



Legal Aid Society of Hawai`i

Unemployment Benefits

How to Prepare For Your Hearing

This brochure may be helpful to you if:

- you were denied UIB benefits, AND
- you appealed the UIB office's decision

This brochure will help you prepare for your hearing.

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You have appealed the UIB office's decision about your unemployment benefits.

You should be receiving or have received a hearing notice in the mail from the UIB office. The notice usually comes about 2-3 weeks after you turned in your appeal.

What is a hearing?

When you appealed the denial of your employment benefits, you asked for a hearing to further explain your case. A *hearing* is an informal court procedure. At your unemployment appeals hearing, a hearing officer will listen to you and your employer explain your versions of the story. The officer will then decide whether or not you will receive unemployment benefits.

A hearing is your day in court, and you should be prepared to tell your story and support your claims with evidence.

Do I Need a Lawyer?

No. Anyone can represent you at the hearing. You can have a lawyer, a friend or family member speak for you, or you can speak for yourself. If you do not speak English well, you can request an interpreter. The appeals office **must** give you an interpreter if you need one.

I need more time to prepare: A Continuance

If you need more time to prepare your case, you can call the court clerk's office and ask for a "continuance." This means that you are asking for a later court date. Call the office as soon as possible to reschedule.

Before the Hearing

There are several things that you should do to prepare:

1. Read the hearing notice

- The notice tells you the time and place of the

hearing. You must be at the correct place at the correct time.

If you are late or go to the wrong place, the hearing officer will think that you are not going to show up. The hearing officer will issue a "default judgment" against you. This means that you will automatically lose the case because you did not show up.

If you cannot make it to the hearing, you must call the hearing office right away to see if you can reschedule.

- The notice also tells you what issues will be covered at the hearing. These are the only issues that can be brought up at the hearing.

If there is a fact or argument that you want to bring up that is not noted on the hearing notice, contact the Appeals Office immediately and ask them to put that new issue in the hearing notice. For example, if your hearing notice says the issue is whether you quit for good cause, but you think you were fired, call the office and tell them to put the issue of being fired on the notice. If you don't add in the issue before the hearing, the hearing officer may not allow you to argue the issue.

2. Think about what you want to prove and what you want to say

When you first applied for UIB benefits, you were sent a letter that denied your application. In this letter, the claims examiner explained the reason(s) for your denial. Some common reasons for denial of unemployment benefits are:

- you were fired for misconduct
- you were not working long enough to qualify for benefits
- you did not have good cause to quit

Whatever the reason is, you need to gather evidence and testimony that proves you should be receiving unemployment. At the hearing, you must show the hearing officer that **every** reason they used to deny you unemployment benefits was wrong. For example, if you were denied because you did not work long enough and because you did not have good cause to quit, you need to prove that both reasons are not true.

Strategies you can use at your hearing:

- 1) **If the notice says you were fired for misconduct, you can:**
 - a) deny the misconduct behavior, OR
 - b) admit the misconduct behavior, but say that it was an isolated incident of negligence, a case of bad judgment, or incompetence. The law says that these examples cannot be considered misconduct.
- 2) **If the notice says that you quit without “good cause,” you need to:**
 - a) show that you attempted to fix the problem before you quit. This includes a letter to a supervisor or a talk with your boss; AND
 - b) prove that you had “good cause” to leave your job.

For more information on “good cause” and misconduct, see brochure entitled “Unemployment Benefits: Good Cause & Misconduct.”

3. **Gather evidence that supports what you want to say.**

To collect evidence that helps your case, you should:

a) **Copy your file at the UIB office**

The UIB office has a file on your case. You have a right to look at it and photo-copy it.

There are several things to look at in the file:

- 1) Your employer’s reasons for disagreeing with your claim
- 2) The claims examiner’s statements will say why you were denied (or why your employer appealed, if your benefits were terminated).

This information is important because it will give you clues on what your employer will say and how to defend your arguments at the hearing. You should take advantage of this file and use it to your benefit. For more information, call the Hearing Office—their phone number is on your hearing notice.

b) **Subpoena People, Witnesses, and Documents:**

FOR PEOPLE/WITNESSES:

A person who will testify at the hearing is called a witness. You should gather witnesses who know first-hand information that can help your case. Talk to people, such as co-workers, who could help your case. For example, a worker who saw you get fired and knows that it was not for misconduct OR a worker who witnessed your boss harassing you and can testify that you quit for good cause.

If you think that a witness may not show up at the hearing, you should subpoena that person or get a written statement from them. A “subpoena” is a court-order that tells a person that he/she must appear in court.

For more information on how to subpoena, see box below.

Prepare Your Witnesses

Preparing your witnesses means to talk to them before the hearing about the questions you will be asking at the hearing.

PLAN YOUR QUESTIONS AHEAD OF TIME.

- Ask short questions that let your witness tell your side of the story.
- Focus on showing why your story is true, and the reasons you were denied benefits are wrong.

By preparing your witness ahead of time, you can decide whether or not their testimony is appropriate and will help your case. Remember, you don’t need a lot of witnesses. You need witnesses who know the most first-hand information.

hint:

Do not subpoena witnesses who have made statements that hurt your case. They will probably repeat the statements in the court and will further hurt your case.

FOR DOCUMENTS:

Collect any documents that can help your case—a letter firing you will prove that you were fired, or good evaluations of your work may help to deny misconduct.

You can also get documents from your employer or other people. If you need a document for your hearing that you can't get on your own or that a person might not bring, you may go to the UIB office and request a "Subpoena Duces Tecum."

This type of subpoena is a court-order that tells the person who has the document that they must bring or send the document to hearing.

Before the hearing, prepare how you will be using the documents. Make sure that each document is appropriate and will help your case. Remember, you should collect all the documents you need, but not use the documents that do not help your case.

4. Organize your thoughts and evidence

After you gather your arguments, your witnesses, and your evidences all together, it is easy to forget what you are trying to prove.

Remember: the main reason for this hearing is to prove that the reasons for denying your unemployment benefits are wrong.

Key strategies to use:

- 1) Know what you are trying to prove
- 2) Make only essential points
- 3) Don't confuse the issues by adding in irrelevant issues

A good way to get organized before your hearing:

List every argument your employer has made against you. Use the UIB file to help you make this list.

Then, next to the arguments, write out how you will defend yourself and what kind of evidence (proof) you have to prove your defense.

How Do I Get a Subpoena?

To get a subpoena, you must file a request at the Unemployment Appeals Office.

Keep in mind that it takes at least seven (7) days for the subpoena to be served so you need to request a subpoena as soon as possible. If it is a person that you want to subpoena, then you must give the Appeals Office the person's full name and a correct address where the subpoena can be served. If you need a document, you need to give the full name and address of the person who has the document. The Hawai'i Sheriff's Office will serve the subpoena but will only do so if the name and address of the witness to be served is correct.

At the Hearing

What do I need to do at the hearing?

1. Be on time at the correct location
2. Bring all your evidence
3. Clearly tell your side of your story
4. Question your witnesses. You will also have a chance to question the other side's witnesses.

What if my employer brings up issues that I am not prepared to argue?

You have a right to know before the hearing what the issues are going to be—these are the issues listed in your notice. If your employer tries to bring up new issues that were NOT on the hearing notice, you should "Object."

You can ask the Referee to:

- say that the issue is not allowed to be raised;
- stop the hearing and set a later date to finish the hearing so you have time to get ready for the new issue; AND/OR
- take a short break to allow you time to think of how to argue against the new issue.

You too may not bring up issues not on the notice. Be sure to call the Appeals Office before the hearing if you want to add another issue into the hearing notice.

After the Hearing

When Do I Get A Decision?

The Appeals Office will mail you their decision, sometime within two weeks after the hearing. If you haven't gotten the decision after two weeks, call the office and ask what has happened.

If You Win the Appeal

You have won your right to unemployment benefits. You will receive benefits for all the time since you were first denied unemployment benefits. This decision is final, unless your employer decides to re-open the case if new evidence is found. Your employer may also appeal the decision in Circuit Court.

If You Lose the Appeal

You have a choice to appeal that decision. Depending on your situation, you have two options:

1. **Re-open the case:** If you have new evidence **that was not available at the time of the hearing**, you can apply within 30 days of the decision to have your case re-opened.
2. **Court Appeal:** If you do not have new evidence, you can appeal your decision in Circuit Court.

To appeal in Circuit Court is very difficult to do on your own so you should try to hire a private attorney.

Legal Terms

Appeal to ask the courts/administrators to rethink their decision. In the case of UIB benefits, you are asking for a hearing to further explain why you should get UIB benefits.

Documents any kind of written papers, including contracts, letters, or pay stubs

Evidence any kind of proof that shows you are telling the truth

Hearing an informal court procedure where a decision is made based on the evidence and testimony of both parties

Subpoena a court-order that tells a person they must show up or bring a necessary document to a hearing

Testimony a witness's story that is given under oath about the case at the hearing

UIB Unemployment Insurance Bureau. This is the office that distributes your unemployment benefits.

Witnesses someone who knows about the case and tells what they know at the hearing



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Other Related Brochures

- “Unemployment Benefits: ‘Good Cause’ & Misconduct”
- “Unemployment Benefits: How to Appeal”

Useful Names & Numbers

Legal Aid Society of Hawai'i - <http://www.legalaidhawaii.org>

LEGAL HOTLINE open Monday to Friday 9-11:30am and 1-3:30pm

Oahu call 536-4302 Maui call 242-0724 Kauai: 245-7580 Lanai: 565-6089

Hilo call 934-0678 Kona call 329-8331 Molokai: 553-3251

Dept of Labor: Unemployment Office

Honolulu Office 586-8970 or 586-8971

830 Punchbowl Street, Room 110

Kaneohe Office 233-3677

45-1141 Kamehameha Hwy

Waipahu Office 675-0030

94-275 Mokuola Street, Room 301

Appeals Office 586-8930

830 Punchbowl Street, Room 429

Honolulu, HI 96813

Hilo Office 933-4461

777 Kilauea Avenue

Kona Office 322-2724

Kealahou

Maui Office 243-5377

Wailuku

Kauai Office 241-3485

3100 Kuhio Hwy, Rm C12