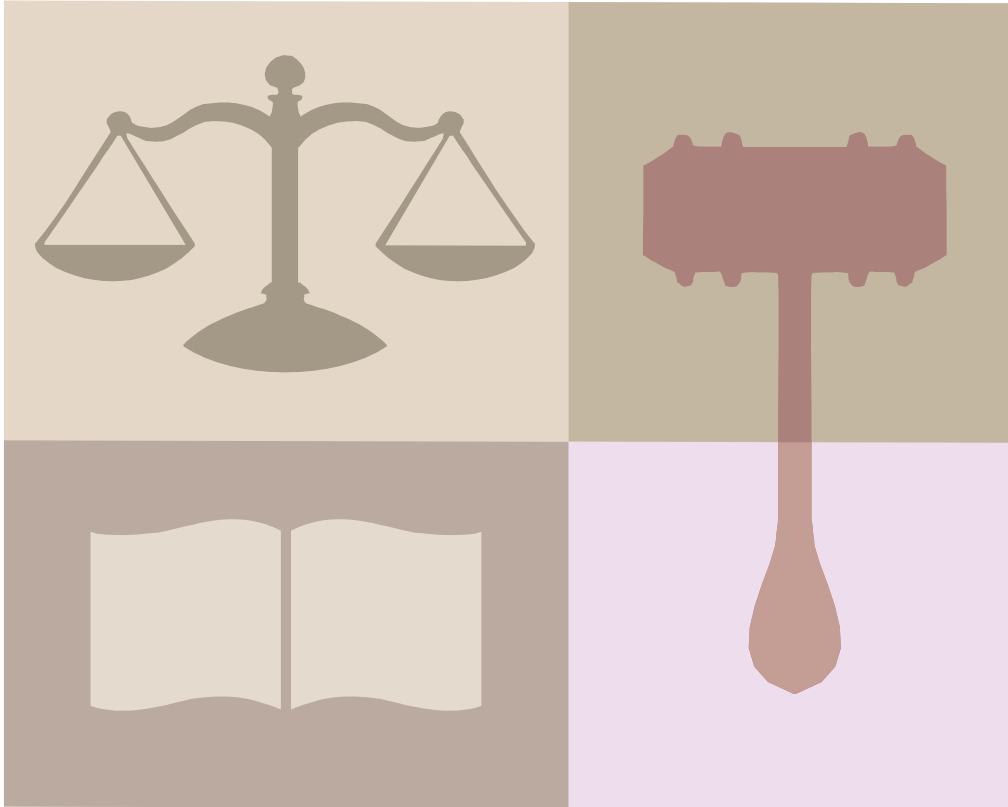


Department of Employee Trust Funds



Administrative Appeal Process



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Introduction

This brochure is designed to assist you in understanding the administrative appeals process as it relates to the Department of Employee Trust Funds (ETF). The information contained in this brochure is not intended to substitute for the legal advice or assistance of an attorney.

An administrative hearing establishes a record of facts in a particular case. The following information is designed to provide you with an outline of the administrative hearing process. You do not have to pay any filing fees or court costs. However, you are responsible for any expenses associated with hiring your own attorney or paying for witnesses to appear and testify on your behalf at the hearing.

Chapter ETF 11 of the Wisconsin Administrative Code governs appeals to the Boards of ETF.

If, after you have read the following, you have any questions relating to the appeals process, please contact the appeals coordinator at the following address:

Appeals Coordinator
Department of Employee Trust Funds
4822 Madison Yards Way P O Box 7931
Madison WI 53707-7931

Phone: (608) 267-2862

Fax: (608) 267-0633

Website: etf.wi.gov

What Is an Appeal?

A written departmental determination made by ETF may be appealed to the Employee Trust Funds Board or one of the four other Boards attached to the ETF. The nature of your appeal determines which Board hears your case. For example, the Group Insurance Board would hear an insurance appeal.

An appeal request must be in writing. When you write your appeal letter, make sure that you include your name, address, phone number and member identification number. If your appeal

concerns another Wisconsin Retirement System (WRS) participant, include his/her name and member identification number. You should also identify any facts, legal interpretations or pertinent data that apply to your appeal. An appeal may also be initiated by completing an Appeal Form (ET-4938). This form is available at the following ETF website:

<https://etf.wi.gov/resource/appeal-form> or you may contact the appeals coordinator to obtain a copy.

The appeals coordinator must receive the written appeal request within 90 days of the date of the ETF departmental determination. Appeals should be mailed to the following address: Appeals Coordinator, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707-7931.

You may also appeal your employer's determination regarding two specific issues: 1) your employer's decision to report you or not report you as a participating employee in the WRS; 2) your category of employment, such as teacher, executive, general, elected official, etc. Appeals of this type are referred to as "direct" appeals. ETF does not make a determination as to whether or not your employer is correct in their reporting decision. Your appeal is made "direct" to the Board. You may file a direct appeal by writing a letter to the appeals coordinator or sending a completed Appeal Form (ET-4938) at the above address.

Before filing an appeal, it is important to consider the facts surrounding your case. ETF is required to administer benefit programs in accordance with Wisconsin Statutes. In other words, ETF, the hearing examiner and the Boards cannot make exceptions to the law in any case or resolve a case in a manner contrary to the law. Likewise, they lack the ability to make a decision because it seems "fair" when the law clearly requires another action. The terms and conditions of some benefit programs are set by contract or administrative rule. You may wish to request and review a copy.

Parties

A “party” in a case refers to a person with a substantial interest in the particular determination being challenged. Other parties to the appeal may include ETF, any person with an interest in the benefits of the WRS participant, the employer or former employer, the insurance provider, or others with a direct interest.

The Hearing Examiner

The person who presides over the appeal process is called the hearing examiner. He/she may also be referred to as an administrative law judge. A hearing examiner is an independent/impartial person employed by the Division of Hearings and Appeals (Department of Administration) to conduct hearings on administrative appeals for certain governmental agencies. An administrative hearing establishes a record of facts in a particular case. At the hearing, you will be asked to tell your side of the story in the dispute.

Because the hearing examiner must listen impartially to the evidence, the hearing examiner will only consider facts and arguments presented when all parties have the opportunity to be present. The hearing examiner will not speak with one party about the case unless all parties are present or consent to the discussion. If you write to the hearing examiner you must also, at the same time, send a copy of your correspondence to the other parties to the appeal.

Your Right To Be Represented

You may be represented by an attorney, but you are not required to have one. You alone must make this decision. If you decide to be represented, you must choose your own attorney. If you need assistance in choosing an attorney, you may want to contact the Wisconsin State Bar Lawyer Referral and Information Service (1-800-362-9082). If you are represented by a union, your union representative may also be able to assist

you. The cost of retaining an attorney is your responsibility.

An advocate who is not a lawyer may represent you. If you decide to be represented by someone who is not a lawyer, such as a union representative, you will be asked to complete a Limited Power-of-Attorney for Appeal (ET-4944) form. This document will authorize your representative to act on your behalf in matters relating to your appeal. This form is available on the ETF website or you may contact the appeals coordinator to receive a copy of the form.

Do not wait until the last minute before deciding if you want someone to represent you. Make the decision early in the process and, if you decide you want an attorney to represent you, begin looking for one immediately. Many attorneys have cases scheduled months in advance and may not be able to take your case if you wait until the last minute to try to retain someone.

In order for your attorney or any other person acting on your behalf to receive documents from your WRS participant file or to talk with ETF staff and attorneys about your file, it is necessary for you to complete an Authorization to Disclose Non-Medical Individual Personal Information (ET-7406) form. If medical information is being disclosed, an Authorization to Disclose Medical Information (ET-7414) form is required. These forms are available on the ETF website or by contacting the appeals coordinator.

Receipt of Your Appeal

Upon receipt of your appeal, someone from the ETF appeals office will contact you to discuss your situation. They will attempt to answer any questions you might have and will review your appeal to determine if a resolution before the appeal proceeds is possible. If it is not possible to resolve the appeal, it will be referred to the Division of Hearings and Appeals for assignment to a hearing examiner.

The Prehearing Conference

The hearing examiner will contact you to schedule a prehearing conference on your appeal. The prehearing conference is an informal discussion (usually by conference call) between the parties regarding your appeal. Although there will be no testimony taken at the prehearing, the hearing examiner will expect the parties to be prepared to determine who the proper parties are, define issues to be resolved, identify factual and legal disputes, and discuss witnesses likely to be called. Following the prehearing conference, the hearing examiner issues a memorandum summarizing the discussion between the parties, specifying the issues to be resolved and making any other appropriate orders. This memorandum will control the subsequent course of the appeal.

Typically, the hearing examiner will direct the parties to stipulate to as many facts as possible prior to the actual hearing. A stipulation of facts provides a “chronology” of events, documents, correspondence and medical records. The purpose of the stipulation is to list facts the parties agree are true and to identify documents to be admitted into the record.

The Hearing

The purpose of the hearing is to receive testimony of witnesses and admit other relevant evidence offered by the parties.

A. Appearing at the Hearing

You must appear on the date specified in the notice of hearing. If you do not appear, the hearing examiner may interpret your absence as an indication that you no longer wish to pursue the matter and decide to dismiss your appeal or proceed without you.

B. Witnesses and Subpoenas

You may want to have one or more witnesses testify on your behalf. If so, you are responsible for having them appear. You may arrange for witnesses to appear voluntarily at the hearing. If a witness will not agree, you may use a subpoena to order the person to appear. Your attorney can prepare a subpoena.

If you are not represented by an attorney, the hearing examiner may sign a subpoena for you. If the hearing examiner signs a subpoena on your behalf, you must arrange to have the subpoena served on the witness. You can do this yourself as long as you prepare an affidavit of service, or you can have it done by the sheriff’s office or a private process-server.

Along with a subpoena, you must include payment to the witness of a daily fee and mileage for appearing. Each witness must be paid a witness fee of \$5 per day and mileage of 20 cents per mile, round trip, when the subpoena is served. (See Wis. Stat. § 814.67). It is also a good idea to provide directions to the hearing location. A subpoena may be written to require a witness to bring along specified documents in the possession or control of that witness.

C. How a Hearing is Conducted

A hearing is conducted similarly to a trial, but without a jury. The hearing examiner oversees the hearing and rules on procedure, evidence and objections.

Each party may present testimony and evidence. Usually the party who files the appeal presents his/her testimony and evidence first. Each party is given the opportunity to call witnesses and ask questions (direct examination). Then the other parties may ask questions of the witnesses (cross examination). Finally, each party gets an opportunity to ask follow-up questions (re-direct and re-cross examination).

D. Evidence

Generally, the appellant has the “burden of proof.” This means that you must produce witnesses, documentation and/or any other evidence, which will convince the hearing examiner to rule in your favor. In addition, other parties to your appeal, such as the ETF or your employer, may present evidence and witnesses in support of their side of the case.

The evidence presented may be documents or oral testimony from witnesses. Witnesses will be sworn to tell the truth. You may testify yourself, and another party may call you as a witness.

You should be prepared to present evidence that supports the facts of your case. Evidence or facts that are not relevant merely slow down the hearing and may be objected to by the other party and not allowed into the record by the hearing examiner.

Generally speaking, witnesses can testify only about matters of which they have personal knowledge. The hearing examiner may not base a finding of fact on “hearsay.” Although the hearing examiner might allow you to testify about what someone else told you (“hearsay”), your case is stronger if you call that person as a witness. **Mere uncorroborated “hearsay” does not constitute substantial evidence upon which an administrative decision can be based.**

Expert witnesses may be required to testify and express their opinions to verify uncorroborated “hearsay” evidence. You may be required to identify, in advance, any expert witnesses you intend to call at the hearing. Expert witnesses may be discussed at the prehearing conference.

When you bring documents that you intend to offer as evidence at your hearing, you should bring the original, a copy for the hearing examiner and copies for each party.

The hearing examiner will mark the document you offer as an exhibit and will keep this as part of the record of the appeal. It will not be returned to you. A photocopy may be offered instead of the original. Other parties may ask to compare the original to the photocopy.

E. The Transcript

A court reporter prepares a written transcript of each hearing. You may purchase a copy of the hearing transcript by contacting the appeals coordinator and paying a fee. Per ETF § 10.71

(a) Wis. Admin. Code, the charge for a transcript is a \$5.00 flat charge plus \$1.00 for each page of the transcript for single copies.

Rescheduling and Continuance

The hearing examiner will consider a request for postponement or continuance only if received within a reasonable time before the date of the hearing. A postponement or continuance may be granted by the hearing examiner as warranted by the circumstances. In addition, a postponement, continuance or extension of time may be granted upon the mutual agreement of all the parties.

Briefs

After the hearing, the parties are afforded the opportunity to file written briefs. A brief is an opportunity for you to argue your case in writing. A brief should include reference to the evidence that you believe proves your case and to the laws you believe should apply. However, a brief cannot contain additional evidence or documents that were not admitted as part of the stipulation of facts or at the hearing. All arguments must be based on the evidence in the record.

A brief can be written in the form of a letter that supports your position. There are no rules regarding the length or format for a brief.

The timing for the filing of briefs is usually discussed at the conclusion of the hearing. The parties may agree to a briefing schedule and advise the hearing examiner of the schedule, or the hearing examiner may set the briefing schedule.

The Proposed Decision

The hearing examiner is responsible for preparing a proposed decision which makes a finding of all the relevant facts of the case as stipulated or proven, recites the law that governs the case, and applies the law to the facts. The hearing examiner waits until the transcript is prepared and the deadline for filing

briefs has passed before writing the proposed decision. In some instances, such as timeliness of the appeal, the hearing examiner can issue a final decision.

When the hearing examiner issues a proposed decision, a copy is sent to all of the parties. Any party to the appeal aggrieved by the proposed decision may file objections within 20 days. Once the deadline for objections to the proposed decision has passed, the record of the appeal is copied and delivered to the Board members for consideration at an upcoming meeting of the Board.

The Final Decision

After the proposed decision has been issued, your appeal is placed on the agenda of an upcoming meeting of the appropriate Board. At a scheduled meeting, the Board confers with its own legal counsel regarding the appeal. While parties are welcome to attend the open portions of the meeting, the Board will go into closed session to consider the appeal, as permitted under Wis. Stats. § 19.85(a). The parties cannot participate in the closed session. At the conclusion of the meeting, the Board will announce the decision made during closed session. The Board can make any of the following types of decisions:

1. Accept the hearing examiner's proposed decision and order;
2. Accept the hearing examiner's proposed decision and order with some changes;
3. Adopt a different decision;
4. Remand the appeal back to the hearing examiner for further action.

A copy of the final decision is sent to all parties, usually within 90 days after the Board meeting. A notice of appeal rights accompanies it. Any party who disagrees with the final decision may make an appeal to the Dane County Circuit Court for review. Judicial review is by certiorari

action which must be commenced within 30 days after the Board decision to be timely.

Questions

If you have other questions about the appeals process, contact the appeals coordinator at (608) 267-2862.

If you are speech, hearing or visually impaired and wish to request any special accommodations during the appeal process, contact the appeals coordinator at (608) 267-2862.

The Department of Employee Trust Funds does not discriminate on the basis of disability in the provision of programs, services or employment

Contact ETF



etf.wi.gov

Find ETF-administered benefits information, forms, brochures, benefit calculators, educational offerings and other online resources. Stay connected with:

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7:00 a.m. to 5:00 p.m. (CST), Monday-Friday

Benefit specialists are available to answer questions.

Wisconsin Relay: 711



PO Box 7931

Madison, WI 53707-7931

Write ETF or return forms.

