

Kansas Administrative Regulations

Department of Labor—Employment Security Board of Review

Article 1.—Appellate Procedure

48-1-4. Conduct of hearing.

(a) (1) Each hearing shall be conducted informally and in such a manner as to ascertain all of the facts and the full rights of the parties.

(2) The referee shall receive evidence logically tending to prove or disprove a given fact in issue, including hearsay evidence and irrespective of common law rules of evidence. Hearsay evidence shall be admissible but carries less weight than direct evidence and shall not be persuasive if the other party contests its admissibility. Each party submitting its evidence shall explain its relevance to the issue in question before the referee admits the evidence into the record. The claimant and any other party to an appeal before a referee shall present pertinent evidence regarding the issues involved.

(3) Uncorroborated hearsay evidence shall not solely support a finding of fact or decision.

(4) If any evidence is unnecessarily cumulative in effect or evidence neither proves nor disproves relevant facts in issue, the referee shall, on objection of appellant, claimant, or interested party or on that individual's own motion, exclude or prohibit any of this evidence from being received.

(b) When a party appears in person or by telephone, the referee shall examine the party and the party's witnesses, if any, to the extent necessary to ascertain all of the facts. During the hearing of any appeal, the referee shall, with or without notice to either of the parties, take any additional evidence deemed necessary to determine the issues identified in the notice of hearing. If during the hearing a party raises an issue not identified in the notice of hearing, the referee shall not determine that issue or consider any evidence in support of that issue unless the other party consents to the referee's deciding that issue.

(c) The parties to an appeal, with the consent of the referee, may stipulate in writing or under oath at the hearing as to the facts involved.

(d) The referee shall record the hearing by use of a recording device or a court reporter. The recording shall constitute the official record. Other recording devices or methods shall not be allowed in the hearing.

(e) (1) Hearings may be conducted in person or by telephone, subject to the following requirements:

(A) The hearing shall be conducted by telephone if none of the parties requests an in-person hearing.

(B) If only one party requests an in-person hearing, the referee shall have the discretion of requiring all parties to appear in person or allow the party not requesting an in-person hearing to appear by telephone.

(C) If all the parties involved request an in-person hearing before the date of a scheduled telephone hearing, the matter shall be continued and set for an in-person hearing.

(D) The party requesting the in-person hearing shall be deemed to have agreed that the hearing will be scheduled at a time and geographic location to be determined by the office of appeals and shall be deemed to have agreed to a delay of the hearing to accommodate scheduling of the hearing.

(E) An in-person hearing shall be held if deemed necessary by the secretary of labor or the secretary's designee for the fair disposition of the appeal.

(2) Each hearing scheduled in person or by telephone shall meet these requirements:

(A) Permit confrontation and cross-examination of the parties and witnesses; and

(B) permit the simultaneous participation of all parties.

(3) An authorized representative or an attorney representing a party may appear by telephone at a geographic location different from that of the party represented.

(4) Documentary evidence shall be submitted no later than 1:00 p.m. on the business day before the hearing by mail or fax to the referee and opposing party. However, the referee shall allow the submission of documentary evidence at the hearing or after the hearing, if to do so is necessary for the fair disposition of the appeal and the party attempting to introduce the evidence shows to the referee's satisfaction there was good cause for not submitting the evidence in advance of the hearing.

(f) If a party appears by telephone, the party shall call as instructed by the notice of hearing no later than 1:00 p.m. on the business day before the scheduled hearing to give the telephone number at which the party and any witness can be contacted by the referee at the time of the hearing. If the hearing is continued, the referee shall contact the parties and any witnesses at the telephone numbers provided for the original hearing. If a party or witness cannot be contacted at the telephone number originally given, the party shall call the office of appeals no later than 1:00 p.m. on the regular business day before the date on which the hearing is to be continued and shall give the telephone number at which the party and any witness can be contacted. Unless good cause is shown to the referee, failure to provide the telephone numbers as required by this subsection shall constitute a nonappearance, and the hearing shall proceed as scheduled without the participation of the party or witness.

(g) The appearance of a party or witness by cellular or mobile telephone shall be permitted. However, the referee shall allow the appearance of a party or witness by cellular or mobile telephone only if the use is under safe conditions. If the referee determines that the party or witness is not using the cellular or mobile telephone under safe conditions, the referee may stop the hearing and continue the hearing until the party or witness can participate safely. The unsafe use of a cellular or mobile telephone shall include driving a vehicle or operating any sort of mechanical device while participating in the hearing.

If the transmission of the cellular or mobile telephone is disrupted, causing the call to be dropped or making it difficult for the referee to hear the party's or witness's testimony or speak to the party or witness, the hearing shall proceed without the participation of the party or witness. If the hearing proceeds, the inability of the party or witness to participate shall be considered a nonappearance for the purpose of rendering a decision based on the merits of the case.

(h) If the ability of a party or witness to participate in a hearing before a referee or the board of review is impaired because of a disability or difficulty with the English language, the party shall contact the office of appeals for assistance and information about a qualified interpreter. The use of a personal interpreter for the purposes of presenting the party's argument and evidence and examining witnesses shall not be

allowed. The only interpreter permitted to give assistance to a party or a witness in the hearing shall be an interpreter approved by the office of appeals.

(i) All parties and witnesses shall testify under oath and be subject to the provisions of K.S.A. 44-719, and amendments thereto.

(j) (1) After making reasonable attempts allowable by the circumstances to secure the presence of a witness or to obtain copies of documents in the possession of the other party or third parties, a party may request the issuance of a subpoena for a witness or documents by submitting a written request to the office of appeals. The request shall contain the correct name and address of each witness to be subpoenaed. If the subpoena is for documents, the documents shall be described to make them reasonably identifiable, and the request shall include the name of the party in possession of those documents.

(2) The referee shall exercise discretion in determining whether the party requesting the subpoena has made reasonable attempts as allowed by the circumstances to secure the presence of a witness or obtain the documents sought without the use of a subpoena. If, in the opinion of the referee, the requesting party has not made reasonable efforts, the request shall be denied and the matter shall be set for a hearing.

(3) The referee shall reschedule a hearing if a subpoena cannot be effectively served in accordance with the service requirements of K.S.A. 44-714(h) and amendments thereto.

(Authorized by K.S.A. 2008 Supp. 44-709(g) and K.S.A. 2008 Supp. 44-714(g); implementing K.S.A. 2008 Supp. 44-709(c) and (k), K.S.A. 2008 Supp. 44-714(h), and K.S.A. 2008 Supp. 44-719; effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980; amended May 1, 1987; amended May 22, 1998; amended Jan. 22, 2010.)

***** Authenticated Kansas Administrative Regulation *****