

11-25-14



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

**IN RE: Crystal Melton,**  
  
**Petitioner**

**NO. PDO-2014-1**

---

**REVISED NOTICE OF CONTESTED CASE HEARING ON PETITION FOR  
DECLARATORY ORDER TO REFLECT NEW HEARING DATE**

---

The Notice of Contested Case Hearing on Petition for Declaratory Order dated October 2, 2014 setting this matter to be heard on December 10, 2014 at 9 a.m. is **hereby revised to reflect a new hearing date.** The parties have requested a continuance of the December 10, 2014 hearing date in order to complete necessary discovery. The request for a continuance was granted and a new hearing date set by agreement of the parties. The below text of this hearing notice is changed only to reflect revised dates.

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 **February 3, 2015** 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  
Servicio de Relevo en Espanol:  
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 **January 27, 2015**.

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](mailto:daniel.a.bailey@tn.gov). Pre-hearing conference requests must be received by **January 16, 2015**.

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.