

UNEMPLOYMENT INSURANCE
DISASTER UNEMPLOYMENT ASSISTANCE HANDBOOK

APPEALS

INTRODUCTION

1. **Appeals and Fair Hearings.** There are different procedures for handling appeals and having a fair hearing under the law of a state with an approved UI law and filing an appeal and having a fair hearing in Guam, American Samoa, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, or the Republic of the Marshall Islands (hereafter referred to as the South Pacific Island jurisdictions).

In all jurisdictions, however, a DUA applicant or an authorized legal representative on behalf of an incapacitated or deceased applicant may appeal any determination or reconsidered determination as to the applicant's eligibility for DUA payments or the amount of any payment as set forth below.

Employers are not interested parties to a DUA claim, and, hence, have no appeal rights, nor should they be furnished any copies of DUA decisions, because the information of the applicant is confidential.

FIRST LEVEL APPEAL2. **First Level Appeal of Determination or Redetermination.**

a. **Appeal Period.** Any DUA monetary or nonmonetary determination or redetermination may be appealed within **60 days** of the date the determination or redetermination is issued (in person) or mailed to the individual. The appeal will be made in accordance with State law to the first level administrative appellate authority in the applicable State. (*See 20 CFR 625.10(a)(1).*)

In the case of the South Pacific Island jurisdictions, the appeal will be made to the agency designated to administer the DUA program for the declared disaster. (*20 CFR 625.30(6)*)

b. **First Level Appeal Hearing and Decision.** The State must provide an opportunity for a fair hearing, which must be scheduled and conducted promptly. The applicant must be notified in writing of the decision of the appellate authority, which must include the reasons for the decision, no later than 30 days after the receipt or postmark date of the appeal to the State. The Secretary's Standard for Appeals Promptness (20 CFR Part 650) applicable to UC claims **does not** apply to DUA (20 CFR 625.10(e)(1)). **All** first level (state agency) DUA decisions must be issued within 30 days of the appeal in order to permit any second level decisions (Regional Administrator) to meet the requirements of Section 423 of the Stafford Act. (*See also 20 CFR 625.10(a)(1) and 625.10(e).*)

In the case of the South Pacific Island jurisdictions, the opportunity for a fair hearing and notice of decision will be handled in accordance with the procedures set forth in 20 CFR 625.30. (See 20 CFR 625.10(b)(1).)

The appeal decision will contain a notice of the individual's right to review by the appropriate ETA Regional Administrator (RA), if requested, within 15 days after the decision was mailed or delivered in person to the individual. It must also contain instructions for obtaining such review, including the name and address of the RA. The decision must also be provided to the State agency (with the same notice of the right to review) and the appropriate RA¹. (See 20 CFR 625.10(a)(2).)

HIGHER REVIEW

3. Review by the Regional Administrator. Under 20 CFR 625.10(c), the appropriate RA, upon request for review by an applicant or a state agency, will or may upon his or her own motion, review a decision rendered by the state agency in accordance with 20 CFR 625.10(a).

a. Request Period. Requests for review by an applicant or State agency will be filed (**within 15 days** after the issuance or mailing of the notice of the first level decision) directly with the RA or through the appropriate State agency for transmittal to the RA for the region in which the State is located. If a request for review is made by the State agency, a copy of the request will be served personally or mailed promptly to the applicant at the applicant's last known address. A review may also be undertaken by the RA's own motion within 15 days after notice of the decision. When a review is undertaken on the RA's own motion, the RA will promptly notify the applicant personally or by mail at the applicant's last known address, and will notify the State agency. Upon receipt of a request for review by an applicant or the State agency, or when the RA so requests, the State agency will forward the entire record to the RA.

b. Regional Administrator's Decision. The decision of the RA will be made not later than the earlier of: (1) 45 days after the appeal was received or undertaken, or (2) 90 days from the date the individual's original appeal of the State agency determination or redetermination was received/postmarked by the State agency (Required by Section 423 of the Stafford Act). The RA's notice of decision will be mailed promptly to the last known address of the applicant, to the State agency, and the USDOL Office of Workforce Security Administrator. The decision of the RA will be the final and conclusive administrative decision unless a review is requested by the Assistant Secretary for ETA. (See 20 CFR 625.10(c)(5)).

¹ Under 20 CFR 625.10(b)(2), the applicable for the South Pacific Island jurisdictions is the ETA RA for Region IX (San Francisco).

4. Transmittal of Appeals Decisions to the Office of Workforce Security (OWS). State agencies will promptly submit one copy of any appeal decision issued by them pertaining to DUA to the appropriate RA. Under 20 CFR 625.10(c)(5), RAs must promptly submit one copy of any DUA appeal decision to the following address:

U.S. Department of Labor, ETA
Attn: Office of Workforce Security (OWS/DUO)
Frances Perkins Building
200 Constitution Avenue, N.W.
Washington, D. C. 20210

5. Review by the Assistant Secretary (ETA). The Assistant Secretary for ETA, on his or her own motion, may review any decision issued by an RA. Notice of a motion for review by the Assistant Secretary will be given to the applicant, the State agency of the applicable State, the appropriate RA, and the OWS Administrator.

When the RA and the State agency are notified of a motion for such a review, they will forward the record in the case to the Assistant Secretary. All written contentions on evidence requested by the Assistant Secretary and any further evidence or arguments offered by the applicant, the State agency, the RA or the Administrator of OWS will be mailed to the Assistant Secretary within 15 days after the mailing of notice of motion for review.

Upon review, the Assistant Secretary may affirm, modify or reverse the decision, or remand it for further proceedings. The decision of the Assistant Secretary will be final, conclusive and binding on all interested parties, and will be precedent applicable throughout the States, including the South Pacific Island jurisdictions. (*See 20 CFR 625.10(d)*).

6. Procedural Requirements. In addition to the requirement that a first level appeal decision must be issued within 30 days of the appeal, the regulatory provisions on the right of appeal and opportunity for a fair hearing and request for review shall be consistent with 20 CFR Part 625 and with Sections 303(a)(1) and 303(a)(3) of the Social Security Act (42 U.S.C. 503(a)(1) and 503(a)(3)). (*See 20 CFR 625.10(e)(2)*).

Any petition or other matter required to be filed within a time limit under 20 CFR 625.10, shall be deemed to be filed at the time it is delivered to an appropriate office, or at the time of the postmark if it is mailed via the United States Postal Service to an appropriate office. If any time period specific in 20 CFR 625.10 ends on a Saturday, Sunday, or a legal holiday in the major disaster area, the time limit shall be extended to the next business day. (*See 20 CFR 625.10(e)(3) and (4)*).

Following the correct procedures for the right of appeal and opportunity for a fair hearing is important in that, if an individual were to appeal a RA's or Assistant Secretary's decision to a Federal District Court, the Court is limited to a review under the Administrative Procedure Act to "challenges to final administrative action".