

Chapter 357-52 WAC

APPEALS

WAC

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WAC 357-52-005 May the board waive the procedural rules contained in chapter 357-52 WAC? In order to prevent hardship, delay, or for other good cause, the board may waive any of the procedural rules contained in chapter 357-52 WAC for any party not represented by legal counsel. The board may not waive a jurisdictional rule.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-190, § 357-52-005, filed 12/21/04, effective 7/1/05.]

WAC 357-52-010 What actions may be appealed? (1) Within WGS, the following actions may be appealed:

(a) Any permanent WGS employee subject to the statutory jurisdiction of the board who is dismissed, suspended, demoted, or separated or whose base salary is reduced may appeal to the board.

(b) Any employee, subject to the statutory jurisdiction of the board who adversely is affected by a violation of the state civil service law (chapter 41.06 RCW) or the rules contained in Title 357 WAC, may appeal to the board as follows:

(i) For a violation of state civil service law or rules relating to a layoff action, excluding removal from a layoff list, the employee may appeal directly to the board.

(ii) For a violation of state civil service law or rules relating to any other subject, including removal from a layoff list, the employee may appeal directly to the board, except as provided in WAC 357-49-010(1).

(c) An employee in a position at the time of its allocation or reallocation or the employer may appeal to the personnel resources board by filing written exceptions to the director's review determination.

(d) An employee whose position has been exempted from chapter 41.06 RCW or the exclusive bargaining unit

representative for a vacant position that has been exempted from chapter 41.06 RCW may appeal the exemption to the board.

(e) An individual or the employer may appeal remedial action to the board by filing written exceptions to the director's review determination.

(2) Within WMS, the following actions may be appealed:

(a) Any permanent Washington management service employee who is dismissed, suspended, demoted, laid off, or separated, or whose base salary is reduced may appeal to the board. A determination of which Washington management service positions will be eliminated in a layoff action is not subject to appeal.

(b) For a violation of state civil service law or rules pertaining to WMS employees, a WMS employee who is adversely affected by a violation of the state civil service law (chapter 41.06 RCW) or the rules pertaining to WMS employees (chapter 357-58 WAC) may appeal directly to the board.

(c) An employee whose position has been exempted from chapter 41.06 RCW may appeal the exemption to the board.

[Statutory Authority: Chapter 41.06 RCW. WSR 14-24-023, § 357-52-010, filed 11/21/14, effective 12/22/14; WSR 09-17-065, § 357-52-010, filed 8/13/09, effective 9/16/09; WSR 06-03-072, § 357-52-010, filed 1/12/06, effective 2/13/06; WSR 05-19-011, § 357-52-010, filed 9/8/05, effective 10/10/05; WSR 05-01-190, § 357-52-010, filed 12/21/04, effective 7/1/05.]

WAC 357-52-012 Does an employee who has been temporarily laid off under chapter 32, Laws of 2010 have the right to appeal the temporary layoff? An employee who has been temporarily laid off under chapter 32, Laws of 2010 does not have the right to appeal the temporary layoff.

[Statutory Authority: Chapter 41.06 RCW. WSR 10-23-040, § 357-52-012, filed 11/10/10, effective 12/13/10.]

WAC 357-52-014 Does an employee who has been temporarily laid off due to the failure of congress to pass a continuing resolution or a federal budget, have the right to appeal the temporary layoff? An employee who has been temporarily laid off due to the failure of congress to pass a continuing resolution or a federal budget does not have the right to appeal the temporary layoff.

[Statutory Authority: Chapter 41.06 RCW. WSR 16-05-058, § 357-52-014, filed 2/12/16, effective 3/14/16.]

WAC 357-52-015 By when must an appeal be filed and received in order to be considered timely? In order to be considered timely, an appeal must be received in writing at the office of the board within thirty calendar days after:

(1) The effective date of the disciplinary action, layoff, or separation;

(2) The date the employee could reasonably be expected to have knowledge of the action giving rise to a law or rule violation claim or the stated effective date, whichever is later;

(3) Service of the director's determination unless the rules specifically state that the director's determination is final; or

(4) The effective date of the exemption of a position or the notice of exemption, whichever is later.

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[Statutory Authority: Chapter 41.06 RCW. WSR 14-24-023, § 357-52-015, filed 11/21/14, effective 12/22/14; WSR 06-03-074, § 357-52-015, filed 1/12/06, effective 2/13/06; WSR 05-01-190, § 357-52-015, filed 12/21/04, effective 7/1/05.]

WAC 357-52-020 What information must be submitted with the appeal? (1) The appeal must include:

(a) The name and address of the appellant and if represented the name, address and telephone number of the representative,

(b) The name of the employer and the department that took the action which is being appealed,

(c) A telephone number at which the appellant can be reached,

(d) The job classification or position of the employee at the time of the action which is being appealed,

(e) A short statement of the grounds or reasons for the appeal, and if applicable, the rule(s) the appellant believes has been violated,

(f) A short statement of the relief or remedy sought by the appellant, and

(g) A short statement of whether the appellant believes the case would or would not be appropriate for mediation.

(2) An appeal of a disciplinary action, separation, layoff, or exemption must also include the effective date of the action and the employee's appointment status at the time of the action. The appeal must include a short statement of the nature of the action being appealed or a copy of the action letter from the employer.

(3) An appeal on exception to a director's determination must also detail the specific items of the director's determination to which exception is taken and should include a copy of the director's determination.

[Statutory Authority: Chapter 41.06 RCW. WSR 06-03-074, § 357-52-020, filed 1/12/06, effective 2/13/06; WSR 05-01-190, § 357-52-020, filed 12/21/04, effective 7/1/05.]

WAC 357-52-025 Who is responsible for notifying the board of any change in address, telephone number or representation? The appellant is responsible for notifying the board of any change in address, telephone number or representation.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-190, § 357-52-025, filed 12/21/04, effective 7/1/05.]

WAC 357-52-030 Are standardized forms available for filing appeals? The director's office makes standardized forms available for filing appeals. Appellants may prepare and use their own appeal documents. Appellants' documents must contain all of the information required by WAC 357-52-020.

[Statutory Authority: Chapter 41.06 RCW. WSR 11-23-054, § 357-52-030, filed 11/10/11, effective 12/13/11; WSR 05-01-190, § 357-52-030, filed 12/21/04, effective 7/1/05.]

WAC 357-52-035 What happens if the appellant does not submit all the information required by WAC 357-52-020? (1) When the board receives an appeal, it reviews the document(s) to determine whether the information required by this section has been provided.

(2) If any of the required information is not provided with the appeal, the board directs the appellant to provide the

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missing information and sends a copy of the notice to all affected parties.

(3) The appellant must provide the missing information as requested within twenty-one calendar days of the date the notification is mailed.

(4) When the board receives the requested information, it sends a copy to the other affected parties.

(5) If the appellant fails to comply with the requirements of this section the board may dismiss the appeal according to WAC 357-52-215.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-190, § 357-52-035, filed 12/21/04, effective 7/1/05.]

WAC 357-52-040 How does the board acknowledge receipt of an appeal? (1) When the board receives an appeal, it sends a written acknowledgement to the appellant and a copy to the other affected parties.

(2) If necessary, the board requests a copy of the action letter from the employer.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-190, § 357-52-040, filed 12/21/04, effective 7/1/05.]

WAC 357-52-045 Are appeals reviewed for timeliness? (1) The board reviews all appeal(s) for timeliness. When an appeal appears to be untimely, the board directs the parties to submit affidavits and/or written argument addressing the timeliness of the appeal.

(2) In addition, any party to an appeal may submit a motion to dismiss for untimeliness at any time during the appeal process.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-190, § 357-52-045, filed 12/21/04, effective 7/1/05.]

WAC 357-52-050 How does the board notify the parties when the appeal is set for hearing? The board must notify the parties of record in writing of the time and place of the hearing. The notice of hearing must be mailed at least thirty calendar days before the date of the hearing, unless all parties agree to a shorter notice period.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-190, § 357-52-050, filed 12/21/04, effective 7/1/05.]

WAC 357-52-055 May anyone other than the board adjudicate appeals or conduct prehearing meetings? The board may designate one or more hearing officers or the director to act as a board designee to mediate appeals, conduct prehearing conferences and/or hearings, and make recommended or final decisions.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-190, § 357-52-055, filed 12/21/04, effective 7/1/05.]

WAC 357-52-060 Can appeals be mediated? When both parties to an appeal agree, the appeal can be mediated.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-190, § 357-52-060, filed 12/21/04, effective 7/1/05.]

WAC 357-52-065 Who mediates appeals? The board may assign the case to a mediator. Nothing in this section prevents the parties from selecting their own mediator. How-

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ever, if a mediator other than the one designated by the board is selected, the parties must pay the cost of the mediator.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-190, § 357-52-065, filed 12/21/04, effective 7/1/05.]

WAC 357-52-070 How are mediations conducted?

(1) After the board assigns a mediator, the parties must meet and confer at least once and engage in a good faith attempt to negotiate a resolution of the appeal. The mediator may decide to hold the mediation by telephone. The appellant and at least one designee of the employer must personally participate in the mediation. If the designee of the employer does not have authority to act on behalf of the employer, a person with the requisite authority must be available by telephone.

(2) Mediation and settlement discussions are privileged and the proceedings must not be reported or recorded in any manner, except for agreements reached by the parties.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-190, § 357-52-070, filed 12/21/04, effective 7/1/05.]

WAC 357-52-075 What happens at the conclusion of mediation conducted by the board? (1) If a settlement is reached, the agreement must be put in writing. The agreement will be binding on all parties to that agreement. The appellant must sign a request to withdraw the appeal.

(2) If a settlement is not reached, the mediator must inform the board.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-190, § 357-52-075, filed 12/21/04, effective 7/1/05.]

WAC 357-52-077 What happens when the parties settle an appeal without the assistance of a board mediator? If a settlement is reached, the appellant must inform the board and must sign and submit a request to withdraw the appeal.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-190, § 357-52-077, filed 12/21/04, effective 7/1/05.]

WAC 357-52-080 What can a prehearing conference be used for? The board may direct the parties or their representatives to engage in a prehearing conference(s) to consider the following:

- (1) Simplification or limitation of issues;
- (2) Possibility of obtaining stipulations, admissions of fact, and admissions of the genuineness of documents that will avoid unnecessary proof;
- (3) Discovery, discovery methods and discovery deadlines;
- (4) Number of witnesses expected to be called and their names when possible;
- (5) Approximate time necessary for presentation of the evidence of the respective parties;
- (6) Whether or when motions may be brought;
- (7) Exhibits;
- (8) Affidavits; and
- (9) Such other matters as may aid in the prompt disposition of the appeal.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-190, § 357-52-080, filed 12/21/04, effective 7/1/05.]

WAC 357-52-085 How and when may a prehearing conference be held? (1) A prehearing conference may be held in conjunction with a mediation.

(2) Prehearing conferences may be held by telephone.

(3) The parties are encouraged where possible to resolve their disputes by agreement. To facilitate such resolution, the prehearing conference may be recessed at any time to give the parties time to discuss settlement of their dispute. In the event settlement is reached, the parties must notify the board and the appellant must sign and submit a request to withdraw the appeal.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-190, § 357-52-085, filed 12/21/04, effective 7/1/05.]

WAC 357-52-090 How are the results of a prehearing conference documented? The results of the prehearing conference must be stated in a written statement of results. The statement must include, where applicable, agreements concerning issues, admissions, stipulations, witnesses, discovery, length of hearing, motions, exhibits, affidavits, and other matters that may expedite the appeal hearing. The statement resulting from the prehearing conference must control the subsequent course of the appeal, subject to modification upon a filing of exceptions to the statement.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-190, § 357-52-090, filed 12/21/04, effective 7/1/05.]

WAC 357-52-095 What happens if one of the parties fails to participate in the prehearing conference? Failure of a party to participate in a prehearing conference may result in dismissal of the appeal, or other appropriate sanctions.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-190, § 357-52-095, filed 12/21/04, effective 7/1/05.]

WAC 357-52-100 How are appeal hearings conducted? Appeal hearings are conducted as follows:

(1) Hearings on all appeals are open to the public unless the board determines there is substantial reason for not having an open hearing, or the employee so requests.

(2) The hearing is informal. Technical rules of evidence do not apply to the proceedings, except for the rules of privilege recognized by law.

(3) All parties may select representatives of their choosing, present and cross-examine witnesses, and give evidence before the board.

(4) All testimony is under oath administered by a member of the board or the hearing officer. Testimony by affidavit is not admitted at a hearing except for good cause shown, or as otherwise permitted in these rules, as provided in a prehearing conference statement or by stipulation of the parties.

(5) One member of the board may hold a hearing and take testimony to be reported for action by the board.

(6) The board prepares an official audio record of the hearing.

(7) The board is not required to transcribe the record. If the proceedings were recorded, a copy of the audio recording may be ordered from the board for a reasonable charge.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-191, § 357-52-100, filed 12/21/04, effective 7/1/05.]

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WAC 357-52-105 Can hearings and conferences be conducted by electronic means? All conferences and hearings before the board may be conducted by telephone or other electronic means as determined by the board.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-191, § 357-52-105, filed 12/21/04, effective 7/1/05.]

WAC 357-52-110 Who has the burden of proof at hearings? (1) At any hearing on appeal of a:

(a) Dismissal, suspension, demotion, or reduction in base salary, the employer has the burden of supporting the charges upon which the action was initiated; or

(b) Layoff or separation, the employer has the burden of supporting both the basis for the action taken and compliance with the civil service law(s) or rule(s) governing the action.

(2) At any other hearing, the party filing the appeal has the burden of proof.

[Statutory Authority: Chapter 41.06 RCW. WSR 06-03-069, § 357-52-110, filed 1/12/06, effective 2/13/06; WSR 05-01-191, § 357-52-110, filed 12/21/04, effective 7/1/05.]

WAC 357-52-115 How may a party request that a hearing be continued? (1) Any party to a hearing may make a written motion to the board to continue a hearing for good cause. The motion must state the specific reason(s) and the period of time for which a continuance is necessary.

(2) Any party desiring a continuance must first orally contact the opposing party to determine whether agreement to a continuance can be reached. The requesting party is responsible for filing a written motion for continuance with the board. The motion must include the reason(s) for the request, the opposing party's response to the request, and a date certain for the hearing on which both parties and the board are available.

(3) The motion for continuance must be filed with the board and the opposing party at least fourteen calendar days before the scheduled hearing date. The board must review the motion, decide whether or not to grant the continuance, and notify the parties of the decision within three working days of receipt of the motion.

(4) In unusual circumstances or emergency situations, and only where the reason(s) for the continuance could not have been foreseen, the board may allow a motion for continuance with less than fourteen calendar day's notice.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-191, § 357-52-115, filed 12/21/04, effective 7/1/05.]

WAC 357-52-120 When may a written motion be filed? (1) Except as otherwise provided in a prehearing conference statement or as otherwise specifically provided in these rules, written motions and any supporting affidavits must be filed and served not less than thirty calendar days before the hearing date. Any opposing affidavits must be filed and served within fourteen calendar days after the motion is filed. Any reply and counter affidavits by the moving party must be filed and served within seven calendar days after the opposing response is filed.

(2) Time requirements for motions for continuance are found in WAC 357-52-115.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-191, § 357-52-120, filed 12/21/04, effective 7/1/05.]

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WAC 357-52-125 Must the board consider untimely motions? The board may refuse to consider motions that are not filed on time.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-191, § 357-52-125, filed 12/21/04, effective 7/1/05.]

WAC 357-52-130 What must be included with a motion? Any party submitting documents in support of or in opposition to a motion must include proposed findings, conclusions, and order.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-191, § 357-52-130, filed 12/21/04, effective 7/1/05.]

WAC 357-52-135 How many copies of a motion must be submitted? When the motion will be considered by the board, the party submitting the documents must provide the original and three copies to the board and one copy to each opposing party. When the motion will be considered by a hearing officer the original will go to the hearing officer, and one copy to each opposing party.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-191, § 357-52-135, filed 12/21/04, effective 7/1/05.]

WAC 357-52-140 What may the board decide based on a motion? (1) The board or hearing officer may decide all or any part of an appeal by motion if the documents, depositions and affidavits on file show there is no genuine issue as to any material fact and the appeal should be decided or dismissed as a matter of law. The board or hearing officer must allow oral argument on dispositive or summary judgment motions at the request of either party. Oral argument may be presented by telephone or other electronic media.

(2) An order must be issued when an appeal is dismissed or decided on motion.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-191, § 357-52-140, filed 12/21/04, effective 7/1/05.]

WAC 357-52-145 Must parties submit prehearing statements? (1) The board may require all parties to file a prehearing statement of position.

(2) If the board does not require statements, parties may still choose to file a prehearing statement.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-191, § 357-52-145, filed 12/21/04, effective 7/1/05.]

WAC 357-52-150 When must prehearing statements be filed? (1) If a party is filing a prehearing statement, the statement must be provided to the board and opposing party at least fourteen calendar days before the scheduled hearing date or at such time as set at the prehearing conference.

(2) Any opposing response to these statements must be provided to the board and opposing party at least seven calendar days before the scheduled hearing date or at such time as set at the prehearing conference.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-191, § 357-52-150, filed 12/21/04, effective 7/1/05.]

WAC 357-52-155 What should be included in a prehearing statement? The prehearing statements must include a summary of the evidence the party intends to present; a list-

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ing of the rules or statutes upon which the party intends to rely; a statement of the remedy requested; and an argument as to why the party is entitled to the requested remedy.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-191, § 357-52-155, filed 12/21/04, effective 7/1/05.]

WAC 357-52-160 How many copies of the prehearing statement must be provided? A party submitting prehearing statement(s) must provide the original and three copies to the board and one copy to each opposing party. When the prehearing statement will be considered by a hearing officer the original will go to the hearing officer, and one copy to each opposing party.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-191, § 357-52-160, filed 12/21/04, effective 7/1/05.]

WAC 357-52-165 Must the board consider untimely prehearing statements? The board may refuse to consider prehearing statements that are not filed on time.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-191, § 357-52-165, filed 12/21/04, effective 7/1/05.]

WAC 357-52-170 What actions may be taken by a hearing officer following a hearing? (1) At the conclusion of a hearing, the hearing officer may require post-hearing briefs.

(2) The hearing officer may affirm, reverse or modify an action of an employer or remand the matter for further proceedings.

(3) When the hearing officer reduces a dismissal to a suspension, the period of suspension is not limited by RCW 41.06.170(1).

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-191, § 357-52-170, filed 12/21/04, effective 7/1/05.]

WAC 357-52-175 What actions may be taken by the board following a hearing? (1) At the conclusion of a hearing, the board may require post-hearing briefs.

(2) The board may affirm, reverse or modify the action of an employer or the recommended decision of the hearing officer or remand the matter for further proceedings.

(3) When the board reduces a dismissal to a suspension, the period of suspension is not limited by RCW 41.06.170(1).

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-191, § 357-52-175, filed 12/21/04, effective 7/1/05.]

WAC 357-52-180 How is a hearing officer's recommended decision served? The hearing officer must provide the recommended decision to the board, to the employer, to the appellant, and to the appellant's representative (if any). The copies to the employer, appellant, and appellant's representative must be sent by certified mail with a return receipt requested.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-191, § 357-52-180, filed 12/21/04, effective 7/1/05.]

WAC 357-52-185 Can a party file exceptions to a hearing officer's recommended decision? Either party may file written exceptions to the board. The exceptions must be

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filed within thirty calendar days of the date that notice of the recommended decision was sent by certified mail.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-191, § 357-52-185, filed 12/21/04, effective 7/1/05.]

WAC 357-52-190 What must be included in a party's written exceptions to a recommended decision? The written exceptions must set forth specific exceptions to the recommended decision and any additional errors a party contends were made by the hearing officer. If a party contends that the hearing officer has made an error which requires a review of the record, the party must identify the specific portion(s) of the record that support each claimed error.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-19-011, § 357-52-190, filed 9/8/05, effective 10/10/05; WSR 05-01-191, § 357-52-190, filed 12/21/04, effective 7/1/05.]

WAC 357-52-193 What must be included in a party's written exceptions to a director's determination? The written exceptions must set forth specific exceptions to the director's determination and any additional errors a party contends were made by the director's designee. The party must identify the specific portion(s) of the record that support each exception or claimed error.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-19-011, § 357-52-193, filed 9/8/05, effective 10/10/05.]

WAC 357-52-195 When is a written response in opposition to exceptions due? The due date for any written response to the exceptions is thirty calendar days following the date the exceptions were filed.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-191, § 357-52-195, filed 12/21/04, effective 7/1/05.]

WAC 357-52-200 When does a hearing officer's recommended decision become final? If no exceptions are filed, the recommended decision becomes final thirty calendar days after service, unless the board notifies each party within that thirty-day period that the board on its own motion will reconsider the recommended decision.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-191, § 357-52-200, filed 12/21/04, effective 7/1/05.]

WAC 357-52-205 What is the subject of a hearing on exceptions? Hearings on exceptions are limited to the contentions set forth in the notice of exceptions unless the board itself chooses to review other matters.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-191, § 357-52-205, filed 12/21/04, effective 7/1/05.]

WAC 357-52-207 How does the board decide an appeal on exceptions? The board reviews the record created by the director's designee or hearing officer. At the board's discretion, the appeal is decided based upon:

- (1) The record and the written arguments on the exceptions, or
- (2) The record and oral arguments on the exceptions.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-12-087, § 357-52-207, filed 5/27/05, effective 7/1/05.]

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WAC 357-52-208 How does the board notify the parties whether the appeal on exceptions will be decided upon written or oral arguments? (1) The board provides thirty calendar days' written notice to the parties of:

- (a) The timeline for submitting written arguments; or
 - (b) The date of the hearing.
- (2) The parties may agree to less than thirty calendar days' notice.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-12-087, § 357-52-208, filed 5/27/05, effective 7/1/05.]

WAC 357-52-210 Can a decision by the board be appealed? Decisions and orders of the board are final.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-191, § 357-52-210, filed 12/21/04, effective 7/1/05.]

WAC 357-52-215 When may the board dismiss an appeal on its own motion? The board may dismiss an appeal on its own motion when:

- (1) An appellant has failed to provide information required under WAC 357-52-020;
- (2) The parties have notified the board that the case has been settled and the appeal has not been withdrawn within thirty calendar days of the notice of settlement;
- (3) An appeal is not filed on time;
- (4) The board lacks jurisdiction over the subject matter or parties to the appeal;
- (5) A party fails to participate in a prehearing conference as described in WAC 357-52-095; or
- (6) The board is unable to contact the appellant at the last address and telephone number provided by the appellant.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-191, § 357-52-215, filed 12/21/04, effective 7/1/05.]

WAC 357-52-220 Will the parties be given notice of the potential dismissal of an appeal on the board's motion and when must a party respond? The parties must be served with written notice that the appeal will be dismissed unless, within fifteen calendar days following the date of service, a written request is made to the board showing good cause why the appeal should not be dismissed. If no timely request is made, the board must dismiss the appeal.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-191, § 357-52-220, filed 12/21/04, effective 7/1/05.]

WAC 357-52-221 What is the timeline for a party to file a motion for reconsideration of a board's final order? After issuance of a final board order, any party may file a motion for reconsideration. Such motions must be filed with the board and the opposing party within fourteen calendar days of service of the board's order. Within seven calendar days of the date on which the motion was filed, a party may file an answer to the motion with the board and the opposing party.

[Statutory Authority: Chapter 41.06 RCW. WSR 06-07-049, § 357-52-221, filed 3/9/06, effective 4/10/06.]

WAC 357-52-222 On what grounds may a party file a motion for reconsideration of a board's final order? A motion for reconsideration must be based on at least one of the following grounds:

- (1) Errors of procedure material to the party seeking reconsideration;
- (2) Misinterpretation of fact or law material to the party seeking reconsideration;
- (3) Irregularity in the hearing before the board by which the party seeking reconsideration was prevented from having a fair hearing; or
- (4) Clerical mistakes in the final decision and order.

[Statutory Authority: Chapter 41.06 RCW. WSR 06-07-049, § 357-52-222, filed 3/9/06, effective 4/10/06.]

WAC 357-52-223 How is a motion for reconsideration responded to by the board? In response to a motion for reconsideration, the board may deny the motion, modify its decision or reopen the hearing. The motion is deemed denied unless the board takes action within thirty calendar days of the date on which the motion was filed.

[Statutory Authority: Chapter 41.06 RCW. WSR 06-07-049, § 357-52-223, filed 3/9/06, effective 4/10/06.]

WAC 357-52-224 Is a board order on a motion for reconsideration subject to further review? A board order on a motion for reconsideration is not subject to further review.

[Statutory Authority: Chapter 41.06 RCW. WSR 06-07-049, § 357-52-224, filed 3/9/06, effective 4/10/06.]

WAC 357-52-225 How must written documents be filed with the board? (1) **Filing generally.** Papers that must be filed with the board are considered to be filed only when the papers are actually received in the board's office in Olympia, Washington.

(2) **Filing by telephone facsimile.**

(a) Written documents filed with the board by telephone facsimile are considered received when a legible copy of the document is reproduced on the board's telephone facsimile equipment in the board's office. If transmission begins after customary office hours, which are 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, the document will be deemed filed on the next business day.

(b) Any document filed with the board by telephone facsimile should be preceded by a cover page identifying the addressee; the party making the transmission, including the address, telephone and telephone facsimile number of such party; the appeal to which the document relates; the date of transmission; and the total number of pages included in the transmission.

(c) The party attempting to file papers by telephone facsimile bears the risk that the papers will not be timely received or legibly printed, regardless of the cause. If the telephone facsimile is not legible, it will be considered as if it had never been sent.

(d) The original of any document filed by telephone facsimile should be mailed to the board within twenty-four hours of the time that the telephone facsimile was sent.

(e) The filing of papers by electronic mail ("email") is not authorized without the express prior approval of the board, and only under such circumstances as the board allows.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-191, § 357-52-225, filed 12/21/04, effective 7/1/05.]

(2/12/16)

WAC 357-52-230 How must written documents be served on the parties? (1) In matters of appeal the board must serve all orders, notices, and other papers issued by it. Every other notice, document or paper required to be served must be served by the party filing it.

(2) All notices, documents, or papers served by either the board or any other party must be served upon all counsel of record at the time of such filing and upon parties not represented by counsel. Service of papers must be made by personal delivery; by mail; or by telephone facsimile transmission with same-day mailing of copies. Correspondence between the board and employers may be sent via the state mail service.

(3) Service upon parties will be regarded as completed when personal service has been accomplished; or upon deposit in the mail, properly stamped and addressed; or upon production by telephone facsimile transmission of confirmation of transmission.

(4) Service upon parties by electronic mail ("email") is not authorized without the express prior approval of the board, and only under such circumstances as the board allows.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-191, § 357-52-230, filed 12/21/04, effective 7/1/05.]

WAC 357-52-235 How must exhibits for hearings be prepared and exchanged? (1) When exhibits are offered at any hearing, one copy must be provided for the official file, sufficient copies must be provided for the board (three copies) or hearing officer (one copy), one copy must be provided to the opposing party, and one copy provided for the witness stand.

(2) The parties must arrive at the hearing location at least thirty minutes before the scheduled hearing for the purpose of exchanging exhibits. The parties must premark their exhibits for identification and present copies to the other party and the board's staff before the beginning of the hearing.

(3) The number, scope and timing of exhibits may be limited by the prehearing statement of results.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-191, § 357-52-235, filed 12/21/04, effective 7/1/05.]

WAC 357-52-240 Who may prepare, sign and issue a subpoena? (1) Subpoenas may be signed and issued by any member of the board, or the board's designee, or the attorney of record of the party requiring the appearance of the witness.

(2) Parties desiring subpoenas to be signed by a member of the board or the board's designee must prepare subpoenas for issuance and submit the subpoenas for signature at least ten calendar days before a hearing or deposition.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-191, § 357-52-240, filed 12/21/04, effective 7/1/05.]

WAC 357-52-245 What must a subpoena include? Every subpoena must name the board and the title of the proceedings and must command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under the person's control at the specified time and place.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-191, § 357-52-245, filed 12/21/04, effective 7/1/05.]

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WAC 357-52-250 How must a subpoena be served?

(1) Parties requesting subpoenas must make arrangements for and bear the expense of service. It is recommended that all subpoenas be served at least five calendar days before a hearing or deposition.

(2) Subpoenas must be personally served upon the designated individual. The individual where entitled, may demand the fees for one day's attendance and the mileage allowed by law.

(3) A copy of the subpoena must also be provided to the opposing party or the party's representative and to the employer's human resource office.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-191, § 357-52-250, filed 12/21/04, effective 7/1/05.]

WAC 357-52-255 Which discovery procedures must a party follow? Parties may use discovery procedures in a manner consistent with the civil rules for the superior courts of the state of Washington and as provided in any prehearing statement of results or other order of the board.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-191, § 357-52-255, filed 12/21/04, effective 7/1/05.]

WAC 357-52-260 When and who may make a motion to quash? A party to the appeal or the person to whom the subpoena or discovery is directed may make a motion to quash. The motion must be filed at least two calendar days following the receipt of a subpoena or discovery request.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-191, § 357-52-260, filed 12/21/04, effective 7/1/05.]

WAC 357-52-265 What actions may the board take when a motion to quash is filed? When a motion to quash is filed, the board provides notice to the party who issued the subpoena or discovery and allow the party to provide a response to the motion. After considering the motion and response the board may:

(1) Deny the motion;

(2) Grant the motion if the subpoena or discovery is unreasonable or requires evidence not relevant to any matter in issue; or

(3) Modify the contents of the subpoena or scope of the discovery request for just and reasonable cause.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-191, § 357-52-265, filed 12/21/04, effective 7/1/05.]