

## A Beginner's Guide to Unemployment Benefits Appeals

By [Munazza Humayun](#)

Unemployment benefits provide a lifeline for hundreds of thousands of Minnesotans who are unemployed through no fault of their own. If a newly unemployed worker is initially denied benefits, a skilled attorney can help the worker effectively present her case on appeal.

Minnesota's unemployment benefit program is administered by the state's Department of Employment and Economic Development. The Department determines whether individuals who apply for unemployment benefits ("applicants") are eligible to receive benefits.

Chapter 268 of the Minnesota Statutes governs the unemployment benefit program. The eligibility requirements an applicant must meet are found in Minn. Stat. §§ 268.069, 268.07, 268.085, and 268.095. An applicant is not eligible for unemployment benefits if she was fired from her job because of employment misconduct. Applicants who quit their jobs are also generally ineligible, unless their reasons for quitting fall within one of ten statutory exceptions to ineligibility. Applicants must also meet several ongoing requirements, such as the requirement to actively look for suitable work, in order to be eligible for benefits for any given week.

An applicant who is denied benefits can appeal the adverse determination. An employer can also appeal a determination that the applicant is eligible for benefits. An

unemployment law judge then hears the appeal and reviews de novo the issue of ineligibility. The appeal hearings are conducted by phone, in accordance with the procedures contained in Minn. R. 3310.2901 through 3310.2924, and usually involve both the applicant and the employer for whom the applicant previously worked. Most applicants appear *pro se*, and this is where the assistance of an attorney—through a pro bono program or otherwise—can be of value. Here are seven tips that will help new lawyers prepare for and succeed in their first unemployment benefits appeal.

- 1. Know that multiple issues could be affecting your client's eligibility at the same time, and that failure to file a timely appeal on each one could have serious consequences.**

Say your client has appealed a determination that she is ineligible for benefits because she quit her job to care for a seriously ill family member, without first requesting some accommodation from her employer. Your client seeks your assistance with that appeal. Even if you help your client get that adverse determination overturned, she could still be held ineligible for benefits if she is not ready, willing, and able to accept suitable work due to her caregiving responsibilities; being available for suitable work is a condition of eligibility. The

Department issues a separate determination on each issue of ineligibility, and each determination must be separately appealed. A determination not timely appealed becomes final, and appeal deadlines are construed strictly, regardless of mitigating circumstances. At the start of the representation, consider all issues that are affecting your client's eligibility for benefits, and clearly define the scope of the representation.

**2. Know that “settlement” is not an option.**

Unemployment benefits are paid from state funds—the Minnesota Unemployment Insurance Trust Fund—and not by an employer or from employer funds. Any agreement between an employer and an applicant, regarding the applicant's eligibility for unemployment benefits, is not binding on the Department and is void on public policy grounds. An applicant's entitlement to unemployment benefits is determined by the Department, in accordance with Minnesota law. There is no burden of proof on either the applicant or the employer. Don't rely on an employer's concession, or even enthusiastic agreement, that your client should be eligible for benefits.

**3. Block off sufficient time on your schedule—and your client's—for the hearing.**

Although the hearing notice will say that the hearing will be scheduled for an hour, hearings sometimes do run longer. Hearings which involve attorneys are very likely to last an hour-and-a-half or longer, depending on the complexity of the case. While continuances are sometimes necessary, it is to your client's benefit to have the hearing completed in one sitting; unnecessary delays could result in your client waiting longer to receive benefits, if an initial determination of ineligibility is overturned by the unemployment law judge, or in a large overpayment of benefits if an initial determination of eligibility is overturned and the unemployment law judge decides that the applicant was not entitled to the benefits she has already received.

**4. Familiarize yourself with the hearing procedures, and prepare accordingly.**

Know that the unemployment law judge will do most of the initial questioning. In your direct and cross-examination, avoid asking questions which have already been asked and answered. Witness lists are not provided to the parties in advance unless specifically requested—if you would like one,

submit a request in accordance with Minn. R. 3310.2914, subp. 2. Documents you wish to offer as evidence must be submitted at least five calendar days before the hearing.

Use objections wisely. Probative hearsay is admissible in unemployment benefit hearings, so objecting to evidence because it is hearsay will not necessarily be helpful. However, you can challenge the credibility of the statements or of the declarant making the hearsay statement through other evidence, and use your cross-examination and closing arguments as opportunities to make a case that the hearsay evidence should not be accorded much weight.

**5. Take advantage of the generous evidentiary rules.**

Although presenting relevant witnesses at the hearing is preferable to submitting written statements only, if a witness is unavailable, obtain and submit a written statement or affidavit from the witness before the hearing. Submit all relevant evidence at least five days before the hearing, rather than waiting until the day of the hearing or after the decision is issued to offer additional evidence.

**6. Preserve error.**

If your client does not prevail on appeal, she can request that the unemployment law judge reconsider the decision. The reconsideration process is an opportunity for the unemployment law judge to correct any factual or legal mistake in the decision. If you agree to represent your client in this process, preserve any claimed error at this stage so that your client is not prejudiced if she later seeks review of the unfavorable decision in the Minnesota Court of Appeals. The caution about multiple issues applies here as well; if, for example, the unemployment law judge considered and decided both the “quit” and “availability” issues, and you wish to challenge the decision on both grounds, explicitly address both in the request for reconsideration.

**7. If your argument relies on case law, make sure the cases were decided under the same provision of the statute as that currently in effect, or that they at least remain instructive despite statutory changes.**

Most Minnesota Court of Appeals opinions dealing with unemployment benefits are unpublished, and therefore not precedential. However, there is a large body of case law on unemployment matters, and many of the unpublished cases provide useful guidance on statutory interpretation. Use case law, but exercise caution.

The unemployment benefit statutes have changed many times over the years, and electronic databases like Westlaw or LexisNexis don't always flag cases which are no longer good law due to the statutory changes.

As is true for any kind of case, there is no substitute for preparation. Knowing the law and familiarizing yourself with the appeal process will help you better advocate for your client, and will make for a smoother experience for all involved.



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