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Statutory Authority: 4-29-110 and 41-35-720
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Subject: Appeals to the Appellate Panel

History: 4692

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Document No. 4692
DEPARTMENT OF EMPLOYMENT AND WORKFORCE
CHAPTER 47
Statutory Authority: 1976 Code Sections 4-29-110 and 41-35-720

47-52. Appeals to the Appellate Panel.

Preamble:

The South Carolina Department of Employment and Workforce proposes to amend Regulation 47-52 to identify a procedure within the Appellate Panel in the event a quorum is present but a majority decision is not reached and to clarify what information is included in a decision. The Notice of Drafting regarding this regulation was published in the *State Register* on August 26, 2016.

Section-by-Section Discussion:

47-52. This section will identify the procedure within the Appellate Panel in the event a quorum is present but a majority decision is not reached and to include language describing what is included in an Appellate Panel decision.

Notice of Public Hearing and Opportunity for Public Comment:

Interested persons may submit written comments to Mark Hendrick, Director of Governmental Affairs, South Carolina Department of Employment and Workforce, P.O. Box 995, Columbia, South Carolina 29202 or by emailing RegulationComments@dew.sc.gov. To be considered, comments must be received no later than November 28, 2016 at 5:00 p.m.

A public hearing is scheduled for November 29, 2016, at 2:00 p.m., at the Administrative Law Court in the Edgar Brown Building, Second Floor, 1205 Pendleton Street, Columbia, South Carolina.

To review the regulation, visit the Department's website at: <http://dew.sc.gov/tools-resources/reports>.

Preliminary Fiscal Impact Statement:

There will be no increased costs to the State or its political subdivisions.

Statement of Need and Reasonableness:

DESCRIPTION OF REGULATION: 47-52. Appeals to the Appellate Panel.

Purpose: The purpose of amending Regulation 47-52 is to identify the procedure within the Appellate Panel in the event a quorum is present but a majority decision is not reached and to include language describing what is included in an Appellate Panel decision.

Legal Authority: South Carolina Code Annotated Section 41-29-110 and Section 41-35-720.

Plan for Implementation: The proposed regulations will take effect upon approval by the General Assembly and publication in the *State Register*.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION
BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

The current Regulation 47-52 does not identify what occurs in the event a quorum is present but a majority decision is not reached.

The proposed Regulation 47-52 identifies what occurs in the event a quorum is present but a majority decision is not reached and what is included in an Appellate Panel decision.

Additional amendments to Regulation 47-52 are to make language consistent with current South Carolina law.

DETERMINATION OF COSTS AND BENEFITS:

There is no additional cost to the Department or to the State based on this regulation. The benefit of this proposed amendment is to clarify what occurs when a quorum is present but a majority decision is not reached and what is included in an Appellate Panel decision.

UNCERTAINTIES OF ESTIMATES:

None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

None.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

The regulation will have no detrimental effect on the environment of public health if the regulation is not implemented.

Statement of Rationale:

S.C. Code Ann. §41-35-720 states the Department must promulgate regulations establishing the rules of procedure for proceedings, hearings, and appeals to the appellate panel and the appeal tribunals. The amendment to Regulation 47-52 identifies the rule of procedure in the event a quorum is present but a majority decision is not reached in an appeal to the Appellate Panel.

~~Indicates Matter Stricken~~

Indicates New Matter

Text:

47-52. Appeals to the Appellate Panel.

A. The Presentation of Application for Leave to Appeal to the Appellate Panel.

1. The party appealing from the decision of an Appeal Tribunal shall file online, by fax, by mail, or otherwise deliver to the Department, a Notice of Appeal, setting forth the information required thereon and the grounds for the appeal; as set forth in Chapter 35 of Title 41 of the South Carolina Code of Laws, 1976, as amended. Any party aggrieved by the decision of an Appeal Tribunal, may apply for leave to

~~appeal from such decision to the Appellate Panel, by filing at the office where the claim was filed, or at the office of the Appellate Panel in Columbia, South Carolina, within ten (10) calendar days after the date of notification or mailing of the decision of the Appeal Tribunal, an Application for Leave to Appeal to the Appellate Panel on the form provided, setting forth the information required thereon and the grounds for the appeal. Such application may be accompanied by reference from the original record of the hearing before the Appeal Tribunal. Copies of the Notice of Appeal Application for Leave to Appeal shall be mailed to the other all-interested parties of the appeal to the decision of the Appeal Tribunal.~~

~~2. The Appellate Panel may grant or deny any Application for Leave to decide an Appeal, filed under Regulation 47-52, A.1, without hearing, or may notify the interested parties to appear before it at a specified time and place for oral argument upon the application. Notices of such oral argument upon application shall be mailed to the interested parties to the decision of the Appeal Tribunal at least seven (7) calendar days before the date of the hearing. The Appellate Panel shall specify the matters to be heard and the place and time of hearing.~~

~~3. Copies of the Appellate Panel's decision on any Application for Leave to Appeal shall be mailed to all interested parties to the decision.~~

~~4. If leave to appeal to the Appellate Panel is granted, the Appellate Panel may schedule a hearing. Notice of hearing on the form provided shall be mailed at least seven (7) calendar days before the date fixed for hearing, specifying the matters to be heard and the place and time of hearing to all interested parties.~~

B. Hearing of Appeals.

1. Except as provided in Appeal Regulation 47-52, D for the hearing of appeals removed to the Appellate Panel from an Appeal Tribunal, all appeals to the Appellate Panel shall be heard solely upon the evidence in the record before the Appeal Tribunal.

2. In the hearing of an appeal upon the record, the Appellate Panel may limit the parties to oral argument, or may permit the filing of written argument, or both.

C. The Review of Decisions of Appeal Tribunals by the Appellate Panel on Its Own Motion.

1. Within ten (10) calendar days following a decision by an Appeal Tribunal, the Appellate Panel on its own motion may remove any decision to its own jurisdiction for review and may affirm, modify, or set aside such decision on the basis of the evidence previously submitted in such case, or may direct the taking of additional evidence.

2. The Appellate Panel shall in such cases allow the parties an opportunity to present their views before it with seven (7) calendar days notice thereof to all parties interested.

3. Where the Appellate Panel directs the taking of additional evidence, it shall be taken in the manner prescribed for the conduct of hearings on appeals before the Appeal Tribunal, including seven (7) calendar days notice to the parties interested. Upon the completion of the taking of evidence and testimony pursuant to the direction of the Appellate Panel, a new decision shall be issued or the case shall be returned to the Appellate Panel for its consideration and decision.

D. The Hearing by the Appellate Panel on Appeals Ordered Removed to It from an Appeal Tribunal.

1. Any appeal before an Appeal Tribunal, ordered by the Appellate Panel to be removed to itself prior to hearing by the Appeal Tribunal, shall be presented, heard, and decided by the Appellate Panel in the manner prescribed in Regulation 47-51, C.1, 2, and 3, for the hearing of appeals before the Appeal Tribunal.

2. Any appeals heard by an Appeal Tribunal may, prior to a decision by the Tribunal, be ordered by the Appellate Panel to be removed to itself and shall then be presented, heard and decided by the Appellate Panel in the manner prescribed in Appeal Regulation 47-52, C.2 and 3.

E. The Decisions of the Appellate Panel.

1. The quorum of the Appellate Panel shall be two (2) members. No meeting of the Panel shall be scheduled when it is anticipated that fewer than two (2) members will be present, and no hearing shall be held nor decision released by the Panel in which fewer than two (2) members participate. Appeals before the Appellate Panel may be heard by any two members thereof constituting a quorum. The Appellate Panel shall, as soon as possible, announce its findings and decision with respect to the appeal. The

~~decision shall be in writing and shall be signed by the members of the Appellate Panel who heard the appeal. It shall set forth with respect to the matters appealed, the findings of fact of the Appellate Panel, its decision, and the reasons for such decision.~~

2. If a decision of the Appellate Panel is not unanimous, the decision of the majority shall control .In the event only two (2) members are able to vote on a case, but are unable to agree on a final decision, the decision of the Tribunal shall stand affirmed. The minority may be recorded as dissenting or file a written dissent from such decision, which shall set forth the reasons for failure to agree with the majority.

3. The Appellate Panel shall, as soon as possible, announce its findings and decision with respect to the appeal. The decision shall be in writing and shall be signed by the members of the Appellate Panel who heard the appeal. It shall set forth with respect to the matters appealed, the findings of fact of the Appellate Panel, its decision, and the reasons for such decision. Copies of all decisions and the reasons therefore shall be mailed or delivered by the Appellate Panel to the interested parties.