

Step 3: Answer Brief

- 1. Purpose:** This is your opportunity as the Respondent to counter the arguments made in the Petitioner's Opening Brief.
- 2. Filing is Optional:** You do not have to file an Answer Brief. However, not filing may lower your chances of winning the appeal.
- 3. Deadline:** The Answer Brief is due 14 days after the Opening Brief is filed.
- 4. Note to Employers:** In most cases, a company must use an attorney to file in the Court of Appeals. If the company meets one of the few exceptions, file a motion to ask permission to file without a licensed attorney. Be sure to read Colorado Revised Statute (C.R.S.) 13-1-127(2), (2.3) and (2.5), and the [available instructions](#).
- 5. Formatting:** Please use a 14-point font size, double line spacing, Bookman, Garamond, or Times New Roman font, and only print on one side of the page.
- 6. Writing your Brief:** You may use the following [Answer Brief Outline](#).

Case Caption (1st Page)

- Fill in the docket number used by ICAO.
- Enter the name of the Petitioner.
- Enter the names of the Respondents.
- Enter your name and contact information in the "Filing Party" box.
- Enter the "Court of Appeals Case Number."

Certificate of Compliance

State how many words are in your Answer Brief. Your Brief may not contain more than 9,500 words, or be more than 30 pages if you hand write the document.

Body of the Form

- Issues on Appeal:** These are the questions the Petitioner would like the Court of Appeals to answer. An Issue on Appeal is a possible error that the agency made in deciding the case. You may either list the Issues on Appeal as they were listed in the Opening Brief, or restate them in your own words. You may not add additional Issues on Appeal.

The Court of Appeals may change the ICAO ruling only in certain circumstances. Examples of common errors the Court of Appeals can act on include the following:

- i. **Clearly Wrong Factual Finding:** Did ICAO affirm (uphold) a factual finding that cannot be supported by the Record on Appeal?
- ii. **Wrong Use of a Law:** Did ICAO use the wrong law or incorrectly interpret the law?
- iii. **Other Legal Errors:** Did ICAO reach the wrong result based on the established facts?

Include the following sections for each Issue on Appeal that was listed:

b. Response to the Standard of Review:

- i. **What it Is:** The Standard of Review is a measuring tool. The Court of Appeals uses this tool to determine whether the agency made an error that it must reverse. The Opening Brief should have stated which Standard of Review should be used for each Issue on Appeal.
- ii. **What to Write:** State whether you agree with the Opening Brief's proposed Standard of Review for the issue. If you disagree, state your own proposed Standard of Review and cite the law that supports using that Standard of Review. Different types of errors may have different Standards of Review.
- iii. **Examples:**
 1. **De Novo Review:** The Court of Appeals will decide the issue on its own, regardless of what the ICAO decided. This Standard is usually used for issues of law, such as interpreting a statute.
 2. **Clearly Erroneous Review:** This Standard is usually used for issues of fact. The Court of Appeals will accept what the ICAO affirmed (upheld) unless there is not relevant, believable, and trustworthy evidence to support the factual finding. The Court of Appeals will look at the whole record to see if there is substantial evidence to support the finding. For example, the issue

“Whether it was an error to find that Cinderella did not quit because of her working conditions?” would take the Clearly Erroneous Standard of Review.

3. **Abuse of Discretion:** The Court of Appeals will uphold what the ICAO decided, unless its decision was clearly unreasonable, arbitrary, or unfair. This Standard is usually used when there was more than one way for the agency to decide the issue. For example, the issue of

“Whether the ICAO erred in ruling that good cause was not shown for missing a hearing because of illness?”, would take the Abuse of Discretion Standard of Review.

c. Preservation:

- i. **What it Is:** The Petitioner must have first argued the issue before the hearing officer (unemployment benefits) or administrative law judge (workers compensation). Then, the issue must have been argued again to the ICAO. Only then may that issue be appealed to the Court of Appeals. This is known as preserving the issue for appeal. If the Petitioner did not bring the issue up before, then the Court of Appeals may not be able to consider the issue now.
- ii. **What to Write:** The Petitioner should have cited to the location in the Record on Appeal where the issue was argued to the hearing officer or administrative law judge, and the ICAO. If you do not believe the issue was preserved, state your arguments as to why it was not preserved here.

- d. Law: Explain the law for this issue. Cite to the statutes, agency regulations, case law, or other laws that support your arguments as to how or why the agency did not err (make a mistake). This will require you to do some research.

e. Facts:

- i. **What to Write:** Add any additional facts and procedural history of the case (what happened with the case in the agency proceedings) that were not included in the Opening Brief. These are the facts that the Court of Appeals will need to know to review this issue.

- ii. **No New Facts:** The Court of Appeals may consider only the evidence that has already been submitted and appears in the Record on Appeal. Your hearing below was the one opportunity to provide that evidence.
- iii. **Citations:** After each sentence that contains a fact from your case, include a citation to the Record on Appeal. Find the page on the CD where that fact can be found. Then after your statement with the fact, cite to the record as R. CF, p. ____.
- iv. **Example:**

Cinderella started working for her stepmother on July 1, 2017. R. CF, p. 5. She was fired three months later for being barefoot. R. CF, p. 51. She testified at the hearing that she lost her shoe only the one time. R. CF, p. 79.

- f. **Discussion:** This is where you will apply the law to the facts of your case to reach your conclusion. Also, discuss if the Standard of Review for this issue has been met by the Petitioner.
- g. **Conclusion:** State exactly what you want the Court to do with your case.
- h. **Repeat:** Repeat these sections (a-g above) for each Issue on Appeal.

Certificate of Service

Certify the date that you sent the Answer Brief and check how service was made (by mail or in-person). Enter the addresses you used. Sign this page.

- 7. **Attachments:** The court may review only the documents that are a part of the certified record. Do **NOT** include any new documents with your Answer Brief.
- 8. **Filing:** You must file the Answer Brief in the Court of Appeals. You may file in person or by mail. If you file by mail, be aware that the Answer Brief must be received by the Court of Appeals by the deadline.

Colorado Court of Appeals
2 East 14th Avenue
Denver, CO 80203

9. Service: Unlike at the agency level, you must send a copy of the Answer Brief to each party's attorney or directly to the party if they do not have an attorney. You will send a copy to:

1. The Colorado Attorney General
2. The Industrial Claim Appeals Office
3. The Petitioner
4. Any other Respondents in the case.

10. Legal Research: You should do research to understand the law in order to make persuasive arguments.

a. Statutes & Rules: To read the Colorado statutes and rules online, visit:

<http://www.lexisnexis.com/hottopics/colorado/>

b. Case Law: To read and search Colorado cases online, visit:

www.scholar.google.com

c. Regulations: To read and search agency regulations online, visit:

www.sos.state.co.us/CCR

11. Sample Brief: Coming Soon.

Be Sure to Read: Colorado Appellate Rules (C.A.R.) 28, 31, and 32. Colorado Revised Statutes (C.R.S.) C.R.S. 8-74-107 (unemployment) and C.R.S. 8-43-308 (workers compensation). And Volume 7 of the Colorado Code of Regulations (CCR), [1101-2 \(unemployment\)](#) and [1101-3 \(workers compensation\)](#).

Appeal Steps:

- Step 1: Notice of Appeal - Start of the appeal.
- Step 2: Opening Brief - Written arguments for the appeal.
- Step 3: Answer Brief - Written response to the appeal.**
- Step 4: Reply Brief - Written response to the Answer Brief.
- Step 5: Opinion - The Court of Appeals' decision.