**Section 2720.255 Failure of Party to Appear at the Scheduled Hearing**

a) Failure of the appellant to appear at the hearing at the time the hearing is scheduled before the Referee will result in a dismissal of the appeal. If the hearing is scheduled to be conducted by telephone or the appellant has been allowed or required to appear by telephone, failure of the appellant to inform the Referee of the telephone number at which he or she can be reached at that time or to answer the telephone at that number will also result in dismissal of the appeal.

b) Failure of the appellee to appear at the hearing at the time the hearing is scheduled or, if a hearing is scheduled to be conducted by telephone or the appellee has been allowed or required to appear by telephone, failure of the appellee to inform the Referee of the telephone number where he or she can be reached at that time, or to answer the telephone at that number, will cause the Referee to issue a decision based on the evidence introduced by the appellant at the hearing and the evidence in the record.

c) Failure of any witness to appear at the hearing at the time that the hearing is scheduled or, if the hearing is scheduled to be conducted by telephone or the witness has been allowed or required to appear by telephone, a party's failure to inform the Referee of the telephone number at which the Referee can, at the time of the hearing, reach the witness, or the witness' failure to answer the telephone at the number given to the Referee by the party seeking the witness' testimony, shall cause the Referee to conduct the hearing with those parties and witnesses who appeared in person or were available by telephone and to make his or her decision based on the available testimony and evidence in the record.

d) If any party or witness shall refuse to consent to the tape recording of the hearing by the Referee or refuse to take the oath or affirmation when requested by the Referee, the participation of that individual in the hearing shall be terminated and the hearing shall be conducted as if the individual failed to appear.

e) If a party fails to appear and an adverse decision is rendered, that party may, by letter or on the record, request rehearing of the appeal from the Referee or from his or her supervisor, provided that party has not filed an appeal to the Board of Review pursuant to Section 2720.300. In the event that such an appeal to the Board of Review has been filed, the rehearing request will be denied. The following procedure shall be used:

1) Requests to rehear the appeal must be filed no later than 10 days after the hearing or the date the party first knew or should have known of the scheduled hearing, whichever is later, but in no event beyond the time for filing a timely appeal to the Board of Review pursuant to Section 2720.300(a); e.g., the appellant does not attend a hearing because he or she claims not to have received notice of the hearing, he or she does, however, receive a decision that his or her appeal has been dismissed for failing to appear at the hearing, his or her request for rehearing must be filed within 10 days after this decision because, as a result of the dismissal of his or her appeal, he or she should have known that he or she missed the scheduled hearing. The requests must state the facts showing that failure to appear at the scheduled hearing was either due to not having received timely notice of the hearing or for an "exceptional reason" as set forth in Section 2720.240 and that either a request for continuance under that Section was improperly denied or the failure to make the request for a continuance was caused by reasons outside of the control of the party and by circumstances that could not have been foreseen and avoided. Upon a party's request, the party shall be treated as not having appeared at the hearing before the Referee and a rehearing shall be granted if, in making the request, the party shows that, at the time of the hearing, the party's Representative was participating in another hearing before a Referee or Director's representative, the conflict was not patently evident prior to the scheduled start of the party's hearing, and no other reasonable accommodation could be made; except with respect to the facts required to be shown, the request must be consistent with all other provisions of this subsection (e).

2) Based on the statements in the request and the facts of the record:

A) If the request meets the requirements of subsection (e)(1), a hearing shall be scheduled with notice to all parties (see Section 2720.205); or

B) If the request fails to meet the requirements of subsection (e)(1), the request shall be denied and a written decision setting forth the reasons for the denial shall be issued. In these cases, if an adverse decision on the merits was issued, a timely appeal to the denial of a timely request for rehearing shall also constitute a timely appeal on the merits of the matter.

3) At the start of the hearing, any party may present its objections to the request. The Referee will consider all objections and responses and supporting evidence, if any, and will grant or deny the request for a rehearing at that time based on the preponderance of the evidence. If the Referee denies the request, he or she will terminate the proceedings. If the Referee grants the request, he or she will proceed to conduct a hearing on the merits.

4) If there is an objection to the request, the Referee's ruling will be on the record, and will state the reasons for the ruling that grants or denies the request. All denials of requests for rehearing shall be in writing.

5) If the party disagrees with the denial of the request for rehearing, he or she must appeal the denial within the time and in the manner set forth in Section 2720.300.

6) A decision to grant a rehearing is not immediately subject to appeal but may be raised by the aggrieved party if an appeal is filed to the decision on the merits of the matter.

EXAMPLE: A decision is made to grant a rehearing to an appellant. After the rehearing, a decision is made in favor of the appellant. The appellee may appeal this decision to the Board of Review. In his appeal to the Board of Review, the appellee (now the appellant) may request that the Board of Review rule on the propriety of the granting of the rehearing before it goes to the merits of the matter.

(Source: Amended at 43 Ill. Reg. 6385, effective May 14, 2019)