

# 19 TIPS

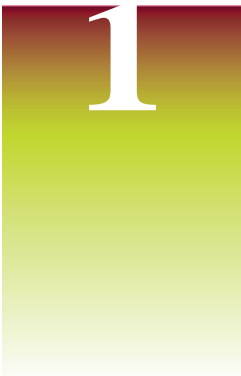
## to help you win your Unemployment Compensation Review Commission hearing



The unemployment appeal process is tailored for claimants and employers who do not have an attorney. At the hearing, the Hearing Officer advises all parties of their rights and has a primary responsibility for questioning witnesses.

In unemployment hearings, several courtroom-based technical rules restricting the admission of evidence (such as hearsay) are relaxed. In other words, there are few technical traps in an unemployment hearing. However, it still is possible to hamper your own efforts and increase your chances of losing. This document will help you identify and avoid the most common pitfalls.

### *File your appeal on time.*



An appeal from an initial determination, a redetermination and/or a Hearing Officer's Decision can be filed by U.S. mail, fax, or online through the Ohio Department of Job and Family Services (ODJFS) website. The address, fax number, and website are found in the appeal rights paragraph of each determination.

appealed to be considered "on time," per Ohio Revised Code (ORC) §4141.281(D)(1).

Appeals to court must be filed within 30 days of the date of mailing of the Commission decision, per ORC §4141.282.

An appeal must be filed within 21 days of the date of mailing of the determination, redetermination, or Decision being

### *If your appeal was late, be prepared to explain why.*



If an appeal is late, a separate Timeliness hearing will be held before the actual appeal hearing. The appellant (the party appealing the decision) must win the Timeliness hearing in order to continue with the appeal.

Appellants occasionally defeat their own appeals by sending a representative who is prepared to present evidence on the merits, but knows nothing about the cause of the late filing of the appeal, to a Timeliness hearing.

## *Read the Notice that an Appeal has been Transferred document.*

### 3

The Notice that an Appeal has been Transferred document should be reviewed carefully as soon as you receive it. It contains a brochure for those who have not participated in a hearing before. It also explains how parties should submit documents, request subpoenas and/or request a file copy.

All hearings start as a daytime telephone hearing, though interested parties do have a right to an in-person hearing. An in-person hearing must be specifically requested within 10 days of the transfer notice's mailing, or the request will not be granted.

An interested party who works during the day and is a claimant, sole proprietor or general partner (not a corporation) has a right to request an evening hearing. All evening hearings are by telephone. This hearing also must be specifically requested.

The appeal notice also lists the issues to be covered in the hearing. If there is an issue regarding timeliness, it will be the only issue listed. Other possible issues can include separation, eligibility, income and/or overpayment. If the appeal notice does not list the issues you expect to be covered at the hearing, you should contact the UCRC as soon as possible.

## *Begin preparing your case as soon as possible.*

### 4

Memories fade, witnesses move, documents are discarded. In other words, evidence quickly grows stale.

As soon as possible after you file an appeal, or learn that the other party has filed one, you should begin interviewing witnesses and gathering the evidence necessary to present your appeal. Start by obtaining a copy of the Director's file. The file reveals the information gathered by ODJFS in making the determination that is now being appealed. Once you review this material, you should have an idea what you will need to challenge or support in the hearing.

Your preparation for the hearing may not be elaborate; you may need to produce

only one witness or document. Often, a party may only need his or her own testimony.

Avoid preparing for irrelevant issues. If the claimant quit, there would rarely be reason for either side to try to prove whether the claimant's work performance was satisfactory. If the claimant was discharged, there would rarely be reason to present evidence about allegedly unsafe working conditions. Parties should not substitute attacks on the other side's character for preparation on the actual issues before the Hearing Officer.

## *Read the Hearing Notice.*

### 5

The Hearing Notice also should be examined carefully as soon as you receive it, as it restates how parties should submit documents, request subpoenas and/or request a file copy.

The Hearing Notice also sets out the date, time and place of the hearing. A street address is provided for an in-person hearing.

## *If needed, you should request a postponement ASAP.*

# 6

If you have an existing conflict that cannot be resolved and you need to postpone your hearing, you should call the UCRC immediately. A UCRC representative will discuss the conflict with you and gather specific information to determine if “good cause” exists to postpone your hearing. Be prepared to provide details on the nature of the conflict, the party(s) affected by the conflict and why this party(s) is crucial to the presentation of your case. Because this discussion is vital to determine whether “good cause” exists, the UCRC requests all parties avoid written requests for postponement. If you submit a written postponement request and do not receive a response, assume that your request was denied.

If the conflict can be verified by written documentation, the UCRC may ask you to fax or e-mail a copy of that documentation for review before a postponement is granted. Failure to provide requested documentation within 24 hours will result in the denial of the postponement request.

A complete copy of our postponement policy may be found on the UCRC website. The UCRC shall grant a postponement request by a party only for “exceptional reasons.” Such “exceptional reasons” are limited to the following:

- 1) Unavailability of party. Parties are expected to take all reasonable steps to make themselves available for a hearing. Personal or business conflicts, unless specified within this policy, are not valid grounds for a reassignment.
- 2) Employment or job interview.
- 3) Medical reasons.
- 4) A demand by a party to obtain legal representation, provided that it is shown at the time of the request that due diligence was exerted to obtain such representation. This reason cannot be used by a party more than one time in a case.

5) A party’s involvement in other legal proceedings, if no other reasonable accommodation can be made and the party notified the UCRC of the conflict within a reasonable time period, or if the conflicting proceeding arose prior to receipt of the UCRC’s Notice of Hearing. However, a postponement will not be granted if the conflicting proceeding arose after receipt of the Notice of Hearing, unless the conflict was unexpected.

6) When the postponement request is made due to a conflict claimed by a legal representative, the following criteria will apply:

- A postponement may be granted due to a conflict with another UCRC hearing upon verification that no other reasonable accommodation can be made and the representative notified the UCRC within a reasonable time period.
  - A postponement may be granted upon verification that the conflicting proceeding arose prior to receipt of the UCRC’s Notice of Hearing.
  - A postponement will not be granted where the conflicting proceeding arose after receipt of the Notice of Hearing, unless the conflict was unexpected and the representative has represented the client in previous legal matters.
  - A postponement will not be granted where the representative has agreed to represent a party knowing that they have a pre-existing conflict on the scheduled hearing date.
  - A postponement will not be granted to give the representative time to prepare after agreeing to represent a party with a scheduled hearing date.
- 7) Conflicting legal or regulatory requirement, such as military or jury duty.
  - 8) Other unforeseen circumstances such as accident, flood, fire, civil disorder, public utility emergency, military necessity or other insuperable interference.

## *Use subpoenas wisely.*

7

You have the right to subpoena witnesses for UCRC hearings. You will need to provide mailing addresses for those witnesses. For an initial hearing in a case, the UCRC will usually not issue more than three subpoenas.

You should subpoena a needed witness whose attendance you cannot control. However, you should avoid issuing a subpoena for an adverse witness (a witness for the other party). There is always the chance the other party will not

produce that witness. In most cases, you should allow that possibility to work in your favor.

A subpoena should be requested as soon as possible. The earlier a subpoena request is made, the more likely it is that it will be received by the addressee.

## *Discuss your witness' testimony prior to the hearing.*

8

It is morally and legally wrong to coach or attempt to induce your witness to giving false testimony. However, witnesses often innocently create the wrong impression or go off on a tangent because they do not understand the issues on appeal. Therefore, you should review testimony with your witness before the hearing. It is also possible that after discussing the witness' knowledge of the events in question, you may decide you do not want that person to testify. This decision is better

made before the hearing than in the middle of the witness' testimony.

## *Arrive on time for the hearing.*

9

If you appear late for your hearing, it increases the likelihood that your case will be delayed for a second hearing. If you have a last-minute emergency or delay en route to the hearing, contact the UCRC immediately.

If the appellee (the party that won the initial decision) has not appeared at the scheduled starting time of the hearing, the hearing will begin without them.

If the appellant (the party that is filing the appeal) has not appeared at the scheduled starting time of the hearing, the appeal will be dismissed unless the appellant appears within 15 minutes for a telephone hearing or 30 minutes for an in-person hearing.

If an appeal is dismissed, the appellant will need to establish good cause for missing the hearing in order to have a new hearing on the merits.

- The appellant has 14 days from the date of the hearing to show good cause for failure to appear.
- To demonstrate good cause, the party needs to present an explanation for both the non-appearance at the hearing and the failure to request a postponement in advance of the hearing.
- If no good cause is found initially, the appellant has 10 days to file a request for a hearing on that issue.
- If no good cause is found at a show cause hearing, the issue must then be appealed to court.
- If good cause is found at either step, the dismissal will be vacated and a new hearing will be scheduled.

## *Understand that the hearing is an administrative procedure.*

**10**

According to state and federal case law regarding unemployment hearings, the goal is to provide a speedy, not overly formal, proceeding that provides due process of law.

Neither the claimant nor the employer has any burden of proof.

The hearing is *de novo*, which means it acts as a new trial without regard to most evidence from the original decision. The exception to this is that the Director's file

pertaining to the case shall be considered part of the record, per ORC §4141.281(C) (2) and (3).

The due process hearing held, and the decision issued, by the UCRC can cure procedural errors previously made in the matter by ODJFS

## *Expect hearsay...*

**11**

The principles of due process in administrative hearings shall be applied in UCRC hearings, per ORC §4141.281(C)(2). The Hearing Officer has a duty to question parties and witnesses to establish the relevant facts and to thoroughly develop the record. The Hearing Officer is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure.

The Hearing Officer shall control the conduct of the hearing, exclude irrelevant or cumulative evidence, and give weight to the kind of evidence that reasonably prudent persons are accustomed to rely on in the conduct of serious affairs.

Hearsay evidence is admissible in unemployment hearings under ORC §4141.281(C)(2). Hearsay evidence may be considered persuasive even in the face of sworn hearing testimony.

## *But try to present the eye witness or key document.*

**12**

The best evidence to an event is the testimony of an eye witness, not hearsay. Still, employers often make the fundamental mistake of sending only a personnel official who has no firsthand knowledge of key events.

For example, if you had a photograph taken at the instant the disputed action took place, you would present the photo. You would not submit only a secondhand description of what the photo depicted. Nevertheless, the failure to produce the

eye witness with the best knowledge is the most common mistake made by both parties.

The best evidence of the contents of a document is the document itself. If you do not have possession of a necessary document, please contact the UCRC and arrange to have the document subpoenaed.

## *Summarize voluminous written materials.*

**13**

Submitting documents in evidence can be overdone. Parties sometimes produce a bewildering stack of written material, such as personnel records. You have a right to offer all the documents and records you see fit. Hearing Officers review all evidence carefully, but company records can be confusing or ambiguous. If you produce a haystack, it is wise to help the Hearing Officer find the needle by preparing charts or summaries of key

information. If you have failed to summarize large amounts of written material or to point out key items in lengthy documents, you run the risk of the Hearing Officer failing to take proper note of those items.

On a related point, you should explain technical terms, occupational slang, and/or trade customs.

## *Do not attempt to get your witness to change his/her testimony.*

**14**

Each person has a different way of expressing himself or herself. Even if your witness does not testify exactly as you would have, it is best not to attempt to prod him or her into changing the testimony by asking further questions, unless the witness made an obvious misstatement, which can be easily rectified. Otherwise, attempting to induce a witness to change testimony usually causes confusion, and may result in a repetition of the same testimony.

If your witness testified to something you know not be true, you have a right to impeach your own witness.

Additionally, you should avoid asking your witness leading questions.

## *Use cross-examination wisely.*

**15**

Asking questions that require the adverse witness to repeat his or her testimony in the hope that something will turn up generally does more harm than good, as it forces the witness to repeat his or her testimony against you.

Resist the temptation to rub it in. Once you strike oil, and the adverse witness gives you the answer that proves the point you are trying to make, stop drilling.

Resist the urge to dispute every point the other side makes. As the hearing progresses, stay focused on the key issue in the case. Parties often are tempted to oppose every single point the other side is making without regard to the effect on the outcome. Often, these matters are irrelevant or even beneficial to your argument.

## *Do not assume the Hearing Officer knows every rule or law.*

**16**

No individual is capable of knowing every federal and state law and regulation that could potentially affect the outcome of a UCRC appeal.

If you are relying on an Ohio unemployment compensation law or rule (ORC Section 4141, or Ohio Administrative Code Sections 4141 and 4146), the Hearing Officer should know it.

However, if your case turns on a decision, rule or regulation from another field, you should provide a copy or citation to the Hearing Officer.

## *Avoid relying on other Hearing Officers' decisions or theories.*

**17**

There is an understandable temptation to rely on the fact that another Hearing Officer at some other time made a decision that now appears to support your position. Mentioning that decision does no harm, but it should not be your sole argument. Your case must stand on its own. In the other case, the facts may have been different, the law may have changed or the other Hearing Officer may have been wrong.

It is unwise to base your appeal on an off-the-wall theory. There have been hundreds of thousands of unemployment hearings before yours. It is unlikely that you will win on some unique theory or novel argument. Your best approach is to stick to a down-to-earth presentation keyed to the essential issues of unemployment eligibility and backed up by solid evidence.

## *If you lose at Hearing Officer level, you may still appeal.*

### 18

After Hearing Officer level, appeals are generally based upon an already-created record. Hearing Officer level is a party's last and best chance to prevail.

Nevertheless, if you disagree with a Hearing Officer's decision, you should file a written appeal. Any party involved in the Hearing Officer's decision can file a request for review to the three-member commission, per ORC §4141.281(C)(3).

The Commission will either disallow or allow the request. If allowed, the Commission can affirm, reverse or modify through a new decision, with or without a new hearing, per ORC §4141.281(C)(4).

Any party involved in the Commission's decision can file an appeal to the Court of Common Pleas, per ORC §4141.282.

## *If you have a complaint, problem, or concern, contact us.*

### 19

We handle as many as 40,000 unemployment compensation hearings per year. We have rules to keep those appeals moving, so that each case receives a timely hearing and decision.

With that said, no matter how precise or well-intentioned, no set of rules can cover every possible circumstance.

If you have a concern, problem or complaint before or after a hearing, please contact the UCRC as soon as possible. If no one else is able to satisfy your concerns, please ask to speak to the Chief Hearing Officer directly. The Chief Hearing Officer may not be able to change anything, but he or she will listen and consider your position.

Our website [www.web.ucrc.state.oh.us](http://www.web.ucrc.state.oh.us) also has useful information, including a copy of our postponement policy and a copy of our Law Abstract.