

Sec. 31-237g-34. Decision of the Referee; final date; motion and appeal distinguished
(Statutory reference: 31-248)

(a) A Referee's decision on an appeal shall become final on the twenty-second (22nd) calendar day after the date on which a copy of such decision was sent to the parties' address of record unless prior to said twenty-second (22nd) day:

(1) a party aggrieved by the decision files either (A) an appeal to the Board of Review or (B) a motion to the Referee to reopen, vacate, set aside or modify such decision; or

(2) the Referee, on the Referee's own motion, reopens, vacates, sets aside or modifies such decision in accordance with the terms of Section 31-237g-35 of the Regulations of Connecticut State Agencies.

(b) Every motion or appeal pursuant to this section shall be filed at any office of Employment Security, the Appeals Division or any Employment Security office of any other state in which the filing party is located at the time of filing. Each such motion or appeal may be filed in person, by facsimile transmission (fax), by internet or by mail but to be acceptable as timely filed, it must be actually received at such office within the twenty-one (21) calendar days allowed by law, must bear a legible United States Postal Service postmark which indicates that within such twenty-one (21) day period it was placed in the possession of the postal authorities for delivery to the appropriate office, or must be received by fax or by internet as set forth in Section 31-237g-1(c) of the Regulations of Connecticut State Agencies. Posting dates attributable to private postage meters shall not be considered in determining the timeliness of appeals filed by mail. If the last day for filing such a motion or appeal falls on a day when the office where such appeal was actually filed was not open for business, such last day shall be extended to the next business day of such office. It is generally advisable, to the extent that it can be accomplished within the allotted twenty-one (21) day period, to file such appeal or motion with the specific Appeals Division office which rendered the decision. Any appeal or motion filed after the twenty-one (21) day period has expired may be considered timely filed if the filing party shows good cause for the late filing.

(c) For purposes of this section, a party has good cause for filing an appeal after the twenty-one (21) day appeal period if a reasonably prudent individual under the same or similar circumstances would have been prevented from filing a timely appeal. In determining whether good cause has been shown, the Board shall consider all relevant factors, including but not limited to:

(1) The extent to which the party has demonstrated diligence in its previous dealings with the Administrator and the Employment Security Appeals Division;

(2) Whether the party was represented;

(3) The degree of the party's familiarity with the procedures of the Appeals Division;

(4) Whether the party received timely and adequate notice of the need to act;

(5) Administrative error by the Administrator or Employment Security Appeals Division; or the failure of the Administrator, the Appeals Division, or any other party to discharge its responsibilities;

(6) Factors outside the control of the party which prevented a timely action;

(7) The party's physical or mental impairment;

(8) Whether the party acted diligently in filing an appeal once the reason for the late

filing no longer existed;

(9) Where there is substantial prejudice to an adverse party which prevents such party from adequately presenting its case, the total length of time that the action was untimely;

(10) Coercion or intimidation which prevented the party from promptly filing its appeal; and

(11) Good faith error, provided that in determining whether good faith error constitutes good cause, the Board shall consider the extent of prejudice to any other party, any prior history of late filing due to such error, whether the appeal is excessively late, and whether the party otherwise acted with due diligence.

(d) An appeal to the Board from a Referee's decision on an appeal generally has consequences different from a motion to the Referee to reopen, vacate, set aside or modify such a decision. An appeal to the Board may, regardless of its title, be treated and processed by the Referee as such a motion for purposes of granting the motion by way of reopening, vacating, setting aside or modifying such a decision, solely in order to grant the relief requested. A clearly titled motion to the Referee to reopen, vacate, set aside or modify such a decision shall be treated and processed by the Referee as such motion, except as provided in Section 31-237g-35(b) of the Regulations of Connecticut State Agencies. If a Referee does so process a document which purports to be an appeal to the Board as a motion to reopen, the Referee shall immediately so notify the Board and provide the Board with a copy of both the document in question and the Referee's written response to such document. After an appeal to the Board is processed as such an appeal, no motion to the Referee to reopen, set aside or modify the appealed decision shall thereafter be accepted or acted upon by the Referee. However, after a motion to the Referee to reopen, vacate, set aside or modify the decision is filed with the Referee, both a Referee's decision denying such a motion and the Referee's preceding decision on the appeal may be appealed to the Board not later than twenty-one (21) calendar days after the Referee's decision denying such motion is sent to the parties. The Referee shall refuse to accept both such a motion and an appeal filed simultaneously with regard to the same Referee decision and in such event the Referee shall accept and process whichever remedial petition the Referee deems proper and the remaining petition shall be void. Whenever possible, the Referee shall treat and process an appeal or motion in such a way as to preserve the right of the appealing party to seek further review by the Board.

(Effective January 1, 1988; Amended October 27, 1997; Amended June 3, 2021)