

Sec. 31-237g-49. Decision of the Board; final date; motions and appeal distinguished

(Statutory reference: 31-249a)

(a) The Board's decision on an appeal shall become final on the thirty-first (31st) calendar day after the date on which a copy of such decision was sent to the parties' addresses of record unless, prior to said thirty-first (31st) day:

(1) a party aggrieved by the decision files (A) an appeal to the Superior Court on such decision, or (B) a motion to the Board to reopen, vacate, set aside or modify such decision; or

(2) the Board, on its own motion, reopens, vacates, sets aside or modifies such decision in accordance with the terms of Section 31-237g-50 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 prior to the expiration of the thirty-day (30) appeal period pursuant to Section 31-249a of the Connecticut General Statutes, must bear a legible United States Postal Service postmark which indicates that within such thirty-day (30) 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. Any appeal or motion filed after the thirty-day (30) period has expired may be considered timely if the filing party shows good cause for the late filing.

(c) A party has good cause for filing a motion to reopen after the thirty-day (30) appeal period if a reasonably prudent individual under the same or similar circumstances would have been prevented from filing a timely motion to reopen. 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 a motion to reopen 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 motion; 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 motion is excessively late, and whether the party otherwise acted with due diligence.

(d) If a party alleges good cause for filing an appeal to the Superior Court after the thirty-day (30) appeal period, the Superior Court shall determine whether the appealing party has shown good cause by reference to the reasonably prudent individual standard contained in subsection (c) of this section together with all relevant factors pertaining to good cause, including but not limited to those factors cited therein. The Board, in certifying the record of proceedings to the Superior Court, shall include a proposed decision on the timeliness of any such appeal.

(e) An appeal to the Superior Court from the Board's decision on an appeal generally has consequences different from a motion to the Board to reopen, vacate, set aside or modify such a decision. An appeal to the Superior Court may, regardless of its title, be treated and processed by the Board as such a motion for purposes of granting the motion by way of reopening, vacating, setting aside, or modifying the Board's decision, solely in order to grant the relief requested. After an appeal to the Superior Court is processed as such an appeal, no motion to the Board to reopen, vacate, set aside, or modify the appealed decision shall thereafter be accepted or acted upon by the Board. After a motion to the Board to reopen, vacate, set aside or modify the decision is filed with the Board, both a Board decision denying such a motion and the preceding Board decision on the appeal may be appealed to the Superior Court not later than thirty (30) calendar days following the date the Board sent its decision denying such motion to the parties' addresses of record. In the event that such a motion and an appeal are filed simultaneously, the Board shall accept and process whichever remedial petition it deems proper and the remaining petition shall be void. Whenever possible, the Board 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 Superior Court.

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