

Kansas Administrative Regulations

Department of Labor

Article 21.—Procedures

49-21-3. Hearings.

(a) Authority of the hearing officer.

(1) The hearing officer shall be appointed by the secretary and shall have the power and authority, in conducting hearings in the name of the secretary, as provided in K.S.A. 44-322:

(A) To administer oaths and examine witnesses under oath;

(B) to issue compulsory process to compel the attendance of witnesses or the production of papers, books, accounts, records, payrolls, documents, or other exhibits relating to claims for unpaid wages; and

(C) to receive depositions and affidavits in the process of the hearing.

(2) The hearing officer shall conduct the hearing, rule on the admissibility of evidence and the examination of witnesses, and determine the extent to which the rules of evidence will apply.

(3) The hearing officer shall weigh the evidence presented, make findings of fact and conclusions of law, and issue orders based on those findings and conclusions. The hearing officer shall explain the decision in memorandum form and the memorandum shall accompany the order.

(4) The hearing officer may require good and sufficient reason before granting any continuance or postponement of any hearing for which proper service has been made. The hearing officer may refuse any such request when, in the hearing officer's judgment, the request:

(A) Would cause hardship or undue delay on the adverse party; or

(B) would not allow time for reasonable notice to each party and witness.

(b) Notice of hearing.

(1) Each party to the dispute shall be given not less than 10 days written notice of the time and place of the hearing by personal service or by first class mail. The notice

shall contain a brief description of the alleged violations to be determined and shall state that each party may be represented by counsel, may call witnesses on its behalf, may cross-examine adverse witnesses, and may introduce evidence in support of its position.

(2) Subpoenas issued to require the attendance of witnesses or the production of evidence shall be served personally. Either party may request the use of a subpoena to require the production of evidence or the appearance of a witness by making the request no later than five days before the hearing date. Each request shall be specific so as to properly identify the evidence or person to be subpoenaed. Failure to obtain service of any such subpoena shall not be cause for a continuance or postponement of any hearing if improper service is made by the parties to the dispute, or if the requesting party has failed to provide accurate or complete information so as to allow such service or if the request does not allow sufficient time to obtain proper service. Final determination of the merits of any such request shall rest with the hearing officer.

(c) Hearing procedures.

(1) The burden of proof that services were performed within an established employment agreement for which payment has not been made shall rest with the claimant. The burden shall be satisfied by testimony or other evidence. Once the claimant has established that an employment agreement existed and that services were performed, the burden of proof to establish payment for those services shall rest with the respondent.

(2) Strict rules of evidence shall not apply and the hearing officer may rule on questions of evidence. All evidence shall be relevant and material to the dispute, and the hearing officer shall determine when a party exceeds the bounds of relevancy. In such a case, the hearing officer may request that the evidence be made relevant to the dispute.

(3) A transcript of the hearing shall be made and maintained by a certified shorthand reporter, or the hearing officer shall make a record by means of a tape recording, until the record is duly transcribed and certified to the court as required. Any party desiring a copy of the transcript may make a request to the agency, and upon payment of a reasonable fee as established by the secretary, a transcript shall be furnished to the

party by the department of human resources. Any party to the hearing wishing to make a separate record may do so at the party's own expense, if the party furnishes a copy to the secretary of human resources and to the adverse party as soon as it is available from the person making such a record.

(4) Either party to the dispute may be represented by counsel and may call any witnesses or cross-examine any witness.

(5) The record on appeal shall consist of the complaint, any response thereto by the employer, any reply by the claimant to the employer's response, the transcript of the proceedings before the administrative tribunal, any exhibits introduced at the hearing, and the order entered by the hearing officer.

That portion of the entire record which is to be filed with the clerk of the district court shall be determined and prepared for filing in accordance with these regulations, but the district court may order any or all additional parts of the entire record to be filed.

(6) The cost of reproducing the record for filing with the district court shall be borne by the appellant. Upon ascertaining the cost of the duplication and the payment thereof in advance by the party making the request, the agency shall effect such duplication and transmit the record to the clerk of the district court for filing.

(d) Findings of fact, conclusions of law, and order.

(1) The findings of fact shall set forth all facts:

(A) That are supported by the evidence;

(B) which are relevant to the issues of the claim; and

(C) that are necessary to support conclusions of law.

(2) The order shall be issued by the hearing officer within 45 days of the hearing and shall include, if required by the facts, any damages assessed because of respondent's willful violation. The order shall contain a certificate of service and shall be served upon each party to the dispute either personally or by first class mail. The order shall contain a statement that, unless the order is satisfied, or an appeal is taken to the district court in accordance with K.S.A. 60-2101 within 30 days after entry of the decision, the case will be:

(A) Referred to the secretary of human resources or the secretary's authorized representative for enforcement; or

(B) reassigned to the claimant for enforcement through judicial proceedings.
(Authorized by K.S.A. 44-325; implementing K.S.A. 1983 Supp. 44-322a, K.S.A. 44-324, 44-327; effective, E-73-23, July 7, 1973; effective Jan. 1, 1974; amended, E-78-38, Dec. 29, 1977; amended May 1, 1978; amended May 1, 1983; amended May 1, 1984.)

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