

## GENERAL INFORMATION

### **Why should I read this pamphlet?**

If you are a **claimant** for unemployment insurance benefits or other program benefits administered by the Employment Security Commission (ESC), you have received this pamphlet because ESC sent you a determination about your qualification or eligibility to receive the benefits. If you are an **employer**, you have received this pamphlet because ESC sent you a determination about a former employee's qualification or eligibility to receive unemployment insurance benefits, or a determination regarding charging benefits to your account, or a determination regarding your status or liability for unemployment insurance taxes. This pamphlet gives you important information about your rights under the Employment Security Law of North Carolina and the ESC Regulations. It tells you how to appeal an unfavorable determination or notice, and what you must do to prepare and participate in a hearing if an appeal is filed. The hearing is your only chance to give all information about the case that has been appealed.

### **What is an ESC proceeding?**

An ESC proceeding is an appeal or hearing. An appeal is a written statement disagreeing with a determination. A hearing is a conference with an ESC hearing officer at which parties and witnesses will present, under oath, information (evidence) about a case.

### **Who can file an appeal?**

A party to whom the determination is unfavorable, or its attorney or legal representative who is supervised by an attorney.

### **Who is a party?**

A party is a claimant, or employer and ESC, or all three (3) depending on the issue to be decided.

### **Who is the hearing officer?**

The hearing officer is an individual who ESC has authorized to hold a hearing. The hearing officer may be a Hearing Officer, Appeals Referee, Special Deputy Commissioner, or an attorney on the ESC Legal Staff.

### **Can I have a lawyer help me? Where can I find a lawyer?**

Yes. You may have a lawyer help you at all levels of ESC proceedings. You have to decide whether to have a lawyer. You may also be represented by someone who is not a lawyer, but is supervised by a lawyer. (This does not apply to court proceedings.) The supervising lawyer does not have to attend the proceeding. The legal representative, however, must submit a letter from the supervising attorney allowing the legal representative to represent you. For help finding a lawyer, call the North Carolina Lawyer Referral Service [1-800-662-7660]. You may also call (919) 856-2564 for a directory of all Legal Services or Legal Aid offices.

### **If my address has changed, what should I do?**

ESC mails all checks, letters, notices, determinations, decisions and other correspondence to your last known address. If you change your mailing address, or you think ESC does not have your correct address, **YOU MUST IMMEDIATELY NOTIFY ESC OF YOUR NEW OR CORRECTED ADDRESS.** ESC will not be responsible if mail does not reach you because you have not given your correct mailing address. *If you are represented by a lawyer*

*or other legal representative, all papers will be mailed to that person rather than to you.*

### **Should I continue to file claims for benefits until all appeals have been decided?**

Yes. If you are an unemployed claimant, you should continue to file claims for benefits until **all** appeals have been decided. No benefits will be paid to you for any week a claim is not filed.

### **If I receive letters or other correspondence from ESC that appear to be in conflict with each other, what should I do?**

You must immediately contact ESC. Show or tell the ESC representative what the letters or correspondence say. You must not assume that the most recently received letter or correspondence cancels the information contained in an earlier letter or correspondence. It is your responsibility to protect your rights, this includes checking your mail if you are required to be away from your mailing address.

### **If my determination covers a matter for which a hearing will be held and I have questions, who may I contact?**

ESC Appeals Department  
Post Office Box 25903, Raleigh, NC 27611-5903  
Telephone No.: 919-733-4887; Fax No.: 919-733-1228  
E-Mail Address: [esc.public.appeals@ncmail.net](mailto:esc.public.appeals@ncmail.net)

Make sure you give enough information about your determination and case in order that your call or written inquiry may be forwarded to the individual who can answer your questions without delay.

### **Where can I get a copy of the law, regulations and this pamphlet?**

The Employment Security Law is found in Chapter 96 of the North Carolina General Statutes. You can get a copy of the law, regulations and this pamphlet from any ESC Local Office. The law and the regulations are on the ESC website - <http://www.ncesc.com>.

## APPEALING THE DETERMINATION

### **If the determination is unfavorable to me, why should I read my appeal rights?**

An ESC representative issues an initial determination regarding a claimant's qualification or eligibility to receive benefits, the charging of benefits to an employer's account, or an employer's tax liability or status. The determination includes an explanation of your right to appeal. It sets forth the deadline by which the appeal must be filed. If the appeal is not filed timely, it may be denied unless you can show good cause or excusable neglect for the appeal deadline to be extended.

### **What do I have to say in my appeal?**

An appeal must be written. ESC local offices have forms that may be used for filing appeals. Generally, you only need to write "I appeal", include the claimant's social security number and the docket number of the determination, and sign and date the appeal. If additional information is needed, the appeal rights will tell you. If you are the employer, you should also include the name of your business and the name and title of the individual filing the appeal on your behalf.

### **Where and how may I file my appeal?**

You may file an appeal by delivering it to any ESC local, branch or satellite office or itinerant point\*, mailing it to the address set forth in the determination, faxing it to (919) 733-1127, or transmitting it to this Internet address - **[esc.public.appeals@ncmail.net](mailto:esc.public.appeals@ncmail.net)**. The appeal is filed only when it is received by ESC and is readable and legible. Unless the appeal rights on the determination specifically state such, the postmark date will not determine the appeal date. If you fax the appeal, it is the date of the ESC receiving facsimile machine that will determine the receipt date, not the date your facsimile machine inserts on the appeal. \***Note:** If you are an out-of-state claimant or employer, you may deliver your appeal to the local Employment Security office in your state. The date the appeal is received by that office will be considered the appeal receipt date.

### **By what date must my appeal be filed?**

The determination will tell you the deadline for the filing of your appeal. Generally, your appeal must be filed within fifteen (15) calendar days after the mailing date of the determination. Three (3) additional calendar days are added to the appeal period because the determination is mailed. If the last day of the appeal period falls on a weekend or a legal state holiday, the appeal period is automatically extended to the next working day. **Remember:** If your appeal is not filed timely, it may be denied unless you can show good cause or excusable neglect for the appeal deadline to be extended. **ALSO,** if you submit your appeal before the written determination is published or mailed, the appeal will be accepted as filed on the date the determination was mailed.

### **Do I have to send or deliver a copy of my appeal to everyone else? If no, how will they know I appealed?**

No. The Notice of Hearing mailed by ESC to all parties will generally state that you appealed the determination and the date your appeal was received.

### **What happens if I choose not to appeal?**

The determination will become final. If you are a claimant who filed for unemployment insurance benefits and was found completely disqualified from receiving benefits and you do not appeal, this disqualification will be for two (2) years. The only way to end this disqualification before its expiration date is if you return to work for at least five (5) weeks, you are paid at least ten (10) times your weekly benefit amount, and lose your job through no fault of your own. If you were disqualified for a specific number of weeks, you will have to serve the disqualification period before again being eligible to receive benefits. If you are an employer and do not appeal a determination that the claimant may receive benefits, your account may be charged for these benefits. If you do not appeal the determination on the charging of benefits to your account, the benefits will be charged to your account. If you do not appeal the determination on your tax liability or status, your liability or status will remain as set forth in the determination.

### **If I appeal, may I later withdraw my appeal?**

Yes. Before a decision is issued on your appeal, you may withdraw the appeal by submitting a written request to do so to the individual scheduled to conduct your hearing. You must include the same identifying information that was included in your appeal, as well as the appeals docket number if known. You may also orally withdraw the appeal at the hearing. You must state that the withdrawal is freely done. **The determination will become final.**

## PARTICIPATING IN THE HEARING

### **If I appeal, will I get a hearing, how will I know when, where and how the hearing will be held, and who will conduct the hearing?**

Your appeal will be scheduled for a hearing. A notice of hearing will be mailed to all interested parties to the appeal at least ten (10) days before the hearing if the hearing will be in-person in an ESC local office. If the hearing will be by telephone or a combination of telephone and in-person, the notice will be mailed to the parties at least fourteen (14) days before the hearing. The hearing notice will state whether the hearing will be conducted in-person, by telephone or a combination of telephone and in-person, where the hearing will be held, the date and time of the hearing, and the name and title of the individual who is scheduled to hold the hearing.

### **If I do not appear at the hearing, what will happen?**

If you appealed from the determination, your appeal will be dismissed. If you are not the appealing party and do not appear, the hearing will be held and the hearing officer will make a decision based solely on the evidence presented by the party attending the hearing. **Note:** Failure of the non-appealing party to appear at the hearing does not mean that the appealing party will automatically win the case.

### **If I cannot appear at the hearing as scheduled, can I get the date and/or time changed?**

You can get the hearing rescheduled if you can show good cause. Examples of good cause are an emergency, death in the immediate family, sickness, a court appearance, a previously scheduled appointment that cannot be postponed or a job interview. The hearing officer must be contacted as soon as you know that you will need the hearing rescheduled. If the hearing is rescheduled, you and all other parties will be notified in writing, or by telephone if the rescheduling occurs close to the hearing date. A new hearing notice will be sent to the parties. Do not assume that the hearing will be rescheduled since the hearing officer may deny your request because you did not show good cause, or you unreasonably delayed in making the rescheduling request.

### **If my notice is for a telephone hearing, how can I get an in-person hearing?**

By law you have the right to ask for an in-person hearing at an ESC local office. Your request must be written and received within six (6) calendar days after the mailing of the notice. If you did not receive the notice in time to meet this deadline, you must include this explanation in your request. The quickest way to submit your request is to send it by the Internet or fax it. Any ESC local office will assist you in transmitting your request. All parties will be notified if your request is granted. If you do not receive notice of the change in your hearing before the date and time of the originally scheduled hearing, you should appear at that hearing and make the hearing officer aware of your earlier request for a change from a telephone hearing to an in-person hearing.

### **If my notice is for an in-person hearing, how can I get a telephone hearing?**

You should follow the same procedure as stated above. If the ESC local office is forty (40) or more miles from the employer's place of business, a telephone hearing may be scheduled, or a telephone hearing may be scheduled upon agreement of the parties, or a telephone hearing may be scheduled to meet standards for appeal promptness or efficient administration of the law. Otherwise, a telephone hearing may be granted at the discretion of the hearing officer. If a telephone hearing is granted, before the hearing date each party must provide to the hearing officer the names and telephone numbers of the party and the party's witnesses who will be participating in the hearing. Usually a telephone hearing questionnaire requesting this information is sent to each party to complete and return to the hearing officer.

### **If I have a witness from a drug-testing laboratory, may that witness testify by telephone even though the hearing is scheduled to be held in-person?**

Yes, this is permitted by the ESC regulations. In addition, the hearing officer may permit a party or witnesses to testify by telephone if all parties agree, or if the hearing officer determines that the substantial interest of all the parties will be best served by allowing part of the hearing to be conducted in such manner.

### **What should I do to prepare for the hearing?**

1) Gather all documents that will support your case and make enough copies to be given to the other parties and the hearing officer during an in-person hearing. If the hearing will be by telephone, you must mail copies of your documents to the hearing officer and the parties in sufficient time that they will have the documents before the hearing starts. If you do not provide copies to the other party and the hearing officer, your documents may be rejected and not considered by the hearing officer. 2) Determine who will be your witnesses and arrange for them to be available to participate in the hearing. If the hearing will be by telephone, make certain that you provide the names and telephone numbers of your witnesses to the hearing officer before the hearing begins. 3) Make notes about your case and take them to the hearing so you will not forget anything you want to say during the hearing. 4) Review the documents in the hearing officer's file in order that you may be familiar with what the other party has said about your case and help you decide what witnesses you should have to participate in the hearing. After you receive the hearing notice, contact the hearing officer to arrange a time to review the file. Of course, the file may be reviewed immediately before the hearing.

### **Who would be my best witnesses?**

A witness who has personal knowledge about the events and information relating to your case will be the best witness. A witness who can only testify about what others, not at the hearing, told him or her can seldom help your case. This type of witness usually presents what is called "hearsay evidence", which is usually disregarded by the hearing officer because a decision may not be based solely on hearsay evidence.

### **If my witness refuses to participate voluntarily in the hearing, how can he or she be made to participate?**

If a witness, who you believe has information pertinent and crucial to your case, refuses to participate in the hearing, he or she may be compelled to participate by a subpoena issued by the hearing officer. To have a witness subpoenaed, you must not delay. You must immediately make a written request to

have the witness subpoenaed. Your request must contain the name, address and telephone number of the witness. You must also explain why the testimony of this witness is pertinent and crucial to your case. The hearing officer may deny your request for a subpoena if he or she determines that the information to be supplied by the witness would not be relevant or material, or would be repetitive. The hearing notice will tell you to whom your subpoena request should be sent.

### **If the other party has documents or records that I need for the proper presentation of my case, will the hearing officer subpoena them for me?**

Yes, if the hearing officer determines that the documents or records are relevant and material to your case, and not repetitive. A written request for this type of subpoena must also be submitted as quickly as possible and contain a clear description of the documents or records, how they are pertinent to your case, and in whose possession (name and address) they may be. The hearing officer will not subpoena documents because you want copies for your records.

### **To whom should I submit my request for a hearing change, rescheduling of the hearing, or subpoena?**

The hearing notice will tell you to whom and what address to submit your request. Be sure to read the notice thoroughly and carefully.

### **How will the hearing be conducted?**

Generally, the hearing will begin on time. If the appealing party does not appear for the hearing within fifteen (15) minutes of the scheduled start time, the appeal will be dismissed and no evidence will be taken in the case.

The hearing will be recorded unless all parties, including ESC, agree that no recording should be made. (In most cases, the hearing officer represents ESC in such matters.) The hearing officer will explain the hearing issues, the purpose of the hearing, and how the hearing will proceed. Each party will be allowed to testify, have its witnesses testify, offer documents as evidence, and review and ask questions about any documents the other party may offer. Each party and its witnesses may be questioned by the other party and the hearing officer. If it is determined that such assistance is needed, the hearing officer may help a party not represented by an attorney to frame questions to be asked of the witnesses and the other party. After each party has presented its side of the case, the hearing officer will provide each party a final opportunity to make statements regarding the case. Each party and its witnesses must appear and present all testimony and other evidence it has at this hearing because this hearing will be the only chance to present testimony and evidence. At the conclusion of the hearing, all parties and witnesses will be asked to leave the hearing room. No party or witness may remain to discuss the case with the hearing officer.

## **Issuing the Decision**

### **Who makes the decision?**

If the hearing officer is a Hearing Officer, Appeals Referee or a Special Deputy Commissioner, he or she will make the written decision. In some cases (especially tax-related ones), the ESC Chairman will make the written decision.

### **What type of decision can be issued?**

If the appealing party does not appear at the hearing, a decision dismissing the party's appeal will be issued. If testimony and other evidence is taken from the parties and witnesses, the decision after the completion of the hearing will address the merits of the hearing issues appearing on the hearing notice, and any additional issues that arose during the hearing and of which the parties waived the receipt of prior written notice.

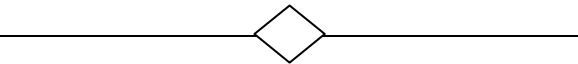
### **What will a decision on the merits of the issues include?**

A decision on the merits will include findings of fact, the applicable provisions of the law and other governing authorities, conclusions of law and the resultant decision on the claimant's qualification or eligibility for benefits, or on the employer's tax liability or status. The findings of fact must be based on competent evidence (testimony and documents), not hearsay evidence, presented at the hearing and address the circumstances surrounding the issues. The conclusions of law must reflect a proper and correct application of the law to the findings of fact. The resultant decision must be consistent with findings of fact and the conclusions of law.

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Form NCEC 568 (Rev. 7/02)



# **What You Need To Know About Appealing An Initial Determination And Participating In The Hearing**

*Usted puede obtener una copia de este folleto en español en la oficina de la Comisión de la Seguridad del Empleo.*



Visit our Website  
[www.ncesc.com](http://www.ncesc.com)