

Sec. 31-237g-48. Decision of the Board: content and form; remand to Administrator or Referee

(a) Each appeal to the Board shall be decided with reasonable promptness following review. Except for a dismissal decision issued pursuant to Section 31-237g-41 or 31-237g-43, the Board's decision shall affirm, reverse, or modify the preceding decision or remand the case to the Referee or the Administrator for such further proceedings as the Board in such decision instructs. Upon such a remand to the Referee, unless otherwise specifically stated in the decision, the Board shall not retain jurisdiction of such appeal, and the rights and responsibilities attaching to the subsequent decision of the Referee shall be the rights and responsibilities normally applicable to such a decision. In remanding the case to the Administrator, the Board may retain jurisdiction. If the Board retains jurisdiction, upon the issuance of a new determination by the Administrator, the Board shall provide all parties to the appeal an opportunity to be heard and shall thereafter issue a decision affirming, reversing, or modifying the Administrator's determination, provided that the Board shall not issue a decision if all parties to the appeal consent to the withdrawal of the appeal. If the Board does not retain jurisdiction, the administrator's determination shall inform the aggrieved party of its right to file a new appeal from the determination. The general provisions of Section 31-237g-49 (a) of these regulations to the contrary notwithstanding, a Board decision remanding an appeal to the Referee or the Administrator shall not be separately appealable to the Superior Court, but may be made an additional ground for appeal from the final decision of the Referee or the Board on the merits of the case. An aggrieved party may, however, file a motion to reopen a decision remanding an appeal to the Referee or the administrator. Where an appeal involves multiple issues, some of which are subject to the Board's order of remand and others of which have been finally resolved by the Board's decision, the aggrieved party does not waive its right to object to the Board's decision on the issues finally resolved and may raise any such objection in the event of further appeal to the Board from the Referee's decision on remand. Unless the Board specifically so directs, a decision of the Board remanding an appeal to the administrator or the Referee shall not automatically vacate the preceding decision of the Referee.

(b) Each Board decision on an appeal shall be prepared and issued in accordance with section 31-273g-13 of these regulations and shall also list the date and location of any hearings held by the Board together with the names and identities of all persons attending such hearing. Except as otherwise provided in Section 31-237g-41, 31-237g-11 (b) and 31-237g-43 of these regulations, each Board decision shall also include:

- (1) a citation to the law involved;
- (2) a case history summarizing the proceedings prior to the date of the Board's decision;
- (3) a statement indicating whether the Board has reviewed the file record of such appeal;
- (4) a statement indicating whether the Board reviewed the tape or transcript of the Referee's hearing prior to issuing the decision;
- (5) the Board's decision on all timely-filed requests for a Board hearing on such appeal;
- (6) a statement of the Board's findings of fact which may adopt the Referee's findings of fact;
- (7) reasons for the Board's decision which shall address the legal and factual claims stated in the appeal, timely-filed written argument, and oral argument presented at any

hearing before the Board;

(8) citations to any specific precedents used to support the decision;

(9) the ultimate decision which may include a statement as to the action to be taken by the Administrator, if any, as a consequence of such ultimate decision;

(10) the signature, or reproduction thereof, of at least one member of the Board in favor of the decision and the name of each concurring member;

(11) a statement that the full Board reviewed and decided such appeal if request for decision by the full Board was timely-filed or by statute the full Board was otherwise required to review and decide such appeal.

(c) The Board's decision on an appeal may include any dissenting or concurring opinion which any member of the Board may wish to provide.

(d) If the Board determines that any appeal or motion to the Board was frivolous, the Board may in its decision on such appeal or motion, include a recommendation to the Administrator that, in the event of an appeal to Superior Court from such Board decision, the Administrator move the Court to rule such appeal to be frivolous and tax costs accordingly.

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