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SENATE BILL 520

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

H. Diane Snyder

AN ACT

RELATING TO UNEMPLOYMENT; REQUIRING EXAMINATION OF UNEMPLOYMENT APPLICATIONS AND CLAIMS WITHIN A CERTAIN TIME; MAKING AN APPROPRIATION.

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~~ rules that 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~~

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1 ~~him~~].

2 B. A representative designated by the secretary as  
3 a claims examiner shall [~~promptly~~] examine [~~the~~] a claim  
4 application for unemployment benefits and each weekly claim  
5 [~~and~~] within fourteen days after the application or claim is  
6 filed with the department. On the basis of the facts found,  
7 the claim examiner shall determine whether the claimant is  
8 unemployed, the week with respect to which benefits shall  
9 commence, the weekly benefit amount payable, the maximum  
10 duration of benefits, whether the claimant is eligible for  
11 benefits pursuant to Section 51-1-5 NMSA 1978 and whether the  
12 claimant shall be disqualified pursuant to Section 51-1-7 NMSA  
13 1978. With the approval of the secretary, the claims examiner  
14 may refer, without determination, claims or any specified  
15 issues involved therein that raise complex questions of fact or  
16 law to a hearing officer for the division for a fair hearing  
17 and decision in accordance with the procedure described in  
18 Subsection D of this section. The claims examiner shall  
19 promptly notify the claimant and any other interested party of  
20 the determination and the reasons [~~therefor~~] for the  
21 determination. Unless the claimant or interested party, within  
22 fifteen calendar days after the date of notification or mailing  
23 of the determination, files an appeal from the determination,  
24 the determination shall be the final decision of the division;  
25 provided that the claims examiner may reconsider a nonmonetary

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1 determination if additional information not previously  
2 available is provided or obtained or whenever [~~he~~] the claims  
3 examiner finds an error in the application of law has occurred,  
4 but [~~no~~] a redetermination shall not be made more than twenty  
5 days from the date of the initial nonmonetary determination.  
6 Notice of a nonmonetary redetermination shall be given to all  
7 interested parties and shall be subject to appeal in the same  
8 manner as the original nonmonetary determination. If an appeal  
9 is pending at the time a redetermination is issued, the appeal,  
10 unless withdrawn, shall be treated as an appeal from the  
11 redetermination.

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

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

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

25 (3) in all other cases involving the allowance

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1 or disallowance of a claim, the secretary, the claimant and any  
2 employing unit directly involved in the facts at issue.

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

21 E. Except with the consent of the parties, [~~no~~] a  
22 hearing officer, [~~or members~~] a member of the board of review  
23 [~~established in Subsection F of this section~~] or the secretary  
24 shall not sit in [~~any~~] an administrative or adjudicatory  
25 proceeding in which:

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1 (1) either of the parties is related to ~~him~~  
2 that person by affinity or consanguinity within the degree of  
3 first cousin;

4 (2) ~~he~~ that person was counsel for either  
5 party in that action; or

6 (3) ~~he~~ that person has an interest ~~which~~  
7 that would prejudice ~~his~~ the rendering of an impartial  
8 decision.

9 The secretary, ~~any~~ a member of the board of review or an  
10 appeal tribunal hearing officer shall withdraw from any  
11 proceeding in which ~~he~~ that person cannot accord a fair and  
12 impartial hearing or when a reasonable person would seriously  
13 doubt whether the hearing officer, board member or secretary  
14 could be fair and impartial. Any party may request a  
15 disqualification of ~~any~~ an appeal tribunal hearing officer or  
16 a board of review member by filing an affidavit with the board  
17 of review or appeal tribunal promptly upon discovery of the  
18 alleged grounds for disqualification, stating with  
19 particularity the grounds upon which it is claimed that the  
20 person cannot be fair and impartial. The disqualification  
21 shall be mandatory if sufficient factual basis is set forth in  
22 the affidavit of disqualification. If a member of the board of  
23 review is disqualified or withdraws from ~~any~~ a proceeding,  
24 the remaining members of the board of review may appoint an  
25 appeal tribunal hearing officer to sit on the board of review

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1 for the proceeding involved.

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

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1 appointed by the governor shall be paid per diem and mileage in  
2 accordance with the Per Diem and Mileage Act for necessary  
3 travel to attend regularly scheduled meetings of the board of  
4 review for the purpose of conducting the board's appellate and  
5 review duties.

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

15 H. Any party aggrieved by a final decision of a  
16 hearing officer may file, in accordance with [~~regulations~~]  
17 rules prescribed by the secretary, an application for appeal  
18 and review of the decision with the secretary. The secretary  
19 shall review the application and shall, within fifteen days  
20 after receipt of the application, either affirm the decision of  
21 the hearing officer, remand the matter to the hearing officer,  
22 tax representative or [~~the~~] claims examiner for an additional  
23 hearing or refer the decision to the board of review for  
24 further review and decision on the merits of the appeal. If  
25 the secretary affirms the decision of the hearing officer, that

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1 decision shall be the final administrative decision of the  
2 department and ~~[any]~~ an appeal ~~[therefrom]~~ from that decision  
3 shall be taken to the district court in accordance with the  
4 provisions of Subsections M and N of this section. If the  
5 secretary remands a matter to a hearing officer, tax  
6 representative or claims examiner for an additional hearing,  
7 judicial review shall be permitted only after issuance of a  
8 final administrative decision. If the secretary refers the  
9 decision of the hearing officer to the board of review for  
10 further review, the board's decision on the merits of the  
11 appeal will be the final administrative decision of the  
12 department, which may be appealed to the district court in  
13 accordance with the provisions of Subsections M and N of this  
14 section. If the secretary takes no action within fifteen days  
15 of receipt of the application for appeal and review, the  
16 decision will be promptly scheduled for review by the board of  
17 review as though it had been referred by the secretary. The  
18 secretary may request the board of review to review a decision  
19 of a hearing officer that the secretary believes to be  
20 inconsistent with the law or with applicable rules of  
21 interpretation or that is not supported by the evidence, and  
22 the board of review shall grant the request if it is filed  
23 within fifteen days of the issuance of the decision of the  
24 hearing officer. The secretary may also direct that any  
25 pending determination or adjudicatory proceeding be removed to

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1 the board of review for a final decision. If the board of  
2 review holds a hearing on any matter, the hearing shall be  
3 conducted by a quorum of the board of review in accordance with  
4 ~~[regulations]~~ rules prescribed by the secretary for hearing  
5 appeals. The board of review shall promptly notify the  
6 interested parties of its findings of fact and decision. A  
7 decision of the board of review on ~~[any]~~ a disputed matter  
8 reviewed and decided by it shall be based upon the law and the  
9 lawful rules of interpretation issued by the secretary, and it  
10 shall be the final administrative decision of the department,  
11 except in cases of remand. If the board of review remands a  
12 matter to a hearing officer, claims examiner or tax  
13 representative, judicial review shall be permitted only after  
14 issuance of a final administrative decision.

15 I. Notwithstanding ~~[any other provision of this~~  
16 ~~section granting any party]~~ the right to appeal, benefits shall  
17 be paid promptly in accordance with a determination or a  
18 decision of a claims examiner, hearing officer, secretary,  
19 board of review or ~~[a]~~ reviewing court, regardless of the  
20 pendency of the period to file an appeal or petition for  
21 judicial review that is provided with respect thereto in  
22 Subsection D or M of this section or the pendency of any such  
23 filing or petition until such determination or decision has  
24 been modified or reversed by a subsequent decision. The  
25 provisions of this subsection shall apply to all claims for

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1 benefits pending on the date of its enactment.

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

15 K. The manner in which disputed claims shall be  
16 presented, the reports [~~thereon~~] required from the claimant and  
17 from employers and the conduct of hearings and appeals shall be  
18 in accordance with rules prescribed by the secretary for  
19 determining the rights of the parties, whether or not the rules  
20 conform to common law or statutory rules of evidence and other  
21 technical rules of procedure. A hearing officer or the board  
22 of review may refer to the secretary for interpretation any  
23 question of controlling legal significance, and the secretary  
24 shall issue a declaratory interpretation, which shall be  
25 binding upon the decision of the hearing officer and the board

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1 of review. A full and complete record shall be kept of all  
2 proceedings in connection with a disputed claim. All testimony  
3 at any hearing upon a disputed claim shall be recorded but need  
4 not be transcribed unless the disputed claim is appealed to the  
5 district court.

6 L. Witnesses subpoenaed pursuant to this section  
7 shall be allowed fees at a rate fixed by the secretary. [~~Such~~]  
8 Fees and [~~all~~] administrative expenses of proceedings involving  
9 disputed claims shall be deemed a part of the expense of  
10 administering the Unemployment Compensation Law.

11 M. Any determination or decision of a claims  
12 examiner or hearing officer or by a representative of the tax  
13 section of the department in the absence of an appeal therefrom  
14 as provided by this section shall become final fifteen days  
15 after the date of notification or mailing thereof, and judicial  
16 review thereof shall be permitted only after any party claiming  
17 to be aggrieved thereby has exhausted [~~his~~] that party's  
18 remedies as provided in Subsection H of this section. The  
19 division and any employer or claimant who is affected by the  
20 decision shall be joined as a party in any judicial action  
21 involving the decision. All parties shall be served with an  
22 endorsed copy of the petition within thirty days from the date  
23 of filing and an endorsed copy of the order granting the  
24 petition within fifteen days from entry of the order. Service  
25 on the department shall be made on the secretary or [~~his~~] the

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1 secretary's designated legal representative either by mail with  
2 accompanying certification of service or by personal service.  
3 The division may be represented in a judicial action by an  
4 attorney employed by the department or, when requested by the  
5 secretary, by the attorney general or any district attorney.

6 N. The final decision of the secretary or board of  
7 review upon any disputed matter may be reviewed both upon the  
8 law, including the lawful rules of interpretation issued by the  
9 secretary, and the facts by the district court of the county  
10 wherein the person seeking the review resides upon certiorari,  
11 unless it is determined by the district court where the  
12 petition is filed that, as a matter of equity and due process,  
13 venue should be in a different county. For the purpose of the  
14 review, the division shall return on certiorari the reports and  
15 all of the evidence heard by it on the reports and all the  
16 papers and documents in its files affecting the matters and  
17 things involved in such certiorari. The district court shall  
18 render its judgment after hearing, and either the department or  
19 any other party affected may appeal from the judgment to the  
20 court of appeals in accordance with the rules of appellate  
21 procedure. Certiorari shall not be granted unless applied for  
22 within thirty days from the date of the final decision of the  
23 secretary or board of review. Certiorari shall be heard in a  
24 summary manner and shall be given precedence over all other  
25 civil cases except cases arising under the Workers'

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1 Compensation Act of this state. It is not necessary in any  
2 proceedings before the division to enter exceptions to the  
3 rulings, and no bond shall be required in obtaining certiorari  
4 from the district court, but certiorari shall be granted as a  
5 matter of right to the party applying therefor. "

6 Section 2. APPROPRIATION. -- One hundred fifty thousand  
7 dollars (\$150,000) is appropriated from the general fund to the  
8 labor department for expenditure in fiscal year 2005 to process  
9 applications for claims for unemployment benefits in a timely  
10 manner. Any unexpended or unencumbered balance remaining at  
11 the end of fiscal year 2005 shall revert to the general fund.