

N.C. BOARD OF REVIEW

Department of Commerce,
Division of Employment Security

BOARD OF REVIEW

The **Board of Review** is composed of 3 members, appointed by the Governor and confirmed by the General Assembly.

- One member is classified as an Employee Representative (Andrew C. Brock),
- one member as an Employer Representative (Fred F. Steen, II), and
- one member as a Representative of the General Public (Theresa B. Stephenson). The member classified as a Representative of the General Public must be a Licensed Attorney in North Carolina and serve as Chair of the Board.

Members serve staggered 4 year terms.

MISSION

The Mission of the North Carolina Board of Review is to impartially and accurately review and determine all disputes over which they have jurisdiction according to the law.

JURISDICTION

- **HIGHER AUTHORITY APPEALS IN UNEMPLOYMENT CASES** - North Carolina has an appeal process that provides for two levels of appeals beyond the initial adjudicator determination. Lower Authority Appeals are telephone hearings conducted by an Appeals Referee, who subsequently issue a decision. The Board decides the Higher Authority appeals which are based on an administrative review of the record, including the hearing before the Appeals Referee, the prior decision, all exhibits and the reasons for the appeal by the appellant. The policy of this Board is to allow Oral Arguments upon request.
- **TAX CASES** - The Board of Review has the statutory authority to conduct hearings for the purpose of determining Employer tax liability. The Division of Employment Security is a party in this action and represented by an attorney in the Division's General Counsel's Office. The employer is a party as well.
- **D-100 CASES** - These cases are when a DES employee files for unemployment benefits. The Board of Review hears the initial appeal, rather than an Appeals Referee employed by DES.
- **LABOR DISPUTES** - The Board of Review has jurisdiction to determine unemployment benefits when there is a labor dispute.

STEPS THE BOARD OF REVIEW GOES THROUGH IN MAKING A DECISION

- Appeal is filed.
- General Counsel's Office reviews and uploads a Recommended Decision to SCUBI, length of time of their review varies greatly.
- BOR Reviews Recommended Decision, reviews entire online file, reads briefs/arguments submitted, and listens to the Hearing Tape from the Appeals Referee. Each tape ranges from 30 minutes to several hours.
- Board Members Discuss Case if Necessary.
- Members Vote whether to Affirm, Reverse, Modify, Remand, Dismiss, etc.
- Members Revise Decisions or Request a Complete Re-Write.
- BOR Issues Decisions within 48 hours of Receipt unless Re-write.

SOME BASIC STATISTICS

NUMBER OF DECISIONS ISSUED – 2017 – 3,186 Decisions
2018 – 2,449 Decisions
2019 – 2,945 Decisions

ORAL ARGUMENTS HEARD SINCE JULY 1, 2019 - 11

TAX CASES HEARD SINCE JULY 1, 2019 – 1

(IN COMPARISON, THE FULL COMMISSION OF THE N.C. INDUSTRIAL COMMISSION ISSUED 452 DECISIONS IN A 12 MONTH PERIOD)

PRIOR STUDY COMPLETED ON THE BOR

- PED REPORT ISSUED MARCH 1, 2016 TO THIS COMMITTEE – ***‘OPPORTUNITIES EXIST TO INCREASE THE ACCOUNTABILITY AND INDEPENDENCE OF THE BOARD OF REVIEW’***
- **NORTH CAROLINA IS ONE OF 47 STATES WITH A BOARD OF REVIEW**
- **MAJORITY OF STATES HAVE 3 MEMBER BOARDS, BUT SIZE RANGES UP TO 9 MEMBERS**
- **IN 86% OF RESPONDING STATES, THE STAFF OF THE BOARD DOES NOT REPORT TO THE DIVISION OF UNEMPLOYMENT (OR THAT STATE’S EQUIVALENT)**

PED RECOMMENDATIONS

TRANSFER

**TRANSFER
STAFF FROM
DES TO THE
BOARD OF
REVIEW**

MODIFY

**MODIFY
STATUTE TO
DIRECT BOR TO
DEVELOP
POLICIES,
PROCEDURES
AND STANDARDS
FOR HIGHER
AUTHORITY
APPEALS
OPERATIONS**

DIRECT

**DIRECT DES TO
WORK WITH
BOR TO TRACK
& COLLECT
DATA
NECESSARY TO
SUPPORT
APPEALS
OPERATIONS**

BOARD OF REVIEW ENHANCEMENTS SINCE JULY, 2019

- **WEBSITE PAGES DEDICATED TO THE BOARD**
 - <https://des.nc.gov/appeals/board-review>
- **GRANTING PARTIES' REQUESTS FOR ORAL ARGUMENTS**
- **HOLDING IN PERSON TAX HEARINGS**
- **BOARD STAFF MEMBER AVAILABLE TO RESPOND TO PHONE CALLS, MAIL AND EMAILS FROM PARTIES & PUBLIC**
- **TRACKING CASE DISPOSITION INFORMATION**
- **DECREASING DISPOSITION TIME TO < 40 DAYS**

CASE DISPOSITION

DECISIONS FILED SEPTEMBER 15, 2019 – FEBRUARY 28, 2020

- **TOTAL NUMBER OF DECISIONS – 1,394**
(AVERAGE 65 PER WEEK – not counting holidays)
- **OF THESE THE BOARD DISAGREED WITH THE RECOMMENDED DECISION FROM THE COUNSEL'S OFFICE IN 128 CASES – 9.20%**
- **IN ADDITION, THE BOARD MADE SUBSTANTIVE CORRECTIONS TO 139 CASES – 9.97%**

**TOTAL NUMBER OF CASES WHICH BOARD CHANGED
FROM COUNSEL'S RECOMMENDATIONS –
267 CASES - 19%**

CASES BOARD CHANGED RESULTS FROM COUNSEL'S RECOMMENDATIONS DIVIDED BY PARTY -9/15/2019-2/28/2020

APPEALS BY CLAIMANT

57 TOTAL:

3 Decided for Claimant

5 Dismissed

29 Decided Against

27 Cases Remanded for
New Hearing

APPEALS BY EMPLOYERS

72 TOTAL:

31 Decided for Employer

6 Dismissed

5 Decided Against

30 Cases Remanded for
New Hearing

OUTCOMES OF CASES WHICH BOR CHANGES RESULTS RECOMMENDED BY DES COUNSEL

- **EMPLOYER PREVAILS IN 50.38% OF THE CASES**
- **CLAIMANT PREVAILS IN 11% OF THE CASES**
- **38.7% OF THE CASES ARE REMANDED**

TOTAL RESULTS CHANGED FROM LOWER AUTHORITY

256 REMANDS (18.3%)

84 REVERSALS (6%)

**BOARD OF REVIEW HAS DISAGREED WITH
THE APPEALS REFERREE RESULTS **24.3%**
FROM THE PERIOD OF 9/15/2019-2/28/2020**

IMPORTANT

U.S. DEPARTMENT OF LABOR GUIDELINES INDICATE HIGHER AUTHORITY APPEALS SHOULD BE ISSUED WITHIN 40 DAYS OF THE DATE APPEAL IS FILED.

IF A STATE FAILS TO DO THIS, THE U.S. DEPARTMENT OF LABOR HAS THE OPTION TO CUT OUR FUNDING!

TIMELINESS IS IMPERATIVE! CASE LOAD REQUIRES DAILY EVALUATION OF CASES.

DES HAS ALREADY REDUCED AMOUNTS FUNDED TO THE BOARD OF REVIEW CONSISTENT WITH OTHER REDUCTIONS ACROSS THE DIVISION

DES HAS RECEIVED 10 MILLION LESS FROM US DOL TO OPERATE FROM 2015-2019. DES allocates dollars to the Organizational Unit According To Function.

- In 2015, 15 Positions were allocated to Higher Authority Function;
- In 2016, this was Reduced to 14 Positions;
- In 2017, this was Further Reduced to 13 Positions;
- In 2018, this was Maintained at 13 Positions;
- In 2019, this was Further Reduced to 12 Positions.

This 20% Reduction in Funding Going to the Higher Authority Appeals represents the Standard across the Division.

QUESTIONS?

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