

Claims Administration in the Ohio Unemployment Compensation Board of Review

LLOYD E. FISHER, JR.*

Administration in Ohio of claims for unemployment compensation is divided at the administrative level between the Ohio Bureau of Unemployment Compensation and the Ohio Unemployment Compensation Board of Review. Claims are first processed through the Bureau (BUC) in the manner detailed in an earlier issue of this *Journal*.¹ Upon completion of the administrative process within the BUC, the determination of the Administrator becomes final unless an interested party gives timely notice that he desires a review of that determination by the Board of Review. "Interested party" is defined by the Act² as ". . . the claimant, his most recent employer, any employer in such claimant's base period and the administrator." To be timely, the notice, given on Form UCO - 901 or by signed letter,³ must be properly filed⁴ within ten calendar days after notification of the Administrator's decision through delivery to the appellant or mailing to his last known postal address.⁵ A properly perfected application for review requires that the Board of Review grant the appeal as of right.⁶

Accompanying the legislative provision for an obligatory review is an authorization to the Board to secure assistance through employment of referees, reporters, an examiner, a secretary, and a clerical staff.⁷ At the present time some twenty-five referees

* Member of the Ohio Bar; J. D. 1949, The Ohio State University.

¹ Ball and Lee, *Claims Administration in the Ohio Bureau of Unemployment Compensation*, 10 OHIO ST. L. J. 207 (1949).

² OHIO GEN. CODE § 1345-1 (g).

³ UCO-901, "Notice of Appeal from Decision of Administrator," carries; Appeals Docket number; claimant's name, address, and Social Security number; date of determination; reasons for appeal; name of employer and place of employment; signature of appellant.

⁴ Rule 901.3 of the Board specifies that notice may be lodged "with the Board, with the Administrator or one of his deputies, or with an employee of another state or federal agency or with an employee of the Unemployment Insurance Commission of Canada charged with the duty of accepting claims . . ."

⁵ When there is a question whether the appeal has been filed within the ten-day period, the matter is referred to the Board's Examiner and to the Board members. If it is determined that the filing was tardy, a mimeographed decision is mailed to all interested parties advising them of this disposition.

⁶ OHIO GEN. CODE § 1346-4.

⁷ *Id.* § 1346-3.

conduct hearings and gather testimony for the Board. The Board itself consists of three members, appointed for six-year terms by the Governor with the advice and consent of the Senate. Not more than two of the members may be of the same political party, and not more than one may be a person classified as either the employer's or the employee's representative.⁸ The Act apparently contemplates, and in operation has achieved in fact, a completely autonomous Board of Review, separate and distinct from the BUC save that it has access to all Bureau records necessary for the effectuation of its official duties.

CLAIMS ADMINISTRATION IN THE BOARD OF REVIEW: DESCRIPTION

Operations before the Referee Hearing

Regardless of the form employed, all notices of appeal are directed to the office of the Secretary of the Board of Review. That office maintains a record of all such notices showing the claimant's name, social security number and the issue involved in each appeal filed during the day. This record, together with the appeal form, is sent to the Benefits Department of the Bureau of Unemployment Compensation where a stop order is issued to suspend payments on the claim, and the folder containing the material relating to each claim on appeal is pulled from the file.⁹ These claim folders and their contents are then dispatched to the Board of Review.

The Board of Review secretarial staff makes the initial preparations for the hearing by assigning an appeals docket number and making an index card for each case. Each appeal is given such a number when the claim folder for that appeal is received from the Benefits Department. Because employees' representatives sometimes file a blanket appeal for all employees even though individual employees have not filed a claim for benefits, the numbering of the appeal is deferred until this time so as to be certain that the appeal has been taken in a case where a claim has been filed. The appeal docket number is written directly on the claim folder where it serves as a reference while the case is before the Board of Review and as a record of the appeal when the folder is returned to the Benefits Department. For each appeal the clerical staff also prepares an index card upon which the progress of the case is posted at each stage of its administration. By referring to this card it is possible to ascertain the status of each case. During these operations, the Board Secretary notifies all persons to whom notice of the decision of the Administrator has been given that

⁸ *Ibid.*

⁹ The file folder contains: copy of the original claim; determination form; application for reconsideration; notice of decision of the Adjustment Unit.

an appeal has been taken.¹⁰

To assign the case for hearing, the Board's Secretary determines the city where the hearing is to be held, usually allocating it to the residence of the claimant. The number of appeals from Cleveland and Cincinnati is such that these claim folders are collected and sent to referees permanently assigned to these cities. Appeals involving the same employer are also bundled together so that they may be heard at the same time. The claim folders for the cases are filed according to the city of hearing and a tentative assignment sheet is prepared showing the name of the town, the date of the hearing, and the referee. Arrangements are then made with the local authorities for space in which to conduct the hearing and, when confirmation is received, a final assignment sheet is made which lists the week's hearings for each referee. This sheet contains the name of the town, the names of the parties, and the time and place of the hearing. The claim folders for the assigned cases are given to the respective referees and remain with them until a decision is rendered.

The final step before the hearing is to notify all interested parties. Board of Review Rule 903 requires that notice be given at least seven days before the hearing, but as a matter of practice the notices, on Form UCO-903,¹¹ are mailed eight or ten days in advance. The Form is sent by first class mail and a record kept of all persons notified and the date of mailing.

The Referee Hearing

At the time and place of the hearing, testimony is given under oath but no stenographic record is kept unless ordered by the referee or permitted by him after a request is made by a party. Where no record is kept the referee makes memorandum notes from which he later dictates his decision. The referee has a broad discretion in the conduct of the hearing. He is not bound by the common-law or statutory rules of evidence nor by technical rules of procedure. Where a party is not represented by counsel, Board of Review Rule 905.2 requires the referee to "advise said party as to his rights, aid him in examining and cross-examining witnesses, and give him every assistance compatible with the impartial discharge of his official duties as such Referee." The referee's hearing is not limited to the issues decided by the Administrator but

¹⁰ Notice of the appeal is given on form UCO-902, "Notice That: an Appeal Has Been Filed From Decision of Administrator," which carries: appeal docket no.; name, address, SS number of claimant; name of party filing the appeal; issues on appeal.

¹¹ UCO-903, "Notice of Hearing on Appeal From Administrator," carries: appeals docket number; name, address, SS number of claimant; name of appellant; date, hour and place of hearing, issues on appeal; rights of parties to an appeal.

may develop any and all issues brought out by the appeal. For this reason, the hearing is usually said to be *de novo*. Actually, it is the first "hearing" of the case because the Administrator's decision is based on facts gathered *ex parte* and is not considered a "hearing" in the legal sense nor is it a "fair hearing" under Section 303 (a) (3) of the amended Social Security Act. If one or all of the parties fail to attend the hearing the referee may decide the appeal on the record, together with the testimony of the parties present, if any.

Operations After the Referee Hearing

During the days of the week when he is not hearing new cases, the referee dictates the decisions of the cases heard the preceding week. These decisions are typed, the referee makes corrections on the typed copy, and a mimeograph stencil is cut from the corrected copy. The stencils are sent to the mimeographing room where about fifty copies are made of each decision. These copies are sent to the Secretary of the Board of Review who mails copies to the parties to the appeal. Other copies are sent to the members of the Board of Review, to the referee decision file, the Chief Referee, the Department of Research and Statistics and to the referees. Various public and private interests also receive copies of the referee decisions. These include: the Social Security Board, Regional Federal Security Board, members of the Advisory Council of the Unemployment Compensation Commission, a number of employer associations and labor unions, publishers of loose-leaf services, Ohio State University, tax consultants, and others.

Section 1346-4 of the Ohio General Code provides that the referee's decision shall be deemed the final decision of the Board unless an interested party applies for leave to institute a further appeal or the Board acts on its own motion. The statute specifies that such action must be taken within ten days after the referee's decision is mailed to the last known addresses of the parties, and to facilitate the recording process the date on which the decision is assumed to have been mailed is the date which appears on the face of the decision. If no action is taken within the ten-day period, the case is considered closed and the clerical staff completes the file on it. The records of the appeal are taken from the claimant's folder and placed in a new file folder bearing the appeal docket number. This new folder remains in the Board of Review files as the record of the case. The claimant's folder and its original contents are returned to the Benefits Department of the Bureau.

When a claim is removed or transferred to the Board on its own motion all interested parties are notified by Form UCO-935A¹²

¹² UCO-935A, "Notice of Removal Or Transfer of Claim to Board of Review On Its Own Motion," carries: appeal docket number, name, address and SS number of claimant; issues on appeal.

and when a hearing date is set, the parties receive notice on Form UCO-935B.¹³ This procedure, seldom used, has in recent years been confined almost entirely to cases where there was a patent error in a referee's decision but the referee could not be contacted to vacate it. During the ten-day appeal period any interested party may file Form UCO-931¹⁴ or any other written application for leave to institute further appeal. When such an application is filed, all parties are notified by Form UCO-932.¹⁵ Each of the three Board members makes a separate study of the record of the case and the referee's decision and the Board then decides whether to allow or disallow further appeal. If there is a disallowance, interested parties are notified on UCO Form 933¹⁶ and they then have thirty days from the date of mailing in which to appeal to the common pleas court.¹⁷ If the Board decides to allow further appeal, all interested parties receive Form UCO-934A¹⁸ notifying them of the allowance of the application and, when the hearing date has been set, Form UCO-934B¹⁹ is used as notification of the date, time and place.

Hearing by the Board of Review

The Board has several procedural methods open to it in conducting the hearing. It may sit as a three-member board and hear oral testimony and argument, it may limit the parties to written argument, or it may assign the case to a referee. Because of limitations of time and space, the Board hears oral testimony and argument only on the most important cases. The usual procedure is to assign the case for hearing before a referee who did not hear the original appeal from the Administrator's ruling. A complete stenographic transcript is made and the Board bases its decision

¹³ UCO-935B, "Notice of Hearing on Claim Removed Or Transferred to Board of Review on Own Motion," carries: appeal docket number, name, address and SS number of claimant; date, hour and place of hearing; issues on appeal; rights of parties to appeal.

¹⁴ UCO-931, "Application For Leave to Institute Further Appeal," carries the usual appeals docket number; name, address and SS number of claimant; reasons for desiring further appeal; date of referee hearing.

¹⁵ UCO-932, "Notice That an Application Has Been Filed to Institute Further Appeal," carries: appeals docket number; name, address and SS number of claimant; name of appellant; relevant rules of the Board.

¹⁶ UCO-933, "Decision," carries: name, address and SS number of claimant; date of referee decision; date of application for further appeal; notice of disallowal.

¹⁷ OHIO GEN. CODE § 1346-3

¹⁸ UCO-934A, "Notice of Allowance of Application for Leave to Institute Further Appeal," carries: appeal docket number; name, address and SS number of claimant; name of applicant; issues on appeal.

¹⁹ UCO-934B, "Notice of Hearing on Appeal From Decision of Referee," carries: appeal docket number; name, address and SS number of claimant; name of applicant; date, hour and place of hearing; issues on appeal.

upon this and the other records in the case. Board of Review Rule 936 requires that within a reasonable time after the hearing the Board must render a written decision setting forth the reasons therefor. It further stipulates that the decision shall be signed by the concurring members and, in the event the decision is not unanimous, permits the dissenting member to file a written dissent. A mimeographed copy of the Board decision is prepared and mailed to all interested parties in the same manner as was the decision of the original referee.

As soon as the Board decision is mailed, the claimant's folder and contents are returned to the Benefits Department and the remaining material transferred to a Board of Review folder for filing. Closing the case in the Board of Review is especially important in those cases where the Board affirms a referee decision allowing benefits; this results from the fact that Section 1346-4 requires the benefits to be paid notwithstanding further appeal and in order to pay the benefits the claimant's records must be available for processing by the Benefits Department. The completion of the files closes the case at the administrative level although any interested party has thirty days after the date of mailing the decision in which to take an appeal to the common pleas court. If the appellant is an employee he may bring the appeal in the county where he is resident or was last employed. The employer may file his appeal in the county of his residence or principal place of business. If it is the Administrator who is appealing he may file the proceeding in the county of the employee's residence or last place of employment or in the county where the claimant's most recent base-period employer has his principal place of business.²⁰

CLAIMS ADMINISTRATION IN THE BOARD OF REVIEW: EVALUATION

The very existence of the Ohio Unemployment Compensation Act attests that the unemployed worker is in need of compensation which, if eligibility requirements are satisfied, should be paid him with all possible dispatch. This means that when a determination of the Administrator is appealed to the Board of Review, two pressures are brought to bear upon each succeeding operation; one is the necessity for affording all interested parties a fair hearing, while the other is the equally urgent necessity of speedy determination. It is patently apparent that these two pressures often drive in diametrically opposing directions. Yet both must be accommodated if claims administration is to be satisfactory in the Board of Review. Inasmuch as there has been little judicial particularization of the fair hearing principle as articulated in the

²⁰ OHIO GEN. CODE § 1346-4

Act, objective evaluation of this factor required observation of the actual operations into which, as previously developed, the process of Board review divides itself. Employing as a schedule of observational guides elements of fair hearing commonly accepted in similar branches of administrative law, the researcher evaluated the hearing notice provisions, some 125 referee hearings, 75 by personal attendance and another 50 by study of the record, and the subsequent decisional process. This direct personal contact with Board of Review operations provided at the same time a basis for evaluation of the correlative factor of speedy determination of claims. Following the same divisional categories into which the administrative review process falls, actual elapsed time for each major operation was appraised in the light of its functional character and its inherent temporal requirements. The following pages reveal the judgments formulated on the basis of these criteria.

Operations Before the Referee Hearing

Pre-hearing operations require, on the average, 27 days: 7 days for receipt of claimant's file folder from the Bureau of Unemployment Compensation; 10 days for notification of the filing of the appeal, scheduling of the hearing and preparation of the case; and 10 days waiting period before the actual hearing. The period of greatest variation is the initial time lag between the Board's request for the claimant's file folder from the Bureau and its receipt in the Secretary's office. Depending upon the claim load, this period may vary from several days to several weeks. A considerable bottleneck results, since the Board Secretary can do nothing on the appeal until this file is received. The solution would appear to lie in the addition of further personnel in the Bureau, if greater efficiency is impossible of attainment with existing personnel.

The right to receive notice of a Board hearing concerning a claim for compensation is recognized by both statute²¹ and Board regulation.²² These provisions are expressions of the general principle requiring notice to persons whose interests may be affected by the ruling of an administrative body in the exercise of adjudicative functions. The form of notice, UCO Form 903, contains the date and place of hearing and a brief description of the issues on appeal. On these matters, the form appears to be entirely adequate. In also serving as one, and in many instances the primary, source of information concerning the right of representation and the compulsory process available to the parties, the form is probably less effective. The information is printed on the back of the form in language of reasonably sufficient clarity and the front carries a

²¹ OHIO GEN. CODE § 1346-4.

²² Rule No. 903, Ohio Unemployment Compensation Board of Review.

reference to the important material on the back; yet almost one third of the claimants had not read or did not understand the instructions. However, this disadvantage is considerably offset by the referee's duty and practice of aiding unrepresented parties and allowing the hearings to be rescheduled if important evidence can be obtained later.

The Ohio Unemployment Compensation Act requires that all interested parties be notified of a referee's hearing on a claim for benefits.²³ Section 1345 - 1 (g) defines the term as ". . . the claimant, his most recent employer, any employer in such claimant's base period and the administrator" and, in fact, all these persons are notified of the hearing by UCO Form 903. Since no other persons have a direct interest, the procedure seems to give notice to all proper parties.

In the early days of the Board, the notice of hearing was sent by registered mail with return receipt requested but in recent times it has been the practice to send the notices by first-class mail. The reason is, of course, financial. However, where it is shown that an interested party, without fault on his part, did not receive notice of the hearing, the hearing is rescheduled and the party is allowed to present his case. Considering this practice, the fact that the hearing notice is the final communication of a series, and balancing the cost of administration against the amounts involved, the use of first-class mail has not diminished the efficiency of notice or worked any substantial injustice.

Basically, the time lapse between the notice of hearing and the hearing itself represents an attempt to provide the parties with adequate time for preparation and yet prevent undue delay in a system predicated upon the need for prompt compensation for eligible claimants. While the Ohio statute does not specify the number of days that must separate notice and hearing, Board of Review rule 903 requires the notice to be mailed "at least seven (7) calendar days before the date thereof" and it is the custom of the Secretary of the Board to mail the notices eight or ten days prior to the hearing date. For the usual case, this time lapse is sufficient but in some cases where a party desires to subpoena witnesses the period is not adequate since a list of these witnesses must be filed with the Secretary of the Board at least five days in advance of the hearing.²⁴

Certainly there is no basis in these circumstances for reduction in the length of the waiting period. Nor, short of an increase in stenographic aid, does the intermediate period immediately preceding this appear to be susceptible to reduction in time consumed

²³ OHIO GEN. CODE § 1346-4.

²⁴ Rule No. 965, Ohio Unemployment Compensation Board of Review.

without impairing safeguards to individual rights. The present time for preparing the appeal for referee hearing, notifying interested parties and scheduling the hearing can doubtless be reduced in individual cases but not in the handling of large numbers of appeals.

The Referee Hearing

Faced with the prospect of an administrative hearing, most people would appreciate the assistance of an expert and this right to representation is given by the Ohio Unemployment Compensation Act.²⁵ In some hearings none of the parties are represented but it is not uncommon to find labor union representatives, actuarial accountants, attorneys and representatives from employers' organizations acting on behalf of the persons involved. The actuarial accountant firms are the most common representatives since they generally represent a number of large employers. As might be expected in a hearing involving unemployment compensation benefits, most claimants are not represented either because of inability to hire an attorney, an unwillingness to seek legal aid, no available union representative, or some other reason. Where any party is not represented, Board rule 905.2 directs the referee to advise the party of his rights, aid him in examination and cross-examination of witnesses and "give him every assistance compatible with the impartial discharge of the Referee's official duties." In actual practice, most of the referees observed did just that. In clear, everyday language, they tried to explain the issues involved and the functions of the various people present at the hearing; the entire direct and cross-examination for the unrepresented party was often done by the referee, who explained involved or technically phrased questions. During the entire period of observation, there were few, if any parties who, because of a lack of representation, were denied the opportunity to present and develop their cases.

Another device available to the parties is the right to use the Board's power of compulsory process to force the attendance of witnesses, the production of records, and so on. The Board of Review is specifically given the power by statute²⁶ and the Board procedure makes subpoenas available to all parties if a request is made to the Board Secretary five days before the hearing.²⁷ Theoretically, compulsory process is a valuable element of a hearing process but it is used in comparatively few referee hearings. This is the result of a number of factors, some of which are the following: ignorance of its possibilities, use of other evidence that might be

²⁵ OHIO GEN. CODE § 1346-4.

²⁶ OHIO GEN. CODE §§ 1346-3, 1345-24.

²⁷ Rule No. 965, Ohio Unemployment Compensation Board of Review.

inadmissible in a court hearing, and the failure of unrepresented parties to understand the issues to be heard and the evidence helpful to their case. In the light of the difference between the referee hearing and a court trial, encouraging greater use of the subpoena might be difficult to justify.

Two other aids, the oath and the stenographic record, may be utilized by the parties. Traditionally, judicial testimony has been under oath and all testimony before the Board of Review referee is so taken. In emphasizing the solemnity of the hearing and subjecting the witnesses to penalties for false statements, the oath is probably valuable. Unlike the oath, the stenographic record is not a mandatory part of the hearing. It is available, at the cost of the requesting party, only when approved by the referee save in rare instances where the referee may order an official transcript made.²⁸ The elimination of the requirement of a transcript at this level is a common phenomenon of administrative law and there is no indication that the unemployment compensation hearings require a unique treatment.

The referee's explanatory statement of the issues raised by the appeal and the parties present is a stock method of opening a hearing and is used very effectively by some referees. Given in a conversational tone and in ordinary language, it puts the parties at ease and gives them some insight into the events to follow. In most of the hearings observed, the explanation of the issues was fairly clear but the claimant was frequently left ignorant of the role of the actuarial accountant if one appeared as employer representative. There is a good chance that an uninformed claimant may consider these men as Board personnel rather than in the nature of adversaries since they often do not take the oath at a particular hearing and show a general familiarity with unemployment law and procedure. Because of this, the referee should make clear the status of the employer representatives if the claimant is not aware of it.

Part of the warp and woof of the Anglo-American judicial fabric is the right to present one's case and to cross-examine adverse witnesses. This practice has been carried over into many administrative tribunals, including the Unemployment Compensation Board of Review. While the usual time allotted to a hearing is thirty minutes, this is only for scheduling purposes and the parties are not told of, nor bound by, any time limitation. In all the hearings observed, the parties were allowed to state their cases and to present the evidence they felt to be necessary, limited only by questions of relevancy. It was apparent in most instances that the referees were giving witnesses and parties an opportunity

²⁸ Rule No. 905.1, Ohio Unemployment Compensation Board of Review.

to tell their full stories and the hearings were always closed by asking if anyone had anything else to say about the case. Cross-examination was extensive and seldom curbed except where it was obviously being used only to berate the person examined. Since in most cases the referee hearing is the only opportunity for anything except an *ex parte* determination of the parties' rights, the right fully to state a case and to cross-examine adverse evidence is extremely important; the conduct of the hearings shows an appreciation of its importance.

Like many other informal hearings, the referee hearing is not punctuated by contests over the admissibility of evidence. The referee is not bound by common-law or statutory rules of evidence and exercises a wide discretion in allowing parties and witnesses to testify. In all the hearings noted, the admissibility question was never raised, yet evidence was considered that might well have been excluded by the hearsay or other formal rules of evidence had the proceeding been a jury trial. The result is that the referee hearing is a smooth-running investigation with no bickering over procedure and with all evidence presented that might have a bearing upon the outcome. This latter is particularly essential since the hearing is not confined to the issues in the original determination by the Administrator but is a hearing *de novo* on any and all issues that may arise.

Two definitive conclusions emerge from extended consideration of the hearing process. The first is that the parties to a referee hearing are accorded a "fair hearing" within the meaning of this concept in modern administrative law. Certain available rights such as those of employee representation and use of compulsory process, might be exercised to a greater extent than at present, but the failure to utilize these aspects of the procedure can in no way be laid at the door of the Board. The only point open to question is the seemingly inadequate identification of actuarial accountants appearing as employers' representatives; the referee should take greater care to explain to claimants the status of such persons in that small portion of the cases where they may be mistaken by claimants as Board personnel. The second definitive conclusion is that, while the hearing is fair as now conducted, it could not properly be expedited. The time allotted is one day, clearly a minimum in the light of the nature of the hearing, the requirements for thorough consideration, and the duties falling upon the referee.

Operations After the Referee Hearing

The process of organizing the testimony and evidence gathered at the hearing, making a legal analysis of this material and, finally, drafting a decision based upon it is not an easy task. The

qualifications for the position of referee have varied from time to time but in general the individual must have been admitted to the Bar of Ohio and have had a specified number of years' experience either in general practice or in labor and industrial relations. Having met these qualifications, the applicant is given oral and written examinations; a civil service appointment list is made from the grades established by the examinations and the prior experience in allied fields. Appointments are made from this list in the same manner as to other civil service positions. The referees' compensation, set by the Unemployment Compensation Act,²⁹ ranges from a minimum of \$5,000 to a maximum of \$6,000 per year. Over the years, this method of selecting the referees has resulted in the acquisition of a hearing staff that seems well qualified for its job. The men are at once cognizant of the legal phases of the hearing and familiar with the practical problems of the industrial world out of which the cases arise. Variations exist, of course, in the abilities and experience of the referees but there was no observed instance where an overall lack of background or training appeared.

Like any human being doing an adjudicative job, the referee is subject to the influence of past experience and environment, yet there is a surprising lack of bias evidenced in either their conduct of the hearings or in their written decisions. The files show no significant pattern of decisional trend toward claimant or employer and there is little feeling about the hearing rooms that certain referees are "claimant-minded" or "employer-minded." In the event that a referee does have a personal interest in a case, he may be challenged and, on the decision of the Board of Review, disqualified to conduct the hearing.³⁰

In addition to the referee's personal qualities, other organizational factors may affect the decision that is rendered. Turning first to the burden of proof, it is important to note the nature of the referee hearing. Although commonly called a trial *de novo* or an administrative review, it is a far cry from anything resembling the legal error proceeding or the chancery trial *de novo*. There are no pleadings, no issues have been framed; it is really the *initial* hearing before a person charged with the duty of finding the facts. In light of this, and the desire to retain the informality of an administrative hearing, it is not surprising to find the referee hearing practically devoid of a burden of proof, at least in the formal legal sense. The Ohio Supreme Court has said that at the judicial level: "The burden of proof to establish a claimant's rights to benefits under the unemployment compensation law rests upon

²⁹ OHIO GEN. CODE § 1346-3.

³⁰ Rule No. 904, Ohio Unemployment Compensation Board of Review.

the claimant"³¹ and, in the interests of orderly procedure, the claimant is usually the first to present his story at the hearing. In this respect, then, and to the extent that he must show eligibility for the compensation claimed, his evidence must outweigh the testimony tending to show ineligibility; but the referees are neither instructed to approach the hearing with a concept of burden of proof nor are the written decisions based upon it.

Closely allied to the matter of burden of proof is the question of the effect upon the hearing of the official records of the Bureau of Unemployment Compensation. The papers relevant to the claimant's employment record, his claim for compensation and the administrator's determination are the only background materials available to the referee before the hearing. However, the referee makes no attempt to pre-judge the case from the records of the Bureau and he usually does not study them before the hearing. The issues decided by the Administrator may be used as a basis for the initial discussion at the hearing but there is no assumption that the facts or decision evidenced by the records are *prima facie* correct and that therefore the parties are subject to a heavy burden of rebuttal. The Bureau records are regarded as evidence in the case but they are not presumed to be correct; they are not given any more weight than other evidence and they are as subject to cross-examination and rebuttal as is any other evidence presented. This attitude toward Bureau evidence seems fair to all parties involved and is in keeping with the theory and practice of maintaining the Board of Review as an autonomous body, separate and distinct from the Bureau of Unemployment Compensation.

The final step in the decisional process is the drafting and mailing of the decision. Part of the effectiveness of this step depends upon the material available to the referee to aid him in drafting his findings into written form. The usefulness of the facts gathered at the hearing will be impaired unless the referee can render a decision upon them in the light of other cases decided by referees, the Board of Review, and the courts. To help him keep abreast of current developments, the referee may refer to a docket file of his own decisions, loose-leaf services, the Federal Interpretation Service, and mimeographed digests of Ohio court cases involving the unemployment compensation law. All of these are readily available while the referee is drafting the findings. It is important that the written decision cover all the issues raised at the hearing and that the findings of fact, the reasons for the decision and, finally, the decision itself be set out in a clear, concise manner. The referees are encouraged to model their decisions

³¹ *Kontner v. Board of Review*, 148 Ohio St. 614, 622, 76 N.E. 611, 616 (1947).

after a format designed to accomplish these ends. This format is changed and improved from time to time, and although it is not as stylized as a legal form book it does serve to give a certain uniformity to the organization of the various referees' decisions. Writing the findings in the form now used makes them more readily understandable to the persons receiving them and thereby gives substance to the provision requiring that mimeographed copies of the decision be mailed to all interested parties. That requirement and the use of first-class mail appear to constitute an adequate method of notification.

Operations after hearing normally require 17 days: 10 days for drafting, typing, correcting, and approving the decision; and 7 days for the preparation and mailing of the mimeographed copies. The decisional process itself is not one to be hurried; as the heart of the administrative adjudication in unemployment compensation, the referee's deliberations should have the benefit of the time-spread now accorded them. The time requirements for the other remaining operations, while they are mechanical in nature, are nevertheless relatively inelastic, being subject only to some reduction through addition of more stenographic personnel. From this it may be seen that in the post-hearing operations, as in earlier operations, opportunities for more speedy resolution of claims appeals are quite limited if adequate safeguard of the rights of interested parties is to be maintained. Otherwise stated, the opposing pressures of fair hearing and speedy determination are quite satisfactorily accommodated in current claims administration in the Board of Review.