



OKLAHOMA
Employment Security Commission



OKLAHOMA EMPLOYMENT SECURITY COMMISSION
APPEALS INFORMATION AND GUIDE

UPDATED APRIL 6, 2023

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Translations

This document is available in Spanish and Vietnamese.

Ver este documento en Español en

<https://oklahoma.gov/content/dam/ok/en/oesc/documents/forms/OES-406-ES.pdf>

Xem tài liệu này bằng tiếng Việt tại

<https://oklahoma.gov/content/dam/ok/en/oesc/documents/forms/OES-406-VI.pdf>

References

Oklahoma Administrative Code, Title 240 - Oklahoma Employment Security Commission, Chapter 10 - Unemployment Insurance Program, Subchapter 13 – Appeal Tribunal Procedure (OAC 240:10-13)

Appeal Tribunal Contact Information

Appeal Tribunal
PO. Box 53345
Oklahoma City, OK 73152

Phone: [405-601-3311](tel:405-601-3311)
Fax: 405-601-3337
Email: atd@oesc.ok.gov

TTD/TTY: [1-800-722-0353](tel:1-800-722-0353)

Preparing for the Hearing

Carefully read this information and any correspondence received from OESC or the Appeal Tribunal and take special consideration of all deadlines.

As soon as an appeal is filed, begin gathering all the documents, records and witnesses that will support the appeal.

Claimants that are still unemployed should continue to file weekly certifications while the appeal is pending.

Interpreting Services

If an interpreter is needed, inform the Appeal Tribunal immediately and one will be provided.

Right to a Representative

Parties may appear at the hearing with or without representation. If an attorney is desired, but finding or affording one is not possible, contact the nearest local bar association or legal aid services. When a party is represented by an attorney, all written correspondence will be sent to the attorney or representative of record. (OAC 240:10-13-44)

Parties are responsible for their attorney's fees. The fee cannot exceed 20% of the maximum benefit amount awarded. (OAC 240:15-1-8)

Date, Time and Place of Hearing

The date, time and place of the hearing will be shown on the OES-405 “Notice of Hearing”. Parties must register no later than 2:00 p.m. the business day before the hearing to participate. For Monday hearings, parties must register no later than 2:00 p.m. the Friday before. If the registration deadline falls on a state holiday, parties must register no later than 2:00 p.m. the business day prior to the holiday.

Registration is done online at <https://ok.c2tinc.com/register> or by calling the Appeal Tribunal (see [contact information](#) section). Failure to register will prevent participation, and the appeal may be dismissed. When registering, be prepared with the following information:

- case number
- claimant’s SSN and name
- date and time of the hearing.

Individuals in a POOL docket, as designated in the “Hearing Officer” section of the OES-405 “Notice of Hearing”, must still register using the above instructions. For POOL dockets, the scheduled time on the Notice of Hearing is the earliest possible time parties may be called, with calls potentially being made up to two hours after the scheduled time.

Postponements

If a different time, date or place of the hearing is needed, a request for a postponement (also called a continuance) may be submitted to the Appeal Tribunal if good cause can be shown. The request must be received in writing by the Appeal Tribunal at least four days prior to the hearing and contain justification for the postponement. Parties will be notified by the Appeal Tribunal if the request has been granted. (OAC 240:10-13-38)

Examples of good cause may include:

- if a party, necessary witness, or attorney representing a party cannot attend the hearing because of a disabling personal illness, jury duty, or death in the immediate family. (OAC 240:10-13-37)
- if an attorney must appear in a court of superior jurisdiction.

If an emergency arises immediately before the hearing and a party is unable to attend, they can call to notify the Appeal Tribunal; however, a request for a postponement or reopen must be made in writing. Alternatively, the request for postponement may be made at the time of the hearing. The hearing officer will rule immediately on the record and will usually set the new date and time.

Attendance of the Witnesses

A witness should be a person with first-hand knowledge of the situation.

To have a witness testify, arrange for them to attend the hearing voluntarily, and notify the Appeal Tribunal of the witness’s intent to participate.

If the hearing is scheduled to take place in-person and a witness lives in a location too far to commute to Oklahoma City, arrangements may be made to obtain the testimony by telephone at the scheduled hearing. Such a request should be made to the Appeal Tribunal

The hearing will not be postponed if a witness cannot attend unless there is good cause, as defined in the "[Postponements](#)" section.

Requesting Subpoenas for Witnesses or Records

A subpoena is a written command issued by a court ordering a person to attend a court or submit a document to a court.

If a witness will not voluntarily attend the hearing, or if documents are not voluntarily given to the requesting party, a request to issue a subpoena may be submitted to the clerk of the Appeal Tribunal. The request must be filed in writing with the Appeal Tribunal at least five days before the scheduled hearing and contain:

1. the case/docket number,
2. date and location of the hearing,
3. name and mailing address of the witness or person holding the requested document[s],
4. a description of the expected testimony or records and why they are needed for the case.

(OAC 240:10-13-60)

Getting Records for the Hearing

Each party must submit copies of all documents and records necessary to support their position to the Appeal Tribunal at least five days before the date of the hearing for copies to be made and delivered to the opposing party in preparation for the hearing. All parties will be mailed copies of documents submitted by OESC. (OAC 240:10-13-47)

Original copies should be maintained in the event they are needed. Additionally, it is encouraged to bring a witness who can explain how the records were obtained and/or prepared for the hearing.

Parties submitting audio, video, or electronic images as evidence must do so in standard formats that do not require special codecs or software. (OAC 240:10-13-42)

The standard formats are:

- Video: MP4, MP2, AVI, ASF, and DVDs that can be played in a standard DVD player
- Audio: MP3, CDA, and WAV
- Electronic Images: JPG, TIF, Adobe Acrobat (PDF), and BMP

Failure to Attend the Hearing

If a party fails to appear at the scheduled hearing, testimony may be taken from the appearing party, and the case will be decided based on the records and testimony introduced at the hearing. If neither party appears, the case will be decided based on the available information. (OAC 240:10-13-39)

If an absent party does not appear for a scheduled hearing, they may request for the case to be reopened. The request must be sent to the Appeal Tribunal within 10 calendar days after the mailing of the Appeal Tribunal's decision, and it must contain the reason for failure to appear.

The letter will be reviewed to determine whether it should be set for another hearing to determine whether there was good cause for not appearing at the original hearing. Both parties will be notified when the next hearing will be, and both parties should attend. (OAC 240:10-13-40)

Late Appeal

Appeals should be filed within 10 calendar days of the mailing date on the OES-541 "Notice of Determination". If the tenth day falls on a Saturday, Sunday or legal holiday, the appeal will be accepted as timely if filed on the following business day.

If an appeal is filed after the deadline, a hearing will be scheduled to allow the party to explain why the appeal was filed late. If good cause cannot be shown, the appeal will be dismissed.

Withdrawal of Appeal

The appealing party may withdraw an appeal by submitting a written request to the Appeal Tribunal at any time before the hearing or before a decision is issued. The case may also be withdrawn by oral request at the time of the hearing. (OAC 240:10-13-41)

Rights at the Hearing

Each party has the following rights:

- To testify on their own behalf,
- To be represented by an attorney or other representative of their choosing,
- To present documents and records,
- To question all witnesses,
- To explain or rebut evidence against their case,
- To object to testimony or documents offered by the opposing party,
- To request a continuance when surprised by a new issue or unexpected evidence,
- To state at the end of the hearing how the evidence and the law supports their position.

Conduct of Hearing

The hearing officer has the sole authority for the conduct of the hearing. In conducting the hearing, the hearing officer will:

1. Explain the issues, and any terms the parties do not understand,
2. Explain the order that parties will testify, ask questions and give rebuttal,
3. Help parties in asking questions of other witnesses,
4. Question parties and witnesses to obtain necessary facts,
5. Determine if testimony and documents being offered should be received and considered,
6. Require parties to give proper background or foundation for secondary evidence, documents, and opinion testimony, and

7. Take official or judicial notice of well-established matters of common knowledge and public records.

Telephone Hearings

If the hearing has been scheduled as a telephone hearing, parties may participate with or without representation. The hearing officer will call all parties via the phone numbers submitted during registration, so ensure the phone being utilized can receive incoming calls. Please be aware that hearings often last up to an hour or longer, so plan accordingly to avoid distractions or disruptions.

Appeal Decision

The hearing officer will decide the appeal based on sworn and recorded testimony given by the parties and witnesses during the hearing, along with any documents entered into the record. Only issues raised before the hearing will be considered.

The decision of the hearing officer will be mailed within 14 days after the hearing. The decision will state the facts found from the evidence presented, the law that applies to the facts, and the basis for the conclusion.

The decision also contains information regarding appeal rights to the Board of Review.

Appeals to the Board of Review

Any party may appeal the decision to the Board of Review. If an appeal is taken, the Board of Review will typically decide the matter based on the record made at the Appeal Tribunal. The appeal to the Board of Review should be mailed within 10 calendar days of the mailing date of the Appeal Tribunal decision. The address can be found in the appeal rights section of the decision notice.

Independence of Hearing Officers and the Board of Review

The Oklahoma Employment Security Act provides for a fair and impartial hearing to all parties affected by OESC determinations, as required by the Social Security Act. The decision-making process of the Appeal Tribunal and its hearing officers is completely independent of the Oklahoma Employment Security Commission and its departments. All stages of the Appeal Tribunal appeal process are governed by the canons of “The Model Code of Judicial Conduct for State Unemployment Insurance Appeals Officers”, established by the National Association of Unemployment Insurance Appellate Boards (OAC 240:10-13-9).

Board of Review

After the Appeal Tribunal hearing is held and the decision is issued, any party may appeal the decision to the Board of Review. The appeal to the Board of Review must be mailed within 10 calendar days of the mailing date of the “Order of Decision” letter.

The appeal may be submitted by mail, FAX or email.

Board of Review
PO Box 53345
Oklahoma City, OK 73152

FAX: 405-962-7540

Email: bor@oesc.ok.gov

The Board of Review consists of three people appointed by the governor for six-year terms. The board does not hold hearings. The members of the board will listen to the recording of the hearing and consider any exhibits that the Appeal Tribunal hearing officer admitted into the record. They generally cannot accept new evidence that was not entered into the record at the Appeal Tribunal hearing. The board can affirm the Appeal Tribunal decision, reverse it, or remand it to either the Appeal Tribunal or OESC with instructions on how to proceed.

The Board of Review is the last step of the appeal process within OESC. Parties have 30 days from the mailing date of the board's decision in which to file an appeal for judicial review to the district court in the party's county of residence if they choose to appeal further.

Assessment Board for Employer Tax Accounts

The Assessment Board at OESC is an appellate division with jurisdiction to hear tax matters concerning employer UI tax accounts. This is separate from the Appeal Tribunal discussed through most of this document. The Assessment Board is authorized to hear and decide cases involving:

- employer contributions rates,
- whether a worker is an independent contractor or an employee,
- assessments of contributions or reimbursement payments,
- successorship,
- waivers of penalty or interest,
- base period employer charges, and
- appeals to any determination made pursuant to any provision contained in Article III of the Oklahoma Employment Security Act.

Protests or appeals to the Assessment Board must be filed within the time limit on the notice or determination and should include a detailed explanation regarding the reason(s) for the protest, the name of the protesting party, and the protesting party's Oklahoma UI tax account number or SSN, whichever is applicable.

In most cases, the Assessment Board cannot accept an untimely protest or appeal, even if good cause is shown.

If the appeal is filed untimely without good cause, the determination will be final and binding, and the Assessment Board will not have the authority to hear the appeal. (OAC 240:10-11-12)

If a timely protest has been filed, a new hearing (also referred to as "de novo") will be scheduled and held concerning the issue appealed. A decision will then be issued based on the testimony and evidence presented at the hearing. Decisions of the Assessment Board may be appealed to District Court by filing a petition for review within 30 days after the mailing date of the decision.