

# Evidentiary Appeals Hearing Procedures

State Personnel Board Appeals Division — July 2014



## GENERAL INFORMATION

This document is intended to provide you with an overview of the administrative hearing process before the State Personnel Board (SPB). However, this document is not intended to provide legal advice, nor is this information a substitute for an attorney or representative.

Appellants must carefully read all documents provided by the employer with the action. These documents detail the charges against you, what the timeline is for appealing the action and what appeal and/or hearing rights you have. In order to secure a hearing you must file a timely appeal. The time frames vary based on the type of appeal. Statutes and SPB regulations govern the specific requirements for filing an appeal. Copies of the statutes are available on the SPB's website at [www.spb.ca.gov](http://www.spb.ca.gov). SPB Regulations can be found at the Office of Administrative Law website [www.oal.ca.gov](http://www.oal.ca.gov). You must review relevant statutes and regulations before proceeding to hearing.

*All citations refer to California Code of Regulations, Title 2*

## EVIDENTIARY APPEALS HEARING PROCESS

An appeal is opened upon the determination that it both falls under SPB jurisdiction and meets regulatory requirements. Cases are assigned to different processes based on what action has been appealed.

Appeals from adverse actions such as: formal reprimands, suspensions for 5 days or less and salary reductions of 5% for 4 months or less are considered lesser appeals and are set for investigatory hearings. Appeals from adverse actions with penalties greater than those listed above and appeals from rejections during probation will initially be set for a Prehearing and Settlement Conference.

*§ 53.2 (b), § 53.3 (2)(3)*

### Prehearing and Settlement Conference

These 2-hour settlement conferences are set prior to a full evidentiary or investigatory hearing. Settlement conferences offer the parties a chance to meet and negotiate a settlement of their case with the assistance of an SPB Administrative Law Judge (ALJ).

Parties are expected to submit a Prehearing and Settlement Conference Statement that complies with SPB Regulations 10 days prior to the date of the settlement conference. Failure to do so may result in a restriction of your evidence at the time of the evidentiary or investigatory hearing.

Appeals from adverse actions that do not settle at the time of the Prehearing Settlement Conference will be set for evidentiary hearings. Appeals from rejections during probation that fail to settle will be set for investigatory hearings.

*§ 57.1*

### Hearing Process

Hearings are presided over by an SPB ALJ. At the outset of the hearing, each side may present an opening statement that outlines the case for the presiding ALJ. Both sides then offer relevant evidence to prove their respective cases. The party that bears the burden of proof will present evidence and witness testimony first. The opposing party will then have an opportunity to cross-examine the first party's witnesses. After the first party has finished presenting their case, the process will be repeated allowing the second party to present evidence and testimony and offering the first party the opportunity for cross-examination.

At the close of the hearing each side may present oral closing arguments. In some cases the ALJ may request that the parties submit written statements in place of oral arguments.

You may represent yourself at hearing or choose to be represented by an attorney or representative. Employers may or may not be represented by an attorney.

*§ 56.1*

### Investigatory Hearings

Investigatory Hearings are scheduled to last 6 hours. Each party will have 3 hours to present their respective cases. During these hearings the formal rules of evidence are relaxed.

*§ 55.2*

### Evidentiary Hearings

Evidentiary hearings may be set for multiple days as required by the circumstances of each individual case. The formal rules of evidence will apply in evidentiary hearings.

## EVIDENCE IN THE HEARING PROCESS

Evidence may be sworn testimony taken under oath at the hearing, or documents and items submitted by the parties. Each party must bring 4 copies of all evidentiary documents. Additionally, each party must prove the accuracy of any submitted documents. In order to be considered by the ALJ, all evidence must be submitted before the close of the hearing. Parties will not have the chance to present evidence at a later time.

It may be appropriate to bring witnesses who are informed about the issues involved in the case. Parties submitting documents such as contracts, business records, or checks must bring the original and three copies. Photographs or other items that are relevant to the case may also be submitted. Items to be considered must be left with the ALJ.

Declarations from witnesses in lieu of testimony are appropriate in Investigatory Hearings. However, it is generally best if witnesses are present so that they can answer questions posed by either the parties or the ALJ. In Evidentiary Hearings, declarations may be used to supplement but not replace witness testimony.

*§ 55.1 (d), § 58.12,*

## FREQUENTLY ASKED QUESTIONS

### Are hearings recorded?

All hearings are digitally recorded. To obtain a copy of the recording or a transcript of the hearing, either party may contact the SPB Appeals Division. The requesting party is responsible for the fees for either the recording or the transcript.

### How do I obtain copies of the employer's evidence?

You are entitled to receive copies of all documents related to the charges set forth in any charging document at the time that you receive it.

If you are appealing an adverse action you have the right to request discovery from your employer. You may also request to interview employees that have knowledge of the charges.

If a Prehearing Settlement Conference is scheduled, you will exchange information in the Prehearing Conference Statement about what documents will be introduced and what witnesses will be called.

§ 59.1 (a,) § 57.1 (f)

### Which side has the burden of proof?

The burden of proof in adverse and medical action appeals for state civil service and county employees, and adverse action appeals for California State University (CSU) employees lies with the employer.

The burden of proof for state civil service rejections during probation, CSU petitions to set aside resignations and appeals from automatic resignation rests on the appellant.

### How do I obtain Subpoenas?

Appellants have the right to subpoena witnesses and relevant documents. If you are not represented by an attorney, you must contact the SPB within a reasonable time before the hearing to obtain a subpoena signed by an ALJ. A state-wide subpoena is required if the witness resides more than 100 miles from the place of hearing. To obtain an ALJ signature for a state-wide subpoena, you must submit to the SPB a completed subpoena along with a written statement explaining the relevance of the witness to your case.

You must arrange for the service of subpoenas by a person that is not a party to your case. You are also responsible to

determine and pay all witness fees and mileage for subpoenaed witnesses according to the rules followed by civil courts.

§ 59.3

### How do I request a change in hearing dates?

To request a continuance you must file a motion to continue with the SPB. You must also contact the opposing party in an attempt to find a mutually agreeable date. Motions to continue filed 90 or more days prior to the hearing date may be based on the mutual agreement of the parties. Motions to continue filed later than 90 days prior to the hearing, as well as those without mutual agreement of the parties, must contain a written declaration explaining the reasons for your request.

§ 60.2

### What if I fail to appear at the hearing?

If you do not obtain a continuance and fail to appear at a Prehearing Settlement Conference or hearing, your appeal will be considered withdrawn and the case will be dismissed.

§ 58.3 (b)

### How do I secure an interpreter for my hearing?

If you or your witnesses require an interpreter, you must contact the SPB within a reasonable time prior to the hearing so that a certified interpreter may be provided for you. Friends and relatives may not act as interpreters.

§ 58.9 (c)

### Are hearing locations accessible to persons with disabilities?

Hearing locations are accessible to persons with disabilities. If you or your witnesses have a specific need for reasonable accommodations, please contact the SPB Appeals Division so that appropriate arrangements may be made.

§ 58.8

### Additional questions

If you have further questions regarding the appeals process or if you wish to inquire about the status of your appeal, please contact the SPB Appeals Division at [appeals@spb.ca.gov](mailto:appeals@spb.ca.gov). Please have your case number available when you contact the SPB about your appeal. In any inquiry, please remember that the SPB cannot provide legal advice.

## SPB CONTACT INFORMATION

General Information.....	(916) 653-0544
.....	(916) 653-0799
Calendaring and Continuances.....	(916) 653-5505
Transcripts, CDs, Court Reports & Admin. Records.....	(916) 651-3165
Fax Line.....	(916) 654-6055
TTY Line.....	(916) 654-2360
Email Address.....	<a href="mailto:appeals@spb.ca.gov">appeals@spb.ca.gov</a>