

**11.2.9 Conduct of Hearing.** Hearings shall be conducted informally with as few technical requirements as possible. The hearing officer shall control the evidence taken during a hearing in a manner best suited to fully and fairly develop the relevant evidence, safeguard the rights of all parties, and ascertain the substantive rights of the parties based on the merits of the issue(s) to be decided. The appealing party shall be required to present evidence that supports the party's position on the issues raised by the appeal. Parties to the appeal may present any relevant evidence. However, the hearing officer is charged with ensuring that the record is fully developed to the extent practicable based on the evidence reasonably available at the time of the hearing, whether or not a party is represented. Therefore, the hearing officer should oversee the development of the evidence and participate in the interrogation process to the extent necessary to fully develop the record.

. 1 Parties and witnesses ordinarily may elect to participate in a hearing in person or SHALL ORDINARILY PARTICIPATE by telephone. However, based on the individual circumstances of a case, the chief hearing officer or designee shall have the discretion to determine which THE method of participation, in person or by telephone, THAT will best achieve the purposes of this rule 11.2.9 and to order the parties to participate in that manner. The in person presence of some parties or witnesses at the hearing shall not prevent the participation of other parties or witnesses by telephone. Sworn testimony from witnesses shall be received during telephone hearings under the same rules as other hearings.

. 2 An interested party to a hearing must submit to the hearing officer any documents, subpoenaed documents, and any physical exhibits that can be reproduced that he or she intends to introduce at the hearing. Such materials must be submitted in time to ensure that the hearing officer receives them before the date of the scheduled hearing. Such party must also provide copies of all documents and physical exhibits sent to the hearing officer to any other interested party to the hearing or to that interested party's representative as shown on the hearing notice, in time to ensure the materials are received prior to the date of the scheduled hearing. Failure to timely submit such materials to the hearing officer, or to timely send the materials to the opposing party or such party's representative may result in their exclusion from the record. However, if a party has made a good faith effort to provide documents or physical exhibits in time to be received prior to the hearing, such materials shall not be excluded due to the failure of the hearing officer, the other interested party, or an interested party's representative to receive the materials. In any appropriate case where documents have been timely sent but not received in advance, an adjournment of the hearing may be permitted by the hearing officer pursuant to rule 11.2.11 unless waived on the record by both parties.

. 3 Hearing Procedure. Prior to taking evidence, the hearing officer shall state the issues and the order in which evidence will be received. The hearing officer also shall inform the parties of any written documents or other tangible materials that have been received and explain the procedure for introducing the materials and offering them into evidence. The sequence of receiving testimony shall be in the hearing officer's discretion. Computer records of the division concerning continued weeks claimed or payment for continued weeks claimed are

admissible as evidence and may be filed in the record as evidence without formal identification if relevant to the issues raised by the appeal. The hearing officer also may consider any other relevant division file documents without a formal request or identification. However, parties shall be advised during the hearing of the division records and documents to be considered. All physical materials offered into the record shall be clearly identified and marked. Further, materials admitted shall be expressly received for the record. The hearing officer shall permit the parties to testify on their own behalf and present witnesses, and opposing parties may cross-examine each other and the others' witnesses. The hearing officer shall examine the parties and witnesses as necessary and, after notice to the parties, may hear such additional evidence as deemed necessary. All testimony shall be presented under oath and the hearing shall be timed. At the conclusion of the hearing, the hearing officer shall inform the parties of the time consumed by the hearing and the approximate cost of the preparation of the transcript of the hearing, if any, and shall instruct the parties that a decision will be promptly issued as to the issues brought forth at the hearing. The hearing officer shall also instruct the parties that such decision may be appealed and, if applicable, that the appellant must bear the cost of preparation of a transcript. The sum paid may, at a later date, be reimbursed by the panel without interest, if such appeal results in a decision favorable to the appellant. It shall also be stated to the parties that the cost of preparation of the transcript may be waived pursuant to rule 11.2.15. The hearing officer shall verify the accuracy of the addresses on file for the parties.

4 New Issues. Parties are entitled to advance notice of the factual issues that may be considered at a hearing. The hearing officer shall not permit an interested party to present factual issues at a hearing that have not been disclosed to the other interested party(ies) in writing, as shown by the claim file. If good cause, as set forth in rule 12.1.8, is found for a party not providing proper notice of the factual issues it intends to present, the hearing officer may adjourn the hearing. If good cause is not found, the hearing shall proceed as scheduled, and those new factual issues raised shall not be considered. In determining whether there is good cause for permitting a new factual issue, the hearing officer shall give substantial weight to an absence of prejudice to the other interested party and to the overall interests of an accurate and fair resolution. An interested party may, at the hearing, waive the requirement that it be provided with proper notice.

5 Based on the individual circumstances of a case, the chief hearing officer or designee shall have the discretion to determine which method of participation, in person or by telephone, will best achieve the purposes of this regulation 11.2.9 and to order the parties to participate in that manner.

### 11.2.13 Failure to Appear.

1 Appealing Party. If the appealing party fails to appear at the time of the hearing before the hearing officer PARTICIPATE IN THE HEARING AS DIRECTED, the appeal shall be dismissed and the decision that was the subject of the appeal shall become final. Written notice that the appeal has been dismissed shall be provided to the interested parties named in the caption. The appealing party may request that the appeal be reinstated and the hearing be

rescheduled pursuant to the procedures set forth in part XII of the regulations. The request must be received by the division within twenty calendar days after the date the dismissal notice was mailed by the division. An untimely request that a hearing be rescheduled may be permitted by the division for good cause shown, pursuant to the procedure set forth in part XII of the regulations.

**2. Nonappealing Party.** If any other interested party fails to appear PARTICIPATE AS DIRECTED for a scheduled hearing, and a decision is issued by a hearing officer on the merits of the appeal, the party who failed to appear PARTICIPATE AS DIRECTED may request that a new hearing be scheduled either by filing a written request with the panel or filing a written appeal from the hearing officer's decision. The written statement shall include details, pursuant to part XII of the regulations, to establish that he or she had good cause for the failure to appear for PARTICIPATE IN the appeal hearing. The request for a new hearing shall be filed with the panel in person, by mail, by facsimile machine, by panel-approved electronic means, or at a public employment office, the central office of the division, the office where the hearing officer is located, or by division-approved electronic means and shall be received by the panel within twenty calendar days after the date mailed on the hearing officer's decision. An untimely request for a new hearing may be permitted by the panel for good cause shown, pursuant to the procedure set forth in part XII of the regulations. If it is determined that the party has shown good cause for the failure to appear PARTICIPATE, the hearing officer's decision that was issued on the merits of the appeal shall be vacated and a new hearing scheduled forthwith.

**12.1.3 Procedure.**

**1. Whenever an interested party files an untimely appeal from a deputy's decision, a**

rebuttable presumption of good cause shall be established and a hearing shall be scheduled unless the appeal was received more than 180 days beyond the expiration of the timely filing period. The notice of hearing shall contain a statement indicating that the appeal was filed beyond the expiration of the timely filing period and that the nonappealing party may object to the hearing being granted at the time of the new hearing. If the nonappealing party fails at the time of the hearing to object to the hearing proceeding, that party waives the opportunity to object to the hearing going forward. If the nonappealing party objects at the time of the hearing to the matter being scheduled, the hearing officer shall determine whether good cause has been shown, pursuant to section 12.1.8, for permitting the untimely appeal. If the hearing officer determines that good cause has been shown for permitting the untimely appeal, the hearing shall proceed. If the hearing officer determines that good cause has not been shown for permitting the untimely appeal, the appeal shall be dismissed.

2. In the event an interested party files an untimely appeal from a deputy's decision or makes a request for a new hearing and the appeal or hearing request is received more than 180 days beyond the expiration of the timely filing period, good cause may not be established, a hearing shall not be scheduled, the appeal shall be dismissed, and the deputy's decision shall become final.

3. Whenever an interested party files an untimely appeal from a hearing officer's decision, or fails to appear for a hearing held on an appeal from a deputy's decision and has filed a request for a new hearing, the panel shall determine if good cause has been shown, pursuant to section 12.1.8, for permitting the untimely appeal or excusing the failure to appear PARTICIPATE IN THE HEARING AS DIRECTED. The panel shall make a determination of good cause only if the untimely appeal or request for new hearing contains a statement of the reasons for which the party failed to act in a timely manner or if information within the appeal file supports a determination of good cause. If the party's untimely appeal or request for a new hearing does not establish good cause, the panel may request an explanation in writing, by postal mail, by approved electronic means, or by telephone. The party shall respond to any such request within ten days.

4. Whenever an appeal from a deputy's decision has been dismissed because the appealing party failed to appear PARTICIPATE AS DIRECTED IN A scheduled hearing, a rebuttable presumption of good cause shall be established and a new hearing shall be scheduled. The notice of the new hearing shall contain a statement indicating that the hearing is being rescheduled because the appealing party did not appear PARTICIPATE IN the prior hearing AS DIRECTED and that the nonappealing party may object at the beginning of the new hearing to the matter being rescheduled. If, at the time of the new hearing, the nonappealing party objects to the matter being rescheduled, the hearing officer shall determine whether good cause has been shown, pursuant to section 12.1.8, to excuse the failure to appear PARTICIPATE IN THE HEARING AS DIRECTED. If, at the time of the hearing, the nonappealing party fails to object to the hearing proceeding, that party waives the opportunity to object to the hearing going forward. If the hearing officer determines that good cause has been shown to excuse the failure to appear PARTICIPATE IN THE HEARING AS DIRECTED, the hearing on the deputy's decision shall proceed. If the hearing officer determines that good cause has not been shown to excuse the failure to appear PARTICIPATE IN THE HEARING AS DIRECTED, the appeal shall be dismissed.

5. Notwithstanding these provisions, good cause may not be established for the failure of an appealing party to appear PARTICIPATE IN a second hearing AS DIRECTED which was set because that party failed to appear PARTICIPATE AS DIRECTED IN the first hearing. In the event that the appealing party fails to appear PARTICIPATE AS DIRECTED IN the first setting of a hearing on a deputy's decision and then subsequently fails to appear PARTICIPATE AS DIRECTED IN the second setting of a hearing, the appeal shall be dismissed and the deputy's decision shall become final. Under such circumstances, the division shall issue a notice to all interested parties that the appeal has been dismissed and that no further rescheduled hearings shall be granted.