

Kansas Administrative Regulations

Department of Labor

Article 23.—Procedure

49-23-7. Hearings, procedures.

(a) Notice of hearing.

(1) Following the filing of a petition, complaint or other paper with the secretary, if it appears to the secretary that a hearing is authorized and warranted, the secretary shall fix a time and place for a hearing and shall notify each of the parties and all individuals or employee organizations known by the secretary to represent employees directly affected in the matter, of the time and place of the hearing. The hearing shall not be held less than seven (7) days after issuance of the notice by the secretary, except by agreement of the parties or in unusual circumstances.

(2) The time and place of the hearing may be changed by the secretary prior to the beginning of the hearing. Reasonable notice of the alternate time and place of the hearing shall be given to all interested parties.

(b) Objections to appointment. Upon notification of appointment by the secretary of an agent to perform any function, the parties shall file, within three (3) days of notification, any objection they might have to the agent appointed. The objection shall contain a specific statement of the reasons for the objection.

(c) Conduct of the hearings.

(1) All hearings shall be conducted by a hearing examiner. In the event the hearing examiner is unable to continue a hearing, the hearing may be reconvened at a later date, when the examiner is available, or, with the consent of all parties, another hearing examiner may be substituted.

(2) It shall be the duty of the hearing examiner to inquire fully into all matters at issue and to obtain a full and complete record.

(3) The hearing examiner may, at his or her discretion, continue the hearing from day to day or adjourn it to a later date or another place, by announcement at the hearing or by other appropriate notice.

(d) Motions.

(1) All motions made during a hearing shall be made part of the record of the proceedings and shall be ruled upon by the examiner.

(2) All motions and answers, other than those made during a hearing, shall be made in writing to the secretary, shall briefly state the relief sought, and may be accompanied by affidavits setting forth the grounds upon which they are based. Any response to the motion shall be filed with the secretary within five (5) days after service of the moving papers, unless the secretary directs otherwise. The secretary shall rule upon all motions. The secretary may decide to hear oral arguments or to accept written testimony on any motion and the secretary shall notify the parties of the fact and of the time and place of the arguments or the methods of submission of written testimony. The secretary shall issue rulings and orders to decide all matters and all motions and rulings shall be part of the record of the proceedings.

(e) Objections. An objection not made before the hearing examiner or the secretary shall be deemed waived unless the failure to make the objection shall be excused by the secretary because of extraordinary circumstances.

(f) Introduction of evidence; the rights of parties at hearings. Any party shall have the right to appear at a hearing in person or by counsel, and any party and the hearing examiner shall have the power to call and examine witnesses, and to introduce into the record documentary and other evidence. A party shall, upon offering an exhibit into evidence at a hearing, simultaneously furnish copies to all other parties, unless excused by the hearing examiner. Witnesses shall be examined orally under oath. Compliance with the technical rules of evidence shall not be required. Stipulations of fact may be introduced as evidence with respect to any issue.

(g) The refusal of a witness at a hearing to answer a question which has been ruled proper by the hearing examiner shall be noted in the record. Such refusal shall go to the weight of the witness' previous testimony, but shall not be grounds for striking all previous testimony of the witness.

(h) Findings of fact; conclusion of law; orders or recommendations.

(1) Upon conclusion of a hearing any party to the hearing may, within a time period specified by the hearing examiner file suggested findings of fact, conclusion of law, and order.

(2) In the event the secretary appoints a hearing examiner to conduct a hearing the hearing examiner shall as expeditiously as possible after the conclusion of the hearings, issue his or her findings of fact, conclusions of law and recommendations. The findings, conclusions, and recommendations shall be in writing and in a form as the secretary may direct.

(A) The hearing examiner's findings, conclusions and recommendations shall be served upon the parties, by the secretary, granting all parties ten (10) days from receipt in which to file written exceptions.

(B) The secretary shall, based upon the evidence produced at the hearing, and after reviewing the findings of fact, conclusions, recommendations of the hearing examiner, and any written exceptions, issue a final order.

(3) In the event the secretary serves as hearing examiner, the secretary shall, as expeditiously as possible after the close of the hearing, issue findings of fact, conclusions of law and a final order.

(Authorized by K.S.A. 72-5432; implementing K.S.A. 72-5417, 72-5418, 72-5419, 72-5420, 72-5427, 72-5430; effective, E-81-38, Dec. 10, 1980; effective May 1, 1981.)

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