

CHAPTER 16: UNEMPLOYMENT COMPENSATION/ REEMPLOYMENT ASSISTANCE APPEALS

A. Introduction.

The State of Florida Department of Economic Opportunity (“DEO”) administers the State’s Reemployment Assistance Program, which in part involves the payment of compensation to unemployed individuals. DEO makes a “determination” regarding a claim for compensation, and that determination can result in a claimant being denied benefits or in an employer being charged for benefits paid. If an adversely affected party disagrees with DEO’s determination, there is a right to appeal. To exercise that right, the party must file an appeal with DEO’s Office of Appeals (the “Office”), through which an appeals referee will hold a hearing. An adversely affected party may in turn appeal the appeals referee’s decision to the Reemployment Assistance Appeals Commission (the “Commission”). The Commission is the last level of administrative review for reemployment assistance determinations. The Commission is an independent body within DEO and is comprised of three commissioners appointed by the Governor and confirmed by the Florida Senate. The law and rules regarding reemployment assistance claims are in Chapter 443 of the Florida Statutes and Chapters 73B-11, 73B-20, 73B-21, and 73B-22 of the Florida Administrative Code. General information about the Reemployment Assistance Program can be found on DEO’s website at www.floridajobs.org. Information about how to appeal a claim determination is available at www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/file-an-appeal. The Commission’s website is available at www.raac.myflorida.com and provides online access to appeal a referee’s decision as well as access to important Commission orders, newsletters, and links to relevant statutes and rules.

B. The Initial Claim and Hearing Process.

A worker who loses his or her job can file a claim for reemployment assistance benefits; the claim must be filed online at www.floridajobs.org/job-seekers-community-

[services/reemployment-assistance-center/file-a-claim-with-connect](#). Rule 73B-11.013 lists exceptions for those who cannot realistically file an application online. *See* Fla. Admin. Code R. 73B-11.013(b), (c), (e). DEO first determines whether a person has earned enough wages in insured work during the period leading up to the claim's filing date ("base period"). If DEO grants the claim, it sends a notice stating the maximum amount of benefits the claimant can receive. If DEO denies the claim, it must explain why. DEO can deny a claim either because the claimant did not earn sufficient wages during the base period or because the wages that were earned were not for insured work.

Once the claimant has established monetary eligibility for a claim, DEO must determine whether the claimant is disqualified for any reason and whether the claimant meets weekly eligibility criteria. Section 443.101, Florida Statutes, lists reasons for disqualifying a claimant for benefits. The most common reasons for denial are that the claimant quit work for personal reasons and that the claimant was fired for workplace misconduct. Section 443.091, Florida Statutes, lists the weekly eligibility criteria for continuation of benefits; failure to demonstrate adequate efforts to find work is the criterion most commonly left unmet. DEO's determination is final unless the claimant or employer asks the Office for a hearing. The request must be made within 20 days of the date DEO mails its determination. A party may request a hearing online at www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/file-an-appeal. An appeal information booklet and hearing notice will be sent to the parties or will be available on-line when the appeal is filed. Both documents should be read carefully.

An "appeal hearing" is like a trial: The parties present evidence, which may include witness testimony, documents, photographs, and recordings (audio or video), and a party may ask questions of the opposing party and of any witnesses. The evidence will either support or rebut the asserted basis for the determination on review (*e.g.*, the claimant would present evidence at an

appeal hearing to rebut a determination that he or she did not qualify for benefits because of a voluntary quitting or a termination for workplace misconduct). After the hearing, an “appeals referee” will prepare a written decision and send it to the parties. The written decision is final unless a party seeks review by the Commission within 20 days of the date the decision was mailed. The referee’s decision will explain the methods for filing an appeal with the Commission.

When the Commission reviews the appeal referee’s decision, it will rely on the evidence presented at the appeal hearing. The Commission generally does not conduct a second hearing. Instead, the Commission reviews the record to determine whether the hearing was fair and procedures were followed, whether there is competent, substantial evidence to support the facts stated by the appeals referee, and whether the referee’s legal conclusions are correct. The Commission may send the case back to the appeals referee to take additional evidence. After completing its review, the Commission will issue an order that affirms, modifies, or reverses the appeals referee’s decision, or that sends the case back (“remands”) with instructions for further review. The clerk of the Commission will mail a copy of that order to the parties. The Commission’s order is the end of the administrative stage in reemployment assistance cases. In other words, at this point, only a district court of appeal can review the Commission’s decision.

C. Review by the District Court of Appeal.

Florida Rule of Appellate Procedure 9.190 governs an appeal from the Commission’s order to the district court of appeal, but with some exceptions, the appeal will be handled under the appellate rules that govern civil appeals. An appeal to the district court, generally speaking, will not proceed on the internet or by telephone or fax in the same way that reemployment assistance claims and appeal proceedings with the Office and the Commission are handled and processed.

Nevertheless, service of documents by e-mail may be available for pro se parties if certain procedures and requirements are followed. *See* Florida Rules of Judicial Administration 2.514 and

2.516. In addition, most courts now allow (but do not require) electronic filing by pro se parties. *See* Florida Rule of Judicial Administration 2.525(c)-(d). The requirements for electronic filing, even when it is available, often vary in different courts. Accordingly, pro se parties interested in electronic filing should consult the website or clerk's office of the particular court to find out if electronic filing is allowed, and, if so, the requirements for electronic filing and service by e-mail. *See also* Florida Rules of Judicial Administration 2.516 and 2.525(c)-(d).

To appeal the Commission's order, the party seeking review (the "appellant") must file a notice of appeal (rule 9.900(e) prescribes a form) and a conformed copy of the order with the clerks of both the Commission and the appropriate district court of appeal. Section 443.151(4)(e), Florida Statutes, provides that the appeal may be taken to the court for the district in which the claimant resides, the job separation occurred, or the Commission's order was entered. The appellant also must serve the notice and order by email and in paper form on any opposing party.

The notice of appeal must be filed with the Commission's clerk within 30 days of the date the Commission files the order to be reviewed. This time period cannot be extended. The district court of appeal will not be able (that is, it will not have jurisdiction) to hear the appeal if the notice of appeal is not filed on time. The date the notice of appeal is mailed will not matter; the Commission's clerk actually must receive the notice of appeal by the 30th day following the day the Commission's order was filed with its clerk. A claimant that takes an appeal will not need to pay a filing fee, but an employer that appeals must include the \$300 filing fee with the notice of appeal filed with the district court of appeal's clerk. The "appellees" in the case will be the parties not challenging the Commission's order: the Commission and either the employer or the claimant.

Rule 73B-22.009(1), Florida Administrative Code, identifies what will be included in the record transmitted to the district court for the appeal. Within 10 days of filing the notice of appeal, the appellant may direct the Commission's clerk to exclude from the record any of the documents

or exhibits listed in the rule. If the appellant directs the clerk to exclude materials, the appellant must also serve on the appellees a statement of the agency actions to be reviewed. Florida Rule of Appellate Procedure 9.900(g) prescribes a form to use for filing the directions with the Commission's clerk.

For most appeals, the appellant also will want a transcript (a typed, verbatim record of a hearing prepared by a court reporter) of the audio recording from the hearing before the appeals referee. The appellant orders that transcript by filing (also within 10 days of filing the notice of appeal) a "designation" with the Commission's clerk, and the designation should identify the date of the hearing. If the appellant will hire a court reporter to prepare the transcript, the designation should request that a copy of the audio recording of the hearing be provided to that court reporter by the Commission's clerk. In the alternative, the appellant may request that the Commission's clerk make the transcription arrangements. A sample of the designation to reporter appears at Florida Rule of Appellate Procedure 9.900(h). An employer must make financial arrangements in advance for preparation of the transcript. A claimant does not have to pay for the preparation of a transcript; however, a claimant, like any other appellant, is responsible for ensuring the district court of appeal has a complete record on appeal.

The Commission's clerk will prepare the record and send an index of the record to the parties within 50 days after filing the notice of appeal. The Commission's clerk will file the record on appeal with the district court clerk within 110 days after filing the notice of appeal. Florida Rule of Appellate Procedure 9.200(f) allows a party to ask the district court of appeal for permission to correct or supplement the record after the record has been transmitted.

The appellant must serve an initial brief on counsel for the appellees within 70 days after filing the notice of appeal, and the brief also must be filed promptly with the district court of appeal. (For guidance on how to prepare this brief, see the chapter in this handbook titled, "Writing

an Appellate Brief.”). The district court of appeal will review the record to determine whether the facts stated by the appeals referee had competent, substantial evidence (that is, proper evidence) in the record to support those facts. If there is evidence in the record to support those facts, then the referee’s findings will stand, even if there also is contradictory evidence in the record. The district court will review conclusions of law under the “clearly erroneous” standard. This means that the district court will determine only whether the correct rules of law were applied; the court will not reverse the Commission’s decision simply because the court disagrees with the Commission’s ultimate legal conclusion. Thus, the appellant’s initial brief should show how the findings of fact do not have support in the record evidence and how the referee or the Commission followed the wrong legal rules. The district court cannot consider new evidence in support of a claim.

If the claimant filed the notice of appeal, then the employer and the Commission will be the appellees; if the employer filed the notice of appeal, then the claimant and the Commission will be the appellees. The Commission almost always submits an answer brief in support of its order. The non-Commission appellee (either the claimant or the employer) should serve an answer brief responding to the arguments made by the appellant. The appellee must serve an answer brief on the appellant and any other appellee within 20 days after service of the initial brief. If the appellee received the initial brief by mail, then the appellee may add five days to the 20-day period. The answer brief also must be filed promptly with the district court of appeal. The appellant then may serve a reply brief (which would contain arguments responding to or rebutting those in the answer briefs) within 20 days after service of the answer briefs. If the answer briefs were mailed, five days may be added to that period. The appellant also must promptly file the reply brief with the district court.

Florida Rule of Appellate Procedure 9.420(c) and Florida Rule of Judicial Administration

2.516 govern service of briefs and other documents. A pro se e-filer may use email to serve the opposing parties, provided he or she complies with the formatting and other requirements set out in the rules. Florida Rule of Judicial Administration 2.516(b)(2) lists alternative methods of service by pro se parties who choose not to utilize email. Florida Rule of Appellate Procedure 9.210(a) sets out page limits, font type, and font size for briefs. *See* Chapter 5, “Writing an Appellate Brief.” Once the briefs have been submitted, the appeal will be assigned to a panel of three appellate judges. Any party may request an “oral argument” before a panel of judges, but the request must be served no later than 10 days after the last brief is due to be served. After considering the briefs and any oral argument, the district court of appeal will issue a written decision, which will either affirm or reverse the Commission’s order. A limited number of post-decision motions are allowed. *See* Chapter 19, “Post-Decision Motions—Appellate.” The district court of appeal’s decision ordinarily is the final step in the appeal process.

Current through June 2016

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