-303. Review of administrative decision.

(1) A decision entered by an administrative law judge under this title is the final order of the commission unless a further appeal is initiated;

(a) (a) under this title; and

(b) (b) in accordance with the rules of the commission governing the review.

(2) (a) Unless otherwise provided, a person who is entitled to appeal a decision of an administrative law judge under this title[;] may appeal the decision by filing a motion for review with the Division of Adjudication.

(b) (i) Unless a party in interest to the appeal requests in accordance with Subsection (3) that the appeal be heard by the Appeals Board, the commissioner shall hear the review in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

(ii) A decision of the commissioner is a final order of the commission unless set aside by the court of appeals.

(c) (i) If in accordance with Subsection (3) a party in interest to the appeal requests that the appeal be heard by the Appeals Board, the Appeals Board shall hear the review in accordance with:

(A) Section 34A-1-205; and

(B) Title 63, Chapter 46b, Administrative Procedures Act.

(ii) A decision of the Appeals Board is a final order of the commission unless set aside by the court of appeals.

(3) A party in interest may request that an appeal be heard by the Appeals Board by filing the request with the Division of Adjudication:

(a) as part of the motion for review; or

(b) if requested by a party in interest who did not file a motion for review, within 20 days of the date the motion for review is filed with the Division of Adjudication.

(4) (a) On appeal, the commissioner or the Appeals Board may:

(i) affirm the decision of an administrative law judge;

(ii) modify the decision of an administrative law judge;

(iii) return the case to an administrative law judge for further action as directed; or

(iv) reverse the findings, conclusions, and decision of an administrative law judge.

(b) The commissioner or Appeals Board may not conduct a trial de novo of the case.

(c) The commissioner or Appeals Board may base its decision on:

(i) the evidence previously submitted in the case; or

(ii) on written argument or written supplemental evidence requested by the commissioner or Appeals Board.

(d) The commissioner or Appeals Board may permit the parties to:

(i) file briefs or other papers; or

(ii) conduct oral argument.

(e) The commissioner or Appeals Board shall promptly notify the parties to any proceedings before ~~[it]~~ the commissioner or Appeals Board of its decision, including its findings and conclusions.

~~[(5) (a) A member of the Appeals Board may not participate in any case in which the member is an interested party.]~~

(5) (a) Each decision of a member of the Appeals Board shall represent the member's independent judgment.

(b) A member of the Appeals Board may not participate in any case in which the member is an interested party.

~~[(b)]~~ (c) If a member of the Appeals Board may not participate in a case because the member is an interested party, the two members of the Appeals Board that may hear the case shall assign an individual to participate as a member of the board in that case if the individual:

- (i) is not ~~[a]~~ an interested party in the case; ~~[and]~~
- (ii) was not previously assigned to:
 - (A) preside over any proceeding related to the case; or
 - (B) take any administrative action related to the case[-]; and

(iii) is representative of the following group that was represented by the member that may not hear the case under Subsection (5)(b):

- (A) employers;
- (B) employees; or
- (C) the public.

(d) The two members of the Appeals Board may appoint an individual to participate as a member of the Appeals Board in a case if:

(i) there is a vacancy on the board at the time the Appeals Board hears the review of the case;

(ii) the individual appointed meets the conditions described in Subsections (5)(c)(i) and (ii); and

(iii) the individual appointed is representative of the following group that was represented by the member for which there is a vacancy:

- (A) employers;
- (B) employees; or
- (C) the public.

(6) 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:

- (a) review, reverse, remand, or annul any order of the commissioner or Appeals Board;

or

(b) suspend or delay the operation or execution of the order of the commissioner or Appeals Board being appealed.