

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

MICHIGAN ADMINISTRATIVE HEARING SYSTEM

(By authority conferred on the director of the department of licensing and regulatory affairs under 1936 PA 1 (Ex. Sess.), being MCL 421.36, and Executive Reorganization Order Nos. 1996-2, 2003-1, 2011-4 and 2011-6, MCL 445.2001, 445.2011, 445.2030, and 445.2032)

PART 1. GENERAL PROVISIONS

R 421.1101 Definitions.

Rule 101. As used in these rules:

- (a) "Act" means 1936 (Ex. Sess.) PA 1, MCL 421.1 et. seq.
- (b) "Agent office" means an unemployment insurance office outside the state of Michigan serving as agent of the agency.
- (c) "Board of review" or "board" means the Michigan employment security board of review.
- (d) "Agency" means the unemployment insurance agency as created in Executive Reorganization Order No.2003-1, MCL 445.2011.
- (e) Unless the context otherwise requires, the word "party" means the agency, the employing unit, and the claimant, and includes an agent or attorney of the agency, the employing unit, or the claimant.
- (f) "Referee" means a hearing officer or administrative law judge with the state office of administrative hearings and rules (SOAHR) as created in Executive Reorganization Order No. 2005-1, MCL 445.2021.
- (g) "Rehearing" means a request for review of a decision of a referee or the board of review received within 30 days after the date of mailing of the decision.
- (h) "Reopening" means a request for review of a decision of a referee or the board of review received after the 30th day, but within one year, after the date of mailing of the decision.

History: 1979 AC; 2002 AACS; 2007 AACS.

R 421.1102 Tense, gender, and number.

Rule 102. For the purposes of these rules, the present tense includes the past and future tenses, and the future, the present; each gender includes the other 2 genders; and the singular includes the plural and the plural, the singular.

History: 1979 AC.

R 421.1103 Principal office of agency and board; location.

Rule 103. (1) The principal office of the unemployment insurance agency is Cadillac Place, 3024 W. Grand Blvd., Detroit, Michigan 48202.

(2) The principal office of the Michigan Employment Security Board of Review is Ottawa Bldg., Fourth Floor, 611 Ottawa St., Lansing, Michigan 48909-7975.

History: 1979 AC; 2002 AACS; 2007 AACS.

R 421.1104 Service of decisions, notices, and orders; "principal office" defined.

Rule 104. (1) A decision, notice, or order shall be served on each party and on the agent or attorney of record for each party by any of the following methods:

(a) Personal service.

(b) Depositing copies, which are enclosed in an envelope that is properly sealed, addressed, and posted to such person at his or her address appearing on the record of the appeal proceedings, in a United States mail receptacle.

(c) Certified or registered mail. An affidavit or certification of the person making such service shall be prima facie proof of service which is rebuttable by a preponderance of the credible evidence.

(2) If a written request for a notice of a referee hearing or a specific referee decision is received by the agency before the date of mailing of such notice or decision from a claimant's collective bargaining representative who is not the claimant's agent of record or from a claimant's employer who is not a party, each such notice of hearing or referee decision shall be served by any of the methods in subrule (1) of this rule on the principal office of the claimant's collective bargaining representative, if any, or of the employer, where the claim involves any of the following:

(a) Whether a claimant is disqualified under section 29(1)(g), 29(8), or 29(9) of the act.

(b) Whether money paid a claimant is vacation or holiday pay within the meaning of a collective bargaining agreement under section 48 of the act.

(c) Whether a claimant is on a leave of absence within the meaning of a collective bargaining agreement under section 48 of the act.

(d) The impact of a collective bargaining agreement on the issue of suitable work under section 28 or 29 of the act, including, but not limited to, the claimant's prior training, prior earnings, experience, and possible loss of recall or seniority rights.

(e) A claim for federal unemployment benefits where the employer is not a party.

(3) For purposes of subrule (2) of this rule, "principal office" means a collective bargaining representative address filed with the agency by the representative or the claimant or an employer address filed with the agency by the employer.

(4) The provision, pursuant to subrule (2) of this rule, of either a notice of a referee hearing or a referee decision, or both, to a collective bargaining representative or to an employer who is not a party does not serve to make such collective bargaining representative or employer a party under these rules.

History: 1979 AC; 1988 AACS; 2007 AACS.

R 421.1105 Computation of time periods.

Rule 105. (1) The calendar day on which any decision, notice, or order is mailed shall be excluded in the computation of time.

(2) The calendar day on which compliance is required shall be included in the computation of time.

(3) If the last day for compliance is a Saturday, Sunday or legal holiday, the time for compliance will extend to the end of the next day which is not a Saturday, Sunday, or legal holiday.

History: 1979 AC.

R 421.1106 Withdrawal or discontinuance of appeal.

Rule 106. A party who has filed an appeal may withdraw or discontinue the appeal by filing a written request and obtaining approval of the referee or the board of review before whom the appeal is pending.

History: 1979 AC.

R 421.1107 Adjournments; taking testimony of witness unable to appear and testify at scheduled hearing; deposition. Rule 107. (1) Adjournments of hearings may be granted by the referee or the board of review before whom the appeal is pending. Adjourned hearings shall be rescheduled to a time and place that the referee or board of review deems most convenient for all interested parties.

(2) The referee or the board of review may schedule an adjourned hearing at a place convenient to the residence of a witness to take his testimony, if he is unable to appear and testify at a regularly scheduled hearing.

(3) The testimony may be taken by any referee of this state or of any agent state, or may be taken by deposition pursuant to the provisions of law applicable to depositions in civil actions pending in the circuit courts of this state.

History: 1979 AC.

R 421.1108 Witness fee vouchers; processing.

Rule 108. At the conclusion of a testimonial hearing by the referee or the board of review, witness fee vouchers shall be processed by the agency for payment for those witnesses who satisfy all of the following conditions:

- (a) Were duly subpoenaed.
- (b) Appeared in person at the hearing.
- (c) Verified their mileage and proper mailing addresses.

History: 1979 AC; 2007 AACCS.

R 421.1109 "Good cause" defined.

Rule 109. As used in these rules, "good cause" includes, but is not limited to, any of the following:

- (a) Newly discovered material evidence.
- (b) A legitimate inability to act sooner.
- (c) A failure to receive a reasonable and timely notice, order, or decision.
- (d) Untimely delivery of a protest, appeal, or an agency document by a business or governmental agency entrusted with delivery of mail.
- (e) Having been misled by incorrect information from the agency, referee, or board of review.

History: 1979 AC; 1988 AACS; 2007 AACS.

R 421.1110 Employer or claimant fraud; hearing procedure.

Rule 110. (1) A hearing of employer or claimant fraud under section 54, 54a, 54b, 54c, or 62(b), (c), or (d) of the act shall be preceded by a written notice of the penalties and issues involved.

(2) Where one party, including the agency, has documentary evidence or witnesses concerning another party's alleged fraud; the party shall make a witness list and the documentary evidence available to the other party or parties not less than 10 days before a fraud hearing.

History: 1979 AC; 1988 AACS; 2002 AACS; 2007 AACS.

R 421.1111 Decisions of board and courts; subject matter index; copies.

Rule 111. Copies of Michigan court decisions involving the act where the agency is a party shall be kept on file by the agency at Cadillac Place, 3024 W. Grand Blvd., Detroit, Michigan 48202. To the extent practicable, the board of review shall maintain a digest, indexed by subject, of selected board of review and related court decisions. The subject matter index and copies of the decisions shall be available to the public for reference purposes.

History: 1979 AC; 1988 AACS; 2002 AACS; 2007 AACS.

R 421.1112 Rescission.

Rule 112. R 421.501 to R 421.561 of the Michigan Administrative Code, appearing on pages 4356 to 4361 of the 1967 Annual Supplement to the Code, are rescinded.

History: 1979 AC.

PART 2. APPEALS TO ADMINISTRATIVE LAW JUDGES

R 421.1201 Appeal; form.

Rule 201. (1) An appeal to a referee shall be in writing and shall be signed by the appealing party or his agent.

(2) Appeal forms for referee hearings and rehearings shall be available at all commission offices.

History: 1979 AC.

R 421.1202 Appeal; deadline; statements on redetermination; procedure on appeal of denial of redetermination.

Rule 202. (1) An appeal to a referee shall be received by the principal office or any branch office of the commission, or by any agent office of the commission outside the state of Michigan, within 30 days after the date of mailing or personal service of the commission's redetermination.

(2) A party who receives a denial of redetermination because his or her request for review was not filed with the commission within 30 days after the date of mailing or personal service of the underlying determination or redetermination may appeal the denial of redetermination to a referee. The referee shall take evidence on whether there was good cause for issuing a redetermination. If the referee finds good cause, the referee shall inform the parties of that fact and shall then proceed to take testimony on, and decide, the underlying issue or issues, in accordance with R 421.1206.

History: 1979 AC; 1988 AACS.

R 421.1203 Notice of hearing.

Rule 203. (1) Except as required by subrule (3) of this rule, notice of the time and place of the initial hearing before an administrative law judge, and a short and plain statement of the issues involved, shall be served upon the parties not less than 10 days before the date of the hearing.

(2) When an administrative law judge adjourns or continues a hearing for which notice has been given, notice to the parties of the new hearing date may be given orally if the new hearing date is within 7 days of the old hearing date. Otherwise, the new notice shall be served at least 7 days before the date of the new hearing.

(3) When a hearing involves employer or claimant fraud under section 54, 54a, 54b, 54c, or 62(b), (c), or (d) of the act, MCL 421.54, 421.54a, 421.54b, 421.54c or 421.62(b), (c), or (d), the notice of hearing shall be served upon the parties not less than 20 days before the date of the hearing.

History: 1979 AC; 2002 AACS; 2014 MR 11, Eff. June 11, 2014.

R 421.1204 Subpoenas.

Rule 204. (1) A party may request subpoenas to compel witnesses to testify at a referee hearing or to compel persons to produce books, records, and papers at a referee hearing.

(2) Requests for subpoenas shall be made to a branch office or the referee division of the commission.

(3) The subpoenas shall be issued promptly, unless the commission decides that the request is unreasonable.

(4) A party denied a subpoena may apply to the board of review for issuance of the subpoena, and the proceedings before the referee shall be stayed until the board decides whether the subpoena should be issued.

History: 1979 AC.

R 421.1205 Consolidation of proceedings.

Rule 205. Any number of proceedings before 1 or more referees may be consolidated for hearing when the facts and circumstances are similar and no substantial right of any party will be prejudiced thereby. All cases shall be consolidated for hearing in which the alleged facts and the points of law are the same.

History: 1979 AC.

R 421.1206 Readiness of parties after notice of hearing; adjournment; issues before referee.

Rule 206. (1) A party appearing at a hearing before a referee after notice shall have his or her evidence and witnesses present and be ready to proceed on the statement of the issues contained in the notice of hearing.

(2) If an issue or time period beyond that specified in the determination or redetermination is raised at the referee hearing without having been included in the notice of hearing, the hearing shall be adjourned for a reasonable time if requested by either party. Evidence shall not be taken on the issue or time period, and a decision shall not be issued thereon, unless a knowing and informed waiver of adjournment is obtained from the parties. The purpose of the adjournment is to give the parties the opportunity to prepare to meet the issue.

(3) To secure a knowing and informed waiver on the record, it is the obligation of the referee to do all of the following:

(a) Advise the parties that an issue or issues or a period of time not specified in the hearing notice has been or is about to be raised.

(b) Advise the parties of the nature of such issue and the consequences of his or her ruling on such issue.

(c) Advise the parties of the right to request an adjournment.

(4) With regard to that part of a referee's decision which rules on an issue or a period of time not specified in the notice of hearing and where a waiver of adjournment has not been obtained, as required under subrules (2) and (3) of this rule, the board may remand, set aside, modify, reverse, or affirm on appeal.

History: 1979 AC; 1988 AACS.

R 421.1207 Conduct of hearing.

Rule 207. (1) The referee shall conduct and control the hearing to develop the rights of the parties.

- (2) At the beginning of the hearing, the referee shall identify all parties, representatives, and witnesses present and shall outline briefly the issues involved.
- (3) Oral evidence at a hearing before a referee shall be taken only on oath or affirmation.
- (4) Each party shall have all of the following rights:
 - (a) To call and examine witnesses.
 - (b) To introduce exhibits.
 - (c) To cross-examine opposing witnesses on any matter relevant to the issues, even though that matter was not covered in the direct examination.
 - (d) To impeach any witness, regardless of which party first called the witness to testify.
 - (e) To rebut the evidence against him or her.
- (5) A party may be called and examined as if under cross-examination.
- (6) Oral arguments may be presented at the conclusion of the hearing.
- (7) The referee may allow a reasonable time after conclusion of the hearing for the filing of written argument.
- (8) The referee shall secure such competent, relevant, and material evidence that he or she deems necessary to arrive at a fair decision. To that end, the referee may adjourn the hearing from time to time to direct the parties to present the required evidence. The referee may cause subpoenas to be issued for that purpose. The referee may examine any party or witness. However, if the claimant or the employer is represented by legal counsel or an authorized agent, the referee shall allow legal counsel or the authorized agent to first conduct the direct examination of his or her witnesses, if requested. Then the referee may further examine any party or witness.
- (9) When an interested party is not represented by legal counsel or an authorized agent, the referee before whom the hearing is taking place shall advise the party of his or her rights, aid him or her in examining and cross-examining witnesses, and give every assistance to the party compatible with an impartial discharge of the referee's official duties.

History: 1979 AC; 1988 AACCS.

R 421.1208 Hearing location; telephone hearing.

Rule 208. (1) Hearings held to resolve disputes of determinations made under sections 13 to 25 of the act, MCL 421.13 to 421.25, and sections 54, 54a, 54b, 54c or 62(b), (c), or (d) of the act, MCL 421.54, 421.54a, 421.54b, 421.54c or 421.62(b), (c), or (d), shall be scheduled as in-person hearings at a location determined by the Michigan administrative hearing system. At the discretion of the administrative law judge, the testimony of parties or witnesses may be taken by telephone or video.

(2) With the exception of a hearing scheduled under subsection (1) of this rule, all hearings held before an administrative law judge shall be conducted by telephone, unless otherwise directed by the executive director of the Michigan administrative hearing system or his or her designee or designees.

(3) A party to the hearing shall submit any documents he or she intends to introduce at the hearing to the other parties and to the administrative law judge in time to ensure the documents are received before the date of the scheduled hearing. All documents submitted to the administrative law judge shall be identified on the record. The documents shall not be considered evidence on the record unless offered and admitted during the course of the hearing.

(4) If a hearing is conducted by telephone, the administrative law judge shall, on the record, make inquiries that the administrative law judge considers appropriate to ascertain the identity of the individuals participating by telephone. Absent approval of the executive director of the Michigan administrative hearing system or his or her designee, an administrative law judge shall not require a party to submit an affidavit to attest to his or her identity.

History: 1979 AC; 1988 AACS; 2002 AACS; 2014 MR 11, Eff. June 11, 2014.

R 421.1209 Further hearing prior to decision.

Rule 209. (1) At any time between the hearing before a referee and issuance of his decision, the referee on his own motion, or at the request of any party to the proceeding, may direct a further hearing.

(2) A further hearing is within the discretion of the referee.

History: 1979 AC.

R 421.1210 Decision of referee.

Rule 210. (1) Within 60 days after concluding a final hearing, the referee shall issue a written decision which shall be signed by him and dated. The decision shall set forth the findings of fact upon which the decision is based, the reasons for the decision, and the decision. The findings of fact, the reasons, and the decision shall be separately stated; but a failure to so separately state shall not vitiate the decision.

(2) The decision shall contain a notice of rights of appeal, pursuant to R 421.1213 of this part.

History: 1979 AC.

R 421.1211 Rehearing of referee's decision.

Rule 211. (1) A request for a rehearing of a referee's previous decision shall be received by the referee or by an office or agent office of the commission within 30 days after the date of mailing of the decision.

(2) Reasons for requesting a rehearing include, but are not limited to, good and valid reasons for not appearing at a referee hearing which resulted in a dismissal for lack of prosecution or the discovery of material evidence after the date of the referee hearing.

(3) A rehearing may also be granted on the referee's own motion.

(4) Granting a rehearing is within the discretion of the referee. The referee shall state in the order or decision allowing rehearing the reasons for granting the rehearing.

(5) If a timely request for rehearing is denied, both the denial and the referee's previous decision may be appealed to the board of review.

History: 1979 AC; 1988 AACS.

R 421.1212 Reopening and review of referee's decision.

Rule 212. (1) A request for reopening and review of a referee's previous decision shall be received by the referee or by an office or agent office of the commission within 1 year, but more than 30 days, after the date of mailing of the decision.

(2) There shall be a showing of good cause for reopening. If the referee grants a reopening, the order or decision allowing such reopening shall contain a statement of the basis for the good cause finding. If the referee denies a reopening, the order denying reopening shall contain a statement of the basis for the denial.

(3) A reopening and review may also be granted on the referee's own motion if the review is initiated by the referee, with notice to the interested parties, within 1 year after the date of mailing of the previous decision.

(4) Granting a reopening is within the discretion of the referee. If good cause is established, the referee shall issue an order allowing reopening. The referee shall thereafter decide the underlying issues of the case based on the evidence already submitted and any additional evidence the referee may enter into the record.

(5) If a request for reopening is denied, the board of review will not review the referee's previous decision unless it first decides there was good cause for a reopening.

History: 1979 AC; 1988 AACS.

R 421.1213 Notice of rights of appeal.

Rule 213. Each referee decision or final order shall notify the parties of all of the following:

(a) A party has the right to have a decision or a denial of a motion for rehearing reviewed by the board of review by making a timely appeal.

(b) A party may make a timely request to the board of review for an oral argument or to present additional evidence in connection with his or her appeal.

(c) Absent a hearing before it, the board of review shall consider a party's written argument to the board of review only if all parties are represented or by agreement of the parties.

(d) A referee decision or final order may be appealed directly to a circuit court if the claimant and the employer or their respective authorized agents or attorneys sign a written stipulation and file it in a timely manner.

(e) A party may make a timely request to a referee to rehear a previous decision.

(f) A party may make a timely request to a referee, for good cause only, to reopen and review a previous decision.

History: 1979 AC; 1988 AACS.

R 421.1214 Stipulations.

Rule 214. (1) The claimant and the employer or their authorized agents or attorneys may sign a written agreement to appeal a referee decision or order directly to a circuit court rather than to the board of review.

(a) Where a party is unrepresented, the agreement shall recite that the parties are thereby waiving the right to have their case appealed to and reviewed by the board of review.

(b) The stipulation shall be received by the referee within 30 days after mailing or personal service of the referee's decision or order.

(c) Seeking, obtaining, or filing a stipulation does not extend any time period. However, when all parties have signed the stipulation, it shall be deemed an appeal to the board of review until such time as the appeal to the court is perfected.

(2) The parties to an appeal before a referee may stipulate the facts in issue.

(3) Stipulations shall not be in any sense in derogation of the act and shall not involve an interpretation of the act.

History: 1979 AC; 1988 AACS.

PART 3. APPEALS TO APPELLATE COMMISSION

R 421.1301 Appeal; form.

Rule 301. (1) An appeal to the board of review shall be in writing and shall be signed by the party appealing or his agent.

(2) Forms for appeals to the board of review and for rehearing by the board of review shall be available at the office of the board of review and all agency offices that are open to the public.

History: 1979 AC; 2007 AACS.

R 421.1302 Appeal; deadline; procedure for late appeal.

Rule 302. (1) An appeal to the board of review may be received at the office of the board of review, the principal office or any office of the agency, or by any agent office of the agency outside the state of Michigan.

(2) To be received on time, an appeal to the board of review must be received within 30 days after the date of mailing of the referee's decision or the referee's order denying rehearing or the referee's order denying reopening.

(3) The board of review is without jurisdiction to consider the merits of any appeal received after the 30-day appeal period. A party whose appeal is received by the board of review after the 30-day appeal period may request a reopening by the referee pursuant to R 421.1212. If the referee grants reopening, he or she will issue a new decision and the new decision may then be appealed to the board of review pursuant to R 421.1302(1)-(2).

(4) An appeal or request for rehearing or reopening to the board of review may be made by personal service, postal delivery, facsimile transmission, or other electronic means as prescribed by the board of review. If an appeal or request is made by facsimile transmission, the following will be presumed:

(a) That the facsimile transmission was received on time if it was received by the board of review not later than the last minute of the day of the applicable deadline as provided in these rules under prevailing Michigan time.

(b) That the facsimile transmission was received on the date and at the time electronically entered or printed on the face of the document, subject to verification by the board of review at its discretion.

History: 1979 AC; 1988 AACS; 2007 AACS.

R 421.1303 Board; decision based on record; notice.

Rule 303. (1) The board of review often decides cases on the record made by the referee, without (a) oral argument before it, (b) additional evidence, or (c) consideration of written argument, unless all parties are represented or agree to written argument.

(2) The record made by the referee is the transcript of the referee hearing, the exhibits marked and received at the referee hearing, and written argument submitted to the referee if the other parties present at the hearing have been served a copy of the argument and have been given an adequate opportunity to respond to it.

(3) Notice of the parties' rights to request oral argument, to submit additional evidence, and to file written argument shall accompany the mailing of the referee hearing transcript to each party.

History: 1979 AC.

R 421.1304 Oral argument; application; reasons.

Rule 304. (1) Oral argument to the board of review shall be by permission only.

(2) If a party wishes to apply for permission to make an oral argument to the board of review, the party shall make a request, in writing, setting forth the reasons for requesting permission for oral argument.

(3) Reasons for requesting oral argument include, but are not limited to, any of the following:

(a) The appeal involves an issue on which the law is unsettled or unclear.

(b) The appeal involves an issue of major precedential value.

(c) The record made by the referee is so lengthy that oral argument will be of special assistance to the board in reviewing the record.

(d) Unusual complexities affecting the referee's decision were present at any stage of the proceedings.

(e) The referee's decision departed from established legal precedent.

(4) To be timely, the application shall be received by the board of review not later than 20 days after the date of mailing of the referee hearing transcript, unless a reason constituting good cause is given.

(5) On the motion of 2 members of the board of review panel assigned to review a pending appeal, the board of review may offer the parties the opportunity to submit an application for oral argument more than 20 days after the date of mailing of the referee hearing transcript.

(6) To be granted, the application shall be approved by 2 members of the board of review panel assigned to review the appeal.

(7) The board of review may consider oral argument presented by conference telephone.

History: 1979 AC; 1988 AACS; 2002 AACS; 2007 AACS.

R 421.1305 Presentation of additional evidence; application.

Rule 305. (1) Presentation of additional evidence to the board of review shall be by permission of the board of review only.

(2) If a party wishes to apply to the board of review for permission to present additional evidence, he or she shall make an application in writing setting forth his or her reasons for applying for permission.

(3) To be timely, the application shall be received by the board of review not later than 20 days after the date of mailing of the referee hearing transcript, unless a reason constituting good cause is given.

(4) To be granted, the application shall be approved by 2 members of the board of review panel assigned to review the appeal.

History: 1979 AC; 2002 AACS; 2007 AACS.

R 421.1306 Additional evidence order.

Rule 306. (1) When the board of review orders additional evidence, it may:

(a) Conduct a hearing pursuant to the act for the purpose of taking and receiving such evidence as it deems necessary.

(b) Remand the matter to a referee for the purpose of taking and receiving such evidence and for the purpose of submitting the evidence so received to the board of review for decision.

(c) Set aside the referee's decision and remand the matter to the referee for the purpose of receiving such additional evidence and for the purpose of issuing a new decision based upon the entire record.

(2) Absent an evidentiary hearing, a copy of documentary evidence directed by the board of review to be introduced shall be mailed by the board to each party to the proceeding, and a reasonable opportunity shall be afforded on request of any party to refute such evidence.

History: 1979 AC.

R 421.1307 Written argument; reply; deadlines; consideration; agreement; application for oral argument or additional evidence not deemed written argument; amicus briefs.

Rule 307. (1) A party's written argument, if any, together with a statement of service of a copy on each other party, shall be received by the board of review not later than 20 days after the date of mailing of the referee hearing transcript. However, if an oral hearing is granted, written argument may be presented at any time at or before the oral hearing.

(2) A reply, if any, to another party's timely written argument, together with a statement of service of a copy on each other party, shall be received by the board of review not later than 20 days after the date of mailing of the other party's written argument.

(3) An extension of time for the filing of written argument may be permitted by the board if warranted by the circumstances.

(4) The board of review may consider a party's written argument only if any of the following conditions exist:

(a) All parties are represented by an attorney or other agent of record.

(b) All parties agree that the board may consider written argument.

(c) The board orders oral argument before it.

(d) The board orders evidence produced before it.

(5) As to subrule (4)(b) of this rule, the agreement shall be signed by each party and received by the board of review not later than 20 days after the date of mailing of the referee hearing transcript.

(6) A party's application to the board of review for either oral argument or additional evidence shall not be deemed a written argument within the meaning of this rule.

(7) When the parties are permitted to submit written argument pursuant to this rule and section 34 of the act, the board of review may consider requests for permission to submit an amicus brief from persons or organizations that are not parties to the matter before the board. If the board, in its discretion, grants such a request, all parties shall be notified and the brief shall thereafter be submitted to the board, together with a statement of service of a copy on each of the parties.

History: 1979 AC; 1988 AACCS; 2002 AACCS; 2007 AACCS.

R 421.1308 Record of proceedings; transmittal to board following notification of appeal; copies of referee hearing transcripts.

Rule 308. The record of proceedings before a referee, including the referee hearing transcript together with supporting exhibits, shall be promptly transmitted to the board of review following notification of an appeal to the board. Copies of referee hearing transcripts shall be mailed to the parties or to their attorneys or agents of record without cost to them.

History: 1979 AC.

R 421.1309 Transfer of proceeding pending before administrative law judge.

Rule 309. (1) A party to a proceeding pending before an administrative law judge may file an application to the Michigan compensation appellate commission (mcac) for either of the following:

- (a) Transfer of the proceeding to the mcac.
- (b) Transfer of the proceeding to another administrative law judge.

(2) A party may file 2 regular applications for transfer. The application shall be filed at least 3 business days before the next scheduled hearing. An application received after business hours shall be considered filed the next business day.

(3) A party may also file a delayed application for transfer. A delayed application may be filed less than 3 business days before the next scheduled hearing. A delayed application shall include a motion. The mcac may grant the motion for sufficient cause shown, that establishes both of the following:

- (a) That circumstances leading to the delay were beyond the control of the applicant.
- (b) That to hold the hearing would violate due process.

(4) A party may also file an extenuating circumstances application for transfer. An extenuating circumstances application may be filed after a party has filed 2 or more applications, in any combinations of subrule (2), (3), or (4) of this rule. An extenuating circumstances application shall include a motion. The mcac may grant the motion for sufficient cause shown that establishes both of the following:

(a) That suspending the proceedings will not create undue hardship for the opposing party.

(b) That holding the hearing would violate due process.

(5) As soon as practicable, the mcac shall notify the administrative law judge of 1 of the following:

(a) That a regular application for transfer is pending.

(b) That a motion for delayed application is granted.

(c) That a motion for extenuating circumstances application is granted.

(6) Upon notification under subrule (5) of this rule, the administrative law judge shall immediately issue an order suspending any further proceedings before him or her that involve the pending application.

(7) Upon its own motion, or in response to an application under subrule (2), (3), or (4), the mcac shall determine whether sufficient cause exists to transfer the proceeding.

History: 1979 AC; 1988 AACS; 2012 AACS.

R 421.1310 Subpoenas.

Rule 310. If the board of review orders additional evidence to be taken before it, a party may ask the board for subpoenas to compel witnesses to testify before the board of review or to compel persons to produce books, records, and papers.

History: 1979 AC.

R 421.1311 Proceedings before board panels.

Rule 311. (1) A matter to be heard by the board of review shall be assigned to a panel of the board for disposition.

(2) Two members on a panel constitute a quorum.

(3) A decision reached by 2 members of the panel shall be the final decision of the board of review, except where the entire board participates as provided in R 408.1312.

History: 1979 AC.

R 421.1312 Board; composition; communications; full review.

Rule 312. (1) The board of review shall be composed of representatives from 3 different representational sectors. One member shall be a representative of the general public and shall serve as chairperson. The remaining membership of the board shall be equally divided between members who are representative of employee interests in the state and employer interests in the state.

(2) The members of the board may communicate with employers, employees, and their agents and with representatives of the public interest about issues of unemployment insurance and matters affecting the administration of the act. However, board of review members shall not discuss the merits of a case pending before them with a party to the case or the party's duly authorized attorney or agent.

(3) The entire board of review shall conduct a full review of any appeal not yet decided and mailed if full board review is requested by 2 board members from different representational sectors or of any panel decision if full board review is requested by 2 board members from different representational sectors within 5 working days after its mailing date, with notice to the parties.

(4) A person may request a board of review member to request a full review.

(5) A decision of the full board of review which is equally divided shall constitute an affirmation of the decision initially appealed to the board of review.

History: 1979 AC; 1988 AACS.

R 421.1313 Board; decision or order; copies; notice of rights of appeal.

Rule 313. (1) The board of review shall issue written decisions or orders which are signed and dated. The board of review may omit the giving of reasons in cases where a referee's decision is affirmed without alteration or modification.

(2) Decisions of the board of review shall contain a notice of rights of appeal, pursuant to R 408.1316 of this part.

History: 1979 AC.

R 421.1314 Rehearing of the board of review's decision.

Rule 314. (1) A request for a rehearing of a board of review decision shall be received by the board of review or by an agent office of the agency or an office of the agency within 30 days after the date of mailing of the decision.

(2) A rehearing may also be granted on the board of review's own motion.

(3) Granting a rehearing is within the discretion of the board of review.

(4) If a request for rehearing is denied, both the denial and the board of review's decision may be appealed to the appropriate circuit court pursuant to section 38 of the act.

(5) A rehearing request received after the 30th day shall be treated as a request for reopening pursuant to R 421.1315.

History: 1979 AC; 1988 AACS; 2007 AACS.

R 421.1315 Reopening and review of the board of review's decision.

Rule 315. (1) A request for a reopening and review of the board of review's decision shall be received by the board of review or by an agent office of the agency or an office of the agency within 1 year, but more than 30 days, after the date of mailing of the decision.

(2) Reopening will be granted only if good cause is established. If the board of review grants reopening, the order or decision allowing reopening shall contain a statement of the basis of the good cause finding. If the board of review denies reopening, the order denying reopening shall contain a statement of the basis for the denial.

(3) Reopening and review may also be granted on the board of review's own motion if the review is initiated by the board, with notice to the interested parties, within 1 year after the date of mailing of the decision.

(4) If good cause is established, the board of review shall issue an order allowing reopening. The board of review shall thereafter decide the underlying issues of the case based on the record already made and any additional evidence the board of review may enter into the record.

(5) If a request for reopening is denied, both the denial of reopening and the board of review's decision may be appealed to the appropriate circuit court pursuant to section 38 of the act.

History: 1979 AC; 1988 AACS; 2007 AACS.

R 421.1316 Notice of rights of appeal.

Rule 316. (1) Each board of review decision or final order shall notify the parties of all of the following:

(a) A party has the right to make a timely appeal of a decision or final order of the board of review to a circuit court.

(b) A party may make a timely request to the board of review to rehear a decision.

(c) A party may make a timely request to the board of review, subject to a showing of good cause, to reopen and review a decision.

(2) Each board of review decision or final order shall state the deadline and places of receipt of the above alternatives. It shall also state in boldface type: "TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME."

History: 1979 AC; 2007 AACS.

R 421.1317 Stipulations.

Rule 317. (1) The parties to an appeal before the board of review may stipulate the facts in issue.

(2) Stipulations shall not be in any sense in derogation of the act and shall not involve an interpretation of the act.

History: 1979 AC.