

Table of Contents

09.01.06 - RULES OF THE APPEALS BUREAU

000. -- 005. (RESERVED).	2
006. GENERAL PROVISIONS.	2
007. EXEMPTION FROM ATTORNEY GENERAL ADMINISTRATIVE PROCEDURE RULES FOR CONTESTED CASES.	2
008. REASONS FOR EXEMPTION FROM ATTORNEY GENERAL'S ADMINISTRATIVE PROCEDURE RULES.	2
009. -- 011. (RESERVED).	2
012. FILING OF AN APPEAL	2
013. -- 016. (RESERVED).	2
017. EFFECT OF POSTAL SERVICE DELAY OR ERROR.	2
018. -- 019. (RESERVED).	3
020. COMMUNICATION WITH APPEALS STAFF.	3
021. -- 025. (RESERVED).	3
026. CONDUCT OF HEARING.	3
027. -- 065. (RESERVED).	5
066. CLAIMS FOR REVIEW.	5
067. -- 089. (RESERVED).	5
090. DISMISSAL IF FILING IS LATE.	5
091. -- 998. (RESERVED).	5
999. ADOPTION, INCORPORATION BY REFERENCE, EFFECTIVE DATES.	5

**IDAPA 09
TITLE 01
Chapter 06**

09.01.06 - RULES OF THE APPEALS BUREAU

000. -- 005. (RESERVED).

006. GENERAL PROVISIONS.

A Department hearing officer will be an Appeals Examiner or the Chief of the Appeals Bureau. Section 72-1368(f).
(2-25-94)

007. EXEMPTION FROM ATTORNEY GENERAL ADMINISTRATIVE PROCEDURE RULES FOR CONTESTED CASES.

Pursuant to the provisions of Section 67-5206(5), Idaho Code, the procedures contained in Subchapter B, "Contested Cases," of the rules of administrative procedure promulgated by the Attorney General as IDAPA 04.11.01.100 through 799 do not apply to appeals within the Department. All appeals within the Department are governed solely by the provisions of Idaho Employment Security Law and the rules of appeals procedure contained in IDAPA 09.01.06.001 et seq. ("Appeals") and by federal regulations governing the Employment Security Complaint System.
(7-28-94)

008. REASONS FOR EXEMPTION FROM ATTORNEY GENERAL'S ADMINISTRATIVE PROCEDURE RULES.

All proceedings to determine the rights to unemployment insurance benefits and tax contribution coverage are exempt from the contested case and judicial review provisions of the Idaho Administrative Procedure Act, pursuant to judicial review provisions of the Idaho Administrative Procedure Act, pursuant to Sections 72-1361 and 72-1368, Idaho Code. Appeals of complaint determinations and other decisions arising within the complaint system must be determined by the requirements of applicable federal regulations. The Department has promulgated its own rules of procedure for its appeals proceedings contained in IDAPA 09.01.06.001 et seq. All procedures affecting the rights to benefits and unemployment insurance coverage must be determined solely by the requirements of Employment Security Law. Such proceedings must be speedy and simple as required by the Federal Unemployment Tax Act and the Social Security Act. The Department determines that it can more adequately meet these requirements through promulgating its own rules rather than relying upon the rules applicable to other state agencies.
(7-28-94)

009. -- 011. (RESERVED).

012. FILING OF AN APPEAL

01. Filing. Filing an appeal shall be in writing, signed by an interested party or representative, and shall contain words that, by fair interpretation, request the appeal process for a specific determination, redetermination or decision of the Department. The appeal may be filed by delivering it to any Job Service office or to the Appeals Bureau of the Department, 317 Main Street, Boise, Idaho. The date of personal delivery shall be noted on the appeal and shall be deemed the date of filing. An appeal may also be filed by mailing it to any Job Service office or to the Appeals Bureau, Department of Employment, Box 35, Boise, Idaho 83735. If mailed, the appeal shall be deemed to be filed on the date of mailing as determined by the postmark on the request. Section 72-1368(f).
(2-25-94)

02. Date Of Mailing. The "Date of Mailing" or "Date Mailed." The date indicated on Department determinations, redeterminations and decisions shall be presumed to be the date the document was deposited in the United States mail, unless shown otherwise by a preponderance of competent evidence.
(2-25-94)

013. -- 016. (RESERVED).

017. EFFECT OF POSTAL SERVICE DELAY OR ERROR.

If a party establishes by a preponderance of the evidence that notice of a Department determination was not delivered to the party's last known address within fourteen (14) days of mailing, as provided in Sections 72-1368(c) and 72-1368(e), Idaho Code, because of delay or error by the U.S. Postal Service, the period for filing a timely request for redetermination shall be deemed to have been fourteen (14) days from the date of actual notice.
(2-25-94)

01. Non-delivery. If a party establishes by a preponderance of the evidence that notice of a Department redetermination was not delivered to the party's last known address within fourteen (14) days of mailing, as provided in Sections 72-1368(d) and 72-1368(e), Idaho Code, because of delay or error by the U.S. Postal Service, the period for filing a timely appeal shall be deemed to have been fourteen (14) days from the date of actual notice. (2-25-94)

02. Filing Timelines. If a party establishes by a preponderance of the evidence that notice of a decision by an appeals examiner was not delivered to the party's last known address within ten (10) days of mailing, as provided in Sections 72-1368(f) and 72-1368(e), Idaho Code, because of delay or error by the U.S. Postal Service, the period for filing a timely application for rehearing shall be deemed to have been ten (10) days from the date of actual notice. If it is established by a preponderance of the evidence that notice of a decision was not delivered to the party's last known address within fourteen (14) days of mailing because of delay or error by the U.S. Postal Service, the period for filing a timely claim for review with the Industrial Commission shall be deemed to have been fourteen (14) days from the date of actual notice. Ref. Sections 72-1368(c), 72-1368(d), 72-1368(e) and 72-1368(f) Idaho Code. (2-25-94)

018. -- 019. (RESERVED).

020. COMMUNICATION WITH APPEALS STAFF.

No party involved in an appeal shall communicate, either directly or indirectly, with Appeals Examiners, the Chief of the Appeals Bureau, or clerical staff of the Appeals Bureau, regarding any issue of fact or law relevant to an appeal, unless all parties involved in an appeal have been provided notice and an opportunity to participate in such communication. No person acting on behalf of any party, including the Department of Employment, shall attempt to influence the disposition of an appeal through such communications. No Appeals Examiner shall knowingly cause a communication prohibited by this section to be made. (2-25-94)

01. Prohibition Of Ex Parte Contacts. The prohibition on ex parte contacts contained in IDAPA 09.01.06.020 applies from the time an appeal is filed pursuant to IDAPA 09.01.06.012 until the appeal becomes final and conclusive pursuant to Section 72-1368, Idaho Code. (2-25-94)

02. Issues Of Fact. As used in IDAPA 09.01.06.020, the term "issue of fact or law relevant to an appeal" includes any matter relating to the merits of an appeal but does not include questions of appeals procedure or case status inquiries. Parties shall not direct questions of appeals procedure or case status inquiries to the Appeals Examiner assigned to their case but rather to other Appeals Examiners, the Chief of the Appeals Bureau (unless he or she is functioning as the Appeals Examiner in the case), or to clerical staff of the Appeals Bureau. (2-25-94)

03. Reporting Prohibited Contacts. An Appeals Examiner or other employee of the Appeals Bureau who receives a communication prohibited by IDAPA 09.01.06.020 shall place in the record of the case all such written communications or a memorandum stating the substance of all such oral communications. The Appeals Bureau shall send a full copy of the communication to the other interested parties to the appeal and allow an appropriate time for the parties to respond to the communication. (2-25-94)

021. -- 025. (RESERVED).

026. CONDUCT OF HEARING.

Upon request for appeal, a hearing shall be set and written notice of the time and place of hearing shall be mailed to each interested party not less than seven (7) days prior to the hearing date. (2-25-94)

01. Telephone Hearings. Hearings will be held by telephone unless, in the sole discretion of the hearing officer, a personal hearing should be set. In deciding the manner in which to conduct the hearing, the hearing officer shall consider factors, including but not limited to the desires of the parties, possible delay and expense, the burden of proof, the complexity of the issues, and the number and location of witnesses. (2-25-94)

02. Continuance. The hearing officer may postpone or continue a hearing for good cause on the officer's own motion or that of any party, before a hearing is concluded. The hearing officer may order the dismissal of an appeal for good cause, such as abandonment of the appeal. (2-25-94)

03. Rehearing. An application for rehearing shall be in writing and filed in person or postmarked within

- ten (10) days after the Appeals Examiner's decision is served. (2-25-94)
04. No Appearance Hearings. If no party appears to present additional evidence, a decision will then be based on the available evidence. (2-25-94)
05. Exhibits And Recordings. The exhibits and tape recordings from a hearing may be destroyed, reused, or otherwise disposed of after the expiration of the time period for appeal from the decisions of the hearing officer. (2-25-94)
06. Subpoenas. After determining that a subpoena of a witness or records is necessary and reasonable, the hearing officer shall issue the subpoena, which may be served by mail or in person. (2-25-94)
07. Failure To Respond To Subpoena. If a person fails to respond to a subpoena issued by mail, the hearing officer will proceed with the scheduled hearing and determine, after hearing the available testimony, whether the subpoena is still necessary and reasonable. If so, the hearing will be continued and a second subpoena will be issued and personally served. (2-25-94)
08. Witness Fees. Individuals who attend hearings before the Appeals Examiner as subpoenaed witnesses, not parties, shall be entitled to receive a fee of seven dollars and fifty cents (\$7.50) for each day or portion thereof for attendance. In no case shall a witness be paid more than seven dollars and fifty cents (\$7.50) for any one (1) day. Subpoenaed witnesses shall also be entitled to mileage expense at the current allowable mileage reimbursement rate as determined by the Idaho State Board of Examiners. Such witness fees and mileage expenses shall be paid from the Employment Security Administration fund. Under no circumstances shall interested parties to a hearing be granted witness fees or mileage expenses. Mileage fees are not allowed for vicinity travel. (2-25-94)
09. Undecided Issues. When it is apparent that there is no prior ruling on an issue which must be decided under the Act, the Appeals Examiner may hear and decide the issue. (2-25-94)
10. Type of Hearing. The proceeding before a hearing officer will be a hearing "de novo" or original hearing and not solely a review proceeding. Ref. Section 72-1368(f) Idaho Code. (2-25-94)
11. Role of Appeals Examiner. The appeals examiner/hearing officer will function as a fact finder and not solely as a judge. The appeals examiner/hearing officer will have the responsibility of developing all the evidence that is reasonably available. Ref. Section 72-1368(f) Idaho Code. (2-25-94)
12. Order Of Witnesses. The appeals examiner/hearing officer will direct the order of witnesses and develop evidence in a logical and orderly manner to move the hearing along as expeditiously as possible. Therefore, as a general rule, the party who bears the burden of proof will be called to testify first. The appeals examiner/hearing officer will exercise reasonable discretion in directing the order, which must be flexible and dependent upon the particular circumstances of each case and which party has the most information. Ref. Section 72-1368(f) Idaho Code. (2-25-94)
13. Exclusion Of Irrelevant Testimony. The appeals examiner/hearing officer will control the undue extension of the hearing by excluding repetitious or irrelevant testimony. Ref. Section 72-1368(f) Idaho Code. (2-25-94)
14. Disruptive Individuals. The appeals examiner/hearing officer may exclude disruptive individuals from the hearing or may postpone the hearing if the integrity of the proceedings is being compromised. If an interested party is excluded, he will be provided a copy of the tape recording of the proceedings and given an opportunity to submit written evidence and argument prior to the issuance of the decision and the opposing party will be given an opportunity to respond. Ref. Section 72-1368(f) Idaho Code. (2-25-94)
15. Challenge Of General Knowledge. If judicially cognizable facts or general, technical, or scientific facts within the appeals examiner's specialized knowledge are used in the decision, the parties will be given an opportunity to challenge them either at the time of the hearing or prior to or at the time of the issuance of the decision. Ref. Section 72-1368(f) Idaho Code. (2-25-94)
16. Closing Arguments. Closing arguments including response in an appeals hearing will be limited to

a total of five (5) minutes for each party unless the appeals examiner/hearing officer grants an exception. Ref. Section 72-1368(f) Idaho Code. (6-1-931)

027. -- 065. (RESERVED).

066. CLAIMS FOR REVIEW.

01. Claim for Review. A claim for review of the hearing officer's decision, as provided in Section 72-1368, Idaho Code, shall be made in writing, signed by the person claiming the review or by his attorney or agent, and filed with the Idaho Industrial Commission in accordance with rules adopted by them. Ref. Section 72-1368(g) Idaho Code. (2-25-94)

02. Transcripts. Upon receipt of a notice that a claim for review has been filed with the Industrial Commission, a true and correct transcript of the recorded proceedings shall be prepared. Copies of the transcript, together with the exhibits received in said cause, shall be transmitted by the Department to the Commission and provided to all interested parties without charge. (2-25-94)

067. -- 089. (RESERVED).

090. DISMISSAL IF FILING IS LATE.

Where it appears that any appeal (request for hearing) to the Appeals Examiner, or claim, or any other request or application, may not have been filed within the period of time prescribed for filing, the appellant, claimant, petitioner, or applicant (as the case may be) shall be notified and be given an opportunity to show that such appeal, claim for review, petition, or other request was timely. In computing any period of time prescribed or allowed by the Idaho Code, the day of the act, event, or default is not to be included. Sundays and holidays shall be counted during the period unless the last day of the period is a Sunday or legal holiday in which event the period shall not expire until the day following the Sunday or legal holiday. If it is found that such appeal, claim for review, petition or other request or application was not filed within the applicable time limit, it shall be dismissed on such grounds. If it is found that such appeal, claim for review, petition, or other request or application was timely, the matter shall be decided on the merits. Copies of a decision under this section shall be given or mailed to all interested parties, together with a clear statement of right of appeal or review. Ref. Section 72-1368 Idaho Code. (2-25-94)

091. -- 998. (RESERVED).

999. ADOPTION, INCORPORATION BY REFERENCE, EFFECTIVE DATES.

The rules previously adopted in Docket No. 09-0000-9401 as published in the Idaho Administrative Bulletin, April 6, 1994, Volume 94-4, at pages 9-12, are hereby incorporated by reference and adopted as final rules, effective February 25, 1994. (2-25-94)