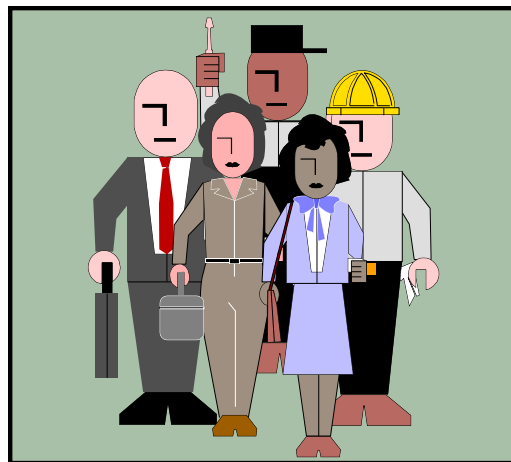




MidPenn Legal Services

WHAT YOU SHOULD KNOW ABOUT:

**THE
UNEMPLOYMENT APPEALS
PROCESS**



MidPenn Legal Services

Office Locations

Administration

213-A North Front Street
Harrisburg, PA 17101
(717) 234-0492
FAX : (717) 234-0496

Service Offices

Adams County

138 Breckenridge Street
Gettysburg, PA 17325
(717) 334-7624
FAX: (717) 334-0863

Bedford County

232 East Pitt Street
Bedford, PA 15522
(814) 623-6189
(800) 326-9177 - Client Intake
FAX: (814) 623-6180

Berks County

501 Washington Street, #401
Reading, PA 19601
(610) 376-8656
(800) 299-6599
FAX: (610) 376-8650

Blair County

205 Lakemont Park Blvd.
Altoona, PA 16602
(814) 943-8139
(800) 326-9177 - Client Intake
FAX: (814) 944-2640

Centre and Huntingdon Counties

2054 East College Avenue
State College, PA 16801
(814) 238-4958
(800) 326-9177
FAX: (814) 238-9504

Clearfield County

211 East Locust Street
Clearfield, PA 16830
(814) 765-9646
(800) 326-9177 - Client Intake
FAX: (814) 765-1396

York County

256 East Market Street
York, PA 17403-2058
(717) 848-3605
FAX: (717) 854-5431

Cumberland County

401 E. Louther Street
Suite 103
Carlisle, PA 17013
(717) 243-9400
(800) 822-5288
FAX: (717) 243-8026

Dauphin and Perry Counties

213-A North Front Street
Harrisburg, PA 17101-2240
(717) 232-0581
(800) 932-0356
FAX: (717) 232-7821

Franklin & Fulton Counties

230 Lincoln Way East, Suite A
Chambersburg, PA 17201
(717) 264-5354
(800) 372-4737
FAX: (717) 264-2420

Lancaster County

38 North Christian Street, Suite 200
Lancaster, PA 17602
(717) 299-0971
(800) 732-0025
FAX: (717) 295-2328

Lebanon County

513 Chestnut Street
Lebanon, PA 17042
(717) 274-2834
FAX: (717) 274-0379

Mifflin and Juniata Counties

3 West Monument Square, Suite 203
Lewistown, PA 17044
(717) 248-3099
(800) 326-9177
FAX: (717) 248-0791

Schuylkill County

315 North Centre Street
Suite 201
Pottsville, PA 17901-2528
(570) 628-3931
(800) 299-6599
FAX: (570) 628-9697

UNEMPLOYMENT APPEALS PROCESS

If you apply for Unemployment Compensation Benefits and are denied, you should read and consider the following information very carefully.

Unemployment Compensation is a benefit available for people not working through no fault of their own.

You must meet two general eligibility requirements to be eligible for unemployment compensation.

1. You must be financially eligible by having earned enough wages
- AND**
2. The reason you are not working now must be through no fault of your own

You will receive a notice from the Office of Employment Security as to whether you meet each of these requirements.

If you are denied unemployment compensation, it is best to consult an attorney immediately since the time limits in unemployment compensation cases are short.

Read all the information you are given or have someone read it to you. Make sure you read the front and back of every form. If you have any questions, ask someone at the Office of Employment Security for help and be sure to get the name of the person to whom you talk.

You have only **15 days** to appeal a decision on your eligibility for unemployment compensation that you get from the Office of Employment Security, so be sure to act quickly!

The 15 day appeal period runs from the date the decision was mailed, not from the date you receive the decision. If you are not sure you want to appeal **you must decide within 15 days** or appeal anyway, to be safe. You can always withdraw your appeal -- you cannot appeal after the deadline is up -- 15 days.

Keep your reason for appeal very simple. You will be limited by the reasons you list, and you cannot bring up issues you have not listed. Therefore, it is best to simply state that you "disagree with the decision."

If you get more than one decision, you must appeal each decision separately. If you

are found eligible for unemployment compensation, your employer may appeal.

COMMON ISSUES

Fired, Terminated, Discharged, Wilful Misconduct

If you were fired, terminated or discharged from your job, the employer has the burden of proof at the hearing. This means that the employer must prove its case with first hand testimony and evidence. The employer will testify first and must show that your conduct was wilful misconduct. That means that you were at fault for your discharge. Object to hearsay. Hearsay is when someone tells what someone else said. It is second hand knowledge. If the employer has a rule that you disobeyed, it must prove that you knew about the rule or should have known about the rule. If you have violated a rule or order, you have to prove that your actions were justified. If there is a disciplinary procedure, the employer must follow that procedure.

After the testimony, you have the right to make a closing statement to tell why you should be eligible for unemployment compensation. The employer also has a right to make a closing statement.

Remember that an employer can fire you for any reason or no reason at all. As long as you were not fired for wilful misconduct, you should be eligible for unemployment compensation.

Quit or Voluntary Termination

If you quit your job the burden of proof in the hearing rests with you. You must prove that you had a necessitous and compelling reason to leave your job. In other words that you had no choice but to leave. Not getting along with your employer or co-workers is **NOT** a necessitous (necessary) and compelling (urgent) reason to quit. You may feel justified in leaving your job but your reasons may not be considered necessitous and compelling under the law.

You must testify to what attempts, if any, you made to try to keep your job. If you had a problem, such as harassment, discrimination or health problems, you must have tried to work out the problem with your employer before you quit.

Able and Available

In order to collect unemployment compensation benefits you must be able to work

(not ill or totally disabled) and be available to be called to suitable work. If you do not understand any of these terms, check with the job center.

Other Issues

Other issues such as self-employment, partial benefit and refusal of suitable work may be at issue in your case. Do not hesitate to ask someone at the Office of Employment Security to explain those issues to you.

Remember, unemployment compensation is available only to those who are not working through no fault of their own.

THE REFEREE'S HEARING

After you or your employer files an appeal, you will receive a **Notice of Hearing** before a Referee. The Notice will state the date, time and location of the hearing and will list the issues to be decided by the Referee.

The Referee's hearing is your only chance to present testimony and witnesses. Yes, you can appeal the Referee's decision to the Unemployment Compensation Board of Review, but the Board rarely conducts hearings. The appeal process to the Board is a review of the record you already made at the Referee's hearing.

There are two types of hearings, telephone hearings and face-to-face hearings.



TELEPHONE HEARINGS:

- ☞ Telephone hearings are allowed in certain circumstances. One of the parties must be located at least 50 miles away from the hearing site to justify a telephone hearing.
- ☞ You must get 14 days advance notice of the telephone hearing.
- ☞ You must be sent all the documents that are part of the record and you must submit all of your documents in advance of the hearing.
- ☞ You will get a copy of the telephone regulations. Read them and object if you do

not feel they are being followed.

FACE-TO-FACE HEARINGS

This is the more preferred type of hearing. It is held before a Referee at a local Office of Employment Security.

☞ You will get notice of the date of the hearing at least seven days in advance. You should look at your file before the hearing at the Office of Employment Security and be sure that all the documents you need are in the file. You must be prepared to present your entire case at the hearing.

☞ Dress appropriately. Be respectful to the Referee. Do not use foul language. If you act angry or disrespectful, it can only hurt your case.

☞ Bring your witnesses and all your evidence. If you are going to give the Referee documents to support your position, be sure to bring extra copies of the documents (one for each party).

☞ You need to offer first-hand testimony, not hearsay. You must object to any hearsay the employer may have submitted, may submit at the hearing, or testifies to at the hearing.

HEARSAY: When someone tells what someone else said. That is not first-hand knowledge.

☞ Do not plan to find out what the employer might say and then plan to present witnesses “at the next hearing.” This is the **only** hearing and you must present your entire case. Be prepared to present your entire case at the Referee’s hearing.

☞ You need to have first-hand testimony. Witnesses may only testify to events they saw and conversations they heard. Witnesses cannot talk about what someone else told them.

☞ If you have witnesses, they need to be at the Referee’s hearing in person. You can get **subpoenas** from the Referee’s office if you need them. You should call the Referee’s office immediately to request a subpoena. You will need the full name and address of the person you want to subpoena.

If you need a **continuance** of the Referee's hearing for some good reason, you should call the Referee's office and request one immediately. If you are denied a continuance, make sure you say at the hearing that you requested a continuance and were denied. Be sure to state why you needed a continuance (for example, you are trying to get representation, a witness cannot come or whatever the reason is).



You will get the Referee's decision in the mail, about one to two weeks after the hearing. You have 15 days from the date the decision was mailed to file a further appeal to the **Unemployment Compensation Board of Review**.

Again, be careful in your request for appeal. Make sure you are specific with your reason for appeal. If you leave something out you may not be able to bring it up again. Make a very clear list of the reasons and do not go on with a long story. If you can, you may want to talk to a lawyer about what you should write here. **The deadline is 15 days from the date the decision was mailed** and not one day more!

When you appeal to the Board, you can ask for a written copy of your record. That will include all the documents and a transcript (a written record of what happened during the hearing) of your Referee's hearing.

If you want to read the record before you list your reasons for appeal, write a letter with your appeal stating you want to appeal and that you want to see the record. You will have 15 days to send in another letter listing your reasons for the appeal.

After you receive the decision of the Unemployment Compensation Board of Review, you have 30 days from the date the **decision was mailed** to file an appeal to the Commonwealth Court.

You may want to seek advice from a lawyer before filing with the Commonwealth Court. If not, or if you cannot get someone to take your case and you still wish to go ahead with it, you can go pro se (represent yourself).

You also have 15 days after the Unemployment Compensation Board of Review's decision to ask them to reconsider their decision. Be careful! You still only have 30 days from the date of their decision to appeal to the Commonwealth Court. If you do not hear anything from the Unemployment Compensation Board by that time (30 days), you must file your appeal with the Court anyway.

THINGS TO REMEMBER

- ☞ You only have 15 days to appeal the Office of Employment Security's or Referee's decision.
- ☞ The Referee's hearing is the only place to present your case: testimony, witnesses and documents.
- ☞ Read everything you get and do not sign anything you have not read. If you disagree with what is on a form, do not sign it unless it is changed.
- ☞ If you are not sure about something, ask and be sure to get the name of the person with whom you speak.
- ☞ Make sure that you keep signing up each week during the entire appeal process. You must sign up until you decide not to go any further with the appeal.

This self-help packet has been prepared for the benefit of the public by MidPenn Legal Services to help meet the overwhelming demand for services. It is not intended as a substitute for the advice of an attorney. MidPenn Legal Services does not assume responsibility for the correctness of the information contained herein nor the use of the information contained herein or its consequences. June 2008