

## What and where is a hearing?

When you file an appeal, your case is scheduled for a telephone hearing with an administrative law judge from the unemployment insurance appeals office.

The hearing is a fact-finding process, and you must be present for the judge to consider your facts when making a decision. You must call into the toll-free number on the Notice of Hearing at the date and time indicated.

The hearing is formal and uses legal procedures. All witnesses testify under oath or affirmation and the parties proceed in the order set by the judge. Each party has the right to ask questions of the witnesses. Documents can be submitted as evidence.

The hearings are recorded. The record made at the hearing is the only thing reviewed if the judge's decision is appealed further. The hearing is important since it is the only chance you have to present the facts of your case.

You may request an in-person hearing by writing to the judge and indicating your reasons for the request. If granted, you will be notified of the location of the hearing. An in-person hearing is usually held at the nearest South Dakota Department of Labor and Regulation job service office.

## How will I be notified of the hearing?

A Notice of Hearing will be mailed to you at least seven days before the hearing. Carefully read the notice and any papers attached to the notice.

The notice lists the date, time and phone number you must call to begin the hearing. The

notice also lists the issues of case and the laws or rules involved in the case.

If you have not received the notice or if you have requested a hearing and then moved, immediately inform the appeals office by calling 605.626.2310.

## Can a hearing be postponed or the appeal withdrawn?

If you are unable to participate at the hearing as scheduled, a request for postponement needs to be made to the appeals office, preferably at least 24 hours before the hearing. The hearing will be postponed only for good cause.

If you have requested a hearing and later decide not to proceed with your hearing, your appeal may be withdrawn any time before the hearing. You should mail or fax a letter withdrawing your appeal to the appeals office as soon as possible so the other party (or parties) can be notified that the hearing is canceled.

## Do I need a lawyer?

You can choose to represent yourself at the hearing. The judge is trained to conduct hearings where one or both parties are not represented by others.

You also have the right to have an attorney or any other authorized representative.

Do not put off deciding whether to have a representative at the hearing. If you decide to hire an attorney, do it immediately and notify the appeals office. Your lawyer will need time to prepare your case before the hearing. If you hire an attorney, it will be at your own expense.

You may be eligible for legal assistance through one of the state's legal services programs if your income/resources are limited. Obtain additional

information about legal representation by calling the South Dakota Lawyer Referral Service at 800.952.2333.

Even if you have a representative, you should appear at the hearing.

Employers may be represented by an officer or employee of the business or an attorney licensed to practice law in South Dakota.

## What happens at the hearing?

Although the exact procedure will vary depending on the nature of the case, the basic process is as follows.

The hearing generally will start at the time shown on the Notice of Hearing. Be sure you appear or call on time for the hearing. If you do not appear or are late for the hearing, your case will probably be dismissed or it may be decided based on other available evidence.

At the beginning of the hearing, the judge explains the hearing process, the issues to be decided and the order of testimony. The witnesses declare that they will testify truthfully. The parties, in the order specified by the judge, present their cases by testifying, calling other witnesses and presenting documents or other evidence.

After each witness testifies, the opposing party can ask questions of the witness. This is not a time to argue with the witness or make comments about the testimony, but is a chance to question the witness or obtain information helpful to your case. The judge may also ask questions of the parties and their witnesses during the hearing.

At the close of the hearing, each party may give a closing statement and the judge closes the hearing. Normally, no information is accepted into the record after the hearing is closed.

## Do I need witnesses and other evidence?

If you believe the opposing party's testimony will be different from yours, you may want to have witnesses or other evidence to help your case. Talk to potential witnesses before the hearing to find out what they know about your case. You should present witnesses with personal knowledge of the facts. A person who did not observe what happened or whose memory is bad is a poor witness.

Use only witnesses you really need. If you have several people who would say the same thing, use the person who can best state the facts. Make sure your witnesses are available to participate at the time set for the hearing. If you are submitting evidence on your behalf, such as signed statements from witnesses, please make sure those witnesses are available to testify to their written statements.

You will receive numbered documents with the Notice of Hearing that relate to your case. If you have other documents or evidence you need to prove your case, the documents must be mailed or faxed to the appeals office a minimum of three days prior to your hearing.

If you want any of these documents considered by the judge in making a decision, ask the judge to mark the documents as exhibits in your case at the hearing. Parties should cooperate in exchanging information before the hearing.

If there are critical witnesses who will not appear voluntarily or if the opposing party refuses to provide documents required to prove your case, you (or your representative) may request they be subpoenaed. Your request must be made immediately, describe why the witnesses or documents are required, and provide the names and addresses of witnesses. The judge will decide whether to grant or deny your request.

## How can I best present my case?

Listen to what the judge tells you. If you do not understand, ask questions before the hearing starts. Make sure you understand the issues for the hearing.

Explain the facts of your case in a clear and orderly way, and give only the facts that are important. Don't waste time on things that have nothing to do with the issues in the case. Do not repeat yourself.

If the judge or the other party asks a question, answer it directly and honestly. Don't add extra information. Be prepared to ask your witnesses questions to present their testimony to the judge. If you present witnesses, make sure they have personal knowledge of the facts.

Listen to what the other side says. Do not interrupt. You will get your turn to ask questions and respond after the witness finishes testifying. Bring a pen and paper to the hearing and take notes so you can ask good questions and properly respond to the testimony. You should ask the other side questions only about important matters where the testimony can help your case.

Getting angry, being rude or arguing with the opposing party, witnesses or the judge will not help your case. Individuals who are disruptive may be expelled from the hearing.

## What happens after the hearing?

The final decision will be mailed to the parties as soon as possible after the hearing. The decision will state the important facts of the case, the legal conclusions and reasons for the decision, and an order stating the result of the decision.

## Do I have further appeal rights?

If you think the judge's decision is wrong, you can appeal it in one of two ways:

- 1 You can file a request for a South Dakota Department of Labor and Regulation review by mailing an appeal within 15 days after the date of the decision to the:

### **Secretary of Labor and Regulation**

123 W. Missouri Ave.  
Pierre, SD 57501-2291

The decision of the Secretary of Labor and Regulation may then be appealed to Circuit Court within 30 days after the date of the Secretary's decision.

- 2 You can file an appeal of the decision directly to Circuit Court within 30 days after the date of the decision.

Decisions of the Circuit Court may be appealed to the South Dakota Supreme Court. If you have any questions about filing an appeal of an administrative decision, consult an attorney.

## For more information, contact:

South Dakota Department of Labor and Regulation  
Unemployment Insurance Appeals  
P.O. Box 4730  
Aberdeen, SD 57402-4730

Tel: 605.626.2310  
Fax: 605.626.2322

# Unemployment Insurance Appeals



HOW TO PREPARE AND PRESENT YOUR CASE



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