

Hearing Procedures

Testimony is recorded and is taken under oath or affirmation. The party with the "burden of proof" usually testifies first. The employer has the burden to show misconduct connected with the work for a discharge.

If the claimant quit work, it is the claimant's burden to show that the reason for leaving work is not disqualifying. Some reasons for quitting are not disqualifying, but also charge the "fund" rather than a contributory employer's account.

The Chairman will ask questions about important and relevant facts. Witnesses will be allowed to testify. Each party (the claimant and interested employers) will be allowed to question witnesses.

During the Hearing

The Chairman is seeking information that bears directly on the issue(s) being considered. Stay focused on the issue. Present relevant evidence, such as documents, and be sure to have copies. Be brief and accurate. Your conduct at the hearing is a factor in assessing the case. Remain calm and do not be defensive or aggressive.

Reading a statement prepared outside the hearing is hearsay, not first-hand testimony. Hearsay is admissible, but will usually be given less weight than first-hand testimony.

Take notes of the other party testimony, especially that with which you disagree. Use these to ask questions and/or address points.

Effective questions for an employer can:

- Uncover "half-true" testimony; or
- Show lack of credibility; or
- Clear up misunderstood testimony.

AFTER THE HEARING

After the hearing is over and the record is closed, the Chairman cannot discuss the case. A Decision of Appeal Tribunal will usually be mailed to the parties within two weeks.

WITHDRAWALS

Only the party that filed the appeal may withdraw an appeal. To withdraw, notify the ATU **in writing** as soon as possible. If a request to withdraw an appeal is accepted, the appealed determination becomes final as soon as the withdrawal notice is mailed.

POSTPONEMENTS/RE-SCHEDULING

Any interested party may request a postponement. The department may also postpone a hearing. Make the request before the hearing and as soon as the need is known.

If you miss a hearing, you may request the hearing be re-scheduled.

Requests should be in writing. Email is preferred to ensure timely receipt.

AMERICANS WITH DISABILITIES ACT

NH Employment Security complies with the Americans with Disabilities Act. Should you require special assistance to pursue your rights due to a disability as defined in the Act, please contact the ATU as soon as possible.

INTERPRETATION ASSISTANCE

If you need language interpretation assistance, including sign language, notify the ATU immediately.

An Employer's Guide to the Appeal Tribunal Hearing



"We're working to keep New Hampshire working"

IMPORTANT NOTICE

The Appeal Tribunal must meet strict U.S. Dept. of Labor timeliness requirements. Postponements should be requested within 48 hours of the receipt of the Notice of Hearing or as soon as possible.



Appeal Tribunal Unit

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**For Additional information visit the
Department web site: www.nhes.nh.gov**

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TTY ACCESS: RELAY NH 1-800-735-2964.

WHAT IS AN APPEAL?

An appeal is a written disagreement with a department determination.

An appeal hearing is held to ensure each affected party may testify and give evidence.

An Appeal Tribunal (AT) Chairman presides at the hearing. Appeal hearings are not open to the public. Information received in the hearing is **CONFIDENTIAL**.

The AT is the first appeal level. Most cases are resolved at this level.

There are additional appeal levels if you feel the Decision is not justified. Each level has a specific filing time limit. The levels are:

- 1. Appeal Tribunal**
- 2. Request to Re-open - Commissioner**
- 3. Appeal to the Appellate Board**
- 4. Motion for Reconsideration - Appellate Board**
- 5. Appeal to the NH Supreme Court**
- 6. Appeal to the US Supreme Court**

IS A LAWYER NEEDED?

No. You may want a lawyer, especially if the other party has an attorney or for complex issues.

Notify the Appeal Tribunal Unit (ATU) about any representation as soon as possible to prevent scheduling delays. Any representative must provide an appearance letter to the ATU and the other parties.

BEFORE THE HEARING

The Notice of Hearing

Read the entire Notice of Hearing. It lists the issue(s) to be addressed at the hearing, the hearing date and time (NH time), whether it is by telephone or in-person, and, if in person, the hearing location.

It will come by US mail or electronically, depending on your preference, so regularly check mail or electronic correspondence box.

The case may be dismissed for an in-person hearing if you are not at the hearing location when it is to start.

The telephone hearing notice a will include a sheet for you to provide the telephone number(s) at which you and any witnesses may be contacted for the hearing. If possible, it may be useful to have the witnesses in one location.

Contact numbers for participants in the hearing must be provided before the hearing.

Evaluate and Prepare

Prepare in advance by evaluating what is important for the case. Make a list of key points for each issue to be addressed in the hearing.

If the issue is a discharge, be prepared to discuss the final incident and any warnings or personnel actions contributing to the decision to terminate the claimant's employment.

If a quit, be prepared to discuss what specifically caused the quit and anything that was done to resolve the situation.

If benefits were paid, be prepared to discuss what you told the department.

Evidence

Testimony is heard and evidence received, other than newly-discovered evidence only at the appeal tribunal level. Present only relevant evidence.

If the claimant was terminated, bring related disciplinary actions documents, if any, or policies that may have been violated.

If the claimant left work, bring any documents, such as resignation letters, that will address the claimant's allegations.

It may be useful to see department records prior to the hearing. Contact the ATU to see or obtain such records.

If there are records that are important to prove the case, the documents should be obtained and brought to the hearing. These may be subpoenaed.

Make copies of evidence to be presented for the claimant, any other employer(s) and the Chairman.

Email, mail, or fax any evidence for telephone hearings to the ATU and to the claimant immediately to prevent a need to continue the hearing.

Witnesses

It is extremely important to have first-hand witnesses present.

A mistake often made is that the witness does not have a first-hand account of the events. For example, a personnel manager's testimony about a witness report is given less weight than the witness's own testimony.

If a first-hand witness cannot attend, the department may allow participation by telephone. If the witness cannot attend by telephone, it is best to request postponement.

If a witness is unwilling to participate voluntarily, the AT may issue a subpoena if the witness has relevant testimony necessary for a fair hearing. It is best to know what the witness will say before a subpoena request.

A written statement from a witness is not as credible as direct testimony.

THE APPEAL HEARING

"De Novo"

The hearing is usually *de novo*, meaning the case is heard as if no prior decision had been made. The AT is not bound by earlier NHES determinations, decisions, or findings.

Attend the Hearing

No matter who filed the appeal it is important to attend the hearing. If you do not appear, the Tribunal will not have your first-hand testimony, and a ruling against you is more likely. If you filed the appeal and you do not appear, the case may be dismissed.