



ADMINISTRATIVE RULES OF MONTANA



24.9.123 APPEAL OF HEARING OFFICER DECISIONS

- (1) Following entry of a hearing officer decision that resolves the complaint, pursuant to 49-2-505, MCA, parties shall have the opportunity to file an appeal, present briefs, and present oral argument to the commission as provided in this rule.
- (2) A party that wants to appeal shall file a notice of appeal to the commission within 14 days of the issuance of the hearing officer decision. A party requesting review of the transcript must so state in the party's notice of appeal.
- (3) All briefing must conform to the commission's formatting requirements set forth in ARM 24.9.111. A brief on appeal of a hearing officer decision may not exceed 20 pages in length.
- (4) The standards of review of appeals of hearing officer decisions are as follows:
 - (a) The commission reviews conclusions of law and interpretations of statutes and administrative rules for correctness. The commission may reject or modify a conclusion of law if it determines that the hearing officer misapplied fact to law or incorrectly interpreted or applied the law.
 - (b) The commission reviews findings of fact to determine whether substantial evidence exists to support a particular finding. The review must be based upon review of the complete record. While the hearing officer is entitled to some deference in findings of fact, weighing of evidence, and credibility determinations, the commission may reject or modify a finding of fact if it determines that such finding is clearly erroneous or not based upon competent substantial evidence. The commission may additionally reject or modify findings of fact if it determines that the proceedings on which the findings were based did not comply with essential requirements of law.
 - (c) The commission reviews damage awards to determine if they are clearly erroneous. A party asserting that a damage award is clearly erroneous shall specifically cite the portions of the record supporting that claim. A party asserting an alternative monetary award shall cite the portions of the record which support such alternative calculation. The commission may deny an appeal on the issue of damages if it fails to comply with this subsection.
 - (d) The commission may grant all relief permitted by 49-2-506, MCA, including full affirmative relief.
- (5) The complete record for the purposes of this rule is comprised of all documents cited or referred to in briefing before the commission. If a party intends to challenge any finding of fact of the hearing officer, the complete record additionally includes the transcript of the hearing.

- (a) The party citing or referring to a document in its briefing is required to attach as an exhibit to its brief the entirety of such document. If a party fails to attach required documents to its briefing, the commission may deny the appeal.
 - (b) Documents which may be included in the complete record are those enumerated at 2-4-614, MCA. Failure of a party to submit documents enumerated in that statute constitutes a stipulation by that party that the commission need not review those documents.
 - (c) Exhibits not admitted at hearing may not be attached to briefs on appeal, unless the failure to admit such exhibit is a reason for appeal. On timely motion by any party, any exhibit improperly attached may be stricken from the appeal.
- (6) The briefing schedule before the commission for appeals of hearing officer decisions must conform substantially with the following:
- (a) If review of the transcript has been requested, the appellant shall file an original and an electronic version of the transcript with the commission within 28 days of filing the notice of appeal.
 - (b) The appellant shall file an original and an electronic version of its opening brief within 21 days of the filing of the transcript or, if no review of the transcript has been requested, within 21 days of the filing of the notice of appeal. Failure to file an opening brief may result in summary denial of the appeal sua sponte or on motion of any party.
 - (c) The appellee shall file an original and an electronic version of its response brief within 14 days of service of the opening brief.
 - (d) The appellant shall file an original and electronic version of its reply brief, if any, within 14 days of service of the response brief.
- (7) The following requirements apply to the preparation of the transcript:
- (a) A transcript must be prepared by an impartial person with no affiliation to any party and with no interest in the outcome of the contested case. A transcript must be a verbatim and complete account of all proceedings on the record of the hearing and must be in the form commonly accepted by the courts of record of this state. The preparer of a transcript shall certify that the transcript is a complete and accurate account of the stenographic or electronic recording of the hearing and that the preparer has no affiliation with any party and has no interest in the outcome of the contested case.
 - (b) Preparation of the transcript is the responsibility of the party requesting review of the transcript. If more than one party requests review of the transcript, all parties requesting the review shall share equally in the cost of the transcript and copies.
- (8) Each party is permitted one-half hour of argument before the commission for each appeal. The appellant may reserve a portion of that time for rebuttal. Oral argument may be waived by the parties, except where it is requested by the commission.
- (9) When a party has timely filed an appeal of a hearing officer decision and has timely filed a supporting brief, the commission will fix a date to provide the parties an opportunity to present oral argument to the commission.
- (10) The commission shall render a decision which affirms, rejects, modifies, and/or remands the hearing officer decision within 90 days of the hearing of the appeal. The final decision of the commission is the final agency decision.

Authorizing statute(s): 49-2-204, 49-3-106, MCA

Implementing statute(s): 49-2-204, 49-2-505, 49-2-506, 49-2-511, 49-3-315, MCA

History: NEW, 1998 MAR p. 3201, Eff. 12/4/98; TRANS, from 24.9.1717, and AMD, 2008 MAR p. 2636, Eff. 12/25/08; AMD, 2017 MAR p. 91, Eff. 1/7/17.