

WSR 22-23-064

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed November 9, 2022, 2:10 p.m., effective December 10, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The new proceedings create an accelerated path for claims to be adjudicated that will allow the office of administrative hearings to resolve cases more quickly.

Citation of Rules Affected by this Order: New WAC 192-04-145.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to the employment security department; RCW 34.05.410 (1)(a), 34.05.220, 50.32.060, 50.32.080.

Adopted under notice filed as WSR 22-19-059 on September 16, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 9, 2022.

Dan Zeitlin
Employment System Policy Director

OTS-3641.1NEW SECTION

WAC 192-04-145 Brief adjudicative proceedings. (1) **Adoption of brief adjudicative proceedings.** Pursuant to RCW 34.05.410 (1)(a), the department hereby adopts the use of brief adjudicative proceedings for use in appeals.

(a) RCW 34.05.488 and 34.05.491 shall not apply to brief adjudicative proceedings under this rule.

(b) Brief adjudicative proceedings will only be used if:

(i) The appeal involves a claim for benefits;

(ii) The appeal is filed by a claimant;

(iii) No employer is an interested party pursuant to WAC 192-04-040; and

(iv) The presiding administrative law judge, in their sole discretion, determines a brief adjudicating proceeding is warranted.

(2) **Procedure for brief adjudicative proceedings.** The following procedural rules will apply to brief adjudicative proceedings:

(a) An administrative law judge with the office of administrative hearings will conduct the brief adjudicative proceeding.

(b) Not less than seven days before the date of the hearing, the office of administrative hearings shall serve notice on the claimant pursuant to WAC 10-08-040 that a brief adjudicative proceeding will occur. The notice of hearing will contain the following:

(i) Notice that the claimant may submit additional relevant documentary evidence and sworn oral statements, if desired, along with a date by which these submissions must be made and instructions for doing so;

(ii) Instructions for how the department or claimant may request that the brief adjudicative proceeding may be converted to a regular proceeding pursuant to subsection (4) of this section and the date by which such request must be submitted; and

(iii) The date of the brief adjudicative proceeding.

(c) The administrative law judge, in their sole discretion, may send a written request for additional evidence from the claimant or the department. The request will contain instructions for how to submit the additional evidence and the date by which additional evidence must be submitted.

(d) The administrative law judge's review will be limited to the record defined in subsection (3) of this section.

(e) If the claimant fails to provide any additional relevant documentary evidence or sworn oral statements, the administrative law judge will affirm the department's determination unless the evidence provided by the department is sufficient to resolve the matter in the claimant's favor.

(f) The administrative law judge shall issue a written decision consistent with WAC 192-04-150.

(3) **Record for brief adjudicative proceeding.** The record with respect to brief adjudicative proceedings will consist of the following:

(a) The department's determination letter;

(b) The claimant's appeal of the determination letter;

(c) All records relied upon by the department in support of its determination letter;

(d) Any additional records submitted by the department;

(e) Any additional records or sworn oral statements submitted by the claimant; and

(f) Any additional evidence submitted by the parties at the written request of the administrative law judge.

(4) **Conversion of brief adjudicative proceeding to regular proceeding.**

(a) A brief adjudicative proceeding will be converted to a regular proceeding if:

(i) The claimant files a conversion request by the deadline listed in the notice of the brief adjudicative proceeding. Such a request shall be automatically granted by the administrative law judge; or

(ii) The department files a conversion request by the deadline listed in the notice of the brief adjudicative proceeding. Such a request shall be automatically granted by the administrative law judge; or

(iii) The administrative law judge, at any time prior to issuing a written decision, determines the brief adjudicative proceeding shall be converted to a regular proceeding. Reasons the administrative law judge may convert the brief adjudicative proceeding to a regular proceeding may include, but are not limited to:

(A) The use of the brief adjudicative proceeding procedures violates any provision of law;

(B) The protection of the public interest requires that notice and an opportunity to be heard be given to persons other than the claimant and the department;

(C) A regular proceeding is required to adequately develop the record and decide the issues in the appeal; or

(D) The issues and interests involved otherwise warrant the use of the procedures in a regular proceeding.

(b) When a brief adjudicative proceeding is converted to a regular proceeding, the office of administrative hearings shall issue a new notice of hearing.

(5) **Right to petition for review.** A party aggrieved by a decision issued by an administrative law judge pursuant to a brief adjudicative proceeding shall have the same right to petition for review as contained in WAC 192-04-060. In conducting this review of the brief adjudicative proceeding, prior to rendering a decision, the commissioner shall order the taking of additional evidence by the office of administrative hearings to be made a part of the record in the case.

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