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**XX.**

**TEXAS WORKFORCE COMMISSION**

The rules are adopted under Texas Labor Code §§301.0015 and 302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

## **Chapter 823. INTEGRATED COMPLAINTS, HEARINGS, AND APPEALS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

#### **§823.1. Short Title and Purpose.**

- (a) This chapter provides an appeals process to the extent authorized by federal and state law and by rules administered by the Texas Workforce Commission (Agency).
- (b) This section applies only to complaints or determinations regarding federal- or state-funded workforce services administered by the Agency or Local Workforce Development Boards (Boards), as follows:
  - (1) Child care;
  - (2) Temporary Assistance for Needy Families (TANF) Choices;
  - (3) Food Stamp Employment and Training (FSE&T);
  - (4) Project Reintegration of Offenders (Project RIO);
  - (5) Workforce Investment Act (WIA) Adult, Dislocated Worker, and Youth; and
  - (6) Eligible Training Providers (ETP) receiving WIA funds or other funds for training services.
- (c) Determinations or complaints relating to the following matters are not governed by this chapter:
  - (1) Across-the-board reductions of services, benefits, or assistance to a class of recipients;
  - (2) Matters governed by hearing procedures otherwise provided for in this title;
  - (3) Alleged violations of nondiscrimination and equal opportunity requirements;
  - (4) Denial of benefits as it relates to mandatory work requirements for individuals receiving TANF and FSE&T services and is administered through the Texas Health and Human Services Commission (HHSC);
  - (5) Matters governing job service–related complaints as referenced in 20 C.F.R. Part 658, Subpart E, §§400-418 and the federal Employment Service law;
  - (6) Services provided by the Commission pursuant to Texas Labor Code §301.023 - Complaints Against the Commission; or
  - (7) Alleged criminal violations of any services referenced in §823.1(b).

*The provisions of this §823.1 adopted to be effective November 26, 2007, as published in the Texas Register, November 23, 2007, 32 TexReg 8546.*

#### **§823.2. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

- (1) Adverse action -- Any denial or reduction in benefits or services to a party, including displacement from current employment by a Texas Workforce Center customer.
- (2) Agency decision -- The written finding issued by an Agency hearing officer following a hearing before that hearing officer.

- (3) Appeal -- A written request for a review filed with the Board or Agency by a person in response to a determination or decision.
- (4) Board decision -- The written finding issued by a Board hearing officer following a hearing before that hearing officer in response to an appeal or complaint.
- (5) Complaint -- A written statement alleging a violation of any law, regulation, or rule relating to any federal- or state-funded workforce service.
- (6) Determination -- A written statement issued to a Texas Workforce Center customer by a Board, its designee, or the Agency relating to an adverse action, or to a provider or contractor relating to denial or termination of eligibility under programs administered by the Agency or a Board listed in §823.1(b).
- (7) Hearing officer -- An impartial individual designated by either the Board or the Agency to conduct hearings and issue administrative decisions.
- (8) Informal resolution -- Any procedure that results in an agreed final settlement between all parties to a complaint or an appeal.
- (9) Party -- A person who files a complaint or who appeals a determination or the entity against which the complaint is filed or that issued the determination.

*The provisions of this §823.2 adopted to be effective November 26, 2007, as published in the Texas Register, November 23, 2007, 32 TexReg 8546.*

### **§823.3. Agency and Board Timeliness.**

- (a) A properly addressed determination or decision is final for all purposes unless the party to whom it is mailed files an appeal no later than the fourteenth calendar day after the mailing date.
- (b) Each party to a complaint or an appeal shall promptly notify, in writing, the Board, Board's designee, or the Agency with which the complaint or appeal was filed of any change of mailing address. Determinations and decisions shall be mailed to this address.
  - (1) A copy of the determination or decision must be mailed to a properly designated party representative in order for it to become final.
  - (2) The Board or Agency is responsible for making an address change only if the Board or Agency is specifically directed by the party to mail subsequent correspondence to the new address.
  - (3) If the Board, Board's designee, or Agency addresses a document incorrectly, but the party receives the document, the time frame for filing an appeal shall begin as of the actual date of receipt by the party, whether or not the party receives the document within the appeal time frame set forth in subsection (a) of this section. However, this does not apply if the party fails to provide a current address or provides an incorrect address.
- (c) A determination or decision mailed to a party shall be presumed to have been delivered if the document was mailed as specified in subsection (b) of this section.
  - (1) A determination or decision shall not be presumed to have been delivered:
    - (A) if there is tangible evidence of nondelivery, such as being returned to sender by the U.S. Postal Service; or
    - (B) if credible and persuasive evidence is submitted to establish nondelivery or delayed delivery to the proper address.

- (2) If a party provides the Board or Agency with an incorrect mailing address, a mailing to that address shall be considered a proper mailing, even if there is proof that the party never received the document.
- (d) A complaint or an appeal shall be in writing. Complaints or appeals may be filed electronically only if filed in a form approved by the Agency in writing. The filing date for a complaint or an appeal shall be:
- (1) the postmarked date or the postal meter date (where there is only one or the other);
  - (2) the postmarked date, if there is both a postmark date and a postal meter date;
  - (3) the date the document was delivered to a common carrier, which is equivalent to the postmarked date;
  - (4) three business days before receipt by the Board or Agency, if the document was received in an envelope bearing no legible postmark, postal meter date, or date of delivery by a common carrier;
  - (5) the date of the document itself, if the document date is fewer than three days earlier than the date of receipt and if the document was received in an envelope bearing no legible postmark, postal meter date, or date of delivery by a common carrier;
  - (6) the date of the document itself, if the mailing envelope containing the complaint or appeal is lost after delivery to the Board or Agency. If the document is undated, the filing date shall be deemed to be three business days before receipt by the Board or Agency; or
  - (7) the date of receipt by the Board or Agency, if the document was filed by fax.
- (e) Credible and persuasive testimony under oath, subject to cross-examination, may establish a filing date that is earlier than the dates established under subsection (d) of this section. A party shall be allowed to establish a filing date earlier than a postal meter date or the date of the document itself only upon a showing of extremely credible and persuasive evidence. Likewise, when a party alleges that a complaint or appeal has been filed that the Board or Agency has never received, the party must present extremely credible and persuasive evidence to support the allegation.
- (f) A decision or determination shall not be deemed final if a party shows that a representative of the Board, Board's designee, or Agency has given misleading information on appeal rights to the party. The party shall specifically establish:
- (1) how the party was misled; or
  - (2) what misleading information the party was given, and, if possible, by whom the party was misled.
- (g) There is no good cause exception to the timeliness rules.

*The provisions of this §823.3 adopted to be effective November 26, 2007, as published in the Texas Register, November 23, 2007, 32 TexReg 8546.*

#### **§823.4. Representation.**

Each party may authorize a hearing representative to assist in presenting a complaint or an appeal on behalf of the party under this chapter. The Agency or Board may require authorization to be in writing. On behalf of the party, the hearing representative may exercise any of the party's rights under this chapter.

*The provisions of this §823.4 adopted to be effective November 26, 2007, as published in the Texas Register, November 23, 2007, 32 TexReg 8546.*

## **SUBCHAPTER B. BOARD COMPLAINT AND APPEAL PROCEDURES**

### **§823.10. Board-Level Complaints.**

- (a) Persons who may file a complaint include:
  - (1) Texas Workforce Center customers;
  - (2) other interested persons affected by the One-Stop Service Delivery Network, including subrecipients and eligible training providers; and
  - (3) previously employed individuals who believe they were displaced by a Texas Workforce Center customer participating in work-based services such as subsidized employment, work experience, or workfare.
- (b) Complaints shall be in writing and filed within 180 days of the alleged violation.
- (c) The complaint shall include:
  - (1) the party's name and current mailing address; and
  - (2) a brief statement of the alleged violation identifying the facts on which the complaint is based.
- (d) Each Board shall ensure that information about complaint procedures is provided to individuals, eligible training providers, and subrecipients. The information provided shall be presented in such a manner as to be understood by the affected individuals, including youth, individuals with disabilities, and individuals with limited English proficiency. This information shall be:
  - (1) posted in a conspicuous public location at each Texas Workforce Center;
  - (2) provided in writing to any customer;
  - (3) made available in writing to any individual upon request; and
  - (4) placed in each Texas Workforce Center customer's file.

*The provisions of this §823.10 adopted to be effective November 26, 2007, as published in the Texas Register, November 23, 2007, 32 TexReg 8546.*

### **§823.11. Determinations.**

- (a) A determination affecting the type and level of services to be provided by a Board or its designee shall be promptly provided to any person directly affected.
- (b) The determination shall include the following:
  - (1) A brief statement of the adverse action;
  - (2) The mailing date of the determination;
  - (3) An explanation of the individual's right to an appeal;
  - (4) The procedures for filing an appeal to the Board, including applicable time frames as required in §823.3;
  - (5) The right to have a hearing representative, including legal counsel; and
  - (6) The address or fax number to send the appeal.
- (c) Boards shall allow providers of training services the opportunity to appeal a determination related to the:
  - (1) denial of eligibility as a training provider under WIA §122(b), §122(c), or §122(e);

- (2) termination of eligibility as a training provider or other action under WIA §122(f); or
- (3) denial of eligibility as a training provider of on-the-job or customized training by the operator of a Texas Workforce Center under WIA §122(h).
- (d) A person that receives a determination from a Board or a Board's designee may file an appeal with the Board requesting a review of the determination. The appeal must be submitted in writing, filed within 14 calendar days of the mailing date of the determination, and include the party's proper mailing address.

*The provisions of this §823.11 adopted to be effective November 26, 2007, as published in the Texas Register, November 23, 2007, 32 TexReg 8546.*

### **§823.12. Board Informal Resolution Procedure.**

- (a) Boards shall provide an opportunity for informal resolution of a complaint or appeal.
- (b) Informal resolution may include but is not limited to:
  - (1) informal meetings with case managers or their supervisors;
  - (2) second reviews of the case file;
  - (3) telephone calls or conference calls to the affected parties;
  - (4) in-person interviews with all affected parties; or
  - (5) written explanations or summaries of the laws or regulations involved in the complaint.

*The provisions of this §823.12 adopted to be effective November 26, 2007, as published in the Texas Register, November 23, 2007, 32 TexReg 8546.*

### **§823.13. Board Hearings.**

- (a) If the informal resolution procedure results in a final agreement between the parties, no hearing shall be held.
- (b) If no final informal resolution is reached, Boards shall provide an opportunity for a hearing to resolve an appeal or complaint.
- (c) Either a final agreement resulting from informal resolution or a hearing and Board decision shall be completed within 60 calendar days of the original filing of the appeal or complaint.
- (d) Boards shall provide a process that allows an individual alleging a labor standards violation to submit a complaint to a binding arbitration procedure, if a collective bargaining agreement covering the parties to the complaint so provides.
- (e) Within 60 calendar days of the filing of the appeal or complaint, the Board shall send the parties a decision setting forth the results of the hearing. The decision shall be issued by a Board hearing officer, shall include findings of fact and conclusions of law, and shall provide information about appeal rights to the parties.
- (f) If no Board decision is mailed within the 60 calendar-day time frame described in subsection (e) of this section or if any party disagrees with a timely Board decision, a party may file an appeal with the Agency.
- (g) An appeal to the Agency shall be filed in writing with TWC Appeals, Texas Workforce Commission, 101 East 15th St., Room 410, Austin, Texas 78778-0001, within 14 calendar days after the mailing date of the Board's decision. If the Board does not issue a decision within 60 calendar days of the date of the filing of the original appeal or complaint, an appeal to the Agency

must be filed no later than 90 calendar days after the filing date of the original appeal or complaint.

*The provisions of this §823.13 adopted to be effective November 26, 2007, as published in the Texas Register, November 23, 2007, 32 TexReg 8546.*

#### **§823.14. Board Policies for Resolving Complaints and Appeals of Determinations.**

- (a) A Board shall establish written policies to handle complaints and appeals of determinations, provide the opportunity for informal resolution, and conduct hearings in compliance with this subchapter for individuals, eligible training providers, and other persons affected by the One-Stop Service Delivery Network, including subrecipients.
- (b) A Board shall maintain written copies of these policies, and make them available to the Agency, Texas Workforce Center customers, and other interested persons upon request. A Board shall require that its subrecipients provide these policies to Texas Workforce Center customers and other interested persons upon request.
- (c) At a minimum, a Board shall develop and approve policies to:
  - (1) ensure that determinations are provided as specified in §823.11;
  - (2) ensure that information about complaint procedures is available as described in §823.10(d);
  - (3) notify persons that complaints must be submitted in writing and set forth the facts on which the complaint is based, and notify them of the time limit in which to file a complaint;
  - (4) maintain a complaint log and all complaint-related materials in a secure file for a period of three years;
  - (5) designate an individual to be responsible for investigation, documentation, monitoring, and following up on complaints;
  - (6) inform persons of the:
    - (A) right to file a complaint;
    - (B) right to appeal a determination;
    - (C) opportunity for informal resolution and a Board hearing;
    - (D) time frame in which to either reach informal resolution or to issue a Board decision; and
    - (E) right to file an appeal to the Agency, including providing information on where to file the appeal;
  - (7) designate hearing officers to conduct Board hearings, document actions taken, and render decisions; and
  - (8) ensure that complaints remanded from the Agency to the Board for resolution are handled in a timely fashion and follow established Board policies and time frames.
- (d) Complaints filed directly with the Agency may be remanded to the appropriate Board to be processed in accordance with the Board's policies for resolving complaints.

*The provisions of this §823.14 adopted to be effective November 26, 2007, as published in the Texas Register, November 23, 2007, 32 TexReg 8546.*



## SUBCHAPTER C. AGENCY COMPLAINT AND APPEAL PROCEDURES

### §823.20. State-Level Complaints.

- (a) A Texas Workforce Center customer or other interested person affected by the statewide One-Stop Service Delivery Network, including service providers that allege a noncriminal violation of the requirements of any federal- or state-funded workforce services, may file a complaint with the Agency.
- (b) Complaints shall be in writing and filed within 180 calendar days of the alleged violation. The complaint shall include the party's name, current mailing address, and a brief statement of the alleged violation identifying the facts on which the complaint is based.
- (c) The complaint shall be filed with TWC Appeals, Texas Workforce Commission, 101 East 15th St., Room 410, Austin, Texas 78778-0001.
- (d) The Agency shall provide an opportunity for informal resolution.
- (e) If the informal resolution procedure results in a final agreement between the parties, no hearing shall be held.
- (f) If no final informal resolution is reached, the complaint shall be promptly set for a hearing and a decision shall be issued in accordance with the procedures for appeals under this subchapter.
- (g) Complaints filed directly with the Agency may be remanded to the appropriate Board to be processed in accordance with the Board's hearing policies.

*The provisions of this §823.20 adopted to be effective November 26, 2007, as published in the Texas Register, November 23, 2007, 32 TexReg 8546.*

### §823.21. Setting a Hearing.

- (a) A WIA-funded training provider or other provider certified by the Agency and later found to be ineligible to receive funding as a training provider may file an appeal directly with the Agency.
- (b) Upon receipt of an appeal from a Board decision, an appeal pursuant to subsection (a) of this section, or if no informal resolution of a complaint is successfully reached pursuant to §823.20, the Agency shall promptly assign a hearing officer and mail a notice of hearing to the parties and/or their designated representatives. The hearing shall be set and held promptly and in no case later than as provided by applicable statute or rule.
- (c) The notice of hearing shall be in writing and include a:
  - (1) statement of the date, time, place, and nature of the hearing;
  - (2) statement of the legal authority under which the hearing is to be held; and
  - (3) short and plain statement of the issues to be considered during the hearing.
- (d) The notice of hearing shall be issued at least 10 calendar days before the date of the hearing unless a shorter period is permitted by statute.
- (e) Hearings shall be conducted by telephonic means, unless an in-person hearing is required by applicable statute or the Agency determines that an in-person hearing is necessary.
- (f) Parties needing special accommodations, including the need for a bilingual or sign language interpreter, shall make this request before the hearing is set, if possible, or as soon as practical.

*The provisions of this §823.21 adopted to be effective November 26, 2007, as published in the Texas Register, November 23, 2007, 32 TexReg 8546.*

### **§823.22. Postponement and Continuance.**

- (a) The hearing officer may grant a postponement of a hearing for good cause at a party's request. Except in emergencies or unusual circumstances confirmed by a telephone call or other means, no postponements shall be granted within two days of the scheduled hearing.
- (b) A continuance of a hearing may be ordered at the discretion of the hearing officer if:
  - (1) there is insufficient evidence upon which to make a decision;
  - (2) a party needs additional time to examine evidence presented at the hearing;
  - (3) the hearing officer considers it necessary to enter into evidence additional information or testimony;
  - (4) an in-person hearing is necessary for proper presentation of the evidence; or
  - (5) any other reason deemed appropriate by the hearing officer.
- (c) The hearing officer shall advise the parties of the reason for the continuance and of any additional information required. At the continuance, the parties shall have an opportunity to rebut any additional evidence.

*The provisions of this §823.22 adopted to be effective November 26, 2007, as published in the Texas Register, November 23, 2007, 32 TexReg 8546.*

### **§823.23. Evidence.**

- (a) Evidence Generally. Evidence, including hearsay evidence, shall be admitted if it is relevant and if in the judgment of the hearing officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. However, the hearing officer may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues, or by reasonable concern for undue delay, waste of time, or needless presentation of cumulative evidence.
- (b) Exchange of Exhibits. To be considered as evidence in a decision, any document or physical evidence must be entered as an exhibit at the hearing. Any documentary evidence to be presented during a telephonic hearing shall be exchanged with all parties and a copy shall be provided to the hearing officer in advance of the hearing. Any documentary evidence to be presented at an in-person hearing shall be exchanged at the hearing.
- (c) Stipulations. The parties, with the consent of the hearing officer, may agree in writing to relevant facts. The hearing officer may decide the appeal on the basis of such stipulations or, at the hearing officer's discretion, may set the appeal for hearing and take such further evidence as the hearing officer deems necessary.
- (d) Experts and Evaluations. If relevant and useful, testimony from an independent expert or a professional evaluation from a source satisfactory to the parties and the Agency may be ordered by hearing officers, on their own motion or at a party's request. The cost of any such expert or evaluation ordered by the hearing officer shall be borne equally by the parties.
- (e) Subpoenas.
  - (1) The hearing officer may issue subpoenas to compel the attendance of witnesses and the production of records. A subpoena may be issued either at the request of a party or on the hearing officer's own motion.

- (2) A party requesting a subpoena shall state the nature of the information desired, including names of any witnesses and the records that the requestor feels are necessary for the proper presentation of the case.
- (3) The request shall be granted only to the extent the records or the testimony of the requested witnesses appears to be relevant to the issues on appeal.
- (4) A denial of a subpoena request shall be made in writing or on the record, stating the reasons for such denial.

*The provisions of this §823.23 adopted to be effective November 26, 2007, as published in the Texas Register, November 23, 2007, 32 TexReg 8546.*

#### **§823.24. Hearing Procedures.**

- (a) General Procedure. All hearings shall be conducted de novo. The hearing shall be conducted informally and in such manner as to ascertain the substantive rights of the parties. The hearing officer shall develop the evidence. All issues relevant to the appeal shall be considered and addressed.
  - (1) Presentation of Evidence. The parties to an appeal may present evidence that is material and relevant, as determined by the hearing officer. In conducting a hearing, the hearing officer shall actively develop the record on the relevant circumstances and facts to resolve all issues. To be considered as evidence in a decision, any document or physical evidence must be entered as an exhibit at the hearing. A party has the right to object to evidence offered at the hearing by the hearing officer or other parties.
  - (2) Examination of Witnesses and Parties. The hearing officer shall examine parties and any witnesses under oath and shall allow cross-examination to the extent the hearing officer deems necessary to afford the parties due process.
  - (3) Additional Evidence. The hearing officer, with or without notice to any of the parties, may take additional evidence deemed necessary, provided that a party shall be given an opportunity to rebut the evidence if it is to be used against the party's interest.
  - (4) Appropriate Hearing Behavior. All parties shall conduct themselves in an appropriate manner. The hearing officer may expel any individual, including a party, who fails to correct behavior the hearing officer identifies as disruptive. After an expulsion, the hearing officer may proceed with the hearing and render a decision.
- (b) Records.
  - (1) The hearing record shall include the audio recording of the proceeding and any other relevant evidence relied on by the hearing officer, including documents and other physical evidence entered as exhibits.
  - (2) The hearing record shall be maintained in accordance with federal or state law.
  - (3) Confidentiality of information contained in the hearing record shall be maintained in accordance with federal and state law.
  - (4) Upon request, a party has the right to obtain a copy of the hearing record at no charge. However, a party requesting a transcript of the hearing record shall pay the costs of the transcription.

*The provisions of this §823.24 adopted to be effective November 26, 2007, as published in the Texas Register, November 23, 2007, 32 TexReg 8546.*

### **§823.25. Withdrawal of Complaint or Appeal.**

A party may request a withdrawal of its own complaint or appeal at any time before a final Agency decision is issued. The hearing officer may grant the request for withdrawal in writing and issue an order of dismissal.

*The provisions of this §823.25 adopted to be effective November 26, 2007, as published in the Texas Register, November 23, 2007, 32 TexReg 8546.*

### **§823.26. Hearing Officer Independence and Impartiality.**

- (a) A hearing officer presiding over a hearing shall have all powers necessary and appropriate to conduct a full, fair, and impartial hearing. Hearing officers shall remain independent and impartial in all matters regarding the handling of any issues during the pendency of a case and in issuing their written decisions.
- (b) A hearing officer shall be disqualified if the hearing officer has a personal interest in the outcome of the appeal or if the hearing officer directly or indirectly participated in the determination or Board decision on appeal. Any party may present facts to the Agency in support of a request to disqualify a hearing officer.
- (c) A hearing officer may withdraw from a hearing to avoid the appearance of impropriety or partiality.
- (d) Following any disqualification or withdrawal of a hearing officer, the Agency shall assign an alternate hearing officer to the case. The alternate hearing officer shall not be bound by any findings or conclusions made by the disqualified or withdrawn hearing officer.

*The provisions of this §823.26 adopted to be effective November 26, 2007, as published in the Texas Register, November 23, 2007, 32 TexReg 8546.*

### **§823.27. Ex Parte Communications.**

- (a) The hearing officer shall not participate in ex parte communications, directly or indirectly, in any matter in connection with any substantive issue, with any interested person or party. Likewise, no person shall attempt to engage in ex parte communications with the hearing officer on behalf of any interested person or party.
- (b) If the hearing officer receives any such ex parte communication, the other parties shall be given an opportunity to review that communication.
- (c) Nothing shall prevent the hearing officer from communicating with parties or their representatives about routine matters such as requests for continuances or opportunities to inspect the file.
- (d) The hearing officer may initiate communications with an impartial Agency employee who has not participated in a hearing or any determination in the case for the limited purpose of using the special skills or knowledge of the Agency and its staff in evaluating the evidence.

*The provisions of this §823.27 adopted to be effective November 26, 2007, as published in the Texas Register, November 23, 2007, 32 TexReg 8546.*

## **SUBCHAPTER D. AGENCY-LEVEL DECISIONS, REOPENINGS, AND REHEARINGS**

### **§823.30. Hearing Decision.**

- (a) Following the conclusion of the hearing, the hearing officer shall promptly issue a written decision on behalf of the Agency.

- (b) The Agency decision shall be based exclusively on the evidence of record in the hearing and on matters officially noticed in the hearing. The Agency decision shall include:
  - (1) a list of the individuals who appeared at the hearing;
  - (2) the findings of fact and conclusions of law reached on the issues; and
  - (3) the affirmation, reversal, or modification of a determination or Board decision.
- (c) Unless a party files a timely motion for rehearing, the Agency may assume continuing jurisdiction to modify or correct a hearing decision until the expiration of 14 calendar days from the mailing date of the hearing decision.

*The provisions of this §823.30 adopted to be effective November 26, 2007, as published in the Texas Register, November 23, 2007, 32 TexReg 8546.*

### **§823.31. Motion for Reopening.**

- (a) If a party does not appear for an Agency hearing, the party has the right to request a reopening of the hearing within 14 calendar days from the date the Agency decision is mailed.
- (b) The motion shall be in writing and detail the reason for failing to appear at the hearing.
- (c) The hearing officer may schedule a hearing on whether to grant the reopening.
- (d) The motion may be granted if it appears to the hearing officer that the party has shown good cause for failing to appear at the hearing.

*The provisions of this §823.31 adopted to be effective November 26, 2007, as published in the Texas Register, November 23, 2007, 32 TexReg 8546.*

### **§823.32. Motion for Rehearing and Decision.**

- (a) A party has 14 calendar days from the date the decision is mailed to file a motion for rehearing. A rehearing may be granted only for the presentation of new evidence.
- (b) Motions for rehearing shall be in writing and allege the new evidence to be considered. The appellant must show a compelling reason why this evidence was not presented at the hearing.
- (c) If the hearing officer determines that the alleged, new evidence warrants a rehearing, a rehearing shall be scheduled at a reasonable time and place.
- (d) The hearing officer shall issue a written decision following the hearing.
- (e) The hearing officer may also issue a decision denying a motion for rehearing.

*The provisions of this §823.32 adopted to be effective November 26, 2007, as published in the Texas Register, November 23, 2007, 32 TexReg 8546.*

### **§823.33. Finality of Decision.**

- (a) The decision of the hearing officer is the final decision of the Agency after the expiration of 14 calendar days from the mailing date of the decision unless within that time:
  - (1) a request for reopening is filed with the Agency;
  - (2) a request for rehearing is filed with the Agency; or
  - (3) the Agency assumes continuing jurisdiction to modify or correct a decision.

- (b) Any decision issued in response to a request for reopening or rehearing or a modification or correction issued by the Agency shall be final on the expiration of 14 calendar days from the mailing date of the decision, modification, or correction.

*The provisions of this §823.33 adopted to be effective November 26, 2007, as published in the Texas Register, November 23, 2007, 32 TexReg 8546.*