

The Appeals Process

A guide to filing unemployment insurance appeals in the state of Colorado



John Hickenlooper
Governor



COLORADO

Department of
Labor and Employment

Division of Unemployment Insurance

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DEFINITIONS AND TERMS

UI Division

The Division of Unemployment Insurance (UI)

UI Appeals

The unit within the UI Division that holds appeal hearings.

Interested Parties

Any of the people or organizations, such as the claimant, the employer, or the UI Division, who may be affected by the outcome of an issue under appeal.

Claimant

A former employee of a company (worker) who filed a claim for unemployment insurance.

Hearing Notice

The notice sent to all interested parties to an appealed decision. It provides important information about the scheduled appeal hearing, including the date, time, and location of the hearing, as well as instructions for the hearing. Also referred to as Form AS-41, Notice of Unemployment Insurance Appeal Hearing.

Hearing Officer

The person who presides over the appeal hearing and issues a written decision in the case.

Notice of Decision

An initial decision issued by the UI Division.

Hearing Packet

A packet sent to all interested parties from the UI Division after an appeal has been filed. This packet will contain a Hearing Notice, an appeal statement by the appealing party, a Notice of Decision (containing the decision being appealed), state-generated claim investigation information, and all known relevant documentation in the state claim file submitted by the former employee and by the employer, if applicable.

Continuation

A hearing that is rescheduled for a different time and date.

FILING YOUR APPEAL

FILING YOUR APPEAL

Filing an appeal is your way of saying that you disagree with a decision and are requesting a hearing before a hearing officer. When you file an appeal, a hearing is scheduled, and all interested parties are notified.

For a decision that is about a job separation (e.g., leaving a job, or a job ending for any reason), the interested parties are the claimant and the former employer. For a decision about a delay in payment of benefits because of other issues (for example, you did not register for work as required), called an eligibility decision, the interested parties are usually the claimant and the UI Division. Occasionally, an employer may be an interested party to an eligibility decision.

Filing on Time

UI Appeals must receive your appeal within 20 calendar days after the date the UI Division mailed the decision. If the 20th day is a Saturday, Sunday, or legal holiday, the appeal must be received by the following business day. Items postmarked with the actual due date of the appeal will not be considered timely when determining the timeliness of an appeal submitted by mail. You can also file your appeal online by logging into your MyUI account.

How to File

The law permits the hearing officer to limit your presentation to only the reasons disclosed in writing prior to the hearing. You may choose to write your explanation in the area provided on the reverse side of the Notice of Decision. You may attach extra sheets if necessary. Explain the reasons you disagree with this decision. Provide as many details as possible. If you do not explain your reasons in the appeal, you may not be allowed to talk about them.

Several decisions may have been made on the claim; without a copy of the decision, UI Appeals may not know which decision you are appealing. Be sure to include the claimant's name (your name) on each page, and you must sign your statement.

There are three ways to file your appeal:

Mail	Fax	Online
Mail your appeal to: Unemployment Insurance Appeals P.O. Box 8988 Denver, CO 80201-8988 If you mail your appeal, please do not fax it.	Fax your appeal to 303-318-9248. Be sure to fax both sides of the Notice of Decision. If you fax your appeal, please do not mail it.	Submit your appeal online through MyUI by viewing your Notice of Decision and following the instructions.

What to Include in Your Appeal

Any facts not in the hearing packet are considered new information or new facts. New facts must be included in your written appeal or presented in writing before the hearing to both the hearing officer and all parties listed on the Hearing Notice. Information about presenting new information and facts is found in this guide under "New Information (Facts) May Not be Introduced at the Hearing." Please read that section carefully if you want to include new facts.

The addresses of the hearing officer and all interested parties and their representatives are on the Hearing Notice. A party who does not report their representative's name to UI Appeals ahead of time is responsible for giving any information received directly to the representative.

Late Appeals

An appeal may still be filed after the 20-day limit if there is a good reason for not filing the appeal on time. This is called showing good cause. If you file a late appeal, state your reasons for not having filed on time as well as the reasons you disagree with the decision. This statement must be signed. The Appeals Division will review your reasons for filing late and will determine whether a hearing will be scheduled.

You will be notified by mail as to whether the late appeal has been accepted. If the late appeal is accepted, you will receive a separate Hearing Notice with the time and date of the hearing.

The other party has the right to disagree with the decision to grant a late appeal. At the hearing, the other party has an opportunity to state his or her reasons for disagreeing with the late appeal and can request that the hearing officer revisit this issue. You must be prepared to explain in detail why the appeal was late.

SHOWING GOOD CAUSE

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Certain circumstances may prevent you from acting in a timely manner or may prevent you from providing evidence for your case. You may request that the hearing officer consider this matter based on good cause as defined in the Regulations Concerning Employment Security, section 12.1.8, Substantive Guidelines.

In determining whether good cause has been shown for permitting an untimely action or excusing the failure to act as required, the Division and the panel may consider any relevant factors including, but not limited to, whether:

- the party acted in the manner that a reasonably prudent individual would have acted under the same or similar circumstances,
- under the circumstances a reasonably careful individual would have neglected the duty,
- the party received timely notice of the need to act,
- there was an administrative error by the Division,
- there were factors outside the control of the party that prevented a timely action; the efforts made by the party to seek an extension of time by promptly notifying the Division, the party's physical inability to take timely action, the length of time the action was untimely, the apparent merits of the party's underlying position;
- any other interested party has been prevented or substantially impaired in the ability to present evidence or refute evidence by the untimely action.

The acts and omissions of a party's authorized representative are not considered to be a factor outside the party's control.

Good cause cannot be established to accept or permit an untimely action or to excuse the failure to act, as required, that was caused by the party's failure to keep the Division directly and promptly informed by providing a written, signed statement of his or her current and correct mailing address in person, by mail, by fax, by Division-approved electronic means, or by the Division's interactive voice response system unless it is determined that the party reasonably believed that the Division would not have any need for his or her new address under the circumstances.

HEARING SCHEDULING

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Receiving the Hearing Notice

You will receive Notice of Unemployment Insurance Appeal Hearing, Form AS-41, for each decision you appeal. This form is also called a Hearing Notice. Review each Hearing Notice carefully. The Hearing Notice provides the following information:

- The date and time of the hearing. If you have more than one Hearing Notice, the dates and times may be different.
- Instructions for participating by telephone or in person (if an in-person hearing is available).
- The location of the appeal hearing (if participating in person) or the telephone number to call at the time of the hearing (if participating by telephone). If you have more than one Hearing Notice, the telephone numbers and/or locations may be different.
- The issue or issues to be covered. If you have more than one Hearing Notice, the issues may be different.

Participating in the Appeals Hearing

All hearings will automatically be scheduled by telephone unless a request for an in-person hearing is made.

Participating by Telephone	Participating in Person
<p>You must call the hearing officer; the hearing officer does not call you. Please call the hearing number only at the time of the hearing. Do not call the hearing number for any other reason.</p> <p>Please do not participate from a pay phone. Background noise makes it difficult to hear what you are saying. This is also often the case when you use a cell phone. If you participate from a cell phone, please do so from a quiet place with good reception.</p> <p>Other interested parties may participate in person even if you participate by telephone.</p>	<p>The Hearing Notice will inform you if there is an option to participate in person. If there is this option, you must appear at the location provided on the Hearing Notice. In communities where there is no appeals office, you are directed to an office outside your immediate community.</p> <p>Other interested parties may participate by telephone even if you participate in person.</p>

Notify Unemployment Insurance Appeals of Conflicts in Your Schedule

You must request a postponement as soon as possible if you cannot attend the hearing at the time and/or place indicated on the Hearing Notice.

You may request a postponement by calling 303-318-9299 or 1-800-405-2338 (outside Denver-metro area).

PREPARE FOR THE HEARING

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The hearing officer is limited to considering only the testimony taken and documents admitted during the hearing. Use this opportunity, and do not assume that new evidence or information can be added at a later date (see “New Information (Facts) May Not Be Introduced at the Hearing”).

Take time to prepare for your hearing. Know the issue or issues involved, obtain documents, and arrange for witnesses supporting your side of the case. To help you remember what you want to present at the hearing, you may prepare a simple chart or written summary with the key information you want to present. Prepare all evidence, and be ready to explain company records, abbreviations, technical terms, and/or symbols.

Know the Issues Involved

Before the hearing, review the other party’s statement or statements attached to your Hearing Notice. Review the documents carefully so that you know what issues will be addressed at the hearing. This helps you to prepare, gather documents, and arrange for witnesses to support your case.

Prepare and Participate Even If You Are Not the Appealing Party

The hearing officer’s decision is based only on what is presented at the hearing. You must participate and be prepared to present and defend your position if you want your point of view to be considered. If you choose not to participate, the hearing goes forward without you, and the decision is based on the other party’s evidence presented at the hearing.

Prepare Facts

Facts, not conclusions, are the basis of a good case. Saying that an employer is unfair or that an employee is unsatisfactory is a conclusion. Prepare facts that prove the point you wish to make, and bring evidence and witnesses that can verify what you are presenting.

Prepare to prove your point of view on the issues under appeal, not on issues unrelated to the appeal.

Some people incorrectly think that unemployment insurance is based upon financial need. If you prepare only to argue that you need the money, you are not preparing to address the relevant issue(s) at hand.

EXCEPTION: If you are a claimant appealing a decision to deny a waiver of an overpayment, you must prepare facts to prove financial need.

New Information (Facts) May Not Be Introduced at the Hearing

Information not contained in the hearing packet may not be introduced at the hearing. Anything new that you wish to include in the hearing must be provided ahead of time, in writing, to the hearing officer and to other interested parties so that they can prepare to respond. It is your responsibility to provide this information to the hearing officer and to any other party (via mail, fax, personal delivery, etc.). The hearing officer and all interested parties must receive the information before the scheduled hearing.

Mail the new material to the hearing officer and to all of the addresses listed on the Hearing Notice.

New information includes anything not in the hearing packet or in the supplemental documentation sent by you to the hearing officer and the other interested parties prior to the date of the hearing. Any material not included in these documents is considered new.

If you do not provide the information before the hearing, the hearing officer may refuse to allow you to introduce the information at the hearing unless you convince the hearing officer of your good cause for the lack of action and the other party agrees to waive their rights to review the material ahead of time. The hearing officer may stop the hearing and schedule it for another time (called continuing the hearing).

Obtain Evidence

Evidence that strengthens your case, such as documents, photographs, or charts, for example, may be presented at the hearing. Gather all such evidence before the hearing. Remember to provide copies ahead of time to the hearing officer and all parties listed on the Hearing Notice.

You can subpoena evidence that is not in your possession (see "Requesting Subpoenas for Documents and/or Persons", below).

Inform and Prepare Witnesses

An eyewitness to events can strengthen your case. If a witness is reluctant to participate, you can subpoena the person (see "Requesting Subpoenas for Documents and/or Persons", below).

You do not need to present witnesses who will not help your case.

You may discuss your potential witness's testimony with the witness before the hearing. There is nothing improper about doing so as long as you do not tell the witness what to say. After you have spoken to the potential witness, you decide if you would like him or her to testify at the hearing.

REQUESTING SUBPOENAS

REQUESTING SUBPOENAS FOR DOCUMENTS AND/OR PERSONS

The best way to prove your point is either through the testimony of an eyewitness or through the documents involved in the case. It is your responsibility to ensure that documents and witnesses are available at the time of the hearing.

When it appears that an important witness may not participate voluntarily or that a critical document is in the possession of another person, you may request that UI Appeals issue a subpoena to require the person to participate or provide records.

Making the Request for Subpoenas

Requests for subpoenas should be made to UI Appeals as early in the process as possible. Call 303-318-9299 (Denver-metro area) or 1-800-405-2338 (outside Denver-metro area), or you may fax your request to 303-318-9247. Requests must specify the reason for the subpoena, to what each witness will testify, and the full address where the witness will be served the subpoena. If you are subpoenaing documents, a detailed description of the document(s) is required. You must show that the testimony or documentation adds to your argument and does not repeat other information. A subpoena will not be issued if the hearing officer reviewing the request determines an undue burden would be placed on the party to whom it is directed or if the testimony adds nothing to your argument or repeats other information.

Obtaining and Serving Subpoenas

When a request is granted, the subpoena is issued by UI Appeals located in Denver. You or your representative must make arrangements to obtain the subpoena when it is ready and to serve the subpoena (make sure it gets to the person specified on the subpoena). Serving the subpoena is your responsibility. UI Appeals does not serve the subpoena. Subpoenas must be served no less than 48 hours before the hearing. If served less than 48 hours before the hearing, the subpoena is not enforceable. Witnesses, whether subpoenaed or not, are not entitled to any form of payment or compensation (i.e., a witness fee) for attending an appeal hearing. Persons failing to comply with properly served subpoenas may be subject to prosecution for a misdemeanor offense.

If Your Request for a Subpoena is Denied

If your request for a subpoena is denied, you may bring up your request again at the hearing. If the hearing officer also denies your request, the hearing proceeds. If the hearing officer grants your request, the hearing is rescheduled to a future date.

PARTICIPATE IN THE HEARING

PARTICIPATE IN THE HEARING

The hearing officer's decision is based on the testimony and evidence presented at the hearing. Your evidence may not be considered if you do not participate.

Call or Appear on Time

You must call or appear on your scheduled date at the time stated on your Hearing Notice. If you are the appealing party and you do not call or appear on time, the hearing officer will dismiss the appeal for failure to appear. The other party and witnesses are allowed to leave. Even if you call or appear later, the hearing cannot be held. If you are not the appealing party and you do not call or appear on time, the hearing proceeds without you.

Should you have a last-minute emergency, call 303-318-9246 as soon as possible. If you can not reach this number, please call 303-318-9299 or 1-800-405-2338. Depending on the nature of the emergency, the hearing may be rescheduled or possibly delayed if you can arrive or participate within a reasonable time.

When participating in a hearing, be sure to have the following with you:

- Hearing Notice
- The entire hearing packet sent to you before the hearing and any earlier hearing packets if the hearing was continued (rescheduled from an earlier date)
- Any supporting documents that are not in the hearing packet (be sure to send copies to the hearing officer and all parties listed on the Hearing Notice)
- Any witnesses and/or their telephone numbers including the area code (see "Inform and Prepare Witnesses")

DURING THE HEARING

DURING THE HEARING

Preparation is important to present the entire case at your hearing (see "Prepare for the Hearing"). You cannot add to the record after the hearing has been completed. Unemployment insurance appeal hearings are administrative hearings. Hearing officers conduct the hearings in a courteous, professional, and orderly manner.

The hearing officer begins the hearing by identifying the case name and by referring to the decision that was appealed. The hearing officer then identifies all persons present at the hearing and administers to all persons who intend to testify an oath or affirmation that they must tell the truth.

The appeal hearing is digitally recorded. The hearing officer issues a written decision by mail to all interested parties and their representatives. If either party appeals the written decision, a CD of the hearing is provided at no charge. There is a fee involved if either party wishes to have a written transcript; the fee for the transcript is included in the hearing officer decision. The party will need to show a special need, and an inability to pay, if a waiver of the fee is desired. A party may request not to be charged by filling out a [form](#) available online or at workforce centers and emailing it to CDLE_ICAO@state.co.us.

The Hearing Officer's Role

The hearing officer runs the hearing and explains the issues involved and the procedures to be followed, including the order in which persons testify and the right to ask questions of the witnesses for your side and the other side. The hearing officer also:

- Ensures witnesses understand the questions that are asked.
- Explains the meaning of terms that are not understood.
- Questions the parties and witnesses in order to obtain necessary facts.
- Enters documents as exhibits.
- Ensures that due process (fair treatment) is given to all parties.
- Keeps the parties focused.
- Issues a written decision.

Presenting Your Case

During the appeal hearing, state facts, not conclusions. Think in terms of “who, what, when, where, how, to what extent, and to what degree” as you present your side of the story. Give only information that is important to the case. Do not repeat what you have already said. Organize your comments so that others can easily follow and understand what you are saying.

Key Documents or Other Evidence

If you are participating in person, do not hesitate to bring original documents to the hearing. Remember, you must mail a copy of your key documents or other evidence (e.g., videos and recordings) to the hearing officer and to all parties listed on the Hearing Notice before the hearing. When presenting your side, request the documents you feel are important be entered as exhibits. Once you make this request, the hearing officer will decide whether the documents will be entered as exhibits.

Questioning the Witness and Cross-Examination

During a job-separation hearing, the claimant is permitted to question the employer and/or the witnesses. Similarly, the employer is permitted to question the claimant and/or the witnesses. During eligibility hearings, the claimant and the UI Division representative are permitted to question each other.

Your questions should call for one fact at a time, and the questions should be short.

Asking a question that requires a witness to repeat what they have already said is not productive and the hearing officer may instruct you to stop asking these type of questions.

Points on Presenting a Case

Know the points that you are trying to make when you present your case (see “Prepare for the Hearing”). The hearing officer knows the content of unemployment law (Colorado Employment Security Act). In the rare situation where part of your case is based on a decision, rule, or regulation in another field, you should quote that statute or decision to the hearing officer.

During the course of the hearing, parties are often tempted to object to many statements made by the other side. Disagreement with the content of another side's statements is not a basis for an objection. Take notes and ask questions of the person at the appropriate time or wait until the appropriate time to tell your version of what occurred.

Do Not Rely Solely on Another Decision

You might be tempted to rely on the fact that a hearing officer made a decision at some other time that appears to support your position. To mention that decision does no harm. However, every case must stand on its own facts. The facts in the other case may have been slightly different, the hearing officer may find different witnesses more or less persuasive or the law may have changed.

You Are Not Required to Weaken Your Own Case

You have no obligation to produce evidence against yourself or ask questions that may weaken your case. You have no obligation to call a witness who might weaken your case or submit as a potential exhibit a document that will not assist your case.

When the Unexpected Occurs

The hearing officer is required to protect the rights of both parties and may only aid and assist the parties in presenting their cases. You may be caught by surprise, may not know what to do or say next, or may realize you have overlooked or forgotten something. If that happens, bring your concern to the attention of the hearing officer.

In making a decision, the hearing officer is limited to the evidence presented at the hearing and, if there is a further appeal, you will not be allowed to offer additional evidence.

If necessary, make a request to have the hearing rescheduled to a different time. This may enable you to produce additional documents, arrange for witnesses, get subpoenas, and better prepare. In many cases, the hearing officer may suggest a way to make your point without having to continue the hearing to another time. If your request to have the hearing continued is denied, and you lose because of the denial, you may bring up the denial if you decide to appeal the decision.

AFTER THE HEARING

AFTER THE HEARING

The Hearing Officer's Decision

You will receive a written decision from the hearing officer. If you disagree with the decision, you may appeal it to the Industrial Claims Appeals Office (ICAO). Instructions on how to appeal the Hearing Officer's Decision are under the hearing officer's signature on the decision. Appeals to ICAO must be received within 20 calendar days after the date the Hearing Officer's Decision is mailed. The mailed date appears on the decision.

CONTACT INFORMATION

UI APPEALS INFORMATION ONLINE

For more information visit our website at www.coloradoui.gov/appeals

UI APPEALS CONTACT INFORMATION

Colorado Appeals Helpline 303-318-9299

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Unemployment Insurance Appeals

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