there may be less need for the appeal tribunal to interrogate. At the same time, the appeal tribunal should maintain control and guide the development of the case, rather than merely permit opposing counsel to "fight it out." To the extent that any representative fails to elicit the necessary information, the appeal tribunal should interrogate to develop this information.

C. Nonappearance of Parties

Appeals should not be dismissed automatically because one or both of the parties fail to appear at the hearing. The appeal tribunal should award or deny benefits only if the ascertainable facts justify it.

If one or both parties fail to appear, the appeal tribunal should proceed with the hearing and obtain the testimony of those present. On the basis of the testimony and the record, the appeal tribunal may decide the case. It should reopen the case, however, upon receiving a timely request and a showing of "good cause" for nonappearance. However, if the appeal tribunal finds that additional evidence is needed for the proper adjudication of the claim, it is the obligation of the appeal tribunal to postpone the hearing in order to secure the testimony of the parties or witnesses or the documentary evidence which is needed.

If neither party appears at the hearing, and the record consists solely of the administrative file, the appeal notice, and the notice of hearing, the appeal tribunal should issue a notice of dismissal of the appeal which contains a notice of right to reopen.

D. Record of Hearing

1. Developing the Hearing Record. The hearing record compiled by an appeal tribunal must be clear and complete. Such a record becomes the basis for the Appeal tribunal's findings of fact and may become the record that is reviewed by the board of review or a court. It is essential, therefore, that the appeal tribunal prepares the hearing record with great care.

   Evidence must be in the record to support each of the findings of fact. All documents considered by the appeal tribunal in making its decision, including the administrative file, should be expressly received for the record and clearly identified. Testimony should be given under oath or affirmation and should be recorded verbatim. The record should clearly show the identity of the person speaking and of those of whom he speaks. For example, persons referred to as "he" "you," etc., should be identified for the record. Further, proper names should be spelled out for the record when they are first mentioned.

2. Transcript of Record. The record of the hearing need not be transcribed unless there is a further appeal. When the record is transcribed, the parties to the appeal should be given an opportunity to read and copy the transcript and the contents of the case file. They should also be given the opportunity to correct the record and transcript in connection

with an appeal. If informational material is given to parties they should be advised of these rights, and the right to purchase a copy of the transcript, authorized by the State law or practice.

E. Decision

1. Need for a Written Decision. An appeal tribunal's decision should be in writing. It serves many purposes, the most important which is to help the parties to understand the outcome of the case and the findings of fact and conclusions of law upon which the decision was based. It is only through such an understanding that the parties have an adequate basis for deciding whether to institute a further appeal. For the State agency, the appeal tribunal's decisions show how the law is applied to various sets of facts, and so serve as a guide today-to-day administration. For the public, the appeal tribunal's decisions illustrate, in a specific way, just how the program works. Finally, if an appeal is taken to the courts, the inclusion of clear and convincing reasoning in an appeal tribunal's decision will explain and support is findings of fact and conclusions of law.

   To accomplish these purposes, the decision should be written in clear, nontechnical language that will be understood by laymen. The decision should include all essential points and should omit nonessential detail.

2. Prompt Preparation of Decision. It is essential that an appeal tribunal's decision be prepared promptly, since benefits in dispute may have been withheld pending the outcome of the appeal. It is administratively desirable, if only for guidance, to fix a specific number of days after the conclusion of the hearing within which the decision should be written and issued.

3. Content of Decision. It is not essential that a particular format be followed in the preparation of a decision. However, the decision should contain the following information;

   a. the names and identification of the parties;
   b. appearances;
   c. recital of jurisdiction of appeal tribunal;
   d. decision number;
   e. date of appeal;
   f. place and date of hearing;
   g. date of mailing decision,
   h. authority making decision;
   i. a brief recital of the decision under review;

j. a clear statement of the issue(s) involved, i.e., of the subject matter in controversy;

k. the appeal tribunal's findings of fact and conclusion of law;

l. a statement of rationale, explaining why the facts found lead to the conclusions of law which were reached;

m. the administrative action taken, e.g., the extent to which benefits are allowed or disallowed, directions to the administrative agency for further proceedings, or other orders for disposition of the appeal;

n. a statement (notice) of right to further appeal and the time limit for filing appeal; also, information as to the places and methods of filing appeal should be contained either in the notice of appeal rights or in separate informational material referred to in the notice. If the State law permits extension of the appeal period for good cause, such information also should be given.

4. Findings of Fact, conclusions of Law, and Reasoning. Well developed decision of an appeal tribunal contain findings of fact, conclusions of law, and reasoning. Each of these elements is considered below:

   a. Findings of Fact. The appeal tribunal's written decision should contain all relevant findings of fact supported by the record, and only such findings. Thus, before starting to write or to dictate its decision, an appeal tribunal first should make a careful review of the evidence. It is the appeal tribunal's responsibility to consider the reliability of the evidence offered, and the inherent probability or improbability of its truth. Accordingly, it is necessary that the tribunal evaluate the credibility of witnesses, including as necessary that the tribunal evaluate the credibility of witnesses, including as necessary, their character, reputation, and demeanor, as well as the actual testimony received from them.

      The facts which the evidence establishes should be recited, not the testimony. The findings need not be elaborate in form or content, but should be complete, concise, and stated in specific terms so as to support the conclusions of law.

   b. Conclusions of Law. A conclusion of law represents the appeal tribunal's application of law to the findings of fact in a particular case. There should be conclusions of law each of the elements of proof required to support the decision on each of the issues.

   c. Reasoning. An appeal tribunal should include in its decision a statement of its reasoning, even though the reason may appear self-evident. The reasoning explains the decision. It serves to bridge the gap between the findings of fact and the conclusion of law. Example: The claimant left work without notice to the employer because he heard a rumor of an imminent layoff. He was held to have left work voluntarily without good cause. Rationale. When he left without

notice, he foreclosed any opportunity for the employer to affirm or deny the rumor, and in fact, the rumor was without any foundation.

5. Mailing of Decision. A written copy of the appeal tribunal's decision should be mailed to each interested party. (See D.2., page 26 and 3.n., page 27.)

VI. Evidence

Simple and informal proceedings are appropriate to unemployment insurance hearings for many reasons, including the need for promptness in the final disposition of benefit rights and the fact that claimants generally are not represented because the small sums of money involved usually do not warrant the expense of paid representation. Accordingly, the statutes and rules of procedure governing such hearings generally provide that appeal tribunals are not bound by common law or statutory rules or evidence, or by common law or statutory rules of evidence, or by technical or formal rules of procedure.

Moreover, trial techniques and technicalities of legal proof characteristic of court proceedings are out of place in unemployment insurance hearings, and the exclusionary rules applicable to admissibility of evidence in court proceedings should not be adopted or used. Any evidence pertaining to the issues in a case should be received as a matter of course. Although evidence which is not relevant or which is repetitious or technical rules of exclusion to preclude admission of such evidence. If a hearing is properly controlled and guided by the appeal tribunal, few problems of irrelevant or repetitious evidence should arise.

By dispensing with exclusionary rules of evidence in unemployment insurance hearings, appeal tribunals avoid the somewhat artificial question of what evidence should be admitted or excluded. The much more important and practical question is the weight that should be given to particular evidence. The liberal practice in admitting evidence, however, imposes upon the appeal tribunal a greater responsibility in weighing the evidence received.

Every finding of fact should be supported by evidence which is sufficient in both qualify and quantity. The quality of evidence desired is best characterized in a decision of Judge Learned Hand as "the kind of evidence on which responsible persons are accustomed to rely in serious affairs." In other words, the quality is the same as that upon which thinking people make important decisions affecting their personal lives and business affairs. "Quality" thus has reference simply to the trustworthiness of evidence. It is implicit that side of the issue on which the evidence is the most credible.

The quantity of evidence desired to support a decision on an issue should be sufficient credible evidence that a court, upon reviewing the decision, would conclude that is supported by substantial evidence. The quantity of evidence required under the substantial evidence test has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. In order to be substantial, evidence must be strong enough to raise a presumption of fact and must be sufficient, when undenied, to establish the fact.

3. Consolidated Hearings. In a hearing on consolidated appeals all of the cases are heard, although with the agreement of the parties evidence introduced in one case may be considered equally applicable to other cases.
4. Token Hearings. This procedure is initiated by the parties and the appeal tribunal agreeing in advance that the hearing and decision in the test case selected by the parties and the appeal tribunal shall apply to and be binding upon all of the parties. All of the parties to be bound by the final decision in the test case are represented in the test case hearing and any appeal from the decision following such hearing. The parties' representative usually would be one or more attorneys, or might be a union officer or employee.
5. Individual Rights of Fair Hearing. Great care should be exercised to preserve fair hearing rights or individuals involved in consolidated appeals and token hearings. To insure that the representatives may act for the parties, and that the parties consent to the procedure and to the acts and agreements of their representatives, each of the parties should affirmatively authorize the representatives to act for him in the case. Further, all parties should be permitted to attend the hearings and should receive individual copies of all decisions in the case.