

Frequently Asked Questions (FAQs)- Appeals

Question: How long do I have to file an appeal?

Answer: You have fifteen days to file your appeal. The time to file an appeal begins on the date at the bottom of the Claims Determination.

Question: How do I file an appeal?

Answer: You may appeal by using one of the following methods:

- Writing a letter of appeal and faxing it to (505) 383-2719
 - Writing a letter of appeal and mailing it to: NMDWS Appeals Tribunal, P.O. Box 1928, Albuquerque, NM 87103
 - Calling the Interactive Voice Response (IVR) system at 1-877-664-6984
 - Online at www.dws.state.nm.us
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Question: Who may file an appeal?

Answer: Any party adversely affected by the Claims determination, or a decision of the Chief of the Tax Section may appeal that determination or decision.

Question: The fifteenth day to file an appeal falls on a weekend, do I have to get my appeal in before then?

Answer: If the fifteenth day falls on a weekend or a day on which the Department offices are closed, an appeal filed by the next working day is considered timely. If an appeal is filed by mail, we use the postmark date as the appeal date even if that is a weekend date.

Question: How long will it take before I hear anything after I file the appeal?

Answer: Once an appeal is filed, the time for hearing to be scheduled will vary depending on the workload at the time. You will receive a Notice of Hearing in the mail. These are mailed no less than ten days prior to the scheduled hearing. You should begin preparing for your hearing as soon as you have filed your appeal. **The notice of Hearing will contain additional [Hearing Instructions](#) which you should carefully read and follow once you receive the Notice.**

Question: What happens after the appeal is filed?

Answer: When an appeal is filed, a hearing will be scheduled. Generally, these hearings are scheduled for one hour. If you feel that the presentation of your case will require additional time, you must notify the Administrative Law Judge immediately. You will be notified by mail of the date, time, and mode of hearing, as well as the issues that will be discussed at the hearing. Additional instructions are included with the Notice of Hearing and should be reviewed carefully. The Notice of Hearing will be mailed to you no less than ten days prior to the hearing date.

Question: I received a Notice of Hearing but I didn't file an appeal. Why did I get this?

Answer: Another party on the claim filed an appeal. If you are the claimant, then the employer filed the appeal. If you are the employer, then the claimant filed an appeal. If you received the Notice of Hearing, you are considered an interested party in the case and should plan to attend the hearing, unless notified otherwise by the Appeals Tribunal.

Question: If the Claims determination was in my favor, why did I start getting my payments if the employer appealed that determination?

Answer: The law provides that once a Claims determination allowing payment has been made; payment cannot be withheld pending a further appeal.

Question: It's my understanding that the UI information handbook is no longer given to claimants, so why are we telling them about it?

Answer: The Notice of Claim Determination and the UI information handbook explain that determinations are subject to appeal and explain the consequences of the appeal process.

Question: Do I have to keep certifying?

Answer: You should continue to certify as long as you are unemployed and continue to meet the other eligibility requirements. If the decision is in your favor you can only be paid for those weeks for which you have certified. If you have problems certifying, you should contact the UI Call Center at 1-877-4-MY-UI (1-877-664-6984) and speak to a customer service representative.

Question: What kind of documentation do I need to proceed with my appeal?

Answer: Each case varies. There are cases where no documentation is available. Any documentation you submit should be directly related to the issue to be addressed. Typically documentation consists of policies, acknowledgement, warnings, doctor's statements, etc. What you will need in your case will depend on the type of issue to be addressed. It is not necessary for you to write out a statement or narrative outlining your position for the Administrative Law Judge prior to the hearing.

Question: If the opposing side to my case already has the documents, do I still need to provide them a copy before the scheduled hearing date?

Answer: Yes. Even though they may already have seen the document, you need to provide them a copy of it prior to the hearing date, so that they are aware that this will be referred to during the hearing. Copies of documentation to be used at the hearing must be received by the other side 48 hours prior to the scheduled hearing date.

Question: The employer has documents that I want to use in my case and won't provide them to me. What do I do?

Answer: You may request that documents be subpoenaed from the opposing side. To do this, you must submit a written statement to the Administrative Law Judge with the following information: the name of the person who has the documents; the address for the subpoena to be served to this person; a list of the documents with an explanation as to what each document has to do with your case and the issue to be addressed at the hearing. This must be submitted as far in advance of the hearing as possible and a copy must be sent to the opposing side. Failure to provide this

information may result in your request being denied. Please remember that just because you have made a subpoena request, that does not automatically mean it will be granted. If you request a subpoena and your request is denied and the decision is against you, you may raise that denial in any further appeal. If the subpoenas are granted, they will be served by certified mail by the Administrative Law Judge.

Question: Who may I have as witnesses?

Answer: Witnesses should be those persons with direct firsthand knowledge of the events which are related to the issues to be addressed at the hearing. As the time for the hearings is limited, it is best to choose the “best” witnesses for the event. If there are too many witnesses, each testifying to the same event, the Administrative Law Judge may limit the number of witnesses if the testimony becomes repetitive. There may be instances where there are no other witnesses available as well.

Question: What do I do if the person I want as a witness will not appear, is afraid to appear, or I can't find them?

Answer: You have the option of requesting that an individual be subpoenaed for the hearing. To do this, you must submit to the Administrative Law Judge a written request with the following information: name of person; the address at which the subpoena is to be served; and the brief statement on what event that person would testify. This must be submitted as far in advance of the hearing as possible and a copy must be sent to the opposing side. Failure to provide this information may result in your request being denied. Please remember that just because you have made a subpoena request, that does not automatically mean it will be granted. If you request a subpoena and your request is denied and the decision is against you, you may raise that denial in any further appeal. If the subpoenas are granted, they will be served by certified mail by the Administrative Law Judge.

Question: What if I don't know the witness' address?

Answer: It is the responsibility of the person requesting the subpoena to provide the information necessary to serve the subpoena. If the witness is employed, the subpoena can be served in case of the employer at their work address.

Question: Do I need an attorney?

Answer: You may have legal representation at the hearing. This is a choice you have to make. The Department does not provide attorneys and if you choose to have one, it is at your own expense and you are responsible for locating an attorney on your own. The hearings are designed so that the parties may appear without representation. The Administrative Law Judge is responsible for explaining the hearing procedures and the applicable laws as well as ensuring the rights of all parties are protected and that all available evidence is obtained.

Question: Can I request an in-person hearing?

Answer: Hearings are generally held over the phone. Telephone hearings meet the requirement of having an opportunity to confront adverse witnesses. If you have special needs which cannot be accommodated by a phone hearing, such as a hearing or other disability, you may request an in person hearing. You should notify the Appeals Tribunal of your request and the reason for the request as far in advance of your hearing as possible. You may be asked to provide more information or documentation to support your request.

Question: How long after the hearing will I know if I won my case?

Answer: Decisions are not announced during the hearings. After the hearing, the Administrative Law Judge will issue a written decision which will be sent to all parties at the same time. As the amount of time required for preparing and writing a decision is not the same for all cases, the amount of time this will take will vary.

Question: If I win, how long will it take for me to get my unemployment benefit checks?

Answer: If you were disqualified, and the Appeals decision is in your favor, you have continued to certify and met all of the other eligibility requirements, payments will be made as soon as possible. Once the Appeals decision is issued, it is the responsibility of the Claims Section to take any action based on that decision. This time frame is generally within three days but may take longer.

Question: If I am getting paid benefits and lose, why do I have to repay those benefits when it was not my fault?

Answer: The law provides that if a claimant is found to be eligible and subsequently found to be ineligible for benefits, any benefits paid to them must be re-paid to the Department. The law does not provide any distinction as to any fault for this. Repayment agreements may be made with the Benefit Payment Control Section.

Question: I started working before the determination was made, do I still have to appear at the hearing?

Answer: If you do not appear, you risk not having your testimony or evidence considered in making the decision. If you were paid any benefits and do not appear you risk a decision that were not entitled to those benefits and will be overpaid those benefits and have to repay them.

Question: If the decision goes against me, can I appeal it again?

Answer: Yes. If you still disagree with the decision, appeals from that decision of the Appeals Tribunal go to the Secretary of the Department. The Secretary may review the appeal and issue a decision or he may refer it to a three member Board of Review. The Secretary or the Board do not conduct new hearings, they only review the tape, documents and previous decision and decide if those decisions are supported by the evidence presented at the hearing. Because these appeals are on a review basis only, you should explain why you disagree with the decision. These appeals must be filed in writing. The time limit for appealing a decision of the Appeals Tribunal is specified in the paragraph below the Administrative Law Judge's signature.

Question: I didn't appear at the hearing, can I still appeal the Appeals Tribunal decision?

Answer: Yes. Since you did not appear, your appeal would be considered as a request to reopen the case. You should explain in detail why you did not appear at the hearing. If it is determined by the Board of Review that you had a good reason for not appearing, the case will be remanded to the Appeals Tribunal for an additional hearing to give you an opportunity to appear. A new decision will be issued based on both the prior record and the new evidence, which would allow new appeal rights from the new decision. You must contact the Appeals Tribunal in advance of the next hearing to review the tapes and evidence submitted at the prior hearing.

Question: My witnesses and documents were not admitted by the Administrative Law Judge and the decision went against me, what do I do about this?

Answer: If you still do not agree with the decision of the Appeals Tribunal and you had witnesses or documents that were excluded, you may appeal to the Secretary of the Department. In your appeal, you should identify the witnesses

and/or documents which were excluded and explain how that evidence would have helped your case and why it should be considered. If it is determined that the evidence should have been considered, the case will be remanded to the Appeals Tribunal for an additional hearing to admit that evidence. A new decision will be issued based on both the prior record and the new evidence. There will be new appeal rights from the new decision.

Question: I have additional evidence I did not present at the hearing and the decision went against me, what do I do about this?

Answer: If you still do not agree with the decision of the Appeals Tribunal and you had witnesses or documents that were not presented, you may appeal to the Secretary of the Department. In your appeal, you should identify the witnesses and/or documents which were excluded and explain how that evidence would have helped your case and why it should be considered and why it was not presented at the hearing. If it is determined that there was good cause for not presenting the evidence at the first hearing and that the evidence should be considered, the case would be remanded to the Appeals Tribunal for an additional hearing to admit that evidence. A new decision would be issued based on both the prior record and the new evidence, which will have new appeal rights from it.

Question: how long will it take to get a decision after filing an appeal to the Secretary?

Answer: If the Secretary issues a decision, the Secretary has fifteen days from the date of the appeal to do so, or the matter will automatically be referred to the Board of Review. The Board of Review meets approximately every two weeks. If your case gets referred to the Board of Review, you will be sent a letter from the Board advising you of when they will meet and review your case. These are mailed no less than ten days prior to the scheduled review date. This letter also provides important information and should be reviewed carefully. After the review of the appeal, the Board of Review will issue a written decision, which will be sent to all parties at the same time. The amount of time this will take varies and there is no set time for that decision to be mailed after the review.

Question: Can I appeal a decision of the Secretary or the Board of Review?

Answer: Yes. However, once the Secretary or Board of Review issues a final decision of the Department, an appeal must be filed within 30 days with the District Court where you reside in New Mexico. It is recommended that you contact an attorney or legal services agency for assistance should you appeal to District Court. There are specific rules which must be followed in pursuing an appeal to District Court. Your decision will identify the legal citation to these rules, but you will be responsible for obtaining a full copy of the rules on your own. Failure to follow those rules may result in the Court dismissing your appeal.
