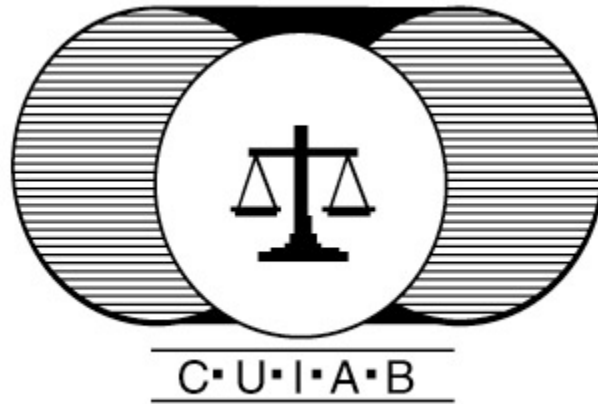




# APPEALS PROCEDURE

BEFORE

- ADMINISTRATIVE LAW JUDGES, CUIAB

## CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

STATE OF CALIFORNIA  
GAVIN NEWSOM, GOVERNOR

## INTRODUCTION

Section 100 of the Unemployment Insurance Code (hereafter referred to as the Code) provides in part as follows:

“The Legislature therefore declares that in its considered judgment the public good and the general welfare of the citizens of the State require the enactment of this measure under the police power of the State, for the compulsory setting aside of funds to be used for a system of unemployment insurance providing benefits for persons unemployed through no fault of their own, and to reduce involuntary unemployment and the suffering caused thereby to a minimum.”

In California more than 900,000 employers are covered by provisions of the Code. They employ in excess of thirteen million workers who are potentially eligible for unemployment or disability benefits under this Code. In addition, thousands of ex-servicemen and former federal employees qualify for some form of unemployment compensation benefits under federal law, paid through offices of the California Employment Development Department (Department). By interstate and international agreement, unemployed workers from the other 49 states, the territories of the United States and the provinces of Canada can claim unemployment compensation benefits through the facilities of the Department.

Many employers and workers have disputes with the Department over their respective rights and responsibilities. Each year more than 230,000 of these parties exercise their right to have their disputes adjudicated by an Administrative Law Judge (ALJ) of the California Unemployment Insurance Appeals Board (CUIAB); each year more than 15,000 claimants and employers file appeals from decisions of ALJs to the Appeals Board itself.

The average citizen's personal experience with the judicial system is frequently limited to an occasional appearance in traffic court. On those rare occasions when he or she appears in court, an attorney at law generally supplies the necessary knowledge of the judicial procedure. However, thousands of workers and employers who regularly appear before CUIAB represent themselves and are not fully aware of their rights and responsibilities. The purpose of this article is to give a brief explanation of the operating rules and practices of the Board to help parties better present their cases.

## THE APPEALS BOARD AND ITS ADMINISTRATIVE LAW JUDGES

CUIAB is an independent governmental agency with powers of a head of a department (Code section 407). It has a Secretary/Chief Counsel, a Chief Administrative Law Judge, a staff of Administrative Law Judges, and a clerical force (Code sections 401-411).

The Appeals Board is comprised of five members. Three are appointed by the Governor, one by the Speaker of the Assembly and one by the Senate Rules Committee. The members serve staggered terms of four years. The Governor designates a Chairperson from the membership of the Appeals Board. CUIAB is not responsible to the Director of the Department for its operations and decisions. The Department is required by statute to furnish equipment, supplies and housekeeping functions for CUIAB.

## INDEPENDENCE AND IMPARTIALITY OF THE ADMINISTRATIVE LAW JUDGE

Section 404 of the Code provides in part as follows:

“The Appeals Board, or the executive officer subject to its direction and control to whom it delegates such responsibility, shall appoint and direct the activities of one or more impartial administrative law judges who shall hear and render a decision in every matter in which a petition is filed with, or an appeal is taken to, an administrative law judge as provided in this division.”

The impartial status of the ALJ is a distinctive feature of the unemployment insurance program in California. In many other states, hearing officers are employees of the Department and therefore potentially subject to direction and control. Since 1943, this relationship has not existed in California. An employer or claimant who files an appeal to review a Department action obtains an independent review of the matter. The Department, like the employer and the claimant, is a party in appeals proceedings.

## TIME LIMITS FOR FILING APPEALS AND PETITIONS TO AN ADMINISTRATIVE LAW JUDGE

Appeals and petitions arising under the Code and related state and federal statutes must be filed within the time limits provided by law (usually a period of from 10 to 55 days) as shown in the chart below.

| Type of Appeal or Petition                                                         | Time Limitations |
|------------------------------------------------------------------------------------|------------------|
| Unemployment Insurance Cases                                                       | 30 days          |
| Disability Insurance Case (State or voluntary plan)                                | 30 days          |
| Ruling Case                                                                        | 30 days          |
| Disputed Coverage Case                                                             | 30 days          |
| Disputed Coverage Case (no response)                                               | 55 days          |
| Tax Case (general)                                                                 | 30 days          |
| The above time limitations may be extended upon a showing of good cause for delay. |                  |
| Tax Case (jeopardy assessment)                                                     | 10 days          |
| Law does not permit extension of filing time.                                      |                  |

## FORM OF THE APPEAL OR PETITION TO AN ADMINISTRATIVE LAW JUDGE

An appeal or petition to an ALJ need not be formal, nor is it required to be prepared in any special form (a letter will do). Appeals and petitions must be in writing and include the following: (1) the name and mailing address of the appellant or petitioner, (2) the employer account number, if any, of the appellant or petitioner, (3) the name and mailing address of any representative filing the appeal or petition; and (4) the name and social security number of any claimant who is a party. The appeal should also include the appellant's or petitioner's telephone number, cell phone number, and e-mail address; the date and case number, if any, of the underlying Department notice or action; a statement of the reasons for the appeal or petition; a request for language assistance (an interpreter) or special accommodation, if needed; and the appellant's or petitioner's signature and the date signed.

## FILING THE APPEAL OR PETITION TO AN ADMINISTRATIVE LAW JUDGE

All appeals and petitions should be filed with the Department office where the case is located. If the person filing does not know the correct office, the document may be sent to any office of the Department. An appeal or petition is considered filed on the date it is mailed, electronically transmitted, or physically delivered.

## PROCESSING OF APPEALS AND PETITIONS

Upon receipt of an appeal, the Department forwards its records to a CUIAB Office of Appeals. The case is registered, a file is prepared and a case number(s) assigned. The case number(s) should be used in corresponding with the Office of Appeals. A notice of hearing showing the date, time and place of hearing, the case number(s), and the legal issue(s) involved is mailed to each party in advance of the hearing. A hearing information pamphlet is also included which explains the rights and responsibilities of the parties and contains important information about the conduct of the hearing.

Upon receipt of a tax petition, the case is registered and a copy of the petition is furnished to the Department. The Department will prepare and file a written answer to the petition. This answer is filed in duplicate, one copy of which is mailed to the petitioner. The purpose of the answer is to advise the petitioner as to the basis for the Department's action.

## SCHEDULING OF CASES FOR HEARING

Section 1326 of the Code provides that benefits shall be promptly paid when due or promptly denied when the claimant is not eligible. As a consequence, cases concerning eligibility for benefits are given priority over tax and ruling proceedings in setting cases for hearing.

The time and place of hearing is determined by the Office of Appeals. Cases which have been filed first are generally heard first. This practice is adjusted as needed for purposes of efficiency by consolidating cases involving the same party or by grouping cases by geographical locations.

Written notice of the time and place of hearing is sent to each party (including the Department) at least 10 days before the date of hearing. Written notice of the time and place of hearing in any tax petition is mailed at least 20 days before the date of hearing.

### **TIME ALLOTTED FOR HEARINGS**

Benefit cases generally are set for hearings at intervals of forty-five minutes to one hour. Two hours or more are generally allotted for hearing a tax petition. If a party believes that more time may be needed for the hearing because of the number of witnesses, number of documents, need for an interpreter, or other reasons, that party should notify the Office of Appeals either at the time the appeal or petition is filed or immediately upon discovering that more time may be necessary. This notification might permit the Office of Appeals to allocate additional time and avoid the expense and inconvenience of a second hearing.

### **WITHDRAWAL AND REINSTATEMENT**

An appellant or petitioner may apply to withdraw an appeal or petition at any time before the decision of the ALJ is sent to the parties. Upon receiving such an application, the ALJ will order the appeal or petition dismissed. Once the appeal or petition is dismissed upon an application to withdraw, it can be reinstated if the appellant or petitioner files an application for reinstatement within 20 days after the mailing of the order dismissing the appeal or petition, and shows good cause to reinstate the appeal. The application must specify the reasons for reinstatement, and if the application is untimely, it must also specify the reasons for the delay.

### **PREPARATIONS FOR THE HEARING**

It is the responsibility of each party to present at the hearing all information, witnesses, and documents or other evidence needed to fully disclose that party's position on each issue involved. It is therefore the responsibility of each party to promptly request a rescheduling of the hearing if that party, or an important witness for that party, will not be available for the scheduled hearing listed on the notice of hearing. A party scheduled to appear in person at the hearing might be permitted to appear for the hearing by phone if good cause can be shown for granting a request to participate in that manner. A request for a phone hearing should be made as soon as possible before the hearing. If a party wishes to have a witness testify during the hearing by phone, that party should contact the Office of Appeals as soon as possible before the hearing and request permission for that witness to testify by phone. If such permission is not granted before the hearing, the ALJ conducting the hearing might not allow the witness to testify by phone.

If a party is unable to obtain an important document for the hearing or experiences difficulty in getting an important witness to appear for the hearing, that party should request the Office of Appeals to issue a subpoena that will require that document or witness to be present for the hearing. Such a request for a subpoena ~~should be~~ made as soon as possible before the hearing. If a subpoena is authorized, the subpoena will be issued to the requesting party and it will be the responsibility of that party to serve that subpoena before the hearing on the person in possession of the document or the witness. The Office of Appeals may also, upon request, mail documents entitled notice to attend or notice to produce which request that a named witness or identified document be presented at the hearing. \_\_\_\_\_

### **THE ROLE OF THE ADMINISTRATIVE LAW JUDGE IN CONDUCTING THE HEARING**

The hearing will be recorded electronically. CUIAB understands that many claimants and employers may not have previously participated in such hearings. The procedure for the proceeding is therefore explained by the ALJ at the beginning of the hearing. The ALJ identifies himself/herself and the case number(s) involved, specifies the date and hearing location, identifies each individual who is participating in the hearing, confirms the correct mailing address for each participating party, describes the issues involved, explains the rights of each party during the hearing, and describes the order in which evidence will be presented and the rights of the parties will be exercised. The ALJ will place all parties and witnesses under oath. The ALJ will generally accept into evidence all relevant documents concerning the case that have been prepared or gathered by the Department and the parties unless the ALJ concludes that a legal justification exists for excluding any of those documents.

It is the ALJ's responsibility to ascertain the relevant facts and safeguard the rights of the parties. The ALJ therefore takes an active role in developing the evidentiary record and may question any party or witness and admit into evidence any relevant information. The ALJ may assist a party in the proper phrasing of questions and otherwise take such action as is necessary to fully and fairly develop the official record of the case under the existing circumstances.

Section 1952 of the Code provides: "The appeals board and its representatives and administrative law judges are not bound by common law or statutory rules of evidence or by technical or formal rules of procedure but may conduct the hearings and appeals in such manner as to ascertain the substantial rights of the parties."

## **THE RIGHTS OF PARTIES AT A HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE**

Each party has the following rights at the hearing: The right to 10 days' advance written notice of each issue that will be discussed and decided; the right to be represented by an individual of that party's choosing; the right to testify on that party's own behalf on each issue; the right to present and question witnesses on that party's behalf on any matter relevant to the proceeding; the right to present relevant documents and other exhibits as proposed evidence to be included in the official record of the case; the right to review the case file and any document or other exhibit that is presented by another party as proposed evidence; the right to object to the questioning of any witness, the conduct of the hearing, and the ALJ's inclusion in the official record or exclusion from the official record of any proposed evidence; the right to question any other party and any witness who testifies on behalf of any other party on any matter relevant to the issues involved; the right to impeach any witness regardless of which party first called the witness to testify; the right to present rebuttal testimony and evidence that explains why information presented by another party should not be believed; and the right to provide a closing statement that explains why the party believes the decision of the ALJ should be in the favor of that party on each issue involved.

## **THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

As soon as possible after the hearing is completed, the ALJ issues a written decision that is mailed to all parties. Unless the appeal is dismissed due to having been untimely-filed or withdrawn or due to another legal reason, the decision of the ALJ shall affirm, reverse, modify or set aside the appealed determination or action of the Department. The decision generally includes (1) an issue statement that identifies the issue(s) involved, (2) findings of fact that the ALJ found to be true after evaluating the evidence, (3) reasons for decision that list the appropriate law and explain the ALJ's application of that law to the facts found, and (4) a conclusion that confirms the ALJ's decision on the issue(s). The mailing date of the decision is listed on the decision. The decision is accompanied by a written explanation of the appeal rights that apply to the decision. After the decision has been issued, it cannot be changed except to correct clerical errors. The case may be reopened by an ALJ if one of the parties shows good cause for failure to attend the hearing.

## **APPEALS FROM THE DECISION OF AN ADMINISTRATIVE LAW JUDGE**

An appeal to the Board from an ALJ's decision need not be formal, but must be in writing and include the name and mailing address of the appellant, the employer name and account number if the appellant is an employer, the name and social security number of any claimant that is a party, and the name and mailing address of any representative filing the appeal. The appeal should also include the telephone number, cell phone number and e-mail address of the appellant, the date and case number(s) of the ALJ's decision(s) being appealed, a statement of the reasons for the appeal, the appellant's signature and the date signed. If the appeal is filed late, it should also contain an explanation as to why it is late.

Within the period provided for the timely filing of the appeal, the appellant has the right to request (1) a copy of the complete record of the case for the purpose of submitting written argument in support of the appeal, (2) permission to submit additional evidence, and (3) the opportunity to offer oral argument on the case. Additional time may be granted upon request. If the appellant desires to exercise any of these rights, a specific request to exercise such right should be included in or with the appeal. Each such request should be underlined if it is contained in the appeal. A request for permission to submit additional evidence should be prepared as described in the following section titled, "Additional Evidence."

Acknowledgement Letter. When a timely Board appeal is received by the Appeals Board, a letter acknowledging receipt of the appeal is mailed by the Board to all parties involved in the case. A copy of the Board appeal is mailed to the other parties with the acknowledgement letter. If the appellant timely requests a copy of the record for the purpose of submitting written argument, a copy of the complete record of the case (including a CD

copy of the audio recording of the hearing) will be mailed by the Board to the appellant and the other parties (respondents). The record mailed to the parties will be accompanied by a written notice that advises each party of its right to submit (1) written argument, (2) a request to submit additional evidence, and (3) a request to offer oral argument. The acknowledgement letter typically functions as that written notice.

Each party will have 12 days from the mailing date of that notice in which to file with the Board written argument, a request to submit additional evidence, and/or a request to offer oral argument. Additional time may be granted upon request. A copy of each such written argument or request must be mailed by the filing party to the other parties at the same time that the written argument and/or request is filed with the Board. The copy of such written argument or request should include a statement as to how and when the copy was mailed to or served upon the other parties.

Additional Evidence. A request to submit additional evidence must state the nature of the additional evidence, explain the importance of the additional evidence, and state the reasons why such evidence was not presented at the hearing before the ALJ. If the additional evidence is documentary, a copy of the additional evidence must be attached to the request. The Board generally does not accept or consider additional evidence unless good cause exists to do so. If the Board grants a request to accept additional documentary evidence, the Board will mail a copy of the additional documentary evidence to each party and allow each party 10 days in which to submit a response.

Board Appeal Permission Letter. Before modifying or reversing the result of an ALJ's decision in a case in which the appellant did not request a copy of the record for the purpose of submitting written argument, the Board shall permit the respondent(s) to exercise its rights to submit written argument, request to submit additional evidence, and request to offer oral argument. A copy of the complete record of the case (including a CD copy of the audio recording of the hearing) will be mailed to the respondent(s) with a written notice that informs the respondent(s) of such rights. That notice is typically titled "Board Appeal Permission Letter." The respondent will have 12 days from the mailing date of that permission notice in which to file with the Board written argument, a request to submit additional evidence, and/or a request to offer oral argument. Additional time may be granted upon request. A copy of each such written argument, and/or request must be mailed by the filing respondent party to the other parties at the same time that such written argument and/or request is filed with the Board. The copy of such written argument or request should include a statement as to how and when the copy was mailed to or served upon the other parties.

Requests to offer oral argument before the Board are rarely granted. In the event that a request for oral argument is granted, the parties shall be provided with at least 10 days' advance written notice of the date, time, and place of the oral argument.

## **APPEALS BOARD REVIEW OF THE ADMINISTRATIVE LAW JUDGE'S DECISION**

The Appeals Board generally does not hold another hearing on the case. The Board's consideration of the case is usually limited to a review of the allegations contained in the appeal, a review of the evidence accepted into the record at the hearing before the ALJ, and a review of any timely submitted written argument and/or timely submitted additional evidence accepted into evidence by the Board. If oral argument was authorized, the consideration of the case will also include a review of the audio recording or transcript of the oral argument and all documents accepted into evidence as part of that oral argument. The Board will not consider any evidence or factual assertions that were not presented at the hearing before the ALJ or authorized by the Board for inclusion in the official record of the case.

A panel of any two members of the Board will consider the Board appeal. The decision of those two members constitutes the decision of the Appeals Board. If the two members do not concur in the decision, the Chairperson or another member of the Board designated by the Chairperson will be assigned to the panel in order to resolve the impasse. A case shall be considered and decided by the Appeals Board acting as a whole at the request of any Board member. The Appeals Board, acting as a whole, may designate certain of its decisions as precedents.

The Appeals Board, acting as a whole, may, by notice mailed to the parties prior to the mailing of an ALJ's decision, on its own motion transfer the case to another ALJ or remove the case to itself for review and decision. The Appeals Board, acting as a whole, may, by notice mailed to the parties not later than 30 days after the mailing date of the

ALJ's decision, on its own motion set aside the decision of the ALJ and transfer the case to another ALJ or remove the case to itself for review and decision. In any case before it, the Board may delegate to one of its members or a special examiner or an ALJ the taking or hearing of evidence.

The written decision of the Appeals Board is sent to all parties. The mailing date of the decision is listed on the decision. Unless the appeal is dismissed as having been untimely-filed or withdrawn or due to another legal reason, the decision may affirm, reverse, modify, or set aside the ALJ's decision. The Board decision may order the taking of additional evidence. The Board decision sets forth the issue(s) involved, the findings of fact, the reasons for decision, and the decision on each issue. The Board may adopt all or part of the ALJ's decision. The ALJ's decision is attached to the Board's decision. A written attachment that explains the appeal rights that apply to the decision is also included with the Board decision. After the Board decision has been mailed, it is not subject to reopening, reconsideration, or rehearing and cannot be changed except to correct clerical error.

## **JUDICIAL REVIEW OF APPEALS BOARD DECISION**

Section 410 of the Code provides that decisions of the Board shall be final "except for such action as may be taken by judicial tribunal as permitted and required by law." Section 3264 of the Code provides that mandamus is the exclusive remedy for reviewing acts of the Board in denying disability benefits under a voluntary plan of insurance. It is well established that mandamus is the exclusive remedy in reviewing benefit actions of the Board. The statutory law relating to administrative mandamus is set forth in Section 1094.5 of the Code of Civil Procedure. Notwithstanding any other provision of law, the right of the director, or of any other party except as provided by Sections 1241, 1243, and 5310 to seek judicial review from an Appeals Board decision shall be exercised not later than six months after the date of the decision of the Appeals Board or the date on which the decision is designated as a precedent decision, whichever is later.

In tax proceedings involving the transfer of reserve accounts or the propriety of a tax rate, the Code provides for judicial review within 90 days after the issuance of the Appeals Board decision, which time may be extended by the Director of the Department for a period not to exceed two years. Mandamus is the remedy for reviewing tax proceedings in this category. In tax proceedings involving an assessment, a petitioner must first pay the assessment, claim a refund, have it denied, exhaust his administrative remedies and then file his judicial action in a court of competent jurisdiction (Sacramento County or a county where the Attorney General maintains a principal office) within 90 days of the action of the Appeals Board. This period may be extended for two years by the Director.

## **HISTORY OF THE APPEALS BOARD**

The unemployment insurance program was adopted in California in 1936. From this inception until 1943, the unemployment insurance program in the Department of Employment was administered by a five-person commission appointed by the Governor. Appeals during this early period were heard by referees, and appeals from referees' decisions were decided by the commission.

In 1943, a separate three-member California Unemployment Insurance Appeals Board was established. In 1949, the Appeals Board became the appointive authority for its staff and was designated as a Division within the Department. Since 1949, the Board and its adjudicative staff have exercised an independent review of appeals and petitions from administrative actions of the Department. In 1967, the Legislature increased the Board's membership to five, two of whom were required to be California attorneys. In 1982, the Legislature increased the Board's membership from five to seven, two of whom were required to be California attorneys. In 2012, the size of the Board was reduced again to five members and all five members were required to be attorneys admitted to practice law.

## **THE APPEALS BOARD TODAY**

Today the Board has 11 Offices of Appeals in major population centers in addition to the Board headquarters in Sacramento. Each office is responsible for the adjudication of the appeals assigned to that office. A Presiding Administrative Law Judge supervises each Office of Appeals.

The Appeals Board has final responsibility for this program. It is assisted by the Secretary/Chief Counsel and by the Chief Administrative Law Judges. The Chief Administrative Law Judge for field operations exercises general supervision over the 12 Offices of Appeals. The Chief Administrative Law Judge for appellate operations exercises general supervision over personnel at the Board.

The address and phone number for each office of the Appeals Board are shown on the last page.

## **PUBLICATIONS OF APPEALS BOARD**

All precedent decisions of the Appeals Board are available online at [www.cuiab.ca.gov](http://www.cuiab.ca.gov). In addition, the Board publishes an index-digest of selected benefit and disability decisions and a descriptive word index of tax decisions. Inquiries concerning the cost of bound decisions, digests and indexes should be directed to the Chief Counsel of the Board.

Board precedent decisions, digests of benefit and disability decisions, and the tax descriptive word index are available for use by parties and their representatives in preparing for the hearing at any office of CUIAB. The Presiding Administrative Law Judge who is in charge of an Office of Appeals will discuss with a party or that party's representative any procedural problems. A copy of the rules adopted by the Appeals Board for proceedings before Administrative Law Judges and the Board may be obtained at no cost from any Office of Appeals or the Appeals Board.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

2400 Venture Oaks Way, Sacramento, CA 95833

P.O. Box 944275, Sacramento, CA 94244-2750

For additional information and a listing of current board members please visit us at: [www.cuiab.ca.gov](http://www.cuiab.ca.gov)

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Office of Chief Administrative Law Judge ..... (916) 263-6722

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