

FREQUENTLY ASKED QUESTIONS

Q. Is the Board proceeding like the hearing before the Office of Administrative Hearings?

No. The Office of Administrative Hearings (OAH) conducted a hearing via a Hearing Officer. Witnesses gave sworn testimony, parties submitted evidence, and the Hearing Officer conducted fact-finding and considered the credibility of the parties. The Unemployment Insurance Appeals Board (Board) reviews the Hearing Officer's decision for errors of law or fact and determines whether that decision was based upon substantial evidence. Mont. Code Ann. § 39-51-2404 and Admin. R. Mont. 24.7.305 and 24.7.306(2). This means that, if the appeal to the Board was timely, the Board focuses on the issue(s) which the Hearing Officer considered and determines whether there was enough evidence in the record to support that decision. The Board does not take witness or other sworn testimony, nor does it admit new evidence except in very limited circumstances listed in Admin. R. Mont. 24.7.306. The Board may ask parties questions to clarify party statements and arguments or the record.

Q. What if I appealed the Hearing Officer's decision more than 10 days after the decision was sent?

If the appeal to the Board was late (i.e. filed more than 10 days after the Hearing Officer issued the decision), the Board must first address whether the appealing party had "good cause" to extend the filing period under Admin. R. Mont. 24.40.101(12) (formerly Admin. R. Mont. 24.11.204(19)). Mont. Code Ann. § 39-51-2403. If the Board does not find "good cause" to extend the filing period, the appeal is considered late, and the Hearing Officer's decision is final. If the Hearing Officer's decision is final, the Board lacks authority to address the Hearing Officer's decision. It will dismiss the remainder of the case and the Hearing Officer's decision will be affirmed. If the appeal was timely or the Board finds good cause to extend the filing deadline, it will proceed to review the Hearing Officer's decision.

Q. How does the Board prepare for my review?

The Board examines and considers "as it deems appropriate, such records or portions of those records the department transmitted on appeal as required under Mont. Code Ann. § 39-51-2404. The Board also considers interested parties' timely filed written arguments and any oral arguments of the parties which appear at the time of the review proceeding." *Id.* at (1). The Board retains the right to listen to audio recordings of the OAH hearing prior to its own review or a party may request the Board listen to that recording (such requests should be made at least one week prior to the Board's scheduled review so Board members have time to listen to recordings). On the day of the review, the Board will listen to arguments (if provided) and, if the appeal to the Board was timely or there was good cause to extend the appeal deadline, vote on whether to affirm, modify or reverse the Hearings Officer's decision or remand for the Hearing Officer to consider additional information or issues.

Q. How should I prepare for my review?

The Board will send you a notice stating the date and time it will review your case. If you plan to attend, confirm the phone number listed for you/your party on the notice is the one where the Board can reach you. Adjust your schedule as needed so that you can attend. The notice will state the issue(s) before the Board. If the appeal to the Board was timely (or the Board found good cause to extend the appeal period), the Board will consider whether there

is substantial evidence to support the Hearing Officer's findings of fact and whether the conclusions of law are correct. Parties that review the Hearing Officer's decision and the administrative record and look up the statutes and administrative rules cited may find it easier to present arguments addressing whether there are errors of fact or law in the Hearing Officer's decision. Parties may find it helpful to write down key points or their entire argument ahead of time and use it to guide them during the review.

If you do not plan to attend but still wish to submit written argument to the Board, you must send your written argument to the Board no later than five business days prior to the scheduled review. Admin. R. Mont. 24.7.304(3) and 24.7.306(1). You should also send a copy of your written argument to any opposing party no later than five business days prior to the scheduled review. Please note that if your argument contains new evidence (i.e. facts or evidence not already a part of the record), you must follow the new evidence requirements of Admin. R. Mont. 24.7.306 or the portion containing new evidence will not be considered and/or admitted into the record. (See below for information regarding new evidence/documents.)

Q. May I bring witnesses to the review before the Board?

While a person who was a witness at your hearing before the OAH may attend the review as a member of the public (unless the proceeding is closed under Mont. Code Ann. § 2-3-203(3)), the Board does not accept witness testimony or testimony of parties under oath because the Board's purpose is to review the Hearing Officer's decision where testimony and evidence were already presented and considered by the fact-finder.

Q. May I bring new documents to the review before the Board?

The Board does not consider or admit new evidence unless the party submitting evidence meets all the procedural and substantive requirements of Admin. R. Mont. 24.7.306(3). Procedurally, the party submitting new evidence must send the new evidence to BOTH the Board and all other parties no later than five business days before the scheduled review proceeding. *Id.* Substantively, the new evidence must be for the purpose of determining whether an interested party had good cause to extend the deadline to appeal the Hearing Officer's decision to the Board (i.e. if the new evidence is for any other purpose than explaining why an appeal to the Board was late it will not be admitted). *Id.* Also, the new evidence must be the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. *Id.* (See *Bean v. Montana Bd. of Labor Appeals*, 1998 MT 222, 290 Mont. 496, 965 P.2d 256.)

Q. What is "good cause"?

"Good cause", for issues of late appeals, means "reasonably compelling circumstances which did not result from any act or omission on the part of the person claiming the good cause and which could not be overcome by reasonable diligence on the part of the person." Admin. R. Mont. 24.40.101 (12). "Good cause" for issues of separation of employment is defined in Admin. R. Mont. 24.40.615.

Q. I just received notice of the scheduled review, and I will not be available. Can I ask the Board to move the review?

The Board has an obligation to keep appeal procedures as simple, speedy and inexpensive as possible. By rule, the Board cannot delay a review indefinitely. Speed assures the prompt

payment of benefits when they are due. The Board is willing to contact you, even if you are not at home or in the office. For example, if you are out of town, but can still be reached at a different location, the Board will give you a call at the time of your review. You may also submit your argument to the Board in writing, prior to your scheduled review date. (However, if your submission contains new evidence in addition to argument, the portion containing new evidence must comply with Admin. R. Mont. 24.7.306(3) to be considered and admitted.)

In those cases where you cannot be reached at the time designated for the review and you have “good cause” (see Admin. R. Mont. 24.7.305(5)) to ask for your review to be postponed, please contact the Board’s Administrative Assistant as soon as possible. The number is (406) 444-3311. The Board Chair has discretion to continue the review but may only do so if it is fair to the parties or allows a party to provide necessary evidence to the Board. *Id.*

Q. What if I do not agree with the decision of the Board?

If any party to the review does not agree with the decision, the disagreeing party may appeal to the Montana District Court where they reside or where any other party to the Board’s proceeding must be made a defendant within 30 days of the date of the Board decision. Mont. Code Ann. § 39-51-2410(2). For additional information about appeals to the district court, see Mont. Code Ann. § 39-51-2410 or contact an attorney or district court clerk. (Please note that district court clerks cannot provide legal advice.)