

10-02-14



**BEFORE THE STATE OF TENNESSEE
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT**

IN RE: Crystal Melton,

Petitioner

NO. PDO-2014-1

**NOTICE OF CONTESTED CASE HEARING
ON PETITION FOR DECLARATORY ORDER**

Crystal Melton, Petitioner and an unemployment claimant, through counsel, has petitioned the Department of Labor and Workforce Development (Department) for a Declaratory Order. This matter is set to be heard before the honorable Dan Bailey, Commissioner's Designee, on **December 10, 2014** beginning at **9:00 a.m. (central standard time)**. The hearing will be conducted in the Tennessee OSHA Review Commission Hearing Room on the First Floor-Side A at **220 FRENCH LANDING DRIVE, NASHVILLE, TENNESSEE 37243-1002**. All parties have a right to be represented by counsel.

LEGAL AUTHORITY AND JURISDICTION

Per Tenn. Code Ann. § 4-5-223(a) any affected person may petition a state agency for a declaratory order as to the validity or applicability of a statute, rule or order within the primary jurisdiction of the state agency. The Department has primary jurisdiction over unemployment appeal hearings and Tenn. Rule & Reg. 0800-11-02-.04(2) pertaining to adjournments and reopening of an unemployment appeal decision. (Tenn. Code Ann. § 50-7-203(c)).

ISSUE TO BE DECIDED

Whether Rule 0800-11-02-.04(2) of the Department should be held to be invalid because it permits an Unemployment Appeals Tribunal Hearing Officer to reopen an unemployment appeal case without notice and an opportunity to participate in the decision to reopen the case by the non-moving party?

RULE AT ISSUE

0800-11-02-.04 ADJOURNMENTS OF HEARINGS.

(2) Any hearing before an Appeals Referee may, and for good cause shall, be postponed or continued upon the request of a party or upon the Appeals Referee's own motion, at any time before the hearing is concluded.

- (a) The Appeals Referee shall grant a rehearing if good cause is shown, including good cause for not appearing at the scheduled hearing.
- (b) The Appeals Referee may also order rehearing on the Appeals Referee's own motion for cause.
- (c) A request for rehearing shall be made as soon as reasonably possible, but in no event later than ten days after the scheduled date of the hearing.
 - 1. A request for rehearing will not prevent the employer's account from being charged for benefits under T.C.A. Section 50-7-304(b)(2)(D).
 - 2. Repealed.
 - 3. Such request must be made in writing.
- (d) Repealed.

RELIEF REQUESTED

- 1. That the Department issue a declaratory order invalidating Tenn. Rule & Reg. 0800-11-02-.04(2), as it relates to reopening Appeals Tribunal decisions;
- 2. That Petitioner's administrative proceeding currently pending, be stayed and, specifically, the rescheduling of a hearing before the Appeals Tribunal be suspended while this request for a declaratory order is pending; and
- 3. That Petitioner be granted general relief.

SUMMARY OF MATTERS ASSERTED

Petitioner seeks a declaration that the Appeals Tribunal of the Department has no authority to reopen, at the request of any party, a decision issued by the Appeals Tribunal. Also, that a stay of Petitioner's pending unemployment case be issued while this Petition for Declaratory Order is pending.

ACCOMMODATIONS

Individuals with disabilities who wish to participate in these proceedings should contact Evelyn Gaines Guzman ten days prior to the meeting.

Evelyn Gaines Guzman
evelyn.gaines.guzman@tn.gov
Telephone: 615-253-1331
TN Relay Service: 711
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1-866 503-0263 (Voice, TTY, ASCII)
Fax: 615-532-1355

The Tennessee Department of Labor and Workforce Development is an equal opportunity employer/program; auxiliary aids and services are available upon request.

PRE-HEARING MATTERS

At least seven (7) days prior to the hearing date, the names and addresses of witnesses and a list of all proposed exhibits shall be filed with the Commissioner's Designee and served on opposing counsel. Any intended use of affidavits must comply with the provisions of Tenn. Code Ann. § 4-5-313. All pre-hearing motions and briefs shall be filed with the Commissioner's Designee no later than **December 3, 2014**.

Copies of all exhibits which are proposed to be offered shall be made available to opposing counsel upon request made no less than five (5) days prior to the hearing date. Each party is responsible for securing and issuing its own subpoenas.

Either party may request a pre-hearing conference by contacting the Commissioner's Designee at (615) 741-9550 or via email at daniel.a.bailey@tn.gov . Pre-hearing requests must be received by **November 24, 2014**.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the record. Any party shall be entitled, upon request made before the adjournment of the hearing, to file a brief, proposed findings of fact and conclusions of law, or both.

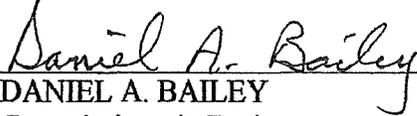
Parties that are corporations or limited liability companies may not be represented by non-attorneys, because this would constitute the unauthorized practice of law. See Supreme Court Rule 9, Section 20.2(e); Tenn. Code Ann. § 23-3-101. Each party has the right to subpoena witnesses, review the agency record, and to conduct discovery.

While individuals may represent themselves individually, and may provide information and evidence on behalf of employers and business entities, they may not engage in the practice of law, as defined above, unless they are licensed to practice law in Tennessee.

The hearing record will be stored at: Tennessee Department of Labor & Workforce Development, Labor Standards Division, 220 French Landing Drive, Nashville, Tennessee.

All other matters are reserved.

Entered and effective this 2nd day of October, 2014.


DANIEL A. BAILEY
Commissioner's Designee
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