# WEST VIRGINIA CODE CHAPTER 21a ARTICLE 7

WV Legislature

## §21A-7-1. Claims.

Claims for benefit shall be made in accordance with the rules and regulations prescribed by the commissioner.

WV Legislature

## §21A-7-2. Display of regulations.

An employer shall post and maintain in places readily accessible to individuals in his service the claim procedure regulations prescribed by the commissioner. At the time any such individual becomes unemployed, an employer shall furnish such individual with a copy of the regulations. The commissioner shall provide an employer copies of the regulations without cost.

WV Legislature

## §21A-7-3. Deputies.

The commissioner shall appoint deputies to investigate all claims, and to hear and initially determine all claims for benefits excepting claims relating to labor disputes or disqualification under subdivision four of section three, article six of this chapter.

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**§21A-7-4. Investigation by deputy; notice and hearing before deputy; referral of labor dispute claims for hearing and determination by appeal tribunal; initial determination of other claims by deputy; notice of findings and decision.**

(a) A deputy shall promptly investigate all claims.

(b) Upon the filing of any claim for benefits, notice thereof shall promptly be given by the commissioner or his designee to the employer concerned, in writing. The employer shall have a period of four calendar days from the receipt of such notice within which to furnish to the deputy or his local office initial information respecting the claim and the facts and circumstances pertaining to the claimant's unemployment. If, within said four-day period, any party shall request a hearing before the deputy, such hearing shall be held, upon notice to all parties by the commissioner or his designee, either by delivery in person or by mail, within five calendar days of receipt of such request. Such hearing shall be informal in nature, but shall afford the parties reasonable opportunity to present, in person, information relevant to the eligibility and disqualification of the claimant.

(c) If it appears from the deputy's investigation and from all of the information before him that a claim relates to a labor dispute or to a disqualification under subdivision (4), section three, article six of this chapter, the claim shall be transferred to the board for full hearing and initial determination by an appeal tribunal.

(d) If it appears from the deputy's investigation, and from all of the information before him that a claim does not relate to a labor dispute or to a disqualification under subdivision (4), section three, article six of this chapter, the deputy shall determine whether or not such claim is valid, and, if valid, shall determine:

(1) The week with respect to which benefits will commence;

(2) The amount of benefit;

(3) The maximum duration of benefits.

(e) After any finding or determination by a deputy, the deputy shall promptly notify the claimant and the employer of his findings and decision.

WV Legislature

**§21A-7-5.**

Repealed.

Acts, 1939 Reg. Sess., Ch. 134.

WV Legislature

**§21A-7-6.**

Repealed.

Acts, 1939 Reg. Sess., Ch. 134.

WV Legislature

## §21A-7-7. Appeal tribunals.

The board shall determine the manner of hearing cases transferred or appealed from a decision of a deputy. All cases relating to labor disputes or to disqualification under subdivision (4), section three, article six of this chapter, and transferred to an appeal tribunal for initial determination, shall be heard by an appeal tribunal composed either of three administrative law judges assigned by the board, or the board itself, as the board may direct in particular cases or in particular areas. All other appeals from the decision of a deputy shall be heard by an appeal tribunal composed, as the board may direct in particular cases or in particular areas, of a single administrative law judge; a tribunal of three administrative law judges assigned by the board; a member of the board; or the board itself.

WV Legislature

## §21A-7-7a. Hearings and determinations by appeal tribunal in labor dispute cases.

Upon transfer to the board of a case relating to a labor dispute or to a disqualification under subdivision four, section three, article six of this chapter, for hearing and initial determination by an appeal tribunal, the parties shall be entitled to a full and complete hearing and opportunity to present evidence before an appeal tribunal as provided in section seven of this article. Within eight days after the transfer or referral of such a case to the board, the board shall fix the time and place for hearing such case, and notify the claimant, last employer, and the commissioner, ten days in advance of the date set for hearing. All such cases shall be heard and determined as expeditiously as possible and shall be given priority over all other cases. Upon consideration of all evidence the appeal tribunal shall make a decision with respect to all questions fairly raised by the record, within fourteen days after the date of the hearing, and shall notify the claimant, last employer, and the commissioner of its findings and decisions.

WV Legislature

## §21A-7-8. Appeal from deputy's decision.

A claimant, last employer or other interested party, may file an appeal from the decision of the deputy within eight calendar days after notice of the decision has been delivered or mailed to the claimant and last employer as provided in section four of this article. The period within which an appeal from the decision of the deputy may be filed shall be stated in such notice. The decision of the deputy shall be final and benefits shall be paid or denied in accordance therewith unless an appeal is filed within such time.

Upon appeal from the determination of a deputy, an individual shall be entitled to a fair hearing and reasonable opportunity to be heard before an appeal tribunal as provided in section seven of this article.

Within eight days after receipt by the board of notice of appeal from the decision of a deputy, the board shall fix the time and place for hearing such appeal, and notify the claimant, last employer, and the commissioner, ten days in advance of the date set for hearing.

Upon consideration of all evidence the appeal tribunal shall make a decision within twenty-one days after the date of the hearing and shall notify the claimant, last employer, and the commissioner of its findings and decision.

WV Legislature

## §21A-7-9. Appeal from appeal tribunal's decision; finality of decision.

A claimant, last employer, or other interested party may file an appeal to the board from the decision of an appeal tribunal within eight calendar days after notice of the decision has been delivered or mailed to the claimant and last employer. The commissioner shall be deemed an interested party. The decision of the appeal tribunal shall be final unless an appeal is filed within such time.

WV Legislature

## §21A-7-10. Review by board.

The board may, on its own motion, after notice to the claimant, last employer, and the commissioner, eight days in advance of the date set for hearing, affirm, modify, or reverse and set aside a decision of an appeal tribunal. Any appeal from a decision of an appeal tribunal allowing benefits in a case relating to a labor dispute or to a disqualification under subdivision four, section three, article six of this chapter, shall be heard as expeditiously as possible and given priority over all other cases and shall be decided by the board within ten days after the hearing before the board.

WV Legislature

## §21A-7-11. Benefits pending appeal.

(a) Benefits found payable by decision of a deputy, appeal tribunal, the board or court shall be immediately paid up to the week in which a subsequent appellate body renders a decision, by order, finding that benefits were not or are not payable.

(b) If, at any appeal stage, benefits are found to be payable which were found before the appeal stage to be not payable, the commissioner shall immediately reinstate the payment benefits. (c) If the final decision in any case determines that a claimant was not lawfully entitled to benefits paid to him or her pursuant to a prior decision, the amount of benefits paid are considered overpaid.

(1) The commissioner shall recover such amount by civil action or in any manner provided in this code for the collection of past-due payment and shall withhold, in whole or in part, as determined by the commissioner, any future benefits payable to the individual and credit the amount against the overpayment until it is repaid in full.

(2) The commissioner may not bill an employer under section three-a, article five of this chapter for overpaid amounts of benefits paid to a claimant. In any instance where the commissioner has billed an employer, the employer has paid the billed amount and the amount is determined under this section to be an overpayment, the commissioner shall reimburse the employer for the amount of the overpayment paid by the employer from the Unemployment Compensation Trust Fund, if allowed by federal law, and if not from the Administrative Fund: Provided, That no employer shall be entitled to any payment under this subdivision unless such employer has filed all requested adequate separation information within the required time frame.

(d) If the final decision in any case determines that the claimant was not lawfully entitled to the benefits paid to him or her pursuant to a prior order any benefits paid pursuant to the prior order, are not chargeable to the employer's account.

(e) Whenever the commissioner finds that a claimant has received back pay at his or her customary wage rate from his or her employer the employee is liable to repay the benefits, if any, paid to the individual for the time he or she was unemployed.

(f) In any case in which, under this section, an employee is liable to repay benefits to the commissioner, the amount is collectible by civil action in the name of the commissioner.

(g) Whenever an employer subject to this chapter is required to make a payment of back pay to an individual who has received unemployment compensation benefits during the same period covered by the back pay award, the employer shall withhold an amount equal to the unemployment compensation benefits and shall repay the amount withheld to the Unemployment Compensation Trust Fund. If an employer fails to comply with this section, the commissioner may recover from the employer the amount of unemployment compensation benefits which should have been withheld by a civil action.

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**§21A-7-12. Quorum.**

All hearings before the board shall be before at least a quorum of its members.

WV Legislature

## §21A-7-13. Board to establish regulations for procedure.

The board shall establish, and may from time to time modify and amend, rules and regulations for:

(1) The conduct and determination of benefit cases appealed to it, or to an appeal tribunal;

(2) The form of all papers and records thereof;

(3) The time, place, and manner of hearings;

(4) Determining the rights of the parties; and the rules need not conform to the common-law or statutory rules of evidence and procedure and may provide for the determination of questions of fact according to the predominance of the evidence.

WV Legislature

## §21A-7-14. Records.

The board shall keep full and complete records of all proceedings concerning a disputed claim. All testimony upon a disputed claim shall be recorded but need not be transcribed unless the claim is appealed.

WV Legislature

## §21A-7-15. Notice of decision.

The board shall, within fifteen days after the conclusion of the hearing, notify the claimant, last employer, and the commissioner of its findings and decision on an appeal.

WV Legislature

## §21A-7-16. Interested parties not to decide disputed claims.

A person interested in the determination of any disputed claim arising under this chapter shall not participate on behalf of the commissioner or the board in the determination thereof.

WV Legislature

## §21A-7-17. Finality of board's decision — Judicial review.

The decision of the board shall be final and benefits shall be paid or denied in accordance therewith, unless a claimant, last employer, or other interested party appeals to the Intermediate Court of Appeals within 30 days after mailing of notification of the board's decision: *Provided*, That, in cases relating to a disqualification under §21A-6-3(4) of this code, the decision of the board shall be final and benefits shall be paid or denied in accordance therewith, unless a claimant, last employer, or other interested party appeals to the Intermediate Court of Appeals within 20 days after mailing of notification of the board's decision.

Parties to the proceedings before the board shall be made defendants in any such appeal; and the commissioner shall be an interested party with the discretionary authority to appear in any such judicial review.

WV Legislature

## §21A-7-18. Claim procedure costs.

Witness fees of subpoenaed witnesses shall be charged to the administration fund.

WV Legislature

**§21A-7-19. Administrative procedure to be exhausted.**

A person claiming an interest under the provisions of this article shall exhaust his remedies before the board before seeking judicial review.

WV Legislature

## §21A-7-20. Board a necessary party to judicial action; legal counsel.

[Repealed.]

WV Legislature

## §21A-7-21. Weight accorded board's findings of fact.

In a judicial proceeding to review a decision of the board, the findings of fact of the board shall have like weight to that accorded to the findings of fact of a trial chancellor or judge in equity procedure.

WV Legislature

**§21A-7-22.**

Repealed.

Acts, 1967 Reg. Sess., Ch. 200.

WV Legislature

## §21A-7-23. Trial; preference on calendar.

Except as limited by section twenty-one of this article, a decision of the board taken to the circuit court of Kanawha county for judicial review shall be tried as any other civil action: Provided, That such actions shall have preference on the calendar of the court over all other civil actions, except cases arising under the workers' compensation law.

WV Legislature

## §21A-7-24. Exceptions; appeal bond.

In any judicial proceeding arising under this chapter it shall not be necessary to enter exception to the rulings of the board and no bond shall be required for entering an appeal.

WV Legislature

**§21A-7-25. Service of process.**

Service in such action shall be upon the chairman of the board or such person as he may designate, and service upon him shall be treated as completed service upon all parties to the original dispute. With such service upon the board there shall be included a copy of the petition for review and as many additional copies as there are defendants, including the commissioner. The chairman of the board or such person as he may designate shall immediately upon receipt of service forward a copy of such service, including a copy of the petition for review, by registered mail to each defendant, including the commissioner.

WV Legislature

## §21A-7-26. Certification and filing of record; certification of questions of law.

The board shall certify and file with the court all documents and papers and a transcript of all testimony taken in a disputed claim together with its findings of fact and decision thereon.

Upon its own motion the board may also certify to the court questions of law involved in any of the board's decisions.

WV Legislature

**§21A-7-27. Appeal to Supreme Court of Appeals.**

The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

WV Legislature

## §21A-7-28. Effect of judicial decision.

Upon the final determination of such judicial proceeding the board shall enter an order in accordance with the court's determination.

WV Legislature

## §21A-7-29. Supersedeas.

A petition for judicial review shall not act as supersedeas or stay unless the board shall so order.

WV Legislature

## §21A-7-30. Appeals from administrative decisions relative to chargeability of benefits.

Appeals shall lie to the board of review, in the manner as provided in this article relating to appeal from an examiner's decision, and under such rules, regulations, and procedure as may be prescribed by the board, from an administrative decision of the commissioner relating to chargeability of benefits. Appeals shall lie from a final decision of the board of review in such case to the circuit court of Kanawha county and thence to the Supreme Court of Appeals of West Virginia within the times and in the manner as provided in this article.

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