INDIANA
WORKFORCE
DEVELOPMENT
AND ITS WorkOne CENTERS

TO: Indiana's Workforce Investment System

FROM: Teresa L. Voors
Commissioner, Indiana Department of Workforce Development

THROUGH: Dustin Stohler
General Counsel

DATE: January 2, 2009

SUBJECT: DWD Policy 2008-28
Unemployment Insurance Benefit Hearings before an Administrative Law Judge

Purpose
To add detail to the policies and procedures for unemployment insurance benefit hearings before an administrative law judge

Rescission
None

Contents
In the interest of providing a fair and impartial forum for claimants and employers with claim disputes, the Indiana Department of Workforce Development (IDWD) has the authority to hear and decide issues related to claims for unemployment insurance benefits pursuant to Indiana Code § 22-4-17-3. IC § 22-4-17-4 provides for the department to maintain one or more administrative law judges (ALJs). This IDWD policy is a detailing of some of the procedural information for hearings before an ALJ.

Interested Parties
Any interested party in the claim of an employee will be entitled to a hearing before an ALJ relative to the merits of the claim following an adverse decision by a Claims Deputy or on referral for an initial determination from the Adjudication Center. An interested party includes:

1. any claimant for benefits;
2. any employer whose account may be affected by the adjudication of the claim;
3. any employer in the claimant's base period;
4. any employer who has made an offer of work to the claimant or to whose employment claimant has been furnished a referral; and/or
5. the claimant's last or separating employer.

Representation before an ALJ

Any employer or employing unit interested in any benefit claim pending before an ALJ may appear:

1. by an individual who is employed by or has an ownership interest in the employer or employing unit
2. by attorney, officer, or member of the firm or its local manager;
3. by a recognized public accountant; or
4. a representative of an unemployment compensation service firm.

Any claimant may appear:

1. in person and represent his own interest; or
2. by an attorney, recognized public accountant, or authorized agent of any bona fide labor organization.

Additionally, any interested party may be represented by an individual or member of a class of individuals authorized by rule of the Indiana Supreme Court to represent parties in judicial or quasi-judicial proceedings.

Filing an Appeal

A party appealing from a decision or order of a claims deputy must file its appeal directly with the Unemployment Insurance Appeals division on the form provided by IDWD for that purpose or pursuant to instructions provided by the appeals division. However, the receipt of any document that indicates on its face a desire to appeal and contains the information requested by the form provided by IDWD will be treated as being in compliance with this policy.

Hearing Notice

Once a hearing on an appeal has been scheduled, notices of the hearing will be mailed to the claimant and to the following:

1. the claimant's last or separating employer;
2. each employer who has made an offer of work to the claimant or to whose employment claimant has been furnished a referral; and
3. each employer who, other than being chargeable with benefits paid or payable to the claimant, has a direct connection with the issue or issues raised by the appeal.

If it appears to the ALJ that an employer was improperly excluded as an interested party, the ALJ may cause that employer to be given notice of the hearing and become party to the appeal.

Unless otherwise provided, all forms, pleadings, and papers in connection with disputed claims must be filed with the Unemployment Insurance Appeals division. It is the responsibility of the attorney or representative to ensure that all legal motions filed are served on all interested parties with a certificate of service.

Notice of all hearings or proceedings before an ALJ, unless otherwise permitted by statute, regulation, or IDWD policy will be given by U.S. mail and the mailing of any notice will be prima facie proof of the service. Notices and the time period which commences with the service of the notices under IDWD regulations and policies will comply with IC § 22-4-17-14.

Hearing Conduct

Hearings before an ALJ will be conducted in the following manner:

1. Hearings will be conducted to determine the substantial rights of the parties.
2. Parties may present evidence as the ALJ deems necessary for determining the substantial rights of the parties.
3. The parties to the appeal may appear in person, by attorney, or by duly authorized agent or representative and will have the right to examine their own witnesses, present evidence, and cross-examine the witnesses of the opposing party.
4. Any ALJ will have the right to examine all witnesses and may require the parties to produce any available evidence the ALJ deems necessary for proper determination of the case.
5. Where either party fails to appear or where either party is not represented by an attorney or duly authorized agent, it will be the duty of the administrative law judge to examine the party's witnesses, and to cross-examine all witnesses of the other party, in order to ensure complete presentation of the case.
6. In general, Indiana Rules of Trial Procedure for the trial of civil causes will govern the proceedings before an ALJ, but not to an extent as to obstruct or prevent a full presentation of the fact or to jeopardize the rights of any interested party.
7. No improper conduct on the part of any party will be permitted during the progress of a hearing.
8. When an employer or claimant is not present at any hearing before an ALJ, but is represented by an agent or representative, the ALJ may require the agent or representative to produce proof in writing, signed by the claimant or employer, giving the agent or representative authority to so appear for and represent the party.
9. In general, hearsay evidence will not be considered, but the ALJ will consider all hearsay evidence as would be admissible under common law and statutory rules of evidence of the courts of Indiana. Hearsay evidence which is not subject to a common law or statutory exception with respect to admissibility may be admitted but will not be entitled to the same weight in reaching a decision as direct testimony. Hearsay evidence properly objected to and not falling within a recognized exception and admitted into record cannot form the sole basis for a decision by the ALJ.

The ALJ may continue any hearing upon its own motion or upon written application of any party to the appeal. The written application must be received not later than three days before the date of the hearing. However, it is within the ALJ's discretion to consider requests filed fewer than three (3) days prior. An application for a continuance of a hearing pending before an ALJ must be filed with the Unemployment Insurance Appeals division.

Failure to Appear
If the party who has requested the appeal fails to appear at an ALJ hearing, after having received due notice, the ALJ can, at the ALJ's discretion, dismiss the appeal and the determination from which the appeal was requested will be deemed final unless the appeal is reinstated as provided.

If a party failing to appear at an ALJ hearing applies within seven days from the date of the mailing of the decision or notice of disposition and can show good cause, as determined at the sole discretion of the Director of Unemployment Insurance Appeals or the designee of the same, why the case should be reinstated, the appeal will be reinstated. No appeal may be reinstated more than once.

Withdrawal
Any party appealing the initial determination of a deputy or a decision of the ALJ may withdraw the appeal at any time prior to the hearing by notice in writing, and the decision of the deputy or ALJ will become final and conclusive as against the party withdrawing the appeal unless within seven days after the date of withdrawal a petition in writing for reinstatement is filed. If the petition is timely filed, and good cause is shown for the withdrawal as determined at the sole discretion of the Director of Unemployment Insurance Appeals, the appeal will be reinstated. No appeal will be reinstated more than once.

Decision
The decision of the ALJ will contain conclusions of law supported by specific findings of fact. The decision will be in writing and electronically signed by the ALJ. Copies will be sent to the parties named, their representatives or attorneys in the appeal, and to the unemployment insurance benefits office.

Review Date
December 31, 2009

Ownership
Director of Unemployment Insurance Appeals
Indiana Department of Workforce Development
311 W. Washington Street, Suite 101
Indianapolis, IN 46204
Telephone: 317.232.7170

Effective Date
January 1, 2009

Action
Indiana's workforce investment system will follow the guidance contained in this policy. Directors and managers will ensure that staff who work with this policy's subject matter are aware of the details contained in this policy and follow its guidelines.