

# THE APPEALS PROCESS

This handbook provides general information and does not constitute legal advice. For questions involving legal interpretations or when litigation is involved, always refer to the Colorado Revised Statutes (CRS), which are published and enacted according to Article 5 of Title 2, CRS. The statutes dealing directly with unemployment insurance law (Articles 70 to 82 of Title 8, CRS) are known as the Colorado Employment Security Act (CESA). To view CESA online, visit [www.coworkforce.com](http://www.coworkforce.com), select **Unemployment Information**, and then click on **Unemployment Law**.



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## 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. *Interested parties* are “those who are affected by the outcome of the issue.” For a decision that is about a job separation (leaving a job), the interested parties are the claimant (former employee) and the employer. For a decision that is about a delay in payment of benefits because of other issues (for example, a claimant did not register for work—called an “eligibility decision”), the interested parties are usually the claimant and Unemployment Insurance (UI) Operations. Occasionally an employer may be an interested party to an eligibility decision.

### Filing on Time

UI Appeals must receive your written appeal within 20 calendar days after the date the UI Program mailed the decision. If the 20th day is a Saturday, Sunday, or legal holiday, the appeal must be received by the following business day. The postmark will not be considered in determining the timeliness of an appeal submitted by mail.

### How to File

You must file your appeal in writing, explaining why you disagree with the decision. You must sign your statement.

You may choose to write your explanation in the area provided on the reverse side of the decision. You may attach extra sheets if necessary. Be sure to include the claimant’s name and social security number on all sheets.

You may choose to write your explanation on a separate sheet of paper. Be sure to provide a copy of the decision with your appeal. 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. Also, be sure to include the claimant’s name and social security number on each page.

### Filing by Mail

Your appeal may be mailed to:

Unemployment Insurance Appeals  
P.O. Box 8988  
Denver, CO 80201-8988

If you **mail** your appeal, please **do not** fax it.

### **Filing by Fax**

Your appeal may be faxed to 303-318-9248. Be sure to fax both sides of the decision as well as your explanation of why you disagree. Make sure the claimant's name and social security number are on all pages, and sign your statement. If you **fax** your appeal, please **do not** mail it.

### **What to Include in Your Appeal**

Any facts not in the claim file are considered "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 facts is found on page 6, "New Facts Cannot Be Introduced at the Hearing." Please read this 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 his or her representative's name to UI Appeals ahead of time is responsible for giving any information he or she receives to the representative.

### **Late Appeals**

An appeal may still be filed after the 20-day limit. You must have a good reason (show good cause) for not filing the appeal on time. When you file a late appeal, you must state your reasons for not having filed on time as well as your reasons for disagreeing with the decision. This statement must be signed. A hearing officer reviews your reasons for filing late and determines whether a hearing will be scheduled.

You will be notified by mail as to whether the late appeal has been accepted. If it has been accepted, you will receive a separate hearing notice indicating the time and date of the hearing.

The other party has the right to disagree with the hearing officer's decision to grant a late appeal. At the beginning of the hearing, the other party has the opportunity to state his or her reasons for disagreeing with the late appeal. You must be prepared to defend your actions in requesting the late appeal.

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## **SHOWING GOOD CAUSE**

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:

**"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, whether the party received timely notice of the need to act, whether there was administrative error by the division, whether 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, and whether any other interested party has been prejudiced by the untimely action. However, 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 written, signed statement of his or her current and correct mailing address in person, by mail, by facsimile machine, by division-approved electronic means, or by CUBLine, 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. A written decision concerning the existence of good cause need not contain findings of fact on every relevant factor, but the basis for the decision must be apparent from the order."

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## **RECEIVING THE HEARING NOTICE**

You will receive a Form AS-41, Notice of Unemployment Insurance Appeal Hearing (Hearing Notice), for each decision you appeal. 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.
- 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 by Telephone**

In most cases, parties choose to participate in appeal hearings by telephone. You must call the hearing office; the hearing officer does not call you. Please **only** call the hearing number at the time of the hearing; **do not** call the hearing number for any other reason.

Please do not participate from a pay telephone or a cellular telephone. Background noise often makes it difficult to hear what you are saying.

Other interested parties may participate in person even if you participate by telephone.

### **Participating in Person**

The hearing notice informs you of the option to participate in person. You must appear at the location provided on the notice. In communities where there is no appeals office, you are directed to an office outside your immediate community.

Other interested parties may participate by telephone even if you participate in person.

### **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 (Denver-metro area)  
1-800-405-2338 (outside Denver-metro area)

## **PARTICIPATE IN THE HEARING**

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

### **Call or Appear on Time**

Hearings begin promptly at the time stated on the hearing notice. You must telephone or appear on your scheduled date at the time designated.

If you are the appealing party and you do not call or appear on time, the hearing officer will dismiss the appeal for nonappearance. 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 the hearing telephone number on your hearing notice as soon as possible. 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:

- The hearing notice.

- Any supporting documents—be sure to send copies to the hearing officer and all parties listed on the hearing notice (see page 6, “New Facts Cannot Be Introduced at the Hearing,” and page 7, “Obtain Evidence”).
  - Any witnesses and/or their telephone numbers including the area code (see page 7, “Inform and Prepare Witnesses”).
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## **PREPARE FOR THE HEARING**

The appeal hearing before the hearing officer is your **only** chance to present everything relevant to the case.

The hearing officer is limited to considering only the evidence introduced during the hearing. Take advantage of this opportunity, and do not assume that, at a later date, new evidence or information can be added (see page 6, “New Facts Cannot 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 time of 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 Your Appeal Based on Facts, Not on Philosophical Arguments or Proof of Financial Need**

Respond to the issues under appeal. 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 (UI) is based upon financial need. If you prepare only to argue that you need the money, you are not prepared to address the issue 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 Facts Cannot Be Introduced at the Hearing**

New facts, not contained in the UI Appeals file, **cannot** be introduced at the hearing. Anything new that you wish to include in the hearing must be provided ahead of time to the hearing officer and to other interested parties, so that they can prepare to respond. It is your responsibility to timely provide this information to the hearing officer and 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 the addresses of the parties listed on the hearing notice.

New facts include whatever is not in the material provided to you with the hearing notice mailed by UI Appeals. For separation (loss of job) hearings, UI Appeals will send you copies of both your statement and

the other party's statement regarding the circumstances surrounding the separation. Any material not included in these documents is considered new.

If you do not provide the information before the hearing, the hearing officer will refuse to allow you to introduce it at the hearing unless you show good cause for your lack of action and the other party agrees to waive his or her right 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, including documents, photographs, charts, etc., that strengthens your case may be presented at the hearing. Gather such evidence before the hearing. Remember to provide copies ahead of time to the hearing officer and all parties listed on the hearing notice.

The best evidence of a document's contents is the document itself. The hearing officer will make copies for the UI Appeals file. You can provide copies of the originals; it is not necessary for you to bring the original documents. The original documents should be available in case it is necessary to authenticate the original.

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 him or her (see "Requesting Subpoenas for Documents and/or Persons" below).

Avoid using witnesses who do not help your case. A person who has, in the past, made negative statements about you or about the events in question is likely to repeat those negative statements at a hearing.

Discuss your witness's testimony with him or her before the hearing. There is nothing improper about doing so as long as you do not tell him or her what to say. You are preparing to respond factually to the issues at hand; you want your witness to do the same. After you have spoken to the witness, you may decide that his or her knowledge of the situation is not what you thought it was, and you may choose not to have that person testify.

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## **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 Unemployment Insurance (UI) Appeals issue a subpoena to require the person to participate or provide records.

### **Making the Request for Subpoenas**

Requests for subpoenas must be made to UI Appeals as early as possible by calling 303-318-9299 (Denver-metro area) or 1-800-405-2338 (outside Denver-metro area). 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 physical evidence is required. You must show that the testimony/documentation adds to your argument and does not repeat other information. A subpoena is not granted if it is determined that 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**

Once 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 state your objection at the hearing. If the hearing officer also denies your request, the hearing proceeds; if he or she grants your request, the hearing is continued (rescheduled) to a future date.

### **Subpoena Documents or Persons That Will Assist Your Case**

The hearing is your only opportunity to present documents or testimony that assist your case. You have no obligation to produce a person who might weaken your case.

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## **CONDUCTING THE HEARING**

Preparation is necessary to present the entire case at your hearing (see page 5, "Prepare for the Hearing"). You may not add to the record after the hearing has been filed.

Unemployment insurance (UI) 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. He or she 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 tape-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 transcript is prepared from the tape.

### **The Hearing Officer's Role**

The hearing officer presides at the hearing and:

- Explains the issues involved.
- Explains the procedures to be followed, including the order in which persons testify and the right to cross-examine.
- Ensures witnesses understand the questions that are asked.
- Explains the meaning of terms that are not understood.
- Questions parties and witnesses in order to obtain necessary facts.
- Enters documents as exhibits, if requested.
- 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**

If you are participating in person, do not hesitate to bring original documents to the hearing. Remember, you must mail a copy to the hearing officer and all parties listed on the hearing notice before the hearing. You must request that the documents be entered as an exhibit. Once you make this request, the hearing officer will decide whether the documents will be entered as an exhibit.

Unless special circumstances require that the original be kept in the UI Appeals file, the hearing officer makes a copy for the UI Appeals file and returns the original at the conclusion of the hearing. Documents submitted are marked as exhibits and, if entered as such, become part of the official hearing record.

### **Witnesses and Cross-Examination**

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

### **Questioning the Witness**

Your questions should call for one key fact at a time, and the questions should be short. It is best to ask a series of questions leading up to the crucial point in the case. Your witness is more believable if allowed to relate events in his or her own way.

Asking a question that requires a witness to repeat testimony generally does little good. At worst, it highlights the points the witness made against you.

Do not attempt to change a person's testimony unless an obvious misstatement that can be easily corrected was made. These attempts can easily cause confusion and result in the witness merely repeating the part with which you are dissatisfied.

### **Points on Presenting a Case**

Know the points that you are trying to make when you present your case (see page 5, "Prepare for the Hearing"). The hearing officer knows the content of unemployment law (Colorado Employment Security Act). If your case is based on a decision, rule, or regulation in another field, however, you should quote that statute or decision to the hearing officer.

If you do not have the full text of the law, be prepared to say the citation (the exact part) of the law you are referring to so that the hearing officer can find it easily. If you have that rule, regulation, or decision available, submit a photocopy.

### **Avoid Objecting to Every Point Made**

During the course of the hearing, parties are often tempted to object to every single point the other side is making. Some points may not affect the outcome one way or another. Try not to confuse issues; try to be specific in the points that you need to make to prove your case.

### **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, it should not be your only defense. Every case must stand on its own facts. The facts in the other case may have been slightly different, 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. Beware of asking follow-up questions that give the witness an opportunity to change or explain his or her testimony or bring out some further fact that might hurt 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 problem to the attention of the hearing officer.

If you keep silent, there is no way of knowing that other evidence exists or that you might have made other arguments. In making a decision, the hearing officer is limited to the evidence presented at the hearing and, on a further appeal, you will not be allowed to offer additional evidence.

If necessary, make a simple request to have the hearing continued (rescheduled) to a different time. This may enable you to produce further 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, you have made your request a matter of record.

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## **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.

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## **UI APPEALS INFORMATION ONLINE**

To view this publication online, visit [www.coworkforce.com](http://www.coworkforce.com), select **Unemployment Information**, and then click on **The Appeals Process**. To find answers to frequently asked questions, visit [www.coworkforce.com](http://www.coworkforce.com), select **Unemployment Information**, click on **Frequently asked questions**, and then click on **Appeals Frequently Asked Questions**.