



STATE OF CALIFORNIA - GOVERNOR GAVIN NEWSOM  
LABOR AND WORKFORCE DEVELOPMENT AGENCY

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**CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD**  
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**TITLE 22. CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD**

November 16, 2022

**NOTICE OF MODIFICATIONS TO TEXT OF  
PROPOSED RULEMAKING AND ADDITION OF DOCUMENTS  
AND INFORMATION TO RULEMAKING FILE**

Pursuant to the requirements of Government Code Sections 11345.8(c), 11345.8(d), 11346.9(a)(1), 11347.1 and section 44 of Title 1 of the California Code of Regulations, the California Unemployment Insurance Appeals Board (CUIAB) is providing notice of changes made to proposed regulations which were the subject of a rulemaking notice published on May 13, 2022. CUIAB is also providing notice that documents and other information which the agency has relied on in adopting the proposed regulations have been added to the rulemaking file and are available for public inspection and comment.

The documents and information added to the rulemaking file are as follows:

Addendum to Initial Statement of Reasons

Any person, or his or her authorized representative, may submit written comments relevant to changes made to the proposed regulations. Additionally, the documents added to the rulemaking file are available for public inspection at CUIAB's office located at the address below from November 16, 2022 through December 1, 2022 between the hours of 8:00 a.m. and 5:00 p.m. If you have any comments regarding changes made to the proposed regulations, or to the documents and other information, written comments must be submitted to CUIAB by midnight on December 1, 2022.

Submit comments as follows:

Kim Hickox, Attorney III  
California Unemployment Insurance Appeals Board  
Office of the Chief Counsel  
2400 Venture Oaks Way, 3<sup>rd</sup> Floor  
Sacramento, California 95833

or

By facsimile (FAX) at (916) 263-6842, or by e-mail to [kim.hickox@cuiab.ca.gov](mailto:kim.hickox@cuiab.ca.gov).

All written comments received by midnight on December 1, 2022, which pertain to the changes indicated by double underline and/or double strikethrough will be reviewed and responded to by CUIAB's staff as part of the compilation of the rulemaking file. Please limit your comments to the modifications to the text.



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**ADDENDUM TO  
INITIAL STATEMENT OF REASONS**

**TITLE 22, CALIFORNIA CODE OF REGULATIONS  
Amend Sections 5000, 5007, 5010, 5050, 5054, 5062, 5066, 5067, 5068,  
and 5111; add section 5066.1; and, repeal Section 5055.**

**PROBLEM STATEMENT**

The California Unemployment Insurance Appeals Board (CUIAB) is an independent administrative court system established to provide due process for workers and employers who seek to appeal Unemployment Insurance (UI) benefit decisions, Disability Insurance (DI) benefit decisions, and Employer Payroll Tax assessments made by the Employment Development Department. Early resolution of appeals provides much-needed relief to the parties. In addition, CUIAB decisions must be issued in accordance with federal timeliness guidelines issued by the United States Department of Labor, as set forth in Title 20 Code of Federal Regulations section 650.4. Existing regulations do not provide the quickest and most accessible means currently available for early resolution of CUIAB appeals.

**BENEFITS**

Benefits of the proposed regulatory changes will be to take advantage of recent advances in technology to expand hearing options available to parties, thereby enhancing the convenience, accessibility, and responsiveness of CUIAB's administrative adjudication process.

**PURPOSE**

The specific purpose of each regulatory change is as follows:

**§5000 Definitions**

Section (b) is being added to define the term administrative record. It is modeled after Government Code section 11523 and Code of Civil Procedure section 1094.6(c). The purpose of this addition is to clarify the meaning of administrative record as it is used in these regulations. Section (c)(c) is being amended to delete the word video. The purpose of this amendment is delete obsolete language. Section (g)(g) is not being amended and was erroneously referenced in the initial statement of reasons. Relettered section (z)(z) is being amended to define a rule as a

reference to a provision of the regulations. The purpose of this amendment is to correct a technical error defining a rule as a section of the subdivision.

### **§ 5007. Time Limitations**

This section is being amended to increase the time for filing of appeals specified appeals from 20 days to 30 days. The purpose of this amendment is to conform these timelines to statutory changes in Unemployment Insurance Code sections 1328 and 2707.2.

### **§ 5010. Case File, Audiovisual Record and Transcript**

This section is being amended to delete the limitation to parties in subdivision (c) and to provide that any person can review all or part of CUIAB records. The language of subdivision (d) regarding the requirement of observing hearings in order to use CUIAB equipment is being deleted. The purpose of these amendments is to delete language that is obsolete and contrary to CUIAB's obligations under the Public Records Act. Amendments are also being made to delete payment requirements for copies of records. The purpose of this amendment is to conform the regulations to CUIAB's practice of not charging for these records. Language is being added to specify the cost of transcripts that have not already been prepared by CUIAB and to specify the cost of other documents that are part of the administrative record. CUIAB determined ten cents is a reasonable approximation of the cost of reproduction. The purpose of this amendment is so CUIAB avoids an underground regulation by not publishing the costs it charges to obtain copies of transcripts and administrative records. This section is further being amended to clarify that claimants will not be charged for a copy of their records.

### **§ 5050. Withdrawal and Reinstatement**

This section is being amended to increase the time for parties to request reinstatement of a withdrawn appeal from 20 days to 30 days. The purpose of this amendment is to implement CUIAB's decision to extend the timelines for filing these requests to be consistent with statutory changes in Unemployment Insurance Code sections that allow 30 days for other types of appeals.

### **§5054 Scheduling of Hearing**

This section is being amended to allow hearings to be scheduled electronically or in person or a combination of both. The purpose of this amendment is to provide CUIAB flexibility to schedule hearings in a manner most conducive to more timely hearings and decisions, while also taking into consideration the parties' preferences.

## **§5055 Electronic Hearing**

This section is being repealed to eliminate the limitations on appearances by parties, representatives, and witnesses by electronic means.

## **§5062 Conduct of Hearing and Evidence**

Subdivision (n) is being amended to specify that the public is not entitled to observe prehearing conferences, settlement conferences and/or other hearings that do not constitute a hearing on the merits. The purpose of this amendment is to conform this regulation with the Administrative Procedure Act. Subdivision (p) is being added to define when records become public and available for non-parties to access. The purpose of this amendment is to define when CUIAB records become public.

## **§ 5066. Prehearing Conference**

This section is being amended to add applicable language from Government Code Section 11511.5 that provides for prehearing conferences and to specify what may be dealt with during a prehearing conference. References to procedures such as alternative dispute resolution, which is not part of CUIAB procedure, and Motions for Intervention, which are not typically part of CUIAB procedure, were not included. This language also specifies that prehearing conferences are not open to the public. The purpose of this amendment is to conform CUIAB's current practice regarding "5066" hearings, which are conducted as prehearing conferences, and to reflect the treatment of prehearing conferences under the Administrative Procedure Act.

### **§ 5066.1 Dismissal of Appeal or Petition**

This section is a renumbering of former section 5066 and in addition provides for dismissal of an appeal or petition if a party does not appear at the newly-established prehearing conference. The purpose of this amendment is to maintain the language and practice of former section 5066.

### **§ 5067. Reopening**

This section is being amended to increase the time for parties to file a request for reopening from 20 days to 30 days and to reflect the renumbering of former section 5066 to new section 5066.1. The purpose of this amendment is to implement CUIAB's decision to extend the timelines for filing these requests to be consistent with statutory changes in Unemployment Insurance Code sections that allow 30 days for other types of appeals and to reflect renumbering of former section 5066.

### **§ 5068. Vacating Decision**

This section is being amended to increase the time for parties to file an application to vacate a decision from 20 days to 30 days. The purpose of this amendment is to implement CUIAB's decision to extend the times for filing these applications to be consistent with statutory changes in Unemployment Insurance Code sections that allow 30 days for other types of appeals

### **§ 5111. Disqualification of Board Member**

Subdivision (a)(ii) is being amended to reference rule 5110. The purpose of this amendment is to refer to the correct subdivision of CUIAB regulations.

# CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

## Amendment of Title 22, California Code of Regulations, Section 5000

### GENERAL

#### Text of Proposed Regulatory Changes

**NOTE:** Changes proposed during the 45 day notice are shown in single underline for additions and in ~~striketrough~~ for deletions. Proposed changes for this 15 day notice are shown in double-underline for additions and ~~double-striketrough~~ for deletions.

#### **AMEND SECTION 5000 AS SHOWN BELOW:**

##### **§ 5000. Definitions.**

Unless otherwise required by the context or specified in the code or these rules, for the purpose of these rules:

**(a)** “Administrative law judge” means any person, including any board staff administrative law judge, appointed as provided by law to hear and render decisions pursuant to code section 404.

**(b)** “Administrative record” consists of the pleadings, all notices and orders issued by the agency, any decision by an administrative law judge or the board, a transcript of all proceedings, the exhibits admitted or rejected, the written evidence and any other papers in the case.

**(c)(b)** “Affidavit” means a written statement under oath made in compliance with Code of Civil Procedure sections 2012 through 2015.6, including a declaration under penalty of perjury made in compliance with Code of Civil Procedure section 2015.5.

**(d)(c)** “Agency” means the administrative unit consisting of the board and its employees.

(e)~~(d)~~ “Appeal” means a request for review of an adverse department action by an administrative law judge, other than a petition.

(f)~~(e)~~ “Appellant” means a party initiating an appeal.

(g)~~(f)~~ “Appellate operations” means the activities carried on by the agency to adjudicate board appeals.

(h)~~(g)~~ “Applicant” means a person or representative of a person initiating an application.

(i)~~(h)~~ “Application” means a request for action by an administrative law judge or the board, other than an appeal, petition, or board appeal, filed or stated by the applicant to an administrative law judge.

(j)~~(i)~~ “Audiovisual record” means the original or a copy of any audio or video record of the proceedings maintained by the agency.

(k)~~(j)~~ “Board” means the California Unemployment Insurance Appeals Board.

(l)~~(k)~~ “Board appeal” means a request for review of an adverse decision or order of an administrative law judge by the board.

(m)~~(l)~~ “Board appellant” means a party initiating a board appeal.

(n)~~(m)~~ “Board office” means the principal office of the board.

(o)~~(n)~~ “Board respondent” means a party responding to a board appeal.

(p)~~(o)~~ “Case file” means the information about a case maintained by the agency, including the case register, but excluding internal agency deliberative and case management documents, the audiovisual record, and any transcript that has been prepared.

(q)~~(p)~~ “Case register” means the written record of communications with and transactions by the agency in a case, excluding the audiovisual record.

(r)~~(q)~~ “Chairperson” means the board member designated by the governor to hold that office, or, in the absence of the chairperson, a board member designated to act as chairperson as provided by code section 401.

(s)~~(r)~~ “Chief administrative law judge” means the person appointed to serve as provided by code sections 405 and 406.

(t)~~(s)~~ “Claimant” means a person claiming benefits under the code.

(u)~~(t)~~ “Clerical error” means an error, mistake, or omission, by any employee of the agency, which is the result of inadvertence, not the deliberate result of the exercise of judgment, discretion, or reasoning.

(v)~~(u)~~ “Code” means the Unemployment Insurance Code.

(w)~~(v)~~ “Consumer” means a consumer as defined in Code of Civil Procedure section 1985.3(a)(2).

(x)~~(w)~~ “Day” means a calendar day.

(y)~~(x)~~ “Decision” means decision as defined in Government Code section 11405.50.

(z)~~(y)~~ “Department” means the Employment Development Department.

(aa)~~(z)~~ “Department branch” means the applicable branch of the department.

(bb)~~(aa)~~ “Director” means the director of the Employment Development Department.

(cc)~~(bb)~~ “Document” means a writing as defined in this rule.

(dd)~~(cc)~~ “Electronic hearing” means a hearing in which a party or witness has the opportunity to participate by telephone, ~~television~~ video, or other electronic means.

(ee)~~(dd)~~ “Electronically transmit” means transmit by facsimile, electronic mail, Internet, or other electronic means, to a valid electronic address of the recipient which has been furnished by the recipient, provided that any document in which a signature is required or used is transmitted by a means that transmits the original or a copy of the signature.

(ff)~~(ee)~~ “Express” means ship by express service common carrier, for next day or second day delivery, addressed to the recipient's street address last known to the sender, with shipping charges prepaid or guaranteed.

(gg)~~(ff)~~ “Field operations” means the activities carried on by the agency to adjudicate appeals and petitions.

(hh)~~(gg)~~ “Filing” means sending in writing to the agency or department branch office where the case is located. If the person filing does not know that location, the document may be sent to any office of the agency or the department branch. A document is filed on the date it is sent.

(ii)~~(hh)~~ “Good cause” means a substantial reason under the circumstances, considering the diligence of the proponent and any burden or prejudice to any person involved. “Good cause” includes, but is not limited to, mistake, surprise, inadvertence, or excusable neglect.

(jj)~~(ii)~~ “Holiday” means holiday as defined in Code of Civil Procedure section 12a.

(kk)~~(jj)~~ “Mail” means deposit with the United States Postal Service, addressed to the recipient's mailing address last known to the sender, with express, priority, or first class postage prepaid.

(ll)~~(kk)~~ “Notice to attend” means a request that a person testify as a witness in a hearing.

(mm)~~(ll)~~ “Notice to attend and produce” means a notice to attend which includes a request that the witness produce documents or things.

(nn)~~(mm)~~ “Office” means a facility regularly maintained and staffed during normal business hours by a party or the agency, where any activity of the party or the agency is carried on.

(oo)~~(nn)~~ “Office of appeals” means a field operations office of the agency which is so named, or the office of the chief administrative law judge.

(pp)~~(oo)~~ “Order” means a disposition, other than a decision, issued by an administrative law judge or the board, and served by the agency.

(qq)~~(pp)~~ “Panel” means the board members assigned to a case as provided by code section 409.

(rr)~~(qq)~~ “Party” includes the department, appellant, petitioner, respondent, board appellant, board respondent, any other person joined or allowed to intervene in the proceeding, or a representative of any of these.

(ss)~~(rr)~~ “Person” includes a natural person, firm, association, organization, partnership, estate, trust, corporation, limited liability company, or public entity.

(tt)~~(ss)~~ “Personal records” means personal records as defined in Code of Civil Procedure section 1985.3(a)(1).

(uu)~~(tt)~~ “Petition” means a tax petition, which is any type of request for review of an adverse department action by an administrative law judge that is authorized by Chapter 4 of Part 1 of Division 1 of the code.

(vv)~~(uu)~~ “Petitioner” means a party initiating a petition.

(ww)~~(vv)~~ “Presiding administrative law judge” means a person appointed to administer the activities of an office of appeals or the board staff in addition to performing the duties of an administrative law judge.

~~(xx)(ww)~~ “Representative” means a person with actual or apparent authority to represent another in a proceeding.

~~(yy)(xx)~~ “Respondent” means a party responding to an appeal or petition.

~~(zz)(yy)~~ “Rule” means a provision of these regulations. ~~section of this subdivision.~~

~~(aaa)(zz)~~ “Send” means mail, express, electronically transmit, or physically deliver.

~~(bbb)(aaa)~~ “Serve” means send in writing to each unrepresented party and to the representative of each represented party. The agency need not serve a document on the party that filed it. A document is served on the date it is sent.

~~(ccc)(bbb)~~ “Signature” includes a mark made in compliance with Section 14 of the Civil Code, or a digital signature affixed by any means used by the sender, accepted by the recipient, and acceptable under Section 16.5 of the Government Code and Chapter 10 of Division 7 of Title 2 of the California Code of Regulations.

~~(ddd)(ccc)~~ “Subpoena” means an order that a person testify as a witness in a hearing.

~~(eee)(ddd)~~ “Subpoena duces tecum” means a subpoena which includes an order that the witness produce documents or things.

~~(fff)(eee)~~ “Untimely” means not filed or served within the time permitted by the code or these rules.

~~(ggg)(fff)~~ “Waiver” means the intentional relinquishment of a known right.

~~(hhh)(ggg)~~ “Writing” means the original or a copy of any form of recorded message capable of comprehension by ordinary visual means.

~~(iii)(hhh)~~ All terms which are defined in the code shall be construed as defined therein.

~~(iii)(iii)~~ These definitions apply to the term defined and to its conjugates.

~~(kkk)(jjj)~~ The singular includes the plural and the plural the singular.

Note: Authority cited: Section 11400.20, Government Code; and Section 411, Unemployment Insurance Code. Reference: Sections 1951, 2712 and 3262, Unemployment Insurance Code.

# CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

## Amendment of Title 22, California Code of Regulations, Section 5007

### GENERAL

#### Text of Proposed Regulatory Changes

**NOTE:** Language to be deleted is shown in ~~strikeout~~ format;  
language to be added is shown in underline format.

#### **AMEND SECTION 5007 AS SHOWN BELOW:**

##### **§ 5007. Time Limitations.**

(a) If no other time is provided by the code or these rules, an appeal or board appeal shall be filed within ~~20~~ 30 days after notice of the action, decision, or order being appealed was served on the appellant or board appellant.

(b) A disputed coverage appeal may be filed by the claimant, department, voluntary plan insurer or self-insurer, or a representative of any of these. A disputed coverage appeal shall be filed within 30 days after notice of denial of coverage was served on the appellant. In disputed coverage cases in which notice of denial of coverage is not furnished, an appeal shall be filed after the expiration of 25 days, and within 55 days, from the date the appellant sends a request for payment of benefits to the department or voluntary plan insurer or self-insurer.

(c) In the case of a denial of a disability claim by a voluntary plan insurer or self-insurer, if no notice of denial is furnished, an appeal may be filed after the expiration of 30 days, and within 60 days, from the date the claim was sent to the voluntary plan insurer or self-insurer.

(d) If no other time is provided in the code or these rules, a petition shall be filed within 30 days after notice of the department action was

served on the petitioner. An additional 30 days may be granted upon a showing of good cause.

(e) A board appeal from the decision of an administrative law judge on a petition shall be filed within 30 days after the decision was served on the board appellant.

Note: Authority cited: Section 11400.20, Government Code; and Section 411, Unemployment Insurance Code. Reference: Sections 1951, 2712 and 3262, Unemployment Insurance Code.

# CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

## Amendment of Title 22, California Code of Regulations, Section 5010

### GENERAL

#### Text of Proposed Regulatory Changes

**NOTE:** Changes proposed during the 45 day notice are shown in single underline for additions and in ~~striketrough~~ for deletions. Proposed changes for this 15 day notice are shown in double-underline for additions and ~~double-strikethrough~~ for deletions.

#### AMEND SECTION 5010 AS SHOWN BELOW:

#### § 5010. Case File, Audiovisual Record and Transcript.

- (a) The provisions of this rule apply except as otherwise ordered or required by law.
- (b) The agency shall maintain the case file, the audiovisual record, and any transcript that has been prepared for at least 36 months after the last date of service of any decision or order, and may thereafter destroy them.
- (c) ~~A party,~~ After issuance of the decision in a case, a person who ~~observes an electronic hearing pursuant to rule 5062(e), or an employee or agent of the agency~~ may review all or part of a ~~case file~~ the administrative record, audiovisual record, or transcript that has been prepared.
- (d) ~~Upon request by a party or a person who observes an electronic hearing pursuant to rule 5062(e), the agency shall permit that person to use, without charge, such facilities or equipment as may be reasonably necessary to review all or part of a case file, audiovisual record, or transcript that has been prepared.~~

~~(e) Upon request by a party, at a charge of \$5, the agency shall provide that party a copy of any or all documents in a case file.~~

~~(f) Upon request by a party, at a charge of \$5, the agency shall provide that party a copy of all or part of an audiovisual record.~~

~~(g) Upon request by a party, at a charge of \$5, the agency shall provide that party a copy of all or part of a transcript that has been prepared.~~

(d) A party or person who requests a copy of a transcript that has not been previously prepared by the agency in its hearing records shall be charged fees for the preparation of the transcript in accordance with Government Code Section 69950.

(e) A party or person who requests a copy of the administrative record shall be charged the costs for preparation of the transcript in accordance with this section and ten cents per page for other documents in the case file administrative record.

~~(h)~~ (f) A party shall not be charged for copies if it shows that payment would cause it financial hardship.

~~(i)~~ (g) A request for copies shall include either payment for the applicable charge or a showing of financial hardship.

~~(j)~~ (h) Notwithstanding any other provision of this rule, a claimant shall not be charged for copies: of the claimant's hearing records administrative record.

Note: Authority cited: Section 11400.20, Government Code; and Section 411, Unemployment Insurance Code. Reference: Sections 1951, 1956, 2712 and 3262, Unemployment Insurance Code.

# CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

## Amendment of Title 22, California Code of Regulations, Section 5050

### GENERAL

#### Text of Proposed Regulatory Changes

**NOTE:** Language to be deleted is shown in ~~strikeout~~ format;  
language to be added is shown in underline format.

#### **AMEND SECTION 5050 AS SHOWN BELOW:**

#### **§ 5050. Withdrawal and Reinstatement.**

(a) An appellant or petitioner may apply to withdraw an appeal or petition before the decision of the administrative law judge is served.

(b) Upon such an application, an administrative law judge shall order the appeal or petition dismissed.

(c) An applicant may apply to withdraw an application for reinstatement, reopening, or vacating a decision before the order of the administrative law judge on the application is served.

(d) Upon such an application to withdraw, an administrative law judge shall order the application for reinstatement, reopening, or vacating dismissed.

(e) The appellant, petitioner, or applicant may file an application for reinstatement within ~~20~~ 30 days after service of an order dismissing an appeal, petition, or application due to withdrawal. The application shall specify the reason for reinstatement. If the application is untimely, it shall also specify the reason for the delay.

(f) If the application fails to specify the reason for reinstatement or, if applicable, for its untimeliness, an administrative law judge may serve notice requiring the applicant to specify the reason by filing it within

10 days after service of such notice. If the applicant fails to comply, an administrative law judge may order reinstatement denied.

(g) If the reason specified by the applicant shows that there is no good cause for reinstatement, or, if applicable, for the untimely application, an administrative law judge may order reinstatement denied.

(h) An application for reinstatement that is not otherwise denied in accordance with this rule shall be scheduled for hearing. If the applicant shows good cause for reinstatement, and, if applicable, for the untimely application, the appeal or petition shall be ordered reinstated; otherwise reinstatement shall be ordered denied.

(i) If an applicant for reinstatement fails to appear in the hearing on reinstatement, an administrative law judge may order reinstatement denied.

Note: Authority cited: Section 11400.20, Government Code; and Section 411, Unemployment Insurance Code. Reference: Sections 1951, 2712 and 3262, Unemployment Insurance Code.

# CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

## Amendment of Title 22, California Code of Regulations, Section 5054

### GENERAL

#### Text of Proposed Regulatory Changes

**NOTE:** Changes proposed during the 45 day notice are shown in single underline for additions and in ~~striketrough~~ for deletions. Proposed changes for this 15 day notice are shown in double-underline for additions and ~~double-striketrough~~ for deletions.

#### **AMEND SECTION 5054 AS SHOWN BELOW:**

#### **§ 5054. Scheduling of Hearing.**

- (a) Hearings may be scheduled as electronic or in person, or a combination of both. ~~Appeals shall be heard promptly.~~
- (b) ~~The hearing shall be scheduled at a location as near as practicable to the claimant or petitioner, and, if practicable, within a 50 mile radius of any department branch office and any residence or office of any other party.~~
- (c) ~~A representative of a party is not included within the definition of a party for the purpose of this rule.~~

Note: Authority cited: Section 11400.20, Government Code; and Section 411, Unemployment Insurance Code. Reference: Section 11440.30, Government Code; and Sections 1951, 1953.5, 2712 and 3262, Unemployment Insurance Code.

# CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

## Repeal of Title 22, California Code of Regulations, Section 5055

### FIELD OPERATIONS

#### Text of Proposed Regulatory Changes

**NOTE:** Language to be deleted is shown in ~~strikeout~~ format;  
language to be added is shown in underline format.

#### **REPEAL SECTION 5055 AS SHOWN BELOW:**

#### ~~§ 5055. — Electronic Hearing.~~

~~(a) For good cause, an administrative law judge, on his or her own motion or upon application of a party or representative, may schedule or conduct all or part of a hearing as an electronic hearing if each party participating in the hearing has the opportunity to participate in and to hear the entire proceeding while it is taking place and to observe exhibits.~~

~~(b) Considerations in determining good cause under this provision shall include, but are not limited to:~~

~~(i) transportation barriers or travel distance required for attendance at an in-person hearing, for any party or witness;~~

~~(ii) hardship caused by time away from current employment or other responsibilities that would be required of a party or witness in order to attend an in-person hearing;~~

~~(iii) inability to secure care for children or other family members that would prevent travel to an in-person hearing;~~

~~(iv) other hardships or impediments as explained by the party making the application for an electronic hearing;~~

~~(c) Each party shall file with the Agency and serve upon all parties any additional documents no later than the 7th day after service of the notice of hearing, unless otherwise specified by an administrative law judge.~~

~~(d) If a hearing is scheduled as an electronic hearing for any party, but notice is not served at least 10 days before the date of the hearing, an administrative law judge, if practicable, shall specify and inform each party of the time and means for filing and serving any additional documents. No proof of service is required unless specified by an administrative law judge.~~

~~(e) The agency shall serve the documents in the case file a reasonable time before a hearing scheduled as an electronic hearing for any party, if practicable.~~

~~(f) The parties retain the right to a rescheduling of a hearing if documents are not filed and served in accordance with these provisions, or to waive service as long as they have an opportunity to review those documents at the hearing.~~

~~(g) Notwithstanding the scheduling of an electronic hearing, any party or witness retains the right to participate in person, and, if warranted by the circumstances, an administrative law judge may require any party participating in a hearing to be present at the hearing.~~

~~Note: Authority cited: Section 11400.20, Government Code; and Section 411, Unemployment Insurance Code. Reference: Sections 1951, 2712 and 3262, Unemployment Insurance Code.~~

# CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

## Amendment of Title 22, California Code of Regulations, Section 5062

### FIELD OPERATIONS

#### Text of Proposed Regulatory Changes

**NOTE:** Changes proposed during the 45 day notice are shown in single underline for additions and in ~~striketrough~~ for deletions. Proposed changes for this 15 day notice are shown in double-underline for additions and ~~double-striketrough~~ for deletions.

#### **AMEND SECTION 5062 AS SHOWN BELOW:**

#### **§5062. Conduct of Hearing and Evidence.**

(a) A party appearing in a hearing shall have his or her evidence and witnesses and be ready to proceed.

(b) An administrative law judge shall consider only those issues in a department action which are appealed, petitioned, or noticed by the agency. A related issue shall not be considered unless a waiver is obtained from all parties. If the department amends the action which is appealed or petitioned, the scope of an administrative law judge's consideration extends to the amended department action, provided that the department either serves it on all other parties at least 10 days before the hearing, or all other parties waive such service.

(c) Testimony shall be taken only on oath, affirmation, or penalty of perjury.

(d) Each party shall have these rights:

(i) to review the case file;

(ii) to call and examine parties and witnesses;

(iii) to introduce exhibits;

(iv) to question opposing witnesses and parties on any matter relevant to the issues even though that matter was not covered in the direct examination;

(v) to impeach any witness regardless of which party first called the witness to testify; and

(vi) to rebut the evidence against it.

(e) Except as otherwise prohibited by law, any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions.

(f) An administrative law judge has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time, or to prevent injustice, undue burden, or prejudice.

(g) The rules of privilege shall be effective to the extent that they are required by law to be recognized at the hearing.

(h) In a proceeding in which conduct that constitutes sexual harassment, sexual assault, or sexual battery is alleged, evidence of specific instances of a complainant's sexual conduct with individuals other than the alleged perpetrator is subject to the limitations set forth in Government Code section 11440.40.

(i) Evidence of communications made in settlement is subject to the limitations of Government Code section 11415.60. Evidence of communications made in alternative dispute resolution under Article 5 of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, commencing with section 11420.10, is subject to the limitations of Government Code section 11420.30. Evidence of communications made in mediation is subject to the limitations of Evidence Code section 1152.5.

(j) An administrative law judge may exclude an untimely exhibit, including an untimely statement that a party intends to constitute its appearance pursuant to rule 5061(c).

(k) An administrative law judge may order the taking of interrogatories and depositions inside or outside the state, upon such terms and conditions as may be just.

(l) An administrative law judge may question any party or witness and may introduce exhibits.

(m) The taking of evidence in a hearing shall be controlled by the administrative law judge in a manner best suited to ascertain the facts and safeguard the rights of the parties. Prior to taking evidence, the administrative law judge shall identify and explain the issues and the order in which evidence will be received.

(n) A hearing shall be open to public observation unless an administrative law judge orders closure or makes other protective orders pursuant to Government Code section 11425.20 or Unemployment Insurance Code section 2713. This section does not apply to a prehearing conference conducted pursuant to rule 5066 or a settlement conference or any other proceeding not constituting a hearing on the merits.

(o) If an electronic hearing is open to public observation, members of the public may be physically present at the place where the administrative law judge is conducting the hearing, and any member of the public who is so present may review the case file, the audiovisual record, and any transcript that has been prepared.

(p) Information obtained by the agency in the administration of its functions under the code is confidential and not open to the public. A party waives confidentiality in such information after it is presented to the agency during the course of a public hearing on the merits of the party's appeal.

Note: Authority cited: Section 11400.20, Government Code; and Section 411, Unemployment Insurance Code. Reference: Sections 1094, 1951, 2712 and 3262, Unemployment Insurance Code.

# CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

## Amendment of Title 22, California Code of Regulations, Section 5066

### GENERAL

#### Text of Proposed Regulatory Changes

**NOTE:** Language to be deleted is shown in ~~strikeout~~ format;  
language to be added is shown in underline format.

#### AMEND SECTION 5066 AS SHOWN BELOW:

#### § 5066. Prehearing Conference Dismissal of Appeal or Petition.

(a) On motion of a party or by order of an administrative law judge, the administrative law judge may conduct a prehearing conference. The administrative law judge shall set the time and place for the prehearing conference, and shall give reasonable written notice to all parties.

(b) The prehearing conference may deal with one or more of the following matters:

(i) Exploration of settlement possibilities.

(ii) Preparation of stipulations.

(iii) Clarification of issues.

(iv) Rulings on identity and limitation of the number of witnesses.

(v) Objections to proffers of evidence.

(vi) Order of presentation of evidence and cross-examination.

(vii) Rulings regarding issuance of subpoenas and protective orders.

(viii) Schedules for the submission of written briefs and schedules for the commencement and conduct of the hearing.

(ix) Exchange of witness lists and of exhibits or documents to be offered in evidence at the hearing.

(x) Any other matters as shall promote the orderly and prompt conduct of the hearing.

(c) The administrative law judge may conduct all or part of the prehearing conference by telephone, video, or other electronic means if each participant in the conference has an opportunity to participate in and to hear the entire proceeding while it is taking place.

(d) Prehearing conferences are not open to public observation.

~~An administrative law judge may order an appeal or petition dismissed without a hearing on the following grounds:~~

~~(a) there is no adverse department action to be reviewed;~~

~~(b) the appellant or petitioner did not intend to file an appeal or petition;~~

~~(c) the case was registered in error;~~

~~(d) there is another case with the same parties and issues;~~

~~(e) there is no disputed issue to be decided;~~

~~(f) the matter is moot;~~

~~(g) the administrative law judge lacks jurisdiction; or~~

~~(h) the appellant or petitioner fails to appear in the hearing on the appeal or petition.~~

Note: Authority cited: Section 11400.20, Government Code; and Section 411, Unemployment Insurance Code. Reference: Sections 1951, 2712 and 3262, Unemployment Insurance Code.

# CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

## Addition to Title 22, California Code of Regulations, Section 5066.1

### GENERAL

#### Text of Proposed Regulatory Changes

**NOTE:** Changes proposed during the 45 day notice are shown in single underline for additions and in ~~striketrough~~ for deletions. Proposed changes for this 15 day notice are shown in double-underline for additions and ~~double-striketrough~~ for deletions.

#### **ADOPT SECTION 5066.1 AS SHOWN BELOW:**

##### **§ 5066.1. Dismissal of Appeal or Petition.**

An administrative law judge may order an appeal or petition dismissed without a hearing on the following grounds:

- (a) there is no adverse department action to be reviewed;
- (b) the appellant or petitioner did not intend to file an appeal or petition;
- (c) the case was registered in error;
- (d) there is another case with the same parties and issues;
- (e) there is no disputed issue to be decided;
- (f) the matter is moot;
- (g) the administrative law judge lacks jurisdiction; or,

(h) the appellant or petitioner fails to appear at the prehearing conference held pursuant to rule 5066 or in the hearing on the appeal or petition.

Note: Authority cited: Section 11400.20, Government Code; and Section 411, Unemployment Insurance Code. Reference: Sections 1951, 2712 and 3262, Unemployment Insurance Code.

# CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

## Amendment of Title 22, California Code of Regulations, Section 5067

### GENERAL

#### Text of Proposed Regulatory Changes

**NOTE:** Language to be deleted is shown in ~~strikeout~~ format;  
language to be added is shown in underline format.

#### AMEND SECTION 5067 AS SHOWN BELOW:

##### § 5067. Reopening.

(a) The appellant, petitioner, or applicant may file an application to reopen the appeal, petition, or application within ~~20~~ 30 days after service of an order:

(i) dismissing an appeal or petition on any of the grounds specified in rule ~~5066~~ 5066.1;

(ii) denying an application for reinstatement, reopening, or vacating a decision for failure to comply with a 10 day notice to specify the reason for the application or, if applicable, the reason the application is untimely;

(iii) denying an application for reinstatement, reopening, or vacating a decision for failure to appear in the hearing on such an application;

(iv) dismissing an untimely petition for failure to comply with a 20 day notice to specify the reason the petition is untimely; or

(v) denying a hearing on a petition for failure to apply for a hearing within 20 days after service of a notice of intention to render a decision or order on the petition without a hearing.

(b) The application shall specify the reason for reopening. If the application is untimely, it shall also specify the reason for the delay.

(c) If the application fails to specify the reason for reopening, or, if applicable, for its untimeliness, an administrative law judge may serve notice requiring the applicant to specify the reason by filing it within 10 days after service of such notice. If the applicant fails to comply, an administrative law judge may order reopening denied.

(d) If the reason specified by the applicant shows that there is no good cause for reopening, or, if applicable, for the untimely application, an administrative law judge may order reopening denied.

(e) An application for reopening that is not otherwise denied in accordance with this rule shall be scheduled for hearing. If the applicant shows good cause for reopening, and, if applicable, for the untimely application, the matter shall be ordered reopened; otherwise reopening shall be ordered denied.

(f) If an applicant for reopening fails to appear in the hearing on reopening, an administrative law judge may order reopening denied.

(g) If a party that has grounds to file an application to reopen files what purports to be a board appeal, it shall be treated as an application to reopen, unless the application or the party clearly states to the contrary.

(h) An order granting reopening is appealable to the board only upon service of an adverse decision or order on the appeal or petition.

Note: Authority cited: Section 11400.20, Government Code; and Section 411, Unemployment Insurance Code. Reference: Sections 1951, 2712 and 3262, Unemployment Insurance Code.

# CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

## Amendment of Title 22, California Code of Regulations, Section 5068

### GENERAL

#### Text of Proposed Regulatory Changes

**NOTE:** Language to be deleted is shown in ~~strikeout~~ format;  
language to be added is shown in underline format.

#### AMEND SECTION 5068 AS SHOWN BELOW:

##### § 5068. Vacating Decision.

(a) If a party fails to appear in any day of a hearing and an administrative law judge issues a decision on the merits adverse to that party's interest, the party may file an application to vacate the decision within ~~20~~ 30 days after service of the decision. The application shall specify the reason for vacating the decision. If the application is untimely, it shall also specify the reason for the delay.

(b) If the application fails to specify the reason for vacating the decision, or, if applicable, for its untimeliness, an administrative law judge may serve notice requiring the applicant to specify the reason by filing it within 10 days after service of such notice. If the applicant fails to comply, an administrative law judge may order the application to vacate the decision denied.

(c) If the reason specified by the applicant shows that there is no good cause for vacating the decision, or, if applicable, for the untimely application, an administrative law judge may order the application to vacate the decision denied.

(d) An application to vacate a decision that is not otherwise denied in accordance with this rule shall be scheduled for hearing. If the applicant shows good cause for vacating the decision, and, if applicable, for the untimely application, the decision shall be ordered

vacated; otherwise the application to vacate the decision shall be ordered denied.

(e) If an applicant fails to appear in the hearing on an application to vacate a decision, an administrative law judge may order the application denied.

(f) If a party that has grounds to file an application to vacate a decision files what purports to be a board appeal, it shall be treated as an application to vacate the decision, unless the application or the party clearly states to the contrary.

(g) Upon service of an order denying an application to vacate a decision, the applicant shall be deemed to have filed a board appeal of the denial of the application to vacate, and also of the original adverse decision which was the subject of the application to vacate.

(h) An order vacating a decision is appealable to the board only upon service of an adverse decision or order on the appeal or petition.

Note: Authority cited: Section 11400.20, Government Code; and Section 411, Unemployment Insurance Code. Reference: Sections 1951, 2712 and 3262, Unemployment Insurance Code.

# CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

## Amendment of Title 22, California Code of Regulations, Section 5111

### GENERAL

#### Text of Proposed Regulatory Changes

**NOTE:** Language to be deleted is shown in ~~strikeout~~ format;  
language to be added is shown in underline format.

#### AMEND SECTION 5111 AS SHOWN BELOW:

##### § 5111. Disqualification of Board Member.

(a) A board member is subject to disqualification in a proceeding on the following grounds:

(i) for bias, prejudice, or interest in the proceeding as defined by Government Code section 11425.40;

(ii) for receipt of an impermissible ex-parte communication under rule ~~5112~~ 5110, the effect of which cannot be eliminated under that rule;  
or

(iii) to maintain the separation of the adjudicative function from the investigative, prosecutorial, and advocacy functions as required by Government Code section 11425.30; or

(iv) for any of the grounds specified in Code of Civil Procedure section 170.1.

(b) A board member who is subject to disqualification shall voluntarily disqualify himself or herself from a proceeding, unless all parties waive the disqualification. A disqualification may not be waived if it is for bias or prejudice, if the member has been a material witness concerning the proceeding, if the disqualification is required by Government Code section 11425.30, or if waiver is otherwise prohibited by law.

(c) A party may apply for disqualification of a board member by filing and serving, within 10 days after service of a board appeal or notice of removal, an affidavit specifying the grounds upon which it is claimed that the board member is subject to disqualification. A board member is disqualified from a proceeding if it is determined upon such an application that the board member is subject to disqualification. The application shall be decided by the other members of the board acting as a whole. If a member of a panel to whom a case is assigned withdraws or is disqualified, the chairperson shall assign another member to the panel.

Note: Authority cited: Section 11400.20, Government Code; and Section 411, Unemployment Insurance Code. Reference: Sections 1951, 2712 and 3262, Unemployment Insurance Code.