

# MINNESOTA RULES 1988

## 9 UNEMPLOYMENT COMPENSATION PROCEDURE 3310.2903

### CHAPTER 3310 DEPARTMENT OF JOBS AND TRAINING UNEMPLOYMENT COMPENSATION PROCEDURE

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**3310.2900** [Repealed, 12 SR 2252]

#### **3310.2901 SCOPE AND PURPOSE.**

Parts 3310.2901 to 3310.2928 establish procedures for hearings conducted by department referees on the appeal of department determinations about the validity of claims for unemployment benefits referred to in part 3310.2700, subpart 5, determinations pertaining to eligibility or disqualification from unemployment benefits referred to in part 3310.2800, charges to employers' accounts and contribution rate assignments under Minnesota Statutes, section 268.06, subdivision 20, determinations on an employing unit's liability to pay unemployment contributions under Minnesota Statutes, section 268.12, subdivision 13, determinations on the erroneous or fraudulent payment of unemployment benefits under Minnesota Statutes, section 268.18, and all other appeals which are decided by referees of the appellate office either by law or rule.

**Statutory Authority:** *MS s 268.021; 268.10 subds 4,6*

**History:** *12 SR 2252*

#### **3310.2902 DEFINITIONS.**

Subpart 1. **Scope.** For purposes of parts 3310.2901 to 3310.2928, the terms defined in this part have the meanings given them.

Subp. 2. **Appellate office.** "Appellate office" means the appellate office of the Department of Jobs and Training.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of the Department of Jobs and Training or a designee.

Subp. 4. **Department.** "Department" means the Department of Jobs and Training.

Subp. 5. **Party.** "Party" means any unemployment insurance claimant or employer whose legal rights, duties, or privileges will be directly determined in a hearing and any authorized representative of the claimant or employer.

**Statutory Authority:** *MS s 268.021; 268.10 subds 4,6*

**History:** *12 SR 2252*

#### **3310.2903 METHODS OF FILING APPEALS.**

Appeals may be delivered to or filed at the appellate office or any unemploy-

ment insurance office of the department or through the United States mail. Appeals filed by mail must be properly addressed to the department with postage prepaid, and the date of filing is the postmark date.

**Statutory Authority:** *MS s 268.021; 268.10 subds 4,6*

**History:** *12 SR 2252*

### 3310.2904 CONTENTS OF APPEAL DOCUMENTS.

An appeal must be in writing, be signed by the appealing party or an authorized representative, must identify the person appealing, and must describe the determination or order appealed from with sufficient clarity to allow the department to ascertain the determination or order. If the term "appeal" is not used but the person's written statement indicates by its meaning that a review of the determination or order is desired, the statement shall constitute an appeal. The appeal should contain the following nonjurisdictional information:

A. the name, address, and social security number of the claimant if the appeal involves a claim for unemployment benefits, and the unemployment tax identification number of the employer if the appeal involves an unemployment contribution liability or rate determination;

B. reference to the determination or order from which the appeal is taken; and

C. the fact that an appeal from that determination is being made.

**Statutory Authority:** *MS s 268.021; 268.10 subds 4,6*

**History:** *12 SR 2252*

### 3310.2905 NOTICE OF APPEAL.

**Subpart 1. Notice.** When a party files an appeal, the department must promptly send notice of the appeal and a copy of the appeal to all interested parties involved in the issue under consideration. The notice of appeal shall identify the determination from which the appeal is taken.

**Subp. 2. Information.** The notice of appeal shall also include the following information:

A. A statement that a hearing will be scheduled promptly, and that the parties should begin to prepare for the hearing.

B. A statement of the parties' right to represent themselves or to be represented by an attorney or other duly authorized representative.

C. A brief description of the procedure to be followed at the hearing.

D. A statement that the parties should bring to the hearing all documents, records, and witnesses they need to support their position.

E. A statement that a party may request the witnesses and documents that another party intends to bring to the hearing, and an explanation of the process for making the request.

F. A statement that subpoenas may be available to compel the attendance of witnesses or the production of documents, and an explanation of the process for requesting a subpoena.

G. A statement that documents to be introduced at the hearing as department exhibits are available upon request, and an explanation of the process for making the request.

H. If a decision issued pursuant to part 3310.2926 could result in a determination that a party has been overpaid benefits, the notice shall contain the following statement: "You have already received benefits on your claim. It is important for you to attend this hearing even if you are back to work and not receiving benefits now, because if you lose the appeal, you will not be able to receive further benefits and you will have to pay back all the benefits you have already received. These benefits are called overpaid benefits and they could be

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deducted from your state income tax refund, rent credit refund, or from a future unemployment compensation claim.”

**Statutory Authority:** *MS s 268.021; 268.10 subs 4,6*

**History:** *12 SR 2252*

### **3310.2906 HEARING OF APPEALS.**

**Subpart 1. In person hearings.** Except as provided in subpart 2, hearings shall be conducted in person with the referee and all parties present at the same location.

**Subp. 2. Telephone conference hearings; split hearings; and hearings based on written interrogatories.**

A. Subject to part 3310.2907, a hearing by telephone may be scheduled under the following circumstances:

(1) the parties are at such locations as to make a prompt in person hearing impractical; or

(2) the appeal involves a single party hearing.

B. A split hearing with the parties present at different times and locations before a referee may be scheduled only if an in person or telephone conference hearing is not possible.

C. A hearing through means of written interrogatories to the parties by the referee may be conducted only when one of the parties is found in a foreign jurisdiction and an in person, telephone conference, or split hearing is not possible.

**Statutory Authority:** *MS s 268.021; 268.10 subs 4,6*

**History:** *12 SR 2252*

### **3310.2907 PROMPT SCHEDULING OF HEARINGS.**

Hearings shall be scheduled as promptly as possible by the appellate office.

**Statutory Authority:** *MS s 268.021; 268.10 subs 4,6*

**History:** *12 SR 2252*

### **3310.2908 RESCHEDULING.**

Requests to reschedule a hearing must be addressed to the appellate office in advance of the regularly scheduled hearing date. The request may be made in person, by telephone, or in writing. Unless a determination is made by the appellate office that a request to reschedule a hearing is made for the purposes of delay, a hearing shall be rescheduled by the appellate office based on a party's need for additional time to obtain necessary evidence or to obtain representation or adequately prepare, inability to be present at the regularly scheduled time due to illness, other judicial or quasi judicial proceedings which have previously been scheduled, or other compelling reasons beyond the control of the party which prevent attendance at the originally scheduled time. A hearing may be rescheduled only once except in the case of an emergency. If requested by the appellate office, a letter confirming the reasons for requesting that the case be rescheduled shall be provided to the appellate office by the requesting party.

Unless a determination is made by the referee that a request to reschedule a hearing is made for the purpose of delay, a referee who has been assigned a case for hearing shall reschedule a hearing at the request of a party provided grounds for rescheduling as set forth above have been established. The failure of subpoenaed witnesses to appear at the hearing or the failure to produce subpoenaed documents may constitute grounds for rescheduling.

**Statutory Authority:** *MS s 268.021; 268.10 subs 4,6*

**History:** *12 SR 2252*

**3310.2909 REQUESTS FOR IN PERSON HEARINGS.**

Upon the filing of an appeal, upon the receipt of a notice of appeal, or after receiving notice of a telephone conference hearing, any party may request an in person hearing. When a telephone conference hearing is scheduled, all parties shall be notified in writing on the notice of hearing of their right to request, and the procedure for requesting, an in person hearing. The request shall be granted unless it is impractical to hold an in person hearing due to the location of the parties or if granting the request would unreasonably delay the time period in which the hearing could be held.

**Statutory Authority:** *MS s 268.021; 268.10 subds 4,6*

**History:** *12 SR 2252*

**3310.2910 NOTICE OF HEARING; CONSOLIDATION OF ISSUES.**

The notice of hearing shall be mailed to each party at the last known address at least ten days before the scheduled date of hearing unless otherwise provided by law, or when notice is waived by the parties. The notice shall state the time, date, and place of the hearing, the name of the referee who will hear the case, the issues to be considered at the hearing, and shall contain the information required by part 3310.2905, subpart 2, items B to H. If the issue to be considered at the hearing involves a disqualification from unemployment benefits, the notice shall explain that either the issue of misconduct or voluntary termination without good cause attributable to the employer may be heard if the facts brought out at the hearing so warrant, and the parties should be prepared to discuss all incidents which arose during the course of the employment which led to the separation. The parties shall also be advised of their right to represent themselves or to be represented by an attorney or other duly authorized representative. Upon the motion of a party to a hearing or on the referee's motion, the referee may consolidate for hearing issues involving the same parties and may take testimony and render a decision on issues not listed on the notice of hearing if each party is so notified on the record at the hearing and does not object on the record.

**Statutory Authority:** *MS s 268.021; 268.10 subds 4,6*

**History:** *12 SR 2252*

**3310.2911 INTERPRETERS.**

The department shall provide an interpreter, when necessary, upon the request of a party. The requesting party shall notify the appellate office at least seven calendar days before the date of the hearing that an interpreter is required. If no request is made, the referee shall continue any hearing where a witness or principal party in interest is a handicapped person so that an interpreter can be appointed. All notices and other documents distributed to parties and witnesses by the appellate office shall be prepared in easily understood English.

A written statement in English, Spanish, Laotian, Vietnamese, Cambodian, and Hmong which states that the accompanying documents are important, and that if the reader does not understand the documents, the reader should seek immediate assistance, shall accompany all notices and written documents distributed by the appellate office to the party whenever the office has reason to believe the primary language of the party is one of those previously listed other than English.

**Statutory Authority:** *MS s 268.021; 268.10 subds 4,6*

**History:** *12 SR 2252*

**3310.2912 EXHIBITS IN TELEPHONE CONFERENCE HEARINGS.**

Upon receipt of notice of a telephone conference hearing, and no later than five calendar days before the scheduled time of hearing, parties may submit to the department any documents they wish to offer as exhibits at the hearing.

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Copies of the documents as well as all documents which are to be introduced as department exhibits shall be mailed to all parties by the appellate office in advance of the hearing. If a party moves to introduce additional documents during the course of the hearing, and the referee rules that the documents should be admitted into evidence, the moving party shall send copies of the documents to the referee and the opposing party. The record shall be left open for sufficient time for the submission of a written objection and for response to the documents. The response may be in writing or the referee may, when appropriate, reconvene the telephone conference hearing to obtain a response or permit cross examination regarding the late filed exhibits.

**Statutory Authority:** *MS s 268.021; 268.10 subds 4,6*

**History:** *12 SR 2252*

## **3310.2913 ACCESS TO DATA.**

The parties to a hearing shall be allowed reasonable access to department data necessary to represent themselves properly in proceedings under parts 3310.2901 to 3310.2928. Access to data under parts 3310.2901 to 3310.2928 shall be consistent with Minnesota Statutes, section 268.12, subdivision 12, Minnesota Statutes, chapter 13, and other laws relating to data practices. Upon oral or written request by a party or the party's authorized representative, the appellate office shall provide copies of documents that are to be introduced as department exhibits. The copies shall be provided at no cost and, upon request, shall be mailed to the party or the party's authorized representative.

**Statutory Authority:** *MS s 268.021; 268.10 subds 4,6*

**History:** *12 SR 2252*

## **3310.2914 SUBPOENAS AND DISCOVERY.**

**Subpart 1. Subpoenas.** Subpoenas are available to a party to compel the attendance of witnesses, the production of documents or other exhibits upon a showing of necessity by the party applying for subpoenas. Subpoenas may be obtained by calling or writing the appellate office sufficiently in advance of the scheduled hearing to allow for the service of the subpoenas. The requesting party must identify the person or documents to be subpoenaed, the subject matter of the evidence requested, and their necessity. A request for a subpoena may be denied if the testimony or documents sought would be irrelevant, immaterial, or unduly cumulative or repetitious. A request for a subpoena may be renewed when a party finds an additional basis or need for evidence.

A party whose request for a subpoena has been denied may request at the time of the hearing that the referee who conducts the hearing issue the subpoena. If the referee grants the request for a subpoena, the referee may adjourn the hearing to allow a sufficient time for service of and compliance with the subpoena.

**Subp. 2. Discovery.** Each party, within three working days following demand by another party, shall disclose the name of the party's attorney or other representative and the names of all witnesses the party intends to call at the hearing and identify any written documents that the party intends to introduce at the hearing. The demand and the response may be made by mail or by telephone. The demanding party shall be permitted to inspect any identified documents at a mutually agreeable time and location prior to the hearing if a demand to inspect is made at least three working days before the hearing. Unless otherwise agreed, the demanding party shall be permitted to reproduce copies of any identified documents only when reproduction is possible without removing them from a party's possession. Any witnesses unknown at the time of the disclosure shall be disclosed as soon as they become known. If a party fails to comply with the disclosure requirements of this subpart, the referee shall, upon request by the demanding party, consider rescheduling the hearing pursuant to part 3310.2908.

**Statutory Authority:** *MS s 268.021; 268.10 subds 4,6*

**History:** *12 SR 2252*

**3310.2915 DISQUALIFICATION OF REFEREE.**

A referee shall remove himself or herself from any case where the referee believes that presiding over the case would create the appearance of impropriety. No referee may hear any case where any of the parties to the appeal are related to the referee by blood or marriage. A referee shall not hear any case if the referee has a financial or personal interest in the outcome. A referee having knowledge of such a relationship or interest shall immediately remove himself or herself from the case.

Any party may move for the removal of a referee by written application of the party together with a statement of the basis for removal. Upon the motion of the party, the director of the appellate office shall decide the fitness of the referee to hear the particular case.

**Statutory Authority:** *MS s 268.021; 268.10 subds 4,6*

**History:** *12 SR 2252*

**3310.2916 REPRESENTATION BEFORE REFEREE.**

Any individual may personally appear in any proceeding before a referee and may be represented by an attorney or a duly authorized representative. Any partnership may be represented by any of its members, an attorney, or other duly authorized representative. Any corporation or association may be represented by an officer, an attorney, or other duly authorized representative.

The commissioner may refuse to allow any person to represent others in any proceeding before a referee if that person is unethical in conduct or intentionally and repeatedly fails to observe the provisions of the law or rules relative to such proceedings or the instructions of the commissioner or a referee.

**Statutory Authority:** *MS s 268.021; 268.10 subds 4,6*

**History:** *12 SR 2252*

**3310.2917 PUBLIC ACCESS TO HEARINGS.**

Appeal hearings are public hearings. A referee may exclude nonessential persons only when necessary due to physical space limitations or to maintain decorum. Upon the referee's motion or upon the motion of a party, a referee may sequester witnesses due to space limitations or to avoid prejudice or collusion.

The referee shall make a tape recording of all testimony that is the official record. No other voice recordings or pictures shall be made in the hearing room of any party, attorney, representative, or witness involved in the hearing while the hearing is in session.

**Statutory Authority:** *MS s 268.021; 268.10 subds 4,6*

**History:** *12 SR 2252*

**3310.2918 APPEARANCES AT TELEPHONE CONFERENCE HEARINGS.**

Appearances before a referee at telephone conference hearings shall be by telephone. The parties must notify the appellate office of the telephone number where they can be reached at the scheduled hearing time. The parties must also notify the appellate office of the telephone numbers of their attorney, representative, or witnesses. The notifications shall be made as far in advance of the hearing as possible.

Whenever a party does not have a telephone or access to one, they may appear by telephone from an area office of the department.

Telephone conference hearings may also be held at area offices of the department with the parties present in the area office and the referee at a different location communicating by telephone.

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**Statutory Authority:** *MS s 268.021; 268.10 subds 4,6*

**History:** *12 SR 2252*

### **3310.2919 DATA PRACTICES NOTICE.**

At the beginning of each hearing, a referee shall advise the parties in the following or a similar manner of the data practices implications of the hearing:

“The purpose of this hearing is to take testimony and evidence. This information will be used to decide your rights under Minnesota law. Certain other government officials may have access to information provided at this hearing if this is allowed by statute or the information may be disclosed pursuant to valid court order.”

**Statutory Authority:** *MS s 268.021; 268.10 subds 4,6*

**History:** *12 SR 2252*

### **3310.2920 ADMINISTRATION OF OATH OR AFFIRMATION.**

Before testifying, every witness shall be required to declare to testify truthfully, by oath or affirmation. The mode of administering an oath shall be as practiced in this state. The form of the oath or affirmation shall be as set forth in Minnesota Statutes, sections 358.07 and 358.08.

**Statutory Authority:** *MS s 268.021; 268.10 subds 4,6*

**History:** *12 SR 2252*

### **3310.2921 CONDUCT OF HEARING.**

The order of presentation of evidence shall be determined by the referee. The referee shall inform the parties of their burdens of proof before the taking of testimony.

Each party may present and examine witnesses and offer their own documents or other exhibits. To the extent permitted by Minnesota Statutes, section 268.12, subdivision 12, and other laws pertaining to the protection of data, a party shall be provided with a copy of any document or exhibit accepted into evidence upon the request of the party. Opposing parties shall have the right to examine witnesses, object to exhibits and testimony, and cross examine the other party's witnesses. The referee should assist unrepresented parties in the presentation of evidence. The referee shall rule upon evidentiary objections on the record. The referee shall permit rebuttal testimony. Parties shall have the right to make closing statements. Closing statements may include comments based upon the evidence and arguments of law. The referee may limit repetitious testimony and arguments.

The referee shall exercise control over the hearing procedure in a manner that protects the parties' rights to a fair hearing. The referee shall ensure that relevant facts are clearly and fully developed.

**Statutory Authority:** *MS s 268.021; 268.10 subds 4,6*

**History:** *12 SR 2252*

### **3310.2922 RECEIPT OF EVIDENCE.**

Only evidence received into the record of any hearing may be considered by the referee. The parties may stipulate to the existence of any fact or the authenticity of any exhibit.

All competent, relevant, and material evidence, including records and documents in the possession of the parties which are offered into evidence, shall be part of the hearing record. A referee may receive any evidence which possesses probative value, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs. A referee may exclude any evidence which is irrelevant, immaterial, unreliable, or unduly repetitious. A referee shall not be bound by statutory and

common law rules of evidence. The rules of evidence may be used as a guide in a determination of the quality and priority of evidence offered. A referee may draw adverse inferences from the refusal of a party or witness to testify on the basis of any privilege. A referee shall only use reliable, probative, and substantial evidence as a basis for decision.

**Statutory Authority:** *MS s 268.021; 268.10 subds 4,6*

**History:** *12 SR 2252*

### **3310.2923 OFFICIAL NOTICE.**

A referee may take official notice of adjudicative facts and matters of common knowledge and may take notice of facts within the referee's specialized knowledge in the field of unemployment insurance. Any fact officially noticed shall be noticed on the record in the decision. Parties shall be notified of any facts officially noticed by the referee and shall be given an opportunity to contest the noticed facts.

A referee may officially note any facts which are subject to judicial notice in the courts of Minnesota.

**Statutory Authority:** *MS s 268.021; 268.10 subds 4,6*

**History:** *12 SR 2252*

### **3310.2924 EX PARTE COMMUNICATIONS.**

Private communication between a referee assigned to an appeal and one or more of the parties to an appeal, in the absence of the other parties to the appeal, is forbidden if it relates to the substance of the matter at issue. Private communication is to be avoided even when it does not relate to the subject matter of the appeal if it would create the appearance of impropriety.

**Statutory Authority:** *MS s 268.021; 268.10 subds 4,6*

**History:** *12 SR 2252*

### **3310.2925 NONAPPEARANCES.**

When a party fails to appear at a regularly scheduled hearing, the referee may issue a decision based upon the evidence that is available unless it appears that there is good and sufficient cause to reschedule the hearing.

**Statutory Authority:** *MS s 268.021; 268.10 subds 4,6*

**History:** *12 SR 2252*

### **3310.2926 DECISIONS.**

Following the conclusion of the hearing of an appeal, a referee shall, within a reasonable time, issue a decision. No factual information or evidence which is not part of the record shall be considered by the referee in reaching a decision. Decisions of a referee shall contain a statement of the date and place of hearing, the parties in attendance, and the procedural history of the claim from which the appeal is taken.

Decisions shall contain a statement of the issue involved, findings of fact, reasons for the decision which apply the law to the facts, and a decision. Decisions may contain additional material at the discretion of a referee.

Decisions made by a referee shall be filed in the state office of the Department of Jobs and Training at Saint Paul, Minnesota. Notice of the filing of a referee's decision together with a copy of the decision shall be mailed to all parties to the appeal. Every decision shall contain a prominent statement indicating in clear language the method of appealing the decision, the time within which the appeal must be made, and the consequences of not appealing the decision.

**Statutory Authority:** *MS s 268.021; 268.10 subds 4,6*

**History:** *12 SR 2252*



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## UNEMPLOYMENT COMPENSATION PROCEDURE 3310.2928

### **3310.2927 WITHDRAWAL OF APPEAL.**

Any party who has filed an appeal may withdraw the appeal at any time before the decision is issued by a referee. All withdrawals must be in writing signed by the party or an authorized representative or placed on the record of the hearing by the party or an authorized representative. Withdrawals in writing must identify the appeal that is being withdrawn. Upon the filing of a withdrawal, the referee before whom the matter is pending shall issue an order dismissing the appeal.

**Statutory Authority:** *MS s 268.021; 268.10 subds 4,6*

**History:** *12 SR 2252*

### **3310.2928 APPEAL OF REFEREE'S DECISION.**

A decision of a referee may be appealed to the commissioner in accordance with applicable statutes and rules relating to appeals to the commissioner.

**Statutory Authority:** *MS s 268.021; 268.10 subds 4,6*

**History:** *12 SR 2252*

**3310.3500** [Repealed, 12 SR 2252]

**3310.3600** [Repealed, 12 SR 2252]

**3310.4100** [Repealed, 12 SR 2252]

**3310.4200** [Repealed, 12 SR 2252]

**3310.4300** [Repealed, 12 SR 2252]

**3310.4400** [Repealed, 12 SR 2252]

**3310.4900** [Repealed, 12 SR 2252]

**3310.5300** [Repealed, 12 SR 2252]