
Rules of
Department of Labor and Industrial
Relations
Division 10—Division of Employment Security
Chapter 5—Appeals

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**Title 8—DEPARTMENT OF
LABOR AND
INDUSTRIAL RELATIONS**
**Division 10—Division of
Employment Security**
Chapter 5—Appeals

**8 CSR 10-5.010 Appeals to an Appeals
Tribunal**

PURPOSE: This rule prescribes procedures where interested parties may appeal determinations made by the Division of Employment Security. This rule implements section 288.190, RSMo.

(1) The provisions of this chapter will apply to any appeal, petition for reassessment or other type of request for hearing conducted by an appeals tribunal unless specifically provided otherwise by state or federal law or regulation.

(2) An interested party means—

(A) The claimant, if any;

(B) Any employer or employing unit that has filed a timely protest in accordance with section 288.070, RSMo;

(C) Any employer or employing unit from whose employment the claimant was separated during a week of continued claim, other than a week during which an initial claim or a renewed claim was effective.

(D) Any employer or employing unit having a legal interest in any determination made under section 288.130, RSMo;

(E) Any person, employer or employing unit having a legal interest in any assessment made under section 288.160, RSMo; or

(F) The Division of Employment Security.

(3) The term material witness means any person, employer or employing unit which is not an interested party to a determination under section (2) but which, nevertheless, has provided information which was used by the division in making its determination. The appeals tribunal, on written request by the material witness, will provide the material witness with a complimentary copy of the decision involving the material witness. The complimentary copy shall not confer on the material witness any legal rights which the witness does not already have.

(4) Appeal to be Written.

(A) Any signed, legible written notice filed by an interested party in accordance with these rules, which expresses disagreement with or otherwise indicates a desire to appeal a determination or redetermination, in the

absence of a reconsideration by the deputy, shall constitute an appeal. An appeal must be signed by the claimant, the claimant's authorized agent, the employing unit (including any officer or employee of it), or by a licensed attorney representing either the claimant or employing unit.

(B) An interested party may file an appeal by using a printed appeal form available from the division. Use of the form is not mandatory; however, whatever instrument is used, it should also include the following information:

1. Name and Social Security account number of each claimant, if any, involved;

2. Name of the employer, if any, involved;

3. Date, issue number and subject matter of the determination; and

4. Statement of the reasons for disagreement with the determination.

(C) Failure to include all of the information listed in subsection (4)(B) may result in unnecessary delay in processing the appeal and scheduling the hearing.

(D) Any signed, legible written notice filed by an interested party in accordance with these rules, which sets forth specifically and in detail the grounds upon which it is claimed the assessment is erroneous shall constitute a petition for reassessment. A petition for reassessment must be signed by the claimant, if any, the claimant's authorized agent, the employing unit (including any officer or employee of it), or by a licensed attorney representing either the claimant or employing unit.

(5) Filing of Appeals and Petitions For Reassessment.

(A) Appeals and petitions for reassessment may be filed by mail or in person at the office of the division where the determination or assessment was made or at any office of the division.

(B) Appeals and petitions for reassessment may be filed by facsimile transmission (fax) at the office of the division where the determination or assessment was made or at any office of the division.

(6) Time Limit for Appeal.

(A) An appeal to a determination or redetermination under section 288.070.4, RSMo shall be filed within thirty (30) calendar days of the date the determination or redetermination was delivered in person or mailed to the appellant's last known address.

(B) An appeal to an *ex parte* determination or redetermination under section 288.130.3, RSMo shall be filed within thirty (30) calendar days of the date of the mailing of the

determination or redetermination to the party's last known address or, in the absence of mailing, the date of personal service to the party.

(C) A petition for reassessment shall be filed within thirty (30) days of the date the assessment was mailed to the petitioner in accordance with section 288.160, RSMo or, in the absence of mailing, the date of personal service to the petitioner.

(D) An appeal or petition for reassessment shall be deemed to have been filed as of the date endorsed by the United States Post Office. In the absence of an endorsement by the United States Post Office, the appeal or petition for reassessment shall be deemed to have been filed on the date received by the division.

(E) Fax transmissions of appeals and petitions for reassessment that are received by an office of the division on a regular workday will be considered as filed on that day. A fax transmission received on a Saturday, Sunday or legal holiday will be considered filed on the next regular division workday. Date and time of receipt will be determined by the division's receiving fax machine. Persons filing by fax transmission must retain the receipt with the original document for reference by the appeals tribunal if so requested.

(F) In computing any period of time prescribed or allowed by these rules, the date of the issuance of a determination, redetermination, assessment, order or decision shall not be counted. The last day of the period shall be counted unless it is a Saturday, Sunday or legal holiday; in which event, the period shall run until the end of the next day that is not a Saturday, Sunday or legal holiday. For the purpose of these rules and Chapter 288, RSMo, legal holiday means—

1. Those dates designated public holidays by Chapter 9, RSMo; and

2. Any other day designated a public or legal holiday by the governor.

AUTHORITY: sections 288.190 and 288.220.5, RSMo Supp. 1997. Original rule filed Sept. 30, 1946, effective Oct. 10, 1946. Amended: Filed June 20, 1951, effective July 1, 1951. Amended: Filed Nov. 9, 1954, effective Nov. 19, 1954. Amended: Filed Jan. 19, 1962, effective Jan. 29, 1962. Amended: Filed Nov. 21, 1975, effective Dec. 1, 1975. Rescinded and readopted: Filed Dec. 14, 1982, effective March 13, 1983. Amended: Filed July 17, 1985, effective Nov. 11, 1985. Amended: Filed Oct. 17, 1988, effective March 26, 1989. Amended: Filed Aug. 31, 1989, effective Nov. 26, 1989. Emergency amendment filed July 31, 1990, effective Aug. 10, 1990, expired Dec. 8, 1990. Emergency*



amendment filed Nov. 13, 1990, effective Dec. 6, 1990, expired April 4, 1991. Amended: Filed Aug. 31, 1990, effective Dec. 31, 1990. Amended: Filed Dec. 9, 1991, effective May 14, 1992. Amended: Filed Nov. 16, 1992, effective June 7, 1993. Emergency amendment filed July 25, 1996, effective Aug. 28, 1996, expired Feb. 23, 1997. Amended: Filed July 25, 1996, effective Jan. 30, 1997. Emergency amendment filed Dec. 11, 1996, effective Jan. 2, 1997, expired June 30, 1997. Amended: Filed Dec. 11, 1996, effective July 30, 1997. Amended: Filed Sept. 9, 1998, effective March 30, 1999.

**Original authority: 288.190, RSMo 1951, amended 1972, 1979, 1984, 1996 and 288.220.5, RSMo 1951, amended 1955, 1961, 1963, 1967, 1971, 1995.*

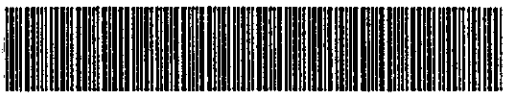


BEFORE THE APPEALS TRIBUNAL
Division of Employment Security
Department of Labor and Industrial Relations of Missouri
JEFFERSON CITY, MISSOURI



NOTICE OF APPEAL TO APPEALS TRIBUNAL

- 1. In the Matter of the Claim of _____
Social Security No. _____
Name _____
Address _____
Phone _____
- 2. APPEAL NO. _____
- 3. ISSUE NO. _____
- 4. Benefit Year Beginning _____
- 5. Date of Determination _____
- 6. Appeal Filed By: _____



- 7. Employer _____
Address _____
Phone _____

8. Deputy's determination being appealed:

9. I appeal this determination because:

- 10. Appellant _____
Attorney _____
Address _____
- 11. Division Witness _____
Office Name _____

INFORMATION FOR CLAIMANT: You should continue to claim every week while your appeal is pending, unless you have returned to work full time.
INFORMATION FOR APPELLANT: If you were not provided with a booklet of information for Appeals Tribunal hearings, ask for one at the local office.

12. Signed by _____

13. Appeal filed _____ Received in Local Office
At _____ By _____

MODES-L-1(01-95) Appeals



8 CSR 10-5.015 Appeal Hearings and Procedures

PURPOSE: This rule establishes procedures for the disposition of preliminary matters and for the conduct of hearings before an appeals tribunal.

(1) Copy of Appeal.

(A) Upon the division's receipt of an appeal, the appeal shall be acknowledged and the appellant shall be provided with a copy of the division's informational pamphlet concerning hearings.

(B) The respondent, if any, shall be provided with a copy of the notice of appeal and the division's informational pamphlet concerning hearings.

(2) An appeals tribunal upon its own motion, or upon the request of any interested party, in its discretion may direct the parties to appear at a specified time and place for a conference to consider—

- (A) The simplification of the issues;
- (B) The possibility of obtaining stipulations, admission of facts or of documents;
- (C) The limitation of witnesses; and
- (D) Other matters as may aid the disposition of the proceedings.

(3) In any proceeding pending before an appeals tribunal, claimants or employing units, or their attorneys, upon request in writing to the appeals tribunal, shall be supplied with information from the division's records to the extent necessary for the proper preparation and presentation of any claim for unemployment or appeal of employer liability.

(4) Unless an appeals tribunal determines otherwise, hearings to which a claimant is an interested party shall be held at or near the office of the division most conveniently located for the claimant. All other hearings, unless the appeals tribunal determines otherwise, shall be held at one (1) of the division's regularly established hearing locations.

(5) Notices of Hearing.

(A) Notice of Hearing shall be mailed, by regular United States mail, to the last known address of each interested party or material witness at least seven (7) days prior to the date of the hearing. Notices also shall be mailed to attorneys who have entered an appearance as set out in these rules. These notices shall specify the date, time and place of the hearing and the address of the office to which all requests or other correspondence concerning the hearing should be directed.

(B) The appeals tribunal or its designated clerk shall complete a certification that the Notice of Hearing was mailed to each of the parties and attorneys of record at the addresses listed in the official file.

(6) Postponements.

(A) The appeals tribunal, upon request of a party or upon its own motion, may postpone a hearing. Postponements may be granted if—

1. The request is promptly made after the party receives the Notice of Hearing or after the circumstance requiring postponement arises; and

2. The party has good cause for not attending the hearing at the time and date set. Good cause exists when the circumstances causing the request are beyond the reasonable control of the requesting party and failure to grant the postponement would result in undue hardship for the requesting party.

(B) A postponement shall not be granted an attorney if the attorney accepts a case which has already been set for hearing knowing that the setting conflicts with a prior obligation of that attorney.

(C) No party may presume that a postponement is granted unless duly notified of the granting by the appeals tribunal.

(D) Any further requests for a postponement by a party will be denied except in extraordinary circumstances.

(7) Continuances and Additional Evidence.

(A) Any hearing may be continued from time-to-time or place-to-place at the discretion of the appeals tribunal.

(B) All parties shall be prepared to introduce all of their evidence when the case is set for hearing as continuances for additional evidence will be granted only when the appeals tribunal before whom the case is set is satisfied that the additional evidence is necessary to a full and complete hearing. If subsequent to hearing, but prior to mailing of the decision, the appeals tribunal decides that an additional hearing is necessary, the parties shall be advised in writing.

(8) Subpoenas to compel the attendance of witnesses or the production of books, papers, correspondence, memoranda and other records may be issued by an appeals tribunal—

- (A) Upon its own motion; or
- (B) At its discretion, upon the request of an interested party who has—

1. Demonstrated that the evidence sought to be procured is relevant and necessary; and

2. Made a good faith effort to obtain the attendance of the witness or the production of the documents but has been unable to do so.

(9) Witnesses subpoenaed for any hearing before an appeals tribunal shall be paid witness and mileage fees in the same amounts as paid in civil actions before the circuit courts of this state, provided the witness and mileage fees are claimed at the time of hearing and certified to by the witness and approved by an appeals tribunal. Approved payment shall be made out of the Unemployment Compensation Administration Fund. Under no circumstances shall parties to the case be granted witness or mileage fees.

(10) Participation and Representation at Hearings.

(A) A claimant may represent him/herself or be represented by a duly authorized agent, who may not charge a fee for his/her representation.

(B) Any interested party which is a corporation, partnership or other business entity authorized by law may be represented by an officer or a person employed full-time in a managerial capacity. For purposes of this rule, managerial capacity includes any person who has managerial or supervisory duties.

(C) An employee of a corporation, partnership, or other business entity authorized by law who is not an officer or full-time managerial employee may attend a hearing to which the business entity is an interested party. The employee's participation at the hearing is limited to testifying and offering exhibits.

(D) Any interested party may be represented by a licensed Missouri attorney, a nonresident attorney appearing *in personam* and complying with Supreme Court Rule 9, or an eligible law student complying with Supreme Court Rule 13. A licensed attorney may charge a fee for representation.

(E) Any attorney retained to represent an interested party before the appeals tribunal shall file an entry of appearance as soon as practicable after being retained.

(F) In order to protect the integrity and fairness of the appeals process, the appeals tribunal requires agents to comply with the following rules of conduct:

- 1. An agent shall appear at the hearing location no later than the starting time listed on the notice of hearing;
- 2. An agent shall comply with all directions given by an appeals tribunal during a hearing;
- 3. An agent may not use dilatory tactics during a hearing;



4. An agent may not engage in abusive conduct, harass, intimidate, threaten or cause physical harm to any referee, other employee of the division, or any other party, witness or member of the public in attendance;

5. An agent may not act in a manner disruptive to the operations of the appeals tribunal;

6. An agent shall act in good faith and with integrity during the representation of a party and shall adhere to reasonable standards of orderly and ethical conduct;

7. An agent shall, to the extent reasonably possible, restrain the party represented by that agent from improprieties in connection with the hearing; and

8. An agent who fails to follow these rules will be excluded from the hearing room.

(11) Conduct of Hearings.

(A) All hearings shall be open public hearings and shall be conducted in an orderly manner. The appeals tribunal shall review the issues presented and set forth the procedures to be followed during the hearing. Persons whose presence would be detrimental to the proper conduct of the hearing may be excluded from the hearing room by an appeals tribunal. Unless an appeals tribunal determines otherwise, the appellant shall first present evidence to show that the determination appealed from is in error. An appeals tribunal may examine all parties and witnesses and shall determine the order of testimony and procedure for each hearing. Upon the motion of any party or an appeals tribunal, witnesses may be sequestered.

(B) In any hearing before an appeals tribunal, the following shall be the applicable rules of evidence and procedure:

1. Oral evidence shall only be taken by oath or affirmation;

2. Subject to this chapter's restrictions regarding representation, each party has the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not a subject of the direct examination, to impeach any witness, regardless of which party first called the witness to testify, and to rebut the evidence against him/her;

3. A party who does not testify in his/her own behalf may be called and examined as if under cross-examination;

4. The hearing need not be conducted according to the common law or statutory rules of evidence or the technical rules of procedure. Irrelevant, immaterial, privileged or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonable persons in the conduct of their affairs shall be admis-

sible, whether or not that evidence would be admissible in a trial in the courts of Missouri. A party or his/her attorney may advise the appeals tribunal of a defect in the character of any evidence introduced by voicing an objection. The appeals tribunal shall rule on the admissibility of all evidence to which an objection is made. Any evidence received without objection which has probative value shall be considered by the appeals tribunal along with other evidence in the case;

5. Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of an act, transaction, occurrence or event, shall be admissible as evidence of the act, transaction, occurrence or event, if it shall appear that it was made in the regular course of any business and that it was the regular course of the business to make the memorandum or record at the time of the act, transaction, occurrence, or event or within a reasonable time after that. All other circumstances of the making of the writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect the weight of the evidence, but the showing shall not affect its admissibility. The term business shall include business, profession, occupation and calling of every kind; and

6. All documents introduced as evidence shall be marked as exhibits. A photocopy may be substituted for an original document. Whenever practicable, demonstrative and physical evidence also shall be marked and placed in the record; otherwise, it shall be described in detail on the record.

(C) If the appeals tribunal believes that the deputy's determination did not apply the correct provision(s) of law to the factual situation presented, the appeals tribunal, after informing the parties, may expand or otherwise alter the hearing to include the correct issues involved. If one (1) or more parties object to the change in the hearing, the appeals tribunal shall continue the hearing to allow the parties time to prepare for the proper issues.

(12) Reassignment of Referee. A referee may be reassigned under the following conditions:

(A) If for any reason, a referee cannot complete disposition of an appeal, the case shall be assigned to another referee;

(B) A referee shall not conduct a hearing in which s/he may have a personal interest or conflict of interest or in which s/he would have a personal bias towards or against any of the parties;

(C) Any party to a proceeding before the appeals tribunal may request the disqualification of the referee assigned to the proceeding by filing with the chief referee a signed, writ-

ten statement detailing the reasons why the disqualification is necessary. This request must be filed no later than five (5) days prior to the scheduled hearing date. The chief referee, or designee, shall issue a written ruling on the request. The written ruling shall be interlocutory but may be specified as a grounds for appeal following the issuance of the decision of the appeals tribunal; and

(D) If the chief referee, or designee, rules that a referee shall not conduct a scheduled hearing, another referee shall be assigned to hear the case.

AUTHORITY: sections 288.190 and 288.220.5, RSMo Supp. 1997.* Original rule filed Dec. 14, 1982, effective March 13, 1983. Amended: Filed July 17, 1985, effective Nov. 11, 1985. Amended: Filed Oct. 17, 1988, effective March 26, 1989. Emergency amendment filed July 31, 1990, effective Aug. 10, 1990, expired Dec. 8, 1990. Emergency amendment filed Nov. 13, 1990, effective Dec. 6, 1990, expired April 4, 1991. Amended: Filed Aug. 31, 1990, effective Dec. 31, 1990. Amended: Filed Nov. 1, 1995, effective April 30, 1996. Emergency amendment filed Dec. 11, 1996, effective Jan. 2, 1997, expired June 30, 1997. Amended: Filed Dec. 11, 1996, effective July 30, 1997. Emergency amendment filed Jan. 22, 1997, effective Feb. 1, 1997, expired July 30, 1997. Amended: Filed Jan. 22, 1997, effective July 30, 1997. Amended: Filed Sept. 9, 1998, effective March 30, 1999.

*Original authority: 288.190, RSMo 1951, amended 1972, 1979, 1984, 1996 and 288.220.5, RSMo 1951, amended 1955, 1961, 1963, 1967, 1971, 1995.

8 CSR 10-5.020 Delivery of Notice and Periods for Filing Protests and Appeals (Rescinded March 13, 1983)

AUTHORITY: section 288.220, RSMo 1978. Original rule filed Aug. 30, 1974, effective Sept. 9, 1974. Amended: Filed Nov. 21, 1975, effective Dec. 1, 1975. Rescinded: Filed Dec. 14, 1982, effective March 13, 1983.

8 CSR 10-5.030 Telephone Hearings Before an Appeals Tribunal

PURPOSE: This rule establishes procedures for conducting hearings by telephone conference under section 288.190, RSMo.

(1) Where, because of distances involved or other substantial reason, it is impractical for interested parties and witnesses to appear at

the same location for a hearing, an appeals tribunal may schedule a hearing by telephone. If that is infeasible, an appeals tribunal shall schedule a separate hearing for each party.

(2) Any interested party shall have an absolute right not to participate in a telephone hearing.

(3) Any interested party electing not to participate in a telephone hearing shall be granted an in-person hearing. The in-person hearing shall be scheduled in accord with these rules.

(4) Election by any interested party not to participate in a telephone hearing shall not be binding as to the division or any other interested party which, at the discretion of an appeals tribunal, may present its evidence by means of a telephone hearing.

(5) If an appeals tribunal is unable to contact any interested party by a telephone hearing due to technical difficulties, the hearing shall not be dismissed but must be rescheduled.

(6) The appeal of any appellant scheduled for telephone hearing who does not exercise the right to an in-person hearing shall be dismissed in accordance with Chapter 288, RSMo and these rules if the appellant—

(A) Does not provide an appeals tribunal with a telephone number where the appellant may be contacted at the time scheduled for the hearing; or

(B) Is not at the location of the telephone number previously provided to an appeals tribunal.

AUTHORITY: sections 288.190 and 288.220.5, RSMo 1986.* *Original rule filed Dec. 14, 1982, effective March 13, 1983. Emergency amendment filed July 12, 1984, effective Aug. 13, 1984, expired Dec. 10, 1984. Amended: Filed July 12, 1984, effective Oct. 11, 1984. Amended: Filed Oct. 17, 1988, effective March 26, 1989. Emergency amendment filed Dec. 11, 1996, effective Jan. 2, 1997, terminated March 31, 1997.*

**Original authority:* 288.190, RSMo 1951, amended 1972, 1979, 1984 and 288.220.5, RSMo 1951, amended 1955, 1961, 1963, 1967, 1971.

8 CSR 10-5.035 Appeal Hearings for Interstate Claimants

PURPOSE: This rule governs the conduct of hearings by an appeals tribunal for interstate claimants.

(1) The definitions found in 8 CSR 10-3.040, unless the context clearly requires otherwise, shall apply to this rule.

(2) An appeal made by an interstate claimant shall be deemed filed on the date endorsed by the United States Post Office. In the absence of an endorsement by the United States Post Office, the appeal shall be deemed to have been filed on the date received by any qualified officer of the agent state or by the division.

(3) Except when an in-person hearing is appropriate, the appeals tribunal shall apply the telephone hearing procedures set out in 8 CSR 10-5.030 to appealed interstate benefit claims.

(4) The appeals tribunal shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims when so requested by a liable state.

AUTHORITY: sections 288.220, RSMo 1986.* *Original rule filed Aug. 31, 1990, effective Dec. 31, 1990.*

**Original authority* 1951, amended 1955, 1961, 1963, 1967, 1971.

8 CSR 10-5.040 Orders of an Appeals Tribunal

PURPOSE: This rule establishes procedures for dismissal of certain appeals.

(1) Dismissing an Appeal.

(A) If it appears to an appeals tribunal that an appeal was not filed within the time allowed by law for that type of appeal, an order may be entered reciting the essential facts which establish the failure to file the appeal within the time allowed and dismissing the appeal. A copy of the order shall be mailed to each of the interested parties. Any party excepting to the order, within thirty (30) days after the date of mailing of the order, may request that the order be reconsidered and that the matter be set down for hearing on both the timeliness of the appeal and the merits, in which event the matter may be scheduled for hearing on both issues.

(B) If an appeal is not dismissed the matter may be scheduled for hearing on both the timeliness of the appeal and the merits.

(2) Failure to Appear.

(A) Failure of the appellant to appear at the hearing shall constitute grounds for dismissal of the appeal by a written order.

(B) Upon written request of the appellant, or upon its own motion, an appeals tribunal, upon a *prima facie* showing of good cause, may set aside an order of dismissal and have the appeal reset for hearing if the request and set aside occur within thirty (30) days of the dismissal.

(C) A threshold issue to be decided at the hearing held to consider a dismissed appeal shall be whether the appellant had good cause for failing to appear for the prior setting. The merits of the appeal also may be heard. If good cause is not found, the appeals tribunal shall reinstate the order of dismissal. If good cause is found, the appeals tribunal also shall rule on the merits of the appeal.

(D) When a written request to set aside an order of dismissal is not granted, the request shall be considered an application for review to the Labor and Industrial Relations Commission.

(E) These procedures also shall apply to any case where an interested party, who is not the appellant, fails to appear for a hearing and the resulting decision is adverse to that party's interests.

(3) Withdrawing an Appeal.

(A) An appellant, subject to the approval of the appeals tribunal, may withdraw an appeal prior to the mailing of a decision. The withdrawal request must be in writing and signed by either the appellant or attorney, or entered orally on the record. If approved, the appeals tribunal shall issue a written order of withdrawal.

(B) Any written request by the appellant to set aside an order of withdrawal shall be considered an application for review to the Labor and Industrial Relations Commission.

(4) For the purposes of sections 288.070.8 and 288.130.4, RSMo, and of this chapter, good cause shall be only those circumstances which are completely beyond the reasonable control of the party and then only if that party acts as soon as practical under the circumstances.

AUTHORITY: sections 288.190, RSMo 1994 and 288.220.5, RSMo Supp. 1995.* *Original rule filed Dec. 14, 1982, effective March 13, 1983. Emergency amendment filed July 12, 1984, effective Aug. 13, 1984, expired Dec. 10, 1984. Amended: Filed July 12, 1984, effective Oct. 11, 1984. Amended: Filed Oct. 17, 1988, effective March 26, 1989. Emergency amendment Filed July 25, 1996, effective Aug. 28, 1996, expired Feb. 23, 1997. Amended: Filed July 25, 1996, effective Jan. 30, 1997.*

**Original authority:* 288.190, RSMo 1951, amended

1972, 1979, 1984 and 288.220.5, RSMo 1951, amended 1955, 1961, 1963, 1967, 1971, 1995.

On May 13, 1998, the Missouri Court of Appeals, Western District held that 8 CSR 10-5.040(4), effective March 26, 1989, was invalid as it applies to cases brought under section 288.130.4 because it is plainly inconsistent with the legislature's intention and is an unreasonable restriction of an employer's statutory right to an extension to the 15-day period for filing an appeal from the deputy's determination. *Pharmflex, Inc. vs. Division of Employment Security*, Case No. WD 53233 (Mo. App. 1998).

8 CSR 10-5.050 Decisions of an Appeals Tribunal

PURPOSE: This rule establishes the decision activities which follow the conclusion of the appeals tribunal hearing including preparation, notification and request for review.

(1) Upon conclusion of the hearing, the appeals tribunal shall prepare a written decision. The decision shall be based solely upon competent and substantial evidence contained in the official record.

(2) The decision may include, but shall not be limited to, the following:

(A) Findings of Fact necessary for resolution of the issues, findings based upon stipulation of the parties or matters officially noticed by the appeals tribunal shall be so designated;

(B) Conclusions of Law accompanied by reference to the operative Findings of Fact and the specific provisions of the statutory law from which the conclusions were drawn; and

(C) The ultimate decision which sets forth the action to be taken.

(3) Notification of the decision shall include the following procedure:

(A) A copy of the decision shall be mailed to the address of record of the interested parties and attorneys of record, if any, by regular United States mail. Information accompanying the decision shall advise the parties of their right to and the means by which an application for review of the decision may be filed with the Labor and Industrial Relations Commission; and

(B) The appeals tribunal or its designated clerk shall complete a certification that the decision was mailed to each of the interested parties and attorneys of record at the addresses listed in the official file.

(4) At any time up to thirty (30) days from the date of a decision and prior to an application for review, an appeals tribunal may issue a corrected decision to eliminate any errors contained in it. This section does not supersede the provisions of this chapter regarding orders of dismissal.

(5) If the appeals tribunal receives a signed written communication from an interested party which expresses disagreement with a decision or order, or which otherwise indicates a desire to file an application for review, the appeals tribunal shall forward it to the Labor and Industrial Relations Commission. This section does not supersede the provisions of this chapter regarding orders of dismissal.

AUTHORITY: sections 288.190, RSMo 1994 and 288.220.5, RSMo Supp. 1995.* Original rule filed Oct. 17, 1988, effective March 26, 1989. Emergency amendment filed July 25, 1996, effective Aug. 28, 1996, expired Feb. 23, 1997. Amended: Filed July 25, 1996, effective Jan. 30, 1997.

*Original authority: 288.190, RSMo 1951, amended 1972, 1979, 1984 and 288.220.5, RSMo 1951, amended 1955, 1961, 1963, 1967, 1971, 1995.



BEFORE THE
LABOR AND INDUSTRIAL RELATIONS COMMISSION
JEFFERSON CITY, MISSOURI

Issue No. _____

APPLICATION FOR REVIEW

(An Application to Have a Decision of an Appeals Tribunal of the Division of Employment Security Reviewed by the Labor and Industrial Relations Commission)

1. Appeal No. _____ 4. Claimant's S.S. No. _____

2. Claimant _____ 5. Employer _____

Address _____

3. Application Filed By: _____ 6. Effective Date of Initial Claim _____

Claimant Employer Division 7. Deputy's Determination Dated _____

8. I request the Labor and Industrial Relations Commission to review the decision of the Appeals Tribunal of the Division of Employment Security which was made on _____.

I understand the Labor and Industrial Relations Commission may affirm, modify, or reverse the Decision of the Appeals Tribunal, remand the matter to the Referee, or deny this application for review.

9. (Optional - You may state the reason you disagree with the decision of the Appeals Tribunal below.)

10. Signed _____

11. Appeal filed _____ (Date) In Person U.S. Postal Endorsement Date Received by Division

At _____ (Office Name & ID No.) By _____ (Deputy)

Where the space provided is insufficient, supplemental sheets, properly numbered by item, may be attached.

MOIC-L-6 (12-92)
Appeals