

MAINE STATE LEGISLATURE

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(NEW DRAFT OF H.P. 766, L.D. 1029)
(NEW TITLE)
SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2459

H.P. 1795 House of Representatives, March 7, 1988
Reported by Representative BEGLEY from the Committee on
Labor and printed under Joint Rule 2.

EDWIN H. PERT, Clerk
Original bill sponsored by Speaker MARTIN of Eagle Lake.
Cosponsored by Senator DUTREMBLE of York and Representative
McHENRY of Madawaska.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-EIGHT

1 AN ACT to Clarify the Unemployment
2 Compensation Appeals Process.
3

4 Be it enacted by the People of the State of Maine as
5 follows:

6 Sec. 1. 26 MRSA §1081, sub-§1, as amended by PL
7 1983, c. 351, §6, is further amended to read:

8 1. Commission. The Maine Unemployment Insurance

1 Commission, as heretofore created, shall consist of
2 3 members, one of whom shall be a representative of
3 labor, one of whom shall be a representative of
4 employers, and one of whom shall be a
5 representative of the general public who shall be
6 impartial and an attorney admitted to the practice of
7 law in the State and shall be the chairman of the
8 commission. Except as provided in this subsection,
9 the 3 members and their successors shall be appointed
10 by the Governor, subject to review by the joint
11 standing committee of the Legislature having
12 jurisdiction over labor and to confirmation by the
13 Senate, to hold office for a term of 6 years or until
14 a successor has been duly appointed and qualified
15 confirmed, except that any member appointed to fill a
16 vacancy occurring prior to the expiration of the term
17 for which his a predecessor was appointed shall be
18 appointed for the remainder of the term. During
19 his a term of membership on the commission, a member
20 shall not engage in any other business, vocation or
21 employment, nor serve as an officer or committee
22 member of any political organization.

23 Sec. 2. 26 MRSA §1081, sub-§3 as amended by PL
24 1983, c. 351, §7, is further amended to read:

25 3. Quorum. Any 2 members of the commission shall
26 constitute a quorum. Whenever the commission hears
27 any case involving a disputed claim for benefits
28 under this chapter and Title 36, chapter 831, the
29 chairman shall act alone in the absence or
30 disqualification of any other member, provided that in
31 the event of illness or extended absence on the part
32 of the chairman or in the event of a vacancy in that
33 position, the remaining members may act on appeals,
34 and conduct hearings, and render a decision
35 decisions, provided both members agree. Except as
36 otherwise provided, no vacancy shall may impair the
37 right of the remaining members to exercise all of the
38 powers of the commission. Any action, decision,
39 order, rule or recommendation which is required by law
40 to be made by the Maine Unemployment Insurance
41 Commission shall not be made until the commission has
42 held a meeting in the regular course of its business
43 for which all members have been provided with

1 reasonable notice of the meeting and its agenda.

2 Sec. 3. 26 MRSA §1082, sub-§4-A is enacted to
3 read:

4 4-A. Division of Administrative Hearings. There
5 is established within the Department of Labor the
6 Division of Administrative Hearings to hear and decide
7 appeals from decisions of the deputy as provided by
8 this chapter and any other appeals as the commission
9 or commissioner may require.

10 A. The division shall be under the direction of
11 the chief administrative hearing officer appointed
12 by the commissioner and subject to the Civil
13 Service Law. The chief administrative hearing
14 officer must be an attorney admitted to practice
15 law in the State.

16 B. The chief administrative hearing officer shall
17 administer the office, supervise and assign cases
18 to the administrative hearing officers, and
19 preside at hearings as necessary.

20 C. Administrative hearing officers shall preside
21 at appeal proceedings. These administrative
22 hearing officers shall be under the direction of
23 the chief administrative hearing officer and hired
24 subject to the Civil Service Law.

25 Sec. 4. 26 MRSA §1082, sub-§8, as amended by PL
26 1985, c. 348, §4, is further amended to read:

27 8. Oaths and witnesses. In the discharge of the
28 duties imposed by this chapter, the commissioner, the
29 commission, the chairman of an appeal tribunal
30 chief administrative hearing officer and any duly
31 authorized representative of them shall have power to
32 administer oaths and affirmations, take depositions,
33 certify to official acts and issue subpoenas to
34 compel the attendance of witnesses and the production
35 of books, papers, correspondence, memoranda and other
36 reports deemed necessary as evidence in connection
37 with a disputed claim or the administration of this
38 chapter. Oaths and affirmations required by reason of

1 duties performed pursuant to this chapter may be
2 administered by any of such persons as may be
3 designated for the purpose by the commissioner. In
4 the discharge of the duties imposed by this chapter,
5 the commissioner, the commission, the ~~chairman of an~~
6 ~~appeal tribunal~~ chief administrative hearing officer
7 or any duly authorized representative of them, when
8 the interests of any interested party demand, may
9 issue commissions to take depositions to any
10 unemployment compensation or employment security
11 official empowered to take such depositions under this
12 chapter or the laws of any other state, for either of
13 the following causes:

- 14 A. When the deponent resides out of, or is absent
15 from, the State;
- 16 B. When the deponent is bound to sea or is about
17 to go out of the State; or
- 18 C. When the deponent is so aged, infirm or sick
19 as to be unable to attend at the place of hearing.

20 Such depositions shall be taken by written
21 interrogatories to be compiled by the commission or
22 the ~~appeal tribunal~~ Division of Administrative
23 Hearings, and the adverse party shall be afforded an
24 opportunity to refute such testimony before
25 determination is made. The deponent shall be sworn
26 and the deposition shall be signed and sworn to by the
27 deponent before admissible as testimony at a hearing
28 before the ~~appeal tribunal~~ Division of
29 Administrative Hearings or the commission.

30 Subpoenas shall be issued pursuant to Title 5, section
31 9060.

32 **Sec. 5.** 26 ~~MRSA~~ §1082, sub-§9-A, as amended by
33 PL 1987, c. 338, §4, is further amended to read:

34 9-A. Refusal to appear. Any person who without
35 just cause fails or refuses to attend and testify or
36 to answer any lawful inquiry or to produce books,
37 papers, correspondence, memoranda and other records,
38 if it is in his that person's power to do so, in

1 obedience to a subpoena of the commissioner, the
2 commission, the appeal tribunal Division of
3 Administrative Hearings or the duly authorized
4 representative of any of them shall be guilty of a
5 Class E crime. Whenever a person refuses to obey a
6 subpoena duly issued by the commissioner, the
7 commission, the appeal tribunal Division of
8 Administrative Hearings or the duly authorized
9 representative of any of them, any court of this State
10 within the jurisdiction of which the person resides or
11 transacts business, shall have jurisdiction to issue
12 to that person an order requiring him the person to
13 appear and produce evidence or testimony and any
14 failure to obey that order may be punished by the
15 court as contempt thereof of court.

16 Sec. 6. 26 M RSA §1082, sub-§10 is amended to
17 read:

18 10. Protection against self-incrimination. No
19 person shall may be excused from attending and
20 testifying or from producing books, papers,
21 correspondence, memoranda and other records before the
22 commission, the chairman of an appeal tribunal
23 chief administrative hearing officer or duly
24 authorized representative of either of them, or in
25 obedience to the subpoena of the commission, the
26 chairman of an appeal tribunal chief administrative
27 hearing officer or the duly authorized representative
28 of either of them in any cause or proceeding before
29 the commission, the chairman of an appeal tribunal
30 chief administrative hearing officer or duly
31 authorized representative of either of them, on the
32 ground that the testimony or evidence, documentary or
33 otherwise, required of him that person may tend to
34 incriminate him that person or subject him that
35 person to a penalty or forfeiture; but no individual
36 shall may be prosecuted or subjected to any penalty
37 or forfeiture for or on account of any transaction,
38 matter or thing concerning which he that person is
39 compelled, after having claimed his privilege
40 against self-incrimination, to testify or produce
41 evidence, documentary or otherwise, except that
42 such the individual so testifying shall not be exempt
43 from prosecution and punishment for perjury

1 committed in so testifying.

2 Sec. 7. 26 MRSA, §1194, sub-§2, as amended by
3 PL 1987, c. 365, §2, is further amended to read:

4 2. Determination. A representative designated by
5 the commissioner, and in this chapter referred to as a
6 deputy, shall promptly examine the first claim filed
7 by a claimant in each benefit year and shall determine
8 the weekly benefit amount and maximum benefit amount
9 potentially payable to the claimant during that
10 benefit year in accordance with section 1192,
11 subsection 5.

12 The deputy shall promptly examine all subsequent
13 claims filed and, on the basis of facts found by
14 him, shall determine whether or not that claim is
15 valid with respect to sections 1192 and 1193, other
16 than section 1192, subsection 5, or shall refer that
17 claim or any question involved therein to an appeal
18 ~~tribunal~~ the Division of Administrative Hearings or
19 to the commission, which shall make a determination
20 with respect thereto in accordance with the procedure
21 described in subsection 3, except that in any case in
22 which the payment or denial of benefits will be
23 subject to section 1193, subsection 4, the deputy
24 shall promptly transmit a report with respect to that
25 subsection to the Director of Unemployment
26 Compensation upon the basis of which the director
27 shall notify appropriate deputies as to the
28 applicability of that subsection.

29 The deputy shall determine in accordance with section
30 1221, subsection 3, paragraph A, the proper employer's
31 experience rating record, if any, against which
32 benefits of an eligible individual shall be charged,
33 if and when paid.

34 The deputy shall promptly notify the claimant and any
35 other interested party of the determinations and
36 reasons therefor. Subject to subsection 11, unless
37 the claimant or any such interested party, within 15
38 calendar days after that notification was mailed to
39 his last known address, files an appeal from that
40 determination, that determination shall be final,

1 provided that the period within which an appeal may be
2 filed may be extended, for a period not to exceed an
3 additional 15 calendar days, for good cause shown. If
4 new evidence or pertinent facts that would alter that
5 determination become known to the deputy prior to the
6 date that determination becomes final, a
7 redetermination is authorized, but that
8 redetermination must be mailed before the original
9 determination becomes final.

10 If an employer's separation report for an employee is
11 not received by the office specified thereon within 10
12 days after that report was requested, the claim shall
13 be adjudicated on the basis of information at hand.
14 If the employer's separation report containing
15 possible disqualifying information is received after
16 the 10-day period and the claimant is denied benefits
17 by a revised deputy's decision, benefits paid prior to
18 the date of the revised decision shall not constitute
19 an overpayment of benefits. Any benefits paid after
20 the date of the revised decision shall constitute an
21 overpayment.

22 If an employer files an amended separation report or
23 otherwise raises a new issue as to the employee's
24 eligibility or changes the wages or weeks used in
25 determining benefits which results in a denial of
26 benefits or a reduction of the weekly benefit amount,
27 the benefits paid prior to the date the determination
28 is mailed shall not constitute an overpayment. Any
29 benefits received after that date to which the
30 claimant is not entitled pursuant to a new
31 determination based on that new employer information
32 shall constitute an overpayment.

33 If, during the period a claimant is receiving
34 benefits, new information or a new issue arises
35 concerning the claimant's eligibility for benefits or
36 which affects the claimant's weekly benefit amount, no
37 benefits may be withheld until a determination is made
38 on the issue. Before a determination is made, written
39 notice shall be mailed to the claimant and other
40 interested parties, which shall include the issue to
41 be decided, the law upon which it is based, any
42 factual allegations known to the bureau, the right to

1 a fact-finding interview, the date and location of the
2 scheduled interview and the conduct of the interview
3 and appeal. The fact-finding interview shall be
4 scheduled not less than 5 days nor more than 14 days
5 after the notice is mailed. The bureau shall include
6 in the notice a statement notifying the claimant that
7 any benefits paid prior to the determination may be an
8 overpayment under applicable law and recoverable by
9 the bureau if it is later determined that the claimant
10 was not entitled to the benefits. If the claimant
11 does not appear for the scheduled interview, the
12 deputy shall make a determination on the basis of
13 available evidence. The deputy shall make a prompt
14 determination of the issue based solely on any written
15 statements of interested parties filed with the bureau
16 before the interview, together with the evidence
17 presented by interested parties who personally
18 appeared at the interview. Upon request and notice to
19 all parties at the interview, the deputy may accept
20 corroborative documentary evidence after the
21 interview. In no other case may the deputy base
22 his a decision on evidence received after the
23 interview has been held.

24 A. This subsection does not apply when the
25 claimant reports that, in the week claimed:

26 (1) The claimant worked and reports a
27 specific amount of earnings for that work;

28 (2) The claimant worked and had earnings
29 from that work, but does not furnish the
30 amount of earnings;

31 (3) The claimant was not able or available
32 for work for a specific portion of the week
33 and there is sufficient information for the
34 deputy to determine that the inability or
35 unavailability for work was for good cause; or

36 (4) The claimant received a specific amount
37 of other remuneration as described in section
38 1193, subsection 5.

39 B. The commissioner shall notify all claimants

1 when a weekly claim is filed that must provide an
2 estimate of their earnings if they do not know the
3 actual amount and, if no estimate is provided,
4 benefits will be withheld pending receipt of that
5 information. Benefits shall be paid on the basis
6 of the estimate provided until actual information
7 is available.

8 **Sec. 8.** 26 MRSA §1194, sub-§3, as amended by PL
9 1981, c. 145, is further amended to read:

10 3. Appeals. Unless such appeal is withdrawn,
11 an appeal tribunal the Division of Administrative
12 Hearings after affording the parties reasonable
13 opportunity for fair hearing, shall affirm, modify or
14 set aside the findings of fact and decision of the
15 deputy. The parties shall be then duly notified of
16 such tribunal's the division's decision, together
17 with its reasons therefor, which subject to subsection
18 11 shall be deemed to be the final decision of the
19 commission unless, within 15 calendar days after that
20 notification was mailed to his last known address, the
21 claimant and employer may appeal to the commission by
22 filing an appeal in accordance with such rules as the
23 commission shall prescribe, provided that the
24 appealing party appeared at the hearing and was given
25 notice of the effect of the failure to appear in
26 writing prior to the hearing.

27 **Sec. 9.** 26 MRSA §1194, sub-§5, as amended by PL
28 1977, c. 587, is further amended to read:

29 5. Commission review. The commission may on its
30 own motion affirm, modify or set aside any decision
31 of an appeal tribunal the Division of
32 Administrative Hearings on the basis of the evidence
33 previously submitted in such that case or direct
34 the taking of additional evidence, or may permit any
35 of the parties of such that decision to initiate
36 further appeals before it. The commission shall
37 permit such further appeal by any of the parties
38 interested in a decision of an appeal tribunal which
39 is not unanimous the Division of Administrative
40 Hearings and by the deputy whose decision has been
41 overruled or modified by an-appeal-tribunal the

1 Division of Administrative Hearings. The commission
2 may remove to itself or transfer to another appeal
3 tribunal the chief administrative hearing officer or
4 to another administrative hearing officer the
5 proceedings on any claim pending before an appeal
6 tribunal the Division of Administrative Hearings.
7 Any proceedings so removed to the commission shall be
8 heard in accordance with the requirements in
9 subsection 3. All hearings conducted pursuant to this
10 section may be heard by a quorum of commissioners, as
11 defined in section 1081, subsection 3. The commission
12 shall promptly notify the interested parties of its
13 findings and decisions.

14 Sec. 10. 26 MRSA §1194, sub-§8, as amended by
15 PL 1983, c. 351, §21, is further amended to read:

16 8. Appeals to courts. Any decision of the
17 commission shall become final 10 days after receipt of
18 written notification and any person aggrieved
19 thereby by the decision may appeal by commencing an
20 action pursuant to Title 5, section 1100:1 et seq
21 subchapter VII. The commissioner commission shall
22 be made a party defendant in any such appeal.

23 Sec. 11. 26 MRSA §1194, sub-§10, as amended by
24 PL 1985, c. 348, §8, is further amended to read:

25 10. Determination may be reconsidered; appeal.
26 The deputy may reconsider a determination with respect
27 to the weekly benefit amount and maximum total amount
28 of benefits for a claimant for any given benefit year,
29 if he the deputy finds that an error has occurred
30 in connection therewith, or that wages have been
31 erroneously reported, but no such redetermination
32 shall may be made after one year from the date of the
33 original determination. Notice of any such
34 redetermination shall be promptly given to the parties
35 entitled to notice of the original determination, in
36 the manner prescribed in this section with respect to
37 notice of an original determination. If the maximum
38 amount of benefits is increased upon such that
39 redetermination, an appeal therefrom solely with
40 respect to the matters involved in such that
41 increase may be filed in the manner and subject to the

1 limitations provided in subsection 2. If the amount
2 of benefits is decreased upon such redetermination,
3 the matters involved in such decrease shall be subject
4 to an appeal by claimant with respect to subsequent
5 benefits which may be affected by the
6 redetermination. An appeal may be filed in the manner
7 and subject to the limitations provided in subsection
8 2.

9 The deputy may reconsider a benefit payment for any
10 particular week or weeks whenever he finds that an
11 error has occurred, but no such redetermination may be
12 made after one year from the date of payment for
13 such that week or weeks. Notice of any such
14 redetermination shall be promptly given to the
15 claimant. Subject to subsection 11, unless the
16 claimant files an appeal from such that
17 redetermination within 15 calendar days after such
18 that redetermination was mailed to his the
19 claimant's last known address, such the
20 redetermination shall be final, provided that the
21 period within which an appeal may be filed may be
22 extended for a period not to exceed an additional 15
23 calendar days for good cause shown.

24 Subject to the same limitations and for the same
25 reasons, the commission may reconsider the
26 determination in any case in which the final decision
27 has been rendered by an appeal tribunal the
28 Division of Administrative Hearings, the commission or
29 a court, and may apply to the body or court which
30 rendered such that final decision to issue a
31 revised decision. In the event that an appeal
32 involving an original determination is pending as of
33 the date of redetermination thereof is issued, such
34 that appeal, unless withdrawn, shall be treated as an
35 appeal from such the redetermination.

36 **Sec. 12. 26 MRSA §1194, sub-§11, ¶A, as enacted**
37 **by PL 1971, c. 538, §34, is amended to read:**

38 A. Benefits shall be paid promptly in accordance
39 with a determination, reconsidered determination,
40 redetermination, decision of an appeal tribunal
41 the Division of Administrative Hearings, the
42 commission or a reviewing court under this

1 section, upon the issuance of such the
2 determination, reconsidered determination,
3 redetermination or decision, regardless of the
4 pendency of the period to apply for
5 reconsideration, file an appeal or petition for
6 judicial review that is provided with respect
7 thereto in this section or the pendency of any
8 such application, filing or petition, unless and
9 until such that determination, redetermination
10 or decision has been modified or reversed by a
11 subsequent reconsidered determination,
12 redetermination or decision. In which event,
13 benefits will be paid or denied for weeks of
14 unemployment thereafter in accordance with such
15 that reconsidered determination, modified or
16 reversed determination, redetermination or
17 decision.

18 **Sec. 13. Transitional provisions.** Transitional
19 provisions are as follows.

20 1. Personnel transferred. The chairman of the
21 Unemployment Insurance Commission shall serve until
22 his term expires and a successor has been nominated
23 and confirmed. The person serving as the director,
24 adjudication, also known as the Director of the
25 Division of Appeals, shall become the Chief
26 Administrative Hearing Officer of the Division of
27 Administrative Hearings. The persons serving as
28 adjudication officers shall become administrative
29 hearing officers. Personnel and support staff of the
30 Appeals Division shall continue as staff for the
31 Division of Administrative Hearings.

32 2. Funds. Funds allocated to the Division of
33 Appeals shall be allocated in the same manner to the
34 Division of Administrative Hearings.

35 3. Equipment and property. All equipment and
36 property of the State used by the Division of Appeals
37 shall be used by the Division of Administrative
38 Hearings.

39 4. Rules and procedures. All rules and
40 procedures currently in effect for the Division of

1 Appeals shall be in effect for the Division of
2 Administrative Hearings until amended or rescinded as
3 provided by state law.

4 STATEMENT OF FACT

5 The original bill proposed to change the appeals
6 process within the Bureau of Employment Security by
7 creating a separate office with its own budget. The
8 new draft proposes to effect the following changes:

9 1. Require the chairman of the Unemployment
10 Compensation Commission to be an attorney;

11 2. Establish the Division of Administrative
12 Hearings to take the place of appeal tribunals.
13 Currently, a claimant may have his appeal heard by a
14 hearing examiner, a representative of employees and a
15 representative of employers. The 2 representatives
16 are appointed by the commissioner. In practice,
17 appeals are heard only by the hearing examiner and
18 representatives have never been appointed because of
19 the expense and logistics of getting 3 people
20 together. Appeals of appeal tribunal decisions are
21 heard by the Unemployment Compensation Commission
22 which has representation by employers and employees.
23 This new draft recognizes current practice in the
24 appeals process and institutionalizes it;

25 3. Changes the name of the appeal tribunal to the
26 Division of Administrative Hearings and changes the
27 titles of the personnel within the division;

28 4. The division is left within the Department of
29 Labor and does not have a separate budget;

30 5. The commission is made a party to any appeals
31 brought before the courts. Currently, the
32 commissioner is made a party to proceedings; and

1 6. A transition section ensures that staff,
2 funding, equipment, rules and policies of the appeals
3 tribunal are continued under the Division of
4 Administrative Hearings.

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