

TITLE 6. ECONOMIC SECURITY

CHAPTER 9. DEPARTMENT OF ECONOMIC SECURITY

APPELLATE ~~SERVICE~~-SERVICES ADMINISTRATION

ARTICLE 3. DECISIONS, HEARINGS, AND ORDERS

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R6-9-301. Definitions and Location of Definitions

~~1. “ASA” means the Appellate Services Administration within the Arizona Department of Economic Security.~~

~~2. “Electronic transmission” means the service of documents via facsimile transmission (“fax”) and electronic mail (“email”).~~

~~3. “On the record” means audio recorded during a formal proceeding conducted by a hearing officer.~~

~~4. “Party” means an appellant, appellee, or the Department.~~

A. Location of definitions. The following definitions applicable to this Article are found in the following Section or Citation:

“Administrator”

R6-9-301(B)

“Adverse Action”

R6-9-301(B)

<u>“Affirm”</u>	<u>R6-9-301(B)</u>
<u>“Appeal”</u>	<u>R6-9-301(B)</u>
<u>“Appeals Board”</u>	<u>R6-9-301(B)</u>
<u>“Appellant”</u>	<u>R6-9-301(B)</u>
<u>“Appellee”</u>	<u>R6-9-301(B)</u>
<u>“ASA”</u>	<u>R6-9-301(B)</u>
<u>"Attorney-Client Privilege"</u>	<u>R6-9-301(B)</u>
<u>“Business Day”</u>	<u>R6-9-301(B)</u>
<u>“Department”</u>	<u>A.R.S. § 41-1951</u>
<u>“Director”</u>	<u>A.R.S. § 41-1951</u>
<u>“Dismiss”</u>	<u>R6-9-301(B)</u>
<u>“Electronic Application”</u>	<u>R6-9-301(B)</u>
<u>“Electronic Service”</u>	<u>R6-9-301(B)</u>
<u>“Expedited Hearing”</u>	<u>R6-9-301(B)</u>
<u>“General Delivery”</u>	<u>R6-9-301(B)</u>
<u>“Good Cause”</u>	<u>R6-9-301(B)</u>
<u>"Good Cause Hearing"</u>	<u>R6-9-301(B)</u>

<u>“Hearing”</u>	<u>R6-9-301(B)</u>
<u>“Hearing Officer”</u>	<u>R6-9-301(B)</u>
<u>“Modify”</u>	<u>R6-9-301(B)</u>
<u>“Notice of Hearing”</u>	<u>R6-9-301(B)</u>
<u>“Oath or Affirmation”</u>	<u>R6-9-301(B)</u>
<u>“Office of Appeals”</u>	<u>R6-9-301(B)</u>
<u>“On the Record”</u>	<u>R6-9-301(B)</u>
<u>“Party”</u>	<u>R6-9-301(B)</u>
<u>“Petition for Review”</u>	<u>R6-9-301(B)</u>
<u>“Portal”</u>	<u>R6-9-301(B)</u>
<u>“Pre-Hearing Conference”</u>	<u>R6-9-301(B)</u>
<u>“Program”</u>	<u>R6-9-301(B)</u>
<u>“Remand”</u>	<u>R6-9-301(B)</u>
<u>“Reverse”</u>	<u>R6-9-301(B)</u>
<u>“Set Aside”</u>	<u>R6-9-301(B)</u>
<u>“Subpoena”</u>	<u>R6-9-301(B)</u>
<u>“Undue Hardship”</u>	<u>R6-9-301(B)</u>

B. The following definitions apply to this Article:

1. “Administrator” means the Program Administrator for ASA.
2. “Adverse Action” means an action or inaction taken by the Department to limit or disqualify an individual from participation in the Program or receiving services or benefits.
3. “Affirm” means to uphold a decision or determination issued by another entity, including a Program, Office of Appeals, or the Appeals Board.
4. “Appeal” means a request for formal review and resolution of an appealable Adverse Action.
5. “Appeals Board” means the authority within ASA that reviews, upon request, decisions issued by the Office of Appeals and conducts limited Hearings as deemed necessary or as provided by law.
6. “Appellant” means the person or group who has filed an Appeal or otherwise requested a Hearing to review and resolve an Adverse Action.
7. “Appellee” means a Party against whom an Appeal is filed, usually seeking affirmation of the Adverse Action.
8. “ASA” means the Appellate Services Administration within the Department that is responsible for administrative Appeal proceedings.
9. “Attorney-Client Privilege” means a Party's protection from the disclosure of confidential

communications between an individual and the individual's attorney.

10. “Business Day” means Monday through Friday, excluding holidays as listed in A.R.S. § 1-301.
11. “Dismiss” means to exclude a decision or determination issued by another entity, including a Program, the Office of Appeals, or the Appeals Board or an Appeal from further consideration or refusal to hear a case and the exclusion of the case from further consideration.
12. “Electronic Application” means an application for benefits or services submitted to the Department electronically.
13. “Electronic Service” means the transmittal of documents via Portal, fax, or email.
14. “Expedited Hearing” means a Hearing scheduled with less than the required notice because of need or accommodation at the request of a Party.
15. “General Delivery” means a service of the United States Postal Service (USPS) for individuals without a permanent mailing address or living in locations without city carrier delivery service. To use General Delivery, an address shall include an addressee’s name, the words “General Delivery,” city, state, and zip code.
16. “Good Cause” means that a Party has adequate reason to take an action or fail to take an action. Good Cause is determined by the Hearing Officer on a case-by-case basis and based on the reason provided. Good Cause may exist if a Party fails to appear for a proceeding because of excusable neglect, as used in Arizona Rules of Civil Procedure, Rule 60(b)(1), including any circumstances beyond the Party's reasonable control.

17. "Good Cause Hearing" means a Hearing conducted by ASA to determine if a Party's failure to appear a previously scheduled Hearing was the result of excusable neglect, as used in Arizona Rules of Civil Procedures, Rule 60(b)(1), including any circumstances beyond the Party's reasonable control.
18. "Hearing" means a formal administrative proceeding to hear an Appeal, referred to in some Programs as a "fair hearing."
19. "Hearing Officer" means an impartial individual, including an Administrative Law Judge or other designee of the Director, who conducts a Hearing.
20. "Modify" means to alter an element of a decision or determination issued by another body, including a Program, Office of Appeals, or the Appeals Board.
21. "Notice of Hearing" means a written notification to the Parties as required by A.R.S. § 41-1061 to allow meaningful participation in a Hearing.
22. "Oath or Affirmation" means a declaration of honesty and truthfulness in the testimony or information provided and made On the Record.
23. "Office of Appeals" means the authority within ASA that conducts a Hearing on an Appeal involving a Program as authorized by law.
24. "On the Record" means that a statement is made or evidence is offered during the course of a proceeding, including a Pre-Hearing Conference or a Hearing, that is conducted by a Hearing Officer under Oath or Affirmation, if that statement is made or evidence is offered while the proceeding is being recorded via audio or video recording or in writing.
25. "Party" means an Appellant, Appellee, or the Department.

26. “Petition for Review” means a request for a formal review, as provided by law, of a decision issued by the Office of Appeals.
27. “Portal” means a secured website provided by the Department to route and process documents.
28. “Pre-Hearing Conference” means a meeting with the Parties and the Hearing Officer prior to a Hearing and that is held On the Record, except as otherwise provided by a specific Program's rules.
29. “Program” means a unit within the Department that provides a specific set of benefits or services to the public.
30. “Remand” means to send back a case to the entity that issued a decision or determination, including a Program, Office of Appeals, or the Appeals Board for further action.
31. “Reverse” means to change a decision or determination issued by another entity including a Program, Office of Appeals, or the Appeals Board that results in a conclusion opposite to the original decision or determination.
32. “Set Aside” means to Modify, Dismiss, or vacate a decision or determination issued by another body, including a Program, the Office of Appeals, or the Appeals Board, based on a different legal analysis.
33. “Subpoena” means a written order from the Hearing Officer to appear and provide testimony or to produce documents for inspection and consideration in a Hearing.
34. “Undue Hardship” means a circumstance that is a substantial barrier to participation in matters related to an Appeal.

35. “Work-Product Privilege” means protection from disclosure for tangible material or the intangible equivalent prepared for an administrative hearing, in anticipation of litigation, or for trial at the direction of an attorney.

R6-9-302. Applicability and General Provisions

A. The rules in this Article govern proceedings before the Office of Appeals or the Appeals Board. The Hearing Officer shall rely on applicable Federal and State laws to review and resolve the disputed Adverse Action. These rules shall be interpreted and administered to secure the just, speedy, and intended purpose of the respective Program involved.

B. Where these rules conflict with Program-specific laws, regulations, and rules, those applicable laws, regulations, and rules control.

C. Unless precluded by another provision of law, a person may waive any right conferred on that person or group by this Article.

D. When submitting an Appeal, request, document, or other item to ASA, the Appeal, request, document, or other item shall be considered timely if the item is submitted within the time frame provided in a Program's written notification of Adverse Action or the applicable laws, regulations, or rules.

1. An Appeal, request, document, or other item submitted outside the prescribed time frame may be deemed timely if it is established that the delay in submission was due to:

a. Department Error or misinformation;

b. Delay or other action caused by USPS or other delivery service;

- c. Failure of Electronic Service as described in R6-9-303(F); or
 - d. The Appellant not receiving a notice from the Department because of the Appellant changing mailing addresses when the Appellant had no duty to notify the Department of the change.
2. A Hearing Officer shall not consider a submission to be timely if the delay was unreasonable as determined by the Hearing Officer based on the circumstances of the case.

~~R6-9-302:R6-9-303.~~ Electronic Service of Documents by the Appellate Services Administration

~~A. ASA may transmit documents electronically, rather than by conventional mail, to parties who have consented to electronic service.~~

~~**B. Consent to Electronic Service.**~~

~~1. A party may only consent to be electronically served documents by:~~

~~a. Submission of a written consent to ASA; or~~

~~b. Consenting on the record.~~

~~2. The party consenting to electronic service of documents shall provide ASA with either a valid e-mail address or a fax number for service of documents.~~

~~3. The party consenting to electronic service of documents shall also provide ASA with a physical mailing address for ASA to use at its discretion to serve documents. A party may use a post office box as its physical mailing address.~~

~~C. Withdrawal of Consent to Electronic Service:~~

- ~~1. A party may withdraw consent to receive documents by electronic means at any time. The withdrawal shall be on the record or in writing to ASA. The withdrawal is effective upon receipt by ASA.~~
- ~~2. ASA shall treat a notice of a change of electronic address as both a withdrawal of the consent to receive documents at the prior address, and as a new consent to receive documents at the new address.~~
- ~~3. ASA shall not send documents by electronic means after a party withdraws consent.~~
- ~~4. ASA shall consider service of a document to have no force or effect if ASA sent the document electronically after a party withdrew consent to receive the document electronically even if the party actually received the electronically transmitted document.~~

~~D. ASA shall consider a document sent by ASA and received by a party at the Mountain Standard Time and date ASA transmits the document to the electronic address provided by the party.~~

~~E. ASA shall encrypt any document sent by e-mail.~~

~~F. Failure of Electronic Service; Effect on Timeliness of Filing:~~

- ~~1. When a party notifies ASA that the party did not receive an e-mail message from ASA, was unable to open or download an attached document, or was otherwise unable to access the document to be served, ASA shall re-send the document.~~
- ~~2. ASA shall calculate any filing deadline that is based on the date ASA electronically sends~~

a document as follows:

- ~~a. If the party does not receive the original e-mail message due to equipment malfunction, action, or inaction of either ASA or a service provider, then the date of service shall be the date ASA re-sends the documents.~~
- ~~b. If the party does not receive the original e-mail message due to the party's own equipment malfunction, action, or inaction:
 - ~~i. The date of service shall be the date of original electronic transmission by ASA, and~~
 - ~~ii. ASA shall exclude from the calculation the time from when the party gave notice of nonreceipt and requested that the document be resent until ASA re-sends or mails the document.~~~~

A. ASA may transmit documents electronically to a Party who has consented to Electronic Service.

B. Consent to Electronic Service.

1. A Party consents to Electronic Service by:

- a. Submitting a written consent for Electronic Service to ASA; or
- b. Consenting to Electronic Service On the Record.

2. A Party consenting to Electronic Service of documents shall provide a physical mailing address and either an email address or a fax number. A Party may use a post office box or General Delivery as the Party's physical mailing address.

C. Withdrawal of Consent to Electronic Service.

1. A Party may withdraw consent to Electronic Service at any time. The withdrawal shall be made in writing to ASA or On the Record.
2. ASA shall not send documents by Electronic Service after a Party withdraws consent. Withdrawal of consent to Electronic Service is effective as soon as processed by ASA but no later than 15 calendar days after receipt of the withdrawal. A withdrawal of consent is deemed received at the time it is delivered to ASA.
3. If an Appellant has consented to Electronic Service, ASA shall treat a notice of a change of electronic address as renewed consent to Electronic Service at the new electronic address.

D. ASA shall consider a document sent by ASA via Electronic Service to a Party as received by the Party at the Mountain Standard Time and date ASA transmitted the document to the fax number or email address provided by the Party.

E. ASA shall ensure all documents sent by email are sent securely.

F. Failure of Electronic Service; Effect on Timeliness of Filing.

1. When a Party notifies ASA that the Party did not receive a fax or email from ASA, was unable to open or download an attached document, or was otherwise unable to access the document sent via Electronic Service, ASA shall resend the document.
2. ASA shall calculate any filing deadline that is based on the date ASA sends a document via Electronic Service, or that a Party receives a document via Electronic Service, as follows:

- a. If a Party establishes that the Party did not receive the original fax or email due to action or inaction of either ASA or an internet service provider, then the date of service shall be the date ASA resends the documents.
- b. If a Party does not receive the original fax or email document due to the Party's own equipment malfunction, action, or inaction:
 - i. The date of service of the document shall be the date of the original Electronic Service by ASA, and
 - ii. ASA shall exclude from the calculation of the timeliness of service the period of time between the date the Party gave notice of non-receipt of the document and the date ASA resends or mails the document.

R6-9-304. Hearings: Place, Notice, and Time

A. Upon receipt of an Appeal, ASA shall schedule a Hearing.

- 1. The Hearing shall be conducted telephonically unless ASA receives a request by telephone from a Party for an in-person Hearing at least five Business Days prior to the scheduled Hearing date.
- 2. If a Party requests an in-person Hearing, ASA shall provide a space within a DES location from which the requesting Party may participate in the Hearing. Requesting an in-person Hearing does not require that other Parties, witnesses, or the Hearing Officer participate in person.

B. ASA shall send a written Notice of Hearing to each Party via USPS or its successor, or via Electronic Service when a Party has consented to Electronic Service. The Notice of Hearing

shall include:

1. The date, time, and place of the Hearing;
2. The name of the Hearing Officer;
3. A statement of the issues involved in the case;
4. A statement listing the Parties' rights;
5. A general statement of the Hearing procedures; and
6. Other information required by the applicable Program.

C. ASA shall send written notice of a rescheduled Hearing unless the Party consents to waiver of written notice.

R6-9-305. Ex Parte Communications Prohibited

A Party shall not communicate with a Hearing Officer associated with the Party's case about any substantive issue in a pending matter unless:

1. All Parties are present and On the Record;
2. The communication occurs during a scheduled proceeding, where an absent Party fails to appear after proper notice; or
3. The communication is in written form with copies provided to all Parties and to ASA.

R6-9-306. Requests

The Office of Appeals or the Appeals Board shall consider a request submitted prior to, or at the

time of a Hearing. The Office of Appeals or the Appeals Board shall notify the requester of the outcome of the request.

R6-9-307. Computation of Time and Waiver

The following standards apply in computing any time period unless waived or otherwise provided by law:

1. Day of the Event Excluded. Exclude the day of the act, event, or default that begins the time period.
2. Exclude Saturdays, Sundays, and Holidays if the time period is 10 days or less.
3. Last Day. Include the last day of the time period unless it falls on a Saturday, Sunday, or Holiday. When the last day is excluded, the time period runs until the next Business Day.

R6-9-308. Documents for Consideration as Evidence

A. ASA shall provide each Party a Notice of Hearing accompanied by documents that the Parties and Hearing Officer may use at the Hearing, including a copy of the Adverse Action being appealed and a copy of the Appeal.

B. A Party may submit additional documents for use in a Hearing. A Party that submits additional documents shall provide copies of the documents to the Hearing Officer and all other Parties for use in the Hearing.

C. The date of submission of documents is:

1. The postmarked date on the envelope when submitted by USPS, or its successor;

2. The date shown on the postage meter mark only in the absence of a postmark when submitted by USPS, or its successor; or
3. The date received by ASA when there is no postmark or meter mark.

D. The Hearing Officer may admit submitted documents that are relevant to the Hearing, non-repetitive, and provided to the Office of Appeals or the Appeals Board and all Parties.

R6-9-309. Consolidated Hearings

Hearings may be consolidated in accordance with applicable laws and regulations and the Program's rules and policies.

R6-9-310. Rescheduling and Continuation of a Hearing

A. At the request of a Party or on the Hearing Officer's own initiative, the Hearing Officer may order, orally or in writing, that a Hearing be rescheduled to a later date and time. A request to reschedule a Hearing shall be granted if:

1. The requesting Party is entitled to an automatic granting of a request for postponement under the law or the rules of the specific Program; or
2. The request is promptly made after the Party received the Notice of Hearing, or after the circumstance requiring a rescheduled Hearing arises; and
3. The requesting Party has established that denial would cause Undue Hardship.

B. At the discretion of the Hearing Officer, a Hearing where evidence has already been taken may be continued to a later date where justice requires additional time for completing the Hearing or a Party has Good Cause for failing to appear at the Hearing on the originally

scheduled date.

R6-9-311. Pre-Hearing Conferences

A. A Pre-Hearing Conference may be scheduled at the discretion of the Hearing Officer.

B. A Pre-Hearing Conference may address:

1. Establishment or clarification of the issues being appealed;
2. Formalizing agreements or settlement on issues; and
3. Setting a date for the Hearing, submission and exchange of documents, and other relevant matters.

R6-9-312. Witnesses and Subpoenas

A. A Subpoena to attend a Hearing or produce documents for the Hearing may be issued by the Hearing Officer on the Hearing Officer's own initiative or upon written application by a Party.

B. A Party may request the issuance of a Subpoena for witnesses or documents by submitting a separate written request for each witness, document, or series of documents to ASA at least five Business Days prior to the Hearing. The request may be submitted in person, by mail, fax, or email and shall include:

1. The requesting Party's name; address; phone number; case number or Social Security Number; and the date and time of the scheduled Hearing.
2. For witnesses, a statement identifying, with specificity, the person or persons being

requested as a witness, including the address and contact information for the person or persons; a description of what the person or persons are expected to testify about; why the person or persons' testimony is relevant to the case; and why the information cannot be obtained without a Subpoena.

3. For documents, a statement specifying the name and address of the person or entity in possession or control of the document or documents being requested; the specific dates or period of time for which the identified document or documents are being requested; the information believed to be contained in the document or documents; the relevance of the document or documents to the case; and why the information cannot be obtained without a Subpoena.

C. Requests received within five Business Days of the Hearing shall be granted or denied by the Hearing Officer no later than at the time of the Hearing and the Parties shall be notified of the ruling in writing, by telephone, or On the Record. If a request is denied, a Party may renew the request at a later time up to the close of the Hearing.

D. A Party may request postponement of the Hearing, as needed.

E. An untimely request or the denial of a request may be raised to the Hearing Officer again at the time of Hearing.

F. When the Hearing Officer grants a Subpoena, ASA shall issue the Subpoena electronically or by mail through the USPS, or its successor. A copy shall be sent to the person or entity identified, or in control of the documents, as set forth in the Subpoena.

G. If the Subpoenaed witnesses or documents are not provided at the time of the Hearing, the

Hearing Officer may:

1. Infer that the failure to produce the documents, or the failure of the witness to appear, means that the documents or witness's testimony would have been adverse, or harmful, to the interests of the person or entity with control of the documents or witness; or
2. Continue the Hearing to attempt to obtain compliance with the Subpoena.

R6-9-313. Rights and Responsibilities of Parties

A. In addition to rights provided to the Parties under the applicable Program or provision of law, a Party or a Party's authorized representative has the right to:

1. Request that a Hearing be rescheduled as provided in R6-9-310;
2. Receive, before or during the Hearing, a copy of any documents that any other Party, including the Department, may use at the Hearing except documents that are shielded by Attorney-Client Privilege or Work-Product Privilege, or by other provisions of law;
3. Request a change of Hearing Officer one time automatically under R6-9-315(B) or at any time for cause as set forth in R6-9-315(D);
4. Request Subpoenas for witnesses and documents;
5. Present the Party's case in person, by written request to resolve the matter in the Party's absence, or through an authorized representative, subject to any limitations prescribed in the Rules of the Supreme Court of Arizona;
6. Present evidence and cross-examine witnesses;

7. Request further Appeal as provided by applicable law if dissatisfied with the decision of the Office of Appeals or Appeals Board;
8. Receive all notices, decisions, and other notifications issued by ASA;
9. Self-representation;
10. Be represented by a legal representative;
11. Be provided language services at no cost if English is not the person's primary language;
12. Be provided reasonable accommodations in accordance with state and federal law, including the Americans with Disabilities Act; and
13. Withdraw an Appeal On the Record or by submitting a request to withdraw to ASA at any time before the Hearing Officer issues a decision.

B. A Party or a Party's authorized representative has the responsibility to:

1. Act calmly and respectfully throughout the proceedings;
2. Read all notices and orders issued by ASA;
3. Notify ASA of any changes to the Party's contact information; and
4. Appear at all Hearings.

R6-9-314. Hearing Officer: Duties

A. A Hearing Officer shall conduct all Hearings.

B. For a Hearing, the Hearing Officer shall:

1. Administer Oaths or Affirmations;
2. Regulate and conduct Hearings in an orderly and dignified manner that avoids unnecessary repetition and affords due process to all Parties;
3. Ensure that all issues were properly noticed;
4. Exclude irrelevant evidence from the record;
5. Request, receive, and incorporate relevant evidence into the record;
6. Subpoena witnesses and documents at the Hearing Officer's discretion;
7. Open, conduct, and close the Hearing;
8. Rule on the admissibility of evidence offered at the Hearing;
9. Direct the order that Parties present evidence at the Hearing;
10. Take any action the Hearing Officer deems necessary for the proper disposition of an Appeal, including:
 - a. Recusing the Hearing Officer from the case;
 - b. Rescheduling the Hearing to a future date or time;
 - c. Reopening the Hearing prior to the entry of a final decision to take additional evidence;
 - d. Remanding the issue to the Program for further investigation or action;
 - e. Denying or dismissing an Appeal in accordance with the provisions of this Article

and applicable federal and state laws, regulations, and rules for the relevant Program;
and

f. Excluding a witness who is not a Party from a Hearing except during the witness's testimony and cross-examination.

11. Issue a written decision resolving the Appeal based on evidence admitted On the Record as well as any information subject to judicial notice under A.R.S. § 41-1062(A)(3).

R6-9-315. Change of Hearing Officer; Challenges for Cause

A. A Party may request a change of Hearing Officer as prescribed in A.R.S. § 41-1992(B) by filing a written request with ASA that includes:

1. The case name and number;
2. The Hearing Officer assigned to the case; and
3. The name and signature of the Party requesting the change.

B. The requesting Party shall file the written request with ASA and send a copy to all other Parties at least five Business Days before the scheduled Hearing date.

C. Unless a Party is challenging a Hearing Officer for cause as provided in subsection (D), a Party may request only one change of Hearing Officer.

D. A Party may challenge a Hearing Officer for cause by filing a written challenge with ASA and sending a copy of the request to all other Parties or by challenging the Hearing Officer for cause On the Record during a Hearing.

1. A written challenge shall include:
 - a. The case name and number;
 - b. The Hearing Officer assigned to the case;
 - c. The name and signature of the Party requesting the change; and
 - d. An explanation or reason why the assigned Hearing Officer is not considered to be impartial or is considered to have a personal stake in the outcome of the Hearing.
2. A challenge made during a Hearing shall include an explanation or reason why the assigned Hearing Officer is not considered to be impartial or is considered to have a personal stake in the outcome of the Hearing.

E. If a Hearing Officer is challenged for cause:

1. Prior to a Hearing, the Hearing Officer's supervisor or the supervisor's designee shall hear and decide the challenge unless the assigned Hearing Officer recuses themselves from the Hearing.
2. During a Hearing, the Hearing Officer shall evaluate whether a conflict exists and if the Hearing Officer shall be replaced.

F. ASA shall transfer the case to another Hearing Officer when:

1. A Party requests a change as provided in subsections (A) and (B),
2. A Hearing Officer is removed for cause as provided in subsection (D), or
3. A Hearing Officer recuses themselves in accordance with R6-9-314(B)(10)(a).

R6-9-316. Failure to Appear and Reopening

A. If a Party does not appear for a Hearing at the scheduled time, the Hearing Officer may:

1. Open the record and issue a decision in the Party's absence.
2. Dismiss the Appeal if the absent Party is the Appellant; or
3. Reschedule the Hearing to a later date.

B. If the Appeal has been dismissed for failure to appear, the Appellant may request to reopen the Hearing within the time frame stated on the dismissal by submitting a request to reopen to ASA that explains the reason for failing to appear at the Hearing.

C. If there is a question of timeliness of the filing of the written request to reopen, a Hearing may be scheduled to determine if the filing was timely.

D. If the request to reopen is timely, ASA shall schedule a Hearing to determine whether the requesting Party had Good Cause for the failure to appear at the Hearing.

E. If a Party requesting reopening does not appear for the Good Cause Hearing, the Party may request to reopen the Good Cause Hearing by submitting a request to reopen the Good Cause Hearing to ASA that explains the reason for failing to appear at the Hearing and the Good Cause Hearing.

F. A Hearing Officer shall review the written request to reopen the Good Cause Hearing, and without further Hearing issue a decision regarding the Party's claim of Good Cause for failing to appear at the Hearing and the Good Cause Hearing.

R6-9-317. Further Administrative Appeal

- A.** Unless otherwise specified in federal or state laws, regulations, or Program rules, a Party may Appeal an adverse decision issued by a Hearing Officer to the Appeals Board by filing a written Petition for Review with ASA within 30 calendar days of the mailing or transmittal date of the Hearing Officer's decision.
- B.** A Party shall ensure that a written Petition for Review:
1. Is submitted to ASA;
 2. Describes why the Party disagrees with the Hearing Officer's decision; and
 3. Is signed and dated by the Party or the Party's representative.
- C.** The Appeals Board shall provide a copy of a Petition for Review and all documents used by the Appeals Board to all interested Parties, including the Program, by mail through USPS, or its successor, or via Electronic Service.
- D.** The Appeals Board shall conduct proceedings in accordance with A.R.S. § 41-1992(D).
- E.** When considering a Petition for Review:
1. The Appeals Board shall:
 - a. Provide a copy of a Petition for Review
 - b. Ensure that all relevant issues were properly noticed; and
 - c. Issue a decision based only on the Hearing record unless additional information is presented under R6-9-317(B)(2).
 2. The Appeals Board may consider additional relevant information if that information

could not reasonably have been presented during the Hearing or if justice so requires.

F. The Appeals Board shall issue to all Parties a final written decision to Affirm, Reverse, Set Aside, Remand, or Modify the Hearing Officer's decision or the Appeals Board may Dismiss the Petition for Review. The decision of the Appeals Board shall specify the right to further review and the time for filing an application for appellate review to the appropriate entity.

G. A Party adversely affected by an Appeals Board decision may seek judicial review under A.R.S. § 41-1993.