

HOUSE BILL No. 2313

By Committee on Federal and State Affairs

2-6

9 AN ACT concerning employment security law; relating to response
10 times; amending K.S.A. 2008 Supp. 44-709 and repealing the existing
11 section.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2008 Supp. 44-709 is hereby amended to read as
15 follows: 44-709. (a) *Filing.* Claims for benefits shall be made in accord-
16 ance with rules and regulations adopted by the secretary. The secretary
17 shall furnish a copy of such rules and regulations to any individual re-
18 questing them. Each employer shall post and maintain printed statements
19 furnished by the secretary without cost to the employer in places readily
20 accessible to individuals in the service of the employer.

21 (b) *Determination.* (1) Except as otherwise provided in this subsec-
22 tion (b)(1), a representative designated by the secretary, and hereinafter
23 referred to as an examiner, shall promptly examine the claim and, on the
24 basis of the facts found by the examiner, shall determine whether or not
25 the claim is valid. If the examiner determines that the claim is valid, the
26 examiner shall determine the first day of the benefit year, the weekly
27 benefit amount and the total amount of benefits payable with respect to
28 the benefit year. If the claim is determined to be valid, the examiner shall
29 send a notice to the last employing unit who shall respond within 10 days
30 by providing the examiner all requested information including all infor-
31 mation required for a decision under K.S.A. 44-706 and amendments
32 thereto. The information may be submitted by the employing unit in
33 person at an employment office of the secretary or by mail, by telefacsi-
34 mile machine or by electronic mail. If the required information is not
35 submitted or postmarked within a response time limit of ~~10 days~~ *20 busi-*
36 *ness days* after the examiner's notice was ~~sent~~ *mailed*, the employing unit
37 shall be deemed to have waived its standing as a party to the proceedings
38 arising from the claim and shall be barred from protesting any subsequent
39 decisions about the claim by the secretary, a referee, the board of review
40 or any court, except that the employing unit's response time limit may be
41 waived or extended by the examiner or upon appeal, if timely response
42 was impossible due to excusable neglect. In any case in which the payment
43 or denial of benefits will be determined by the provisions of subsection

1 (d) of K.S.A. 44-706, and amendments thereto, the examiner shall
2 promptly transmit the claim to a special examiner designated by the sec-
3 retary to make a determination on the claim after the investigation as the
4 special examiner deems necessary. The parties shall be promptly notified
5 of the special examiner's decision and any party aggrieved by the decision
6 may appeal to the referee as provided in subsection (c). The claimant and
7 the claimant's most recent employing unit shall be promptly notified of
8 the examiner's or special examiner's decision.

9 (2) The examiner may for good cause reconsider the examiner's de-
10 cision and shall promptly notify the claimant and the most recent em-
11 ploying unit of the claimant, that the decision of the examiner is to be
12 reconsidered, except that no reconsideration shall be made after the ter-
13 mination of the benefit year.

14 (3) Notwithstanding the provisions of any other statute, a decision of
15 an examiner or special examiner shall be final unless the claimant or the
16 most recent employing unit of the claimant files an appeal from the de-
17 cision as provided in subsection (c). The appeal must be filed within ~~16~~
18 ~~calendar~~ 25 business days after the mailing of notice to the last known
19 addresses of the claimant and employing unit or, if notice is not by mail,
20 within ~~16 calendar~~ 25 business days after the delivery of the notice to the
21 parties.

22 (c) *Appeals.* Unless the appeal is withdrawn, a referee, after affording
23 the parties reasonable opportunity for fair hearing, shall affirm or modify
24 the findings of fact and decision of the examiner or special examiner. The
25 parties shall be duly notified of the referee's decision, together with the
26 reasons for the decision. The decision shall be final, notwithstanding the
27 provisions of any other statute, unless a further appeal to the board of
28 review is filed within ~~16 calendar~~ 25 business days after the mailing of
29 the decision to the parties' last known addresses or, if notice is not by
30 mail, within ~~16 calendar~~ 25 business days after the delivery of the decision.

31 (d) *Referees.* The secretary shall appoint, in accordance with subsec-
32 tion (c) of K.S.A. 44-714, and amendments thereto, one or more referees
33 to hear and decide disputed claims.

34 (e) *Time, computation and extension.* In computing the period of
35 time for an employing unit response or for appeals under this section
36 from the examiner's or the special examiner's determination or from the
37 referee's decision, the day of the act, event or default from which the
38 designated period of time begins to run shall not be included. The last
39 day of the period shall be included unless it is a ~~Saturday, Sunday or~~ legal
40 holiday, in which event the period runs until the end of the next day
41 which is not a ~~Saturday, Sunday or~~ legal holiday.

42 (f) *Board of review.* (1) There is hereby created a board of review,
43 hereinafter referred to as the board, consisting of three members. Except

1 as provided by paragraph (2) of this subsection, each member of the board
2 shall be appointed for a term of four years as provided in this subsection.
3 Two members shall be appointed by the governor, subject to confirmation
4 by the senate as provided in K.S.A. 75-4315b and amendments thereto.
5 Except as provided by K.S.A. 46-2601, and amendments thereto, no per-
6 son appointed to the board, whose appointment is subject to confirmation
7 by the senate, shall exercise any power, duty or function as a member
8 until confirmed by the senate. One member shall be representative of
9 employees, one member shall be representative of employers, and one
10 member shall be representative of the public in general. The appointment
11 of the employee representative member of the board shall be made by
12 the governor from a list of three nominations submitted by the Kansas
13 A.F.L.-C.I.O. The appointment of the employer representative member
14 of the board shall be made by the governor from a list of three nomina-
15 tions submitted by the Kansas chamber of commerce and industry. The
16 appointment of the public representative member of the board, who,
17 because of vocation, occupation or affiliation may be deemed not to be
18 representative of either management or labor, shall be made by the mem-
19 bers appointed by the governor as employee representative and employer
20 representative. If the two members do not agree and fail to make the
21 appointment of the public member within 30 days after the expiration of
22 the public member's term of office, the governor shall appoint the rep-
23 resentative of the public. Not more than two members of the board shall
24 belong to the same political party.

25 (2) The terms of members who are serving on the board on the ef-
26 fective date of this act shall expire on March 15, of the year in which such
27 member's term would have expired under the provisions of this section
28 prior to amendment by this act. Thereafter, members shall be appointed
29 for terms of four years and until their successors are appointed and
30 confirmed.

31 (3) Each member of the board shall serve until a successor has been
32 appointed and confirmed. Any vacancy in the membership of the board
33 occurring prior to expiration of a term shall be filled by appointment for
34 the unexpired term in the same manner as provided for original appoint-
35 ment of the member. Each member shall be appointed as representative
36 of the same special interest group represented by the predecessor of the
37 member.

38 (4) Each member of the board shall be entitled to receive as com-
39 pensation for the member's services at the rate of \$15,000 per year, to-
40 gether with the member's travel and other necessary expenses actually
41 incurred in the performance of the member's official duties in accordance
42 with rules and regulations adopted by the secretary. Members' compen-
43 sation and expenses shall be paid from the employment security admin-

1 istration fund.

2 (5) The board shall organize annually by the election of a chairperson
3 from among its members. The chairperson shall serve in that capacity for
4 a term of one year and until a successor is elected. The board shall meet
5 on the first Monday of each month or on the call of the chairperson or
6 any two members of the board at the place designated. The secretary of
7 labor shall appoint an executive secretary of the board and the executive
8 secretary shall attend the meetings of the board.

9 (6) The board, on its own motion, may affirm, modify or set aside any
10 decision of a referee on the basis of the evidence previously submitted in
11 the case; may direct the taking of additional evidence; or may permit any
12 of the parties to initiate further appeal before it. The board shall permit
13 such further appeal by any of the parties interested in a decision of a
14 referee which overrules or modifies the decision of an examiner. The
15 board may remove to itself the proceedings on any claim pending before
16 a referee. Any proceedings so removed to the board shall be heard in
17 accordance with the requirements of subsection (c). The board shall
18 promptly notify the interested parties of its findings and decision.

19 (7) Two members of the board shall constitute a quorum and no
20 action of the board shall be valid unless it has the concurrence of at least
21 two members. A vacancy on the board shall not impair the right of a
22 quorum to exercise all the rights and perform all the duties of the board.

23 (g) *Procedure.* The manner in which disputed claims are presented,
24 the reports on claims required from the claimant and from employers
25 and the conduct of hearings and appeals shall be in accordance with rules
26 of procedure prescribed by the board for determining the rights of the
27 parties, whether or not such rules conform to common law or statutory
28 rules of evidence and other technical rules of procedure. A full and com-
29 plete record shall be kept of all proceedings and decisions in connection
30 with a disputed claim. All testimony at any hearing upon a disputed claim
31 shall be recorded, but need not be transcribed unless the disputed claim
32 is further appealed. In the performance of its official duties, the board
33 shall have access to all of the records which pertain to the disputed claim
34 and are in the custody of the secretary of labor and shall receive the
35 assistance of the secretary upon request.

36 (h) *Witness fees.* Witnesses subpoenaed pursuant to this section shall
37 be allowed fees and necessary travel expenses at rates fixed by the board.
38 Such fees and expenses shall be deemed a part of the expense of admin-
39 istering this act.

40 (i) *Court review.* Any action of the board is subject to review in ac-
41 cordance with the act for judicial review and civil enforcement of agency
42 actions. No bond shall be required for commencing an action for such
43 review. In the absence of an action for such review, the action of the

1 board shall become final 16 calendar days after the date of the mailing
2 of the decision. In addition to those persons having standing pursuant to
3 K.S.A. 77-611, and amendments thereto, the examiner shall have standing
4 to obtain judicial review of an action of the board. The review proceeding,
5 and the questions of law certified, shall be heard in a summary manner
6 and shall be given precedence over all other civil cases except cases arising
7 under the workers compensation act.

8 (j) Any finding of fact or law, judgment, determination, conclusion or
9 final order made by the board of review or any examiner, special exam-
10 iner, referee or other person with authority to make findings of fact or
11 law pursuant to the employment security law is not admissible or binding
12 in any separate or subsequent action or proceeding, between a person
13 and a present or previous employer brought before an arbitrator, court
14 or judge of the state or the United States, regardless of whether the prior
15 action was between the same or related parties or involved the same facts.

16 (k) In any proceeding or hearing conducted under this section, a party
17 to the proceeding or hearing may appear before a referee or the board
18 either personally or by means of a designated representative to present
19 evidence and to state the position of the party. Hearings may be con-
20 ducted in person, by telephone or other means of electronic communi-
21 cation. The hearing shall be conducted by telephone or other means of
22 electronic communication if none of the parties requests an in-person
23 hearing. If only one party requests an in-person hearing, the referee shall
24 have the discretion of requiring all parties to appear in person or allow
25 the party not requesting an in-person hearing to appear by telephone or
26 other means of electronic communication. The notice of hearing shall
27 include notice to the parties of their right to request an in-person hearing
28 and instructions on how to make the request.

29 Sec. 2. K.S.A. 2008 Supp. 44-709 is hereby repealed.

30 Sec. 3. This act shall take effect and be in force from and after its
31 publication in the statute book.