

Federal Perspective on Judicial Independence of Lower Appeals Authority



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Federal Perspective on Judicial Independence of Lower Appeals Authority

Section 303(a)(1), SSA

(1) Such methods of administration (including after January 1, 1940, methods relating to the *establishment and maintenance of personnel standards on a merit basis*, except that the Secretary of Labor shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary of Labor to be reasonably calculated to *insure full payment of unemployment compensation when due...*

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Merit and Payment When Due

- Personnel Standards on a Merit Basis promotes judicial independence.
- Hearing officers selected on Knowledge Skills and Ability
- No discipline on the basis someone makes an unfavorable decision

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Payment When Due

- Review of Cases for Conformity
- Is decision a reasonable application of state UC law

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Section 303(a)(3), SSA

(3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied.

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Fair Hearing – Impartial Tribunal

- Fair Hearing afforded – equality of opportunity to be heard
- Impartial tribunal – each case decided on record with no predisposition to decide case either for claimant or employer

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DOL Guidance

- The “Yellow Book”
- “A Guide to Unemployment Insurance Benefit Appeals Principles and Procedures”
- Available in Handbook 382 -
http://wdr.doleta.gov/directives/attach/ETAH/ET_Handbook_No_382_3rd_Edition.pdf

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DOL Perspective on UC Appeals

- The “fair hearing” provision in section 303(a)(3) of the Social Security Act requires a reasonable opportunity for workers whose claims are denied to be heard by an impartial tribunal in an adjudicatory proceeding which assures them of elementary fairness.
- The “methods of administration” provision in section 303(a)(1) requires that procedures for appeals and hearings be reasonably calculated to pay benefits promptly when due.
- From the outset of the unemployment insurance program it has been recognized by both State and Federal officials that the mandate of these sections is for appeal and hearing procedures that take account of the circumstances of unemployed workers and the special needs of the program.

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Simple Speedy and Inexpensive

- Simplicity assures that parties may know and understand their rights; it precludes formal and technical procedures which place undue burdens on parties which tend to impair their ability to protect their rights.
- Speed assures the prompt payment of benefits when due.
- Low expense means that no individual may be deprived of his rights merely because he cannot afford to retain representation or to incur other expense in the pursuit of these rights. (p1)

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Role of Hearing Officer

“(The judge) shall know nothing about the parties, everything about the parties, everything about the case. He shall do everything for justice; nothing for himself; nothing for his friends; nothing for his patron; nothing for his sovereign. If, on one side, is the executive power, and the Legislature and the People—the sources of his honors, the givers of his Daily bread—and on the other an individual nameless and odious, his Eye is to see neither, great nor small; attending only to the “trepidations Of the balance.” —

Rufus Choate (1853)

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Independence of Action

An appeal tribunal's responsibility for adjudication requires complete independence of action on the part of the tribunal. The appeal tribunal serves, in effect, as both judge and jury. In addition, it is obligated to get the evidence by questioning witnesses and, if necessary, by subpoenaing witnesses and records and ordering investigations. It is the tribunal's responsibility to get all the facts and to apply the law and the reasoning fairly and wisely. This great responsibility requires that the appeal tribunal be completely independent in obtaining facts and making decisions. (p4-5)

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Fair Hearing – Just Decision

The importance of an appeal tribunal's attitude cannot be overemphasized; the results of its work will be, to a considerable degree, a reflection of the tribunal's attitude. It should not be impressed by the identity of the interested parties or their representatives, or by the personal conduct of such individuals at the hearing. The appeal tribunal's only interest should be to provide a fair hearing, and to make a just decision under the law. (p5)

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Appearance Matters

It is not enough for a hearing to be fair; a hearing must also give the appearance of fairness. A hearing that is technically fair, but gives an appearance of unfairness, is unfair in practical effect. An appeal tribunal which seems interested when the employer is testifying and somewhat bored when the claimant is testifying may, in fact, give the testimony of both full and fair consideration. The claimant, however, who has noticed the tribunal's apparent concern with all the employer has said, and its seeming lack of interest as soon as the claimant began to testify, is likely to conclude that the hearing is unfair. (p6)

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Impartiality

The essence of a fair hearing lies in the manifest impartiality of the appeal tribunal. An appeal tribunal should be free not only of any personal interest or bias in the appeal before it, but also of any reasonable suspicion of personal interest or bias. (p14)

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The Organizational Challenge

Under some State laws, appeal tribunals organizationally are a part of the State agency. When is so, the appeal tribunal should make certain that such a connection does not cloud its judgment or diminish its resolution for the proper discharge of its duties. Whatever the organizational structure the tribunal's authority and responsibility for providing a fair hearing and making a proper decision remain the same. (p5)

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Handbook 382

- Handbook for Measuring UI Lower Authority Appeals Quality
- Criteria used to evaluate appeal hearings and decisions

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Fairness in Appearance and Fact

The appeal hearing must be fair both in form and substance. In addition, the hearing must appear fair both to the participants and to any casual observer. A hearing that is technically fair, but gives the appearance of unfairness, is unfair in practical effect. (p4)

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Attitude

- 21 ATTITUDE
- PURPOSE - The hearing officer should display an attitude that allows the parties and representatives to speak freely in an orderly manner about the issues in the case.

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Equal Opportunity to Be Heard

The intent of this question is to ensure that the hearing officer makes the necessary effort to put the parties and witnesses "at ease" as much as possible. It is important that the parties believe that the hearing is fair as well as for a fair hearing to be provided. The hearing officer must strive to leave the parties with the impression that a fair opportunity was provided to both parties to present testimony and evidence and that a fair decision will be rendered.

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Putting Parties at Ease

The hearing officer should exhibit care to make the parties and witnesses feel at ease with providing information and try to strike a balance between being too formal and too informal. Too much formality in mannerisms and tone of voice can be intimidating, and can give the impression that form is more important than substance. On the other hand, too little formality can lead to a loss of control of the hearing, as well as the appearance that the hearing officer is disinterested.

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Demeanor

The hearing officer must take care to avoid demeanor that projects an attitude of dislike, boredom, lack of concern, disengaged, and the like. While this may be primarily a problem for in-person hearings, such an attitude may be discernable over the telephone, such as when the parties can hear the hearing officer typing, or speaking to someone else, or a sigh.

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Free of Bias or Prejudice

22. BIAS AND PREJUDICE.

PURPOSE - The hearing officer must conduct the hearing in an impartial manner.

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Free of Bias or Prejudice

The intent of this criterion is to ensure that the hearing officer conducted the hearing in a fair and impartial manner. It is not enough that the hearing officer was not biased or prejudiced. The hearing officer must also avoid the appearance of bias or prejudice.

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Free of Bias or Prejudice

When it appears that the hearing officer blatantly treated any party in a biased or prejudiced manner, the criterion must be scored as unsatisfactory. For example, the hearing officer displays a negative or demeaning manner directed towards a party's attitude, vocabulary, mannerisms, career field, status, beliefs, appearance, age, sex, or religious beliefs, among other characteristics.

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Free of Bias or Prejudice

The hearing officer must control the hearing by asking important questions, limiting irrelevant testimony or improper statements, and being persistent in clarifying or determining the truth of a statement. However, at some point the attempt to clarify seemingly contradictory or inconsistent statements can be, or appear to be, badgering. At times one party may require more assistance than the other. Maintaining control and asking questions do not excuse bullying or badgering a party or witness. By the same token, offering assistance in a way that clearly is demeaning and disparaging would result in an unsatisfactory score.

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Threats to Judicial Independence

Any changes to state law relating to the requirement that a state employs personnel standards on a merit basis for UC adjudicators or first level appeal staff.

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Threats to Judicial Independence

Direct supervision of hearing officers by political appointees – natural tension between deciding each case on merit of appeal and pursuing political objectives.

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Threats to Judicial Independence

Statewide directives to decide cases in favor of one side or the other or in a manner other than based on the record and the independent professional judgement of the hearing officer.