

A Guide To

*Unemployment Insurance
Appeals Hearings*



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INTRODUCTION

Unemployment Insurance hearings are conducted by Administrative Law Judges (ALJs) at the Michigan Office of Administrative Hearings and Rules (MOAHR). The purpose of this booklet is to help you understand what happens at an unemployment insurance hearing so you can make your best case. After you have read this booklet, you should have a better understanding of what to do before, during, and after the hearing.

The information in this booklet is for informational purposes only and is not legal advice.

Free Representation

The Advocacy Program provides free help to individuals and employers at their initial hearing with MOAHR. Some cases do not qualify for advocacy program assistance.

If your case qualifies for free assistance, you will be able choose and advocate from a statewide network of qualified independent consultants. The advocates are independent contractors who work on your behalf.

The Advocacy Program is operated by the Unemployment Insurance Agency (UIA). For more details about the Advocacy Program, call the UIA at 1-800-638-3994 and choose menu item 2. Information can also be found at:

<https://www.michigan.gov/leo/bureaus-agencies/uia/tools/claimant-and-employer-advocacy>

If you want advocacy assistance, contact the Advocacy Program after you have received a Notice of Hearing. Assistance must be requested at least two business days before your hearing date. Not being able to get an advocate before a hearing is not sufficient reason to reschedule the hearing.

Basic Terms Used at a Hearing

Here are some terms used most often in a hearing.

An “**Administrative Law Judge**” (ALJ) is an attorney who works for the Michigan Office of Administrative Hearings and Rules (MOAHR) and conducts the hearing. The ALJ considers the evidence presented by the parties at the hearing and may also question witnesses. After the hearing, the ALJ makes findings of fact and conclusions of law and decides how the law applies to the facts of the case. After the hearing, the ALJ issues a written decision resolving the issue that led to the hearing. The decision states whether an individual is, or is not, due unemployment benefits.

“**Parties**” are the people affected by the outcome of an unemployment insurance case. There are generally three parties at a hearing: the individual seeking unemployment benefits, the employer (the business that is, or may be, charged for the payment of benefits, or whose tax rate or liability for taxes is in question), and UIA), the state agency that issued the determination or redetermination that is the basis of the appeal and hearing.

“**Witnesses**” are the people who participate in the hearing and give testimony. Parties arrange for their own witnesses to appear at the hearing and can ask the ALJ to order other witnesses to

appear.

The first time the UIA rules on an issue, it is called a “**Determination**.” If someone protests that determination, the UIA reviews the protest and after consideration issues a second ruling called a “**Redetermination**.” If someone disagrees with a redetermination and files an appeal, the appeal is automatically sent to MOAHR for a hearing in front of an ALJ .

Presenting “**Evidence**” at a hearing is the way parties show the ALJ what happened.

The most common type of evidence is “**Testimony**” – the statements made at the hearing by a party or witness telling the ALJ what happened. People providing testimony must swear or affirm that they are telling the complete truth. The ALJ will normally only allow testimony that is based on first-hand knowledge.

Other things, like documents, pictures, videos, etc., can also be offered as evidence. These things are called “**Exhibits**” Someone must be at the hearing who can provide testimony to explain and answer questions about any exhibits offered as evidence. The ALJ will decide whether to accept testimony or exhibits, depending on whether they are proper. The ALJ will also decide how much importance to give testimony and exhibits offered by a party.

Throughout the rest of this booklet, additional terms will be explained as they come up.

Why Is It Important to Attend the Hearing?

There are several reasons why it is important for you to attend the hearing:

1. If you are the party who appealed the case and you do not appear at the hearing, the ALJ may dismiss the case. This means the UIA Redetermination that you appealed will be affirmed and remain in effect.
2. If you are required to establish certain facts, and you are not present at the hearing, no one will be there to establish those facts – which means you will probably lose.
3. The ALJ relies only on sworn testimony and exhibits supported by sworn testimony. Even though the UIA may have agreed with your point-of-view in the past, the ALJ must take a fresh look at the evidence and may not rely on documents found in the file unless someone is at the hearing to testify about them.
4. The hearing is generally your last chance to present the facts of your case. If you are not at the hearing, facts you think are important may not be considered, and there is generally not a second chance to offer those facts later.

If a party disagrees with an ALJ's decision, the decision can be appealed to the Unemployment Insurance Appeals Commission (UIAC). Appeals to the UIAC and the courts usually involve only arguments about the law, not about the facts. For that reason, it is critical that you offer all the evidence you have about the facts of the case during the administrative hearing, not later.

What Happens First?

When a claim is filed, the Unemployment Insurance Agency first issues a Monetary Determination. The monetary determination states whether your claim for unemployment benefits is allowed or denied depending on whether an individual has earned a certain amount in past wages to qualify for benefits. The monetary determination contains information that includes but is not limited to, whether unemployment benefits will be paid or not, how much will be paid per week, and how many weeks will be paid. If either the employer or the unemployed worker disagrees with the monetary determination, they can protest and explain why they disagree. UIA will review the protest and after consideration issue a Monetary Redetermination that either affirms, reverses, or modifies the monetary determination.

If there is a question of whether an individual is eligible or qualified for unemployment benefits that is not related to whether the individual earned enough wages to qualify for a claim, UIA will issue a non-monetary determination. A non-monetary determination states what the issue is and whether or not you will be paid benefits because of that issue. If the unemployed worker or employer disagrees with the non-monetary determination, which is referred to as a ‘determination’, they can protest explaining why they disagree. UIA will review the protest and issue a redetermination that affirms, reverses, or modifies the prior determination.

If the individual or employer disagrees with the monetary or non-monetary redetermination, either can file an appeal, either in writing or through their online Michigan Web Account Manager (MiWAM) account, asking for a hearing before an ALJ.

If the appeal is received by UIA within 30 days of the mail date of the monetary or non-monetary redetermination, it is scheduled for a hearing. Hearings are normally done by telephone conference call. Hearings can also be done by video conference call or in person, depending on the circumstances. If you want a hearing to be in person or by video, you must submit a written request that explains why the hearing should be in person or by video. The ALJ will make a decision on how the hearing will be conducted.

If a protest or appeal of any determination is received late, the UIA will determine whether the reason the appeal was late amounts to “good cause.” If UIA finds good cause, the lateness of the protest or appeal will be excused. If UIA does not find that there was good cause for the lateness, the UIA will issue a determination that the protest or appeal was late, and it was late without good cause. A UIA determination or redetermination that a protest or appeal is late without good cause, can be appealed for a hearing before an ALJ. As part of the hearing, the ALJ will take testimony on and issue an order finding that good cause was or was not established for the late protest or appeal. The ALJ may also take testimony on and will make a decision about the primary issue of the case.

After an appeal is filed, all parties will receive a Notice of Hearing, notifying them of the date and time of the hearing. MOAHR mails the Notice of Hearing to your address on file at least 10 days before the scheduled hearing date. The Notice of Hearing contains very important information you need to review about the hearing. **Be sure to carefully read all the information provided with the Notice of Hearing well before the date of the hearing!**

Preparation Before the Hearing

You may be able to have an advocate from the UIA's Advocacy Program, or other representation, with you at the hearing, although representation is not required. If either party does not have an attorney, advocate, or representative at the hearing, the ALJ will ask questions. Each party should also be prepared to ask questions of all witnesses.

If you or someone you would like to attend the hearing (for example your attorney, advocate, representative, or a witness) are unable to attend the hearing, you may write or fax the ALJ and request that the hearing be rescheduled to a later date. You must explain the reasons for the request, and the ALJ will only reschedule a hearing for exceptionally good reasons. Generally, having another appointment which can be rescheduled is not a good reason. In an emergency, call the ALJ's office before the hearing and explain the situation. Sometimes, if all necessary witnesses are not available, the hearing is held with the available witnesses, and the rest of the hearing is finished on another day.

Even if you choose to represent yourself, you need to decide whether to have witnesses at the hearing. If you do, ask your witnesses well before the hearing if they are willing to participate. Make sure to tell them the date and time of the hearing, as well as the contact information they will need to join the hearing.

Remind your witnesses that they must tell the truth about what happened, but do not tell them what to say or how to say it.

If you think a witness might not appear voluntarily, you can ask

for a **subpoena** from the ALJ's office to require that person to appear. You should give the witness the subpoena a reasonable time before the scheduled hearing so they can plan to attend. Neither the UIA nor the ALJ will deliver subpoenas for you. After the hearing, a person who appears at a hearing under subpoena can receive a small fee for his or her time, as well as mileage from the residence of the witness to the hearing location and return if required to appear in person.

To receive reimbursement, the witness must complete Form 1820, *Witness Fee Voucher*, and return it to MOAHR. The form will then be processed by a staff member of MOAHR for payment. This fee will be paid and mailed by MOAHR.

If the case involves a voluntary quit or a firing, the parties should bring witnesses who have personal knowledge of the details of the quit or firing, such as a supervisor or co-worker.

Before the hearing, it is a good idea to write down questions you want to ask the other party, as well as important points you want to make on your own behalf. Take your notes to the hearing; they will give you added confidence and allow the hearing to proceed more smoothly. However, because your notes can only be used to refresh your memory, your testimony cannot consist of reading your notes aloud.

Before the hearing, decide what documents (for example attendance records, employer policy statements, doctors' statements, check stubs, etc.) you will need to make your case. These should be sent to the ALJ and the other parties at least 3 days before the hearing. Also, be sure witnesses who can testify

as to their own knowledge of the documents will participate in the hearing. Doctors' statements and government records (such as safety inspection reports) may generally be admitted without the presence of a witness.

If you are hearing-impaired or have difficulty speaking or understanding English and need an interpreter, notify the ALJ's office as soon as possible. If you bring your own interpreter to the hearing, the ALJ may postpone the hearing until the ALJ's office can schedule an independent interpreter.

Who Should Be at the Hearing?

Normally, the unemployed worker and employer should attend the hearing. Unemployed workers should attend because their right to benefits is in question. Employers should attend because the ALJ's decision may affect their liability or cause their accounts to be charged for benefits paid to an unemployed worker. A representative of the UIA may also attend the hearing).

In deciding if you should bring a witness, it is important to keep in mind that the hearing operates within the general requirements of the rules of evidence, much like a court. The ALJ will not accept most **hearsay** testimony. Hearsay is testimony that is not based on the witness's own first-hand knowledge. For example, the ALJ cannot allow a party or witness to answer a question by saying "I don't know what happened, but from what Joe tells me...." If "Joe" knows what happened, then "Joe" should have appeared at the hearing. Nobody else can testify as to what "Joe" would have said had he been at the hearing. If, for example, a worker's attendance is at issue, the person with the most personal

knowledge should appear as a witness to describe the worker's attendance and any warnings given by the employer to the worker.

In addition to presenting witnesses who have personal knowledge of the facts, parties may want to introduce documents to support the testimony of the witnesses or their own testimony. Documents include things like attendance records, written warnings, dates of verbal warnings, layoff notices, and letters or other correspondence that bear on the case. The employer's keeper of business records should be present at the hearing to testify about them, and to testify that they are the actual records.

Another reason it is important to present witnesses, in addition to documents, is that only a person who is at the hearing can be cross-examined by the other party. A notarized statement generally cannot be used at the hearing in place of a witness.

What Happens at the Hearing?

ALJs start hearings by introducing themselves and making sure they have the names of all the parties, witnesses, representatives, advocates, and attorneys.

Hearings are recorded. If an appeal is later taken, the recording will be provided to the UIAC. It is important for everyone to speak clearly and slowly, and not rustle papers or interrupt others, so that a clear recording can be made. The recording and the documents that are accepted as exhibits become the "record" of the hearing that is reviewed at higher levels of appeal.

The ALJ asks the parties and witnesses to raise their right hands

and swear or affirm that they will provide complete and truthful testimony.

The ALJ then identifies each of the participants in the hearing for the record, and summarizes the issue being appealed and the UIA's Redetermination.

When multiple people will testify, the ALJ may **sequester** witnesses. To sequester means to remove a witness from the hearing while other witnesses are testifying, so that the witnesses are not influenced by each other's testimony. An ALJ may also determine that the testimony of the witnesses is "cumulative," that is, that they will all be testifying to the same set of facts. In that case, the ALJ may accept the testimony of only one of the witnesses, and not allow the party's other witnesses to testify.

The ALJ usually asks the party with the burden of proof to present their case first. There is a more complete discussion of who has the burden of proof, and what that means, later in this booklet.

If the party with the burden of proof has a representative, advocate, or attorney, that person usually asks the party and the witnesses questions. This process is called **direct examination**. If the party with the burden of proof does not have a representative, advocate, or attorney, the ALJ may ask the questions. Even if the party has a representative, advocate, or attorney, the ALJ may ask additional questions to clarify testimony. The ALJ will also give the party with the burden of proof an opportunity to explain what happened and why they should win their appeal.

After the party with the burden of proof presents testimony, the other party can ask questions of each witness. This is called **cross-examination**. If the party has a representative, advocate, or

attorney, that person conducts the cross-examination. If the party does not have a representative, advocate, or attorney, the ALJ conducts the cross-examination, or may ask the party to do so.

Next, the other party presents direct testimony, and that party's witnesses may be cross-examined.

Sometimes during a hearing, an issue comes up that was not originally part of the case and was not included on the Notice of Hearing. If that happens, the ALJ often adjourns the hearing to allow the parties to prepare for that issue. If they feel prepared to give evidence on the new issue, the parties can agree to continue with the hearing rather than adjourn it to a later day.

The ALJ works to get all the information needed to fully understand the facts of the case. In some cases, this may mean that the ALJ takes over the direct- or cross-examination, and exclude the testimony of some witnesses.

The ALJ also ensures that the rules of evidence are generally followed throughout the hearing. For that reason, the ALJ may rule that certain testimony is hearsay or is not relevant to the case and cannot be allowed, or that certain documents cannot be accepted, or that the testimony of certain witnesses will not be permitted.

The ALJ also controls the progress of the hearing. When the ALJ attempts to closely control the hearing, they are not being rude. Rather, the ALJ is ensuring that the hearing is focused on the right issues and proceeds efficiently.

At the conclusion of the hearing, the ALJ may give the parties an opportunity to make closing statements, summarizing their positions on the issues in the case if the ALJ believes such

statements will assist in deciding the case.

Because hearings are normally conducted by telephone, each party must send to the ALJ and the other party, a copy of any documents expected to be discussed at the hearing. These documents should be sent in time to reach the other party and the ALJ at least 3 days before the scheduled hearing date.

What Happens After the Hearing?

After the hearing, the ALJ reviews the testimony of the parties. The ALJ may also take into account the demeanor of the parties and their witnesses, that is, the manner in which they presented testimony and answered questions and the consistency of a witness's testimony. This will help the ALJ determine whose testimony is more accurate.

Based on these factors, the ALJ makes “findings of fact” that are included in the ALJ’s written decision. In addition, the ALJ decides how the unemployment insurance law applies to those facts and makes conclusions of law. The most important factor the ALJ uses in making their decision is this: HAS THE PARTY WITH THE BURDEN OF PROOF SUCCESSFULLY MET THAT BURDEN?

The ALJ usually issues a decision within 10 business days of the date of the hearing. A losing party may appeal the decision to the UIAC. The last page of the decision includes information about how to appeal. It is also possible to request a rehearing before the ALJ, but this will be granted only at the discretion of the ALJ, based upon the reason stated in the request for rehearing.

The ALJ cannot talk about the case with a party, before or after

the hearing. The ALJ cannot take a party's telephone call and talk about the case, except at the hearing itself when all parties have the opportunity to be present. The ALJ's office staff can answer questions about the scheduling of the case or issuance of the decision.

Burden of Proof: The Key to Making Your Best Case

In every hearing, the ALJ's attention is focused on one primary issue: Has the party with the burden of proof met that burden with substantial evidence, with first-hand testimony, and with other admissible evidence? Who has the burden of proof depends on the type of case.

Misconduct Cases

In a misconduct case, the burden is always on the employer to prove:

- (1) That the unemployed worker engaged in misconduct, and
- (2) That the misconduct occurred in connection with the work.

In unemployment insurance cases, "misconduct" is a willful or wanton disregard of the employer's interest, or negligence of such seriousness as to imply disregard of the employer's interest. However, the mere inability to do the job, or a good faith error in judgment, is not considered misconduct. In some cases, the employer may have a perfectly good and valid reason to discharge an employee, but that reason may not amount to misconduct for purposes of the unemployment insurance law.

The Michigan Supreme Court described misconduct in the case of

Carter v Employment Security Commission, 364 Mich 538, 541 (1961) like this:

“[Misconduct in an unemployment compensation case is] ... conduct evincing such willful or wanton disregard of an employer’s interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer’s interests or of the employee’s duties and obligations to his employer. On the other hand, mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed ‘misconduct’ within the meaning of the [unemployment compensation] statute.”

To show misconduct, the employer may need to show, through testimony and, if possible, documents, that (1) the employer had a policy on the particular conduct involved; (2) the employer applied the policy equally to all employees; and (3) the employer had not previously condoned the actions that resulted in the discharge. In some cases, it is useful for the employer to show that the unemployed worker had received warnings about violations, but that the unemployed worker continued in the misconduct after the warnings.

However, where the employee’s misconduct is a serious offense, the employer need not warn the employee prior to discharge.

Voluntary Leaving Cases

In a voluntary leaving case, the burden is on the unemployed worker to prove:

- (1) That the worker voluntarily left the job **but with good cause for leaving attributable to the employer**, or
- (2) That the worker did not leave the job voluntarily (for example, due to personal health reasons).

To show that a leaving was with good cause attributable to the employer, the unemployed worker must prove that some condition existed that would have made it unacceptable to a reasonable person continue working for the employer. This condition must have been brought to the employer's attention and the employer failed to correct it.

Unsafe working conditions, failure to pay wages when due, or failure to provide promised benefits or promotions (things over which the employer has control but fails to correct) are examples of situations that could amount to good cause attributable to the employer for the worker to voluntarily leave a job.

To prove that a leaving was involuntary, the unemployed worker may, for example, prove that a health reason, verified by a doctor, prevented the worker from continuing to do the job, that the worker informed the employer of this fact and unsuccessfully tried to find another job with the same employer and that the worker unsuccessfully sought a leave of absence from the employer. However, a person who is unable to do any work he or she has done in the past, or work he or she was trained to do, or is no longer part of the labor force, would not be eligible for unemployment benefits until again able to work.

Refusal of Suitable Work Cases

In a refusal of suitable work case, the burden of proof is on the employer to show:

- (1) That the employer made an offer of work to the unemployed worker;
- (2) That the work offered was suitable;
- (3) That the offer was for a job that really existed;
- (4) That the offer was specific; and
- (5) That the unemployed worker refused the offer.

Elements of suitability of a job include wages, distance from the worker's residence, length of unemployment, and risk to the unemployed worker's health, safety, or morals.

If the employer meets their initial burden, the burden shifts to the unemployed worker to show that the worker had good cause to refuse the offered suitable work.

Eligibility for Benefits

In an eligibility case, the burden of proof is always on the unemployed worker to prove that they filed a claim and, for every week the worker is claiming benefits, they were:

- (1) Able to work;
- (2) Available for full-time, suitable work;
- (3) Actively seeking work, unless this requirement has been waived; and
- (4) Reporting for benefits as directed by the UIA or had good

cause for not reporting or filing as directed.

It is a good idea for the unemployed worker to keep notes about where they looked for work each week, and to take these notes to the hearing.

Liability/Tax Issues

An employer's liability/tax issues may include, but are not limited to, the following:

- (1) The employer believes it should not have been determined to be liable for paying unemployment taxes.
- (2) The employer believes it should not have been determined to be a successor of another employer's business.
- (3) The employer disagrees with its tax rate.

If appealing these issues, the employer must bring supporting documents to the hearing, as well as appropriate witnesses.

Some Final Words

The best advice for parties appearing before an ALJ is to be prepared. Parties should also know the following before going to the hearing:

- (1) what the issue (question) is that needs to be resolved. The issue(s) to be discussed are on the Notice of Hearing.
- (2) who has the burden of proof.
- (3) what must be proven to meet the burden of proof.
- (4) Read all the information provided with the Notice of Hearing. Have the necessary papers with you at the time of the hearing, and make sure that you send any documents that you want the

ALJ to consider to the ALJ and all other parties before the hearing.

- (5) have your witnesses available at the time of the hearing, and make sure that witnesses can offer testimony based on their own personal knowledge, and
- (6) be on time.

If the decision of the ALJ is not in your favor, you may either request a rehearing before the ALJ (for example, if you have additional facts that were not available to you at the time of the original hearing), or you may appeal the ALJ's decision to the **Unemployment Insurance Appellate Commission (UIAC)**, which is a separate agency from MOAHR. The 30-day time limits for filing either a request for rehearing before the ALJ, or an appeal to the UIAC, will be on the last page of the ALJ's decision.

You must file by the deadline date. If your request for a rehearing is late but within one year of the ALJ's decision, your request will be considered a request for a **reopening** of the case before the ALJ, who will then have to decide whether you have "good cause" for requesting a reopening.

When the UIAC receives an appeal, it reviews the recording of the ALJ hearing or it may request a written transcript of the hearing. The UIAC will then decide whether the ALJ properly considered the facts presented at the hearing and properly applied the law to the facts. Occasionally, if requested by the parties, the UIAC may allow parties to appear in person before the Commission to present oral arguments.

If you follow the suggestions made in this booklet, you should be able to make your best case. By reading this booklet, you should know how to prepare for the hearing and what to expect and feel

more at ease during the hearing.

If you would like to provide feedback regarding your hearing experience or on the contents of this booklet (what should be added, what needs clarification, etc.) please send your written comments to:

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