

State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. **1666**

04/02/2013 Authored by Fritz

The bill was read for the first time and referred to the Committee on Jobs and Economic Development Finance and Policy

1.1 A bill for an act
1.2 relating to unemployment insurance; directing that an appeals hearing must
1.3 occur within 15 days of filing an appeal; amending Minnesota Statutes 2012,
1.4 section 268.105, subdivision 1.
1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2012, section 268.105, subdivision 1, is amended to read:

1.7 Subdivision 1. **Evidentiary hearing by unemployment law judge.** (a) Upon
1.8 a timely appeal having been filed, the department must send, by mail or electronic
1.9 transmission, a notice of appeal to all involved parties that an appeal has been filed, and
1.10 that a de novo due process evidentiary hearing will be scheduled. The hearing must occur
1.11 no more than 15 days from the filing date of the appeal. The notice must set out the
1.12 parties' rights and responsibilities regarding the hearing. The notice must explain that the
1.13 facts will be determined by the unemployment law judge based upon a preponderance of
1.14 the evidence. The notice must explain in clear and simple language the meaning of the
1.15 term "preponderance of the evidence." The department must set a time and place for a
1.16 de novo due process evidentiary hearing and send notice to any involved applicant and
1.17 any involved employer, by mail or electronic transmission, not less than ten calendar
1.18 days before the date of the hearing.

1.19 (b) The evidentiary hearing is conducted by an unemployment law judge as an
1.20 evidence gathering inquiry. At the beginning of the hearing the unemployment law judge
1.21 must fully explain how the hearing will be conducted, that the applicant has the right to
1.22 request that the hearing be rescheduled so that documents or witnesses can be subpoenaed,
1.23 that the facts will be determined based on a preponderance of the evidence, and, in
1.24 clear and simple language, the meaning of the term "preponderance of the evidence."

2.1 The unemployment law judge must ensure that all relevant facts are clearly and fully
2.2 developed. The department may adopt rules on evidentiary hearings. The rules need
2.3 not conform to common law or statutory rules of evidence and other technical rules of
2.4 procedure. The department has discretion regarding the method by which the evidentiary
2.5 hearing is conducted. A report of any employee of the department, except a determination,
2.6 made in the regular course of the employee's duties, is competent evidence of the facts
2.7 contained in it. An affidavit or written statement based on personal knowledge and signed
2.8 under penalty of perjury is competent evidence of the facts contained in it; however, the
2.9 veracity of statements contained within the document or the credibility of the witness
2.10 making the statement may be disputed with other documents or testimony and production
2.11 of such documents or testimony may be compelled by subpoena.

2.12 (c) After the conclusion of the hearing, upon the evidence obtained, the
2.13 unemployment law judge must make findings of fact and decision and send those, by mail
2.14 or electronic transmission, to all involved parties. When the credibility of an involved
2.15 party or witness testifying in an evidentiary hearing has a significant effect on the outcome
2.16 of a decision, the unemployment law judge must set out the reason for crediting or
2.17 discrediting that testimony. The unemployment law judge's decision is final unless a
2.18 request for reconsideration is filed under subdivision 2.

2.19 (d) Regardless of paragraph (c), if the appealing party fails to participate in the
2.20 evidentiary hearing, the unemployment law judge has the discretion to dismiss the appeal
2.21 by summary order. By failing to participate, the appealing party is considered to have
2.22 failed to exhaust available administrative remedies unless the appealing party files a
2.23 request for reconsideration under subdivision 2 and establishes good cause for failing to
2.24 participate in the evidentiary hearing under subdivision 2, paragraph (d). Submission
2.25 of a written statement does not constitute participation. The applicant must participate
2.26 personally and appearance solely by a representative does not constitute participation.

2.27 (e) Only employees of the department who are attorneys licensed to practice law
2.28 in Minnesota may serve as the chief unemployment law judge, senior unemployment
2.29 law judges who are supervisors, or unemployment law judges. The commissioner
2.30 must designate a chief unemployment law judge. The chief unemployment law judge
2.31 may transfer to another unemployment law judge any proceedings pending before an
2.32 unemployment law judge.

2.33 (f) A full-time unemployment law judge must be paid a salary within a range directly
2.34 tied to the salary set under section 15A.083, subdivision 7, for a workers' compensation
2.35 judge. The salary paid within that range to any single unemployment law judge is based
2.36 on experience and performance.