

Appellate Division Oklahoma Employment Security Commission

Authority and Organization

The Appellate Division of the Oklahoma Employment Security Commission (OESC) functions under the authority of Article 2, Part 6 of the Oklahoma Employment Security Act. The mission of the division is to provide timely, fair, and impartial hearings to the employers and workers of Oklahoma.

The Appeal Tribunal is the first level of appeal from OESC determinations on unemployment insurance benefits eligibility. The Administrative Hearing Officers of the Appeal Tribunal are also appointed by the Commission to sit as the Assessment Board (OAC 240:10-11-13), hearing appeals from determinations issued primarily by the OESC Unemployment Insurance Contributions Department. An appeal to either type of determination is filed with the office that issued the determination and then forwarded to the Appeal Tribunal for hearing.

The Appeal Tribunal and the Assessment Board are the only stage of the administrative process where opposing parties have the opportunity to confront each other in an evidentiary hearing. (40 O.S. Sec. 2-604). Due to U.S. Department of Labor standards requiring timely disposition of cases, budgetary concerns, and for the convenience of the parties, most hearings are conducted by telephone. Conference calls are set up allowing all parties to testify and present witnesses. Each party is also allowed to hear all testimony and evidence presented and to cross examine opposing witnesses. Administrative rules also provide for in-person hearings under certain circumstances.

After the Hearing Officer hears the case, a written decision is issued to both parties. Appeals to Appeal Tribunal decisions are filed with the Board of Review. The Board of Review is an independent board of three members appointed to 6 year terms by the Governor.(40 O.S. Sec. 4-202). The OESC pays the salaries of and provides administrative support to the Board. The Board reviews a case based on the record made at the Appeal Tribunal. Parties seeking review beyond the Board must file in the district court of the claimant's county of residence. In cases involving a claimant not residing in Oklahoma, appeals must be filed in Oklahoma County. Appeals from decisions of the Assessment Board are appealed directly to district court.

The Director of the Appellate Division has authority over the Chief Hearing Officer, Administrative Hearing Officers, and support staff of the Appeal Tribunal (OAC 240: 10-13-4) and is responsible for administering the Assessment Board. (OAC 240:10-11-3 (c)). The Director is answerable to the Executive Director. (OAC 240:10-13-4(b)(1)). The Director, Chief Hearing Officer and Hearing Officers of the Appellate Division are governed at all stages of the appellate process by the canons of the Model Code of

Judicial Conduct For State Unemployment Insurance Appeals Officers. (OAC 240:10-11-8 and 10-13-9).

Jurisdiction

Appeal Tribunal:

OAC 240:10-13-5 Jurisdiction

Pursuant to provisions of 40 O.S. Section 2-602, the Appeal Tribunal is empowered to decide an appeal from determinations of the Commission and/or its representatives. An appeal from a determination by the Commission must be filed within ten (10) days from the date of mailing by the Commission. If not timely filed, the Appeal Tribunal is without jurisdiction, unless good cause for late filing is found by the Appeal Tribunal.

Assessment Board:

240:10-11-5. Jurisdiction

(a) The Assessment Board shall have jurisdiction to hear the following types of cases:

- (1) An appeal to a determination regarding employer liability for unemployment contributions, pursuant to 40 O.S. Sections 1-208 and 1-210.
- (2) An appeal to a determination regarding whether a worker is an independent contractor or an employee, pursuant to 40 O.S. Section 1-210(14).
- (3) An appeal to a determination regarding the contribution rate of an employer, pursuant to 40 O.S. Section 3-102.
- (4) An appeal to a determination to charge a base period employer, pursuant to 40 O.S. Section 3-106.
- (5) An appeal to a determination of an acquiring employer (successor employer) and predecessor, pursuant to 40 O.S. Section 3-111.
- (6) An appeal to a determination regarding unemployment contribution assessments, pursuant to 40 O.S. Section 3-305.
- (7) An appeal to a determination regarding a request for refund of penalty or interest, or a portion thereof, pursuant to 40 O.S. Section 3-310.
- (8) An appeal to a determination to intercept state tax refunds through the Oklahoma Tax Commission, pursuant to 68 O.S. Section 205.2(B).
- (9) An appeal filed by a Workforce Investment Act subrecipient, as a result of audit findings issued by the Commission pursuant to the Workforce Investment Act, pursuant to 20 C.F.R. Sections 661.120, 667.400, and 667.500.
- (10) An appeal concerning the voluntary election of an employer for coverage pursuant to 40 O.S. §3-203.

- (11) Any other appeal pursuant to 40 O.S. §3-115.
- (b) The Commission, or its appointee, may assign other subjects of appeal to the Assessment Board as it deems appropriate.

Standards and Performance

The unemployment insurance appellate process is held to high standards for both quality and timeliness by the U.S. Department of Labor. The USDOL responsibility for that oversight is grounded in the Social Security Act (Act). Subsections 302(a) and (b) of the Act provide for payments to the States to assist in the administration of their unemployment insurance compensation laws only if the Secretary of Labor certifies that certain conditions are met. Under the provisions of Sec. 303(a) of the Act the Secretary cannot make certification to any State unless it is found that the law of the State includes provisions for:

- (1) Such methods of administration ...as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due, and
- (2) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment are denied;....

The above establishes the Secretary of Labor's authority and responsibility for oversight of the State's UI appellate process. Methods of administration for "payment...when due," is measured by the Secretary standard that requires the Appeal Tribunal to issue decisions within 30 days of the date the appeal is filed on at least 60% of the cases filed. Within 45 days, 80% of cases must be disposed of. In addition, the standard for the average age of pending cases is set at 30 days.

Fairness and quality of the hearing process are measured by applying the Lower Authority Quality Criteria developed by Unemployment Insurance Service of the U.S. Department of Labor. States must meet those criteria to assure the State's appeals operations conform and comply with Federal law. There are three components to the quality review of the appeals process. First is a quarterly State self-evaluation measuring the State's performance as "good", "fair", or "unsatisfactory" on each of 31 criteria. States must pass the criteria in 80% of the sampled cases. The second component measures the State's performance in meeting 8 due process elements in the criteria. Third is an annual review and validation of the State's self-evaluations to determine if States are applying the criteria accurately.

The Oklahoma Lower Authority Appellate Division has consistently ranked high nationally in both performance and quality standards.