

# Evidentiary Appeals Hearing Procedures During COVID-19

State Personnel Board Appeals Division —September 2021



## GENERAL INFORMATION

This document is intended to provide you with an overview of the administrative hearing process before the State Personnel Board (SPB). However, this document is not intended to provide legal advice, nor is this information a substitute for an attorney or representative.

Appellants must carefully read all documents provided by the employer with the action. These documents detail the charges against you, what the timeline is for appealing the action and what appeal and/or hearing rights you have. To secure a hearing, you must file a timely appeal. The time frames vary based on the type of appeal. Statutes and SPB regulations govern the specific requirements for filing an appeal. Copies of the statutes are available on the SPB's website at [www.spb.ca.gov](http://www.spb.ca.gov). SPB Regulations can be found at the Office of Administrative Law website [www.oal.ca.gov](http://www.oal.ca.gov). You must review relevant statutes and regulations before proceeding to hearing

*All citations refer to California Code of Regulations, Title 2*

## EVIDENTIARY APPEALS HEARING PROCESS

An appeal is opened upon the determination that it both falls under SPB jurisdiction and meets regulatory requirements. Cases are assigned to different processes based on what action has been appealed.

Appeals from adverse actions such as formal reprimands, suspensions for 5 days or less, and salary reductions of 5% for 4 months or less are considered lesser appeals and are immediately assigned to the investigatory hearing calendar.

Appeals from rejection during probation shall also be assigned to the investigatory hearing process. These appeals, however, shall be set for a videoconference prehearing/settlement conference prior to the appeal being set for an investigatory hearing.

Appeals with penalties greater than those listed above will initially be set for a videoconference prehearing/settlement conference prior to being assigned to the evidentiary hearing calendar.

*§ 53.2 (b), § 53.3 (2)(3)*

## Videoconference Prehearing/Settlement Conference

These 2-hour videoconference prehearing/settlement conferences are set prior to a full evidentiary hearing, or in appeals from rejection during probation, prior to an investigatory hearing. Settlement conferences offer the parties a chance to meet and negotiate a settlement of their case with the assistance of an SPB Administrative Law Judge (ALJ).

Parties are expected to submit a Prehearing/Settlement Conference Statement that complies with SPB Regulations at least 12 days prior to the date of the settlement conference. Failure to do so may result in a restriction of your evidence at the time of the evidentiary or investigatory hearing.

Appeals from adverse actions that do not settle at the time of the prehearing/settlement conference will be set for an evidentiary hearing. Appeals from rejections during probation that fail to settle will be assigned to an Investigatory hearing. § 57.1

### **Hearing Process**

Evidentiary hearings, either in-person or utilizing the SPB's Webex platform, are presided over by an SPB ALJ. At the outset of the hearing, each side may present an opening statement that outlines the case for the presiding ALJ. Both sides then offer relevant evidence to prove their respective cases. The party that bears the burden of proof will present evidence and witness testimony first. The opposing party will then have an opportunity to cross-examine the first party's witnesses. After the first party has finished presenting their case, the process will be repeated allowing the second party to present evidence and testimony and offering the first party the opportunity for cross-examination.

At the close of the hearing, each side may present oral closing arguments. In some cases, the ALJ may request that the parties submit written statements in place of oral arguments.

You may represent yourself at hearing or choose to be represented by an attorney or representative. Employers may or may not be represented by an attorney.

§ 56.1

### **Cases Assigned to Investigatory Hearing Process**

Appeals from lesser adverse actions such as formal reprimands, suspensions for 5 days or less, and salary reductions of 5% for 4 months or less, as well as appeals from rejection during probation, are assigned to a six-hour investigatory hearing. Each party is afforded three hours to present its case. At the close of the hearing, each side may present oral closing arguments. In some cases, the ALJ may request that the parties submit written statements in place of oral arguments.

You may represent yourself at hearing or choose to be represented by an attorney or representative. Employers may or may not be represented by an attorney.

§ 53. & 55.2

### **Evidentiary Hearings**

Evidentiary hearings may be set for multiple days as required by the circumstances of each individual case. The formal rules of evidence will apply in evidentiary hearings.

### **EVIDENCE IN THE HEARING PROCESS**

Evidence may be sworn testimony taken under oath at the hearing, or documents and items submitted by the parties to the SPB. For in-person hearings, each party must bring 4 copies of all evidentiary documents. For hearings conducted on the Webex platform, each party shall create Exhibit Packages consisting of hard copies and electronic (PDF format) copies of all documents that they intend to introduce or display at the hearing, including documents for use by anticipated rebuttal witnesses. Both the hard and electronic copies of a party's Exhibit Package shall be consecutively numbered (Bates numbered) in the lower right corner of each Exhibit Package page. The Bates numbering for the hard and electronic copies shall be identical. The parties shall not pre-mark or staple individual exhibits within their Exhibit Package. All documents shall be printed on one side only. Additionally, each party must prove the accuracy of any submitted documents. The ALJ will only consider evidence that is submitted before the

close of the hearing; evidence will not be accepted at a later time. Declarations from witnesses in lieu of testimony are appropriate in cases assigned to the Investigative hearing Process.

*§ 55.1 (d), § 58.12*

## **FREQUENTLY ASKED QUESTIONS**

### **Are hearings recorded?**

All hearings are digitally recorded. To obtain a copy of the recording or a transcript of the hearing, either party may contact the SPB Appeals Division. The requesting party is responsible for the fees for either the recording or the transcript.

### **How do I obtain copies of the employer's evidence?**

You are entitled to receive copies of all documents related to the charges set forth in any charging document at the time that you receive it.

If you are appealing an adverse action you have the right to request discovery from your employer. You may also request to interview employees that have knowledge of the charges.

If a Prehearing/Settlement Conference is scheduled, you will exchange information in the Prehearing Conference Statement about what documents will be introduced and what witnesses will be called.

*§ 59.1 (a), § 57.1 (f)*

### **Which side has the burden of proof?**

The burden of proof in adverse and medical action appeals for state civil service employees, and adverse action appeals for California State University (CSU) employees lies with the employer.

The burden of proof for state civil service rejections during probation, CSU petitions to set aside resignations and appeals from automatic resignation rests on the appellant.

### **How do I obtain Subpoenas?**

Appellants have the right to subpoena witnesses and relevant documents. If you are not represented by an attorney, you must contact the SPB within a reasonable time before the hearing to obtain a subpoena signed by an ALJ. A statewide subpoena is required if the witness resides more than 100 miles from the place of hearing. To obtain an ALJ signature for a statewide subpoena, you must submit to the SPB a completed subpoena along with a written statement explaining the relevance of the witness to your case.

You must arrange for the service of subpoenas by a person that is not a party to your case. You are also responsible to determine and pay all witness fees and mileage for subpoenaed witnesses according to the rules followed by civil courts.

*§59.3*

### **How do I request a change in hearing dates?**

To request a continuance, you must file a motion to continue with the SPB. You must also contact the opposing party in an attempt to find a mutually agreeable date. Motions to continue filed 90 or more days prior to the hearing date may be based on the mutual agreement of the parties. Motions to Continue filed later than 90 days prior to the hearing, as well as those without mutual agreement of the parties, must contain a written declaration explaining the reasons for your request.

*§ 60.2*

### **What if I fail to appear at the hearing?**

If you do not obtain a continuance and fail to appear at a Prehearing/Settlement Conference or hearing, or fail to timely submit your written brief, your appeal will be considered withdrawn and the case will be dismissed.

*§ 58.3 (b)*

### **How do I secure an interpreter for my hearing?**

If you or your witnesses require an interpreter, you must contact the SPB within a reasonable time prior to the hearing so that a certified interpreter may be provided for you. Friends and relatives may not act as interpreters.

*§ 58.9 (c)*

### **Are hearing locations accessible to persons with disabilities?**

Hearing locations are accessible to persons with disabilities. If you or your witnesses have a specific need for reasonable accommodations, please contact the SPB Appeals Division so that appropriate arrangements may be made.

*§ 58.8*

### **Additional questions**

If you have further questions regarding the appeals process or if you wish to inquire about the status of your appeal, please contact the SPB Appeals Division at [Appeals@spb.ca.gov](mailto:Appeals@spb.ca.gov). Please have your case number available when you contact the SPB about your appeal. In any inquiry, please remember that the SPB cannot provide legal advice.

### **SPB CONTACT INFORMATION:**

For general information dial (916) 653-0544, or (916) 653-0799.

For calendaring and continuances dial (916) 654-6417 or (916) 653-5505, or send an email to calendar at [calendar@spb.ca.gov](mailto:calendar@spb.ca.gov).

For transcripts, CDs, court reports & administrative records dial (916) 651-8645, or send an email to [custodianofrecords@spb.ca.gov](mailto:custodianofrecords@spb.ca.gov).

To send a fax dial (916) 654-6055.

To use the California Relay Service, go to: <https://ddtp.cpuc.ca.gov/relay.aspx>

Send email correspondence to [Appeals@spb.ca.gov](mailto:Appeals@spb.ca.gov).