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AN ACT

RELATING TO UNEMPLOYMENT INSURANCE; AMENDING A CERTAIN SECTION OF THE UNEMPLOYMENT COMPENSATION LAW CONCERNING CLAIMS ADJUDICATION.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 51-1-8 NMSA 1978 (being Laws 1936 (S.S.), Chapter 1, Section 6, as amended) is amended to read:

"51-1-8. CLAIMS FOR BENEFITS.--

A. Claims for benefits shall be made in accordance with such regulations as the secretary may prescribe. Each employer shall post and maintain printed notices, in places readily accessible to employees, concerning their rights to file claims for unemployment benefits upon termination of their employment. Such notices shall be supplied by the division to each employer without cost to the employer.

B. A representative designated by the secretary as a claims examiner shall promptly examine the application and each weekly claim and, on the basis of the facts found, shall determine whether the claimant is unemployed, the week with respect to which benefits shall commence, the weekly benefit amount payable, the maximum duration of benefits, whether the claimant is eligible for benefits pursuant to Section 51-1-5 NMSA 1978 and whether the claimant shall be disqualified pursuant to Section 51-1-7 NMSA 1978. With the approval of the secretary, the claims examiner may refer, without determination, claims or any specified issues involved therein that raise complex questions of fact or law to a hearing officer for the division for a fair hearing and decision in accordance with the procedure described in Subsection D of this section. The claims examiner shall promptly notify the claimant and any other interested party of the determination and

1 the reasons therefor. Unless the claimant or interested party, within fifteen calendar
2 days after the date of notification or mailing of the determination, files an appeal
3 from the determination, the determination shall be the final decision of the division;
4 provided that the claims examiner may reconsider a nonmonetary determination if
5 additional information not previously available is provided or obtained or whenever
6 the claims examiner finds an error in the application of law has occurred, but no
7 redetermination shall be made more than twenty days from the date of the initial
8 nonmonetary determination. Notice of a nonmonetary redetermination shall be
9 given to all interested parties and shall be subject to appeal in the same manner as
10 the original nonmonetary determination. If an appeal is pending at the time a
11 redetermination is issued, the appeal, unless withdrawn, shall be treated as an
12 appeal from the redetermination.

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13 C. In the case of a claim for waiting period credit or benefits,
14 "interested party", for purposes of determinations and adjudication proceedings and
15 notices thereof, means:

16 (1) in the event of an issue concerning a separation from
17 work for reasons other than lack of work, the claimant's most recent employer or
18 most recent employing unit;

19 (2) in the event of an issue concerning a separation from
20 work for lack of work, the employer or employing unit from whom the claimant
21 separated for reasons other than lack of work if the claimant has not worked and
22 earned wages in insured work or bona fide employment other than self-employment
23 in an amount equal to or exceeding five times the claimant's weekly benefit amount;
24 or

25 (3) in all other cases involving the allowance or disallowance
of a claim, the secretary, the claimant and any employing unit directly involved in
the facts at issue.

1 D. Upon appeal by any party, a hearing officer designated by the
2 secretary shall afford the parties reasonable opportunity for a fair hearing to be held
3 de novo, and the hearing officer shall issue findings of fact and a decision which
4 affirms, modifies or reverses the determination of the claims examiner or tax
5 representative on the facts or the law, based upon the evidence introduced at such
6 hearing, including the documents and statements in the claim or tax records of the
7 division. All hearings shall be held in accordance with regulations of the secretary
8 and decisions issued promptly in accordance with time lapse standards
9 promulgated by the secretary of the United States department of labor. The parties
10 shall be duly notified of the decision, together with the reasons therefor, which shall
11 be deemed to be the final decision of the department, unless within fifteen days
12 after the date of notification or mailing of the decision further appeal is initiated
13 pursuant to Subsection H of this section.

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14 E. Except with the consent of the parties, no hearing officer or
15 members of the board of review, established in Subsection F of this section, or
16 secretary shall sit in any administrative or adjudicatory proceeding in which:

17 (1) either of the parties is related to the hearing officer,
18 member of the board of review or secretary by affinity or consanguinity within the
19 degree of first cousin;

20 (2) the hearing officer, member of the board of review or
21 secretary was counsel for either party in that action; or

22 (3) the hearing officer, member of the board of review or
23 secretary has an interest which would prejudice the rendering of an impartial
24 decision.

25 The secretary, any member of the board of review or appeal tribunal hearing
officer shall withdraw from any proceeding in which the hearing officer, member of
the board of review or secretary cannot accord a fair and impartial hearing or when

1 a reasonable person would seriously doubt whether the hearing officer, board
2 member or secretary could be fair and impartial. Any party may request a
3 disqualification of any appeal tribunal hearing officer or board of review member by
4 filing an affidavit with the board of review or appeal tribunal promptly upon discovery
5 of the alleged grounds for disqualification, stating with particularity the grounds
6 upon which it is claimed that the person cannot be fair and impartial. The
7 disqualification shall be mandatory if sufficient factual basis is set forth in the
8 affidavit of disqualification. If a member of the board of review is disqualified or
9 withdraws from any proceeding, the remaining members of the board of review may
10 appoint an appeal tribunal hearing officer to sit on the board of review for the
11 proceeding involved.

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12 F. There is established within the department, for the purpose of
13 providing higher level administrative appeal and review of determinations of a
14 claims examiner or decisions issued by a hearing officer pursuant to Subsection B
15 or D of this section, a "board of review" consisting of three members. Two
16 members shall be appointed by the governor with the consent of the senate. The
17 members so appointed shall hold office at the pleasure of the governor for terms of
18 four years. One member appointed by the governor shall be a person who, on
19 account of previous vocation, employment or affiliation, can be classed as a
20 representative of employers, and the other member appointed by the governor shall
21 be a person who, on account of previous vocation, employment or affiliation, can be
22 classed as a representative of employees. The third member shall be an employee
23 of the department appointed by the secretary who shall serve as chairman of the
24 board. Either member of the board of review appointed by the governor who has
25 missed two consecutive meetings of the board may be removed from the board by
the governor. Actions of the board shall be taken by majority vote. If a vacancy on
the board in a position appointed by the governor occurs between sessions of the

1 legislature, the position shall be filled by the governor until the next regular
2 legislative session. The board shall meet at the call of the secretary. Members of
3 the board appointed by the governor shall be paid per diem and mileage in
4 accordance with the Per Diem and Mileage Act for necessary travel to attend
5 regularly scheduled meetings of the board of review for the purpose of conducting
6 the board's appellate and review duties.

7 G. The board of review shall hear and review all cases appealed in
8 accordance with Subsection H of this section. The board of review may modify,
9 affirm or reverse the decision of the hearing officer or remand any matter to the
10 claims examiner, tax representative or hearing officer for further proceedings. Each
11 member appointed by the governor shall be compensated at the rate of fifteen
12 dollars (\$15.00) for each case reviewed up to a maximum compensation of twelve
13 thousand dollars (\$12,000) in any one fiscal year.

14
15 H. Any party aggrieved by a final decision of a hearing officer may
16 file, in accordance with regulations prescribed by the secretary, an application for
17 appeal and review of the decision with the secretary. The secretary shall review the
18 application and shall, within fifteen days after receipt of the application, either affirm
19 the decision of the hearing officer, reverse the decision of the hearing officer, modify
20 the decision of the hearing officer, remand the matter to the hearing officer, tax
21 representative or claims examiner for an additional hearing or refer the decision to
22 the board of review for further review and decision on the merits of the appeal. If
23 the secretary affirms, reverses or modifies the decision of the hearing officer, that
24 decision shall be the final administrative decision of the department and any appeal
25 therefrom shall be taken to the district court in accordance with the provisions of
Subsections M and N of this section. If the secretary remands a matter to a hearing
officer, tax representative or claims examiner for an additional hearing, judicial

1 review shall be permitted only after issuance of a final administrative decision. If
2 the secretary refers the decision of the hearing officer to the board of review for
3 further review, the board's decision on the merits of the appeal shall be the final
4 administrative decision of the department, which may be appealed to the district
5 court in accordance with the provisions of Subsections M and N of this section. If
6 the secretary takes no action within fifteen days of receipt of the application for
7 appeal and review, the decision shall be promptly scheduled for review by the board
8 of review as though it had been referred by the secretary. The secretary may
9 request the board of review to review a decision of a hearing officer that the
10 secretary believes to be inconsistent with the law or with applicable rules of
11 interpretation or that is not supported by the evidence, and the board of review shall
12 grant the request if it is filed within fifteen days of the issuance of the decision of the
13 hearing officer. The secretary may also direct that any pending determination or
14 adjudicatory proceeding be removed to the board of review for a final decision. If
15 the board of review holds a hearing on any matter, the hearing shall be conducted
16 by a quorum of the board of review in accordance with regulations prescribed by the
17 secretary for hearing appeals. The board of review shall promptly notify the
18 interested parties of its findings of fact and decision. A decision of the board of
19 review on any disputed matter reviewed and decided by it shall be based upon the
20 law and the lawful rules of interpretation issued by the secretary, and it shall be the
21 final administrative decision of the department, except in cases of remand. If the
22 board of review remands a matter to a hearing officer, claims examiner or tax
23 representative, judicial review shall be permitted only after issuance of a final
24 administrative decision.

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25 I. Notwithstanding any other provision of this section granting any party the right to appeal, benefits shall be paid promptly in accordance with a determination or a decision of a claims examiner, hearing officer, secretary, board

1 of review or reviewing court, regardless of the pendency of the period to file an
2 appeal or petition for judicial review that is provided with respect thereto in
3 Subsection D or M of this section or the pendency of any such filing or petition until
4 such determination or decision has been modified or reversed by a subsequent
5 decision. The provisions of this subsection shall apply to all claims for benefits
6 pending on the date of its enactment.

7 J. If a prior determination or decision allowing benefits is affirmed by
8 a decision of the department, including the board of review or a reviewing court, the
9 benefits shall be paid promptly regardless of any further appeal which may
10 thereafter be available to the parties, and no injunction, supersedeas, stay or other
11 writ or process suspending the payment of benefits shall be issued by the secretary
12 or board of review or any court, and no action to recover benefits paid to a claimant
13 shall be taken. If a determination or decision allowing benefits is finally modified or
14 reversed, the appropriate contributing employer's account will be relieved of benefit
15 charges in accordance with Subsection B of Section 51-1-11 NMSA 1978.

16 K. The manner in which disputed claims shall be presented, the
17 reports thereon required from the claimant and from employers and the conduct of
18 hearings and appeals shall be in accordance with rules prescribed by the secretary
19 for determining the rights of the parties, whether or not the rules conform to
20 common law or statutory rules of evidence and other technical rules of procedure.
21 A hearing officer or the board of review may refer to the secretary for interpretation
22 any question of controlling legal significance, and the secretary shall issue a
23 declaratory interpretation, which shall be binding upon the decision of the hearing
24 officer and the board of review. A full and complete record shall be kept of all
25 proceedings in connection with a disputed claim. All testimony at any hearing upon
a disputed claim shall be recorded but need not be transcribed unless the disputed
claim is appealed to the district court.

1 L. Witnesses subpoenaed pursuant to this section shall be allowed
2 fees at a rate fixed by the secretary. Such fees and all administrative expenses of
3 proceedings involving disputed claims shall be deemed a part of the expense of
4 administering the Unemployment Compensation Law.

5 M. Any determination or decision of a claims examiner or hearing
6 officer or by a representative of the tax section of the department in the absence of
7 an appeal therefrom as provided by this section shall become final fifteen days after
8 the date of notification or mailing thereof, and judicial review thereof shall be
9 permitted only after any party claiming to be aggrieved thereby has exhausted the
10 remedies as provided in Subsection H of this section. The division and any
11 employer or claimant who is affected by the decision shall be joined as a party in
12 any judicial action involving the decision. All parties shall be served with an
13 endorsed copy of the petition within thirty days from the date of filing and an
14 endorsed copy of the order granting the petition within fifteen days from entry of the
15 order. Service on the department shall be made on the secretary or his designated
16 legal representative either by mail with accompanying certification of service or by
17 personal service. The division may be represented in a judicial action by an
18 attorney employed by the department or, when requested by the secretary, by the
19 attorney general or any district attorney.

20 N. The final decision of the secretary or board of review upon any
21 disputed matter may be reviewed both upon the law, including the lawful rules of
22 interpretation issued by the secretary, and the facts by the district court of the
23 county wherein the person seeking the review resides upon certiorari, unless it is
24 determined by the district court where the petition is filed that, as a matter of equity
25 and due process, venue should be in a different county. For the purpose of the
review, the division shall return on certiorari the reports and all of the evidence
heard by it on the reports and all the papers and documents in its files affecting the

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1 matters and things involved in such certiorari. The district court shall render its
2 judgment after hearing, and either the department or any other party affected may
3 appeal from the judgment to the court of appeals in accordance with the rules of
4 appellate procedure. Certiorari shall not be granted unless applied for within thirty
5 days from the date of the final decision of the secretary or board of review.
6 Certiorari shall be heard in a summary manner and shall be given precedence over
7 all other civil cases except cases arising under the Workers' Compensation Act.
8 It is not necessary in any proceedings before the division to enter exceptions to the
9 rulings, and no bond shall be required in obtaining certiorari from the district court,
10 but certiorari shall be granted as a matter of right to the party applying therefor."

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