

§ 4.1127

§ 4.1127 Initial orders and decisions.

An initial order or decision disposing of a case shall incorporate—

(a) Findings of fact and conclusions of law and the basis and reasons therefore on all the material issues of fact, law, and discretion presented on the record; and

(b) An order granting or denying relief.

§ 4.1128 Effect of initial order or decision.

An initial order or decision shall become final if that order or decision is not timely appealed to the Board under § 4.1270 or § 4.1271.

§ 4.1129 Certification of record.

Except in expedited review proceedings under § 4.1180, within 5 days after an initial decision has been rendered, the administrative law judge shall certify the official record of the proceedings, including all exhibits, and transmit the official record for filing in the Hearings Division, Office of Hearings and Appeals, Arlington, Va.

DISCOVERY

§ 4.1130 Discovery methods.

Parties may obtain discovery by one or more of the following methods—

(a) Depositions upon oral examination or upon written interrogatories;

(b) Written interrogatories;

(c) Production of documents or things or permission to enter upon land or other property, for inspection and other purposes; and

(d) Requests for admission.

§ 4.1131 Time for discovery.

Following the initiation of a proceeding, the parties may initiate discovery at any time as long as it does not interfere with the conduct of the hearing.

§ 4.1132 Scope of discovery.

(a) Unless otherwise limited by order of the administrative law judge in accordance with these rules, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody, con-

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dition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.

(b) It is not ground for objection that information sought will not be admissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) A party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (a) of this section and prepared in anticipation of or for the hearing by or for another party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the administrative law judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding.

(d) Upon motion by a party or the person from whom discovery is sought, and for good cause shown, the administrative law judge may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following—

(1) The discovery not be had;

(2) The discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) The discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) Certain matters not relevant may not be inquired into, or that the scope of discovery be limited to certain matters;

(5) Discovery be conducted with no one present except persons designated by the administrative law judge; or

(6) A trade secret or other confidential research, development or commercial information may not be disclosed

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or be disclosed only in a designated way.

§4.1133 Sequence and timing of discovery.

Unless the administrative law judge upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

§4.1134 Supplementation of responses.

A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows—

(a) A party is under a duty to supplement timely his response with respect to any question directly addressed to—

(1) The identity and location of persons having knowledge of discoverable matters; and

(2) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which he is expected to testify and the substance of his testimony.

(b) A party is under a duty to amend timely a prior response if he later obtains information upon the basis of which—

(1) He knows the response was incorrect when made; or

(2) He knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(c) A duty to supplement responses may be imposed by order of the administrative law judge or agreement of the parties.

§4.1135 Motion to compel discovery.

(a) If a deponent fails to answer a question propounded, or a party upon whom a request is made pursuant to §4.1140, or a party upon whom answers to interrogatories are served fails to adequately respond or objects to the request, or any part thereof, or fails to permit inspection as requested, the discovering party may move the adminis-

trative law judge for an order compelling a response or inspection in accordance with the request.

(b) The motion shall set forth—

(1) The nature of the questions or request;

(2) The response or objection of the party upon whom the request was served; and

(3) Arguments in support of the motion.

(c) For purposes of this section, an evasive answer or incomplete answer or response shall be treated as a failure to answer or respond.

(d) In ruling on a motion made pursuant to this section, the administrative law judge may make such a protective order as he is authorized to make on a motion made pursuant to §4.1132(d).

§4.1136 Failure to comply with orders compelling discovery.

If a party or an officer, director, or other agent of a party fails to obey an order to provide or permit discovery, the administrative law judge before whom the action is pending may make such orders in regard to the failure as are just, including but not limited to the following—

(a) An order that the matters sought to be discovered or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(b) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters into evidence; or

(c) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

§4.1137 Depositions upon oral examination or upon written questions.

(a) Any party desiring to take the testimony of any other party or other person by deposition upon oral examination or written questions shall, without leave of the administrative law judge, give reasonable notice in writing to every other party, to the