

North Carolina Division of Workforce Solutions
Agricultural Services Program
Appeals Process for Migrant and Seasonal Farm Worker Program Complaints

Complainant appeal process to request a hearing with the state (20 CFR 658.411(d)(5)(ii))

This appeal process is exclusively for parties affiliated with the North Carolina Division of Workforce Solutions (DWS) Agriculture Services and Migrant and Seasonal Farmworker (MSFW) Program. Appeals with any other program administered by DWS should be routed through the DWS ombudsman who can be reached at (919) 814-0302 or emailed at DWSMLCustomerOmbudsman@nccommerce.com. Parties requesting a hearing on MSFW issues may contact the DWS monitor advocate directly. Requests for a hearing must be made in writing.

After reviewing the appeal, the DWS monitor advocate may determine that the appeal does not fall within the agency scope or mission of DWS, such as an issue with housing or unfair wages. If this is the case, the DWS monitor will refer the case to the proper governing agency in writing and will notify all parties of the referral.

The monitor advocate shall have 20 business days from the certified date of receipt of a written request (via hard copy or electronic mail) for a hearing to refer the complaint to the DWS hearing officer for review. The monitor advocate must, in writing (via hard copy or electronic mail), notify the respective parties to whom the determination was sent that:

1. The parties will be notified of the date, time, and place of the hearing.
2. The parties may be represented at the hearing by an attorney or other representative.
3. The parties may bring witnesses and/or documentary evidence to the hearing.
4. The parties may cross-examine opposing witnesses at the hearing.
5. The decision on the complaint will be based on the evidence presented at the hearing.
6. The hearing officer may reschedule the hearing at the request of a party or its representative.
7. With the consent of the monitor advocate and hearing officer, the party who requested the hearing may withdraw the request in writing prior to the hearing.

If DWS makes a final determination that the employer, who has or is currently using DWS services, has violated DWS Policy, the determination must state that the DWS will initiate procedures for discontinuation of services to the employer.

A complaint regarding DWS services must be handled to resolution by these regulations only if it is made within two years of the alleged occurrence.

Resolution of complaints

A complaint is considered resolved when:

1. The complainant indicates satisfaction with the outcome via written correspondence.
2. The complainant chooses not to elevate the complaint to the next level of review.
3. The complainant or the complainant's authorized representative fails to respond to a request for information within 20 working days, or in cases where the complainant is a migrant seasonal farmworker, 40 working days of a written request by DWS.
4. The complainant exhausts all available options for review.
5. A final determination has been made by the enforcement agency to which the complaint was referred.

Reopening of case after resolution

If the complainant or the complainant's authorized representative fails to respond, the complainant or the complainant's authorized representative may reopen the case within one year after the monitor advocate has closed the case.

State hearing process including the designation of a state hearing official (20 CFR 658.417)

The hearing must be held by a designed DWS hearing officer. A DWS hearing officer may be any state official authorized to hold hearings under North Carolina state law. The hearing officer may decide to conduct hearings on more than one complaint concurrently if he/she determines that the issues are related or that the complaints will be handled more expeditiously if conducted together.

The hearing officer, upon the referral of a case for a hearing, must notify all involved parties of the date, time, and place of the hearing, and reschedule the hearing, as appropriate. In the event of a health or safety issue, the hearing may be held virtually by phone or teleconference. A teleconference may only be held if all parties have easy access to technologies required to conduct a hearing via teleconference.

In conducting a hearing, the hearing officer must:

1. Regulate the course of the hearing.
2. Issue subpoenas, if necessary, provided the official has the authority to do so under state law.
3. Ensure that all relevant issues are considered.
4. Rule on the introduction of evidence and testimony.
5. Take all actions necessary to ensure an orderly proceeding.

The following procedures must be followed during the hearing:

1. All testimony at the hearing must be recorded and may be transcribed when appropriate.
2. The parties must be afforded the opportunity to present, examine, and cross-examine witnesses.
3. The hearing officer may elicit testimony from witnesses but may not act as advocate for any party.
4. The hearing officer must receive and include in the record documentary evidence offered by any party and accepted at the hearing. Copies thereof must be made available by the party submitting the document to other parties to the hearing upon request.
5. Federal and state rules of evidence do not apply to hearings conducted pursuant to this section; however, rules or principles designed to assure production of the most credible evidence available – and to subject testimony to test by cross-examination – must be applied where reasonably necessary by the hearing officer. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence.
6. The case record, or any portion thereof, must be available for inspection and copying by any party at, prior to, or subsequent to the hearing upon request. Special procedures may be used for disclosure of medical and psychological records such as disclosure to a physician designated by the individual.
7. The hearing officer must, if feasible, resolve the dispute at any time prior to the conclusion of the hearing.
8. At the hearing officer's discretion, other appropriate individuals, organizations, or associations may be permitted to participate in the hearing as amicus curiae (friends of the court) with respect to any legal or factual issues relevant to the complaint. Any documents submitted by the amicus curiae must be included in the record.

If the parties to the hearing are in more than one geographic region, or access to the hearing location is extremely inconvenient for one or more parties as determined by the hearing officer, the hearing official must:

1. Whenever possible, hold a single hearing at a location convenient to all parties or their representatives wishing to appear and present evidence, with all such parties and/or their representatives present. This assumes that there are no health or safety issues to consider.
2. If a hearing location cannot be established by the hearing officer, he/she may conduct, with the consent of the parties or due to health concerns, the hearing virtually by a telephone conference.
3. Regardless of how a hearing is conducted, DWS must take evidence and hold the hearing in the same manner as used for appealed interstate unemployment claims in North Carolina to the extent that such procedures are consistent with this section.

Decision of the state hearing official (20 CFR 658.418)

All decisions by the hearing officer shall be accompanied by a written notice informing the parties (not including the regional administrator, the solicitor of labor, or entities serving in an amicus curiae capacity) that, if they are not satisfied, they may, within 20 working days of the certified date of receipt of the decision, file an appeal in writing to the given address of the regional administrator.

Rescinded