

4.6 CHARGE TO AN EMPLOYER'S EXPERIENCE RATING ACCOUNT – K.S.A. 44-710 (c):

An employer's account will be "charged" only if the employer is a "contributing base period" employer and if the individual either quit with good cause attributable to the work, was fired under circumstances which do not qualify as misconduct connected with the work, or the work does not meet the special definition of "part-time." Not all "quits with good cause" will result in a charge to the employer's account. All "reimbursing" employers will receive a "charge" if the claimant is found to be "qualified" for unemployment benefits.

4.7 ELIGIBILITY – K.S.A. 44-705:

Once a claimant is found to be "qualified" which is a "one time" question, there is still a "continuing" question as to whether the individual is "eligible." This is a question that is asked on a weekly basis and includes questions such as are weekly claims being filed properly; has the individual properly registered with job service; is the individual physically able to work; is the individual actively pursuing employment? An individual may be found eligible for one particular week, but not for another. An individual must be both "qualified" and "eligible" in order to receive benefits for any given week.

UNEMPLOYMENT INSURANCE

APPEAL HEARING PROCEDURE

Phone 785-296-1800
Toll Free .. 800-227-0067
FAX 785-296-4065

★ **IMPORTANT** ★
Read before participating.
Failure to follow any of
these instructions could
result in an adverse impact
on your hearing and/or its
outcome.

OFFICE OF APPEALS
Kansas Department of Labor
401 SW Topeka Boulevard, Topeka, KS 66603-3182

1. Before The Hearing

1.1 APPEARANCE:

Shortly, you will receive a “Notice of Hearing.” This notice will state the date, time, type (telephone or in-person) and location of your hearing. Read and follow the instructions contained therein.

If appearing by telephone, you must call the Office of Appeals and give them the telephone number at which you and each of your witnesses are to be contacted at the time of the hearing in accordance with the instructions set forth in the Notice of Hearing. You should forward those numbers as far in advance of the hearing as possible and, in any event, no later than 24 hours prior to the start of the hearing unless there is good reason for doing otherwise.

Failure to appear at the time and place scheduled or to answer the telephone promptly will constitute a “non-appearance” on your part. The non-appearance of the party filing the appeal will result in the witnesses for the other side being released and your appeal being dismissed. The non-appearance of the non-appealing party will result in the hearing taking place as scheduled without the non-appearing party’s statements being considered.

If your telephone hearing is continued and you have already turned in your telephone number as instructed the same telephone number will be used when your case is re-scheduled unless you call and notify the Office of Appeals that a different number should be used.

1.2 TELEPHONE:

Your appeal hearing will probably be scheduled to take place by telephone. If you have forwarded your telephone number as

4.5 MISCONDUCT CONNECTED WITH THE WORK – K.S.A. 44-706 (b):

Unemployment benefits will be paid to a claimant unless the individual is fired for “misconduct connected with the work.” There are several scenarios under which an employee may properly be fired which do not qualify as misconduct connected with the work. “Misconduct connected with the work” is generally defined by statute to be a violation of a duty or obligation reasonably owed to the employer as a condition of employment. The statute specifically excludes from that definition circumstances such as: unsatisfactory performance if the individual was acting in good faith and performing unsatisfactorily due to inefficiency, inability, incapacity, lack of training or experience; isolated incidents of ordinary negligence or inadvertence; giving notice of intent to quit; good faith errors in judgment or discretion; circumstances beyond the claimant’s control; or to refuse to do more or different work than agreed to.

Absence or tardiness is not misconduct unless the employer had a written attendance policy of which the employee was aware; the employer gave or sent to the employee written notification that continued absences may or could result in being fired; and that absences “without good cause,” which were in violation of the employer’s attendance policy, occurred. Further, if there is a dispute over whether or not the absences occurred “with good cause,” the employee must prove that a majority of the absences were for “good cause.” The failure of an employee to notify the employer of an absence is prima facie evidence of misconduct. If health related, the proof must include medical documentation. Absence due to incarceration may also be misconduct.

Discharges for drug or alcohol problems at work or failure to pass a drug screen test as it relates to misconduct connected to the work is more complex and, if you are dealing with that type of case, you may contact the Office of Appeals for more specific information.

4.4 QUIT WITH GOOD CAUSE – K.S.A. 44-706 (a):

The Employment Security Act sets forth twelve reasons for which an employee may “quit” and still qualify for unemployment benefits. They generally include:

1. being out of work based upon a physician’s advice due to illness or injury and finding no suitable work still available with the employer when released to return to work (c/nc);
2. leaving temporary employment to return to regular employment (nc);
3. leaving to enter military service and the entry is rejected or delayed (nc);
4. leaving work because of the transfer or acceptance of other work by a spouse in a location which makes commuting impractical (nc);
5. leaving because of hazardous working conditions (c);
6. leaving to enter training approved under the Federal Trade Act of 1974 (nc);
7. leaving because of unwelcome harassment (c);
8. leaving to accept better work (nc);
9. leaving because of being instructed or required to violate the law in the commission of your job duties (c);
10. leaving work because the employer violated the work agreement (c);
11. leaving work because of a compelling, personal emergency (nc);
12. leaving work because of domestic violence (nc).

The “quit” must be “voluntary” and cannot be the result of coercion such as resigning in lieu of being fired.

- (c) contributing base period employer is charged;
- (nc) contributing base period employer is not charged;
- (c/nc) contributing base period employer is charged if the illness or injury is attributable to the job.

instructed, you will be called by the Unemployment Insurance (UI) Judge assigned to hear the case at the scheduled time.

Before the hearing starts, you should make sure your telephone is in proper working order, keep the line clear and be ready to receive the call. Occasionally, as a result of a previous hearing lasting longer than expected, you may not be called at the exact time of your scheduled hearing. In that event, please stand by and you will be called shortly.

You should plan to appear by telephone in a location free of background noise so you will be clearly heard. If the UI Judge and/or the other party cannot hear you clearly, the Judge has the right to stop the hearing and schedule it for another time.

Use of cellular or mobile telephones are not allowed and cordless telephones should be avoided whenever possible. Pay telephones should not be used unless absolutely necessary. If you must use a pay telephone, be sure it is one that will accept incoming calls and is free of traffic and other background noise. If using a speaker telephone, make sure the area is free of all background noise and make arrangements so that each of the parties testifying is no more than three (3) feet from the telephone when speaking.

If you do not have access to a telephone, you must contact the Office of Appeals immediately and make arrangements for access to one. If having witnesses appear on your behalf, have them all at the same location whenever possible in order to reduce the number of telephones being connected to the conference call.

1.3 PREPARE FOR THE HEARING:

The hearing before the UI Judge is your **only** chance to present everything relevant to the case. The Judge is limited to considering only the evidence introduced during the hearing. Take advantage

of this opportunity and do not assume that at a later date new evidence or information can be added.

Take time to prepare for your hearing. Know the issue or issues involved, obtain documents and line up witnesses supporting your side of the case. To help you remember what you want to present at the hearing, you may prepare a simple chart or written summary with the key information you want to present. Prepare all evidence and be ready to explain company records, abbreviations, technical terms and/or symbols. Do not rely solely upon written statements of witnesses as part of your evidence presentation (see page 9, section 2.2 “Hearsay”).

Review the Material

Before the hearing, review the other party’s statement(s) attached to the “Protest Acceptance.” Review this carefully so that you know what issues will be addressed at the hearing. This helps you to prepare, gather documents and arrange for witnesses to support your case.

Prepare and Participate Even if You Are Not the Appealing Party

The UI Judge’s decision is based only on what is presented at the hearing. You must participate and be prepared to present and defend your position if you wish your point of view to be considered. If you choose not to participate, the hearing will proceed without you, and the decision will be based on the other party’s evidence presented at the hearing.

Prepare Facts

Facts, not conclusions, are the basis of a good case. Be prepared to answer the questions of who, what, when, where and why. Saying that an employer is unfair or that an employee is

4. THE LAW

4.1 THE EMPLOYMENT SECURITY ACT:

The law which governs unemployment is found at K.S.A. 44 - 701 et. seq. and supplemented by the appropriate Kansas Administrative Regulations beginning at K.A.R. 48 - 1-1 as well as court decisions related to the Act. The information set forth below is only intended to give a general summary of the law and should not be used as a substitute for the full text of the applicable statutes, regulations, and court decisions.

4.2 INTENT:

The intent of the law is to provide income to those who become “involuntarily unemployed” and to prevent “economic insecurity, due to unemployment” which is considered to be “a serious menace to health, morals, and welfare of the people of this state”; K.S.A. 44-702. Unemployment benefits are not paid as a “punishment” to an employer who has done something wrong. The money used to pay for unemployment benefits, for the most part, come from quarterly taxes paid into the appropriate fund by the employer on all employees who work for them. Those taxes are paid solely by the employer and are not the result of any withholdings of wages from the employee. There is no set amount of time the employee must work for any one particular employer to qualify.

4.3 QUALIFICATION – K.S.A. 44 – 706:

In order to “qualify” for unemployment benefits, the employee must have either “quit for good cause attributable to the work or the employer” or was fired under circumstances which do not constitute “misconduct connected with the work” as defined by statute. “Qualification” is based solely upon the reason the employee separated from the last employer.

3. AFTER THE HEARING

3.1 DECISION:

You will not be told of the UI Judge's decision at the end of your hearing. The law requires the Judge to issue a written decision setting forth the findings of fact, applicable law, and an explanation of how the law was applied to your facts to reach the decision made. You will receive your decision in the mail within 10 days to two weeks after your hearing, if not sooner. If you have not received your decision after two weeks, you may call the Office of Appeals to inquire.

3.2 FILING WEEKLY CLAIMS:

You should continue to file your weekly claims even after filing your request for an appeal or after receiving notification that an appeal has been filed by the other party. You should continue to do so even after the hearing has been conducted and during the time you are waiting to receive your decision in the mail. **You will not receive payment of benefits for any week in which you do not make the proper filings.**

3.3 APPEAL RIGHTS:

If either party disagrees with the UI Judge's decision, they may appeal to the Employment Security Board of Review. Instructions for filing that appeal can be found on the last page of the UI Judge's decision. The decision of the Board will be based solely upon the record created by the Judge at your appeals hearing. You may appeal the Board's decision to the District Court and up through the Court of Appeals and Kansas Supreme Court if you so desire.

unsatisfactory is a conclusion. Prepare facts that prove the point you wish to make, and have evidence and witnesses that will verify what you are presenting available at the hearing.

Prepare Your Appeal Based on Facts, Not on Philosophical Arguments or Proof of Financial Need

Respond to the issues under appeal. Prepare to prove your point of view on the issues under appeal, not on issues unrelated to the appeal. Some people incorrectly think that unemployment insurance is based upon financial need. If you prepare only to argue that you need the money, you are not prepared to address the issue at hand.

1.4 DOCUMENTS:

If you plan to introduce into evidence or rely upon any information contained within a document, **you must submit that document to both the UI Judge and the opposing party at least 24 hours prior to the start of the hearing** (weekends and holidays not included). You should do so far enough in advance to ensure that it will be received in sufficient time to be reviewed by the other party and the Judge before the hearing begins. All documents should refer to the appropriate case by docket number and the name of the UI Judge assigned to your case as set forth in the "Notice of Hearing." Failure to submit the documents in this manner could result in the denial to use these documents as evidence in the hearing.

1.5 TELEPHONE VS. IN-PERSON HEARINGS:

As stated above, your appeal hearing will probably be scheduled for a telephone conference. However, the Office of Appeals and/or the presiding UI Judge reserves the right to set or reset a hearing to an in-person hearing if deemed necessary to ensure an orderly and fair hearing which meets due process requirements. You may request an in-person hearing rather than

a telephone hearing. If your request is granted, you may appear in-person. The other party may still appear by telephone if they so choose, unless required by the UI Judge to appear in-person.

Make your request to the Office of Appeals immediately after receiving the “Notice of Hearing” which will state the type of hearing for which you have been scheduled. The granting of your request to appear in-person may result in a re-scheduling of your hearing, so be prepared for that possibility.

1.6 CONTINUANCE:

After receiving the “Notice of Hearing” which informs you of the date and time of your hearing, if you cannot appear at that time, you should contact the Office of Appeals immediately and request that your hearing be continued and reset for another date and/or time. Your request for a continuance will only be granted for “good cause” and not merely for the convenience of the requesting party. **No request for a continuance will be granted if made within 24 hours of the scheduled hearing** (weekends and holidays not included) unless for a compelling, personal emergency.

Be prepared to give specific details as to the reason for the continuance request. Only the presiding UI Judge or his or her designee may grant that request. After making the request, unless you have specifically been informed that your request was granted, you should plan to appear for your hearing as originally scheduled.

1.7 WITHDRAWAL:

After filing for an appeal hearing, if you change your mind and do not wish to continue with your appeal, you should make a **written request** to the Office of Appeals stating that you want to withdraw your appeal request. In that event, your request will be granted and the appeal hearing will be dismissed. You may

contested. No finding of fact or decision may be based solely on uncorroborated, hearsay evidence. Hearsay evidence usually carries less weight and credibility than does first hand testimony, especially if the other party disputes that information. As a result, whenever possible, you should have the witnesses themselves who made the statement and/or observations available to testify during the hearing and do not rely upon documents or representatives who have no first hand knowledge of events.

2.3 TIME:

Your hearing will normally be scheduled to last no more than 45 minutes, depending upon the issues to be covered in the hearing. It is important that you are prepared and ready to begin at your scheduled time. Each UI Judge is assigned to conduct several hearings each day and must keep to a preset schedule which provides for little leeway. If you believe your hearing cannot be conducted within that amount of time due to complex issues, lengthy testimony, multiple witnesses, voluminous documentation, etc. you should call the Office of Appeals to discuss the allotment of additional time for your hearing.

2.4 LEGAL PROCEEDING:

Although the strict rules of evidence and court procedure will not be followed, you must remember this is still a legal proceeding, whether conducted by telephone or in person, presided over by an Unemployment Insurance Judge. You should prepare and conduct yourself accordingly. Make arrangements to give your full attention to the hearing and do not attempt to baby-sit, conduct business, accept other incoming calls, put the parties and/or the Judge on “hold”, etc. while the hearing is in progress. Have all your files, documents, and witnesses ready when your case is called. It is your responsibility to be prepared to present your case in full at the time scheduled and your failure to do so could result in an unfavorable decision.

The hearing will be conducted in accordance with the requirements of due process. The formal rules of evidence and court procedure will be followed, but not strictly enforced.

The hearing will be tape recorded by the UI Judge in order to preserve a record for appeal purposes. **All other recordings or records of the hearing are prohibited.**

All participants will testify under oath and be subject to the perjury laws of Kansas. The presiding UI Judge will question the witnesses and designate their order of testimony. Each witness may also be questioned by their own representative at the time designated by the Judge. The other party may also question each witness for the other side. Appropriate, legal objections may be made. At the end of all testimony, each side may make a brief closing statement as a summary of their position.

The UI Judge will not rule at the end of the hearing itself, but will mail both sides a written decision as required by law. The Judge's ruling will be based solely on the evidence presented at the hearing. The Judge is not allowed to make contact with anyone or to consider any evidence outside the formal hearing.

Proper foundation must be laid before any documents will be considered as evidence. The UI Judge will assist the parties in presenting their testimony and other evidence as well as assist in questioning all the witnesses, but will always remain neutral in regard to the representation of either party.

2.2 HEARSAY:

“Hearsay” is any statement, whether oral or in writing, made by another person who does not appear to testify under oath and be subject to questioning of either the UI Judge or the other party. Hearsay is admissible in the hearing, but is not persuasive if

make an oral request to the presiding UI Judge at the time of your hearing before it begins and it will be granted when appropriate. Only the appealing party may request a withdrawal.

1.8 REQUESTING SUBPOENAS FOR DOCUMENTS AND/OR PERSONS:

The best way to prove your point may be either the testimony of an eyewitness or through the documents involved in the case. It is your responsibility to ensure that documents and witnesses important to your case are available at the time of the hearing.

When it appears that an important witness may not participate voluntarily or that a critical document is in the possession of another person, you may request the Office of Appeals issue a subpoena to require the person to participate or provide records.

Making the Request for Subpoenas

Requests for subpoenas must be made in writing to the Office of Appeals at least one week (7 days) in advance of the scheduled hearing. Requests must specify the reason for the subpoena, the testimony of each witness and the full address where the witness will be served. If you are subpoenaing documents, a detailed description of the physical evidence is required. You must show that the testimony/record adds to your argument and does not repeat other information. A subpoena is not granted if it is determined that an undue burden would be placed on the party to whom it is directed or if the testimony adds nothing to your argument or repeats other information.

Facts About Subpoenas

A subpoena requires appearance of the witness as directed and is enforceable by an order of contempt in the District Court. It is a crime for anyone, including an employer, to impede or penalize

an employee for testifying at the hearing. The department will pay an appearance fee of \$10, plus mileage for a witness under subpoena. A subpoena cannot be served at an address outside Kansas.

If Your Request for a Subpoena Is Denied

If your request for a subpoena is denied, you may state your objection, if any, at the hearing. If the UI Judge also denies your request, the hearing proceeds; if he or she grants it, the hearing may be rescheduled to a future date.

1.9 REPRESENTATION:

Although it is not required, you have the right to be represented by an attorney or a “Duly Authorized Representative” at your hearing. The attorney must be licensed to practice law in the State of Kansas or be in compliance with the Kansas Supreme Court Rule 116. A “Duly Authorized Representative” is defined in K.A.R. 48-3-2(c) to include only a union representative, supervised law student, an employee of a corporate employer, or the employee of the employer’s cost control firm. No other non-attorney representative is permitted by law.

All attorneys must file a written entry of appearance before the hearing with the Office of Appeals.

All attorney’s fees are to be paid by the party retaining them and will not be paid by the Kansas Department of Labor. A claimant’s attorney may not charge a fee greater than an amount approved by the Secretary of Labor and it is a crime for an attorney to exceed the approved amount; K.S.A. 44-718 (b). After the hearing, the attorney’s statement of charges must be submitted to the Office of Appeals for approval.

An attorney may appear at a location different than that of his or her client if the hearing is scheduled by telephone. **A duly**

authorized representative may appear only at the same location as their client whether their appearance is in-person or by telephone.

1.10 COMMUNICATION DISABILITY OR LANGUAGE BARRIER:

If your ability to participate in the hearing is impaired because of a disability or difficulty with the English language, contact the Office of Appeals immediately for assistance and information about an interpreter. As a general rule, use of your own interpreter will not be allowed. After proper notification of a need, the Office of Appeals will arrange to have an interpreter available.

1.11 QUESTIONS:

You will not be allowed by law to speak with the UI Judge assigned to your case either before or after the hearing in regard to substantive issues. The only exception would be to discuss procedural matters needed to be resolved before the hearing. Under no circumstances will the Judge be allowed to give legal advice to either party.

2. The Hearing

2.1 PROCEDURE:

The hearing will be presided over by a UI Judge who is an attorney and employee of the State. You are to follow the instructions of the UI Judge during the hearing. If any participant in the hearing repeatedly fails to follow the instructions of the Judge or otherwise becomes disruptive, the Judge has the authority to either deny that individual’s further participation in the hearing or to stop the hearing entirely and issue a ruling on the evidence available.