

SUBCHAPTER 24C - INITIAL APPEALS FROM DETERMINATION

SECTION .0100 – GENERAL INITIAL APPEALS INFORMATION

04 NCAC 24C .0101 APPEAL DATE ESTABLISHED BY TESTIMONY

- (a) A party shall be allowed to establish an appeal date earlier than a postal meter date, or the date of a document only in the face of clear and convincing evidence.
- (b) When a party alleges filing an appeal that DES never received, the party shall present clear and convincing evidence of a timely filing, which may be corroborated by testimony or physical evidence linked to the appeal in question.
- (c) The Appeals Referee shall allow cross-examination to establish timeliness of an appeal consistent with 04 NCAC 24A .0106.

History Note: Authority G.S. 96-4; 96-15;
Eff. July 1, 2015.

04 NCAC 24C .0102 TIMELINESS EXCEPTION

Timeliness sanctions shall be waived by the Appeals Referee when DES or an agent state representative gives misleading information on appeal rights to a party, if the party:

- (1) establishes what he or she was told was misleading and how he or she was misled, pursuant to the procedures in 04 NCAC 24C .0101;
- (2) identifies, if possible, the individual who misled him or her; and
- (3) establishes that DES did not provide the party with any written instructions contrary to the misleading information with service of the decision being appealed.

History Note: Authority G.S. 96-4; 96-15;
Eff. July 1, 2015;
Amended Eff. July 1, 2018.

04 NCAC 24C .0103 BASE PERIOD EMPLOYER DENIED NONCHARGING

A base period employer who was not the claimant's last employer may file an appeal from a determination denying noncharging of benefits to its account as provided in 04 NCAC 24A .0104(s). The claimant is not a party with appeal rights in this appeal.

History Note: Authority G.S. 96-4; 96-11.3; 96-11.4;
Eff. July 1, 2015;
Amended Eff. July 1, 2018.

04 NCAC 24C .0104 EMPLOYER PARTY TO DETERMINATION

An employer may file an appeal from a determination that affects a claimant's entitlement to benefits if the employer is a party to the determination. Only one employer shall be a party with appeal rights to a proceeding.

- (1) An employer named as the last employer on an initial claim shall be a party to a determination ruling on the merits of the claimant's separation from employment and other specific issues raised by the employer regarding the claimant's entitlement to benefits.
- (2) An employer named as the last employer on an additional or continued claim shall be a party to a determination ruling on the merits of that additional or continued claim regarding separation from employment or other specific issues raised by the employer if the employer:
 - (A) was the employer named as the last employer on the claimant's initial claim; or
 - (B) is a base period employer whose account has been ruled subject to charging of benefits.
- (3) A reimbursing employer named as the last employer on an additional or continued claim shall be a party to a determination ruling on the merits of that additional or continued claim regarding separation from employment or other specific issues raised by the employer if the employer:
 - (A) was the employer named as the last employer on the claimant's initial claim; or
 - (B) is a base period employer.
- (4) If an employer, during a claimant's benefits year, provides DES with information that raises specific issues, including a potential disqualification, ineligibility, allegations of fraud, or other

issues that affect a claimant's entitlement to benefits, the employer shall be a party with appeal rights to a determination ruling on the merits of the specific issue raised by the employer if the employer is:

- (A) named as the last employer on the claimant's initial claim;
 - (B) a base period taxed employer whose account has been ruled subject to charging of benefits, even if that employer was named as the last employer on the claimant's initial claim and did not timely respond to notice of the claimant's initial claim; or
 - (C) a base period reimbursing employer.
- (5) An employer against whom a claimant has alleged entitlement to additional base period wages shall be a party with appeal rights to that issue.

History Note: Authority G.S. 96-4; 96-11.3; 96-11.4; 96-15;
Eff. July 1, 2015.

SECTION .0200 – INITIAL APPEALS HEARING

04 NCAC 24C .0201 APPEARANCE BY PARTY

An appearance by a party to an appeals hearing includes offering testimony, questioning witnesses, and presenting oral arguments. A submission of written documents or observation of the proceedings shall not constitute an appearance.

- (1) A party or witness shall appear by telephone when the party participates in the telephone conference call with the Appeals Referee on the date and time of the hearing and participates in the proceedings.
- (2) A party or witness shall appear in person at the location on the date and times scheduled for the in-person hearing, and participate in the proceedings.
- (3) An individual shall appear at an in-person/telephone hearing as provided in 04 NCAC 24C .0213 on the date and time of the hearing and participate in the proceedings.

History Note: Authority G.S. 96-4; 96-15;
Eff. July 1, 2015;
Amended Eff. July 1, 2018.

04 NCAC 24C .0202 PRESENTING AND SCHEDULING APPEALED CLAIMS

A party wishing to appeal from an adjudicator's determination shall file an appeal pursuant to Rule 04 NCAC 24A .0104(b).

History Note: Authority G.S. 96-4; 96-15;
Eff. July 1, 2015;
Amended Eff. July 1, 2018.

04 NCAC 24C .0203 CONTENTS OF APPEAL TO APPEALS SECTION

A party's written appeal shall contain the following:

- (1) the date of the appeal;
- (2) the docket or issue identification number of the determination being appealed;
- (3) the claimant's identification number;
- (4) the names of the claimant and employer;
- (5) each reason for the appeal;
- (6) the name of the individual filing the appeal;
- (7) the official position, if any, of an individual filing the appeal on behalf of the party; and
- (8) a telephone number.

History Note: Authority G.S. 96-4; 96-15;
Eff. July 1, 2015;
Amended Eff. July 1, 2018.

04 NCAC 24C .0204 APPEALS HEARING NOTICE

- (a) The Appeals Section shall mail notice of the hearing to each party at least 14 days before the hearing date.
- (b) A party who elects to receive correspondence and notices by electronic transmission shall receive an email notification, at least 14 days before the hearing date, indicating that the hearing notice is available in their SCUBI account.
- (c) Notice of the hearing shall include:
- (1) the determination appealed;
 - (2) the appealing party;
 - (3) the time of the hearing;
 - (4) the date of the hearing;
 - (5) if requested at the time of filing the appeal, the physical location of an in-person hearing;
 - (6) the telephone number of each party for telephone hearings;
 - (7) each issue, with statutory reference, to be heard and decided;
 - (8) the name and contact information of the designated Appeals Referee;
 - (9) the manner by which witnesses may offer evidence and participate in the hearing;
 - (10) each party's right to legal representation;
 - (11) instructions for requesting a rescheduling of the hearing pursuant to 04 NCAC 24C .0207;
 - (12) each party's right to request the issuance of a subpoena for the production of records or for individuals to appear and testify, as well as instructions for making these requests pursuant to 04 NCAC 24C .0401;
 - (13) instructions on how to request an in-person hearing;
 - (14) instructions on how to give evidence at a hearing pursuant to 04 NCAC 24C .0209;
 - (15) notice that documents accompanying the hearing notice are available in their SCUBI account; and
 - (16) instructions that if the individual's telephone number is not listed or is incorrect to contact the Appeals Referee prior to the scheduled start time of the hearing to provide the correct telephone number pursuant to 04 NCAC 24C .0205.
- (d) The determination, the written appeal, the claimant's application for unemployment insurance, the employer's response to claimant's application for unemployment insurance, if any, and any documents provided to the Appeals Section with the appeal shall accompany the hearing notice. If a party desires to introduce additional documents or other evidence, e.g., audio or video recordings, photographs, or screenshots, at a hearing, the party shall submit the additional documents or other evidence to the Appeals Referee or hearing officer and to all other parties prior to the hearing in accordance with 04 NCAC 24C .0209(a), (c), and (d).

*History Note: Authority G.S. 96-4; 96-15;
Eff. July 1, 2015;
Amended Eff. June 1, 2022; September 1, 2017.*

04 NCAC 24C .0205 TELEPHONE HEARINGS

- (a) Hearings shall be conducted by telephone conference call, unless a request is made for an in-person hearing at the time the appeal is filed or an objection is made pursuant to Rule .0206 of this Section.
- (b) The Appeals Hearing Notice will list a telephone number for each party. This is the telephone number the Appeals Referee will call unless a different telephone number is provided in accordance with this Rule.
- (1) If no telephone number is listed for a party, that party shall provide a telephone number directly to the Appeals Referee prior to the scheduled start time of the hearing.
 - (2) If a party wishes to be called at a telephone number other than the one listed, that party shall provide a telephone number directly to the Appeals Referee prior to the scheduled start time of the hearing.
 - (3) If a party wishes to have witnesses called for participation in the hearing, that party shall provide the name and telephone number for each witness directly to the Appeals Referee prior to the scheduled start time of the hearing.
- (c) Telephone numbers for parties and additional witnesses shall be provided to the Appeals Referee by telephone or by email. The telephone number and email address for the Appeals Referee are listed on the Appeals Hearing Notice.
- (d) If a party fails to provide a telephone number to the Appeals Referee prior to the scheduled start time of the hearing, the Appeals Referee shall call the party at the telephone number listed on the Appeals Hearing Notice. If no telephone number is listed for a party, and no number has otherwise been provided in accordance with this Rule, no call will be placed to that party for the hearing.

History Note: Authority G.S. 96-4; 96-15;
Eff. July 1, 2015;
Amended Eff. June 1, 2022; October 1, 2017.

04 NCAC 24C .0206 IN-PERSON HEARINGS

- (a) A party may request an in-person hearing:
- (1) at the time the appeal is filed; or
 - (2) by filing a written objection to the telephone conference call to:
 - (A) the Appeals Section as provided for in 04 NCAC 24A .0104; or
 - (B) the designated Appeals Referee using the contact information provided on the hearing notice.
- (b) If travel is required to conduct the in-person hearing, the objecting party shall be required to travel to a location convenient to the non-objecting party and where the Division regularly conducts in-person hearings as determined by the Appeals Referee based on each party's location.

History Note: Authority G.S. 96-4; 96-15;
Eff. July 1, 2015.

04 NCAC 24C .0207 RESCHEDULING A HEARING

- (a) An Appeals Referee may continue a hearing for "good cause" as defined in 04 NCAC 24A .0105. In addition to the reasons set forth in G.S. 96-15(d1), the reasons for which a continuance may be granted include, but are not limited to, the following:
- (1) illness; ;
 - (2) death of an immediate family member. Immediate family member is defined as an individual's wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson, granddaughter, regardless of whether the relationship is a biological, adoptive, step-, half-, or in-law relationship;
 - (3) a need to obtain an interpreter or translator;
 - (4) a religious observance;
 - (5) jury duty;
 - (6) actively seeking legal representation;
 - (7) appearance in another proceeding before the Division or the Board of Review;
 - (8) active military duty;
 - (9) a scheduling conflict created by or to accommodate return-to-employment activities of the claimant;
 - (10) to accommodate the business needs of the employer;
 - (11) a scheduling conflict of the Appeals Referee; or
 - (12) based on the operation and scheduling needs of the Appeals Section.
- (b) Any request for continuance by a party prior to the hearing shall be made in writing to the Appeals Referee listed on the Appeals Hearing Notice, or where applicable, Order for Continuance or Order for Adjournment. The written request shall explain the reasons the request is being sought.
- (c) Unless the parties are notified by the Appeals Referee or the Appeals Section that a request for continuance has been granted, the hearing will be conducted as scheduled.

History Note: Authority G.S. 96-4; 96-15;
Eff. July 1, 2015;
Amended Eff. June 1, 2022.

04 NCAC 24C .0208 DISQUALIFICATION OF APPEALS REFEREE

- (a) An Appeals Referee shall be free of any personal interest or bias in the appeal over which he or she is presiding.
- (b) An Appeals Referee shall not participate in hearing an appeal in which that Appeals Referee has a personal interest in the outcome of the appeals decision.
- (c) An Appeals Referee may recuse himself or herself from a hearing to avoid the appearance of impropriety or partiality.

(d) A pre-hearing challenge to the impartiality of a designated Appeals Referee shall be in writing, addressed to the Chief Appeals Referee as provided in 04 NCAC 24A .0104(b), and shall be heard and decided by the Chief Appeals Referee or designee.

(e) The Chief Appeals Referee or designee's decision on any pre-hearing challenge to the impartiality of an assigned Appeals Referee shall be in writing and mailed to the parties.

History Note: Authority G.S. 96-4; 96-15; 20 CFR 650.2;
Eff. July 1, 2015;
Amended Eff. July 1, 2018.

04 NCAC 24C .0209 CONDUCT OF HEARINGS

(a) Hearings may be conducted by a Hearing Officer or an Appeals Referee, including the Chief Appeals Referee and the Deputy Chief Appeals Referee. Consistent with G.S. 96-15(f), all hearings shall be conducted in a manner to preserve the substantial rights of the parties.

- (1) The parties to an appeal before an Appeals Referee have the right to present relevant and material evidence as determined by the Appeals Referee.
- (2) The Appeals Referee may ask questions to develop the record as to the relevant facts, circumstances, and issues presented at the hearing.
- (3) The Appeals Referee may examine parties and witnesses, and shall allow cross-examination.
- (4) All issues relevant to the appeal shall be considered and ruled upon.

(b) The Appeals Referee shall give each party 10 minutes from the time of the scheduled hearing to appear for the hearing. If the appealing party fails to appear at the hearing and a continuance had not been previously granted, the Appeals Referee shall issue an Appeals Decision dismissing the appeal. If the appealing party appears and the non-appealing party fails to appear, the Appeals Referee shall proceed with the hearing .

(c) If a party wishes to introduce documents or other evidence not provided by the Appeals Section with the Appeals Hearing Notice, the party shall provide a copy to the Appeals Referee and to all other parties prior to the hearing.

(d) Any party propounding in excess of 25 pages of documents, photographs, or screen shots shall number and paginate each exhibit, and provide an index listing each exhibit and its corresponding page number, which will become part of the official record.

(e) Official notice may be taken by the Appeals Referee of all facts for which judicial notice may be taken as well as other facts within the specialized knowledge of the DES. The official notice and its source shall be stated on the record. Each party shall be given an opportunity to dispute the noticed fact by argument and submission of evidence on the record.

History Note: Authority G.S. 96-4; 96-15; 20 CFR 650.2;
Eff. July 1, 2015;
Amended Eff. June 1, 2022.

04 NCAC 24C .0210 HEARSAY

(a) Hearsay evidence shall be accepted as credible evidence only when it:

- (1) falls within the statutory or common law exceptions to the hearsay rules; or
- (2) has an equivalent indicia of trustworthiness as competent evidence; and
- (3) is more probative on the point for which it is offered than any other evidence which the party offering the hearsay could reasonably be expected to procure.

(b) The Appeals Referee may permit the parties to file an affidavit at the time of the hearing in the same manner as applicable to other hearsay evidence.

History Note: Authority G.S. 8C, Art. 8; 96-4; 96-15;
Eff. July 1, 2015.

04 NCAC 24C .0211 CONTROLLED SUBSTANCE RESULTS

In lieu of live testimony from a laboratory representative at a contested claims hearing, an affidavit from an authorized representative of the laboratory may be presented to prove controlled substance examination results, chain of custody, or compliance with all testing or retesting required by federal or state law.

- (1) When a party desires to introduce the affidavit at the hearing, a copy of the affidavit shall be received by the party against whom the affidavit will be offered at least two days before the hearing.
- (2) If the party who desires to introduce the affidavit is unable, despite reasonable efforts, to accomplish the required service within the time specified, the Appeals Referee may adjourn or continue the hearing to allow such service to be accomplished. However, the Appeals Referee shall not continue the hearing if the party against whom the affidavit is offered has refused to accept service or has taken other steps to avoid or delay receipt of the affidavit.
- (3) At the hearing, the party shall offer an authenticated copy of the affidavit as an exhibit.
- (4) If the party against whom the affidavit is offered objects to the entry of the affidavit into the official

record, the objecting party may request an adjournment or continuance of the hearing to subpoena the author of the affidavit. The affidavit's author shall be permitted to testify by telephone at the reconvened hearing.

- (5) Once the affidavit is made a part of the official record of evidence compiled by the Appeals Referee, the Appeals Referee may, in his or her discretion, base findings of fact on the affidavit.
- (6) The results of the controlled substance examination and compliance with any applicable statutory or regulatory procedural requirements shall be deemed proven if the claimant admits or stipulates to them during the hearing or by affidavit.

History Note: Authority G.S. 95-230; 95-231; 95-232; 95-233; 95-234; 95-235; 96-4; 96-15; Eff. July 1, 2015; Amended Eff. July 1, 2018.

04 NCAC 24C .0212 CONTENTS OF APPEALS DECISION

(a) The Appeals Decision shall include:

- (1) the names of the individuals present for the hearing;
- (2) findings of fact necessary for a resolution of the appeal;
- (3) the applicable statutory provisions;
- (4) conclusions of law;
- (5) the name of the Appeals Referee who conducted the hearing and rendered the decision; and
- (6) notice of each party's right to file an appeal of the Appeals Decision and the time period for filing an appeal.

History Note: Authority G.S. 96-4; 96-15; Eff. July 1, 2015.

04 NCAC 24C .0213 COMBINATION TELEPHONE AND IN-PERSON HEARINGS

(a) The Appeals Referee may conduct an in-person/telephone hearing to avoid prejudice, to ensure security, to comply with standards for appeal promptness, or to expedite an appeal.

(b) A party may obtain an in-person/telephone hearing by filing a written objection to a telephone conference call hearing notice pursuant to 04 NCAC 24C .0205, or to an in-person hearing notice pursuant to 04 NCAC 24C .0206.

- (1) The objection shall state each reason that the party objects to appearing in the manner listed in the hearing notice.
- (2) The objecting party shall state the manner in which it, or its witnesses, request to appear for the hearing.
- (3) This request shall be directed to the Appeals Section as provided in 04 NCAC 24A .0104(b), or to the designated Appeals Referee using the contact information provided in the hearing notice.

(c) The Appeals Referee shall consider a party's request to change its witnesses' appearance from a telephone or in-person hearing, and shall make a determination of whether the substantial rights of each party would be preserved by granting the party's request.

(d) The Appeals Referee may grant a request to change an appearance by telephone or in-person for good cause as defined in 04 NCAC 24A .0105. If the request is granted, the official hearing record shall include the written request for the change, reflect the Appeals Referee's determination that the substantial rights of each party would be preserved by granting the request, and each reason for the determination.

(e) The objecting party shall appear in person or by telephone as requested by the objecting party if the Appeals Referee grants the request.

- (f) The Appeals Referee may deny a request to change a party's appearance at a hearing to telephone or in-person if:
 - (1) the Appeals Referee believes that the requesting party's intent is to inconvenience the opposing party or delay the proceedings;
 - (2) the party or witnesses request to appear by telephone, and are less than 40 miles away from an in-person hearing location; or
 - (3) the request is made less than 24 hours before the hearing is scheduled to begin.
- (g) If a party's request for a change to a telephone or in-person hearing is denied, the Appeals Referee shall state the grounds for denial on the record, include the written request in the official records, and state the reasons for the denial in the written decision.
- (h) The Appeals Referee shall notify each party of the change prior to the hearing.

History Note: Authority G.S. 96-4; 96-15;
Eff. July 1, 2018.

04 NCAC 24C .0214 WITHDRAWAL OF APPEAL

- (a) The appealing party may request to withdraw an appeal. Any request to withdraw an appeal must be made to the Appeals Referee scheduled to conduct the hearing.
- (b) A request to withdraw an appeal may be made in writing or orally.
 - (1) If the request is made in writing, it shall be made part of the record and include:
 - (A) the Appeals Docket Number;
 - (B) the names of parties to the appeal;
 - (C) the name of the individual making the request, and the individual's job title if the employer is the requesting party; and
 - (D) a telephone number where the individual making the request to withdraw may be reached. The written request to withdraw shall be made part of the record.
 - (2) If the request is made orally, it shall be recorded by the Appeals Referee using the digital recording system used to record hearings in accordance with G.S. 96-15(c).
- (c) If a request to withdraw the appeal is granted, the Appeals Referee shall issue a written order. The order shall contain no right to appeal the withdrawal of the appeal.
- (d) If the request to withdraw the appeal is denied, the Appeals Referee shall notify the requesting party and make an oral ruling on the record providing the information considered and the reason the request was denied. The order shall contain no right to appeal the denial of the withdrawal of the appeal.
- (e) The Appeal Referee's order granting or denying the request shall be included in the official record of the case.

History Note: Authority G.S. 96-4; 96-15;
Eff. July 1, 2018;
Amended Eff. June 1, 2022.

04 NCAC 24C .0215 NEW FILING AFTER WITHDRAWAL OF APPEAL

A party who has withdrawn their appeal pursuant to 04 NCAC 24C .0214 may file a new appeal of the determination by the Adjudicator consistent with 04 NCAC 24C .0203. The refiled appeal shall be scheduled for hearing before an Appeals Referee consistent with G.S. 96-15(c). Either the DES or a party may raise the issue of timeliness if the refiled appeal is received after the appeal rights to the determination have expired. The issue of timeliness shall be determined in accordance with G.S. 96-15(b)(2).

History Note: Authority G.S. 96-4; 96-15;
Eff. July 1, 2018;
Amended Eff. June 1, 2022.

SECTION .0300 - LEGAL REPRESENTATION FOR INITIAL APPEALS

04 NCAC 24C .0301 ADMINISTRATIVE PROCEEDINGS

- (a) An individual who is a party to a proceeding may represent himself or herself before an Appeals Referee.
- (b) A partnership may be represented by an employee or any of the partners.
- (c) A corporation may be represented by an officer, employee, or agent as defined in G.S. 32C-1-102.
- (d) An association may be represented by an employee or any of its members.

- (e) A limited liability company may be represented by an employee, agent, or any of its members.
- (f) Any party may be represented by a legal representative as defined in 04 NCAC 24A .0105.

History Note: Authority G.S. 96-4; 96-15; 96-17;
Eff. July 1, 2015;
Amended Eff. August 1, 2020.

04 NCAC 24C .0302 NOTICES, SERVICE, AND LEGAL REPRESENTATION OR SUPERVISION BY NORTH CAROLINA ATTORNEY

- (a) Notices or certification of legal representation by an attorney licensed to practice law in this State shall be in writing and presented to the Appeals Referee to become part of the official record.
- (b) Notices or certification of legal representation by an individual who is supervised by an attorney licensed to practice law in this State shall be in writing and presented to the Appeals Referee to become part of the official record, and shall contain:
 - (1) the name, business address, and telephone number of the supervising attorney;
 - (2) the supervising attorney's active North Carolina State Bar number; and
 - (3) the name, address, and telephone number of the person being supervised.
- (c) When a party has a legal representative, all documents or information required to be provided to the party shall only be provided to the legal representative, unless otherwise instructed on the record during the hearing.
- (d) An address provided to an Appeals Referee for mailing or electronic transmission of an Appeals Decision in a specific case shall not constitute a change of address with DES as set forth in 04 NCAC 24A .0102.
- (e) Any information provided to a party's legal representative shall have the same force and effect as if it had been sent to the party.

History Note: Authority G.S. 84-4; 84-7.1; 96-4; 96-15; 96-17;
Eff. July 1, 2015;
Amended Eff. July 1, 2018.

04 NCAC 24C .0303 ADMISSION OF OUT-OF-STATE ATTORNEY TO APPEAR BEFORE APPEALS REFEREE

- (a) Pursuant to G.S. 84-4.1, attorneys residing in and licensed to practice law in another state may seek to be admitted to practice before DES to represent a client.
- (b) An out-of-state attorney seeking to practice before DES, or the North Carolina attorney with whom the out-of-state attorney associates pursuant to G.S. 84-4.1(5), shall file a motion with the Chief Appeals Referee that complies with the requirements of G.S. 84-4.1.
- (c) A proposed Order Permitting Out-Of-State Attorney to Appear Pro Hac Vice, found on DES's website, shall be provided to the Chief Appeals Referee with the motion.
- (d) Following review of the motion, the Chief Appeals Referee shall issue an order granting or denying the motion.
- (e) Pro hac vice admission granted to practice before an Appeals Referee shall allow continued representation before the Board of Review and all administrative proceedings regarding the same matter. The Chief Appeals Referee has the discretionary authority to deny a motion for pro hac vice admission even if the motion complies with the requirements of G.S. 84-4.1.
- (f) Upon receipt of an order granting a motion for pro hac vice admission to practice before an Appeals Referee, the admitted out-of-state attorney or the associated North Carolina attorney shall pay the fees required by G.S. 84-4.1 to the North Carolina State Bar and General Court of Justice, and file a statement with the Chief Appeals Referee documenting payment of the fees and the submission of any pro hac vice admission registration statement required by the North Carolina State Bar. A copy of the motion, Order, registration statement, and documentation reflecting payment of the fees shall be provided to the Appeals Referee to be included in the official hearing record.

History Note: Authority G.S. 84-4.1; 96-4; 96-17;
Eff. July 1, 2018.

SECTION .0400 – SUBPOENAS FOR INITIAL APPEALS

04 NCAC 24C .0401 ISSUANCE OF SUBPOENAS

- (a) Subpoenas to compel the attendance of witnesses and the production of records for any appeal hearing may be issued at the direction of the designated Appeals Referee.
- (1) A subpoena may be issued at the request of a party or on motion of the Appeals Referee.
 - (2) Any documentation showing service of the subpoena shall become part of the official hearing record.
- (b) Any party's request for a subpoena to be issued by the Appeals Referee shall be in writing, sent to the Appeals Referee, and shall include:
- (1) the name of the party requesting the subpoena;
 - (2) the claimant's name, if applicable;
 - (3) the employer's name, if applicable;
 - (4) the docket or issue identification number of the case;
 - (5) the name, address, and telephone number of each person sought for appearance at the hearing;
 - (6) the specific identification of any document, recording, or item sought, including a detailed description of where the item is located;
 - (7) the name and address of the individual or party in possession of any item sought; and
 - (8) a statement of why the testimony or evidence to be subpoenaed is necessary for a proper presentation of the case.
- (c) The request shall be granted only to the extent that the items or testimony sought appears relevant to the issues on appeal.
- (d) Legal representatives may issue subpoenas at their own expense only if prior consent is obtained from the designated Appeals Referee.
- (e) Subpoenas shall be issued at least five business days before the date of the scheduled hearing.
- (f) Service of a subpoena shall be made by delivering a copy to the person, or by registered or certified mail, return receipt requested, unless a party or witness consents to service of the subpoena by other means, including electronic transmission.
- (g) Any party or person receiving a subpoena may serve a written objection to the issuance of the subpoena.
- (1) The objection shall be directed to the Appeals Referee listed in the hearing notice prior to the commencement of the hearing and provide reasons for the objection and the relief sought by the objecting party.
 - (2) The Appeals Referee shall rule on the objection and notify the parties before the hearing. The Appeals Referee's reasons for the ruling shall be in writing or stated on the record during the hearing.

History Note: Authority G.S. 96-4; 96-15;
Eff. July 1, 2015;
Amended Eff. July 1, 2018.

04 NCAC 24C .0402 OBJECTION TO SUBPOENA

- (a) Any party or person receiving a subpoena may serve a written objection to the issuance of a subpoena. The objection shall be addressed to the designated Appeals Referee, sent prior to the hearing, and contain the following:
- (1) the reasons for the objection; and
 - (2) the relief sought by the objecting party.
- (b) The Appeals Referee shall rule on the objection and notify the parties of the ruling before the hearing. The Appeals Referee's ruling shall be in writing or recorded as part of the official hearing record.

History Note: Authority G.S. 96-4; 96-15;
Eff. July 1, 2015.

SECTION .0500 – HIGHER AUTHORITY REVIEW OF APPEALS DECISION

Codifier's Note: Rules codified as 04 NCAC 24C .0501-.0506 were transferred to 04 NCAC 24F .0201-.0206 effective October 1, 2017.

SECTION .0600 - POST-DECISION RELIEF

04 NCAC 24C .0601 POST-DECISION RELIEF

*History Note: Authority G.S. 96-4; 96-11.4; 96-15;
Eff. July 1, 2015;
Temporary Repeal Eff. March 1, 2016;
Temporary Repeal Expired December 10, 2016;
Repealed Eff. April 1, 2017.*