

Board, they shall be treated in all respects as if they had been raised therein. In such circumstances motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings or said appeal file (which shall be deemed part of the pleadings for this purpose), it may be admitted within the proper scope of the appeal: *Provided, however,* That the objecting party may be granted a continuance if necessary to enable him to meet such evidence.

§4.109 Hearing—election.

Within 15 days after the Government's answer has been served upon the appellant, or within 20 days of the date upon which the Board enters a general denial on behalf of the Government, notification as to whether one or both of the parties desire an oral hearing on the appeal should be given to the Board. In the event either party requests an oral hearing, the Board will schedule the same as hereinafter provided. In the event both parties waive an oral hearing, the Board, unless it directs an oral hearing, will decide the appeal on the record before it, supplemented as it may permit or direct. A party failing to elect an oral hearing within the time limitations specified in this section may be deemed to have submitted its case on the record.

§4.110 Prehearing briefs.

Based on an examination of the appeal file, the pleadings, and a determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to §4.109. In the absence of a Board requirement therefore, either party may, in its discretion, and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall be furnished simultaneously to the other party.

§4.111 Prehearing or presubmission conference.

Whether the case is to be submitted without a hearing, or heard pursuant to §§4.118 through 4.123, the Board may upon its own initiative or upon the application of either party, call upon the parties to appear before a member or hearing officer of the Board for a conference to consider:

- (a) The simplification or clarification of the issues;
- (b) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;
- (c) The limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if the case is to be heard;
- (d) The possibility of agreement disposing of all or any of the issues in dispute; and
- (e) Such other matters as may aid in the disposition of the appeal.

Any conference results that are not reflected in a transcript shall be reduced to writing by the Board member or the hearing officer. This writing shall thereafter constitute part of the record.

§4.112 Submission without a hearing.

Either party may elect to waive a hearing and to submit his case upon the Board record, as settled pursuant to §4.114. Such waiver shall not affect the other party's rights under §4.109. In the event of such election (see the time limitations for election in §4.109), the submission may be supplemented by oral argument (transcribed if requested) and by briefs.

§4.113 Optional small claims (expedited) and accelerated procedures. (See §4.100(a)(2).)

- (a) The procedures set forth in this rule are available solely at the election of the appellant.
- (b) *Elections to utilize small claims (expedited) and accelerated procedure.* (1) In appeals where the amount in dispute is \$10,000 or less, the appellant may elect

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to have the appeal processed under a SMALL CLAIMS (EXPEDITED) procedure requiring a decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in paragraph (c) of this section. An appellant may elect the ACCELERATED procedure rather than the SMALL CLAIMS (EXPEDITED) procedure for any appeal eligible for the SMALL CLAIMS (EXPEDITED) procedure.

(2) In appeals where the amount in dispute is \$50,000 or less, the appellant may elect to have the appeal processed under an ACCELERATED procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in paragraph (d) of this section.

(3) The appellant's election of either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure may be made either in the notice of appeal or by other written notice at any time thereafter.

(4) In deciding whether the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure is applicable to a given appeal the Board shall determine the amount in dispute by adding the amount claimed by the appellant against the respondent to the amount claimed by respondent against the appellant. If either party making a claim against the other party does not otherwise state in writing the amount of its claim, the amount claimed by such party shall be the maximum amount which such party represents in writing to the Board that it can reasonably expect to recover against the other.

(c) *The SMALL CLAIMS (EXPEDITED) procedure.* (1) This procedure shall apply only to appeals where the amount in dispute is \$10,000 or less as to which the appellant has elected the SMALL CLAIMS (EXPEDITED) procedure.

(2) In cases proceeding under the SMALL CLAIMS (EXPEDITED) procedure, the following time periods shall apply (i) within 10 days from the respondent's first receipt from either the

appellant or the Board of a copy of the appellant's notice of election of the SMALL CLAIMS (EXPEDITED) procedure, the respondent shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any; (ii) within 15 days after the Board has acknowledged receipt of the notice of election, either party desiring an oral hearing shall so inform the Board. If either party requests an oral hearing, the Board shall promptly schedule such a hearing for a mutually convenient time consistent with administrative due process and the 120-day limit for a decision, at a place determined under §4.118. If a hearing is not requested by either party within the time prescribed by this Rule, the appeal shall be deemed to have been submitted under §4.112 without a hearing.

(3) In cases proceeding under the SMALL CLAIMS (EXPEDITED) procedure, pleadings, discovery, and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the date scheduled or, if no hearing is scheduled, to close the record on a date that will allow decision within the 120-day limit. The Board, in its discretion, may shorten time periods prescribed elsewhere in these Rules as necessary to enable the Board to decide the appeal within 120 days after the Board has received the appellant's notice of elections of the SMALL CLAIMS (EXPEDITED) procedure. In so doing the Board may reserve whatever time up to 30 days it considers necessary for preparation of the decision.

(4) Written decision by the Board in cases processed under the SMALL CLAIMS (EXPEDITED) procedure will be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge. If there has been a hearing, the Administrative Judge presiding at the hearing may, in his discretion, at the conclusion of the hearing and after entertaining such oral arguments as he deems appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the Appeal. Whenever such an oral decision is rendered, the

Board will subsequently furnish the parties a typed copy of such oral decision for the record and payment purposes and to establish the date of commencement of the period for filing a motion for reconsideration under §4.126.

(5) Decisions of the Board under the SMALL CLAIMS (EXPEDITED) procedure will not be published, will have no value as precedents, and in the absence of fraud, cannot be appealed.

(d) *The ACCELERATED procedure.* (1) This procedure shall apply only to appeals where the amount in dispute is \$50,000 or less as to which the appellant has made the requisite election.

(2) In cases proceeding under the ACCELERATED procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board, in its discretion, may shorten time periods prescribed elsewhere in these Rules as necessary to enable the Board to decide the appeal within 180 days after the Board has received the appellant's notice of election of the ACCELERATED procedure, and may reserve 30 days for the preparation of the decision.

(3) Written decisions by the Board in cases processed under the ACCELERATED procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge with the concurrence of the Chairman or Vice Chairman or other designated Administrative Judge, or by a majority among these two and an additional designated member in case of disagreement. Alternatively, in cases where the amount in dispute is \$10,000 or less as to which the ACCELERATED procedure has been elected and in which there has been a hearing, the single Administrative Judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as he deems appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such

oral decision for record and payment purposes and to establish the date of commencement of the period for filing a motion for reconsideration under §4.126.

(e) *Motions for reconsideration in cases arising under §4.113.* Motions for reconsideration of cases decided under either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure need not be decided within the time period prescribed by this §4.113 for the initial decision of the appeal, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this rule.

§4.114 Settling of the record.

(a) A case submitted on the record pursuant to §4.112 shall be ready for decision when the parties are so notified by the Board. A case which is heard shall be ready for decision upon receipt of transcript, or upon receipt of briefs when briefs are to be submitted. At any time prior to the date that a case is ready for decision, either party, upon notice to the other, may supplement the record with documents and exhibits deemed relevant and material by the Board. The Board upon its own initiative may call upon either party, with appropriate notice to the other, for evidence deemed by it to be relevant and material. The weight to be attached to any evidence of record will rest within the sound discretion of the Board. Either party at any stage of the proceeding, on notice to the other party, may object to the relevancy or materiality of documents in the record or offered into the record.

(b) The Board record shall consist of the appeal file described in §4.104(b) and any additional material, pleadings, prehearing briefs, record of prehearing, or presubmission conferences, depositions, interrogatories, admissions, transcripts of hearing, hearing exhibits, and posthearing briefs, as may thereafter be developed pursuant to these rules. In deciding appeals the Board, in addition to considering the Board record, may take official notice of facts within general knowledge.

(c) This record will at all times be available for inspection by the parties at an appropriate time and place. In