

14.4 REHEARING AND RECONSIDERATION

The APA provides that a party seeking rehearing or reconsideration must file the request within ten days of the agency's order.¹ The APA, however, does not confer a right to rehearing or reconsideration on any party to a contested case. The statutes or rules specific to a particular agency may contain such a right.² Specific agency statutes or rules might contain procedural requirements for rehearing and reconsideration that would supplement those found in the APA.³ The Office of Administrative Hearings (OAH) rules provide that any notice of and order for rehearing must be served on all parties in the same manner prescribed for the original notice and order for hearing.⁴ They also provide that the rehearing must be conducted in the same manner as the original hearing.⁵

Although the APA provides no right to a rehearing, and accordingly agencies are not required to entertain requests for rehearing, agencies may exercise their discretion to do so.⁶ Where through fraud, mistake, or misconception of facts, an agency enters an order, it may, with notice to the parties, correct its order.⁷ An agency has the inherent authority to correct its prior decisions.⁸ An agency may also reopen its own proceeding on the ground of an implied authority to deal with fraud on the agency resulting from *ex parte* contacts with agency decision makers.⁹ An agency may exercise its discretion to reconsider a matter on the ground of newly discovered evidence.¹⁰ Rejecting an application for rehearing on such ground will not, however, constitute an abuse of discretion where the proffered evidence is merely cumulative of that already in the record and was in existence at the time of the

¹ See MINN. STAT § 14.64 (2014). The statute provides:

If a request for reconsideration is made within ten days after the decision and order of the agency, the 30-day period provided in section 14.63 [for a writ of certiorari for judicial review] shall not begin to run until service of the order finally disposing of the application for reconsideration.

Id.; see also *Nw. Bell Tel. Co.*, 374 N.W.2d 758, 761 (Minn. Ct. App. 1985) (noting that once a request to rehear has been made by at least one party to the proceeding, the 30-day appeal period does not begin to run as to all parties until service of the order disposing of the application).

² See, e.g., MINN. R. 7829.3000 (2013) (public utilities commission).

³ See, e.g., *id.* 7829.3000-.3200; *Henry v. Minn. Pub. Utils. Comm'n*, 392 N.W.2d 209, 214-15 (Minn. 1986) (discussing telephone rate proceeding rehearing requirements).

⁴ MINN. R. 1400.8300 (2013) (providing that ALJ may permit less than 30 days' notice prior to rehearing).

⁵ *Id.*

⁶ *Henry*, 392 N.W.2d at 214 (finding MINN. STAT. § 216A.05, subd. 5, authorized MPUC to reopen hearing on own motion to avoid cost of retrying issues); *Plunkett v. First Nat'l Bank of Austin*, 262 Minn. 231, 246 n.6, 115 N.W.2d 235, 245 n.6 (1962) (dictum); *Pfalzgraff v. Comm'r of Econ. Sec.*, 350 N.W.2d 458, 460 (Minn. Ct. App. 1984).

⁷ *Anchor Cas. Co. v. Bongards Co-op. Creamery Ass'n*, 253 Minn. 101, 106, 91 N.W.2d 122, 126 (1958); see also *State ex rel. Turnbladh v. Dist. Court*, 259 Minn. 228, 236, 107 N.W.2d 307, 313 (1960); *In re Minn. Pub. Utils. Comm'n*, 417 N.W.2d 274, 281-82 (Minn. Ct. App. 1987).

⁸ *Minn. Pub. Utils. Comm'n*, 417 N.W.2d at 282; see also *In re Class A License Application of N. Metro Harness, Inc.*, 711 N.W.2d 129, 136 (Minn. Ct. App. 2006); *In re Authority to Provide Alt. Operator Servs. in Minn.*, 490 N.W.2d 920, 925 (Minn. Ct. App. 1992).

⁹ *Minn. Pub. Utils. Comm'n*, 417 N.W.2d at 280-83.

¹⁰ See *Stepan v. Campbell*, 228 Minn. 74, 78-79, 36 N.W.2d 401, 404 (1949).

hearing.¹¹ The authority of an agency to rehear or reconsider lasts until its jurisdiction is lost on the filing of an appeal from its decision.¹² A rehearing may in some circumstances be summary and not include the taking of additional evidence.¹³

The APA provides that an application for rehearing or reconsideration is not a prerequisite to judicial review of a contested case.¹⁴ The Court of Appeals has ruled that it could consider issues not addressed by an unemployment law judge in the initial decision but raised and addressed for the first time on a motion for reconsideration.¹⁵

¹¹ *Id.*

¹² *Anchor Cas. Co.*, 253 Minn. at 106, 91 N.W.2d at 126 (finding that case law prior to adoption of ten-day filing requirement by MINN. STAT. § 14.64 allowed petition to be filed within reasonable time; time within which appeal could be filed has been said to be reasonable; therefore, request for rehearing or reconsideration under law before § 14.64 was timely as long as time for appeal had not expired; prejudice to other interested parties was also consideration in determining timeliness of application). The agency's authority to amend its decision also expires when the appeal period has ended and no appeal has been filed. *See, e.g.,* *Rowe v. Dep't of Emp't & Econ. Dev't*, 704 N.W.2d 191, 196 (Minn. Ct. App. 2005) (finding ULJ lacked authority to amend decision *sua sponte* because the 30-day appeal period had expired and by statute the ULJ's decision became a final decision of the Department if no appeal was filed); *cf. N. Metro Harness*, 711 N.W.2d at 135 (recognizing agency's inherent authority to reopen, rehear, and redetermine a decision if time for appeal has not yet expired).

¹³ *See Henry v. Minn. Pub. Utils. Comm'n*, 392 N.W.2d 209, 215 (Minn. 1986).

¹⁴ MINN. STAT. § 14.64 (2014).

¹⁵ *The Work Connection, Inc. v. Bui*, 749 N.W.2d 63, 66-67 (Minn. Ct. App. 2008).