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ATTORNEY GENERAL OPINION NO. 79- 288

Dr. James A. McCain
Secretary of Human Resources
Department of Human Resources
401 Topeka Avenue
Topeka, Kansas 66603

Re: Labor and Industries--Employment Security
Law--Representation of Parties--Conduct of
Hearings

Synopsis: K.A.R. 48-3-2 permits individual claimants to appear for themselves or be represented by either an attorney at law or by a duly authorized agent in hearings held pursuant to the Kansas Employment Security Law, K.S.A. 44-701 et seq., as amended. Corporations or partnerships may be represented in such hearings by a corporate officer or partner, respectively, by an attorney at law or by a duly authorized agent. The conduct of a hearing is a matter left by the regulations to the discretion of the hearing officer or board before whom the hearing is held.

* * *

Dear Dr. McCain:

You request our opinion as to which persons may properly represent parties in appeals made to the Board of Review pursuant to K.A.R. 48-3-2 and as to the permissible parameters of conduct in hearings before the Board.

K.S.A. 1978 Supp. 44-709(g) provides in pertinent part:

"The manner in which disputed claims shall be presented . . . and the conduct of hearings and appeals shall be in accordance with rules of procedure prescribed by the board for determining the rights of the parties, whether or not such rules conform to common law or statutory rules of evidence and other technical rules of procedure."

The Board, pursuant to the authority set out in K.S.A. 1978 Supp. 44-709(a), has promulgated a number of regulations which impact upon the questions raised in your letter.

The question regarding the proper representation of parties is addressed by K.A.R. 48-3-2. It provides in part:

"Any individual may appear for himself in any proceeding before a referee, special examiner, or the board of review. Any partnership may be represented by an officer or a duly authorized representative

"(a) Representation by attorney. Any party may be represented by an attorney-at-law who has been admitted to practice before the highest court of any state or territory of the United States, or by any duly authorized agent."

Note that subsection (a) allows "any party . . . [to] be represented by an attorney at law . . . or by any duly authorized agent." The regulation would thus authorize an individual to "appear for himself" or in the alternative to "be represented by an attorney-at-law" or "by any duly authorized agent." The same flexibility is afforded to partnerships and corporate parties, who may represent themselves through a partner or a corporate officer or who may appear through a "duly authorized representative." Corporate parties and partnerships also may be represented, as set out in subsection (a), "by an attorney-at-law . . . or by any duly authorized agent."

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In our opinion, the terms "duly authorized representative" and "duly authorized agent" as used in this context are indistinguishable. Both of the terms refer to an individual designated by a party to act on the party's behalf and thus to an individual who is "duly authorized" to act in that capacity. As a practical matter, the board may require such evidence as it deems necessary by affidavit or otherwise in order to make the determination that an agent or representative is, in fact, "duly authorized" to represent the claimant or party.

You also inquire as to the range of permissible conduct for parties in hearings authorized by the Act. The manner in which hearings are to be conducted is set out in K.A.R. 48-1-4. It provides, in part:

"All hearings shall be conducted informally and in such manner as to ascertain all the facts and the full rights of the parties. The claimant and any other party to an appeal before a referee may present such evidence as may be pertinent to the issues involved. The referee shall receive any evidence logically tending to prove or disprove a given fact in issue, including hearsay evidence and irrespective of common law rules of evidence. The referee, when the evidence is unnecessarily cumulative in effect or where the evidence neither proves nor disproves relevant facts in issue, may, on objection of appellant, claimant, or interested party, or on his own motion, exclude or prohibit any such evidence from being received. Where a party appears in person, the referee may examine such party and his witness, if any, to such extent as he deems necessary. During the hearing of any appeal, the referee may, with or without notice to any of the parties, take such additional evidence as he deems necessary."

Note also subsection (b) of K.A.R. 48-3-2:

"(b) Standards of conduct. A referee, special examiner, or the board of review may refuse to allow any person to represent others in any proceeding who is found guilty of unethical conduct, or who intentionally and repeatedly fails to observe the provisions of the Kansas employment security law, or the regulations and instructions of a referee, special examiner, or board of review."

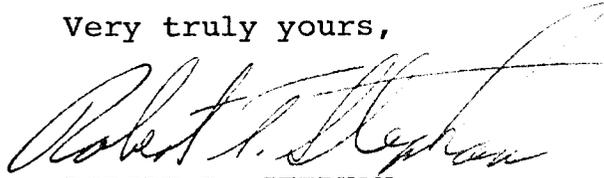
The tenor that such hearings will take is thus a matter left almost solely to the discretion of the individual or the board before whom the hearing is held. However, the regulations clearly reflect the board's intention to avoid the strict and formalized procedures which typify judicial proceedings by requiring that such hearings "be conducted informally and in such manner as to ascertain all the facts and the full rights of the parties." (K.A.R. 48-1-4.) The referee, examiner or the board, as the case may be, may then, as a matter of discretion, limit or even totally disallow parties to cross-examine witnesses. The need for, or propriety of, cross-examination of witnesses and other such adversary techniques may vary with the facts of each case. For this reason, the hearing officers are given the discretion to set out the permissible parameters of conduct as well as the power to "refuse to allow any person to represent others in any proceeding who is found guilty of unethical conduct, or who intentionally and repeatedly fails to observe the . . . instructions of a referee, special examiner, or board of review." [K.A.R. 48-3-2(b)].

In sum, the statutes and regulations authorize both individual and corporate parties to represent themselves in hearings conducted in administering the Employment Security Law. Alternatively, the regulations also authorize such parties to be represented in hearings by an attorney or by a "duly authorized" agent or representative. The conduct of such parties or their representatives in such hearings is subject to the control of the hearing officer or board before whom the hearing is held.

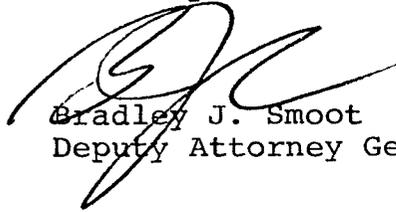
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The hearing officer or board is vested with the authority to control the demeanor of the hearing by K.A.R. 48-1-4 and K.A.R. 48-3-2 and he, she, or it may set out whatever limitations are deemed appropriate under the circumstances in the application of the discretion granted under the statutes and regulations.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Bradley J. Smoot
Deputy Attorney General

RTS:BJS:gk