

SOUTHEAST REGIONAL OFFICE
DEPARTMENT OF WORKFORCE DEVELOPMENT
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THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
DEPARTMENT OF UNEMPLOYMENT ASSISTANCE

**** HEARING NOTICE ****

Date Mailed: 4/19/2019

APPEAL NOTICE*OPEN IMMEDIATELY

TOWN OF CHILMARK
P.O. BOX 119
CHILMARK, MA 02535

CLAIMNT:
EMPLOYER:

TOWN OF CHILMARK
P.O. BOX 119
CHILMARK, MA 02535

The **EMPLOYER** appealed a determination issued on **03/27/2019**.

EAN: 78501930

A **TELEPHONE HEARING** is now scheduled:

ISSUE ID: SEC24A-1Z-19-052

DATE: THURSDAY, MAY 2, 2019

TIME: 3:00 P.M. EASTERN TIME

POSTPONEMENT REQUEST DEADLINE: 4/25/2019

YOU MUST CALL THE ABOVE PHONE NUMBER **BEFORE THE DAY OF THE HEARING** TO CONFIRM THE TELEPHONE NUMBER AT WHICH WE WILL CALL YOU ON THE DAY OF THE HEARING.

The ISSUES to be heard are whether:

* **WHETHER THE EMPLOYER IS A SEASONAL EMPLOYER. MGL 151A, S. 24A& 1(Z)**

SPECIAL MESSAGES:

***AFTER 10 MINUTES RESULTS IN DEFAULT/DISMISSAL.**

***PLEASE NOTIFY ANY REPRESENTATIVES AND/OR WITNESSES THAT YOU WISH TO HAVE PRESENT.**

9POSTPONEMENT REQUESTS MUST BE MADE BEFORE THE DEADLINE DATE 4/25/2019. POSTPONEMENTS WILL BE GRANTED **ONLY FOR GOOD CAUSE**. REQUESTS MADE AFTER THE DEADLINE WILL NOT BE GRANTED EXCEPT FOR EMERGENCY. TO REQUEST A POSTPONEMENT, CALL (508) 894-4777.



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TELEPHONE HEARING INSTRUCTIONS

- **DOCUMENTS:** DUA will provide the agency documents to all parties before the hearing either electronically or by U.S. mail based on the method you selected to receive DUA correspondence.

If you have documents other than the documents included in the appeals packet that you want to have considered, you **MUST** provide copies to all parties listed on the Notice of Telephone Hearing and the review examiner before the hearing. Please include a copy of the Notice of Telephone Hearing with documents you mail. You may upload the review examiner's copy to your account in UI Online or mail to the Hearings Department at the address listed on the Notice of Telephone Hearing.

If you plan to use audio or video exhibits, please notify the Hearings Department at the telephone number listed on the Notice of Telephone Hearing as soon as possible.

- **QUIET PLACE FOR HEARING:** You must find a place to participate in the hearing that is free of distractions and noises.
- **WITNESSES:** If you have witnesses who have agreed to testify on your behalf, please have their names and telephone numbers available for the review examiner.
- **ATTORNEYS/REPRESENTATIVES:** If you and your attorney/representative will be participating from the same location, only one call/PIN is necessary.
- **PROBLEMS:** If you have any problems, or if you have waited on hold for more than 10 minutes and the review examiner has not joined the call, please call the Hearings Department at the telephone number listed on the Notice of Telephone Hearing.



IMPORTANT INFORMATION ABOUT APPEALS

You are receiving this IMPORTANT information about your rights and responsibilities because an appeal has been filed in response to a decision made by the Department of Unemployment Assistance (DUA). It is important that you read this information carefully and begin preparing now for your hearing.

The DUA Hearings Department will schedule a hearing within the next few weeks. DUA will send you a Notice of Hearing with the date, time and location of your hearing. The notice will be sent either electronically or by U.S. mail based on the method you selected to receive DUA correspondence. Please note that the 'appellant' is the person or entity who asked for the hearing. The 'non-appealing party' is the person or entity who did not request the hearing, but may be affected by the outcome of the hearing.

CONDUCT OF HEARING

A DUA Review Examiner will conduct the hearing. The Review Examiner's job is to make sure that all important facts are presented so that the examiner can make a fair and legal decision. In most cases, the hearing will be your only chance to present testimony and evidence in support of your case. The Review Examiner will base the decision only on the testimony and evidence presented at the hearing.

At the beginning of the hearing, the Review Examiner will:

- Explain the rules for the hearing and let you know that the hearing will be recorded
- Identify all of the parties (claimant, employer and any other witnesses)
- Explain the legal issue(s) that will be decided during the hearing
- Require anyone who is going to testify to **swear or affirm that what they say will be the truth**
- Ask you if you have any questions about the hearing

After the Review Examiner has explained the rules, the examiner will begin asking you and the other party questions about the case. When you or the other party answers the questions, it is called testifying. All parties to the hearing will be allowed to testify. All parties will also be allowed to question all witnesses and to present other evidence (such as documents or letters). The Review Examiner will ask questions throughout the hearing to make sure that all necessary information is presented. In most cases, the parties will **not** be allowed to testify by reading a long prepared statement.

In some cases, an employer may be present at the hearing as a witness (rather than a party) because the employer failed to return complete and timely information to the DUA. In those cases, the employer will not be allowed to question its own witnesses or ask questions of the claimant and the claimant's witnesses.

The Review Examiner decides what information and documents may be admitted on the record and will control the order of the testimony by telling the parties when it is their turn to speak. Depending on the issues, the claimant or the employer could testify first. For example, if it is alleged that the claimant was fired from his/her job for misconduct, the employer and its witnesses will usually testify first. If the issue is whether or not the claimant voluntarily left his/her job, the claimant and his/her witnesses will generally testify first.

Hearings involving only one party (for example, a claimant's eligibility for training or an employer's tax liability) are conducted in a similar way but only one party is present to give testimony.

TELEPHONE HEARINGS

DUA does not require a party to travel more than 75 miles or more than one and one-half hours to come to a hearing. Therefore, in some cases, DUA will schedule a hearing and all parties will participate by telephone from different locations. Before the telephone hearing, DUA sends exhibits (documents that will be submitted into evidence as part of the hearing) either electronically or by U.S. mail based on the method you selected to receive DUA correspondence. The conduct of telephone hearings is the same as in-person hearings.

If you receive a notice of a telephone hearing, you may ask for an in-person hearing by contacting the Regional Hearings Office identified on the notice. You may ask for the in-person hearing no later than the Postponement Deadline Date listed on the Notice of Hearing. If DUA allows your request for an in-person hearing, you must be willing to travel more than 75 miles or one and one-half hours depending on the situation.

If you receive a notice for an in-person hearing, you may ask to participate by telephone by contacting the Regional Hearings Office identified on the notice. The request must be made no later than the Postponement Deadline Date listed on the Notice of Hearing and the other party must agree.

CHILDREN AT HEARINGS

Because the hearing will be recorded, DUA cannot allow children in the hearing. In addition, for safety reasons, children may not remain in the waiting area without supervision. Parties who bring children without a person to watch them **will not be allowed to participate in the hearing.**

REPRESENTATION AT A HEARING

You have the right to be represented by an attorney, agent or advocate. If you do not have or cannot afford an attorney, you may contact one of the legal organizations listed on the last page of this material.

If you want to be represented at your hearing, **you should find an attorney or representative right away.** Once the hearing is scheduled a postponement will not be granted to allow you time to find an attorney. Please note that fees for services provided by an attorney or agent to a claimant in connection with an appeal to the Hearings Department are not payable unless submitted to the DUA for approval. G.L. c. 151A, s. 37. This means that if you have an attorney, the attorney must get permission from the DUA before charging you for services.

PREPARATION FOR THE HEARING

To prepare your case, you should gather any documents which will support your facts in this case. Such documents may include attendance records, payroll records, pay stubs, correspondence (emails or letters), work documents, employee evaluations, or performance warnings. Bring all relevant documents to the hearing with a copy for the Review Examiner and a copy for the other party. If your hearing is held by telephone, instructions will be included with the Notice of Hearing. **If you want to introduce evidence in an electronic format, you need to contact the Regional Hearings Office as soon as possible. You may be required to provide the technology necessary to present the evidence.**

If you plan to have witnesses testify on your behalf, you should identify and contact them now to request their participation at the hearing. The best witness for you is someone who has direct knowledge of the issues to be heard. If the person you want to testify refuses to attend the hearing on your behalf, you may ask that a subpoena be issued to require his/her appearance. (See next section regarding Subpoenas).

SUBPOENAS

You have the right to request any person to produce documents or come to your hearing to testify if the information is relevant to the issues to be heard at the hearing. If the person refuses to come or provide the documents, you may ask a Notary Public or Justice of the Peace to issue a subpoena in the name of the DUA or, if you prefer, the DUA will issue a subpoena. A subpoena is a legal document that forces a person to testify or give documents. Regardless of who issues the subpoena, it is your responsibility to have the subpoena served (delivered) and to pay any witness or service fees. If you want the DUA to issue a subpoena, you must contact the Regional Hearings Office listed on the enclosed Appeal Acknowledgement, Appeal Notification, or Notice of Hearing as soon as possible for further instructions.

REASONABLE ACCOMMODATIONS

If you have a disability, you may request Auxiliary Aids and Services or other reasonable accommodations which will allow you to effectively participate in a hearing. If you need such accommodations, you must contact the Regional Hearings Office as soon as you receive this notice and tell us what accommodations you need. The telephone number of the Regional Hearings Office is located on the enclosed Appeal Acknowledgement, Appeal Notification, or Notice of Hearing. Requests which are reasonable and necessary will be granted. The Department has the right to request medical documentation proving the need for the requested accommodation. Requests which are denied may be appealed to the U.S. Department of Labor (202) 219-8927 or the U.S. Department of Justice (617) 223-9715.

REVIEW DUA MATERIAL

If you want to review any information about your case before the hearing, you can contact the Regional Hearings Office shown on the front of the Appeal Acknowledgement, Appeal Notification, or your Notice of Hearing. On the day of the hearing, you will have an opportunity to review the file before the start of the hearing. If you want to make a copy of the case file prior to the hearing, you must come in person to the Regional Hearings Office. Since some hearings are held in different offices, please call ahead to verify that the file is still available at the Regional Hearings Office.

INTERPRETER

The Hearings Department will provide an interpreter during the hearing at no cost for any party who needs one. To request an interpreter you must contact the Regional Hearings Office listed on the enclosed Appeal Acknowledgement, Appeal Notification, or Notice of Hearing as soon as possible.

ATTENDANCE AT A HEARING

It is important that you and your witnesses or representatives come to the hearing on time. If the appellant (the person or entity who requested the hearing) does not come to the hearing or arrives more than 10 minutes after the scheduled hearing time, the hearing will not take place. When this happens, the Review Examiner will send a Notice of Dismissal to the appellant. The appellant must respond to DUA in writing within 10 days of the mailing of the Notice of Dismissal and must give a good cause reason why they did not appear in order for the hearing to be rescheduled. If the appellant does not respond or give a good cause reason within 10 days, the appeal will be dismissed and the original decision will remain in effect. If the non-appealing party fails to appear or arrives more than 10 minutes after the scheduled hearing time, the hearing will go forward with the parties who are present. The Review Examiner is allowed to decide if parties who show up late are allowed to participate in the hearing. If the hearing goes forward without the **non-appealing party**, the decision will be based only on the testimony and evidence presented at the hearing.

POSTPONEMENT REQUESTS

Because the DUA Hearings Department must provide prompt resolutions to appeals, requests to postpone a hearing will not be approved unless the request is made by the deadline date listed on the Notice of Hearing. In addition, the postponement will only be granted for good cause. Examples of good cause are the unavailability of a party or an important witness due to a scheduling conflict of a serious nature, or unavailability of a representative/attorney due to scheduling conflicts of a serious nature.

A request to postpone the hearing made **after the deadline date will be approved for emergency situations only**. Examples of emergency situations are serious illness of a party, representative, or key witness for which the person is seeking or has received medical attention (documentation may be requested), death of a family member of a party, representative, or key witness, or other conflicts of a serious nature which developed after the postponement deadline date. Requests to postpone a hearing made after the deadline date because of a vacation of a party or representative, not enough preparation time or business meetings are not emergencies and will not be granted. In cases where a witness is not able to attend, the Review Examiner can proceed with the hearing as scheduled and decide if it is necessary to continue the hearing on a different date to get that witness' testimony.

WITHDRAWAL OF APPEAL REQUEST

If the appellant (person or entity who asked for the appeal) changes his/her mind about having a hearing, he/she may withdraw the request any time before the hearing. The request for withdrawal must be in writing and should be sent to the Regional Hearings Office listed on your Appeal Acknowledgment, Appeal Notification or your Notice of Hearing. Once the hearing has started, the appellant must get the approval of the Review Examiner assigned to the case to withdraw the appeal.

DECISION OF THE REVIEW EXAMINER

The Hearings Department makes every effort to send the written decision of the Review Examiner within 2-4 weeks after the hearing is over. The decision will include the facts upon which the decision is based and the reasons for the decision.

If you disagree with the decision, you may file an appeal with the Board of Review. Enclosed with the decision will be an explanation of how to file an appeal. The appeal must be in writing and should include the case number, the social security number of the claimant involved (if a claimant is involved), and the reasons why you disagree with the decision. If you mail the appeal, it must be postmarked within **30 calendar days from the mail date of the decision**. If you choose to hand-deliver the appeal to the Board of Review, the appeal must be received by a DUA office within **30 calendar days** from the mail date of the decision.

Exception: Decisions concerning protest of benefit charges and liability for the Fair Share Employer Contribution cannot be appealed to the Board of Review. These decisions may be appealed to Superior Court.