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## THE IOWA UNEMPLOYMENT APPEALS TELEPHONE HEARING PROCESS

Bruce Graham<sup>1</sup>

Iowa Job Service, the implementing agency for unemployment insurance benefits, was an early leader in organizing its appeals process to include telephone hearings.

The Appeals Section of Iowa Job Service, within the Department of Employment Services, consists of a Chief Administrative Law Judge (ALJ) and 13 ALJ positions (12 filled as of June, 1992), and handled a workload of 14,000 appeals during 1990, almost 15,000 appeals during 1991, and almost 9,000 appeals during the first half of 1992. Support staff includes a working office manager, and six clerks who handle scheduling, mailing of decisions and exhibits, retrieving files, processing mail, issuing subpoenas, clearing recording tapes, managing the docket, and the dozens of other often unnoticed tasks without which the professional work could not go forward.

Decisions of Job Service representatives are mailed to the affected claimant and employer, and contain notice of the appeal deadline. The decision provides an address to which appeals may be directed, and sets forth further information.

Except for an in-person meeting between the ALJ and the parties, and the ALJ's dictation of a decision, at field offices around the state, all appeal activities are conducted at the administrative office in the capital. Each ALJ occupies a cubicle, approximately six by twelve, with desk, swivel chair, visitor chair and one or two bookshelves, accommodations whose spartaneity seems to satisfy Will Rogers' desire that people in government should live as simply as the public they serve.

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The author expresses his appreciation to Iowa Job Service Chief Administrative Law Judge Steve Beasley for his thoughts and advice in preparation of this article.

he listens, and connects all participants himself. Reception over the phone line is generally from very good to excellent, with few inaudibles. In fact, clarity of participants' speech over the telephone exceeds that achieved during many in-person hearings.

During 1990 and 1991 the Bureau was able to maintain a rate of decision within 30 days of appeal filing well in excess of 80% (when understaffed by two). Even understaffed and faced with Emergency Unemployment appeals, the Bureau's rate of decisions within 30 days, for the first half of 1992, was above 80%. This efficiency would be impossible but for the telephone appeal process, without a substantial increase in the number of ALJs.

Appeals that contain a request for an in-person hearing are, without more, placed in waiting for an ALJ to journey to the appropriate local field office (there are 15 locations away from the capital where in-person hearings are held). Unless an in-person hearing request is included in the appeal, a telephone hearing notice is prepared and sent out after the file is gathered. Unless an in-person hearing is then requested, the telephone hearing goes forward.

The front of the telephone hearing notice (Appendix A) names the parties and explains that a telephone hearing will be held at a stated time, and contains a large box, margin and message in red, with the caveat that unless the party calls one of the toll-free numbers listed, before the hearing, the party will not be called. The front of the notice states the parties' right to be represented by counsel or anyone else (Iowa has no restriction on who may represent a party), a citation to the statutory provision believed to be involved, and a narrative statement that "The following matters have been asserted (e.g.): Whether the Claimant was discharged for misconduct," and the admonition to read important material on the back. The back of the notice (Appendix B) contains general information on how a party may request a postponement, subpoena witnesses and obtain an in-person hearing and instructs the parties to submit proposed exhibits as soon as possible, to the Bureau, for dispatch to the opposing party. These items are marked as exhibits by the ALJ and sent on to the opposing party, time permitting, before the hearing.

The statute governing unemployment compensation provides an unconditional right of a party to an in-person hearing, merely upon request, no questions asked and no justification necessary, unless distance makes an in-person hearing impractical. In practice, a person requesting an in-person hearing after notification of a telephone hearing is spoken to and advised of the advantages of a telephone hearing and potential disadvantages to them of an in-person hearing. As a general principle, even when the volume of appeals is very heavy, and available ALJ time limited, telephone hearings are scheduled sufficiently in advance of the expiration of 30 days from the date of appeal filing

to allow a comfortable margin for the ALJ to prepare and mail a decision within the federal time standard deadline. The Iowa system is so well organized, and the support personnel so skilled in fancy footwork, in fact, that a postponement request, other than for an in-person hearing, promptly upon receipt of the hearing notice, often results in the telephone hearing, even with a postponement, being still held in time for the decision to comply with the federal time standards.

Three clerical persons are assigned—along with other duties—to receive calls from parties, at numbers designated on the notice. One number is for calls from the local calling area, and two 800 (toll-free) numbers accept calls, one from within the state and the other from outside the state. The posts are covered from 8 a.m. to 4:30 p.m. If any of the designated people are absent, other staff members fill in. Even ALJs will lend a hand. A typical colloquy for taking a call is as follows:

Appeals: "Appeals, may we help you?"

Caller: "I'm supposed to give you a number for a hearing."

A: "Yes. Are you the claimant or the employer?"

C: "The employer."

A: "The Claimant's name?"

C: "Saddam Hussein."

A: "The date and time of the hearing?"

C: "May 21, 1:30 p.m."

begins 92A-UI." A: "The appeal number? It's at the top right of the notice; it

C: "Okay. 04372-Gt."

A: "And the name of the employer?"

C: "Amalgamated Terrorist Butchers."

A: "And what number should we call?"

Journal of the National  
Association of Administrative Law Judges

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C: "515-961-8594."

A: "And who should we ask for?"

C: "Any one of several people. If Mr. Qaddafi isn't available, you could ask for a Kim Il Sung or Yasir Arafat. If none of them are free you can talk to Hafez Assad; he'll definitely speak to you."

A: "And will there by any other numbers we should call for other witnesses?"

C: "No, that's it."

A: "I'm going to give you a control number. You should write it on your appeal notice. It confirms that you made the call. Today's number is 162. Now let me go over this with you. The hearing is on May 21, at 1:30 p.m., on Appeal 04372-Gt, for Saddam Hussein, and we should call 515-961-8594, for Mr. Qaddafi, Mr. Arafat, Mr. Sung or Mr. Assad."

C: "Right."

A: "Thank you and good-bye."

The slip (Appendix C) containing the information is delivered directly to the ALJ's desk if the call is on the same day as the hearing. Otherwise the slip is kept in a box at the clerk's desk, until the end of the day, then left in a receptacle at the ALJ's office. The clerk also notes in a notebook the date of the call, the claimant's name, the appeal number and who called, the claimant or employer. A significant number of calls come in after the beginning of the hearing, and the information is immediately passed on to the ALJ, so that the caller can be reached to join the hearing or be contacted promptly, if the hearing has been concluded.

A fair number of calls are not specifically to leave numbers, but are inquiries, complaints about decisions, delays or scheduling, and the like. If the efforts of the clerical staff are not able to promptly resolve the problem, they take the message for the ALJ involved in the matter or channel the call to the Chief ALJ or to an available ALJ.

The advantages of telephone hearings to ALJs are obvious: more production with less stress and strain over wasted travel time; compliance with time standards, which causes supervisors to be more contented; more ALJ time at home with their

families or whatever. Other values have to do with the effective functioning of the system, and that better operation of the system is attained without burdening the ALJ or other aspects of the system: decisions are issued sooner; "invisible" overhead of case presence within the system is reduced; savings in travel expense and lost travel time; keeping on top of current correspondence and calls when received rather than facing them each week on returning from the road; and, not least, substantially lower costs to the taxpayers.

One incidental advantage of the telephone hearing process is the tendency toward elimination of any even unconscious bias or prejudice on the part of the ALJ. Who among us can claim with total certitude not to be influenced by the bedraggled or spiffy appearance of a participant in an in-person hearing? Which of us can be absolutely confident of indifference toward the hair or clothing style, ethnic origin or other visible characteristic of a party to a hearing?

As earlier mentioned, a system of telephone hearings encourages not simply compliance with the federal time standards, but exceeding those standards by significant margins.

## Problems

Aside from the usual problems incident to all hearings, whether in person or otherwise, certain difficulties are unique, but certainly not insurmountable.

### Calls

#### 1. No Call

No call by a party is equivalent to no appearance by a party at an in-person hearing. If the failure to appear is not followed by some contact before the decision is issued, the fact is given the same effect, and any claim that would relieve a non-appearing party of detrimental impact would have the same validity as with a scheduled in-person hearing.

#### 2. Call During the Hearing

A call received during the hearing is roughly the same as an appearance in the middle of an in-person hearing, and would be treated the same way.

### 3. Late Call

This is an area where the telephone system provides a definite advantage over the in-person setup. First, it has been the practice in Iowa to tape record, after the hearing record, all conversations with parties who call after the hearing is concluded. This is now incorporated in Job Service regulations. If the party provides an insufficient reason for the late call (e.g., "I forgot to read the notice" or "I thought you had my number") this explanation, tacked onto the end of the hearing tape, establishes the absence of good cause for reopening the record, and reviewing authorities have clear proof of this.

### **In-Person Hearing Requests**

Requests for in-person hearings, after the initial appeal cannot be avoided. Experience, however, demonstrates that, rather than a simple "Okay" to every request, scrutiny of the request, information to the requester, or gentle persuasion, or even firm persuasion, will parry the request and expedite the work flow. A certain number of requests cannot be turned aside, because they are predicated upon misunderstandings or misgivings which cannot be relieved, or for illogical and emotional reasons. Lawyers will assert that they always want to "present evidence in person so that credibility can be judged;" people whose side does not prevail at a telephone fact finding will often attribute their failure to the method of operation instead of the weakness of their evidence; parties motivated by an animus will not be moved from their demand for an in-person hearing, because they wish vengeance and to cause inconvenience. In-person requests for these reasons—whether stated or unstated—once determined to be such, might as well be granted without wasting time in attempting to reason with the unreasonable. Other requests can be coped with, and, if dealt with effectively, will often lead to the request being withdrawn, with the requester feeling no anxiety or unhappiness with the system.

First, in-person hearings, except at the capital, almost always involve several weeks' delay, since an ALJ is not in each city every week. This works against a claimant not receiving benefits, and may require a claimant, who finds work between the date of the scheduled telephone hearing and the in-person hearing date, to take time off from work that would not be lost otherwise.

Witnesses usually find it more convenient to testify over the phone, instead of at the local office. And employers whose evidence may be incomplete without the testimony of several witnesses to segments of the events involved will find it more convenient not to incur substantial down time bringing all of the observers to the in-person hearing site.

As a matter of practice, the party requesting the in-person hearing is required to bear the heavier burden of travel. For example, an in-person hearing requested by a claimant who lives 15 miles from city A and 50 miles from city B, would normally result in him travelling to city B, if the employer is 15 miles from city B but 30 miles from city A.

There is also some chance of a "backup" of hearings at the in-person hearing site, resulting in either delays or postponements. The Iowa system requires that an in-person hearing running into the scheduled time slot for a subsequent hearing give way to the later-scheduled matter. This means that the late-running hearing resume later or on another day. This does not happen with telephone hearings, since there are other ALJs at the administrative office to take a matter for an ALJ bogged down on a hearing, and the earlier telephone hearing can proceed without interruption to a conclusion.

#### 1. "I want to look him in the eye."

This is a common basis for an in-person hearing request. The lay- and even legal-community's widespread confidence in personal observation in order to determine credibility is inconsistent with reality. See, Lareau & Sachs, *Assessing Credibility in Labor Arbitration*, 5 *The Labor Lawyer* 151 (Spring 1989). The author recalls only one instance—in almost eight years of hearings—where observation of the witness influenced his opinion on credibility, and that was based upon a collateral matter and not on any of the "classical" indications of veracity or mendacity. As most ALJs will agree, credibility is, in the overwhelming number of cases, either not at issue because the relevant facts are not in dispute, or determined by the testimony and other evidence at the hearing, and not observations of witness actions by the ALJ.

#### 2. In-Person Request a Subterfuge for Postponement

On rare occasions an application for a postponement is denied, and the requester is astute enough to ask for an in-person hearing, knowing that the Appeals Bureau has no option, and fully aware that the party will later ask for a telephone hearing. Isolated cases are best dealt with as legitimate in-person requests. If the problem becomes common with a particular party, usually an employer or its representative, a denial of the request would seem appropriate, although not provided for by the letter of the law.

#### 3. Lawyer Conflicts

In Iowa something like 10% of the separation hearings involve a lawyer on at least one side. Many postponement requests are from lawyers, for in-person



as well as telephone hearings. A party is entitled to be represented by counsel, but not by any specific lawyer, and the general principle applied in Iowa is that a simple, uncomplicated, attorney conflict is not good cause for a postponement. In most cases the firm has several lawyers, the client has contacted the lawyer at the eleventh hour or the lawyer has waited until the eleventh hour to ask for a postponement, none of which are good reasons for granting a postponement.

#### 4. Claimant Work/Employer Business Conflicts

As a rule a claimant's work schedule is not good cause for a postponement. Much more often than not, the claimant would not, even if a postponement were granted, be available at a time when hearings are scheduled, so a postponement solves nothing. And the claimant can normally obtain a break or time off to participate from his present employer, if he asks for enough in advance. Similarly, an employer who pleads appointments, seminars, meetings, travel, usually is not entitled to a postponement. An unemployment hearing is business, just like other aspects of his business, and the telephone hearing format allows great flexibility in an employer working around other scheduled activities.

Peculiar postponement requests are not uncommon. In one case the claimant lived in city A, and was a truck driver who was dispatched to and from a terminal in city B, 70 miles distant by interstate highway (speed limit 65), where his supervisors were situated. He requested an in-person hearing, which, for where he lived, normally would have been scheduled for city C, 45 miles by two-lane highways from both cities A and B. After some consideration, it was decided to schedule the hearing for city B, the real "situs" of his job. The difference in the claimant's travel times to city B and city C was minor, and the employer should not have been subjected to such a major inconvenience for so small a convenience to the claimant. A "center of gravity" standard was applied.

#### Late Receipt of Exhibits

One problem whose resolution seems to defy all efforts is the tendency of parties—usually employers—to submit exhibits too late to be sent to the other side prior to the telephone hearing. When the author began his tenure with the Appeals Section, exhibits were almost always received by first class mail, with an occasional overnight letter. The exhibits came to the office, usually, several days prior to the hearing date, and could be dispatched so as to be in the hands of the opposing party by the hearing time. With the advent of the FAX craze, an aggravatingly large number of employers and their representatives wait until two days, or the day before, the hearing, to send their papers beeping their way to the ALJ. Arrival of these items is now often on the

day of the hearing, and the author has had more than one employer representative ask, during the telephone hearing, if their FAX sent that morning was being received in evidence.

The administrative process—as the contemporary common law and equity courts—abhors "trial by ambush." The problem of late exhibits, of course, is not a problem where the hearing is in person. The solutions to late exhibits for telephone hearings appear to be (1) for the ALJ to quote the items to allow a response by the other side, provided the exhibit is not so complex or prolix as to lead to prejudice; or (2) reject the documents as untimely sent and give the late submitter the chance to make whatever offer of other proof is available. In most cases the problem is not in reality a major one, anyway, since experience demonstrates that most of the documents tendered by employers, both at in-person hearings and for telephone hearings, are either cumulative, immaterial or not relevant to a material issue in dispute.

#### **Summary**

The author has worked with the Iowa telephone hearing method for almost eight years, and finds it of substantial benefit to the system, the public for whose benefit the system functions, and ALJs personally. High production levels are attained within the time standards, with less cost to the system and less strain on the personnel. And, most important, the quality of hearings and decisions is not compromised.