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2023 Edition

Unemployment Compensation Appeals in Connecticut

A Guide to Resources in the Law Library

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Prepared by Connecticut Judicial Branch, Superior Court Operations, Judge Support Services, Law Library Services Unit

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- "We set forth a brief road map of the unemployment compensation appeals process. The administrator can investigate claimants receiving benefits. General Statutes § 31-241(a). After such an investigation, an appeal from the administrator's decision and a request for a hearing before an adjudicator may be made. General Statutes § 31-241(a). If the adjudicator denies the claimant unemployment benefits, the claimant can then appeal the adjudicator's determination to an appeals referee for a de novo review of the claim. General Statutes § 31-242. The referee's determination may then be appealed to the employment security board of review; General Statutes § 31-249; whose subsequent determination may then be appealed to the Superior Court. General Statutes § 31-249b." Manukyan v. Administrator, Unemployment Compensation Act, 139 Conn. App. 26, footnote 1 (pp. 28-29), 54 A.3d 602 (2012).

- "At any time before the board's decision has become final, any party, including the administrator, may appeal such decision, including any claim that the decision violates statutory or constitutional provisions, to the superior court for the judicial district of Hartford or for the judicial district wherein the appellant resides." Conn. Gen. Stat. § 31-249b (2021).

- "Appeals from the board of review to the superior court are exempt from the Uniform Administrative Procedure Act codified at General Statutes § 4-166 et seq. General Statutes § 4-186. Appeals of this nature are governed by General Statutes § 31-222 et seq., the Unemployment Compensation Act." Glenn v. Unemployment Comp., Superior Court, Judicial District of Waterbury, No. CV040183331S (2004 WL 1392632) (2004 Conn. Super. Lexis 1489) (June 4, 2004).

- "In appeals of this nature, the Superior Court sits as an appellate court to review only the record certified and filed by the board. . . *Burnham v. Administrator*, 184 Conn. 317, 321, 439 A.2d 1008 (1981)." Lazarchek v. Unemployment Compensation Act, 1 Conn App 591, 594, 474 A.2d 465 (1984).

- "'[R]eview of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support the agency's findings of basic fact and whether the conclusions drawn from those facts are reasonable.... Neither this court nor the trial court may retry the case or substitute its own judgment for that of the administrative agency on the weight of the evidence or questions of fact.... Our ultimate duty is to determine, in view of all of the evidence, whether the agency, in issuing its order, acted unreasonably, arbitrarily, illegally or in abuse of its discretion.'" JSF Promotions, Inc. v. Administrator, Unemployment Compensation Act, 265 Conn. 413, 417, 828 A2d 609 (2003).

Section 1: Appeal to Employment Security (Appeals Division) Board of Review

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources related to the law and procedure on appealing a decision of the Referee to the Employment Security Board of Review.

SEE ALSO:

- Section 2: Appeal to Superior Court

DEFINITIONS:

- "**Appeal:** Asking a higher court to review the decision or sentence of a trial court because the lower court made an error." Common Legal Words, CT Judicial Branch.

- "As an initial matter, we set forth the general principles regarding an appeal involving unemployment benefits. 'In the processing of unemployment compensation claims . . . the administrator, the referee and the employment security board of review decide the facts and then apply the appropriate law. . . . [The administrator] is charged with the initial responsibility of determining whether claimants are entitled to unemployment benefits. [See generally] General Statutes § 31-241. . . . This initial determination becomes final unless the claimant or the employer files an appeal within twenty-one days after notification of the determination is mailed. [General Statutes § 31-241(a)]. Appeals are taken to the employment security appeals division which consists of a referee section and the board of review. [See] General Statutes §§ 31-237a [and] 31-237b. . . . The first stage of claims review lies with a referee who hears the claim de novo. The referee's function in conducting this hearing is to make inquiry in such manner, through oral testimony or written and printed records, as is best calculated to ascertain the substantial rights of the parties and carry out justly the provisions . . . of the law. General Statutes § 31-244. This decision is appealable to the board of review. General Statutes § 31-249. Such appeals are heard on the record of the hearing before the referee although the board may take additional evidence or testimony if justice so requires. [General Statutes § 31-249]. Any party, including the administrator, may thereafter continue the appellate process by appealing to the Superior Court and, ultimately, to [the Appellate and Supreme Courts].' (Internal quotation marks omitted.) *Ray v. Administrator, Unemployment Compensation Act*, 133 Conn. App. 527, 531–32, 36 A.3d 269 (2012)." Seward v. Administrator, Unemployment Compensation Act, 191 Conn. App. 578, 583-584, 215 A3d 202 (2019). (Emphasis added)

- "Appeals are taken to the employment security appeals division which consists of a referee section and the board of review. [See] General Statutes §§ 31-237a [and] 31-237b." Seward v. Administrator, Unemployment Compensation Act, 191 Conn. App. 578, 584, 215 A3d 202 (2019).

- "The employment security administrative appellate system established pursuant to General Statutes § 31−237b provides for an employment security board of review and a referee section which are separate and apart from the administrator of the unemployment act." *Robinson v. Unemployment Security Board of Review*, 181 Conn. 1, 2, 434 A.2d 293 (1980)." Addona v. Administrator, Unemployment Compensation Act, et al., 121 Conn. App. 355, 996 A.2d 280 (2010). Footnote 3

- "The first stage of claims review lies with a referee who hears the claim de novo. The referee's function in conducting this hearing is to make inquiry in such manner, through oral testimony or written and printed records, as is best calculated to ascertain the substantial rights of the parties and carry out justly the provisions . . . of the law. General Statutes § 31-244." Seward v. Administrator, Unemployment Compensation Act, 191 Conn. App. 578, 584, 215 A3d 202 (2019).

- "This decision is appealable to the board of review. General Statutes § 31-249. Such appeals are heard on the record of the hearing before the referee although the board may take additional evidence or testimony if justice so requires. [General Statutes § 31-249]. Any party, including the administrator, may thereafter continue the appellate process by appealing to the Superior Court and, ultimately, to [the Appellate and Supreme Courts]." (p. 584)

- Appeal from employment security referee's decision to Employment Security Board of Review: "At any time before the referee's decision has become final within the periods of limitation prescribed in section 31-248, any party including the administrator, may appeal therefrom to the board. Such appeal shall be filed in a manner prescribed by the appeals division and may be heard in any local office of the Employment Security Division or, in the case of an interstate claim, in the office in which the claim was filed, or in the office of the appeals referee or the board of review. Such appeal to the board may be heard on the record of the hearing before the referee or the board may hear additional evidence or testimony, provided the board shall determine what evidence shall be heard in the appeal established in accordance with the standards and criteria in regulations adopted pursuant to section 31-237g. The board may remand the case to a referee for such further proceedings as it may direct. Upon the final determination

of the appeal by the board, it shall issue its decision, affirming, modifying or reversing the decision of the referee. The board shall state in each decision whether or not it was based on the record of the hearing before the referees, the reasons for the decision and the citations of any precedents used to support it. In any case in which the board modifies the referee's findings of fact or conclusions of law, the board's decision shall include its findings of fact and conclusions of law." Conn. Gen. Stat. § 31-249 (2021).

ADDITIONAL INFORMATION:

Procedure:

- "The manner in which disputed claims shall be presented and the reports thereon required from the claimant and from employers shall be in accordance with regulations prescribed by the administrator." Conn. Gen. Stat. § 31-244 (2021).

Stay of proceedings:

- "Jurisdiction over benefits shall be continuous but the initiating of a valid appeal under section 31-242 or the pendency of valid appellate proceedings under section 31-249 shall, if the appellate tribunal has taken jurisdiction, stay any proceeding hereunder, but only in respect to the same period and the same parties, but shall not cause the cessation of payment of benefits as provided by section 31-242." Conn. Gen. Stat. § 31-243 (2021).

Evidence:

- "Neither the administrator nor the examiners shall be bound by the ordinary common law or statutory rules of evidence or procedure, but may make inquiry in such manner, through oral testimony or written, printed or electronic records, as is best calculated to ascertain the substantial rights of the parties and carry out justly the provisions of this chapter." Conn. Gen. Stat. § 31-244 (2021).

- "A complete record shall be kept of all proceedings in connection with a disputed claim." Conn. Gen. Stat. § 31-244 (2021).

- "In the discharge of the duties imposed by this chapter, the administrator, the examiners, the referees, the hearing officials designated pursuant to subsection (b) of section 31-237d and subsection (b) of section 31-273, and the chairman of the board shall have power to administer oaths and affirmations, certify to official acts and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in connection with the disputed claim or the administration of this chapter." Conn. Gen. Stat. § 31-245 (2021).

- "In case of contumacy by any person, or his refusal to obey a subpoena issued to him under section 31-245, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which such person guilty of contumacy or of refusal to obey is found or resides or transacts business, upon application by a referee, the chairman of the board or the administrator, shall have jurisdiction to issue to such person an order requiring him to appear before the referee, the board, the administrator or any examiner, there to produce evidence if so ordered or there to give testimony concerning the matter under investigation or in question; and any person failing to obey such order of the court may be punished by such court as for contempt thereof. Any person who, without just cause, fails to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda or other records, if it is in his power to do so, in obedience to a subpoena issued to him under said section 31-245, shall be fined not more than two hundred dollars or imprisoned not more than six months or both." Conn. Gen. Stat. § 31-246 (2021).

STATUTES: Conn. Gen. Stat. (2021)

You can visit your local law library or search the most recent statutes and public acts on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

Title 31. Labor
Chapter 567. Unemployment Compensation
§ 31-237. Employment Security Division. (2022 supplement)
§ 31-237a. Definitions.
§ 31-237b. Employment Security Appeals Division established.
§ 31-237c. Employment Security Board of Review. Appointment of members, chairman, alternate members. (Amended by P.A. 22-67, sec. 7)
§ 31-237d. Executive head of appeals division, delegation of his authority. Hearing of appeals to board. (Amended by P.A. 22-67, sec. 8; P.A. 22-37, sec. 15)
§ 31-241. Determination of claims and benefits. Notice, hearing and appeal. Regulations.
§ 31-242. Referee's hearing of claim on appeal from examiner: Decision, notices, remand; disqualification of referee, challenge.
§ 31-243. Continuous jurisdiction.
§ 31-244. Procedure.
§ 31-244a. Procedure on appeals; hearings; rules of evidence; record.
§ 31-245. Authority to administer oaths and issue subpoenas.
§ 31-246. Enforcement of subpoena.
§ 31-247. Witness fees. Payment of expenses of proceedings.

§ 31-248. Decisions of employment security referee; final date, notice; reopening; judicial review.
§ 31-248a. Transfer of case from referee to Employment Security Board of Review.
§ 31-249. Appeal from employment security referee's decision to Employment Security Board of Review.
§ 31-249a. Decision of board, final date, grounds for reopening appeal, payment of benefits, exhaustion of remedies.
§ 31-249d. Disqualification of referees and board members as advocates.
§ 31-249e. Decisions of board and referees. Methods of issuance. Notice of appellate rights.
§ 31-273. Overpayments; recovery and penalties. Timeliness of appeals. False or misleading declarations, statements or representations. Additional violations and penalties.

LEGISLATIVE:

Office of Legislative Research reports summarize and analyze the law in effect on the date of each report's publication. Current law may be different from what is discussed in the reports.

- *Employer's Rights in Unemployment Compensation Appeals Process*, 2002-R-0621, by John Moran, Research Analyst, Connecticut General Assembly, Office of Legislative Research, July 19, 2002.

  "You asked the following questions about cases when a former employee appeals an unemployment compensation ruling denying him unemployment benefits:

  1. What are the employer's rights in employee appeals?

  2. Is the employer required to appear at appeals hearings or other proceedings?

  3. Are employers required to obtain an attorney?

  4. Can an employer collect legal fees from a former employee if the employee loses the appeals?"

- *Unemployment Compensation Appeal Process*, 1997-R-1093, by Judith Lohman, Principal Analyst, Connecticut General Assembly, Office of Legislative Research, September 29,1997.

  "You asked for a summary of the unemployment compensation benefit appeal process."

REGULATIONS:

- Regulations of Connecticut State Agencies

  Title 31. Labor
  Proceedings on Disputed Matters Pertaining to Unemployment Compensation Claims
  Article I - General Provisions

You can visit your local law library or browse the Connecticut eRegulations System on the Secretary of the State website to check if a regulation has been updated.

31-237g-1 Definitions; interpretations
31-237g-2 Appeals Division
31-237g-3 Regulations; purpose of regulations
31-237g-4 Chairperson of the Board; Acting Chairperson
31-237g-5 Referees; Chief Referee; Principal Referees
31-237g-6 Decisions of the Appeals Division; electronic index of Board decisions
31-237g-7 Appeals Division records
31-237g-8 Administrator as a party
31-237g-9 Responsibilities of parties; notification upon change of address or name
31-237g-10 Responsibilities of parties; form of documents submitted to the Appeals Division
31-237g-11 Representation by attorney or agent; authorization; notice; fees; amicus curiae
31-237g-12 Formal pleadings not permitted
31-237g-13 Notices from the Appeals Division

Article II - Appeals to the Referee
§§ 31-237g-14 to 31-237g-35

Article III - Appeals to the Board
31-237g-36 Appeal to the Board; form; processing
31-237g-37 Appeal to the Board; recommended content; reasons
31-237g-38 Appeal to the Board; optional content; written argument
31-237g-39 Appeal to the Board; optional content; request for decision by the full Board
31-237g-40 Appeal to the Board; optional content; request for Board hearing; supplementing the record
31-237g-41 Untimely appeal; lack of aggrievement; moot appeal; dismissal
31-237g-42 Timely appeal to the Board; notice of appeal
31-237g-43 Withdrawals; dismissal
31-237g-44 Stipulations; official notice; consolidated proceedings
31-237g-45 Disqualification of Board members; assignment of alternative members
31-237g-46 Extension of time to file written argument
31-237g-47 Review and decision by the Board
31-237g-48 Decision of the Board: content and form; remand to Administrator or Referee
31-237g-49 Decision of the Board; final date; motions and appeal distinguished

You can visit your local law library or browse the Connecticut eRegulations System on the Secretary of the State website to check if a regulation has been updated.

31-237g-50 Motion to the Board to reopen, vacate, set aside, or modify; motion for articulation
31-237g-51 Appeal to Superior Court
31-237g-51a Motion to correct findings

Article IV - Hearings Before the Board
31-237g-52 Scheduling of hearing; notice of hearing
31-237g-53 Rescheduling; postponements
31-237g-54 Subpoenas
31-237g-55 Failure to timely appear at hearing
31-237g-56 Responsibility of party to present testimony and evidence
31-237g-57 Right of party to request interpreter or reasonable accommodation
31-237g-58 Hearing record
31-237g-59 Rights of parties at hearings
31-237g-60 Conduct of hearing

Rules of Procedure for Declaratory Ruling
31-237g-101 Definitions
31-237g-102 Scope of regulations on declaratory rulings
31-237g-103 Form and content of petitions
31-237g-104 Notice by board of receipt of petition
31-237g-105 Procedural rights of persons with respect to declaratory rulings
31-237g-106 Board proceedings on petition
31-237g-107 Content, form, and effect of declaratory rulings

Appeals and Hearing Procedures
31-244-1a Definitions
31-244-2a Fact-finding and adjudication of eligibility issues
31-244-3a Notice of fact-finding process
31-244-4a Timeliness of an employer's response to notice of fact-finding or in response to Administrator's request for information on a claim
31-244-5a Postponements
31-244-7a Determination of adequacy of the employer's response
31-244-8a Conduct of the fact-finding
31-244-9a Employer's appeal of charges resulting from its nonparticipation in the fact-finding process or in response to a request for information by the Administrator

AGENCY WEBPAGES:

- Appeals Decision Library (ADLIB) - Connecticut Employment Security Appeals Division

- Employment Security Appeals Division - Connecticut Department of Labor

- Filing a Claimant Appeal On-line
  1. Claimant's appeal to Referee (from local American Job Center decision denying benefits. This includes out-of-state claimants who have been denied benefits at the first level.)
  2. Claimant's motion to reopen a Referee's decision (Do not choose this option if your intent is to appeal the Referee's decision to the Board of Review.)
  3. Claimant's appeal to the Board of Review (from Referee's decision)
  4. Claimant's motion to reopen a decision of the Board of Review
  5. Claimant's appeal to the Superior Court (from a decision of the Board of Review)

- Claimant's Guide to the Appeals Process

  Appeal to the Board of Review

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

- Harris v. Administrator, Unemployment Compensation Act, Superior Court, Judicial District of Stamford-Norwalk at Stamford, FSTCV215025341S (January 5, 2022) (2022 WL 225697). "'[A]ppeals within the unemployment compensation system must be taken in a timely fashion and, if they are not, they come "too late" for review.' *Gumbs v. Administrator*, 9 Conn.App. 131, 133 (1986). The Board's decision becomes final on the twenty-first day unless the appealing party establishes good cause for filing late pursuant to Conn. Gen. Stat. § 31-249a(a)(1) and Regs., Conn. State Agencies, Labor § 31-237g-49(d)."

- Phillips v. Administrator, Unemployment Compensation Act, 157 Conn. App. 342, 346-347, 115 A.3d 1162 (2015). "In adjudicating eligibility for unemployment compensation benefits, including cases involving falsification, the standard of proof is by a preponderance of the evidence, not a higher quantum of proof as claimed by the plaintiff. . . The referee applied the preponderance of the evidence standard in the present case. At an unemployment compensation hearing, an employer may present hearsay evidence to meet its burden of proof if the hearsay is reliable. The reliability test has four factors: (1) the nature and atmosphere of the proceeding, (2) the availability of the witness declarant, (3) the lack of bias or interest of the witness declarant, and (4) the quality and probative value of the statements. . . The board acknowledged that firsthand testimony generally is more reliable and deserving of greater weight than hearsay evidence. A referee, however, may not elevate firsthand

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testimony that is not credible over reliable hearsay evidence."

- Speer v. Administrator, Unemployment Compensation Act et al., Superior Court of Connecticut, Judicial District of New London, No. CV125014479 (July 1, 2014) (2014 WL 3893233) Footnote 1. "The board did make two substitute findings of fact and two supplemental findings of fact. The board substituted the referee's finding that 'The appellant hired Diana Swistowich as an independent contractor earning $11 hourly to do bookkeeping work' with the following finding: 'The appellant utilized Diana Swistowich to perform data-entry and bookkeeping services at $11.00 per hour.' The board also substituted the referee's finding that '[t]he appellant set Swistowich's hours of work and required her to punch a time clock' with the following finding: 'The appellant did not set Swistowich's hours, but she required her to punch a time clock each day.' The board also supplemented the referee's findings with the following findings: 'The appellant expected Reid to start working at 8:00 a.m.' and 'Reid performed services for his father during his relationship with the appellant. The appellant issued Reid and Swistowich a 1099 for income tax purposes."

- Resso v. Administrator, 147 Conn. App. 661, 667-668, 83 A.3d 723 (2014). "In the present case, the court determined that the facts in the record, as found by the referee and adopted with modifications by the board, were insufficient to establish a finding of wilful misconduct. Although the court did not specify which necessary facts were absent from the board's findings, our review of the record confirms that the court's conclusion was correct. Specifically, the board's findings of fact were devoid of any facts supporting a finding that the bank's policy was uniformly enforced. The board was required to find that the bank treated other tellers who inaccurately reported the contents of their drawer similarly to the plaintiff. It failed to do so, as its findings contain no mention whatsoever of other tellers violating the policy or the treatment they received for doing so.

  The defendant argues that the board need not specifically address all the criteria required for a finding of wilful misconduct contained in the regulations. We disagree. 'Valid agency regulations have the force of statutes and constitute state law.' (Emphasis omitted; internal quotation marks omitted.) *Canterbury v. Commissioner of Environmental Protection*, 62 Conn. App. 816, 819, 772 A.2d 687, cert. denied, 257 Conn. 901, 776 A.2d 1153 (2001). 'When interpreting a regulation, [a court] must use common sense.' *Fullerton v. Dept. of Revenue Services*, 245 Conn. 601, 612, 714 A.2d 1203, 1208 (1998). The

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regulation relating to wilful misconduct under the knowing violation definition expressly states that the administrator 'must find all' of the listed criteria in order to establish that a knowing violation has occurred and thereby deny benefits to a claimant. (Emphasis added.) Regs., Conn. State Agencies § 31-236-26b. It is only logical that the satisfaction of these criteria must be announced in any administrative decision denying benefits on those grounds and predicated on the findings of fact recited therein. See *Tosado v. Administrator, Unemployment Compensation Act*, supra, 130 Conn. App. at 277-78, 22 A.3d 675 (reviewing board's decision for findings related to all criteria contained in regulation pertaining to deliberate misconduct in wilful disregard of employer's interest)."

- Addona v. Administrator, Unemployment Compensation Act, et al., 121 Conn. App. 355, 996 A.2d 280 (2010).

"Nonetheless, issues of law afford a reviewing court a broader standard of review when compared to a challenge to the factual findings of the referee. See *United Parcel Service, Inc. v. Administrator*, 209 Conn. 381, 385, 551 A.2d 724 (1988)." (p. 361)

"The plaintiff argued that the referee improperly prevented him from testifying in person and that there were technical difficulties with his telephone testimony." (p. 358)

"At the outset, we note that § 31−237g−17 of the Regulations of Connecticut State Agencies expresses a preference for in-person hearings but allows for hearings by telephone. Additionally, the board consistently has concluded that telephone hearings do not violate due process and are constitutional. See, e.g., *Bizub v. Fitness 4000, LLC*, Employment Security Appeals Division Board of Review, Case No. 983−Br−06 (August 18, 2006) (stating both federal and state court have ruled that telephone hearings satisfy due process)" (p. 362)

"Last, we note that sibling authorities have concluded that telephone hearings in the context of unemployment compensation benefits are permissible and described them as 'a pragmatic solution, made possible by modern technology, which attempts to reconcile the problem of geographically separated adversaries with the core elements of a fair adversary hearing....' *Slattery v. Unemployment Ins. Appeals Board*, 60 Cal.App.3d 245, 251, 131 Cal.Rptr. 422 (1976); see also *Greenberg v. Simms Merchant Police Service*, 410 So.2d 566 (Fla.App.1982)." (pp. 362-363)

"We begin by noting that hearsay testimony, so long as it is sufficiently trustworthy, generally is admissible in

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administrative hearings. *Carlson v. Kozlowski*, 172 Conn. 263, 266, 374 A.2d" (p. 363)

" 'The General Assembly expressly has provided that "[*t*]*he referees and the board shall not be bound by the ordinary common law or statutory rules of evidence or procedure.*' (Emphasis added.) General Statutes § 31–244a. 'Nonetheless, procedural due process is a requirement of adjudicative administrative hearings ... and the admission of hearsay material ... without an opportunity to cross-examine is ordinarily a deprivation of procedural due process.' *Balkus v. Terry Steam Turbine Co.*, 167 Conn. 170, 177, 355, A.2d 227 (1974). In the present case, none of the employees present for the verbal conflicts involving the plaintiff testified either in person or by telephone." (p. 363)

"Even if we assume, arguendo, that the plaintiff was denied due process by the admission of and reliance on unreliable hearsay evidence, we conclude that he did not suffer material prejudice as a result." (p. 364)

"There was other evidence, namely, the plaintiff's own testimony, apart from the hearsay evidence on which the referee found wilful misconduct. We conclude, therefore, that the plaintiff was not harmed by the referee's consideration of the hearsay evidence presented by Sargent." (p. 364)

"Our Supreme Court has stated: "Under our existing case law, we have distinguished ... between two kinds of administrative remands. A trial court may conclude that an administrative ruling was in error and order further administrative proceedings on that very issue. In such a circumstance, we have held the judicial order to be a final judgment, in order to avoid the possibility that further administrative proceedings would simply reinstate the administrative ruling, and thus would require a wasteful second administrative appeal to the Superior Court on that very issue.... A trial court may alternatively conclude that an administrative ruling is in some fashion incomplete and therefore not ripe for final judicial adjudication." (Citations omitted.) *Schieffelin & Co. v. Dept. of Liquor Control*, 202 Conn. 405, 410, 521 A.2d 566 (1987). There is nothing in the record to suggest that the court concluded that the board's ruling was incomplete and not ripe for final adjudication; therefore, we determine the decision of the court to be an appealable final judgment." Footnote 9

- King v. Administrator, 51 Conn. Supp. 302, 305-306 (2008). "General Statutes § 31-244a provides in relevant part: 'The referees and the board shall not be bound by the ordinary common law or statutory rules of evidence or

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procedure. They shall make inquiry in such manner, through oral testimony and written and printed records, as is best calculated to ascertain the substantial rights of the parties and carry out justly the provisions of this chapter. . . .' This statutory language seeks to strike balance. Hearsay evidence is admissible, but 'the substantial rights of the parties' must be observed and the proceedings must be done 'justly.'

This balance is similar to that required by controlling constitutional law. Administrative and regulatory hearings are subject to the protections of due process. These protections include 'the requirements of confrontation and cross-examination.' *Greene v. McElroy*, 360 U.S. 474, 496, 79 S. Ct. 1400, 3 L. Ed. 2d 1377 (1959). At the same time, however, 'due process is flexible and calls for such procedural protections as the particular situation demands.' *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972). Even a parole revocation hearing 'should be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial.' Id., 489.

In the context of unemployment compensation hearings, the Pennsylvania Supreme Court has drawn a useful distinction. 'Hearsay evidence, [a]dmitted without objection, will be given its natural probative effect and may support a finding of the [b]oard, [i]f it is corroborated by any competent evidence in the record, but a finding of fact based [s]olely on hearsay will not stand.' (Internal quotation marks omitted.) *Rox Coal Co. v. Workers' Compensation Appeal Board (Snizaski)*, 570 Pa. 60, 75, 807 A.2d 906 (2002). Both parties to the present appeal agreed with this distinction at argument. It is a distinction faithful to the statutory text of § 31-244a."

- Fullerton v. Administrator, Unemployment Compensation Act, 280 Conn. 745, 911 A.2d 736 (2006). "In their individual appeals to the board, the plaintiffs had challenged the validity of the requirement under § 31–235–6(a) of the regulations that claimants must be available for full-time work, arguing that the requirement was in violation of the Connecticut constitution as well as various state and federal statutes, including General Statutes § 46a–71(a), which provides in relevant part that '[a]ll services of every state agency shall be performed without discrimination based upon ... mental disability ... or physical disability,' General Statutes § 46a–76(a), which provides in relevant part that 'mental disability ... or physical disability ... shall not be considered as limiting factors in state-administered programs involving the distribution of funds to qualify applicants for benefits authorized by law,' and Title II of the Americans with

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Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq., which prohibits public entities from discriminating against persons with disabilities. In both cases, however, the board concluded that it did not have jurisdiction to rule on the constitutionality of a duly enacted regulation or on the plaintiffs' contentions that the regulation violated state and federal statutes other than the Unemployment Compensation Act, stating that it would leave those issues for the courts to decide." (pp. 751-752)

"We conclude that neither the board nor the trial court had subject matter jurisdiction to consider the plaintiffs' claims that § 31−235−6(a) of the regulations violates Title II of the ADA. We additionally conclude that neither the board nor the trial court had subject matter jurisdiction to consider *any* of the plaintiffs' state or federal statutory or constitutional claims challenging the validity of the regulation." (p. 754)

"'Administrative agencies ... are tribunals of limited jurisdiction and their jurisdiction is dependent entirely upon ... the statutes vesting them with power and they cannot confer jurisdiction upon themselves.... We have recognized that [i]t is clear that an administrative body must act strictly within its statutory authority, within constitutional limitations and in a lawful manner.... It cannot modify, abridge or otherwise change the statutory provisions ... under which it acquires authority unless the statutes expressly grant it that power.' (Internal quotation marks omitted.) *Tele Tech of Connecticut Corp. v. Dept. of Public Utility Control*, 270 Conn. 778, 789, 855 A.2d 174 (2004)." (pp. 754-755)

"We have declared that '[t]here is no absolute right of appeal to the courts from a decision of an administrative agency.... Appeals to the courts from administrative [agencies] exist only under statutory authority.... Appellate jurisdiction is derived from the ... statutory provisions by which it is created ... and can be acquired and exercised only in the manner prescribed.... In the absence of statutory authority, therefore, there is no right of appeal from [an agency's] decision....' (Internal quotation marks omitted.) *Fedus v. Planning & Zoning Commission*, supra, 278 Conn. at 756, 900 A.2d 1." (p. 760)

- Acro Technology, Inc. v. Administrator, 25 Conn. App. 130, 593 A.2d 154 (1991). "In order to apply General Statutes § 31-236 to the circumstances of this case, an appropriate finding of fact at the administrative level is required. *United Parcel Services, Inc. v. Administrator*, supra. Practice Book § 519 and General Statutes § 31-249b provide in pertinent part that '[t]he court may remand the case to the board for proceedings de novo, or for further proceedings on the

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

record, or for such limited purposes as the court may prescribe.' Because neither the referee nor the board made the requisite finding, the court lacked the factual basis to reverse the board's decision regarding Brophy's eligibility. The court should have remanded the case for further administrative proceedings to resolve this question of fact."

- Howell v. Administrator, 174 Conn. 529, 532, 391 A.2d 165 (1978). "The plaintiff principally contends that her uncontroverted testimony concerning her efforts to find work and her willingness to rearrange her schedule at college established her right to benefits under § 31-235 (2). We do not agree. The burden of proving facts entitling her to benefits, and which must appear in the finding, was upon the plaintiff. *Northup* v. *Administrator*, supra, 480. Significantly, the referee's finding stated that the claimant 'avers' that she searched for work, making at least twenty employer contacts per week, and that she 'indicates' that she would accept full-time work and would rearrange her school schedule. The logical inference is that the referee did not accept the plaintiff's statements. A fact is not proven merely because a claimant testifies to it and no one denies it, for it is the province of the referee as trier of fact to determine the credibility of the witnesses and the weight of the evidence. General Statutes § 4-183 (g); Practice Book § 435; *Guevara* v. *Administrator*, 172 Conn. 492, 495, 374 A.2d 1101."

- Northup v. Administrator, 148 Conn. 475, 480, 172 A.2d 390 (1961). "It was the plaintiff's burden to prove facts which he claimed entitled him to benefits, and they would have to appear in the finding. The plaintiff did not appear or offer evidence before the commissioner. It is not suggested that any facts other than those disclosed in the record existed or were for any reason not found by the commissioner. Consequently, the plaintiff would not be benefited by a remand for further evidence or for amplification of the finding. See *France* v. *Munson*, 123 Conn. 102, 106, 192 A. 706. The court should have sustained the appeal on the ground that the subordinate facts found by the commissioner were insufficient to support his conclusion and that the conclusion itself was legally unsound in giving effect to a personal reason, unrelated to the employment, in determining the plaintiff's availability for work."

- Gargiulo v. Administrator, 21 Conn. Supp. 203, 205 (1959). "The weight of the evidence and the credibility of the witnesses are to be determined by the commissioner."

- Lanyon v. Administrator, 139 Conn. 20, 34, 189 A.2d 558 (1952). "Until the finding is clarified upon this important aspect of the case, the award cannot be sustained either

wholly or in part. Since the panel has failed to make a finding on this issue and since such a finding is necessary to support its conclusions of law, the company's appeal must be sustained. The matter must be remanded for a finding of what the fact is upon this issue. *Almada v. Administrator*, 137 Conn. 380, 391, 77 A.2d 765."

- Sharkiewicz v. Cushman Chuck Co., 11 Conn. Supp. 221 (1942). "Findings of a Commissioner should state facts and not incorporate statements of evidence or argumentative comment. *Reilley vs. Carroll*, 110 Conn. 282, 284." (p. 223)

  "If . . . the necessary elements of wilful misconduct are not found in the subordinate facts embodied in the finding, the conclusion would be subject to correction." (p. 224)

WEST KEY NUMBERS:

Unemployment Compensation − Judicial Review
VIII. Proceedings ## 250 − 445
(A) In general
(B) Hearing
(C) Administrative Review
310. In general
311. Proceedings for review
312. − In general
313. − Time for proceedings
314. Hearing; trial de novo
315. − In general
316. − New evidence
317. Reference
318. Scope of review
319. − In general
320. − De novo review
321. − Substantial or competent evidence
322. Findings and conclusions
323. Determination and order
324. − In general
325. − Reopening or reconsideration
326. − Modification
327. − Remand or remittal
328. Interstate appeals
(D) Costs and Fees
(E) Misconduct in Compensation Proceedings
(F) Evidence in General
(G) Weight and Sufficiency of Evidence

ENCYCLOPEDIAS:

- 76 *AmJur 2d* Unemployment Compensation, Thomson West, 2016 (Also available on Westlaw).
  A. Administrative Proceedings Determining Entitlement to Benefits; Judicial Review of Administrative Determinations
  1. Administrative Proceedings
  § 204. Procedure, generally; due process
  § 205. Burdens of proof; failure to present evidence

Encyclopedias and ALRs are available in print at some law library locations and accessible online at all law library locations.

Online databases are available for in-library use. Remote access is not available.

§ 206. Credibility and qualifications of witnesses; weight of evidence
§ 207. Use of hearsay evidence
§ 208. Stare decisis; res judicata
§ 209. Administrative appeal
§ 210. Attorney's fees

- 81A *CJS* Social Security and Public Welfare, Thomson West, 2015 (also available on Westlaw).
  - IX. Unemployment Compensation
    - E. Administrative Boards, Commissions, Officers, and Employees
      - 1. In General
        - § 479. Administrative boards, commissions, and officers, generally
      - 2. Jurisdiction, Powers, and Duties
        - § 484. Boards and commissions
        - § 485. Commissioners and other officers
        - § 486. Extent of jurisdiction
        - § 488. Rules and regulations
        - § 491. Subpoenas and witnesses
    - F. Claims, Proceedings, and Judicial Remedies
      - 1. In General
        - § 492. Generally
        - § 493. Procedure
        - § 494. Application or claim
        - § 495. − Disclosure of material facts
        - § 496. − Processing and disposition
        - § 497. Registration for work and reporting to authorities
        - § 498. Parties
      - 2. Evidence
        - a. In General
          - § 499. Claimant's burden of proof
          - § 500. − Exception from disqualification
          - § 501. − Good cause for voluntarily leaving
          - § 502. Employer's burden of proof
          - § 503. Presumptions
          - § 504. − Eligibility for benefits
          - § 505. − Availability for work
          - § 506. Admissibility
          - § 507. - Hearsay
        - b. Weight and Sufficiency
          - § 508. Generally
          - § 509. Claimant's evidence
          - § 510. Employer's evidence
          - § 511. Evidence supporting decision
          - § 512. Applicability of rules to various findings
          - § 513. − Claimant's separation from work
          - § 514. − Eligibility for benefits
          - § 515. − Availability for and efforts to obtain work
      - 3. Hearing, Findings and Determination

Encyclopedias and ALRs are available in print at some law library locations and accessible online at all law library locations.

Online databases are available for in-library use. Remote access is not available.

a. Hearing
§ 516. Generally
§ 517. Notice
§ 518. Rehearing
§ 519. Conduct of hearing
§ 520. − Witnesses
§ 521. − Right to cousel; pro se parties
§ 522. Questions of fact
b. Findings, Conclusions, and Decision
§ 523. Generally
§ 524. Definiteness and specificity of findings; evidentiary support
§ 525. Notice of finding
§ 526. Reconsideration
§ 527. Res judicata and collateral estoppel

4. Administrative Review
§ 528. Generally
§ 529. Effect of failure to appeal
§ 530. Time for proceedings
§ 531. − Timeliness of filing
§ 532. − Commencement of appeal period
§ 533. Trial de novo
§ 534. Power, authority, and duty of appellate tribunal
§ 535. Determination and disposition

TEXTS & TREATISES:

Each of our law libraries own the Connecticut treatises cited. You can contact us or visit our catalog to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

- *Connecticut Employment Law*, 5th ed., by Pamela J. Moore, Connecticut Law Tribune, 2020.
  Chapter 9. Unemployment Compensation
  § 9-5. Appeal Procedures
  § 9-5:1. Board of Review
  § 9-5:2. Record Review or Testimony
  § 9-5:3. Written Decisions

- 2 *Labor and Employment in Connecticut: A Guide to Employment Laws, Regulations and Practices*, 2nd ed., by Jeffrey L. Hirsch, Matthew Bender, 2000, with 2022 supplement.
  Chapter 16. Termination of Employment
  § 16-5. Unemployment Compensation
  [.0a] Generally
  [a] Unemployment Compensation − Eligibility
  [e] Employee Benefits − Amount and Eligibility
  [f] Ineligibility for Benefits
  [g] Benefits payable
  [h] Extended benefits

- 2 Connecticut Practice Series, *Connecticut Civil Practice Forms*, 4th ed., by Joel M. Kaye et al., Thomson West, 2004, with 2022 supplement (also available on Westlaw).
  Authors' Comment to Form 204.2. Appeal from Decision of the Employment Security Board of Review, pp. 407-410

LAW REVIEWS:

Public access to law review databases is available on-site at each of our law libraries.

- Susan Nofi-Bendici, *Unemployment Appeals: Can Your Program Really Do More with Less - The Legal Aid Perspective*, 44 Clearinghouse Review Journal of Poverty Law and Policy 58 (May-June 2010)
- Susan Nofi-Bendici, *Representing Claimants in Unemployment Compensation Proceedings: Lessons Learned from Hearing and Deciding These Cases*, 43 Clearinghouse Review Journal of Poverty Law and Policy 500 (March-April 2009)
- Robert A. DeMarco, *Connecticut Unemployment Compensation: Eligibility, Disqualification and the Appeal Process*, 5 University of Bridgeport Law Review 145, issue 1, pp. 145-174 (1983)

Section 2: Appeal to Superior Court

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources related to the procedure to appeal a decision of Employment Security Board of Review to the Connecticut Superior court.

DEFINITIONS:

"Appeal: Asking a higher court to review the decision or sentence of a trial court because the lower court made an error." Common Legal Words, CT Judicial Branch.

"At any time before the board's decision has become final, any party, including the administrator, may appeal such decision, including any claim that the decision violates statutory or constitutional provisions, to the superior court for the judicial district of Hartford or for the judicial district wherein the appellant resides." Conn. Gen. Stat. § 31-249b (2021).

ADDITIONAL INFORMATION:

"Judicial review of any decision shall be allowed only after an aggrieved party has exhausted his or her remedies before the board. General Statutes §§ §§ 31-248 (c) and 31-249a (c)." Walsh v. CT Unemployment Comp., Connecticut Superior Court, Judicial District of Hartford at Hartford, No. CV 99 0586121S (2002 Conn. Super. Lexis 664) (Feb. 26, 2002).

"Appeals within the unemployment compensation system must be taken in a timely fashion or they are to be dismissed. *Gumbs v. Administrator*, 9 Conn. App. 131, 133, 517 A.2d 257 (1986)." Walsh v. CT Unemployment Comp., Connecticut Superior Court, Judicial District of Hartford at Hartford, No. CV 99 0586121S (2002 Conn. Super. Lexis 664) (Feb. 26, 2002).

". . . appeals from . . . the decisions of the administrator of the Unemployment Compensation Act, appeals from decisions of the employment security appeals referees to the board of review, and appeals from decisions of the Employment Security Board of Review to the courts, as is provided in chapter 567. . . are excepted from the provisions of this chapter." Conn. Gen. Stat. § 4-186(a) (2021) (As amended by Public Act 21-2, § 276, June Special Session).

"An appeal to Superior Court from a board decision may be processed by the board as a motion for purposes of reopening, setting aside, vacating or modifying such decision solely in order to grant the relief requested." Conn. Gen. Stat. § 31-249a(b) (2021).

Number of copies and content:

"In such judicial proceeding the original and five copies of a petition, which shall state the grounds on which a review is sought, shall be filed in the office of the board in a manner

prescribed by the appeals division." Conn. Gen. Stat. § 31-249b (2021).

"(a) Each appeal petition to the Superior Court from the Board's decision on an appeal shall be filed through a mechanism specified by the Appeals Division, or by means of a document which shall:
(1) state the grounds on which judicial review of the Board's decision is sought; and
(2) be clearly entitled 'appeal to superior court from decision of the employment security board of review' and otherwise prepared in accordance with Section 31-237g-10(a) of the Regulations of Connecticut State Agencies." Regulations of CT State Agencies § 31-237g-51(a).

Mailing:
"The chairman of the board shall, within the third business day thereafter, cause the original petition or petitions to be mailed to the clerk of the Superior Court and copy or copies thereof to the administrator and to each other party to the proceeding in which such appeal was taken . . ." Conn. Gen. Stat. § 31-249b (2021).

"Following the Board's receipt of such appeal, the Chairman shall, pursuant to the existing law, cause the original appeal petition and the appeal record to be certified to the appropriate Superior Court." Regulations of CT State Agencies § 31-237g-51(b).

". . . and said clerk shall docket such appeal as returned to the next return day after the receipt of such petition or petitions." Conn. Gen. Stat. § 31-249b (2021).

Bond:
" . . . no bond shall be required for entering an appeal to the Superior Court." Conn. Gen. Stat. § 31-249b (2021).

Short calendar:
"Such appeals shall be claimed for the short calendar unless the court shall order the appeal placed on the trial list." Conn. Gen. Stat. § 31-249b (2021).

"In any appeal in which one of the parties is not represented by counsel and in which the party taking the appeal does not claim the case for the short calendar or trial within a reasonable time after the return day, the court may of its own motion dismiss the appeal, or the party ready to proceed may move for nonsuit or default as appropriate." Conn. Gen. Stat. § 31-249b (2021).

Judgment:
"Unless the court shall otherwise order after motion and hearing, the final decision of the court shall be the decision as

to all parties to the original proceeding. . . When an appeal is taken to the Superior Court, the clerk thereof shall by writing notify the board of any action of the court thereon and of the disposition of such appeal whether by judgment, remand, withdrawal or otherwise and shall, upon the decision on the appeal, furnish the board with a copy of such decision. The court may remand the case to the board for proceedings de novo, or for further proceedings on the record, or for such limited purposes as the court may prescribe. The court also may order the board to remand the case to a referee for any further proceedings deemed necessary by the court. The court may retain jurisdiction by ordering a return to the court of the proceedings conducted in accordance with the order of the court or the court may order final disposition." Conn. Gen. Stat. § 31-249b (2021).

"In any appeal, any finding of the referee or the board shall be subject to correction only to the extent provided by section 22-9 of the Connecticut Practice Book." Conn. Gen. Stat. § 31-249b (2021).

"[Unemployment] appeals are heard by the court upon certified copy of the record filed by the board. The court does not retry the facts or hear evidence. It considers no evidence other than that certified to it by the board, and then for the limited purpose of determining whether the finding should be corrected, or whether there was any evidence to support in law the conclusions reached . . . The court's ultimate duty is to decide only whether, in light of the evidence, the board of review has acted unreasonably, arbitrarily, illegally, or in abuse of its discretion. (Internal quotation marks omitted.) *Phillips v. Administrator, Unemployment Compensation Act*, 157 Conn. App. 342, 350, 115 A.3d 1162 (2015)." Cousins v. Administrator, Unemployment Compensation Act et al., Superior Court, Judicial District of New Haven at New Haven, NNH-CV17-5038021-S (65 CLR 670, 672) (2017 WL 7053754) (2017 Conn. Super Lexis 5175) (December 26, 2017).

Postjudgment:

"A party aggrieved by a final disposition made in compliance with an order of the Superior Court, by the filing of an appropriate motion, may request the court to review the disposition of the case." Conn. Gen. Stat. § 31-249b (2021).

"An appeal may be taken from the decision of the Superior Court to the Appellate Court in the same manner as is provided in section 51-197b." Conn. Gen. Stat. § 31-249b (2021).

STATUTES: Conn. Gen. Stat. (2021)

Chapter 567. Unemployment Compensation
§ 31-236. Disqualifications. Exceptions. (Amended by PA 22-37, sec. 14)

You can visit your local law library or search the most recent statutes and public acts on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

§ 31-243. Continuous jurisdiction.
§ 31-249b. Appeal.
§ 31-249c. Administrator a party to all appeal proceedings. Right of board to intervene as a party.

Chapter 882. Superior Court
§ 51-197b. Administrative appeals.

LEGISLATIVE:

Office of Legislative Research reports summarize and analyze the law in effect on the date of each report's publication. Current law may be different from what is discussed in the reports.

- *Employer's Rights in Unemployment Compensation Appeals Process*, 2002-R-0621, by John Moran, Research Analyst, Connecticut General Assembly, Office of Legislative Research, July 19, 2002.

  "You asked the following questions about cases when a former employee appeals an unemployment compensation ruling denying him unemployment benefits:

  1. What are the employer's rights in employee appeals?

  2. Is the employer required to appear at appeals hearings or other proceedings?

  3. Are employers required to obtain an attorney?

  4. Can an employer collect legal fees from a former employee if the employee loses the appeals?"

- *Unemployment Compensation Appeal Process*, 1997-R-1093, by Judith Lohman, Principal Analyst, Connecticut General Assembly, Office of Legislative Research, September 29,1997.

  "You asked for a summary of the unemployment compensation benefit appeal process."

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal and posted online.

Connecticut Practice Book (2023)
Chapter 22. Unemployment Compensation
§ 22-1. Appeal
§ 22-2. Assignment for Hearing
§ 22-3. Finding
§ 22-4. Correction of Finding; Motion to Correct Finding
§ 22-5. – Evidence to Be Filed by Appellee
§ 22-6. – Motion to Correct by Appellee
§ 22-7. – Duty of Board on Motion to Correct
§ 22-8. – Claiming Error on Board's Decision on Motion to Correct
§ 22-9. Function of the Court

ONLINE RESOURCES:

- Appealing an Unemployment Decision to Superior Court, by CTLawHelp.org (accessed August 4, 2022)
  - Welcome

- Am I ready to ask the Superior Court to look at my unemployment case?
- Can the court help me?
- Step 1: Tell the Board of Review you don't agree with their decision
- Step 2: Get the written record of your Appeals Referee Hearing
- Step 3: Read the transcript
- Step 4: Ask the Board to make corrections
- Step 5: Ask the court to look at the Board's decision
- Step 6: Follow the instructions from the Court

FORMS:

- 2 Connecticut Practice Series, *Connecticut Civil Practice Forms*, 4th ed., by Joel M. Kaye et al., Thomson West, 2004, with 2022 supplement (also available on Westlaw).

  Form 204.2. Appeal from Decision of the Employment Security Board of Review
  Form 204.2.1. Amended Appeal from Employment Security Board of Review

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

Connecticut Supreme Court:

- Finkenstein v. Administrator, Unemployment Compensation Act, et al., 192 Conn. 104, 470 A.2d 1196 (1984 Conn. Lexis 507) (1984). "Any party, including the administrator, may thereafter continue the appellate process by appealing to the Superior Court . . .

  Important to our disposition of this issue is that on an appeal from an initial determination made by an examiner, a referee hears the claim de novo. . . The administrator, through his examiner, does not continue to act as an adjudicator, but is deemed a party to all appellate proceedings, having the correlative right to appeal the decision rendered pursuant to such proceedings. Inherent in the nature of de novo proceedings is that new or previously undiscovered facts or evidence may arise. Such information, had it been known at the stage of the proceedings before the examiner, certainly might have altered that determination regarding eligibility. It, therefore, follows that the information obtained from a de novo hearing might fairly alter the administrator's position concerning a claimant's eligibility. As a party to the proceedings with the right to appeal, the administrator must be able to oppose the initial determination based upon the facts revealed subsequent thereto. To do otherwise would leave the administrator bound to advocate a position which, based upon the de novo hearing, he now recognizes as erroneous and not in accordance with the eligibility provisions established by the legislature." (p. 109)

  "Conclusions of law reached by the referee cannot stand, however, if the court determines that they resulted from an

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incorrect application of the law to the facts found or could not reasonably and logically follow from such facts. Although the court may not substitute its own conclusions for those of the referee, the court's ultimate duty is to decide whether the referee acted unreasonably, arbitrarily or illegally. . . Thus, we have recognized that our standard of review in administrative proceedings must allow for judicial scrutiny of claims such as constitutional error, jurisdictional error, or error in the construction of an agency's authorizing statute." (Internal quotations and citations omitted.) (p. 113)

Connecticut Appellate Court:

- Seward v. Administrator, Unemployment Compensation Act, 191 Conn. App. 578, 215 A3d 202 (2019). "The board concluded that this was not a sufficient excuse for failing to appear at the May 18, 2017 hearing, stating: '[W]e find that the [plaintiff's] failure to timely read his mail constituted poor mail handling, which does not excuse his failure to participate in the referee's May 18, 2017 hearing. We conclude that the [plaintiff] has not shown good cause for failing to appear at the referee's hearing and that the referee did not err in denying his motion to [open]. By choosing not to attend the referee's hearing despite having received notice of the hearing, the [plaintiff] has waived the right to object to the referee's findings of fact and conclusions of law which were based on the testimony and evidence presented at that hearing.' (Footnote omitted.) Accordingly, the board affirmed the decision of the referee.

  On September 13, 2017, the plaintiff filed an appeal with the Superior Court. Approximately three months later, the defendant filed a motion for a judgment to dismiss the appeal. On February 14, 2018, the court, after conducting a hearing, issued a memorandum of decision overruling the defendant's motion and remanding the matter to the board with direction to grant the motion to open to afford the plaintiff an opportunity to defend the initial ruling that he was entitled to unemployment benefits. The court 'observed that the [plaintiff] was just an ordinary, working class person a bit overwhelmed with the amount of mail he was receiving . . . . When the [plaintiff] realized his error, he immediately requested that the matter be reopened so that he could have an opportunity to present his case. To deny the [plaintiff] an opportunity to have his day in "court" when he already was adjudicated eligible for benefits is, in the opinion of this court, a gross abuse of discretion, especially when he immediately responded to the decision of the [board] when he discovered his mistake. There would not have been a long delay in the process if his request would have been granted and he would have had an opportunity to present his side of the story.' This appeal followed." (pp. 582-583)

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"On appeal, the defendant claims that the Superior Court exceeded the scope of its review by finding and relying on facts outside of the certified record, in violation of controlling case law and our rules of practice, and then improperly used those facts to determine that the board had abused its discretion. We agree. . .

The board did not find that the plaintiff was 'an ordinary, working class person' who had been overwhelmed by the volume of mail related to the claim for unemployment benefits. 'In an appeal to the court from a decision of the board, the court is not to find facts. . . . In the absence of a motion to correct the finding of the board, the court is bound by the board's finding.' (Citations omitted.) . . .

We conclude that the Superior Court exceeded the scope of its review in this case by finding facts. The facts improperly found by the court formed the basis of its determination that the board had abused its discretion. Stated differently, the reasoning of the Superior Court, in reversing the decision of the board and remanding the case for further proceedings, rested on *facts found by the court*. The Superior Court, under these facts and circumstances, was bound by the facts *found by the board*. By making and relying on its own factual findings, the Superior Court exceeded its role. The determination that the board abused its discretion, therefore, is improper." (pp. 585-586)

- Manukyan v. Administrator, Unemployment Compensation Act, 139 Conn. App. 26, 33-34, 54 A.3d 602 (2012). "We begin by setting forth our standard of review and the principles that guide our analysis. 'To the extent that an administrative appeal, pursuant to General Statutes § 31-249b, concerns findings of fact, a court is limited to a review of the record certified and filed by the board of review. The court must not retry the facts nor hear evidence.... If, however, the issue is one of law, the court has the broader responsibility of determining whether the administrative action resulted from an incorrect application of the law to the facts found or could not reasonably or logically have followed from such facts. Although the court may not substitute its own conclusions for those of the administrative board, it retains the ultimate obligation to determine whether the administrative action was unreasonable, arbitrary, illegal or an abuse of discretion.' (Citations omitted.) *United Parcel Service, Inc. v. Administrator, Unemployment Compensation Act*, 209 Conn. 381, 385-86, 551 A.2d 724 (1988). '[The court] is bound by the findings of subordinate facts and reasonable factual conclusions made by the appeals referee where, as here, the board of review adopted the findings and affirmed the decision of the referee.' *DaSilva v. Administrator, Unemployment Compensation Act*, 175 Conn. 562, 564,

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402 A.2d 755 (1978). 'If the referee's conclusions are reasonably and logically drawn, the court cannot alter them.' *Howell v. Administrator, Unemployment Compensation Act*, supra, 174 Conn. 533."

- Phillips v. Administrator, Unemployment Compensation Act, 157 Conn. App. 342, 349, 115 A.3d 1162 (2015). "The board further stated that although a party to an unemployment compensation proceeding has the right to be represented by counsel, a party is not provided a second hearing if the party failed to obtain legal representation at the first hearing. See Regs., Conn. State Agencies § 31-237g-11 (a)."

- Marquand v. Administrator, Unemployment Compensation Act, 124 Conn. App. 75, 3 A.3d 172 (2010), cert denied 300 Conn. 923 (2011). "'As a preliminary matter, we note the unique place this type of appeal holds in our appellate jurisprudence. [A]ppeals from the board to the Superior Court are specifically exempted from governance by General Statutes § 4-166 et seq., the Uniform Administrative Procedure Act. All appeals from the board to the court are controlled by [General Statutes] § 31-249b. . . . We also are mindful of the remedial nature of our state's statutory scheme of unemployment compensation. . . . This remedial purpose, however, does not support the granting of benefits to an employee guilty of willful misconduct. . . .'" (pgs. 78-79)

  "Essentially, the only issue for the court to determine was whether the board acted unreasonably, arbitrarily, illegally or in abuse of its discretion when it denied the plaintiff's motion to open for lack of jurisdiction and found that there was no good cause for the late filing. General Statutes § 31-249a provides in relevant part: '(a) Any decision of the board, in the absence of a timely filed appeal from a party aggrieved thereby or a timely filed motion to reopen, vacate, set aside or modify such decision from a party aggrieved thereby, shall become final on the thirty-first calendar day after the date on which a copy of the decision is mailed to the party, provided ... any such appeal or motion which is filed after such thirty-day period may be considered to be timely filed if the filing party shows good cause, as defined in regulations adopted pursuant to section 31-249h, for the late filing .... (b) Any decision of the board may be reopened, vacated, set aside, or modified on the timely filed motion of a party aggrieved by such decision, or on the board's own timely filed motion, on grounds of new evidence or if the ends of justice so require upon good cause shown....' On the basis of the record, we conclude that there was ample evidence to support the board's decision that the plaintiff failed to file a timely appeal both with the referee and with the board and that no

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good cause exists for the late filing of the motion to open." (pp. 80-81)

- Gumbs v. Administrator, Unemployment Compensation Act, 9 Conn. App. 131, 133, 517 A.2d 257 (1986). " . . . appeals within the unemployment compensation system must be taken in a timely fashion and, if they are not, they come 'too late' for review. The plaintiff's petition for review should have been dismissed by the trial court as untimely."

Connecticut Superior/Trial Court:

- Javier v. Administrator, Unemployment Compensation Act, Superior Court at New Britain, No. HHB-CV-20-5027359-S (70 Conn. L. Rptr. 473) (2020 Conn. Super. Lexis 1388) (October 30, 2020). "The court in *Louis v. Administrator, Unemployment Compensation Act*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-13-5014177-S (August 29, 2014, Tobin, J.T.R.), stated, more specifically, that, '[w]e have consistently ruled that a party's erroneous belief that it had twenty-one business days instead of calendar days to file does not excuse the untimely filing of an appeal . . . Therefore, we conclude that the referee was required by law to dismiss the appeal because the claimant did not show good cause for the late filing of his appeal.'. . .
  Also relevant for purposes of the present case is the court's determination in *Gupton v. Administrator, Unemployment Compensation Act*, Superior Court, judicial district of Hartford, Docket No. CV-96-0562793-S (November 8, 1996, Sullivan, J.), wherein the court stated that, 'failure to read the appeals advisement does not afford the claimant good cause for filing a late appeal.' As these cases show, Ms. Javier's claims, that she believed she had twenty-one business days to file her appeal and that she failed to read part of the notice, do not constitute good cause."

- Sessions v. Administrator, Unemployment Compensation Act, Judicial District of New Britain, CV19-5024846-S (2019 Conn. Super. Lexis 2791) (2019 WL 5957879) (October 25, 2019). "The claimant also maintained that she is awaiting the result of her grievance. In its decision to deny the motion to reopen, the Board stated that 'because the appeals division has independent authority to determine whether the claimant was discharged for disqualifying reasons, it is not required to await the outcome of proceedings, such as a grievance procedure, before issuing a decision. . . . We are bound to make a determination of eligibility for unemployment compensation benefits "at the earliest point administratively feasible."' Citing *Java v. California Department Resources Development*, 402 U.S. 121."

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

"New evidence that will provide a basis for reopening the record must meet essentially the same test as the evidence required for granting a new trial. The evidence must be new, it must not have been discoverable through the exercise of due diligence, and it must be sufficiently material to provide some reasonable basis for producing a different outcome. *Grant v. Administrator*, Superior Court, judicial district of Hartford-New Britain at New Britain, Docket No. 410853 (February 22, 1984)."

"The defendant argues, and the court agrees, that the issues of overpayment and reimbursement are governed by statute and must be decided separately from this appeal."

- Dennis v. Administrator, Unemployment Compensation Act, Connecticut Superior Court, Judicial District of New Haven at New Haven, CV18-5041385-S (2018 Conn. Super. Lexis 2056) (August 27, 2018). "'A reviewing court must accept the findings made by the Board as to witness credibility and must defer to the agency's conclusions to be drawn from the evidence. *Howell v. Administrator, Unemployment Compensation Act*, 174 Conn. 529, [391 A.2d] (1978) . . . ; *Briggs v. State Employees Retirement Commission*, 210 Conn. 214, 217, [554 A.2d 292] (1989).' *Cooper v. Administrator, Unemployment Compensation Act*, Superior Court judicial district of New London at Norwich, Docket No. CV 98 115055 (February 24, 2000, *Corradino, J.*)."

- Scraders v. Administrator, Unemployment Comp. Act, Connecticut Superior Court, Judicial District of New Haven at New Haven, CV17-5039014S (2018 Conn. Super. Lexis 1650) (August 1, 2018). No abuse of discretion in board's dismissal of appeal for perceived lack of diligence and denial of motion to reopen.

- Cousins v. Administrator, Unemployment Compensation Act et al., Superior Court, Judicial District of New Haven at New Haven, NNH-CV17-5038021-S (65 CLR 670, 673) (2017 WL 7053754) (2017 Conn. Super. Lexis 5175) (December 28, 2017). "When it comes to non-appearances due to scheduling or other 'good faith' mistakes, the Board appears to have drawn a line based on how quickly the defaulting party contacts the Appeals Division to seek clarification or rectification once the error is discovered. . . ('We have excused a party's failure to appear at the referee's hearing as good faith error, where the party made a mistake about the hearing date or time, or failed to report to the correct hearing location, if the party acted diligently as soon as it discovered its error'). A telephone call to the Appeals Division later the same day of the scheduled hearing will serve as a basis to reopen a dismissal and schedule a new hearing, but such efforts any time after the day of the missed hearing will not be excused, absent some

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justification other than mere good-faith mistake. . . Again, this 'same day' rule strikes the court as unduly and unnecessarily harsh, but the court's preference for added leniency does not make the Board's exercise of discretion unreasonable or arbitrary in this context. The Board's decision must be affirmed."

- Walsh v. CT Unemployment Comp., Connecticut Superior Court, Judicial District of Hartford at Hartford, No. CV 99 0586121S (2002 Conn. Super. Lexis 664) (Feb. 26, 2002). "'[A]ppeals from the board to the Superior Court are specifically exempted from governance by General Statutes §§ 4-166 et seq., the Uniform Administrative Procedure Act. All appeals from the board to the Court are controlled by §§ 31-249b.' *Calnan v. Administrator Unemployment Compensation Act*, 43 Conn. App. 779, 783, 686 A.2d 134 (1996)."

WEST KEY NUMBERS:

Unemployment Compensation – Judicial Review
450 – 500
450. In general
455. Persons entitled to seek review; parties
460. Time for proceedings
466. Dismissal of appeal
467. Withdrawal of appeal
468. Abandonment of appeal
469. Scope of review
474. – Deference to administrative determination, in general
476. – Discretion of agency, and abuse thereof
477. – Substitution of court's judgment for that of agency, in general
479. – Additional evidence, consideration of
493. – Particular cases and issues
495. Harmless error
496. Reversible error
497. Remand
498. Rehearing, reopening or reconsideration
500. Further review

ENCYCLOPEDIAS:

Encyclopedias and ALRs are available in print at some law library locations and accessible online at all law library locations.

Online databases are available for in-library use. Remote access is not available.

- 76 *AmJur 2d* Unemployment Compensation, Thomson West, 2016 (Also available on Westlaw).
  A. Administrative Proceedings Determining Entitlement to Benefits; Judicial Review of Administrative Determinations
  1. Administrative Proceedings
  § 211. Availability of judicial review, generally
  § 212. Standing
  § 213. Prior findings or decisions subject to review
  § 214. Issues and evidence considered
  § 215. Attorney's fees; interest
  § 216. Standard of review, generally

Encyclopedias and ALRs are available in print at some law library locations and accessible online at all law library locations.

Online databases are available for in-library use. Remote access is not available.

§ 217. Application of "substantial evidence" standard

- 81A *CJS* Social Security and Public Welfare, Thomson West, 2015 (Also available on Westlaw).
  - 5. Judicial Review
    - a. In General
      - § 536. Generally
      - § 537. Nature and form of remedy
      - § 538. Decisions reviewable
      - § 539. Person entitled to obtain review
      - § 540. − Necessary and proper parties
      - § 541. Record
    - b. Proceedings for Review
      - § 542. Generally
      - § 543. When jurisdiction acquired
      - § 544. Service of petition for review
      - § 545. Time for proceedings
      - § 546. − Commencement of time to appeal
    - c. Scope of Review
      - § 547. Review as limited to decision of, and facts before, administrative tribunal
      - § 548. Review as de novo
      - § 549. Review as limited to questions of law and to review of agency's order; deference to agency
      - § 550. Harmless error
      - § 551. Burden of proof
      - § 552. Presumptions
      - § 553. Questions reviewable
      - § 554. Questions not reviewable
      - § 555. − Questions not properly preserved for review
      - § 556. Findings of fact − Generally
      - § 557. Conclusiveness
      - § 558. When findings may be set aside
      - § 559. Particular findings found conclusive or adequately supported by evidence
      - § 560. Particular findings found not supported by evidence and not binding on court
      - § 561. Determination and Disposition − Generally
      - § 562. Reversal
      - § 563. Remand
      - § 564. − To take additional evidence
      - § 565. Costs and attorney's fees
      - § 566. Further Review − Generally
      - § 567. Appeal by administrative agency
      - § 568. Decisions appealable
      - § 569. Scope of review
      - § 570. − Findings of fact; conclusions of law
      - § 571. Determination and disposition
      - § 572. Costs
      - § 573. Attorney's fees
      - § 575. Exhaustion of administrative remedies

TEXTS & TREATISES:

Each of our law libraries own the Connecticut treatises cited. You can contact us or visit our catalog to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

- 1 Connecticut Practice Series, *Superior Court Civil Rules*, 2022 ed., by Wesley W. Horton et al., Thomson West (also available on Westlaw).
  Chapter 22. Unemployment Compensation
  See Authors' Comments after each section

- 2 Connecticut Practice Series, *Connecticut Civil Practice Forms*, 4th ed., by Joel M. Kaye et al., Thomson West, 2004, with 2022 supplement (also available on Westlaw).
  Authors' Comment to Form 204.2. Appeal from Decision of the Employment Security Board of Review, pp. 407-410

- *Connecticut Employment Law*, 5th ed., by Pamela J. Moore, Connecticut Law Tribune, 2020.
  Chapter 9. Unemployment Compensation
  § 9-5. Appeal Procedures
  § 9-5:4. Appeal to Superior Court
  § 9-5:4.1. Standard of Review

- 1 *West's Connecticut Rules of Court Annotated*, 2022 ed., Thomson West.
  Chapter 22. Unemployment Compensation
  See Notes of Decisions for each section

LAW REVIEWS:

Public access to law review databases is available on-site at each of our law libraries.

- Robert A. DeMarco, *Connecticut Unemployment Compensation: Eligibility, Disqualification and the Appeal Process*, 5 University of Bridgeport Law Review 145, issue 1, pp. 145-174 (1983)

SCOPE:

Bibliographic resources regarding the record and motions to correct the record in Connecticut unemployment compensation appeals to the superior court.

DEFINITIONS:

Function of the Court:

"Such appeals are heard by the court upon the certified copy of the record filed by the board. The court does not retry the facts or hear evidence. It considers no evidence other than that certified to it by the board, and then for the limited purpose of determining whether the finding should be corrected, or whether there was any evidence to support in law the conclusions reached." CT Practice Book § 22-9(a) (2023).

Board responsibilities:

"In all cases, the board shall certify the record to the court." Conn. Gen. Stat. § 31-249b (2021).

"At the time the petition is mailed to the clerk, or as soon thereafter as practicable, the chair of the board shall cause to be mailed to the clerk a certified copy of the record . . ." Conn. Practice Book § 22-1(b) (2023).

"Upon request of the court, the board shall (1) in cases in which its decision was rendered on the record of such hearing before the referee, prepare and verify to the court a transcript of such hearing before the referee; and (2) in cases in which its decision was rendered on the record of its own evidentiary hearing, provide and verify to the court a transcript of such hearing of the board." Conn. Gen. Stat. § 31-249b (2021).

"The judicial authority may, on request of a party to the action or on its own motion, order the board to prepare and verify to the court a transcript of the hearing before the referee in cases in which the board's decision was rendered on the record of such hearing, or a transcript of the hearing before the board in cases in which the board's decision was rendered on the record of its own evidentiary hearing." Conn. Practice Book § 22-1(c) (2023).

Contents of the record:

"The record shall consist of the notice of appeal to the referee and the board, the notices of hearing before them, the referee's findings of fact and decision, the findings and decision of the board, all documents admitted into evidence before the referee and the board or both and all other evidentiary material accepted by them." Conn. Gen. Stat. § 31-249b (2021).

"[T]he record . . . shall consist of the notice of appeal to the referee and the board, the notices of hearing before them, the referee's findings of fact and decision, the findings and decision of the board, all documents admitted into evidence before the referee and the board or both, and all other evidentiary material accepted by them." Conn. Practice Book § 22-1(b) (2023).

"Following the Board's receipt of such appeal, the Chairperson shall, pursuant to the existing law, cause the original appeal petition and the appeal record to be certified to the appropriate Superior Court. Such record shall consist of all pertinent file records concerning such appeal including:
(1) the relevant Administrator's record in the file;
(2) all appeals and accompanying materials filed with the Appeals Division;
(3) all written notices and decisions of the Appeals Division;
(4) all written requests, motions, argument or material correspondence timely-filed or considered concerning such appeal;
(5) the Appeals Division record of oral requests, reports, notifications and decisions made concerning such appeal;
(6) all documents and exhibits admitted into evidence by the Appeals Division; and
(7) all other evidentiary material accepted by the Appeals Division." Regulations of CT State Agencies § 31-237g-51(b).

"Each such certification to the Superior Court pursuant to subsection (b) of this section shall have, as a cover sheet, a notice of such certification which itemizes the appeal record thus certified. Such notice shall be prepared and delivered in accordance with Section 31-237g-13(a) of the Regulations of Connecticut State Agencies and each copy of such notice mailed to the parties, attorneys and authorized agents of record shall include a copy of the appeal to the Superior Court." Regulations of CT State Agencies § 31-237g-51(c).

"Upon request of the Superior Court, the Board shall prepare and certify to the Court a transcript of the hearing before the Referee or the Board, or both, as the Court may direct." Regulations of CT State Agencies § 31-237g-51(b).

ADDITIONAL INFORMATION:

Motion to correct the record:

- Manukyan v. Administrator, Unemployment Compensation Act, 139 Conn. App. 26, 54 A.3d 602 (2012). "It was the plaintiff's obligation, under practice Book § 22-4, to make a timely motion to correct if he claimed any lack of clarity or error in the board's findings . . . " (p. 38)

- "If the appellant desires to have the finding of the board corrected, he or she must, within two weeks

after the record has been filed in the Superior Court, unless the time is extended for cause by the board, file with the board a motion for the correction of the finding and with it such portions of the evidence as he or she deems relevant and material to the corrections asked for, certified by the stenographer who took it; but if the appellant claims that substantially all the evidence is relevant and material to the corrections sought, he or she may file all of it, so certified, indicating in the motion so far as possible the portion applicable to each correction sought. The board shall forthwith upon the filing of the motion and of the transcript of the evidence, give notice to the adverse party or parties." (Emphasis added.) Conn. Practice Book § 22-4 (2023).

- "Any party who objects to the inclusion or exclusion of documents in the record certified to the Superior Court may file with the Board a request to correct the certification. The Board, upon notice to the parties, shall issue a written decision on such request and shall certify to the court the request, any objection to the request, the Board's decision, and any correction to the record originally certified." Regulations of CT State Agencies § 31-237g-51(d).

- Motion to correct findings:
  "(a) A party seeking to have the findings of fact of the Board corrected must file a motion to correct findings of fact with the Board. Such motion must be filed not later than two weeks after the Board's filing of the record of an appeal to the Superior Court. A party may, within such two- week period, seek an extension of time for the filing of such a motion, and the Board shall grant an extension where the moving party indicates that it has filed with the Superior Court a request that the Board prepare a transcript of the hearings before the Referee and the Board or otherwise demonstrates good cause for its request. The Board shall deny an untimely request for an extension of time unless the moving party demonstrates good cause for failing to file its request within the two- week period. For purposes of this provision, good cause shall include such factors listed in Section 31-237g-49 of the Regulations of Connecticut State Agencies as may be relevant. The moving party shall indicate in and attach to its motion such portions of the evidence, including relevant portions of the transcript, which support each correction sought." Regulations of CT State Agencies § 31-237g-51a.

- Notice and objection:
  "(b) Upon receipt of a motion to correct findings, the Board shall provide each adverse party notice of the filing of the motion. Each adverse party shall have seven (7) calendar days from the mailing of the Board's notice in which to file with the Board objections to the motion to correct. Any

objecting party may file with the Board additional evidence which it believes is relevant and material to the motion to correct." Regulations of CT State Agencies § 31-237g-51a.

- Decision on motion to correct:
"(c) Upon expiration of the time provided for filing objections, the Board shall issue a written decision on the motion to correct. The Board shall certify to the Court the motion, any objection thereto, and the Board's decision. If the Board denies the motion to correct in whole or in part, and the denial is made an additional ground of appeal to the Court, the Board shall certify to the Court all evidence and transcripts, not previously certified, which the Board deems relevant and material." Regulations of CT State Agencies § 31-237g-51a.

- Claims of error on decision on motion to correct:
"(d) Any party to the appeal may file claims of error concerning the Board's decision on a motion to correct the finding. Such claims shall be filed with the Court not later than two weeks from the date on which the Board's decision on the motion to correct was mailed to the party making the claim and shall contain a certification that a copy thereof has been served on the Board and on each other party to the appeal in accordance with Sections 10-12 to 10-17, inclusive, of the Connecticut Practice Book.

  The appellant shall include any claims of error in the appeal petition unless they are filed subsequent to the filing of that petition, in which case they shall be set forth in an amended petition." Regulations of CT State Agencies § 31-237g-51a.

  "When considering an appeal from the board, we have stated that '[a] plaintiff's failure to file a timely motion [to correct] the board's findings in accordance with [Practice Book] § 22-4 prevents further review of those facts found by the board . . . In the absence of a motion to correct the findings of the board, the court is not entitled to retry the facts or hear evidence. It considers no evidence other than that certified to it by the board, and then for the limited purpose of determining whether . . . there was any evidence to support in law the conclusions reached." *Davis v. Administrator, Unemployment Compensation Act*, 155 Conn. App. 259, 262-63, 109 A.3d 540 (2015).

STATUTES:

You can visit your local law library or search the most recent statutes and public acts on the Connecticut General Assembly website.

Conn. Gen. Stat. (2021)
Title 31. Labor
Chapter 567. Unemployment Compensation
§ 31-249b. Appeal

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal and posted online.

Connecticut Practice Book (2023)

Chapter 22. Unemployment Compensation

§ 22-1. Appeal
§ 22-3. Finding
§ 22-4. Correction of Finding; Motion to Correct Finding
§ 22-5. – Evidence to Be Filed by Appellee
§ 22-6. – Motion to Correct by Appellee
§ 22-7. – Duty of Board on Motion to Correct
§ 22-8. – Claiming Error on Board's Decision on Motion to Correct
§ 22-9. Function of the Court

ONLINE RESOURCES:

Step 4: Ask the Board to make corrections, from Appealing an Unemployment Decision to Superior Court, by CTLawHelp.org

FORMS:

- Motion to the Board of Review to Correct Findings of Fact, Finkenstein v. Administrator, 192 Conn. 104, records and briefs, argued November 1983. Figure 1.

- Decision of the Board on Motion to Correct Findings of Fact, Finkenstein v. Administrator, 192 Conn. 104, records and briefs, argued November 1983. Figure 2.

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

Connecticut Supreme Court:

- Finkenstein v. Administrator, 192 Conn. 104, 112-113, 470 A.2d 1196, 1984 Conn. Lexis 507 (1984). "We have stated previously that the Superior Court does not retry the facts or hear evidence in appeals under our unemployment compensation legislation. Rather, *it acts as an appellate court to review the record certified and filed by the board of review.* *Burnham v. Administrator*, 184 Conn. 317, 321, 439 A.2d 1008 (1981). The court 'is bound by the findings of subordinate facts and reasonable factual conclusions made by the appeals referee where, as here, the board of review adopted the findings and affirmed the decision of the referee.' Id., quoting *DaSilva v. Administrator*, 175 Conn. 562, 564, 402 A.2d 755 (1978). 'Conclusions of law reached by the referee cannot stand, however, if the court determines that they resulted from an incorrect application of the law to the facts found or could not reasonably and logically follow from such facts. Although the court may not substitute its own conclusions for those of the referee, the court's ultimate duty is to decide whether the referee acted unreasonably, arbitrarily or illegally. *Guevara v. Administrator* [172 Conn. 492, 495, 374 A.2d 1101 (1977)].' . . . Thus, we have recognized that our standard of review in administrative proceedings must allow for judicial scrutiny of claims such as constitutional error, jurisdictional error, or error in the construction of an agency's authorizing statute." (Emphasis added.)

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Connecticut Appellate Court:

- Seward v. Administrator, Unemployment Compensation Act, 191 Conn. App. 578, 586, 215 A3d 202 (2019). "(failure to file timely motion for correction of board's findings in accordance with Practice Book § 22-4 prevents further review of facts found by board); *Shah v. Administrator, Unemployment Compensation Act*, 114 Conn. App. 170, 176, 968 A.2d 971 (2009)."

- Pajor v. Administrator, Unemployment Compensation Act, 174 Conn. App. 157, 165, 165 A.3d 265 (2017). "The plaintiff is also incorrect in his assertion that the filing of such a motion [to correct] permits the court to review the board's credibility determinations. Practice Book § 22–9 (b) provides: 'Corrections by the court of the board's finding will only be made upon the refusal to find a material fact which was an admitted or undisputed fact, upon the finding of a fact in language of doubtful meaning so that its real significance may not clearly appear, or upon the finding of a material fact without evidence.' Section 22–9 (a) provides that, despite the filing of a motion to correct, a court's review of the board's findings does not extend to 'conclusions of the board when these depend on the weight of the evidence and the credibility of witnesses.'"

- Martinez v. Administrator, Unemployment Compensation Act, 170 Conn. App. 333, 338-339, 154 A.3d 1048 (2017). "Practice Book § 22-4 provides the mechanism for the correction of the board's findings. It states that '[i]f the [plaintiff] desires to have the finding of the board corrected, he or she must, within two weeks after the record has been filed in the superior court ... file with the board a motion for the correction of the finding and with it such portions of the evidence as he or she deems relevant and material to the corrections asked for....'

  'A plaintiff's failure to file a timely motion [to correct] the board's findings in accordance with [Practice Book] § 22-4 prevents further review of those facts found by the board.... In the absence of a motion to correct the findings of the board, the court is not entitled to retry the facts or hear new evidence.' (Internal quotation marks omitted.) *Resso v. Administrator, Unemployment Compensation Act*, 147 Conn. App. 661, 665, 83 A.3d 723 (2014).

  In the present case, the plaintiff failed to file a motion to correct with the board, a necessary prerequisite to a challenge of the board's findings. Despite no motion being filed, the court, in examining the board's decision, reviewed the evidence to determine its sufficiency and its credibility, and then substituted its own conclusions for those of the board. Specifically, the court determined that there was no

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finding that, if jury duty was cancelled, the employer required its employees to return to work. In addition, the court determined that the record did not indicate whether the plaintiff went to the court and was told jury duty was cancelled or at what time the plaintiff was told jury duty was cancelled. Moreover, the court determined that Accuosti's knowing that jury duty was cancelled on October 21 because he looked it up on the judicial branch website was not credible. Absent a motion to correct, the court did not have the authority to attack the findings of the board and make these new findings."

- Phillips v. Administrator, Unemployment Compensation Act, 157 Conn. App. 342, 115 A3d 1162 (2015). "The board noted the underlying record may not be supplemented without good cause. Although new evidence may provide a basis for opening the record, the evidence must be new and not discoverable through the exercise of due diligence. See Regs., Conn. State Agencies § 31-237g-35; *Meehan Real Estate* v. *Administrator, Unemployment Compensation Act*, Superior Court, judicial district of Windham, Docket No. CV-11-5005707-S (April 2, 2012). The board's review of a referee's decision is limited to the existing record." (p. 348)

  "The plaintiff also attempted to raise new allegations outside of the existing record, which she may not do. See *Mayo* v. *Administrator, Unemployment Compensation Act*, 136 Conn. App. 298, 301–302, 44 A.3d 883 (2012)." (pp. 348-349)

  "The board stated that even if it had considered the plaintiff's new claims, they were not likely to alter its conclusion. The board further stated that although a party to an unemployment compensation proceeding has the right to be represented by counsel, a party is not provided a second hearing if the party failed to obtain legal representation at the first hearing. See Regs., Conn. State Agencies § 31-237g-11 (a)." (p. 349)

- Chicatell v. Administrator, Unemployment Compensation Act, 145 Conn. App. 143, 149, 74 A. 3d 519 (2013). "Further, it bears repeating that '[i]n the absence of a motion to correct the findings of the board, the court is not entitled to retry the facts or hear evidence. It considers no evidence other than that certified to it by the board, and then for the limited purpose of determining whether . . . there was any evidence to support in law the conclusions reached. [The court] cannot review the conclusions of the board when these depend upon the weight of the evidence and the credibility of witnesses.' (Internal quotation marks omitted.) Id., 275, citing Practice Book § 22-9 (a)."

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

- Manukyan v. Administrator, Unemployment Compensation Act, 139 Conn. App. 26, 54 A.3d 602 (2012). "Our Supreme Court has held that when the Superior Court reviews an appeal from the employment security board of review (board), and no timely motion to correct has been filed with the board, the board's factual findings are not subject to further review by the Superior Court or an appellate court. *JSF Promotions, Inc. v. Administrator, Unemployment Compensation Act*, 265 Conn. 413, 422, 828 A.2d 609 (2003). The court only looks to whether the referee's and board's conclusions are reasonably and logically drawn. See *Howell v. Administrator, Unemployment Compensation Act*, 174 Conn. 529, 533, 391 A.2d 165 (1978) . . ." (pp. 27-28)

  "It was the plaintiff's obligation, under practice Book § 22-4, to make a timely motion to correct if he claimed any lack of clarity or error in the board's findings . . . " (p. 38)

Connecticut Trial/Superior Court:

- Sessions v. Administrator, Unemployment Compensation Act, Judicial District of New Britain, CV19-5024846-S (2019 Conn. Super. Lexis 2791) (2019 WL 5957879) (October 25, 2019). "The issue in this appeal is whether the decision of the board that the plaintiff is ineligible for benefits because she was discharged by her employer for willful misconduct in the course of her employment resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts. *Robinson v. Unemployment Security Board of Review*, Supra, 181 Conn. 5. The plaintiff did not file a motion to correct the facts found. After reviewing the certified record and the parties' pleadings and arguments, the court concludes that the decisions of the Board to deny the Motion to Reopen and to deny the claimant eligibility for unemployment compensation benefits follow reasonably and logically from the facts found and correctly apply the law to those facts. The findings of fact and conclusions of law are not arbitrary, illegal or an abuse of discretion."

WEST KEY NUMBERS:

Unemployment Compensation − Judicial Review
450-500
465. Record; transcript
469. Scope of review
478. − Presumptions and inferences, in general
479. − Additional evidence, consideration of
484. − Reweighing evidence
485. − Evidence supporting findings, in general
486. − Substantial evidence; competent evidence
487. − Conflicting evidence
488. − Weight of evidence
489. − Credibility determinations

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  Authors' Comment to Form 204.2, pp. 407-410

- 1 Connecticut Practice Series, *Superior Court Civil Rules*, 2022 ed., by Wesley W. Horton et al., Thomson West (also available on Westlaw).
  Chapter 22. Unemployment Compensation
  See Authors' Comments after each section

- *Connecticut Employment Law*, 5th ed., by Pamela J. Moore, Connecticut Law Tribune, 2020.
  Chapter 9. Unemployment Compensation
  § 9-5. Appeal Procedures
  § 9-5:4. Appeal to Superior Court
  § 9-5:4.1. Standard of Review

- 1 *West's Connecticut Rules of Court Annotated*, 2022 ed., Thomson West.
  Chapter 22. Unemployment Compensation
  See Notes of Decisions for each section

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- Robert A. DeMarco, *Connecticut Unemployment Compensation: Eligibility, Disqualification and the Appeal Process*, 5 University of Bridgeport Law Review 145, issue 1, pp. 145-174 (1983)

Figure 1: Motion to the Board of Review to Correct Findings of Fact

Motion to the Board of Review to Correct Findings of Fact

The plaintiff in the above-entitled case respectfully moves that the Findings of Fact be corrected as follows:

1. By deleting and amending Paragraph 7 to state:

   Ms. Fitzgerald being in another room only overheard from a distance and only overheard parts of the conversation between Dr. Nanda and the claimant. Her memory as to those parts that she did overhear was not clear. Upon seeing the claimant and the claimant's reactions to Dr. Nanda's statement, Ms. Fitzgerald thought that the claimant had been fired and was certain that the claimant believed she had been fired. (This correction is based on Pages 13, 24, 25, 27, and 28, of the transcript certified to the Court and on the corresponding pages of the attached transcript).

2. By adding the following paragraph:

   7 (a) In her conversation with the claimant on July 30, 1979, Dr. Nanda failed to make her intentions clear to the claimant. Dr. Nanda admitted to a lack of proficiency in the English language. (This addition is based on Pages 10, and 15, of the transcript certified to the Court and on the corresponding pages of the attached transcript).

The Appellant

September 29, 1980

Figure 2: Decision of the Board on Motion to Correct Findings of Fact

Decision of the Board of Review on Claimant's Motion to Correct Findings of Fact

The claimant, through counsel, filed with the Board of Review a Motion to Correct Findings of Fact, said findings being those recited in the Appeals Referee's decision of December 12, 1979 and which were adopted by the Board of Review in issuing its decision on the claimant's appeal from the Referee's decision in the above captioned unemployment compensation matter.

"Facts will not be added unless they are undisputed and material. Cutler v. MacDonald, 174 Conn. 606, 608-10, 392 A. 2d 476. Omissions will not be corrected if the change sought amounts to a request that we accept the appellant's version of the facts. Edgewood Construction Co. v. West Haven Redevelopment Agency, 170 Conn. 271, 272, 365 A.2d 819. Nor will corrections be made by adding facts already included in the finding in different language. Cleveland v. Cleveland, 165 Conn. 95, 96, 328 A.2d 691." Deer Island Association v. Trolle, 41 Conn. L. J., No. 50, p. 18, 19.

The claimant's Motion to Correct Findings of Fact having been heard and it appearing that no factual or legal basis has been presented to warrant and require the requested corrections, the motion is herewith denied.

Chairman,
Board of Review

November 19, 1980

Table 1: Supplementing the Record

Supplementing the Record	
Decarolis v. Administrator, Unemployment Compensation Act, Superior Court, Judicial District of Litchfield at Torrington, LLICV185010537S (November 27, 2018) (2018 WL 6722430).	On December 22, 2017 the Referee issued her decision affirming the Administrator's decision and dismissing the plaintiff's appeal. On December 27, 2017 the plaintiff submitted his additional information. Rather than supplementing the record with this information, the Referee treated the plaintiff's submission as a motion to reopen and declined to supplement the record. The plaintiff filed a timely appeal of the Referee's decision to the Board which held a hearing and reviewed the record before the Referee. Apparently recognizing the unfairness of the Referee's failure to supplement the record with the plaintiff's additional information, the Board supplemented the record with it. This information included additional work search efforts as well as medical documentation that the plaintiff has not had any barriers to working full time since initiating has claim for benefits.
Sheri Speer v. Administrator, Unemployment Compensation Act et al., Superior Court, Judicial District of New London., No. CV125014479 (July 1, 2014) (2014 WL 3893233).	The plaintiff filed a timely motion to correct with the board of appeals on October 10, 2012 seeking to correct some eighty-five items. The board denied the motion to correct in its entirety on June 26, 2013 after determining that the motion improperly attempted to supplement the record with additional evidence and challenged the board's previous conclusions of law. . . The plaintiff's motion to correct merely listed eighty-five evidentiary points that the plaintiff wished the board to reconsider without specifying any particular findings of fact to which the plaintiff objected. As the board observed, much of the plaintiff's motion to correct had "not identified by number any finding which it [was] asking the board to correct. Instead, it [was] apparently seeking to supplement the record. However, a request to supplement the record is not the proper subject of a motion to correct the findings."
Salvatore Caracoglia, v. Administrator, Unemployment Compensation Act et al., Superior Court, No. CV 960079843S (Jan. 27, 1998) (1998 WL 46431).	At the hearing on his appeal, the claimant sought to supplement the administrative record, claiming that right under § 4-183(h) C.G.S. The court denied that motion pursuant to § 4-186 C.G.S., which exempts appeals from the decisions of the Administrator of the Unemployment Compensation Act from the application of Chapter 54, including § 4-183(h).

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

Section 2b: Hearing

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources regarding the hearing in Connecticut unemployment compensation appeals to the superior court.

DEFINITIONS:

"Appeals from decisions of the Employment Security Board of Review are privileged with respect to their assignment for trial, but they shall be claimed for the short calendar. The judicial authority, however, may order the appeal placed on the administrative appeal trial list." Conn. Practice Book § 22-2(a) (2023).

"Such appeals shall be claimed for the short calendar unless the court shall order the appeal placed on the trial list." Conn. Gen. Stat. § 31-249b (2021).

ADDITIONAL INFORMATION:

"In any appeal in which one of the parties is not represented by counsel and in which the party taking the appeal does not claim the case for the short calendar or trial within a reasonable time after the return day, the judicial authority may of its own motion dismiss the appeal, or the party ready to proceed may move for nonsuit or default as appropriate." Conn. Practice Book § 22-2(b) (2023).

"In any appeal in which one of the parties is not represented by counsel and in which the party taking the appeal does not claim the case for the short calendar or trial within a reasonable time after the return day, the court may of its own motion dismiss the appeal, or the party ready to proceed may move for nonsuit or default as appropriate." Conn. Gen. Stat. § 31-249b (2021).

"The judicial authority may, on request of a party to the action or on its own motion, order the board to prepare and verify to the court a transcript of the hearing before the referee in cases in which the board's decision was rendered on the record of such hearing, or a transcript of the hearing before the board in cases in which the board's decision was rendered on the record of its own evidentiary hearing." Conn. Practice Book § 22-1(c) (2023).

STATUTES:

Conn. Gen. Stat. (2021)
- Title 31. Labor
  - Chapter 567. Unemployment Compensation
    - § 31-249b. Appeal

You can visit your local law library or search the most recent statutes and public acts on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal and posted online.

Connecticut Practice Book (2023)
Chapter 22. Unemployment Compensation
§ 22-2. Assignment for Hearing

WEST KEY NUMBERS:

Unemployment Compensation − Judicial Review
450-500
498. Rehearing, reopening or reconsideration

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

- Pajor v. Administrator, Unemployment Compensation Act, 174 Conn. App. 157, 165 A.3d 265 (2017). "The plaintiff next claims that the court improperly concluded that the board's determination that he lacked good cause for his failure to attend the remand hearing was not arbitrary, unreasonable, or an abuse of discretion. Specifically, he argues that he had been actively prosecuting the appeal for a year, and, thus, the referee's determination that he deliberately chose not to attend the remand hearing as a "delay tactic" was unavailing. The plaintiff further argues that he failed to attend the hearing because of a language barrier between himself and his counsel. He alleges that, during a meeting following the board's remand to the referee for a hearing on the merits, his attorney communicated with him in Polish, the language in which the plaintiff is proficient, in regard to the upcoming hearing, and that he had left that meeting with the mistaken impression that his counsel would 'take care of' the hearing, either by attending it or providing him with further instructions. We are not persuaded by the plaintiff's arguments." (pgs. 169-170)

  "The plaintiff, on appeal, does not dispute the board's findings that he met with his counsel and discussed the scheduled hearing. He argues only that he misunderstood his counsel's advice because his counsel had an alleged limited ability to communicate in Polish. It is clear, in our review of the board's September 30, 2013 decision, that its findings depended on the weight of all of the evidence before it and that those findings did not discount the plaintiff's conversation with his counsel about the hearing. In fact, the board made a credibility determination that the plaintiff's alleged confusion lacked merit in light of his counsel's advice that he would prevail if he answered the referee's and employer's questions at the hearing. It further determined that he had received a similar notice to appear at a prior hearing and did so appear, and thus he should have been well aware of his required presence at the July 9, 2013 hearing.

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On the basis of the record before us, we conclude that the board was presented with substantial evidence to justify its conclusions concerning the plaintiff's failure to prosecute the appeal. Accordingly, we agree with the court that the board's decision was logically based upon its findings of fact, and that there is nothing in the record to indicate that its decision was unreasonable, arbitrary, or illegal." (pgs. 171-172)

- Phillips v. Administrator, Unemployment Compensation Act, 157 Conn. App. 342, 349, 115 A.3d 1162 (2015). "The board further stated that although a party to an unemployment compensation proceeding has the right to be represented by counsel, a party is not provided a second hearing if the party failed to obtain legal representation at the first hearing. See Regs., Conn. State Agencies § 31-237g-11 (a)."

- Cragg v. Administrator, Unemployment Compensation Act, 160 Conn. App. 430, 442-443, 125 A.3d 650 (2015). "It is apparent that under Practice Book § 22–2, titled 'Assignment for Hearing,' parties bringing appeals from the decisions of the board to the trial court are entitled to oral argument as to the merits of their appeal. As a general proposition, it is self-evident that parties should be afforded the right to be heard on the merits of their appeal; this is fair, reasonable, and fundamental to our adversarial system. Indeed, it is commonplace for courts to hold hearings before ruling on motions for judgment. . . In the present case, the plaintiff attempted to invoke her right to a hearing through her three separate requests for oral argument. The plaintiff argues that the court should not have deprived her of oral argument merely because 'she filed the wrong form, requesting argument rather than claiming the case for a trial.' In essence, the plaintiff contends that she put the court on notice three times that she wished to be heard on the merits of her appeal and, therefore, did not waive her right to oral argument. The court, nonetheless, dismissed the plaintiff's appeal without affording her a hearing. We therefore conclude that the court should not have granted the administrator's motion for judgment absent oral argument.

  Given the procedural realities of this case, however, the failure to permit the plaintiff to be heard was harmless error. . . Although we conclude, under the particular circumstances of this case, that the error is harmless, we, nonetheless, reiterate the importance of providing litigants with the opportunity to be heard on the merits of their appeals consistent with chapter 22 of the Practice Book and *Law Offices of Neil Johnson v. Administrator, Unemployment Compensation Act*, supra, 101 Conn. App. 782, 924 A.2d

859. In a future case, different circumstances might dictate a different result." (Internal citations omitted.)

- Manukyan v. Administrator, Unemployment Compensation Act, 139 Conn. App. 26, 32, 54 A.3d 602 (2012). "The matter was taken on the papers because neither party requested oral argument."

LAW REVIEWS:

Public access to law review databases is available on-site at each of our law libraries.

- Robert A. DeMarco, *Connecticut Unemployment Compensation: Eligibility, Disqualification and the Appeal Process*, 5 University of Bridgeport Law Review 145, issue 1, pp. 145-174 (1983)