

Unemployment Compensation Tax Liability, Rate, and Reimbursement Appeals Hearings Before Special Deputies

INTRODUCTION

This pamphlet explains the special deputy hearing process and how to prepare for your hearing. If you still have questions after reading this pamphlet, contact the deputy clerk whose telephone number appears on the *Notice of Telephone Hearing* or check the AWI website: www.floridajobs.org/unemployment/uc_empr_taxes.html

Special deputies conduct hearings and issue Recommended Orders on tax reimbursement and liability protests. Hearings are held in accordance with the provisions of Chapters 120 and 443, Florida Statutes and Rule 60BB-2.035, Florida Administrative Code. A *Notice of Telephone Hearing* is mailed to all parties at least fourteen (14) days before the scheduled hearing date and includes, among other things, the name of the special deputy, the name and telephone number of the special deputy clerk, the date and time of the telephone hearing, the location if an in-person hearing is scheduled, and the issue(s) before the special deputy.

Before the hearing, provide to the special deputy clerk your name and telephone number or the name and telephone number of the person who will represent you at the hearing. Be available to receive the telephone call at least ten minutes before the scheduled hearing time. **Contact the deputy clerk at the number on the *Notice of Telephone Hearing* if you do not receive a telephone call within ten minutes after the scheduled hearing time.**

1. WHY IS THIS SPECIAL DEPUTY HEARING IMPORTANT?

A hearing was scheduled because a determination issued by the Department of Revenue was appealed. The Final Order resulting from this hearing will replace the determination that was appealed. Only one Agency hearing level is provided by law. To protect your rights, you should participate even if another party filed the appeal. If you cannot participate as scheduled, immediately follow the instructions in Section 9 to request rescheduling. Otherwise, you may receive an unfavorable ruling. A claimant who was joined as a party and receives an unfavorable ruling will have to repay unemployment compensation benefits that should not have been received.

Be prepared to present evidence on all issues listed on the *Notice of Telephone Hearing*. **THE FINAL ORDER WILL BE BASED ONLY ON EVIDENCE IN THE HEARING RECORD.**

2. WHO ARE PARTIES TO THE APPEAL?

The parties to a special deputy appeal include the employing unit (Petitioner), the Agency for Workforce Innovation (Respondent), represented by the Department of Revenue, and any claimant whose unemployment compensation claim may be affected by the outcome of the appeal (Joined Party). Others may be joined as parties as the special deputy deems appropriate.

3. WHAT WILL HAPPEN IF I DON'T ATTEND A HEARING?

If the Petitioner does not attend the hearing, the special deputy will recommend that the case be dismissed. If the Petitioner appears, the hearing will be conducted with the parties who attend and the result will be based on the hearing record.

4. WHAT ARE MY RIGHTS AT THE HEARING?

As a party, you have the right to:

- A. Testify in your own behalf;
- B. Present documents and other pertinent evidence;
- C. Arrange for witnesses to testify;
- D. Question the other parties and witnesses;

- E. Explain or rebut evidence;
- F. Make a statement at the end of the hearing;
- G. Examine and object to evidence presented.

5. HOW CAN I ARRANGE FOR WITNESSES?

Notify the witness and arrange for the witness to be present at your location for the hearing. If the witness cannot be present at your location, provide to the special deputy clerk the name of the witness and the telephone number where the witness agreed to be reached for the hearing. Advise the witness to be available 10 minutes prior to the scheduled hearing time and remain available until dismissed by you or the special deputy. **A witness who can give a firsthand account of what happened is better than one who presents testimony of what was heard from others.**

If you believe a party possesses a document that you wish to present as part of your case, contact the party directly and request a copy of the document(s). Upon receipt, mail a copy to the special deputy and all addresses shown on the *Notice of Telephone Hearing*. **Documents or affidavits standing alone are normally hearsay and insufficient to prove a case.** If you plan to submit business records in evidence, you should also present a witness who can verify when and how the records were prepared and vouch for their authenticity. *After the hearing is closed, the special deputy will not accept additional documents or evidence.*

6. WHAT IF A WITNESS REFUSES TO TESTIFY?

You may request a subpoena for a witness who refuses to testify voluntarily. If a party refuses your request to provide a document copy for the hearing, you may request a *subpoena duces tecum* for the document. Any request for subpoena must be delivered to the special deputy clerk sufficiently in advance of the hearing date to allow time for the subpoena to be served prior to the hearing. Include on the written request:

- ◆The docket number assigned to the case;
- ◆The name and address of any person to whom a subpoena is to be issued; and
- ◆A detailed description of any document(s) to be furnished by the witness.

7. HOW CAN I PROVE MY APPEAL WAS FILED ON TIME?

The appeal must be filed within the time shown on the determination. If the last day to appeal is a Saturday, Sunday, or holiday as specified in Section 110.117, Florida Statutes, the appeal time is extended to the next working day (Monday through Friday). If listed as an issue on the hearing notice, timeliness of the appeal will be the first issue addressed by the special deputy. If the issue of timeliness is resolved unfavorably to the Petitioner, the special deputy will adjourn the hearing and recommend that the appeal be dismissed for lack of jurisdiction. If the appeal is considered timely, the special deputy will complete the hearing and address the remaining issues. **When timeliness of the appeal is an issue, the person who actually filed the appeal is an important witness. The case will be dismissed without competent evidence of timely filing.**

8. WHAT IF I WISH TO WITHDRAW MY APPEAL?

The Petitioner may withdraw an appeal by mail or fax to the Appeals Office address or fax number on the *Notice of Telephone Hearing* or to: Office of Appeals; MSC 347; 107 E Madison Street; Tallahassee FL 32399-4143. (Fax: 850-921-3925) Include the docket number and employer account number on the withdrawal request. In most situations, a withdrawn appeal cannot be reopened.

9. WHAT IF I CAN'T MAKE IT TO THE HEARING?

The special deputy will postpone or continue a hearing **only for good cause and only if requested in writing prior to the hearing or orally at the hearing.** Include the reason for requesting a different hearing date. If requested prior to the hearing, the special deputy will consider the request and immediately notify the parties in writing of the decision. **Unless the request is granted, the hearing will proceed as scheduled.** If you request a continuance prior to the hearing but do not receive a reply by the date of the hearing, attend the hearing and be prepared to present your case.

A party who was unable to participate in the hearing for good cause may make written application for rehearing, stating in detail the reason for not participating. If good cause is alleged and the request is filed

within fifteen (15) days of the mailing of the Recommended Order, the special deputy will rescind the Recommended Order and reopen the appeal. At the rescheduled hearing, the party will be required to present evidence to establish good cause for not attending the previous hearing. Good cause is restricted to reasons of a compelling and necessary nature, not of convenience. If good cause is not found, the special deputy will adjourn the hearing and reinstate the Recommended Order.

10. WHAT TYPE OF EVIDENCE SHOULD I PROVIDE?

The best type of evidence is testimony from someone who was present when an event occurred and can answer specific questions about what happened. Choose witnesses carefully to ensure competent evidence is presented. *HEARSAY (INFORMATION LEARNED FROM SOMEONE ELSE) MAY BE USED TO SUPPORT OTHER EVIDENCE, BUT WILL NOT BE SUFFICIENT BY ITSELF.*

11. HOW DO I OBTAIN AND PROVIDE DOCUMENTS?

The Department of Revenue will mail to each party a certified copy of documents from its file regarding the case. **To have other documents considered, you must arrange delivery of the document copies to the special deputy and each address listed on the hearing notice prior to the scheduled date of the hearing. Documents which are not available to all parties or their representatives at the hearing will not be considered by the special deputy, absent waiver.** The special deputy will consider documents in the case file and those received before or at the hearing. **Remember, most documents and affidavits are hearsay and will be insufficient to prove what occurred.** An employing unit that must rely on business records should bring a witness who can testify how the records were prepared and vouch for their authenticity. Unless the records qualify as an exception to the hearsay rule, they cannot be used as the sole basis for a finding of fact. **Once the hearing is closed, no additional evidence will be accepted.**

12. DO I NEED AN ATTORNEY?

Professional representation at the hearing is not required. You do, of course, have the right to be accompanied, represented, or advised by an attorney or authorized representative at your own expense. Any fees for representing a claimant who is joined as a party must be approved by the special deputy; however, the fee must be paid by the claimant.

13. WHAT IF I NEED A TRANSLATOR?

The hearing will be conducted in English. When necessary, the Petitioner and Respondent must provide their own translators. Translators will be provided for claimants who are joined as parties and indicate a primary language other than English. If a translator is needed by a Joined Party and the *Notice of Telephone Hearing* does not advise that translation is arranged, have the special deputy clerk contacted at once to advise what language is needed so arrangements for translation can be made. The special deputy clerk's telephone number is on the *Notice of Telephone Hearing*.

14. WHO SHOULD I CONTACT FOR INFORMATION?

The address of the Appeals Office is shown on the *Notice of Telephone Hearing*, as well as the name, telephone number and fax number of the special deputy clerk who should be contacted to provide or receive information. For a complete listing of Appeals Offices, refer to the last section of this pamphlet. Include the docket number and employer account number on all correspondence.

15. WHAT ARE THE HEARING PROCEDURES?

The special deputy assigned to the case will:

- A. Explain the issues, purpose of the hearing, order of testimony, and other procedures;
- B. Identify the documents received from the parties;
- C. Place all witnesses under oath or affirmation;
- D. Question parties and witnesses to obtain facts;
- E. Determine whether testimony and documents being offered should be received and considered;

- F. Rule on motions entered by the parties;
- G. Electronically record the hearing;
- H. Take official notice of well-established matters of common knowledge and public record;
- I. Record the entire hearing.

16. WHAT HAPPENS AFTER THE HEARING?

*The parties may within **15 days** after the close of the hearing submit written proposed findings of fact and conclusions of law. However, **no additional evidence will be accepted after the hearing has been closed.**

When the time for filing proposed findings and conclusions expires, the special deputy will prepare and transmit a *Recommended Order* to the Director, including the special deputy's proposed findings of fact and conclusions of law together with the record of the proceedings and the parties' proposed findings and conclusions.

A party aggrieved by the *Recommended Order* may file written Exceptions to the Director within fifteen (15) days of the Recommended Order mailing date.

An opposing party may file Counter Exceptions within ten (10) days of the mailing of Exceptions.

A Brief in Opposition to the Counter Exceptions may be filed within ten (10) days of the mailing of the Counter Exceptions.

**You must send a copy of any correspondence listed in this section to each address on the Notice of Telephone Hearing and indicate that the copies were sent.*

17. CAN THE TIME LIMIT BE EXTENDED?

An extension of time can be granted for submitting proposed Findings of Fact and Conclusions of Law, Exceptions, Counter Exceptions, and/or Briefs if an application for extension of time, including the reason for the request and the amount of time requested, is received by the special deputy, in writing, before the expiration of the original deadline.

18. WHO MAKES THE FINAL DECISION?

The Director of the Agency for Workforce Innovation or the Director's designee will issue a Final Order and serve a copy to the parties by certified mail.

19. WHAT IF I DISAGREE WITH THE ORDER?

Orders of the Director become final when the time expires for seeking judicial review, provided such review has not been invoked. **Final Orders may be appealed to the appropriate District Court of Appeals.**

20. WHAT IS THE DIFFERENCE BETWEEN INDEPENDENT CONTRACTORS AND EMPLOYEES

Many factors are involved. In Cantor v. Cochran, 184 So.2d 173 (Fla. 1966), the Supreme Court of Florida adopted the tests in 1 Restatement of Law, Agency 2d Section 220 (1958) to determine whether an employer-employee relationship exists. Section 220 provides:

- (1) A servant is a person employed to perform services for another and who, in the performance of the services, is subject to the other's control or right of control.
- (2) The following matters of fact, among others, are to be considered:
 - (a) the extent of control which, under the agreement, the business may exercise over the details of the work;
 - (b) whether the worker is in a distinct occupation or business;
 - (c) whether the type of work is usually done under the direction of the employer or by a specialist without supervision;
 - (d) the skill required;
 - (e) who supplies the place of work, tools, and materials;
 - (f) the length of time employed;
 - (g) the method of payment;
 - (h) whether the work is part of the regular business of the employer;
 - (i) whether the parties believe the relationship is independent;

(j) whether the principal is in business.

21. WHERE CAN I FIND MORE INFORMATION?

Information regarding special deputy hearings, unemployment compensation tax, claims, and appeals can be found on the Internet at www.floridajobs.org by selecting Unemployment Services.

Important Reminders

Telephone Number: Prior to the hearing, you must provide your telephone number to the special deputy clerk or the name and telephone number of your contact person to be telephoned for the hearing. Failure to do so may result in an adverse decision. Claimants who are joined as parties may call the special deputy clerk collect to provide telephone number information.

Witnesses: To have a witness testify by telephone, advise the witness to be present at your location. (See Sections 5 and 6 for more information.)

Department of Revenue File: If you do not receive a copy of the case file from the Department of Revenue at least five days before the hearing, contact the special deputy clerk to arrange mailing of a second copy.

Documents: If you wish to have documents entered in evidence, arrange for delivery of the document copies to the special deputy and all parties listed on the hearing notice prior to the scheduled date of the hearing. **Documents which are not available to all parties or their representatives at the hearing will not be considered by the special deputy, absent waiver.**

Permission to Record: To record the hearing yourself, you must obtain permission to record from all hearing participants.

Telephone Equipment: An extension or speaker telephone will be necessary if you use the services of a translator, representative, or witnesses. A party without appropriate telephone access should immediately telephone the special deputy clerk to make suitable arrangements. Failure to do so may delay the hearing.

THE APPEALS OFFICE LOCATION IS SHOWN ON THE NOTICE OF TELEPHONE HEARING

This pamphlet is for informational purposes only and does not have the full effect of law and/or regulations.

In accordance with the Americans with Disabilities Act, persons needing special accommodation to participate in the hearing may contact the deputy clerk at the number shown on the Notice of Telephone Hearing at least 5 days before the hearing or via Florida Relay Service at 1-800-955-8770.

The Florida Agency for Workforce Innovation is an equal opportunity agency, offering all persons the benefits of participating in each of its programs and competing in all areas of employment regardless of race, color, religion, sex, national origin, age, handicap, or other non-merit factors.