

GUIDE TO UNEMPLOYMENT INSURANCE APPEALS BOARD REVIEWS

If a party is dissatisfied with the Hearing Officer's decision after the hearing before the Department of Labor and Industry's Office of Administrative Hearings (OAH), the party may appeal the decision to the Unemployment Insurance Appeals Board (Board) for a review of the prior decision. Mont. Code Ann. § 39-51-2403. The Board is a three-member citizen review panel appointed by the Governor to hear matters related to unemployment insurance. At least one of the members is a licensed attorney. This volunteer Board meets once a month to review the appeals.

The Board does NOT conduct a hearing like what occurred at the OAH. Instead, it holds a review proceeding where it reviews the prior decision by the Hearing Officer for errors of fact or law and reviews the administrative record to determine if it supports the Hearing Officer's findings. Admin. R. Mont. 24.7.306(2). The Board may only consider the issues raised and ruled on during the review proceeding if the appeal to the Board is timely or the appeal period was extended for good cause. (See below for more details.) Mont. Code Ann. § 39-51-2403 and Admin. R. Mont. 24.40.101(12). For the Board to overturn an OAH decision, at least two members of the Board (i.e. a quorum) must find error in the Hearings Officer's decision sufficient to merit reversal. Admin. R. Mont. 24.7.306(6). Parties, or their attorney or representative, may appear before the Board to provide arguments as to whether the Hearing Officer's decision should be affirmed, reversed, amended, or remanded back to the OAH. Neither parties nor witnesses provide testimony and cross-examination is not permitted.

IMPORTANT: The decision issued by the OAH will be **FINAL** unless a party appeals to the Board within **10 DAYS** after the OAH decision was mailed. If the appeal is not requested within 10 days, the appealing party must show good cause to extend the deadline, or the Board is prohibited from reviewing the Hearing Officer's decision. See Mont. Code Ann. §§ 39-51-2403 and 39-51-2404 and Admin. R. Mont. 24.40.101(12).

NOTICE OF SCHEDULED REVIEW

After a party appeals an OAH decision, the Board sends interested parties a Notice of Scheduled Review. This Notice informs parties of the date, time, and place of the Board review. (If you received this *Guide* by mail, your Notice will be in the same envelope. If you did not receive your Notice, please contact the Board's administrative assistant at (406) 444-3311.) The Notice you receive has the telephone number the Board will call at the time of your review. You are responsible for updating the Board with any changes to your contact information. Admin. R. Mont. 24.7.305(1). If this is not the number where you can be reached for the review, call (406) 444-3311 prior to the day of the review with the new number.

REVIEW BEFORE THE BOARD

A review before the Board is open to the public (exceptions are found in Mont. Code Ann. § 2-3-203). The Board records all reviews, and a typical review lasts about 20-30 minutes. The

Board conducts its reviews remotely via telephone and/or video conferencing but may hold a review in person at its discretion. Admin. R. Mont. 24.7.305(2). To attend the review in person, please notify us by calling (406) 444-3311. If you are not available at the time of your review, the review will proceed without you and the Board will issue a decision based on the information available to it. Admin. R. Mont. 24.7.305(5) and 24.7.306(5).

Prior to the review, the Unemployment Insurance Division (Department) sends the Board the relevant portions of the administrative record to examine. Admin. R. Mont. 24.7.306(1). (The Board retains the option to listen to the recording(s) of the OAH hearing if necessary.) Parties that want the Board to listen to the recording(s) of the hearing must make this request to the Administrative Assistant to the Board no later than one week prior to the review. You should retain, and have with you during the review, the written exhibits from the OAH hearing to use as reference when addressing the Board.

The Board will not consider new evidence unless it directly relates to a late appeal to the Board and meets all requirements of Admin. R. Mont. 24.7.306(3). Any documentation submitted as potential new material must be filed with the Board Administrative Assistant and sent to the opposing party no later than five (5) business days prior to the scheduled review. *Id.* Potential new evidence must be submitted: in person (1315 Lockey Ave., Helena, MT 59601), by mail (Unemployment Insurance Appeals Board, P. O. Box 8020, Helena, MT 59624-8020) or via e-mail (uiappealsboard@mt.gov). Admin. R. Mont. 24.7.304(1)(a)-(d). If the opposing party is the Department, the party submitting evidence should send the new evidence to the Department by uploading documents, photos, or audio/video recording to their MUSE account on the claimant portal and clearly designate the uploaded material as “UIAB Proceeding: Evidence”.

If the appeal to the Board was late (i.e. more than 10 days after the Hearing Officer’s decision was issued), the Board must first consider the timeliness of the appeal to the Board and determine whether there was good cause to extend the 10-day appeal deadline (see Mont. Code Ann. 39-51-2403 and Admin. R. Mont. 24.40.101(12)). Only if it finds good cause will the Board then discuss and rule upon remaining issues. If the Board determines there is not good cause to extend the 10-day appeal deadline, the previous decision is final, and the Board will dismiss the remainder of the case. It will not address any other issue on appeal. Similarly, if the appeal of other decisions (Determination or Redetermination) was late, the Board addresses lateness before underlying issues such as eligibility. NOTE: the Board does not have authority to address issues which are not before it. To see the issues before the Board in your case, review the first page of the Notice of Scheduled Review.

When a party chooses to appear at a review, the party will be given a chance to make a brief argument. At a typical review, the Board begins with an introduction that explains the procedure that will be used in the review, including the issue(s) it will consider. The Board grants each party a total of 7 minutes to address all issues before the Board. A party may reserve part of the 7 minutes for a closing statement. The Appellant (i.e. the appealing party) begins and is followed by the Respondent (i.e. the non-appealing party). After appearing parties have made opening argument, the Board members may ask parties questions. Typically, the Board will discuss and rule on the appeal after the parties have given any closing statements. You are free to listen to the Board’s deliberations. However, at times

the Board may need to move on to the next scheduled review and will reserve discussion and ruling until time permits. In those cases where the parties choose not to present or submit argument to the Board, the Board will examine the relevant portions of the record and base its decision on that record. Admin. R. Mont. 24.7.306(5).

The Board will issue a written decision as soon as possible following the review proceeding, normally within ten (10) days, to the parties' addresses of record with the Department. It is the parties' responsibility to promptly update any changes of address with the Department. The written decision is mailed to the parties listed on the review notice and to the Department. If the Board decision changes or reverses the previous decision, the Department will update their records to reflect the Board's decision. After you receive the Board's decision, if you have questions on how it affects a benefit claim, you should contact the Department at (406) 444-2545.

A decision issued by the Board is not a determination of any other possible employment claims. The Board's decision is limited to the specific requirements of law relating to unemployment insurance. Definitions used by the Board in reaching its decision may be substantially different than definitions of similar terms under other laws.

The Board expresses no opinion about the viability of a potential claim(s) under Montana or Federal law for wrongful discharge, discrimination, or any other employment related claim.