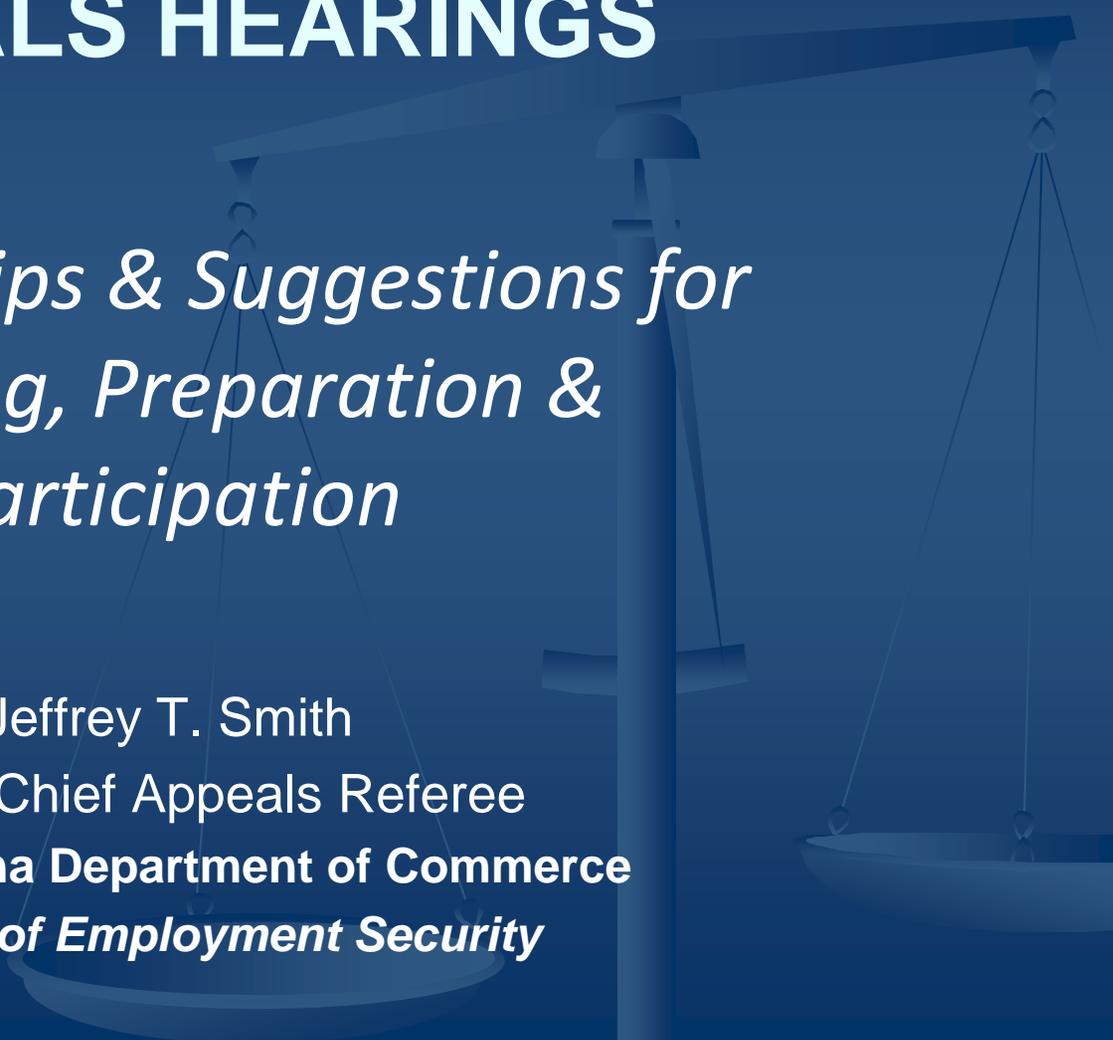


# UNEMPLOYMENT INSURANCE APPEALS HEARINGS



*Including Tips & Suggestions for  
Planning, Preparation &  
Participation*

Jeffrey T. Smith  
Deputy Chief Appeals Referee  
North Carolina Department of Commerce  
*Division of Employment Security*

# Unemployment Claims 2011

2010

2011

\$13,543,405

\$15,126,203

State

\$ 1,655,615

\$ 2,212,892

Federal

\$ 4,337,430

\$ 6,410,732

Local & CN

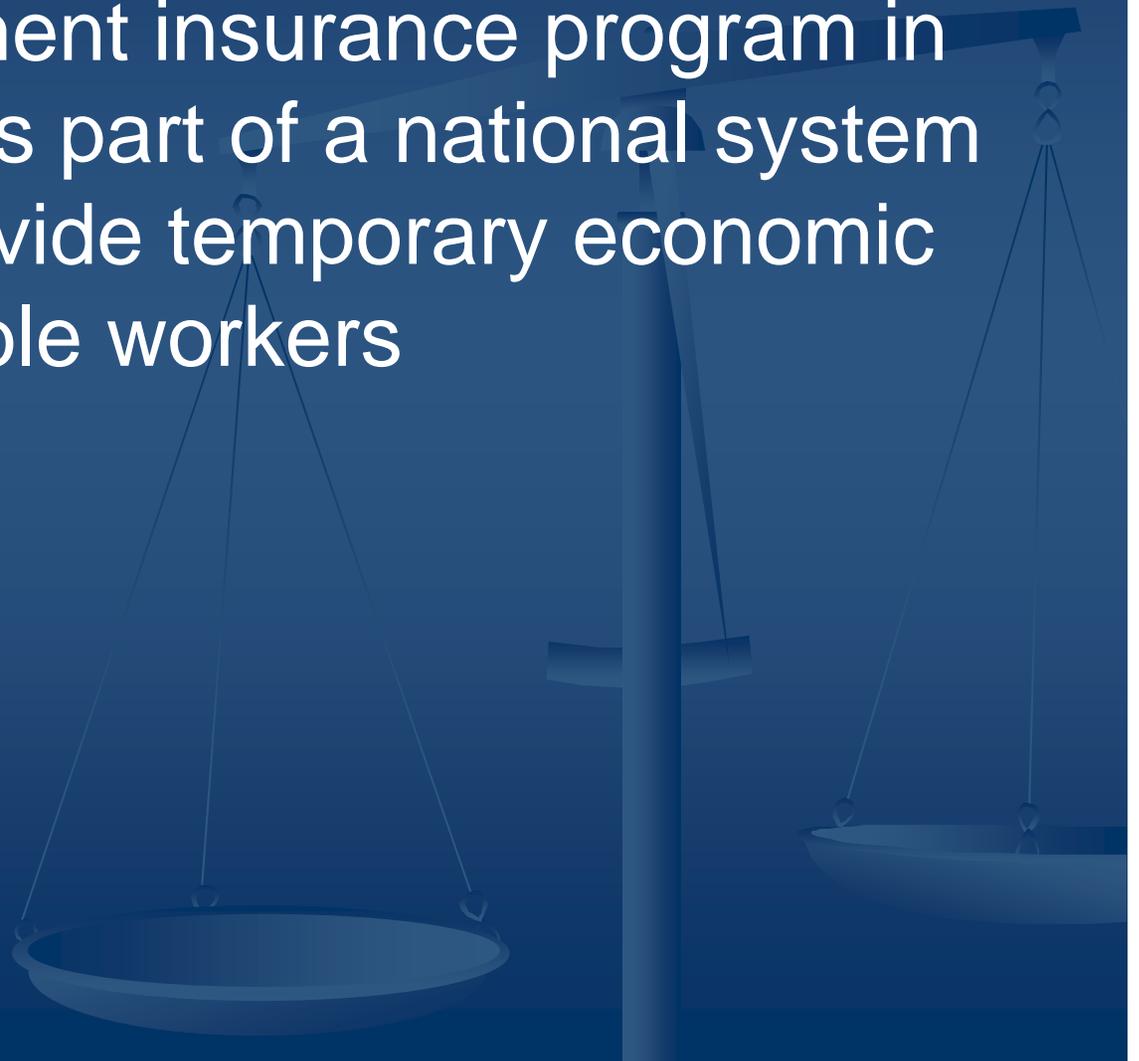
NCGS 96-13(b)(1) Reasonable Assurance

NCGS 96-14 (2b) Loss of Licensure or Certification

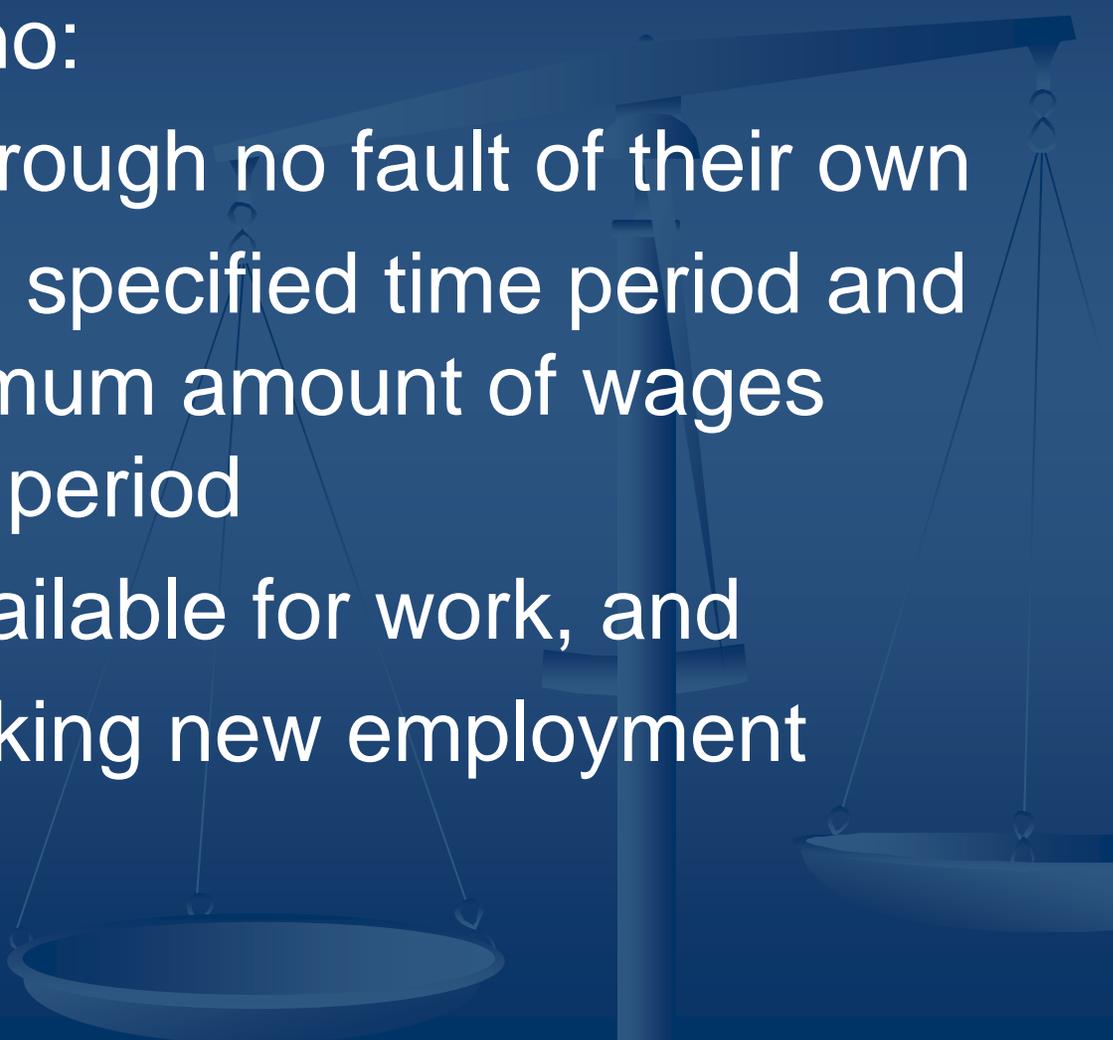
NCGS 96-8(10)f Substitute Teachers

# Unemployment Insurance - Basics

- The unemployment insurance program in North Carolina is part of a national system designed to provide temporary economic benefits to eligible workers



# Eligible Workers

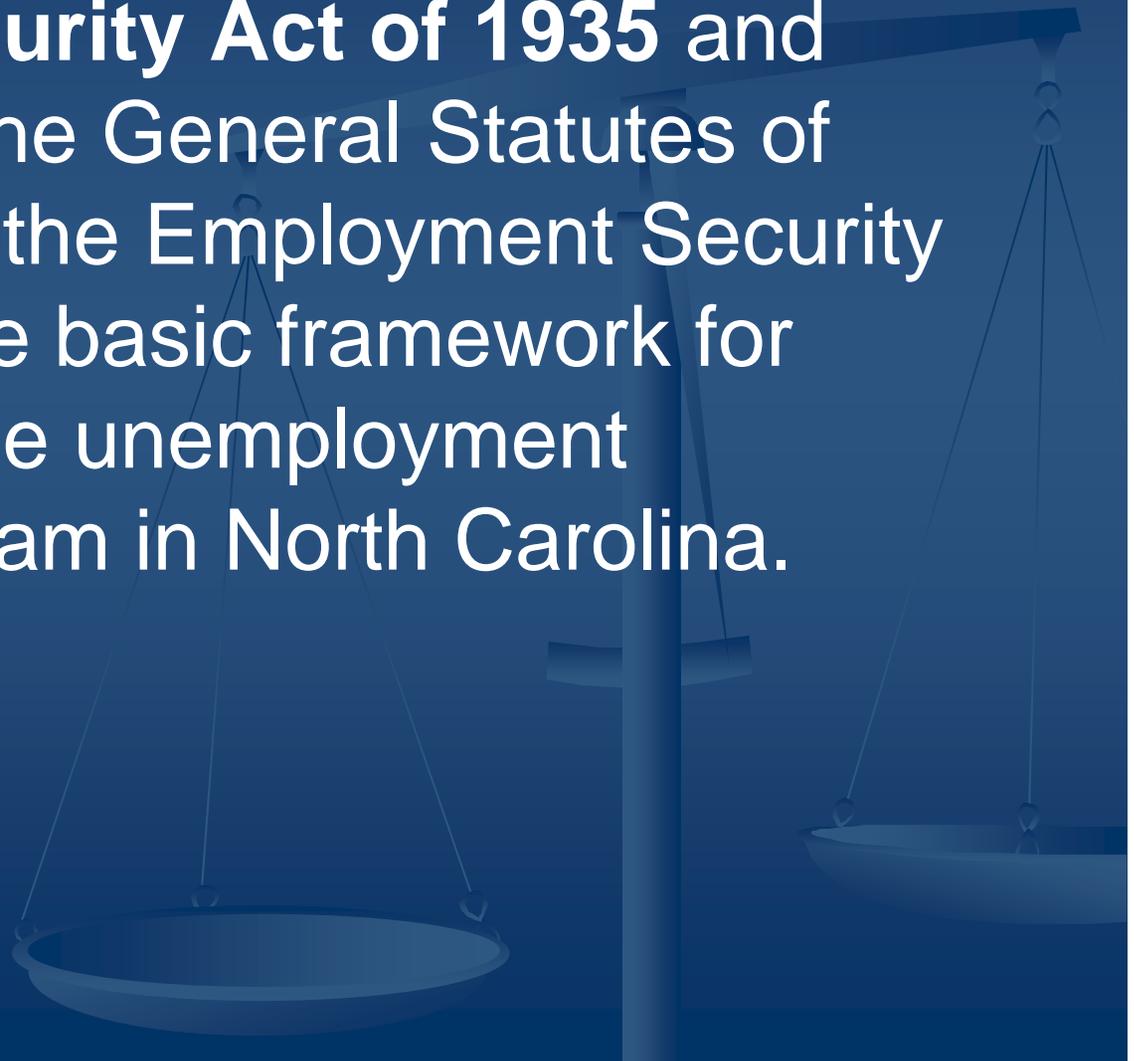


Are individuals who:

- lost their jobs through no fault of their own
- worked during a specified time period and received a minimum amount of wages during that time period
- are able and available for work, and
- are actively seeking new employment

# Origins and Laws

- **The Social Security Act of 1935 and Chapter 96 of the General Statutes of North Carolina (the Employment Security Law) provide the basic framework for administering the unemployment insurance program in North Carolina.**



# Issues

- Eligibility
- Separation

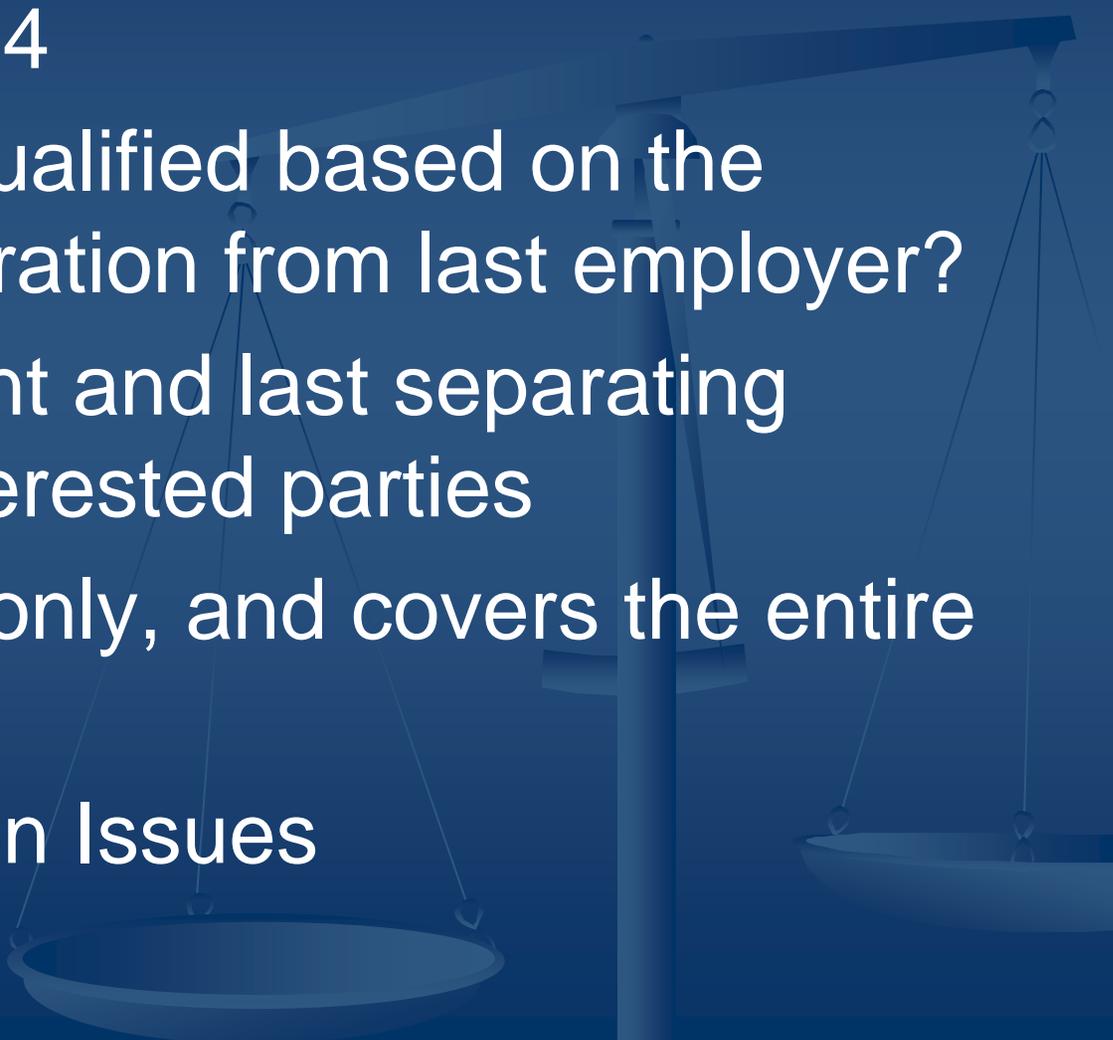


# Eligibility



- N.C.G.S. § 96-13
- Is claimant meeting the requirements to be eligible for any claimed week - basically is able, available and actively looking for work?
- Involves the claimant and the agency – is claimant following our rules?
- Considered on a week-by-week basis

# Qualification

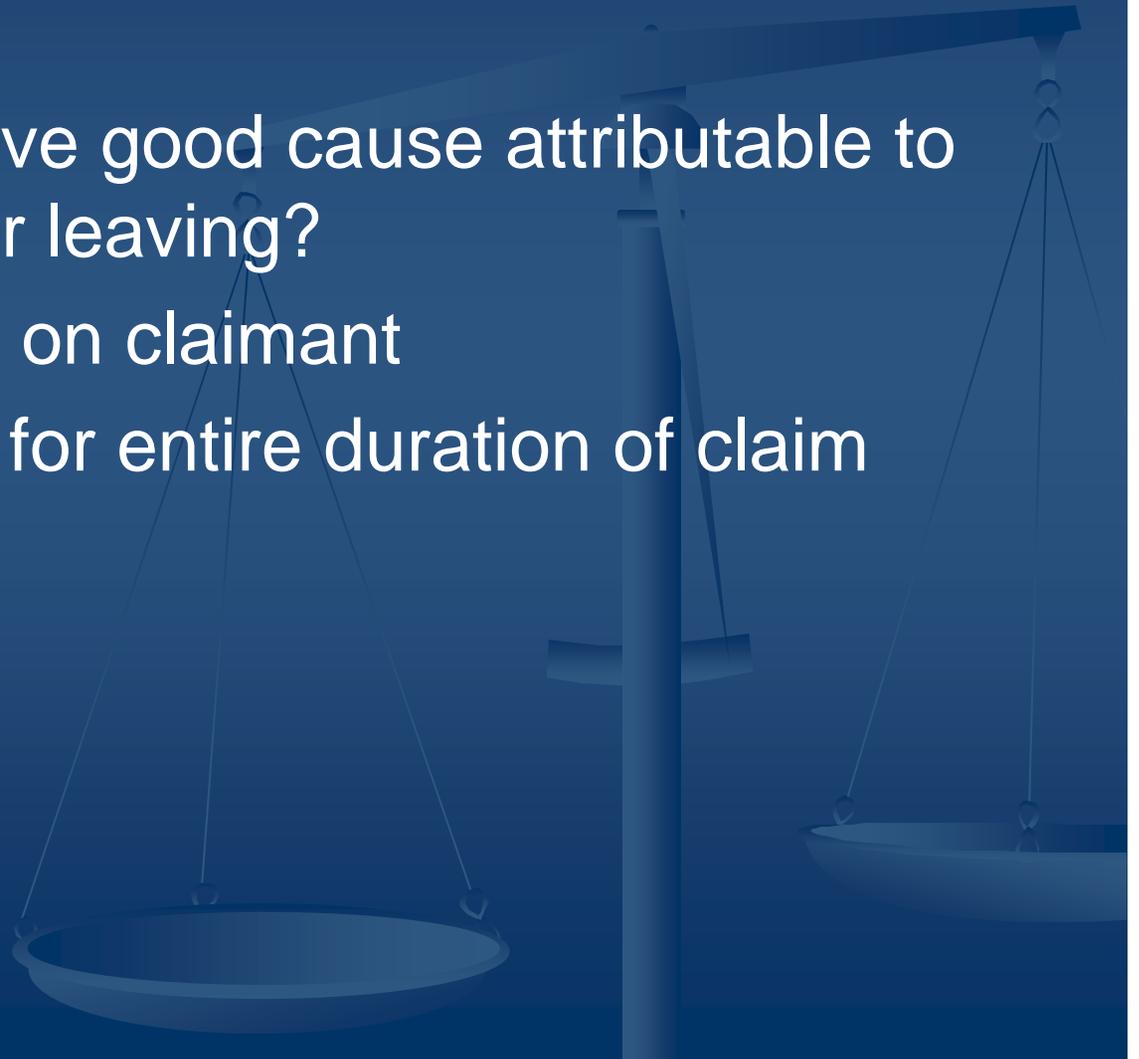


- N.C.G.S. § 96-14
- Is claimant disqualified based on the reason for separation from last employer?
- Involves claimant and last separating employer as interested parties
- Resolved once only, and covers the entire claims year
- A/K/A Separation Issues

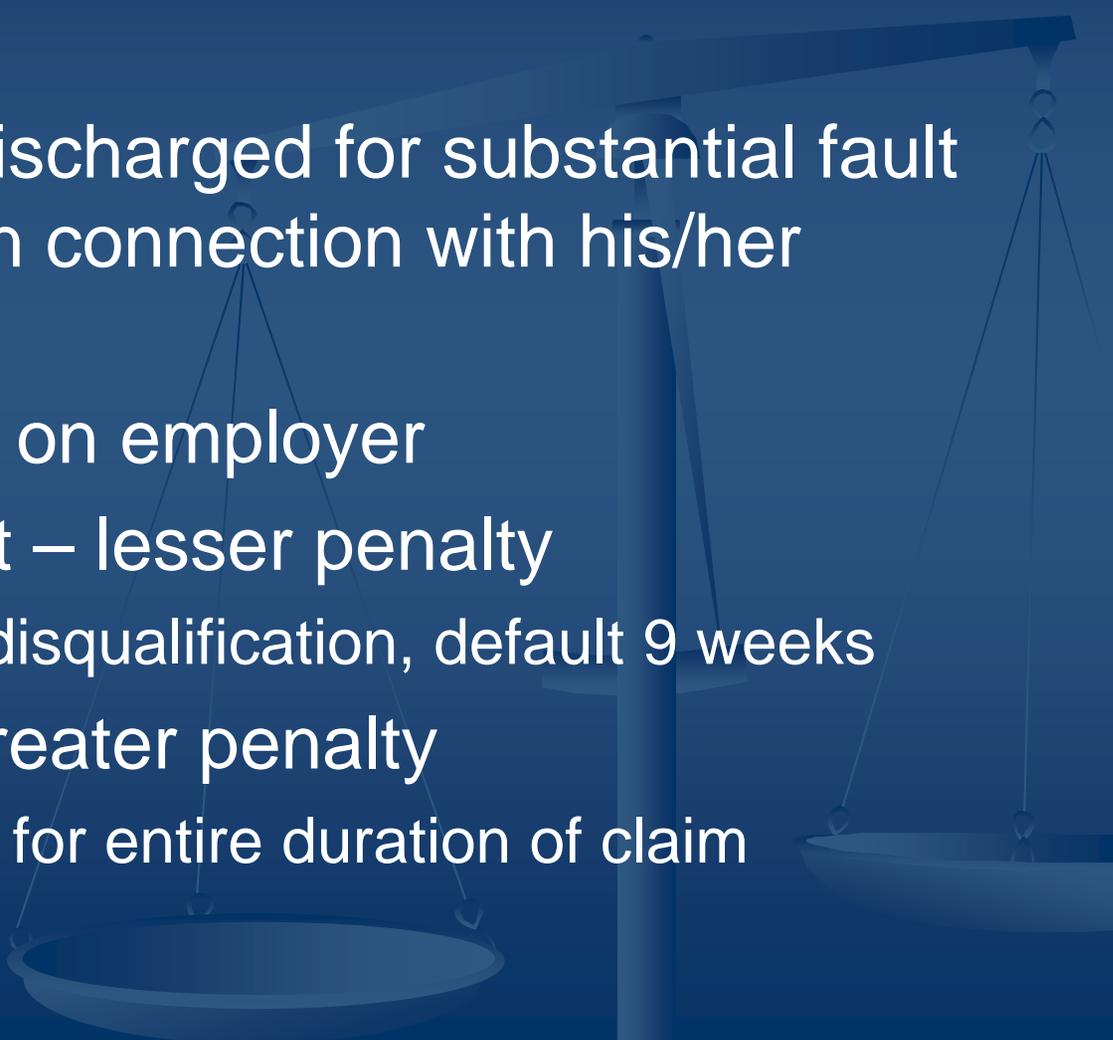
# Separation Issues

## ■ Quits

- Did claimant have good cause attributable to the employer for leaving?
- Burden of proof on claimant
- Disqualification for entire duration of claim



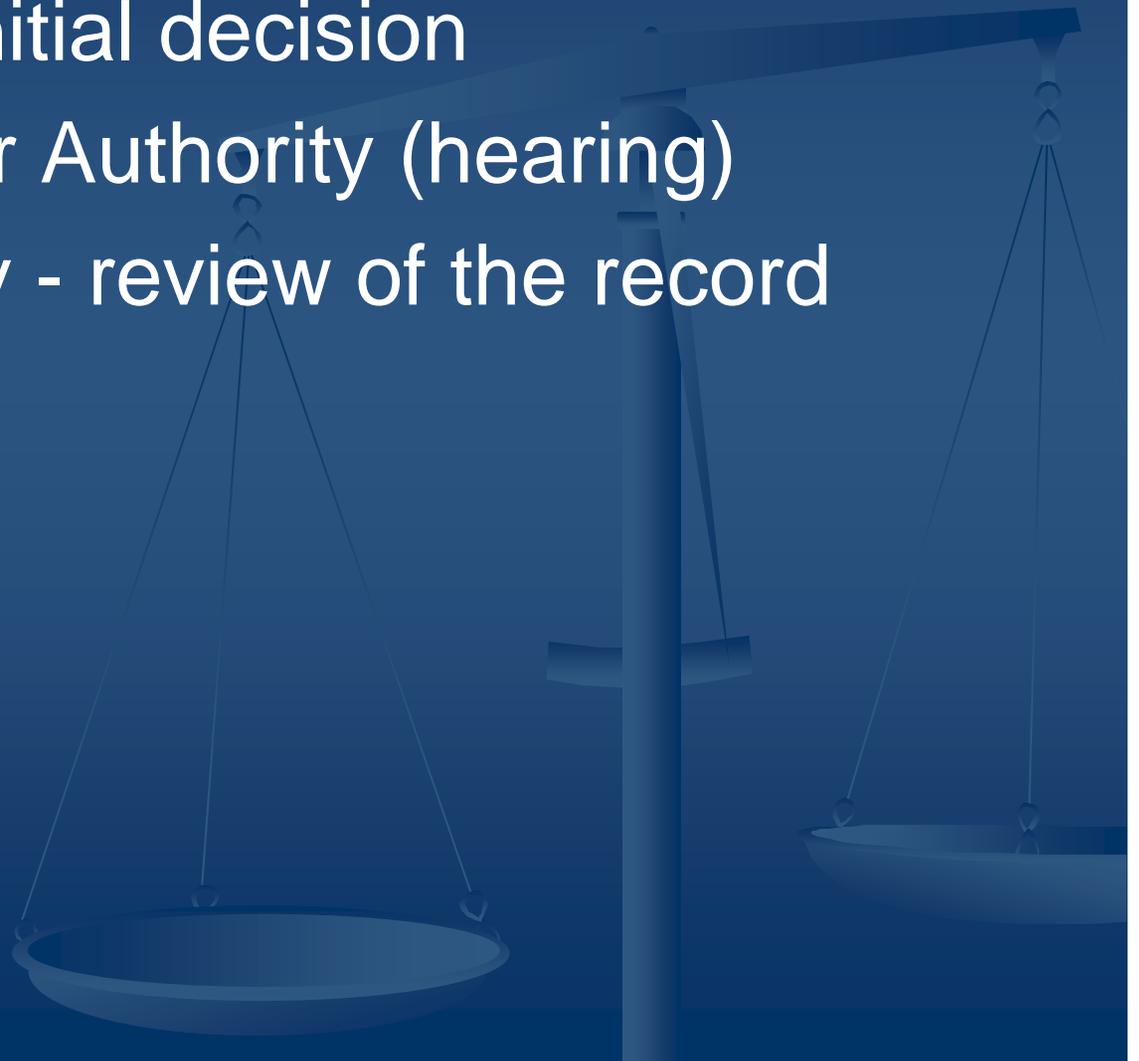
# Separation Issues



- Discharges
  - Was claimant discharged for substantial fault or misconduct in connection with his/her work?
  - Burden of proof on employer
  - Substantial fault – lesser penalty
    - 4-13 weeks of disqualification, default 9 weeks
  - Misconduct – greater penalty
    - Disqualification for entire duration of claim

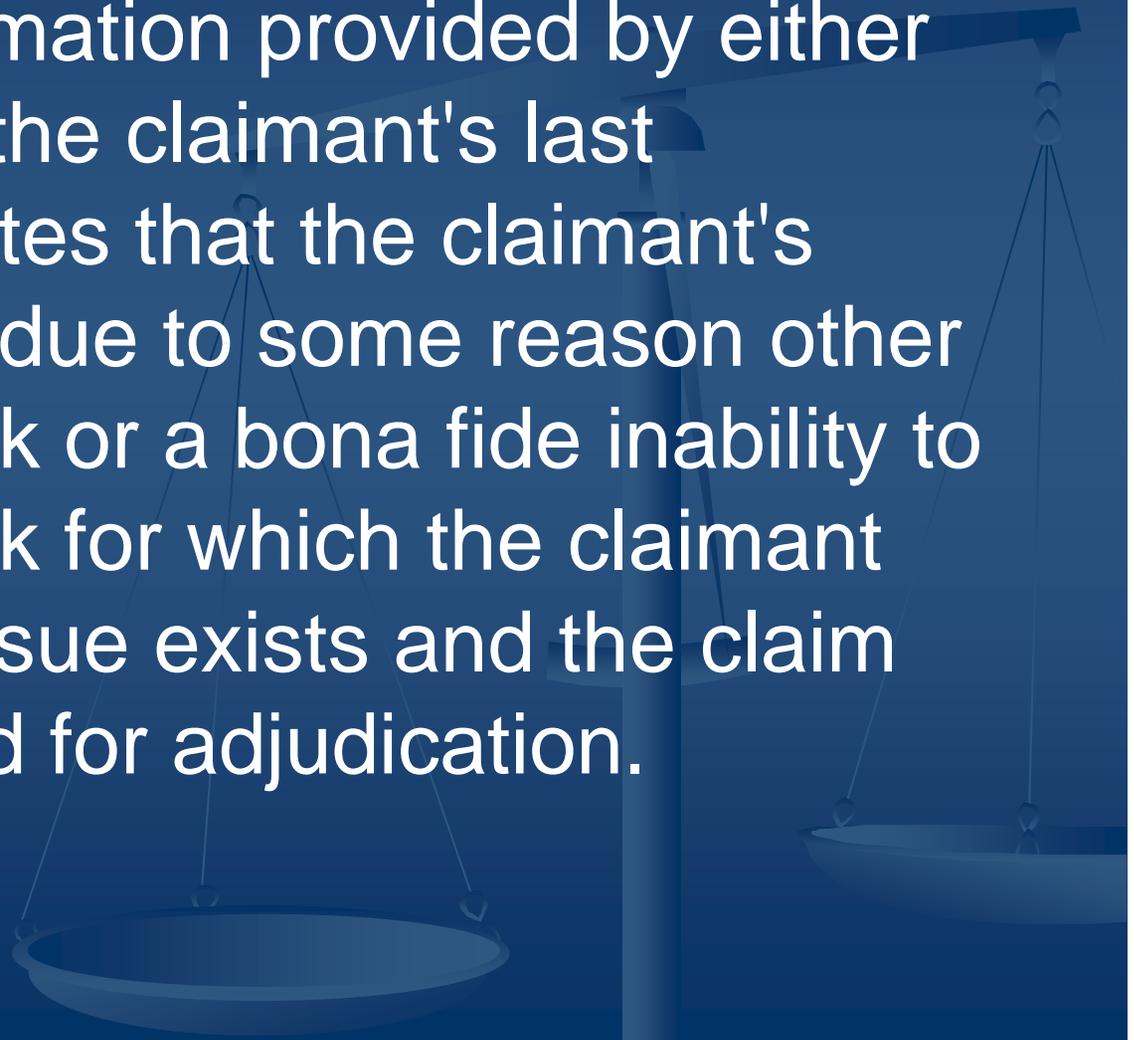
# Decision-making

- Adjudication - initial decision
- Appeals - Lower Authority (hearing)
- Higher Authority - review of the record



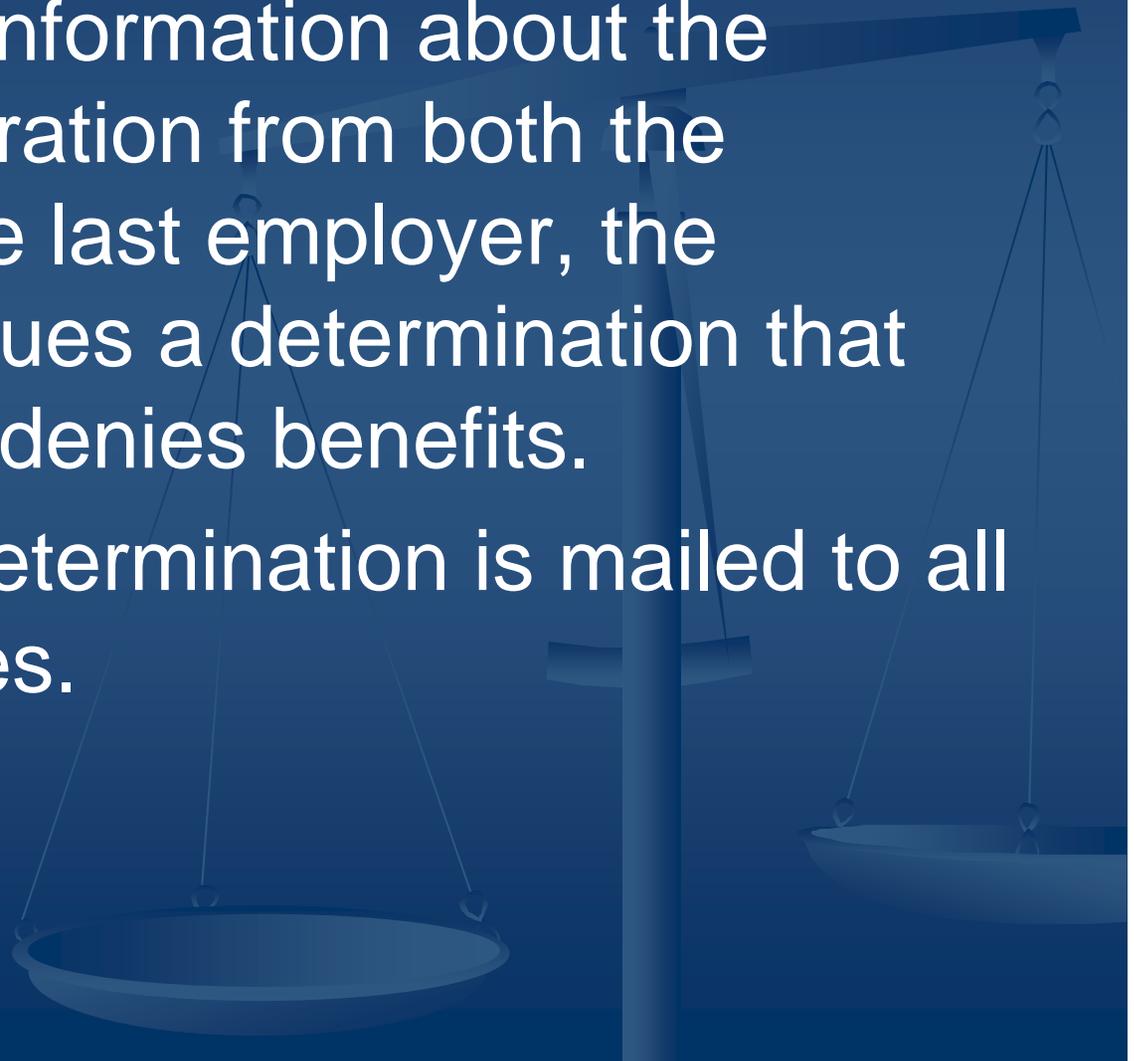
# Adjudication

- Whenever information provided by either the claimant or the claimant's last employer indicates that the claimant's separation was due to some reason other than lack of work or a bona fide inability to perform the work for which the claimant was hired, an issue exists and the claim must be referred for adjudication.



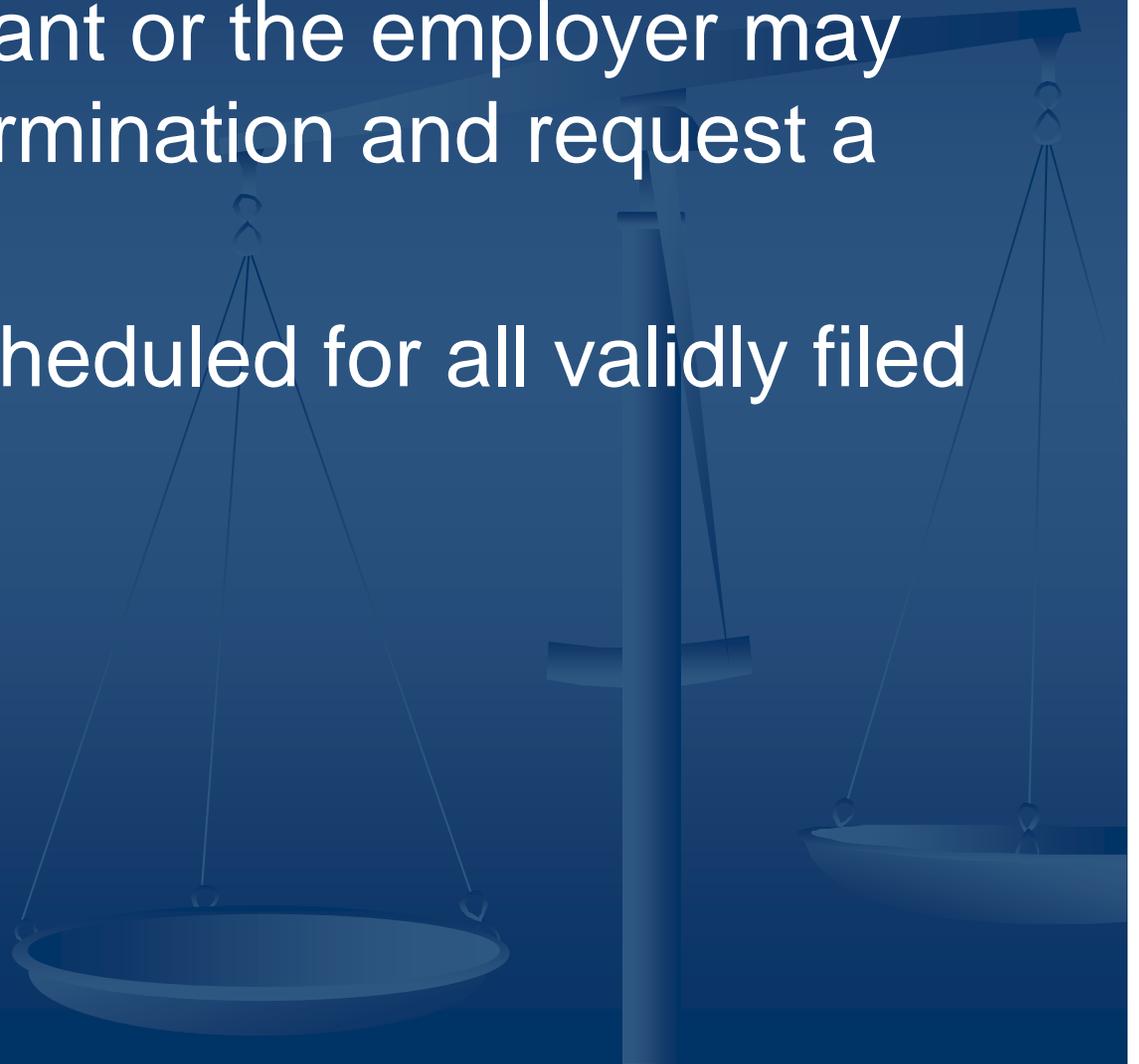
# Adjudicator's Determination

- After obtaining information about the reason for separation from both the claimant and the last employer, the Commission issues a determination that either allows or denies benefits.
- A copy of this determination is mailed to all interested parties.



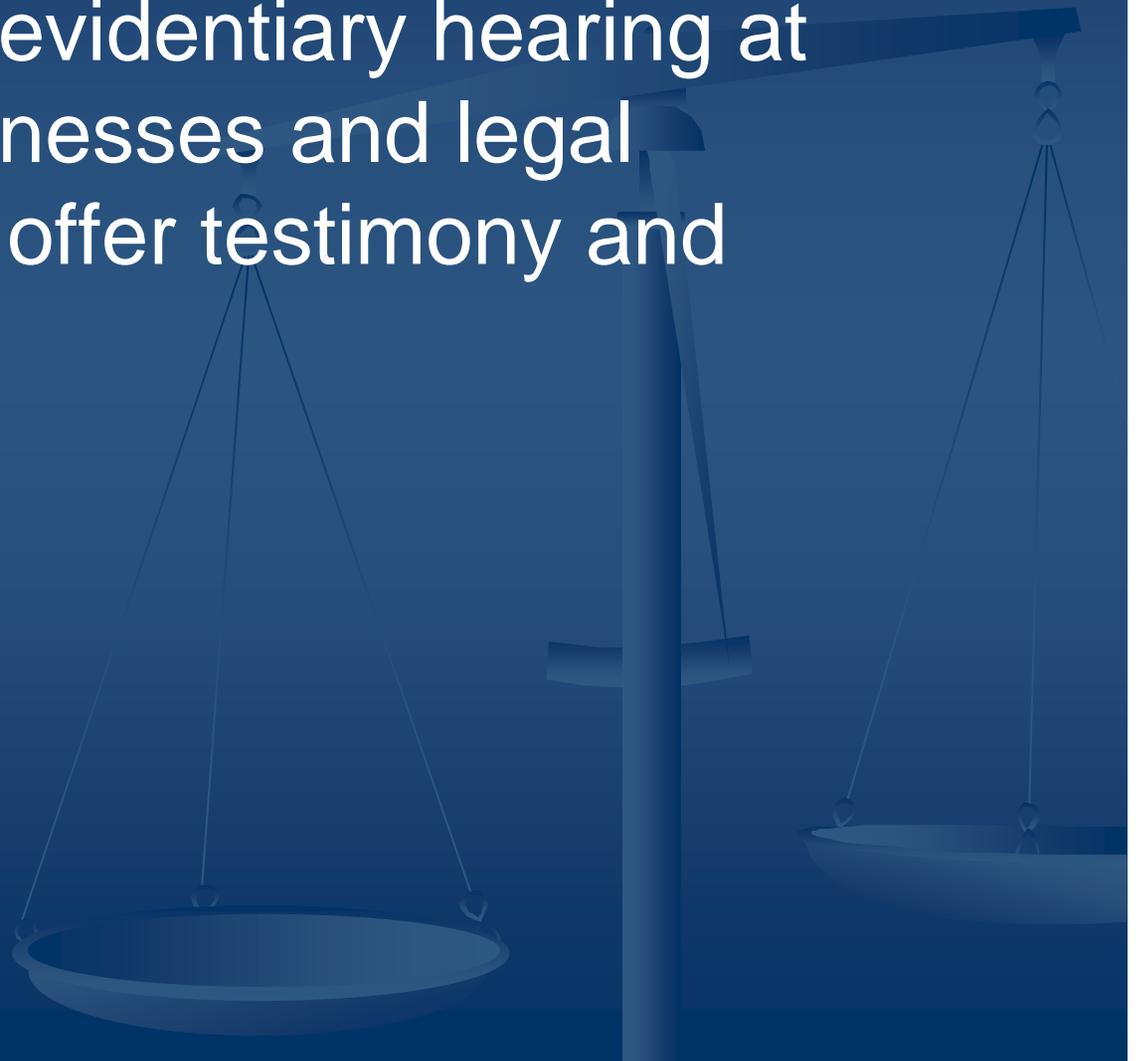
# Appeals

- Either the claimant or the employer may appeal the determination and request a formal hearing.
- Hearings are scheduled for all validly filed appeals

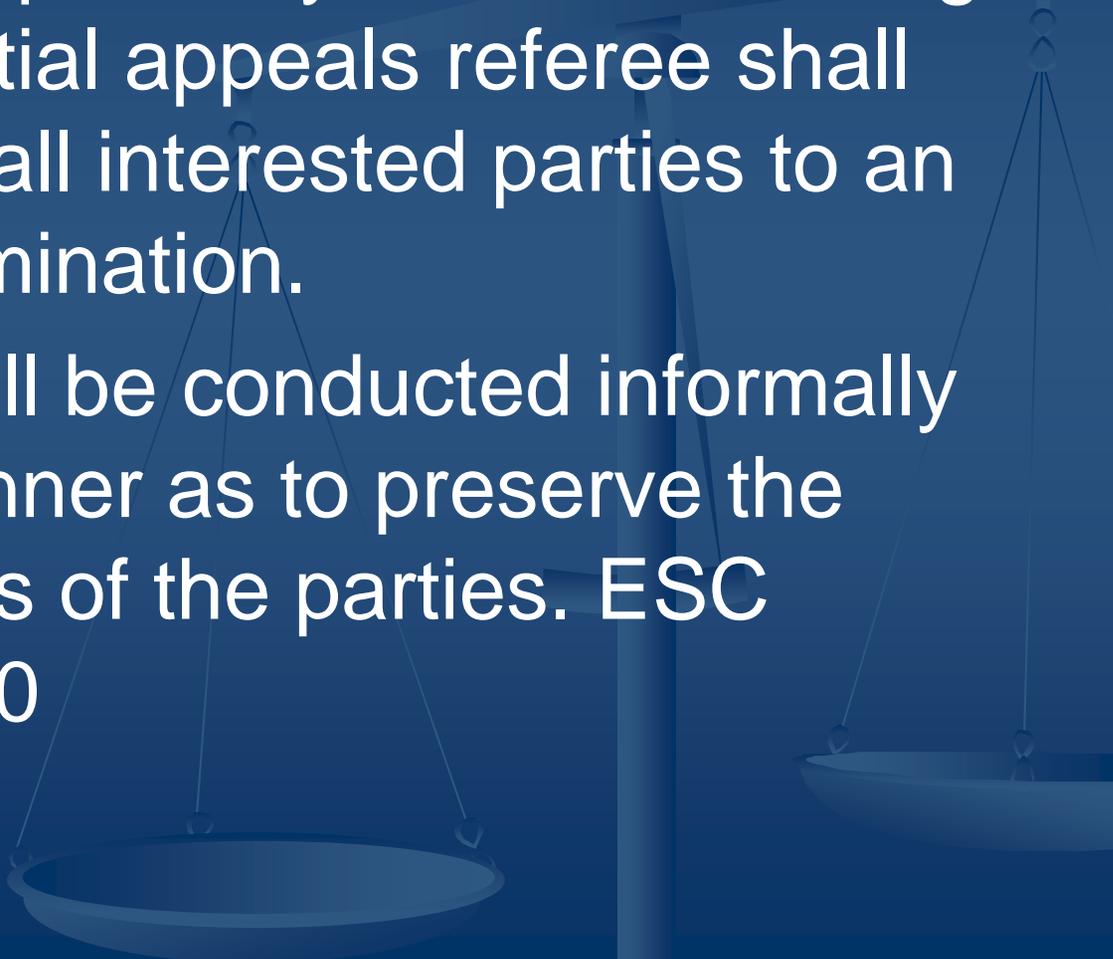


# Appeals Hearing

- A quasi-judicial evidentiary hearing at which sworn witnesses and legal representatives offer testimony and evidence

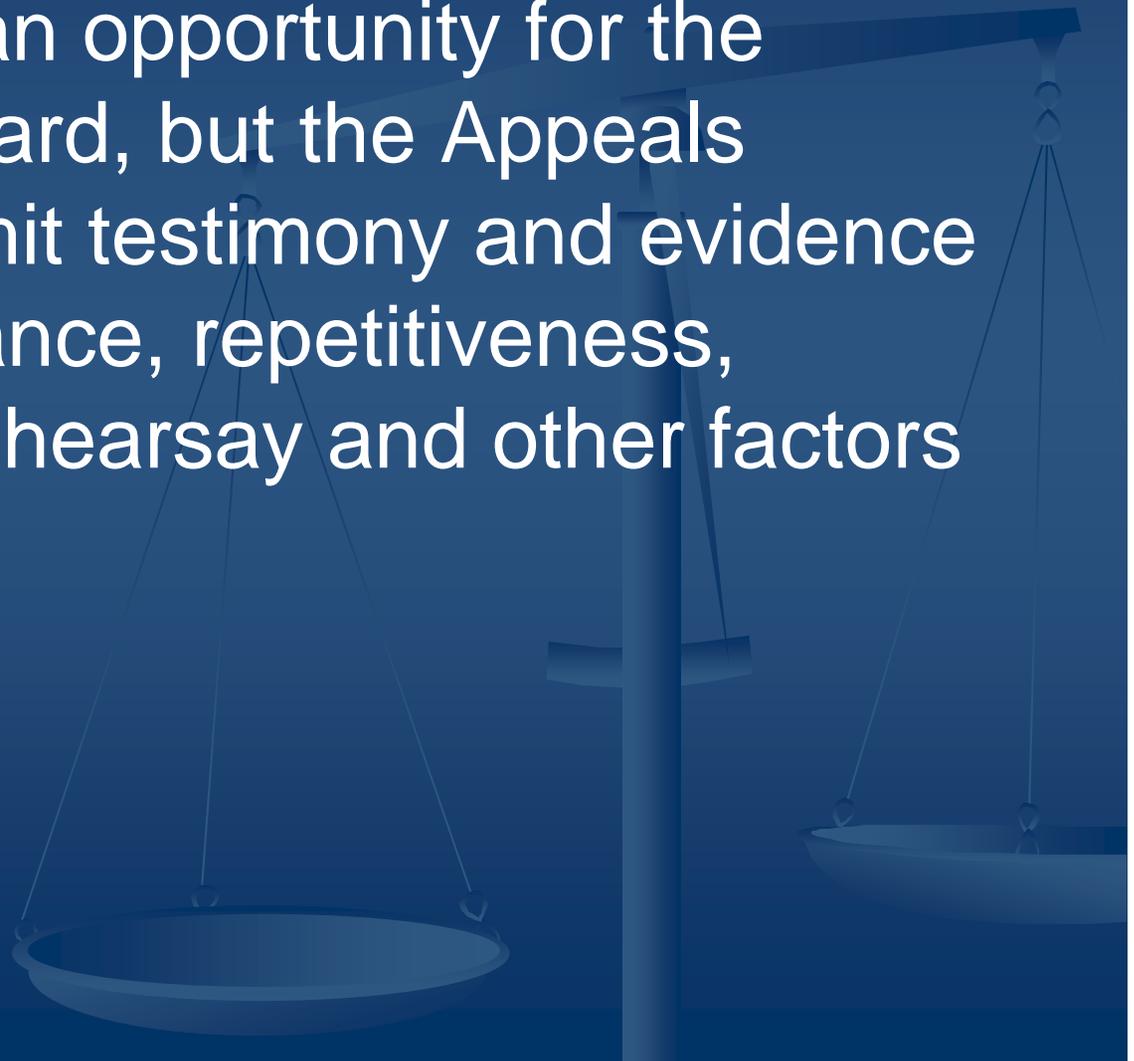


# Right to Hearing

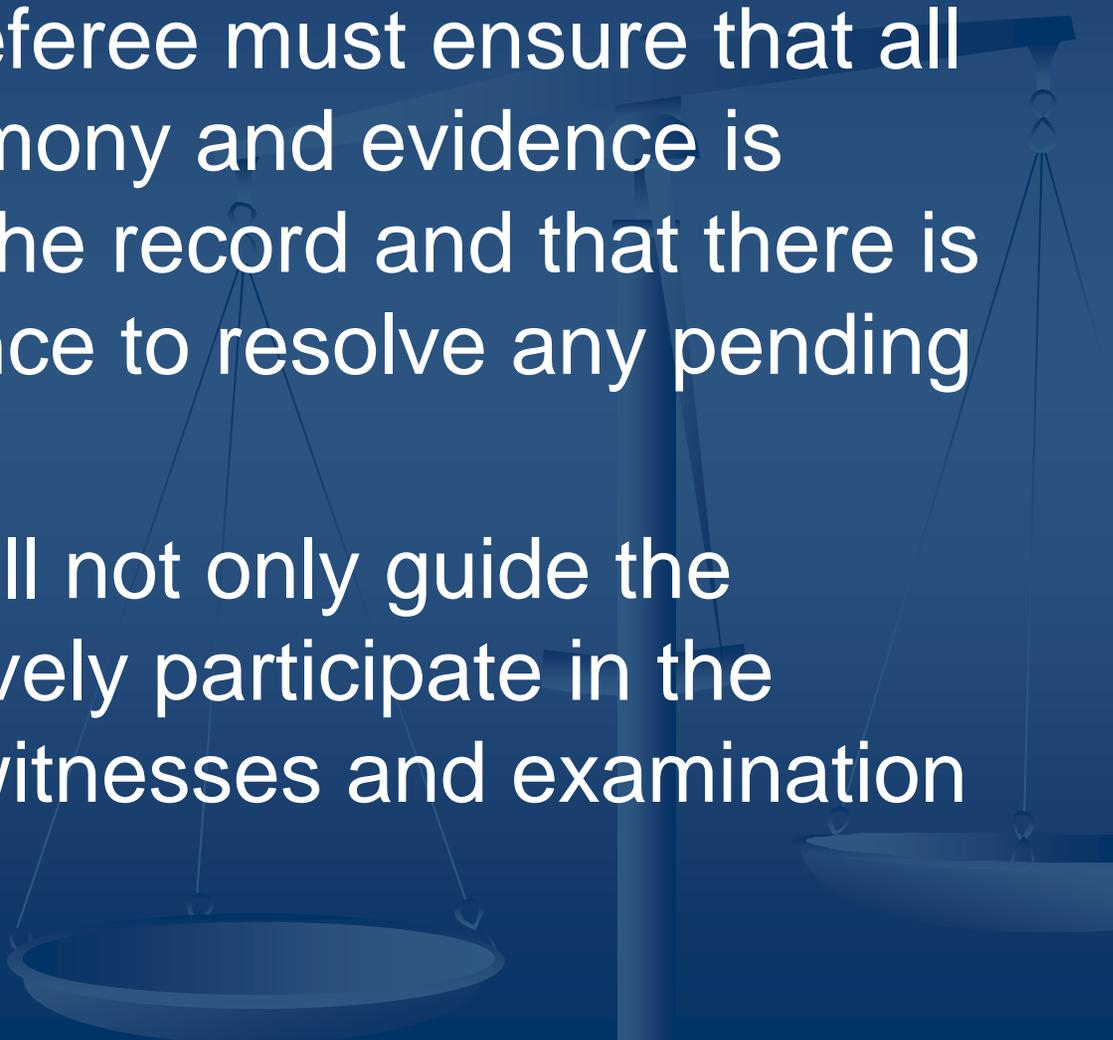
- A reasonable opportunity for a fair hearing before an impartial appeals referee shall be provided for all interested parties to an appealed determination.
  - All hearings shall be conducted informally and in such manner as to preserve the substantial rights of the parties. ESC Regulation 14.10
- 

# Hearings

- The hearing is an opportunity for the parties to be heard, but the Appeals Referee may limit testimony and evidence based on relevance, repetitiveness, uncorroborated hearsay and other factors



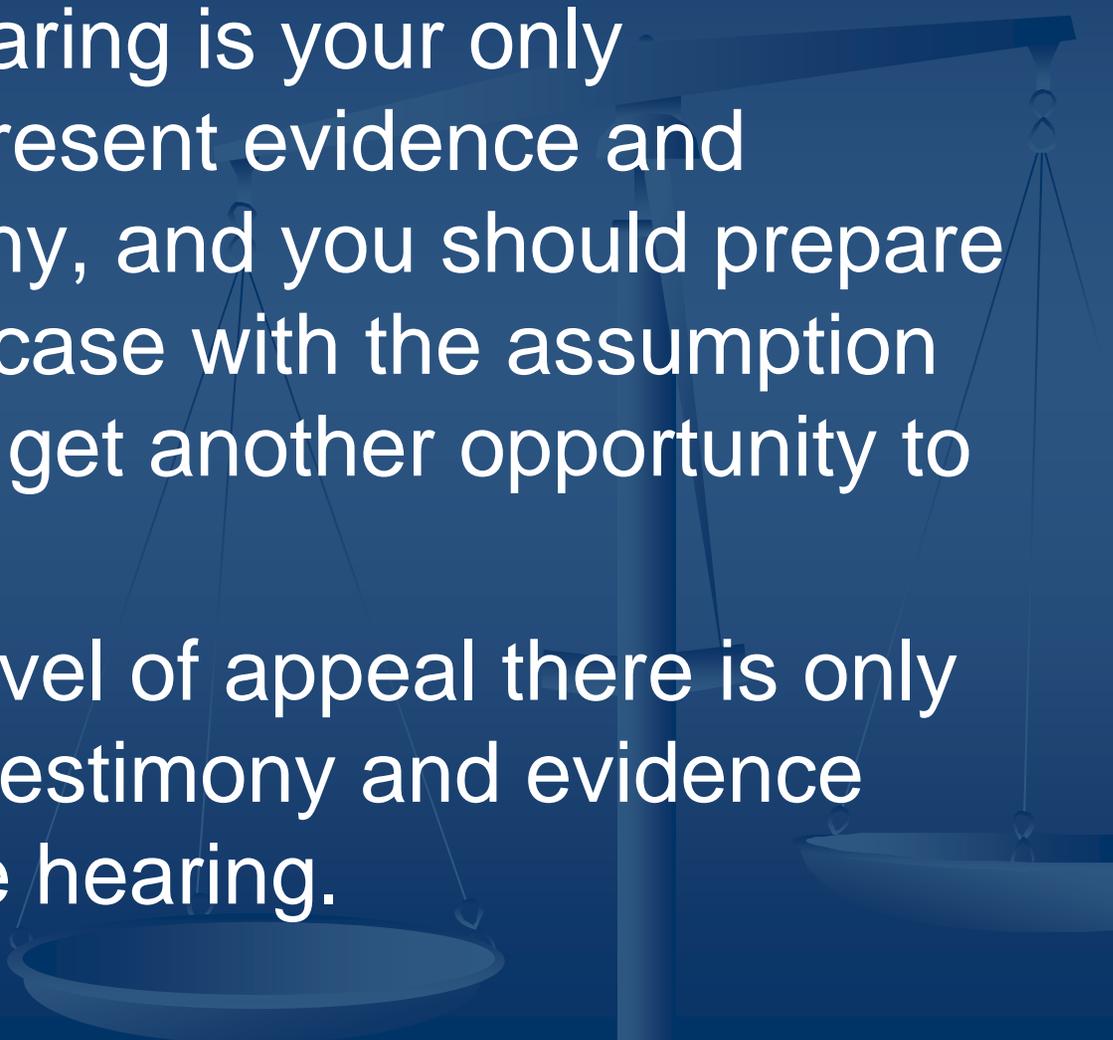
# Role of the Appeals Referee

- The Appeals Referee must ensure that all necessary testimony and evidence is made a part of the record and that there is sufficient evidence to resolve any pending issues
  - So often they will not only guide the hearing but actively participate in the questioning of witnesses and examination of evidence
- 

# Why bother?

- Both the claimant and the last employer should participate in the appeals hearing. Why? The Appeals Referee's decision is based solely on sworn testimony and evidence presented at the appeals hearing.
- If you don't participate, the hearing may go forward without you, or if you filed the appeal, your appeal may be dismissed.

# The Hearing of Record

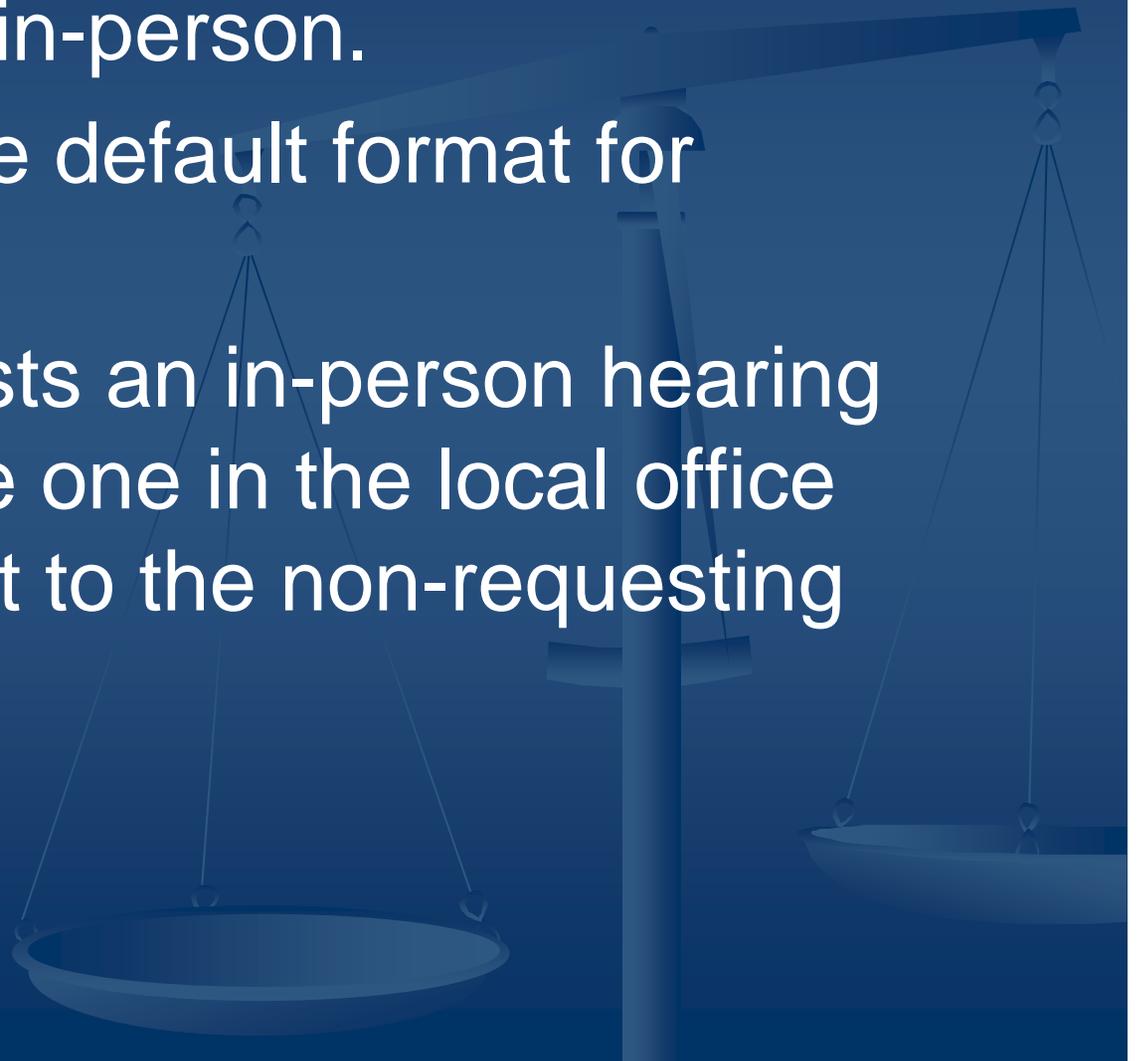
- The appeals hearing is your only opportunity to present evidence and witness testimony, and you should prepare to present your case with the assumption that you will not get another opportunity to do so.
  - At any further level of appeal there is only a review of the testimony and evidence presented at the hearing.
- 

# Continuances

- If you are unable to prepare your case or arrange for the participation of witnesses in time for the hearing, make a motion to continue (request to reschedule) to the Appeals Referee as soon as possible.
- Even if your motion is denied you can raise that as an exception to the Appeals Referee's decision in a later appeal.

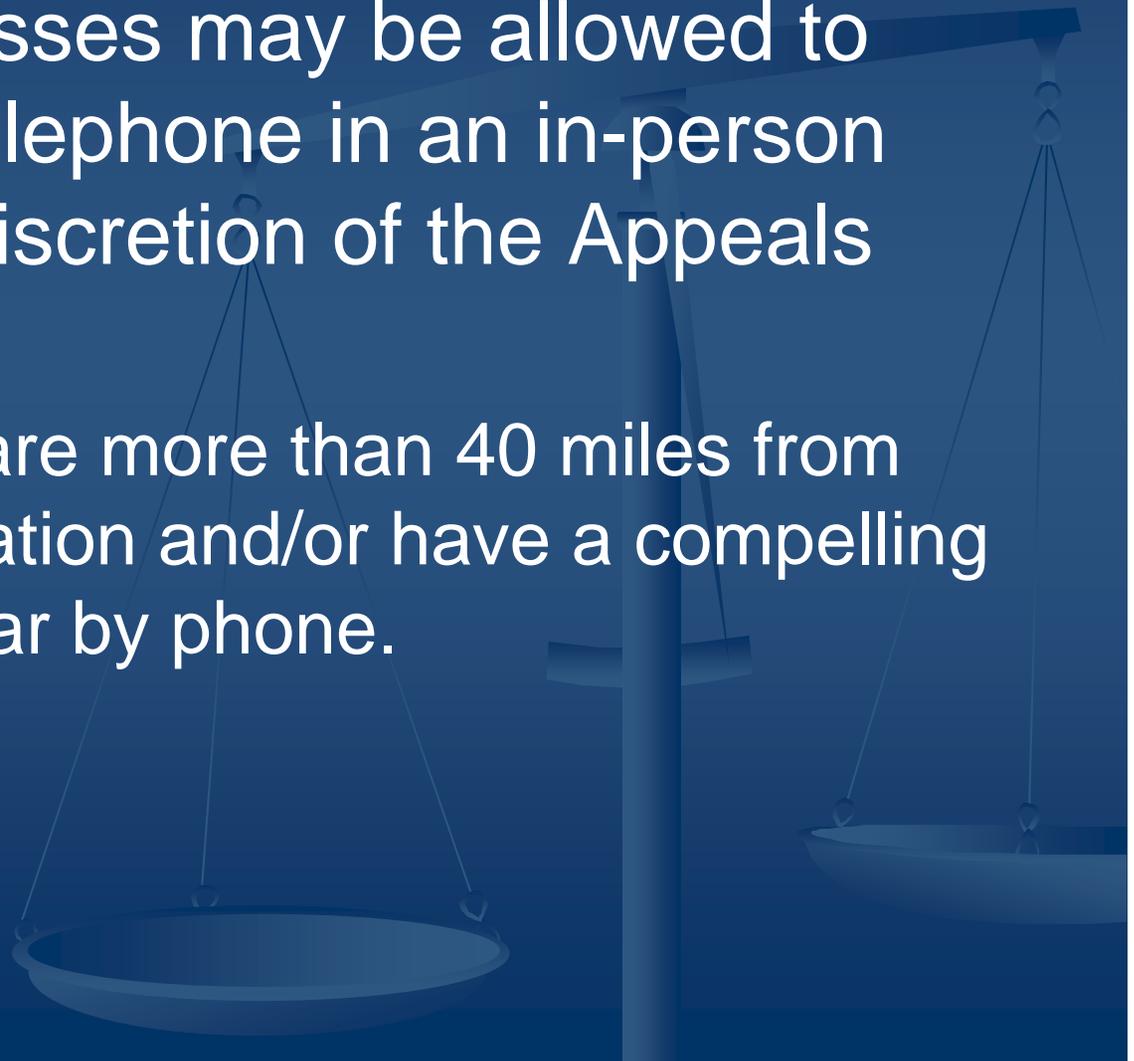
# Hearing Format

- Telephone and in-person.
- Telephone is the default format for hearings.
- If a party requests an in-person hearing we will schedule one in the local office most convenient to the non-requesting party.

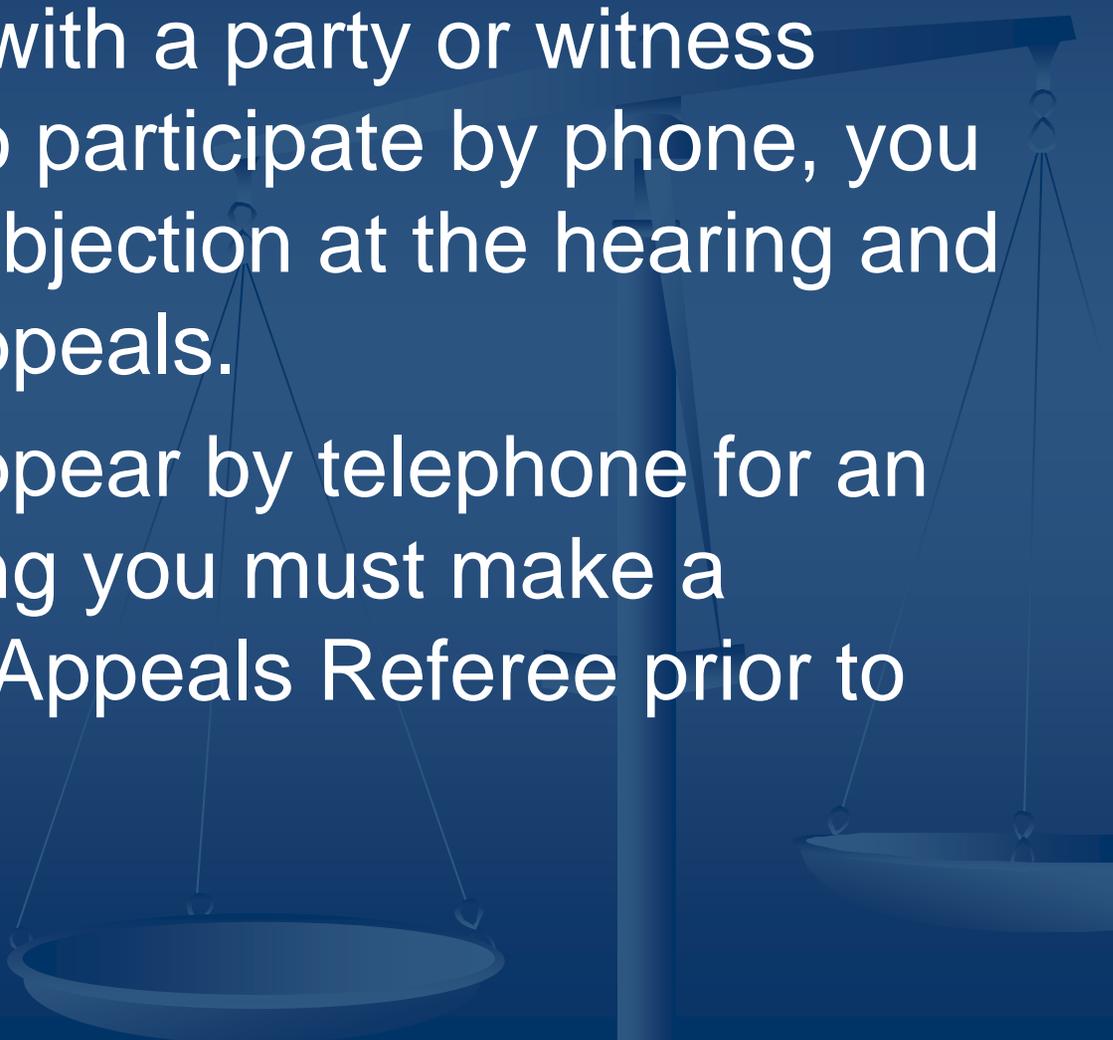


# In-Person Hearings

- Parties or witnesses may be allowed to participate by telephone in an in-person hearing at the discretion of the Appeals Referee
  - typically if you are more than 40 miles from the hearing location and/or have a compelling reason to appear by phone.



# Over the Phone for In-Person

- If you disagree with a party or witness being allowed to participate by phone, you can raise your objection at the hearing and in any further appeals.
  - If you wish to appear by telephone for an in-person hearing you must make a request to your Appeals Referee prior to the hearing.
- 

# ***TIPS & SUGGESTIONS***

for

Planning, Preparation &  
Participation in Hearings



# THE GOLDEN RULE

## *The “Right” Witnesses*

Witnesses with first-hand knowledge of what happened in a case are always your best choice.

The person or persons with the most knowledge are not necessarily the best witnesses – quality trumps quantity.

If all you have is hearsay, you might lose.

# THE SILVER RULE

## *THINK, PLAN & BE PREPARED*

Take time to organize and prepare your case: review your evidence, review the case file if you have it, talk to your witnesses & plan your presentation.

Take some time to think through your case, including “what ifs” before you get to the hearing.

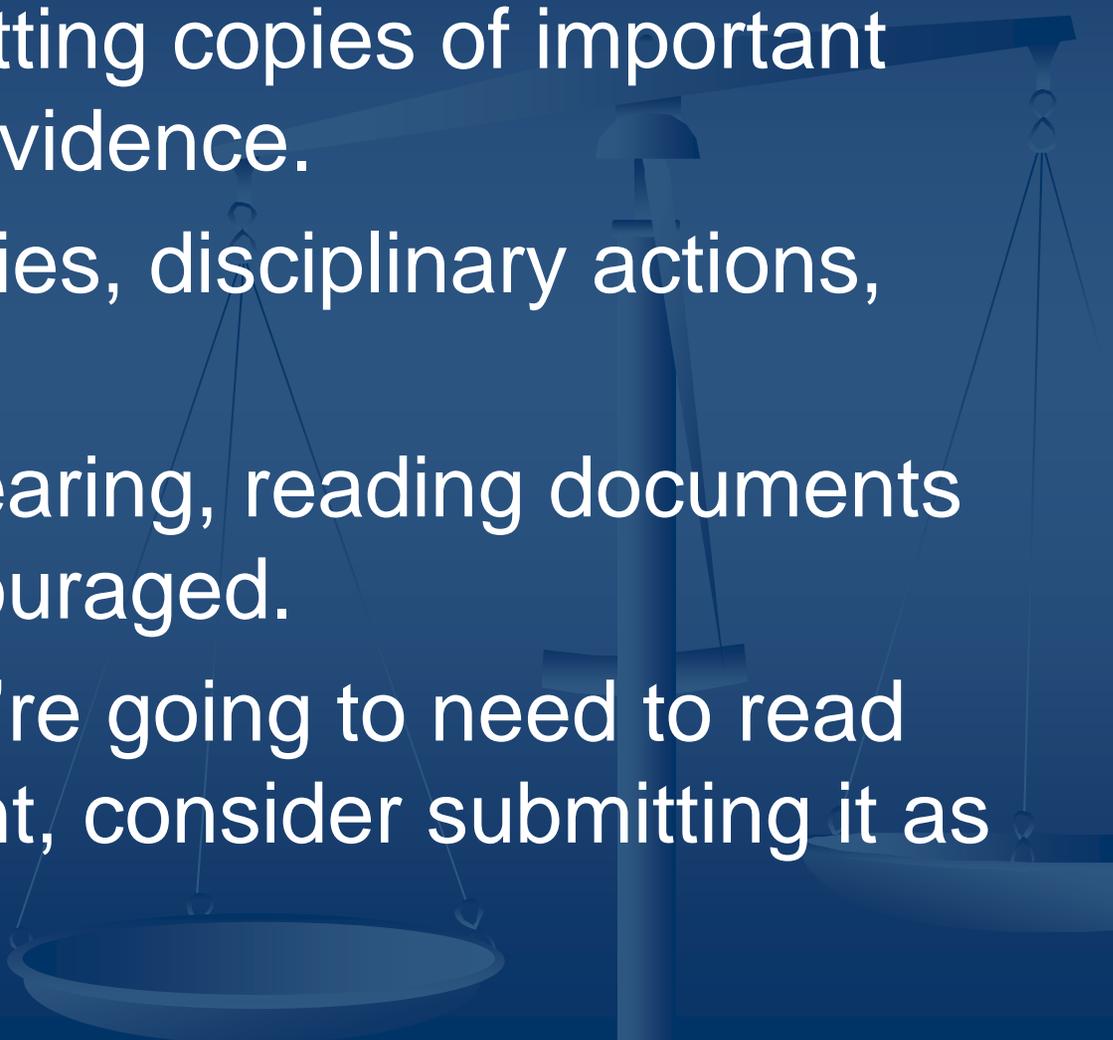
# THE BRONZE RULE

## *The REAL reason for discharge*

Focus on the “real” reason for discharge rather than providing a laundry list of every bad thing a former employee ever did.

If it wasn't really part of the reason for discharge, don't mention it.

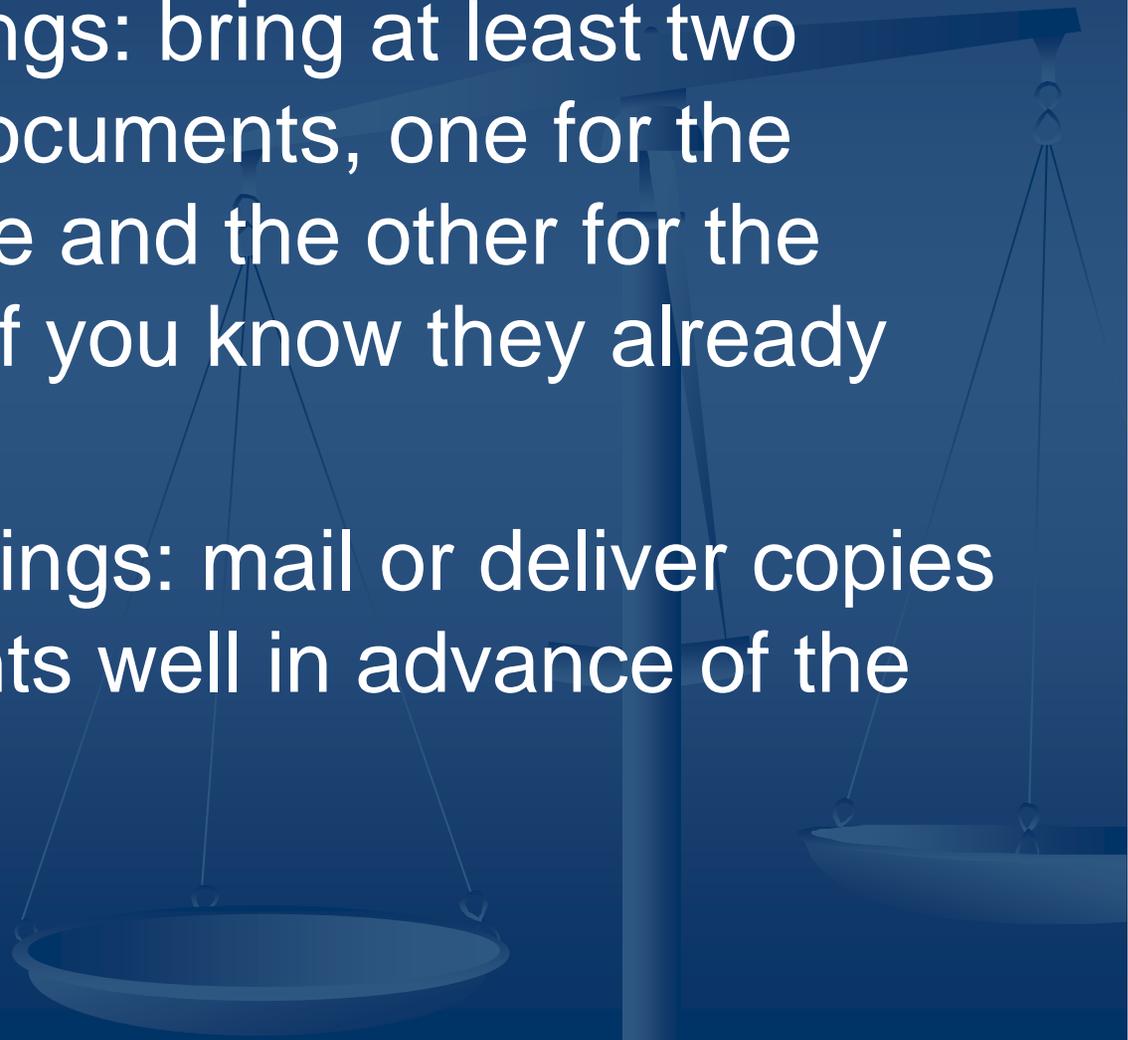
# Documents



- Consider submitting copies of important documents as evidence.
- Examples: policies, disciplinary actions, warnings.
- In any sort of hearing, reading documents out loud is discouraged.
- If you know you're going to need to read from a document, consider submitting it as evidence.

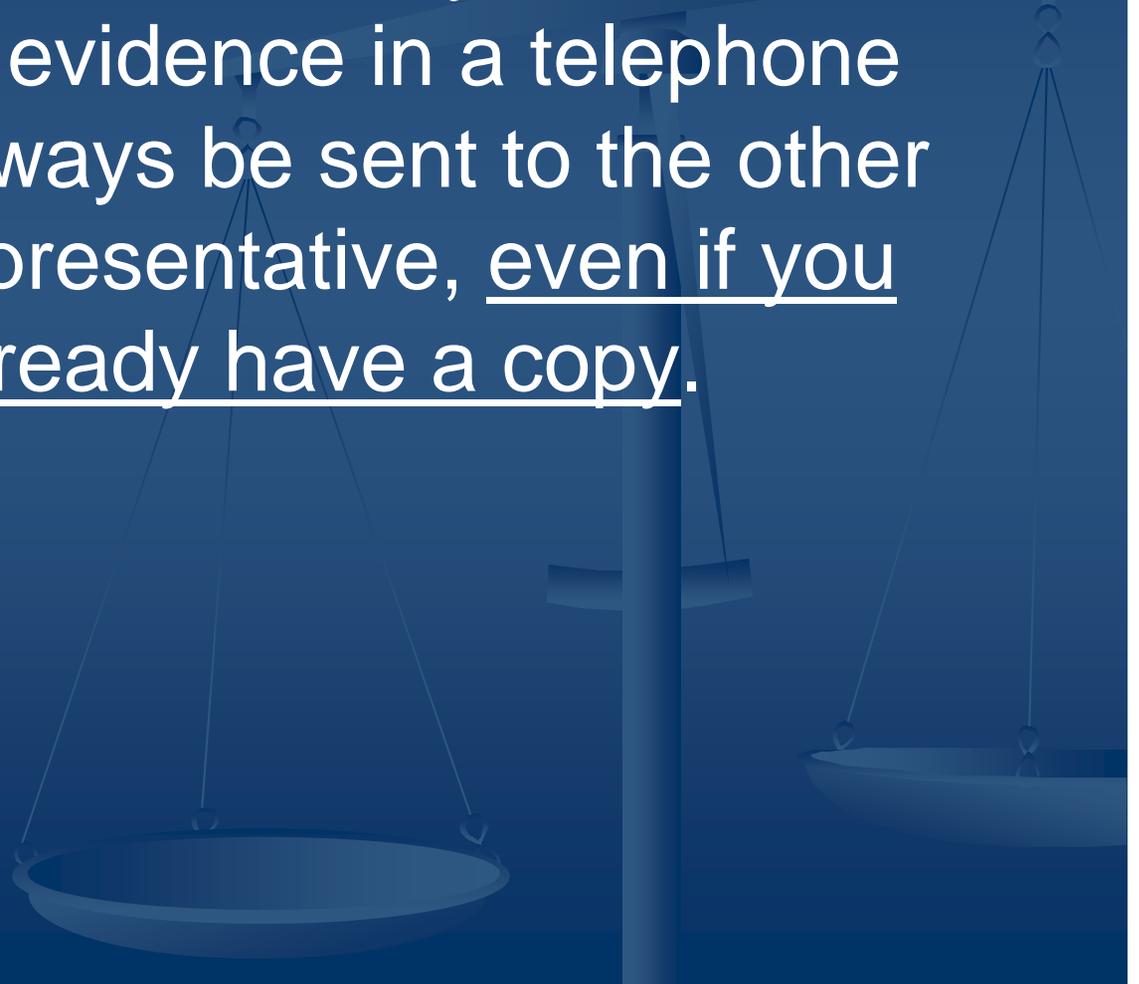
# Documents

- In-person hearings: bring at least two copies of any documents, one for the Appeals Referee and the other for the claimant (even if you know they already have a copy).
- Telephone hearings: mail or deliver copies of any documents well in advance of the hearing.



# Documents for Telephone

- Remember any documents you mail or fax to us for use as evidence in a telephone hearing must always be sent to the other party or their representative, even if you are sure they already have a copy.

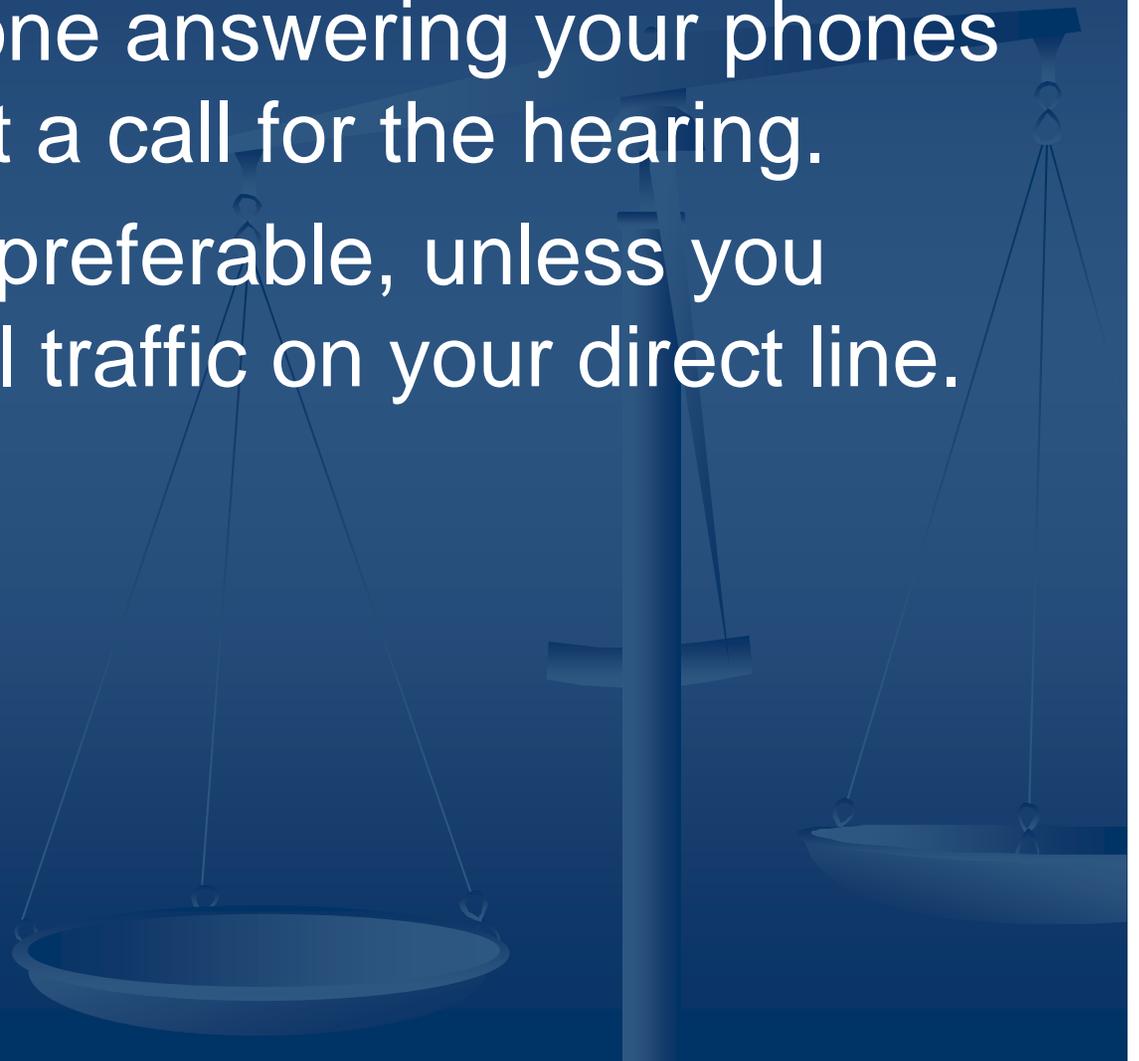


# Telephone Questionnaire

- Always send in the telephone hearing questionnaire with the names and telephone numbers of all your participants.
- If you can, fax and mail to make sure it is received, especially if sending close to the date of the hearing.

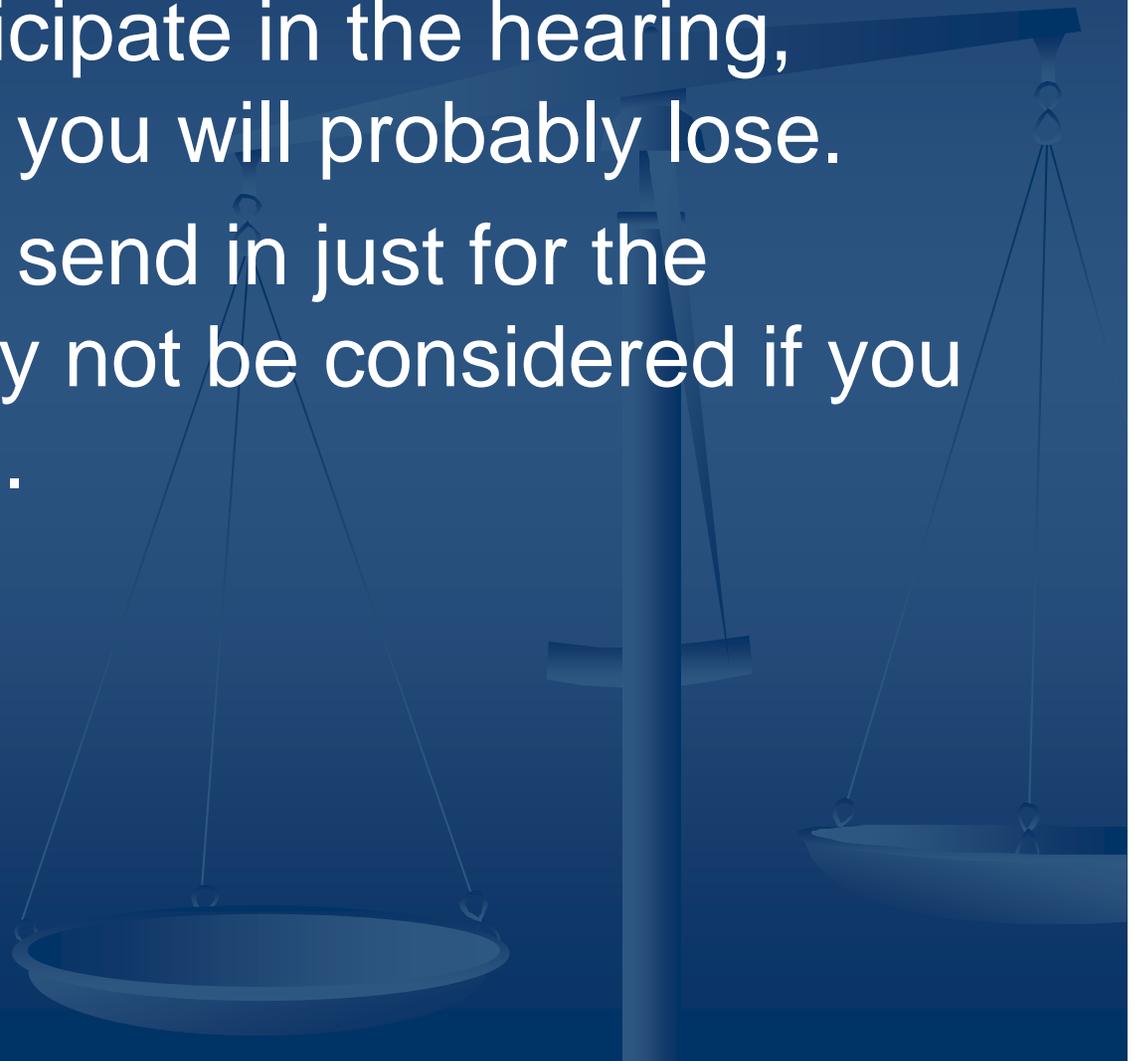
# Your Telephone Line

- Make sure anyone answering your phones knows to expect a call for the hearing.
- Direct lines are preferable, unless you have a lot of call traffic on your direct line.



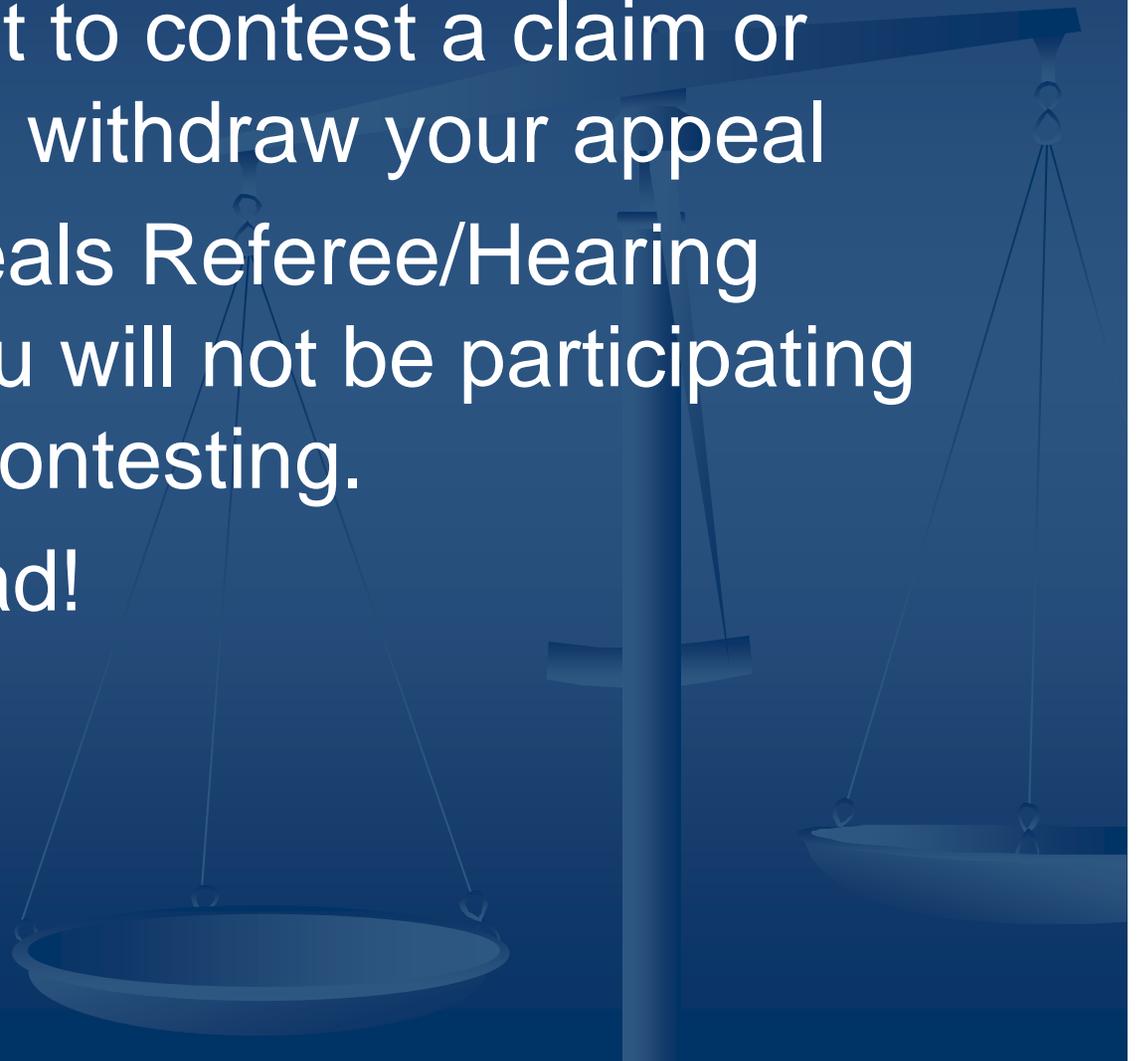
# Participation

- If you don't participate in the hearing, understand that you will probably lose.
- Documents you send in just for the hearing will likely not be considered if you don't participate.



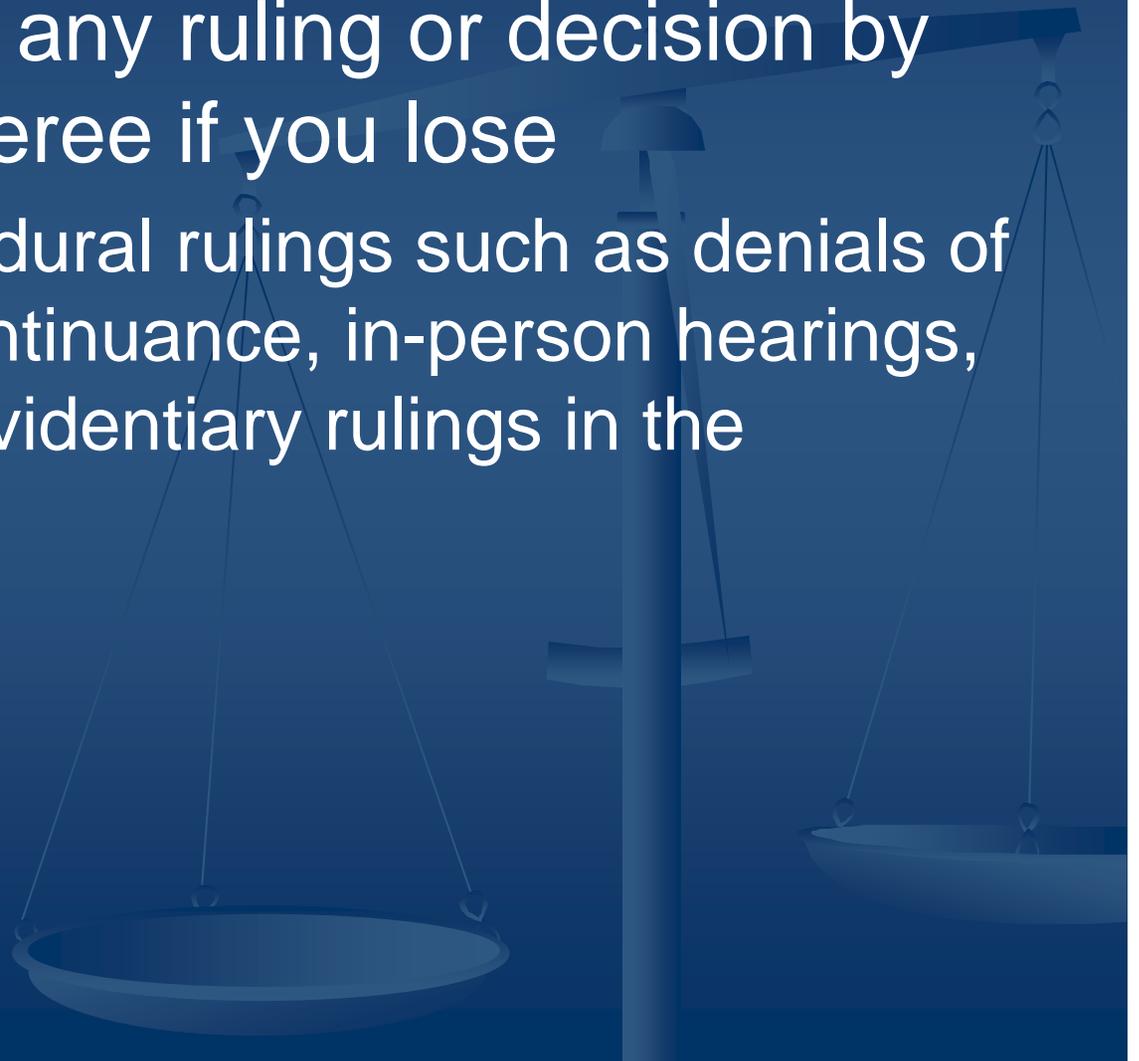
# Choosing Not To Participate

- If you decide not to contest a claim or appeal, you can withdraw your appeal
- OR let the Appeals Referee/Hearing Officer know you will not be participating and/or are not contesting.
- We won't be mad!



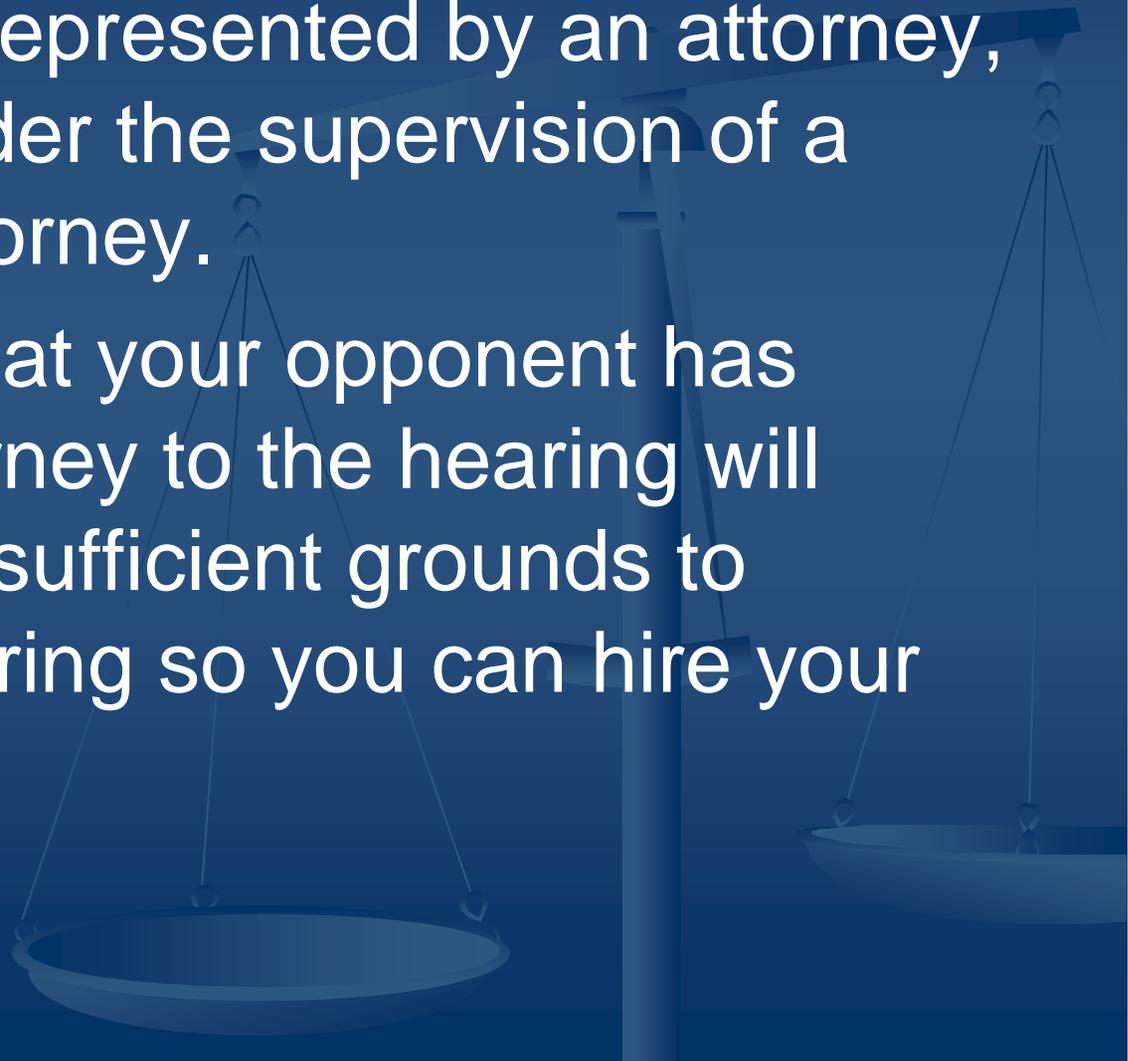
# Further Appeals

- You can appeal any ruling or decision by an Appeals Referee if you lose
  - including procedural rulings such as denials of requests for continuance, in-person hearings, subpoenas & evidentiary rulings in the hearing.



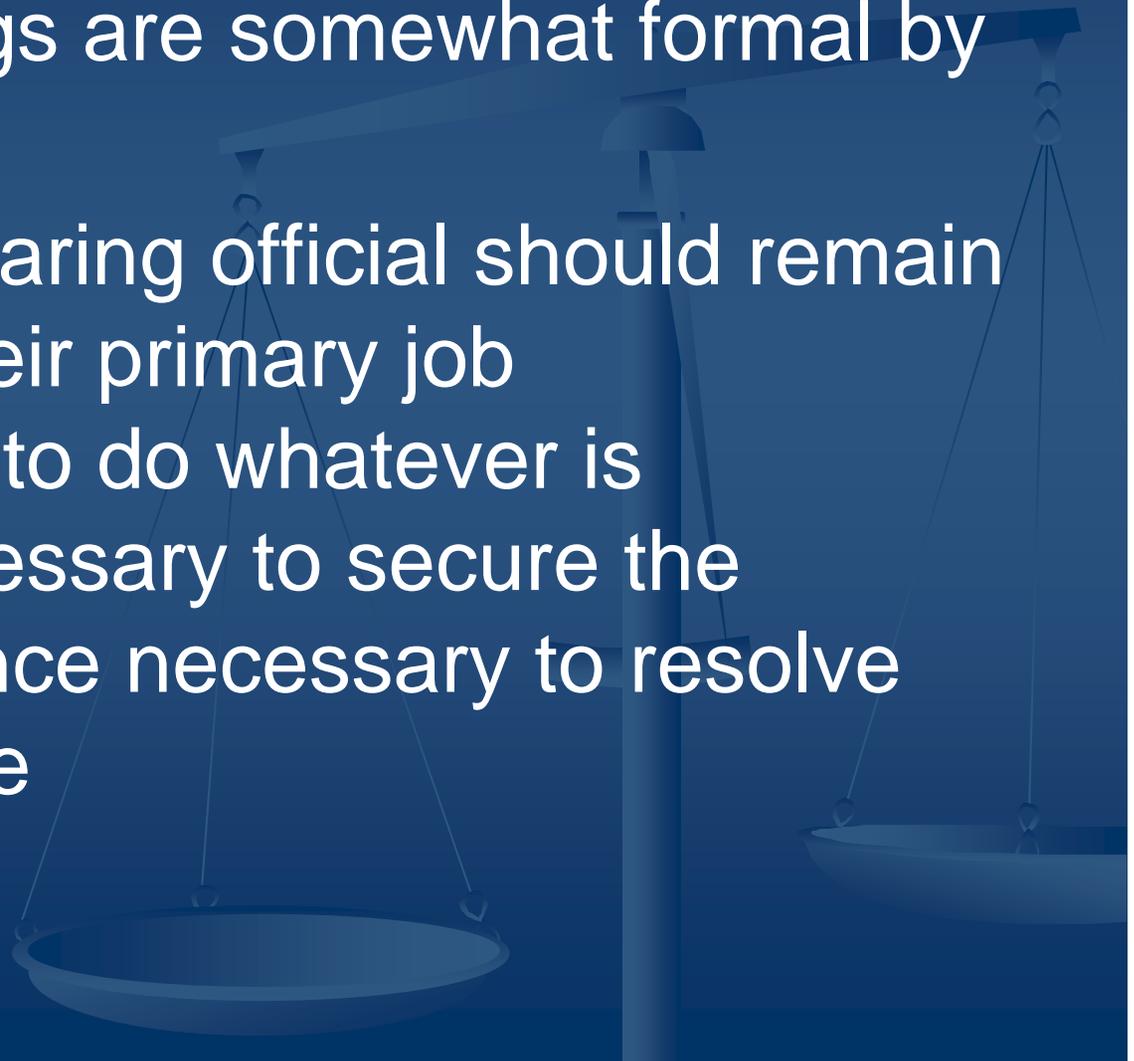
# Representation

- Parties can be represented by an attorney, or someone under the supervision of a licensed NC attorney.
- Your surprise that your opponent has brought an attorney to the hearing will typically not be sufficient grounds to adjourn the hearing so you can hire your own lawyer.



# Formal or Informal

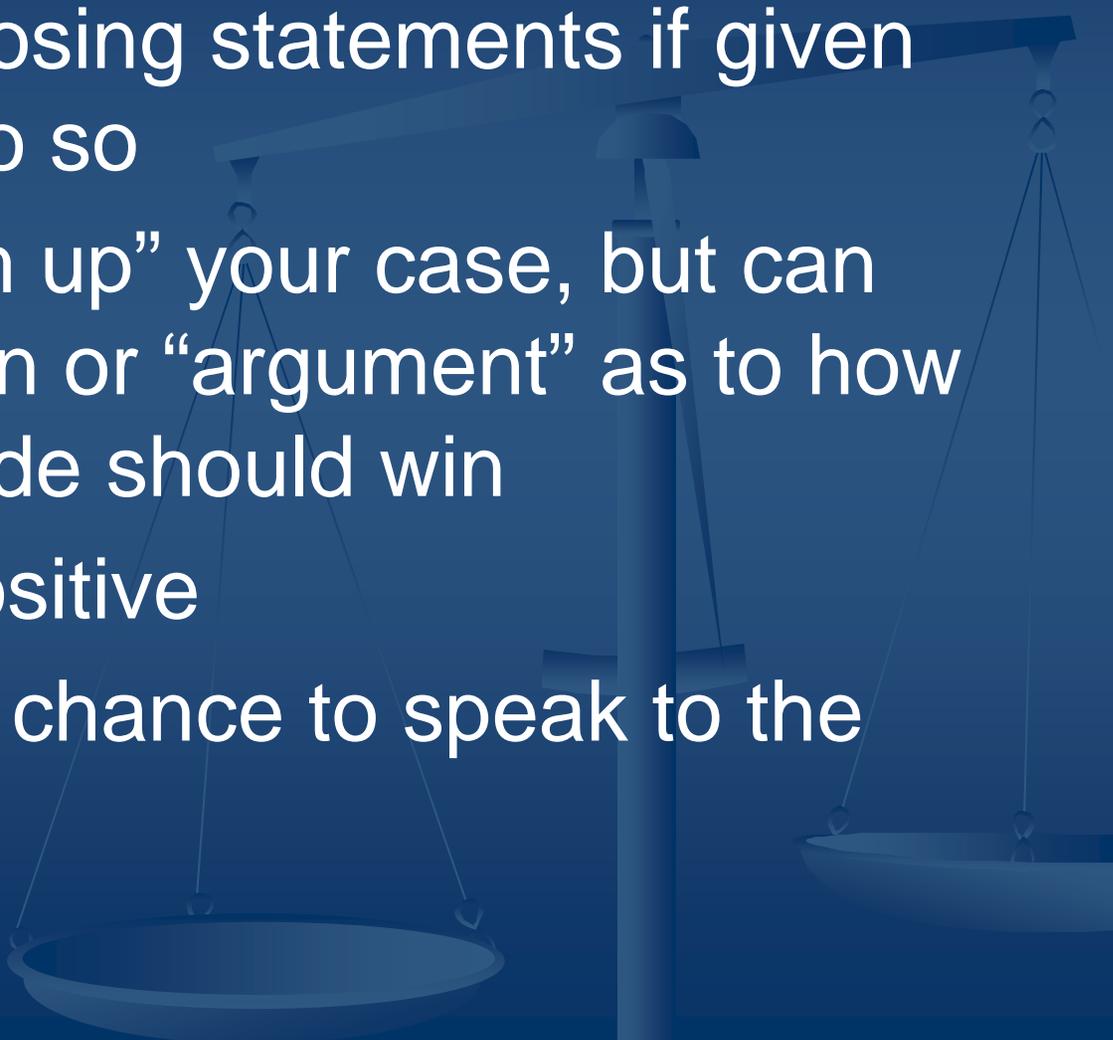
- Appeals hearings are somewhat formal by nature
- Although the hearing official should remain professional, their primary job responsibility is to do whatever is reasonably necessary to secure the available evidence necessary to resolve issues in dispute



# Make it Easy

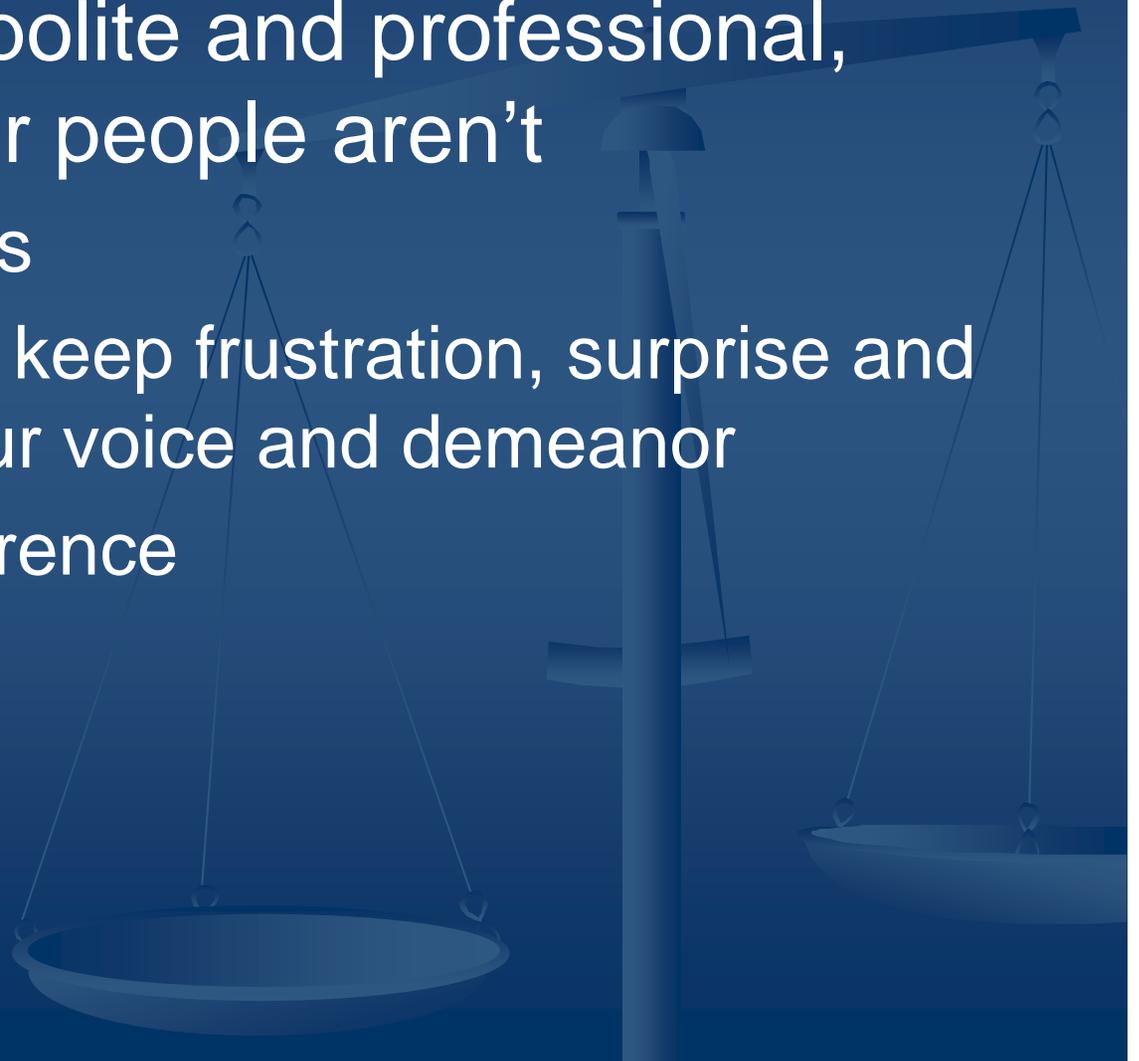
- Make it EASY for the Appeals Referee, and things will typically go smoother for you and everyone else.
  - Have your case prepared, your documents sent in, your questionnaire with witnesses sent in well in advance and as many uncertainties eliminated as you can.

# Closing Statements

- Always make closing statements if given the chance to do so
  - Not only to “sum up” your case, but can give your opinion or “argument” as to how and why your side should win
  - Focus on the positive
  - This is your last chance to speak to the decision-maker
- 

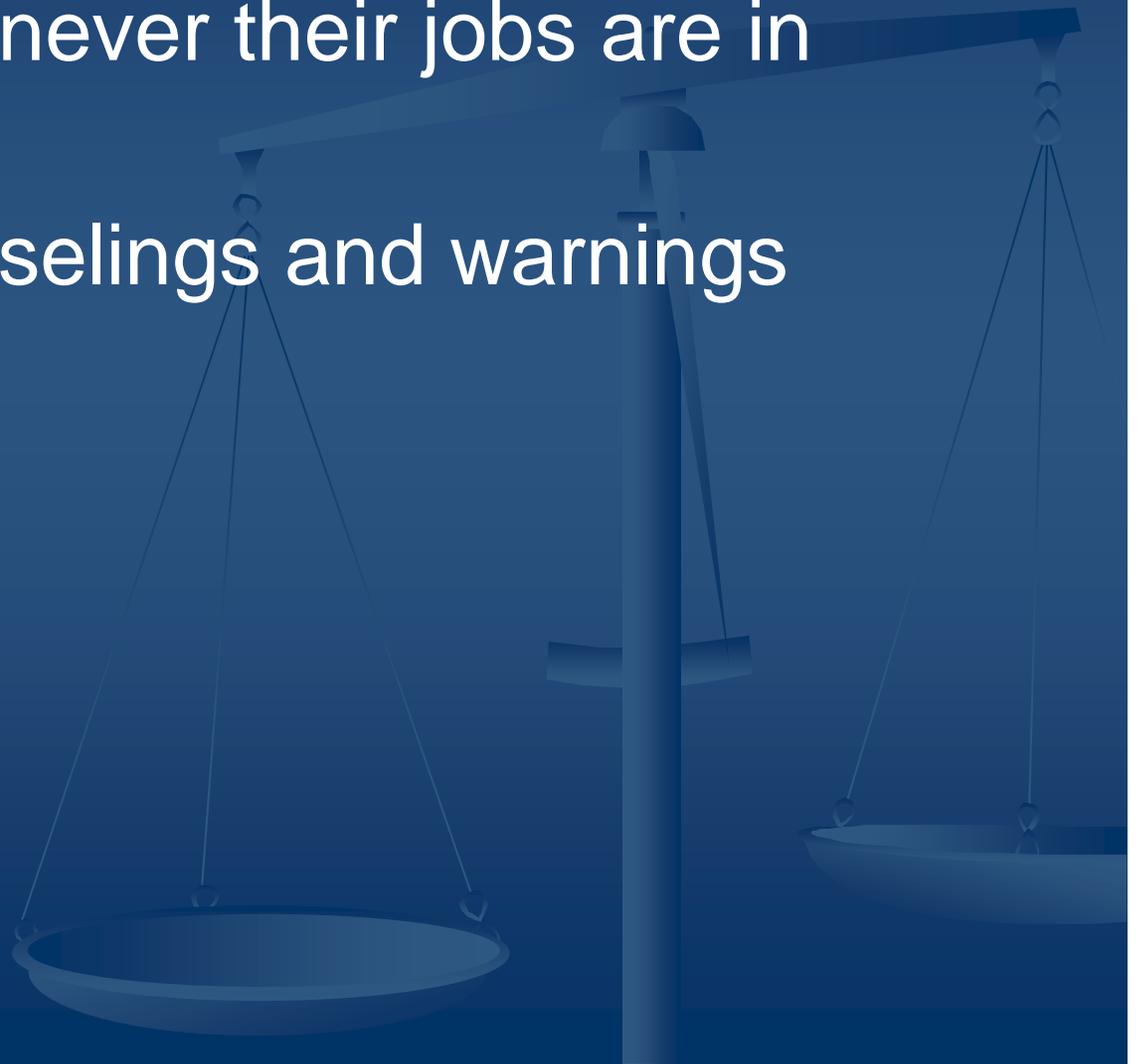
# Keep your cool

- Always remain polite and professional, even when other people aren't
  - Stick to the facts
  - Do your best to keep frustration, surprise and upset out of your voice and demeanor
  - It makes a difference



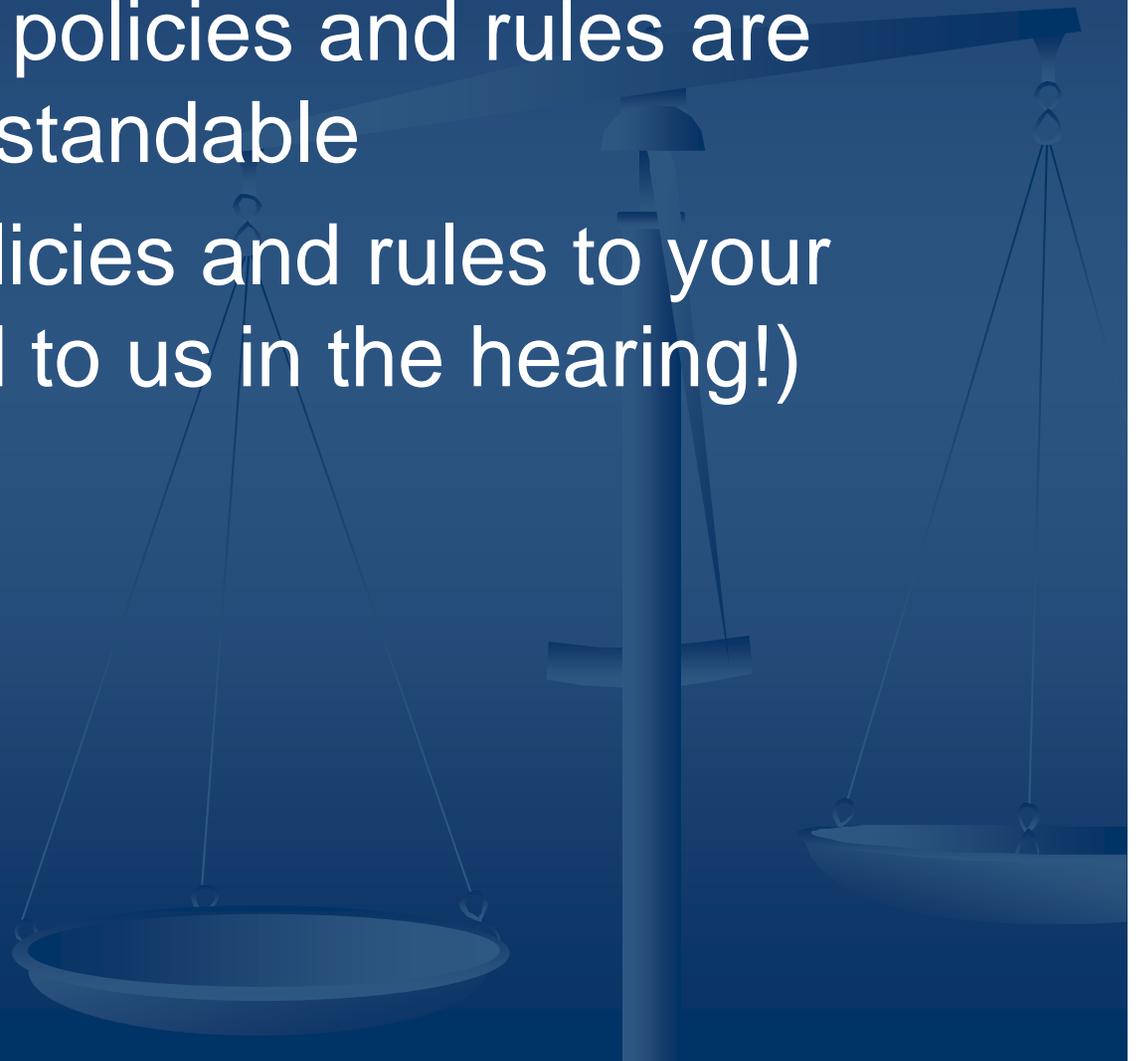
# Give Notice

- Notify folks whenever their jobs are in jeopardy.
- Document counselings and warnings



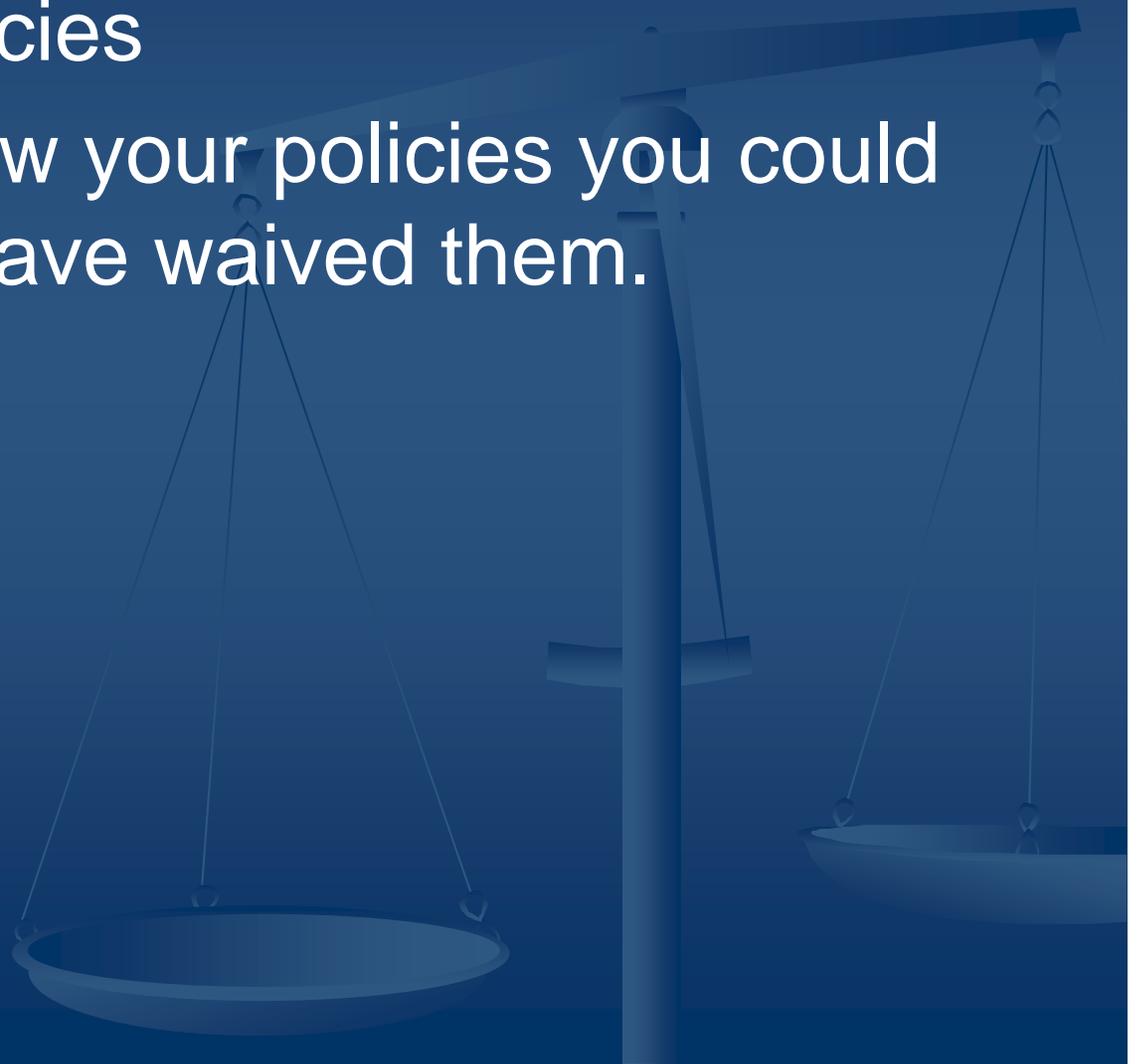
# Be Clear

- Make sure your policies and rules are clear and understandable
- Explain your policies and rules to your employees (and to us in the hearing!)



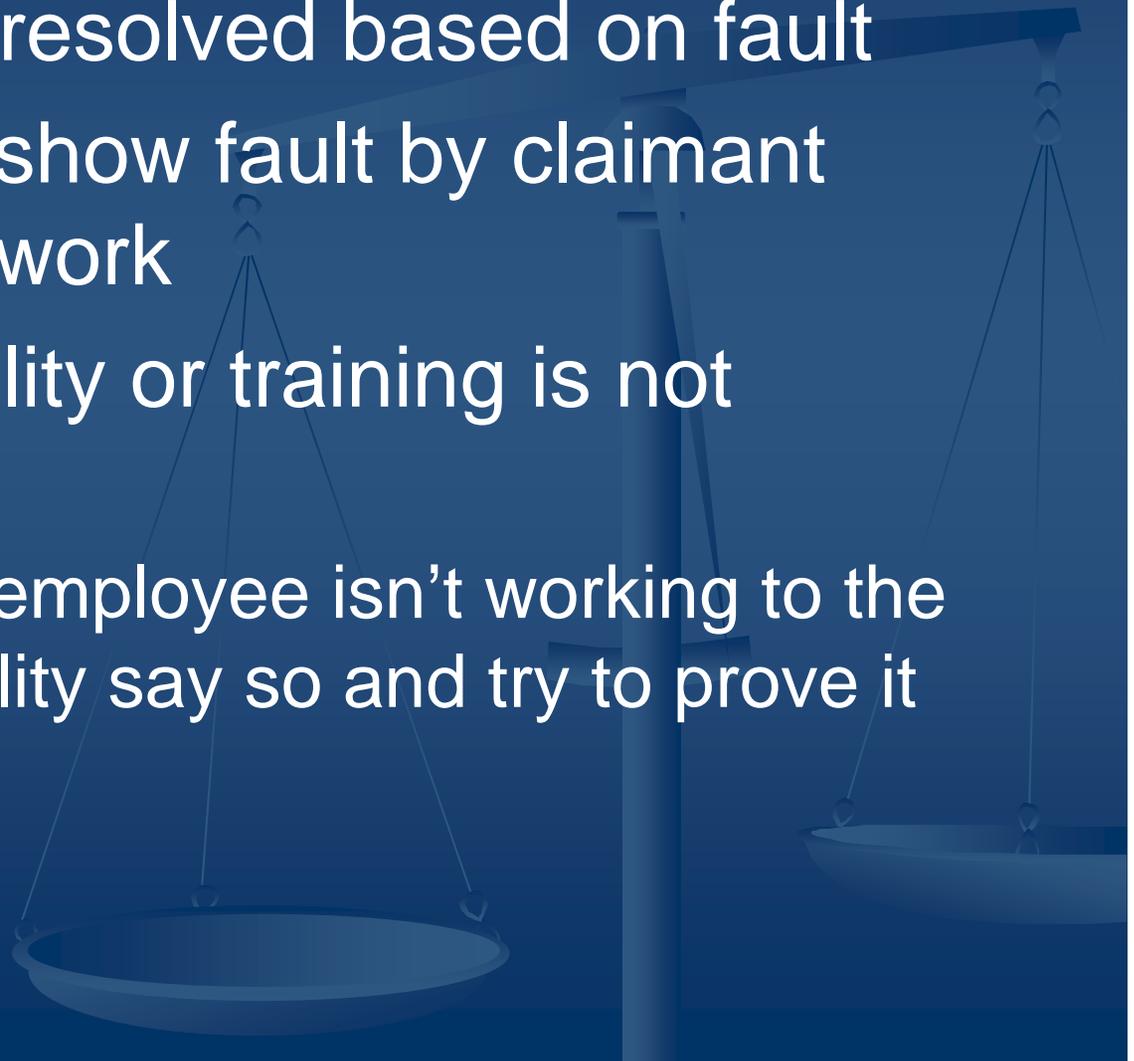
# Waiver

- Follow your policies
- If you don't follow your policies you could be deemed to have waived them.



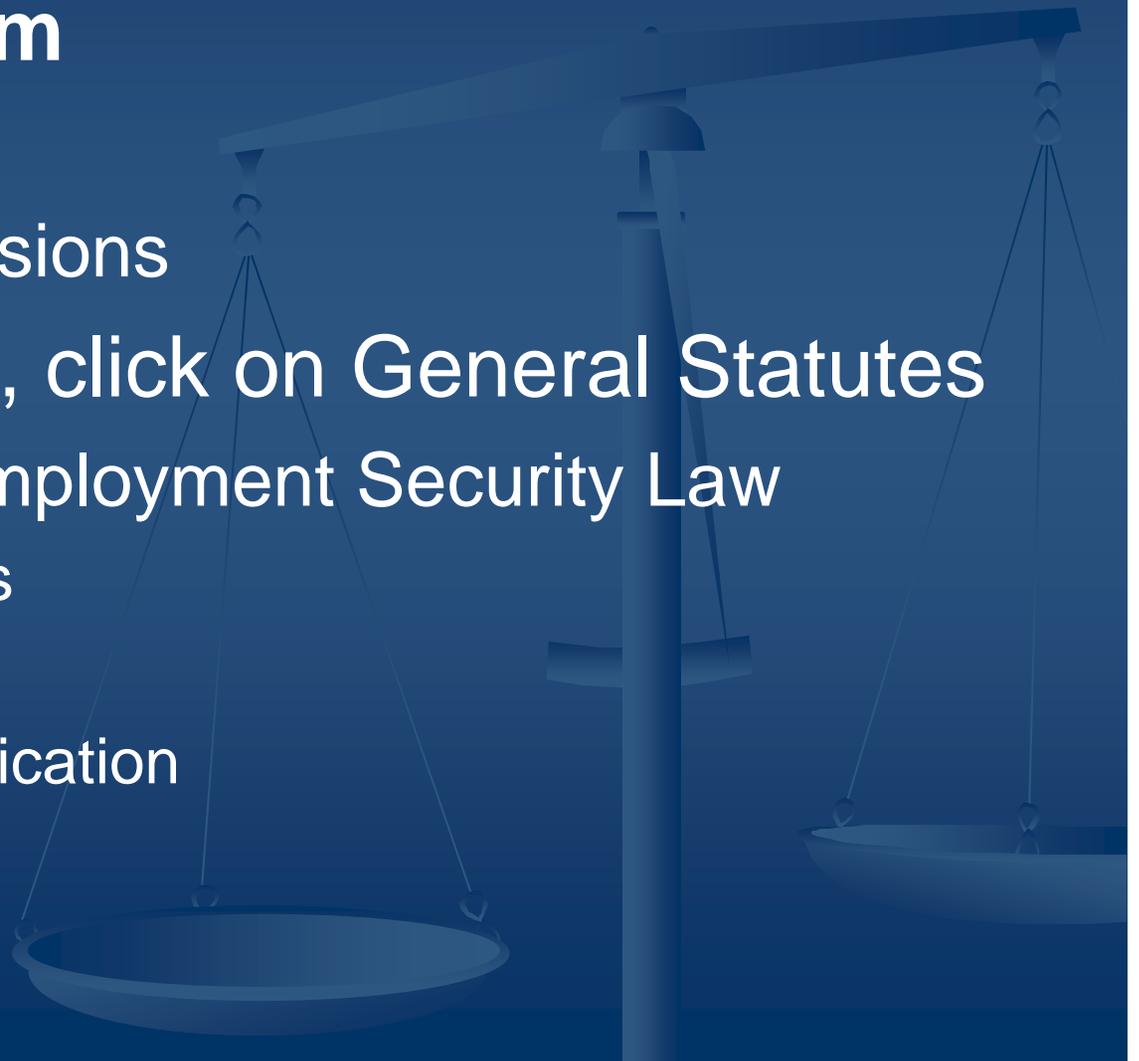
# Fault

- Discharges are resolved based on fault
- Employer must show fault by claimant connected with work
- Lack of skill, ability or training is not disqualifying
  - If you know an employee isn't working to the best of their ability say so and try to prove it



# The Law & Info Resources

- [www.ncesc.com](http://www.ncesc.com)
  - Regulations
  - Precedent Decisions
- [www.ncleg.net](http://www.ncleg.net), click on General Statutes
  - Chapter 96 - Employment Security Law
    - 96-8 Definitions
    - 96-13 Eligibility
    - 96-14 Disqualification



# Appeals Contact Information

- Call (919) 707-1060 (the Appeals Main Line) if you have questions about the Appeals process or need contact info for our Appeals Referees or staff.
- (919) 733-1228 - Appeals Main FAX Line.
- [esc.public.appeals@nccommerce.com](mailto:esc.public.appeals@nccommerce.com) - General Appeals Department email address
- Jeffrey T. Smith, Deputy Chief Appeals Referee  
(919) 707-1329 direct,  
[jeff.smith@nccommerce.com](mailto:jeff.smith@nccommerce.com)