

REFERENCE TITLE: employment security; appeals board

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HB 2246

Introduced by
Representatives Hershberger, Ableser, Bradley, Senators Gray L, Landrum
Taylor, Rios: Representatives Alvarez, Anderson, Barto, Burges, McGuire,
Murphy, Tobin, Senators Harper, Huppenthal

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)

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

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

4 23-672. Appeals board; review of board decision

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

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

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

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28 withdrawn, the appeals board after affording the parties reasonable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

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

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

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

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

9 23-674. Procedure in rendering decisions and orders; rights of
10 parties; representation

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

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

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

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

39 3. Any party may be represented by a person who is charging a fee for
40 the representation and who is either a duly authorized agent who was
41 previously or is currently retained by a party for purposes other than
42 representation in an unemployment compensation hearing or an attorney who is
43 authorized to practice law in this state. An attorney or agent representing
44 a party before an appeal tribunal or the appeals board may charge a fee not

1 in excess of seven hundred fifty dollars but may request the department to
2 approve an additional amount which is reasonable for the services rendered.
3 This is limited only to an unemployment compensation appeal.

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

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

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

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

34 23-681. Changing hearing date; good cause

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

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

1 B. ~~If a request for postponement is made with fewer than five calendar~~
2 ~~days' notice or is the second or any subsequent request of a party, the~~
3 ~~postponement shall be granted on a showing of good cause.~~ Good cause exists
4 if the request is reasonable or the circumstance causing the request is
5 beyond the control of the requesting party and failure to grant the
6 postponement would cause undue hardship to the requesting party.
7 C. ~~The department of economic security shall adopt rules to set~~
8 ~~standards under which a party may be excused for failure to attend a hearing~~
9 ~~for good cause.~~