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Proposed Rule Amendments to Good Cause

PART XII GOOD CAUSE

12.1 DETERMINATION OF GOOD CAUSE

12.1.1 Statutory References: 8-73-107 (1)(h), 8-73-108 (5)(e)(XVIII)(XIX), 8-74-102, 8-74-106, 8-76-110 (2)(g), 8-76-110 (4)(e), 8-76-113, and 8-79-104 (1)(d), C.R.S.

12.1.7 Appeals. ~~If any interested party objects to a determination of the chief hearing officer or designee or the panel, based solely on written documents, that A REBUTTABLE PRESUMPTION OF good cause exists for an untimely appeal from a deputy's decision; or objects to a determination of the chief hearing officer or designee or panel BASED SOLELY ON WRITTEN DOCUMENTS THAT THERE IS GOOD CAUSE FOR AN UNTIMELY APPEAL, that excuses the failure to appear for a hearing or determines that good cause exists for an untimely request for a new hearing; or objects to a determination that good cause exists for accepting an untimely appeal and a new hearing is required because the complete record of the proceedings is no longer available,~~ that interested party may present its objections at the hearing scheduled on the issues in dispute.

- .1 The hearing officer shall consider all information in support of or in opposition to the good cause determination presented by the interested parties, including all objections and responses and supporting evidence. The hearing officer shall determine if good cause exists for permitting the untimely appeal or excusing the failure to appear or excusing the untimely request for a new hearing based on the evidence presented.
- .2 However, if the hearing officer does not find the facts to be different than those already considered, the hearing officer shall not disturb the prior determination of good cause, and the hearing will proceed on the merits of the issues in dispute. If good cause is overturned, the hearing will be terminated and any previously vacated hearing officer's decision on the merits of the appeal shall be reinstated.

12.1.8 Substantive Guidelines. In determining whether good cause has been shown for permitting an untimely action or excusing the failure to act as required, the division ~~and~~ OR the panel may consider:

- .1 ~~any relevant factors including, but not limited to, whether the party acted in the manner that a reasonably prudent individual would have acted under the same or similar circumstances; whether the untimely action or failure to act resulted from circumstances that would cause a reasonably careful individual to neglect a duty, whether the party received timely notice of the need to act;~~
- .2 whether there was administrative error by the division;

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- ~~.3 whether there were factors outside the control of the party that prevented a timely action or interfered with the opportunity to act~~ WHETHER THE PARTY EXERCISED CONTROL OVER THE UNTIMELY ACTION, except that the acts and omissions of a party's authorized representative are considered the acts and omissions of the party and are not considered to be a factor outside the party's control as intended by this rule;;
- ~~.4 the efforts made by the party to seek an extension of time by promptly notifying the division, the party's physical inability to act or take timely action,~~ the length of time the action was untimely;;
- ~~.5 whether any other interested party has been prejudiced by the failure to act or untimely action, the apparent merits of the party's underlying position, and the overall interests of an accurate and fair resolution of the underlying issue to be decided.,~~"PREJUDICED," AS USED IN THIS SECTION, MEANS THAT AN INTERESTED PARTY WILL BE PREVENTED FROM PRESENTING OR SUBSTANTIALLY HINDERED FROM PRESENTING PROBATIVE EVIDENCE IN SUPPORT OF THE INTERESTED PARTY'S POSITION OR IN THE ABILITY TO REFUTE THE POSITION OF THE OPPOSING PARTY; AND
- ~~.6 WHETHER DENYING GOOD CAUSE WOULD LEAD TO A RESULT THAT IS INCONSISTENT WITH THE LAW. "Prejudice," as used in this section, means that an interested party will be prevented from presenting or substantially hindered from presenting probative evidence in support of the interested party's position or in the ability to refute the position of the opposing party.~~
- ~~.7 However, g~~Good cause cannot be established to accept or permit an untimely action or to excuse the failure to act, as required, that was caused by the party's failure to keep the division directly and promptly informed by a written, signed statement of his or her current and correct mailing address in person, by mail, by facsimile machine, OR by OTHER division-approved electronic means, ~~or by CUBLine, the division's interactive voice response system.~~ This provision shall not apply if it is determined THE PARTY ESTABLISHES that the party HE OR SHE reasonably believed that the division would not have any need for his or her new address under the circumstances ~~or if the party was physically or mentally unable to provide the address in a prompt manner.~~
- ~~.8 A written decision concerning the existence of good cause need not contain findings of fact on every relevant factor, but the basis for the decision must be apparent from the order.~~
- ~~.9 UNLESS OTHERWISE PROVIDED BY LAW, NO ACT SUBJECT TO THIS SECTION SHALL BE PERMITTED MORE THAN 180 DAYS BEYOND THE APPLICABLE TIMELY DATE.~~

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PART II. CLAIM FOR BENEFITS

2.1 REGISTRATION AND FILING CLAIMS

2.1.1 Statutory References. 8-7-111 (2)(a), 8-70-112, 8-73-107 (1)(a)(b)(e)(h), and 8-74-101 (1), C.R.S.

2.1.10 Exceptions to Time Limits. Acts under this section 2.1 may be permitted out of time only under limited circumstances, but regardless of whether an individual has met the requirements of this section 2.1.10, no act under this section 2.1 shall be permitted more than ~~six months~~ 180 DAYS beyond the last day of the applicable time period. Exceptions for untimely act that occur within the allotted ~~six months~~ 180 DAYS may be granted only if the following standards apply.