House Engrossed

FILED

JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

CHAPTER 119

HOUSE BILL 2246

AN ACT

AMENDING SECTIONS 23-672, 23-674 AND 23-681, ARIZONA REVISED STATUTES; RELATING TO EMPLOYMENT SECURITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 23-672, Arizona Revised Statutes, is amended to read:

23-672. Appeals board; review of board decision

A. ~~There is established~~ Within the department, an appeals board IS ESTABLISHED consisting of four members. The director shall appoint the members of the appeals board and shall designate one member to serve as chairman.

B. Hearings conducted by or at the direction of the appeals board shall be conducted as provided by section 23-674 and other provisions of this chapter. The department shall prescribe by rule the procedures for petitioning for review, removal of cases to the board~~,~~ and appeals under section 23-673. Upon the filing of a petition for review, the department shall prepare a complete record~~, including a transcript,~~ unless the parties stipulate otherwise.

C. In any case in which a petition for review of an appeal tribunal or hearing officer decision has been filed by an interested party, the appeals board may remand the case to any appeal tribunal or hearing officer for further proceedings or may review the matter on the basis of the record in the case, take additional evidence or rehear the matter and affirm, reverse, modify or set aside the decision of the appeal tribunal or hearing officer. Upon notice to the interested parties, a petition for review may be reviewed by one member of the appeals board designated by the chairman. If an interested party objects to review by one board member, the matter shall be heard by three members of the appeals board.

D. Unless a petition for hearing or review of a department determination made under ~~the provisions of~~ article 5 of this chapter is withdrawn, the appeals board after affording the parties reasonable opportunity for a fair hearing shall issue its decision.

E. Every decision of the appeals board shall be in writing. If the decision is issued by three members of the appeals board, and the appeals board is not unanimous, the decision of the majority shall control. The minority may file a dissent from the decision, setting forth the reasons therefor. All interested parties shall be promptly notified of the decision and the reasons therefor. Notice to the parties of the decision shall be accompanied by instructions explaining the procedure for requesting review as described in subsection F of this section and clearly indicating the final date for filing a request for review.

F. A party dissatisfied with the decision under subsection E of this section may file a request for review within thirty days from the date of the decision, which shall be a written request and memorandum stating the reasons why the appeals board's decision is in error and containing appropriate citations of the record, rules and other authority. Upon motion, and for good cause, the appeals board may extend the time for filing a request for review. The timely filing of such a request for review is a prerequisite to

any further appeal. The appeals board shall notify all parties of the filing of a request for review and shall allow fifteen days from the date of the notice for any party to respond. Thereafter, the appeals board shall issue a decision upon review affirming, modifying or reversing its decision, or ordering the taking of additional testimony. All parties shall be given written notice by mail of the decision upon review.

Sec. 2. Section 23-674, Arizona Revised Statutes, is amended to read:

23-674. Procedure in rendering decisions and orders; rights of parties; representation

A. All interested parties to a hearing before the appeal tribunal or the appeals board shall be given reasonable notice of the hearing and afforded an opportunity for hearing. The notice shall state the time, place and issues involved but if by reason of the nature of the proceeding the issues cannot be fully stated in advance of the hearing, or if subsequent amendment of the issues is necessary, they shall be fully stated as soon as practicable, and opportunity shall be afforded all parties to present evidence and argument with respect thereto. If a party's legal or factual basis of contention is substantially changed at the hearing, causing surprise to the opposing party, the hearing shall be rescheduled with timely notice of the nature of the new contention unless a waiver on the record is obtained from the party claiming surprise or the surprise could have been avoided with due diligence. ~~The proceedings~~ ALL HEARINGS shall be recorded~~, but transcripts need not be prepared unless required by the director or if further appeal is taken~~. THE APPEAL TRIBUNAL SHALL SECURE EITHER A COURT REPORTER OR AN ELECTRONIC MEANS OF PRODUCING A CLEAR AND ACCURATE RECORD OF THE PROCEEDING AT THE DEPARTMENT'S EXPENSE. IF A PARTY FILES AN APPLICATION FOR APPEAL TO THE COURT OF APPEALS PURSUANT TO SECTION 41-1993 AND THE HEARING HAS NOT YET BEEN TRANSCRIBED, THE HEARING SHALL BE TRANSCRIBED AT THE DEPARTMENT'S EXPENSE. Informal disposition may be made of any case by stipulation, agreed settlement, consent order or default.

B. In a hearing conducted pursuant to this section, parties may be represented in the following manner:

1. An individual, either an employee or an employer, may represent himself or may be represented by a duly authorized agent who is not charging a fee for the representation.

2. An employer, including a corporate employer, may represent itself through an officer or employee.

3. Any party may be represented by a person who is charging a fee for the representation and who is either a duly authorized agent who was previously or is currently retained by a party for purposes other than representation in an unemployment compensation hearing or an attorney who is authorized to practice law in this state. An attorney or agent representing a party before an appeal tribunal or the appeals board may charge a fee not in excess of seven hundred fifty dollars but may request the department to

approve an additional amount which is reasonable for the services rendered. This is limited only to an unemployment compensation appeal.

C. Notwithstanding any other law, representation of a party at a hearing conducted pursuant to this section is not deemed to be the practice of law.

D. The tribunal and the appeals board may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. It shall give effect to the rules of privilege recognized by law. It may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. All evidence, including records and documents in the possession of the department of which it desires to avail itself, shall be offered and made a part of the record in the case, and no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. The tribunal and the appeals board may take notice of judicially cognizable facts and in addition may take notice of general, technical or scientific facts within its specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. The tribunal and the appeals board may utilize their experience, technical competence and specialized knowledge in the evaluation of the evidence presented to them. Each party shall have the right of cross-examination of the witnesses who testify and shall have the right to submit rebuttal evidence.

E. Every decision and order adverse to a party to the proceedings shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Parties to the proceeding shall be notified of the decision and order in person or by mail.

Sec. 3. Section 23-681, Arizona Revised Statutes, is amended to read:

23-681. Changing hearing date; good cause

~~A. At the oral or written request of a party or on its own motion, the hearing officer may order, orally or in writing, that the hearing be postponed. A postponement shall be granted, if it is the party's first request and the request is made at least five calendar days prior to the time of hearing.~~

A. THE SCHEDULED HEARING DATE MAY BE ADVANCED OR POSTPONED IF THE PARTIES AGREE OR ON A SHOWING OF GOOD CAUSE.

B. ~~If a request for postponement is made with fewer than five calendar days' notice or is the second or any subsequent request of a party, the postponement shall be granted on a showing of good cause.~~ Good cause exists if the request is reasonable or the circumstance causing the request is beyond the control of the requesting party and failure to grant the postponement would cause undue hardship to the requesting party.

C. The department of economic security shall adopt rules to set standards under which a party may be excused for failure to attend a hearing for good cause.

APPROVED BY THE GOVERNOR APRIL 24, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 24, 2007.