

Memorandum 97-14

Administrative Adjudication: Telephone Hearings

The administrative adjudication legislation recommended by the Commission that becomes operative on July 1 includes a provision that liberalizes use of telephone hearings:

Gov't Code § 11440.30. Hearing by electronic means

(a) The presiding officer may conduct all or part of a hearing by telephone, television, or other electronic means if each participant in the hearing has an opportunity to participate in and to hear the entire proceeding while it is taking place and to observe exhibits.

(b) The presiding officer may not conduct all or part of a hearing by telephone, television, or other electronic means if a party objects.

Subdivision (b), which limits the use of telephone hearings if a party objects, was added at the suggestion of the Office of Administrative Hearings (OAH), which believes that it is a matter of fair procedure to provide an in-person hearing if requested.

We have received a letter from the Unemployment Insurance Appeals Board (UIAB) indicating that the limitation in subdivision (b) will cause serious problems for their operations. See Exhibit pp. 1-2. UIAB hearings are not conducted by OAH under the formal hearing procedure of the APA but rather are conducted by in-house administrative law judges employed by UIAB. In fact, the number of hearings conducted by UIAB is so great that it may exceed the total of all other state administrative hearings combined. UIAB indicates that approximately 25% of its hearings are conducted by telephone, as a convenience to remote parties.

“Given these circumstances, it is clearly not practical to require one party to appear in person at a hearing at the insistence of the opposing party. In fact, in an interstate case, the employer could effectively deny an unemployed claimant who is living in a distant state the right to a hearing on an appeal by the simple expediency of objecting to the telephone hearing.”

UIAB suggests a good cause exception along the following lines:

(b) The Except as provided in subdivision (c), the presiding officer may not conduct all or part of a hearing by telephone, television, or other electronic means if a party objects.

(c) The presiding officer may conduct all or part of a hearing by telephone, television, or other electronic means, notwithstanding a party's objection, on a showing of good cause. This subdivision does not apply to an adjudicative proceeding required to be conducted under Chapter 5 (commencing with Section 11500).

Comment. Good cause, within the meaning of subdivision (c) of Section 11440.30, may include circumstances where a party resides out of state or at a location distant from the hearing site and it is not practical for the party to appear in person. This may be of particular importance in hearings of benefit disbursing agencies, where the amount in controversy may be relatively small. However, the presiding officer may require the parties to appear in person if warranted by the circumstances of the case.

UIAB notes that “this is a matter of considerable concern to us.”

The proposal appears reasonable to the staff. It would preserve flexibility for hearings of agencies such as UIAB, while ensuring an in-person hearing under the formal hearing procedure. The staff suggests that the Commission recommend it for inclusion in legislation pending this session.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary



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CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
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Law Revision Commission
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January 30, 1997

File: _____

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Dear Nat,

As we have discussed, this Board feels that section 11440.30 of the new Administrative Procedures Act, relating to telephone hearings, is incompatible with our operation. Our administrative law judges conduct hearings on unemployment insurance appeals, state disability insurance appeals, and employment tax petitions. Approximately twenty-five percent of our hearings are conducted with one or both parties appearing by telephone. The Board does not favor telephone hearings but will permit a party to appear by phone in an appropriate case if the party is located at least fifty miles from the hearing site.

Due to the mobility of today's labor force, many benefit claimants relocate after becoming unemployed. In these situations, the hearing is usually held in a location convenient to the claimant who would then appear in person. The employer, however, if located more than fifty miles from the hearing site, would be permitted to appear by telephone. In many instances, claimants relocate out-of-state. In these situations, the hearing typically is conducted in Sacramento with both parties appearing by telephone unless the employer is located in Sacramento.

Given these circumstances, it is clearly not practical to require one party to appear in person at a hearing at the insistence of the opposing party. In fact, in an interstate case, the employer could effectively deny an unemployed claimant who is living in a distant state the right to a hearing on an appeal by

the simple expediency of objecting to the telephone hearing. Moreover, we are required by federal regulations to issue at least sixty percent of our decisions within thirty days of the appeal being filed, and eighty percent within forty-five days. If hearings were delayed because parties would be required to travel long distances to the hearing site, it would not be possible for us to meet our regulatory obligations.

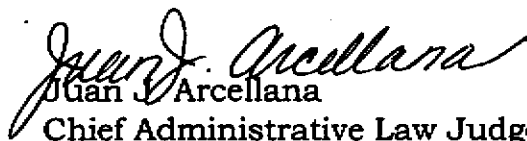
Accordingly, we propose that a subdivision be added to section 11440.30 of the new Administrative Procedures Act which will provide for a good cause exception to requiring a party to appear in person at a hearing. The exception would apply only to agencies which are not required to conduct hearings under chapter 5 of the new act. The suggested language is as follows:

- (c) Notwithstanding subdivision (b), in a proceeding other than those conducted under chapter 5, the presiding officer may conduct all or part of a hearing by telephone, television, or other electronic means over a party's objection upon a showing of good cause.

Perhaps a comment could be added to the effect that subdivision (c) addresses those circumstances where one or more of the parties reside at a location out-of-state or otherwise distant from the hearing site and it is not practical for the party to appear in person. This situation would exist primarily with benefit disbursing agencies where the amount in controversy is relatively small. The presiding officer, however, could still require the parties to appear in person if the circumstances of the case so warranted.

This is a matter of considerable concern to us and we greatly appreciate your assistance in helping us to bring it to a favorable resolution. Please do not hesitate to contact me or Assistant Chief Administrative Law Judge Tim McArdle if we can provide you with further information or assistance.

Very truly yours,


Juan J. Arcellana

Chief Administrative Law Judge, Field Operations