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

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

1 the secretary, the claims examiner may refer, without  
2 determination, claims or any specified issues involved  
3 therein that raise complex questions of fact or law to a  
4 hearing officer for the division for a fair hearing and  
5 decision in accordance with the procedure described in  
6 Subsection D of this section. The claims examiner shall  
7 promptly notify the claimant and any other interested party  
8 of the determination and the reasons therefor. Unless the  
9 claimant or interested party, within fifteen calendar days  
10 after the date of notification or mailing of the  
11 determination, files an appeal from the determination, the  
12 determination shall be the final decision of the division;  
13 provided that the claims examiner may reconsider a  
14 nonmonetary determination if additional information not  
15 previously available is provided or obtained or whenever the  
16 claims examiner finds an error in the application of law has  
17 occurred, but no redetermination shall be made more than  
18 twenty days from the date of the initial nonmonetary  
19 determination. Notice of a nonmonetary redetermination shall  
20 be given to all interested parties and shall be subject to  
21 appeal in the same manner as the original nonmonetary  
22 determination. If an appeal is pending at the time a  
23 redetermination is issued, the appeal, unless withdrawn,  
24 shall be treated as an appeal from the redetermination.

25 C. In the case of a claim for waiting period

1 credit or benefits, "interested party", for purposes of  
2 determinations and adjudication proceedings and notices  
3 thereof, means:

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

8 (2) in the event of an issue concerning a  
9 separation from work for lack of work, the employer or  
10 employing unit from whom the claimant separated for reasons  
11 other than lack of work if the claimant has not worked and  
12 earned wages in insured work or bona fide employment other  
13 than self-employment in an amount equal to or exceeding five  
14 times the claimant's weekly benefit amount; or

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

19 D. Upon appeal by any party, a hearing officer  
20 designated by the secretary shall afford the parties  
21 reasonable opportunity for a fair hearing to be held de novo,  
22 and the hearing officer shall issue findings of fact and a  
23 decision which affirms, modifies or reverses the  
24 determination of the claims examiner or tax representative on  
25 the facts or the law, based upon the evidence introduced at

1 such hearing, including the documents and statements in the  
2 claim or tax records of the division. All hearings shall be  
3 held in accordance with regulations of the secretary and  
4 decisions issued promptly in accordance with time lapse  
5 standards promulgated by the secretary of the United States  
6 department of labor. The parties shall be duly notified of  
7 the decision, together with the reasons therefor, which shall  
8 be deemed to be the final decision of the department, unless  
9 within fifteen days after the date of notification or mailing  
10 of the decision further appeal is initiated pursuant to  
11 Subsection H of this section.

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

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

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

24 (3) the hearing officer, member of the board  
25 of review or secretary has an interest which would prejudice

1 the rendering of an impartial decision.

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

21 F. There is established within the department, for  
22 the purpose of providing higher level administrative appeal  
23 and review of determinations of a claims examiner or  
24 decisions issued by a hearing officer pursuant to Subsection  
25 B or D of this section, a "board of review" consisting of

1 three members. Two members shall be appointed by the  
2 governor with the consent of the senate. The members so  
3 appointed shall hold office at the pleasure of the governor  
4 for terms of four years. One member appointed by the  
5 governor shall be a person who, on account of previous  
6 vocation, employment or affiliation, can be classed as a  
7 representative of employers, and the other member appointed  
8 by the governor shall be a person who, on account of previous  
9 vocation, employment or affiliation, can be classed as a  
10 representative of employees. The third member shall be an  
11 employee of the department appointed by the secretary who  
12 shall serve as chairman of the board. Either member of the  
13 board of review appointed by the governor who has missed two  
14 consecutive meetings of the board may be removed from the  
15 board by the governor. Actions of the board shall be taken  
16 by majority vote. If a vacancy on the board in a position  
17 appointed by the governor occurs between sessions of the  
18 legislature, the position shall be filled by the governor  
19 until the next regular legislative session. The board shall  
20 meet at the call of the secretary. Members of the board  
21 appointed by the governor shall be paid per diem and mileage  
22 in accordance with the Per Diem and Mileage Act for necessary  
23 travel to attend regularly scheduled meetings of the board of  
24 review for the purpose of conducting the board's appellate  
25 and review duties.

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

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

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



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

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

24 J. If a prior determination or decision allowing  
25 benefits is affirmed by a decision of the department,

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

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

1 hearing upon a disputed claim shall be recorded but need not  
2 be transcribed unless the disputed claim is appealed to the  
3 district court.

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

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

1 personal service. The division may be represented in a  
2 judicial action by an attorney employed by the department or,  
3 when requested by the secretary, by the attorney general or  
4 any district attorney.

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

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

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