



DIVISION ONE
FILED: 02/13/17
AMY M. WOOD,
CLERK
BY: JT

IN THE
COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

IN THE MATTER OF:)
)
ARIZONA DEPARTMENT OF) ADMINISTRATIVE ORDER
ECONOMIC SECURITY'S FAILURE TO) 2017-01
TRANSMIT TO THE ARIZONA COURT)
OF APPEALS APPLICATIONS FOR)
APPEAL FILED WITH THE ARIZONA)
DEPARTMENT OF ECONOMIC SECURITY)
BOARD)
_____)

¶1 Pursuant to Arizona Revised Statutes (A.R.S.) section 12-120.04, the Chief Judge has the authority to exercise administrative supervision over the Court, including matters relating to the timely processing of appeals for which the Court has jurisdiction, such as the applications for appeal discussed herein. As described below, the Arizona Department of Economic Security (ADES) has a process to administratively resolve disputes arising out of unemployment compensation, food stamp and cash assistance programs. A party may challenge a final administrative decision by filing an application for appeal with ADES. When that happens, ADES is required by statute to transmit the application for appeal and related documents to this Court. Information recently provided to this Court indicates that ADES has failed to transmit to this Court as many as 140 such appeals, some of which have been pending with ADES for more than two years. Given this information, this Order imposes specific deadlines for ADES to transmit to this Court pending and future applications for appeal and related documents.

¶2 ADES administers Arizona's unemployment compensation, food stamp and cash assistance programs under both Arizona and federal law. *See* A.R.S. §§ 41-1953(E)(1); 23-601 to -799; Ariz. Admin. Code (A.A.C.) §§ R6-12-101 to -1404; R6-14-111. Although the policies underlying these three programs differ, the Legislature's statutory "Declaration of Policy" governing unemployment compensation is instructive:

As a guide to the interpretation and application of [Chapter 4, Economic Security], the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

A.R.S. § 23-601.

¶3 Consistent with this policy, ADES has implemented a multi-stage process to administratively resolve disputes arising from these programs, including disputes regarding whether an individual is eligible to receive unemployment compensation, food stamps or cash assistance. *See, e.g.,* 7 C.F.R. § 273.15; A.R.S. §§ 23-671, -672, -771 *et seq.*;

A.A.C. §§ R6-3-1803, *et seq.*; R6-12-1001 to -1015. The last administrative stage of this process, which typically occurs after an evidentiary hearing, is review and decision by the ADES appeals board.

¶4 A party wishing to challenge an ADES appeals board decision may seek review by this Court by filing an application for appeal “with the [ADES] clerk of the appeals board.” A.R.S. § 41-1993. “On the filing of an application for appeal, the clerk of the appeals board *shall* transmit to” this Court “the application for appeal, the decisions issued by the appeals board and all petitions for review and responses of the appeals board.” *Id.* (emphasis added). The application for appeal and all related documents (including the decisions issued by the ADES appeals board, petitions for review, responses of the ADES appeals board, exhibits received and any other filings received by ADES in the case) is referred to in this Order as “the ADES Record.” ADES is also obligated to pay for and provide to the Court a transcript from any evidentiary hearing held before ADES. A.R.S. § 23-674(A) (“If a party files an application for appeal to the court of appeals pursuant to section 41-1993 and the hearing has not yet been transcribed, the hearing shall be transcribed at [ADES’] expense.”).

¶5 After ADES sends the application for appeal to this Court, the Clerk of the Court opens a case with the Court and promptly assigns the case to a three-judge panel for resolution. The panel then considers the issues raised in the application for appeal, in conjunction with the ADES Record, and either grants or denies the application. *See* A.R.S. § 41-1993(B). If the application for appeal is denied, the decision of the ADES appeals board becomes final and no further appeal can be taken. *Id.* If the application for appeal

is granted, the appeal is treated like an appeal in a civil case pursuant to “the rules for appeals in civil actions.” *Id.*

¶6 Because an application for appeal from the ADES appeals board is filed with ADES, the Court is unaware of the application for appeal until such time as ADES notifies the Court, as ADES is required to do by statute. In the past decade, the annual number of applications for appeal received by the Court has fluctuated significantly. ADES provided the Court less than 140 applications for appeal in each of the four fiscal years ending June 30, 2009 (ranging from a low of 77 to a high of 137). *See* <http://www.azcourts.gov/statistics>. In FY 2010, the number more than doubled to 299. *Id.* In FY 2011 and FY 2012, the number spiked to nearly 486 and 430 respectively. *Id.* In FY 2013, the Court received 292 applications for appeal from ADES, a significant decline from the two prior years. *Id.*

¶7 Thereafter, the number of applications for appeal transmitted by ADES continued to decline, resulting in the Court receiving 99 applications for appeal in both FY 2014 and FY 2015. *Id.* In FY 2016, the Court received 43 applications for appeal from ADES. This downward trend appeared to continue dramatically during the first half of FY 2017, where ADES provided the Court two applications for appeal on December 29, 2016. One of those applications for appeal, however, had been filed with ADES on February 24, 2016, more than 300 days before ADES transmitted it the Court.

¶8 By January 20, 2017, ADES had transmitted to the Court a total of 19 applications for appeal in FY 2017. Four were transmitted by ADES to the Court within 60 days after they were filed with ADES; three were transmitted by ADES within 200

days after they were filed with ADES and two were transmitted to the Court somewhat less than one year (309 days and 342 days) after they were filed with ADES. For the remaining 10 applications for appeal, three had been pending with ADES for more than 18 months before they were transmitted by ADES to the Court. The other seven had been pending with ADES since 2014 (ranging from 807 days to 1,039 days), yet they were transmitted by ADES to the Court in 2017.

¶9 On January 24, 2017, ADES disclosed to the Court that ADES had not yet transmitted 140 additional applications for appeal. On January 30, 2017, ADES provided a list of applications for appeal that had been filed with ADES but not transmitted to the Court listing 144 such cases. Of those applications for appeal, 60 had been pending with ADES for more than a year and six had been pending with ADES since 2014. A relatively small number of these have now been transmitted to the Court, and the remaining applications for appeal (as identified by ADES) that remain pending with ADES but have not yet been transmitted to the Court are listed in Exhibit A.

¶10 Regardless of the reasons why ADES did not transmit the applications for appeal to this Court as mandated by A.R.S. § 41-1993, one of the Court's immediate concerns is for ADES to transmit these applications for appeal to the Court as soon as possible to permit the parties to have their applications for appeal resolved by the Court. Additionally, every litigant who filed with ADES an application for appeal that was not properly transmitted to the Court should be made aware of the status of the application for appeal. Thus, upon consideration of the foregoing,

¶11 **IT IS ORDERED** that for every application for appeal filed with ADES as of the date of this Order that has not been transmitted to this Court (including appeals listed in Exhibit A), ADES shall transmit the ADES Record to the Court within **20** days of the date of this Order. If a transcript has been prepared, that transcript shall be transmitted with the ADES Record. If a transcript has not been prepared, then the ADES Record shall be transmitted within **20** days of the date of this Order, with the transcript to be provided as soon as reasonably possible, but no later than **40** days from the date of this Order.

¶12 **IT IS FURTHER ORDERED** that if ADES is uncertain whether a particular ADES Record or transcript for an application for an appeal filed with ADES as of the date of this Order has been transmitted to this Court, ADES shall refer to the Court's website, (<http://apps.supremecourt.az.gov/aacc/1ca/1cacase.htm>), which lists the public docket information for all pending cases, including applications for appeal transmitted by ADES to this Court, or contact the Clerk of the Court for confirmation.

¶13 **IT IS FURTHER ORDERED** that with regard to any ADES Record or transcript that is not timely transmitted by ADES to the Court within the time periods listed above, or if ADES fails to comply with any of the other requirements set forth in this Order, the Court may place the matter on the Court's Order to Show Cause Calendar so that ADES has an opportunity to show cause, if any exists, why it should not be held in civil contempt and fined and/or sanctioned until such ADES Record or transcript is filed as required by this Order and to otherwise ensure compliance with this Order.

¶14 **IT IS FURTHER ORDERED** that ADES, within **10** days of the date of this Order, shall mail and email (if the relevant email address is known) a copy of this Order to every party involved in each application for appeal listed in Exhibit A. ADES shall then file an affidavit with this Court confirming this mailing/emailing to every party listed in Exhibit A within **15** days of the date of this Order.

¶15 **IT IS FURTHER ORDERED** that, in addition to issuing this Order, the Court may take any such other actions it deems appropriate in the circumstances.

¶16 **IT IS FURTHER ORDERED** that, until further order of the Court, for all applications for appeal filed with ADES after the date of this Order, the ADES Record shall be transmitted to the Court within **30** days of the filing of the application for appeal with ADES. If the transcript has been prepared in that timeframe, it shall be included with the transmittal of the ADES Record. Otherwise, the transcript shall be transmitted to the Court separately, but in any event no later than **40** days after the filing of the ADES Record with this Court.

¶17 **IT IS FURTHER ORDERED** that the Clerk of the Court shall distribute this Order to Mark Brnovich, Arizona Attorney General; Carol A. Salvati, Assistant Attorney General, Arizona Attorney General's Office; Henry Darwin, Interim Director, Arizona Department of Economic Security; and Clerk, Arizona Department of Economic Security Board.

_____/s/_____
Michael J. Brown, Chief Judge
Arizona Court of Appeals, Division One

Exhibit A

Claimant Name	Case #	Pgm	[Recd date]	[Appeal date]
BOFIA, SUZANNE	1434780	UI	10/27/2014	10/27/2014
ATWELL, JOSHUA	1446377	UI	11/10/2014	11/10/2014
TORNBERG, LINDA	1437969	UI	12/9/2014	12/9/2014
GUTIERREZ, JENNIFER	1446375	UI	12/18/2014	12/18/2014
EINSELE, MEGAN	1457209	UI	12/23/2014	12/23/2014
SNODGRASS, MICHAEL	1451284	UI	1/12/2015	1/7/2015
WOLFF, CELESTE	1459414	UI	1/20/2015	1/16/2015
CUNNINGHAM, JORDAN	1451601	UI	3/25/2015	3/25/2015
HUTCHINSON, ANTHONY	1457878	UI	4/7/2015	4/7/2015
MCCOY, CARLO	1469539	UI	4/13/2015	4/9/2015
RIGGS JR., ALEX	1463975	UI	4/30/2015	4/30/2015
SANCHEZ, MANUEL	1470630	UI	5/1/2015	4/28/2015
LAZO, MARCO	1469261	UI	5/28/2015	5/28/2015
COTA, JAZMIN	1475581	UI	6/15/2015	6/15/2015
PATEL, MAMATA	1461500	UI	6/23/2015	6/23/2015
BURGESS, JENNIFER	1462302	UI	6/24/2015	6/22/2015
MORA, MARIA	1472119	UI	6/24/2015	6/8/2015
BURGESS, JENNIFER	1473182	UI	6/24/2015	6/22/2015
CHASE, SEAN	1471326	UI	6/29/2015	6/29/2015
CHASE, SEAN	1471327	UI	6/29/2015	6/29/2015
CHASE, SEAN	1471331	UI	6/29/2015	6/29/2015
HOWARD, CLAUDIA	1476130	UI	7/1/2015	7/1/2015
ANDREWS, MATTHEW	1450213	UI	7/15/2015	7/15/2015
LEON CASTRO, HARVEY	1475177	UI	8/31/2015	8/31/2015
MIDCAP, TERESE	1476856	UI	8/31/2015	8/31/2015
LOPEZ, CARLA	1477682	UI	9/29/2015	9/25/2015
TRAVIS, ANTHONY	1481526	UI	10/19/2015	10/19/2015
CANTRELL, RHONDA	1481918	UI	10/29/2015	10/21/2015
HARDY, MARIE	1484144	UI	11/2/2015	11/2/2015
MARTINEZ, CHARLENE	1484224	UI	11/5/2015	11/5/2015
AUDILETT, TRACI	1491064	UI	11/23/2015	11/23/2015
RECINOS, ILIANA	1485695	UI	12/7/2015	12/7/2015
NAVARRO, RODOLFO	1490245	UI	12/7/2015	12/7/2015
HERNANDEZ, OMAR	1492053	UI	12/14/2015	12/14/2015
RODRIGUEZ, RENEE	1494743	UI	12/14/2015	12/14/2015
DURIO, BOBBIE	1489334	UI	12/16/2015	12/16/2015

Claimant Name	Case #	Pgm	[Recd date]	[Appeal date]
TOISTER, MOSHE	1490050	UI	12/24/2015	12/24/2015
MCCURDY, SHEREE	1487656	UI	12/28/2015	12/28/2015
MCCURDY, SHEREE	1487653	UI	12/29/2015	12/29/2015
PLAISIVAL, EDWITCH	1491788	UI	1/8/2016	1/4/2016
MORA, MARIA	1494278	UI	1/8/2016	1/7/2016
OST, GARY	1487325	UI	1/11/2016	1/11/2016
OST, GARY	1487326	UI	1/11/2016	1/11/2016
JAUREGUI, VERENICE	1492552	UI	1/15/2016	12/30/2015
RUSH, SALLY	1495294	UI	1/19/2016	1/19/2016
MONTOYA MULLEN, LINDA	1494382	UI	1/20/2016	1/19/2016
MONTOYA MULLEN, LINDA	1494385	UI	1/20/2016	1/19/2016
SALAZAR, ABEL	1490174	UI	1/21/2016	1/20/2016
NUTTALL, JEFFEREY	1496624	UI	1/29/2016	1/29/2016
ACEDO, REYNALDO	1490576	UI	2/10/2016	2/10/2016
FRENCH, BARBARA	1496296	UI	2/19/2016	2/19/2016
CLARK, ERATHA	1484118	UI	2/24/2016	2/24/2016
FREUND, JAY	1495434	UI	2/24/2016	2/24/2016
GUZMAN, BERTHA	1491890	UI	2/25/2016	2/25/2016
VALENZUELA, PAULINO	1495287	UI	3/3/2016	3/3/2016
MCCURDY, SHEREE	1487651	UI	3/14/2016	3/14/2016
PERON, TRACY	1499135	UI	3/14/2016	3/14/2016
GILLOTT, DINO	1497401	UI	4/4/2016	4/1/2016
KENNY, KEVIN	1499660	UI	4/7/2016	4/7/2016
PRADO, JOE	1500686	UI	4/28/2016	4/28/2016
SOZA, CATRINA	1504231	UI	5/9/2016	5/9/2016
SOZA, CATRINA	1504243	UI	5/9/2016	5/9/2016
ESPEJO, SELAH	1505450	UI	5/12/2016	5/12/2016
BEEBE, NICK	1507045	UI	5/16/2016	5/12/2016
HODGES, AARON	1498482	UI	5/27/2016	5/27/2016
CORREA, XOCHITL	1493263	UI	6/1/2016	6/1/2016
SALINAS, MA	1489538	UI	6/13/2016	6/13/2016
KISSINGER, LAURA	1500506	UI	6/20/2016	6/20/2016
JIMENEZ, OSCAR	1507925	UI	6/22/2016	6/15/2016
MACAK, ANNE	1507718	UI	6/30/2016	6/22/2016
NEECE, JASON	1499266	UI	7/8/2016	7/8/2016
BOYD, RANDY	1495031	UI	7/11/2016	7/11/2016
GARCIA, LETICIA	1494737	UI	7/25/2016	7/20/2016
GARCIA, LETICIA	1494742	UI	7/25/2016	7/20/2016

Claimant Name	Case #	Pgm	[Recd date]	[Appeal date]
MCCARLEY, FLYNN	1500303	UI	7/29/2016	7/27/2016
WEBB, TARA	1514349	UI	8/8/2016	8/8/2016
WEBB, TARA	1514355	UI	8/8/2016	8/8/2016
GIVENS, MANERVIA	1504922	UI	8/16/2016	8/16/2016
BAKER, JANET	1512544	UI	9/26/2016	9/21/2016
MAU, ROBIN	1512963	UI	9/26/2016	9/19/2016
HEDGES, TIA	1523907	UI	10/17/2016	10/17/2016
JOERGENSEN, SIW REBEKKA	1519527	UI	10/31/2016	10/31/2016
SANCHEZ, ERICA	1530344	UI	11/1/2016	10/14/2016
RENS, DESIREE	1515462	UI	11/8/2016	11/7/2016
RAMIREZ, AMANDA	1530312	UI	11/8/2016	10/31/2016
JACOBSEN, CHERYL	1521082	UI	11/14/2016	11/14/2016
JACOBSEN, CHERYL	1521082	UI	11/14/2016	11/14/2016
DAVILA, BARBARA	1528718	UI	11/16/2016	11/16/2016
LYNALL, JOANN	1530215	UI	11/16/2016	11/16/2016
ERHARDT, TERESA	1527425	UI	11/21/2016	11/21/2016
SMITH, ERIC	1524218	UI	11/23/2016	11/23/2016
KRAUSE, JOAN	1534002	UI	11/23/2016	11/23/2016
ELLIS, GREGORY	1537247	UI	11/25/2016	11/23/2016
PENA, STACY	1515369	UI	11/28/2016	11/17/2016
PENA, STACY	1515370	UI	11/28/2016	11/17/2016
MOORE, DOROTHY	1511986	UI	12/1/2016	12/1/2016
SIQUEIROS, LUIS	1525872	UI	12/5/2016	11/25/2016
ZAMORA, AARON	1529901	UI	12/6/2016	12/6/2016
MACNAB, LINDA	1524598	UI	12/7/2016	9/14/2016
MACNAB, LINDA	1524600	UI	12/7/2016	9/14/2016
ESTRADA, MANUEL	1534187	UI	12/8/2016	12/8/2016
CONTRERAS, ADAM	1530496	UI	12/9/2016	12/9/2016
SEPULVEDA, RAFAEL	1526223	UI	12/12/2016	12/12/2016
WILLIAMS, KELLI	1523702	UI	12/16/2016	12/16/2016
UNDERWOOD, BRADY	1528473	UI	12/21/2016	12/19/2016
STRONG, JANE	1528849	UI	12/22/2016	12/22/2016
TAVARES, KESHIA	1530150	UI	12/22/2016	12/14/2016
RENDON, LYDIA	1531551	UI	12/22/2016	12/22/2016
JONES, TIA	1534316	UI	12/22/2016	12/22/2016
AL OBAIDI, FIRAS	1537890	UI	12/22/2016	12/22/2016
RENDON, LYDIA	1538214	UI	12/22/2016	12/22/2016
RENDON, LYDIA	1538217	UI	12/22/2016	12/22/2016

Claimant Name	Case #	Pgm	[Recd date]	[Appeal date]
AL OBAIDI, FIRAS	1537887	UI	12/23/2016	12/22/2016
HOOKER, GEORGE	1530135	UI	12/28/2016	12/28/2016
HOOKER, GEORGE	1530138	UI	12/28/2016	12/28/2016
HOOKER, GEORGE	1530141	UI	12/28/2016	12/28/2016
KIM, JINWON	1222697	UI	12/29/2016	12/27/2016
KIM, JINWON	1222700	UI	12/29/2016	12/27/2016
HEARNS, LATOYA	1534756	UI	1/3/2017	1/3/2017
MEDCALF, HARRY	1534776	UI	1/12/2017	1/9/2017
STRICKLEN, ASHLEY	1532841	UI	1/24/2017	1/5/2017
GALAVIZ, DAVID	1435466	FS	10/21/2014	10/20/2014
ALVAREZ, LEONOR	1501645	FS	11/14/2016	11/14/2016