

part, any party may file an application for temporary relief from alleged discriminatory acts.

(b) The application shall be filed in the Hearings Division, OHA, Arlington, Va.

(c) The application shall include—

(1) A detailed written statement setting forth the reasons why relief should be granted;

(2) A showing that the complaint of discrimination was not frivolously brought;

(3) A description of any exigent circumstances justifying temporary relief; and

(4) A statement of the specific relief requested.

(d) All parties to the proceeding to which the application relates shall have 5 days from receipt of the application to file a written response.

(e) The administrative law judge may convene a hearing on any issue raised by the application if he deems it appropriate.

(f) The administrative law judge shall expeditiously issue an order or decision granting or denying such relief.

(g) If all parties consent, before or after the commencement of any hearing on the application for temporary relief, the administrative law judge may order the hearing on the application for review of alleged discriminatory acts to be advanced and consolidated with the hearing on the application for temporary relief.

§ 4.1204 Determination by administrative law judge.

Upon a finding of a violation of section 703 of the act or 30 CFR 865.11, the administrative law judge shall order the appropriate affirmative relief, including but not limited to—

(a) The rehiring or reinstatement of the applicant to his former position with full rights and privileges, full backpay, and any special damages sustained as a result of the discrimination; and

(b) All other relief which the administrative law judge deems appropriate to abate the violation or to prevent recurrence of discrimination.

[43 FR 34386, Aug. 3, 1978, as amended at 67 FR 61510, Oct. 1, 2002]

§ 4.1205 Appeals.

Any party aggrieved by a decision of an administrative law judge concerning an application for review of alleged discriminatory acts may appeal to the Board under procedures set forth in § 4.1271 *et seq.*

APPLICATIONS FOR TEMPORARY RELIEF

§ 4.1260 Scope.

These regulations contain the procedures for seeking temporary relief in section 525 review proceedings under the act. The special procedures for seeking temporary relief from an order of cessation are set forth in § 4.1266. Procedures for seeking temporary relief from alleged discriminatory acts are covered in § 4.1203.

§ 4.1261 When to file.

An application for temporary relief may be filed by any party to a proceeding at any time prior to decision by an administrative law judge.

§ 4.1262 Where to file.

The application shall be filed with the administrative law judge to whom the case has been assigned. If no assignment has been made, the application shall be filed in the Hearings Division, OHA, 801 North Quincy Street, Arlington, Va. 22203.

[43 FR 34386, Aug. 3, 1978, as amended at 67 FR 4368, Jan. 30, 2002]

§ 4.1263 Contents of application.

The application shall include—

(a) A detailed written statement setting forth the reasons why relief should be granted;

(b) A showing that there is a substantial likelihood that the findings and decision of the administrative law judge in the matters to which the application relates will be favorable to the applicant;

(c) A statement that the relief sought will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources;

(d) If the application relates to an order of cessation issued pursuant to section 521(a)(2) or section 521(a)(3) of

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the act, a statement of whether the requirement of section 525(c) of the act for decision on the application within 5 days is waived; and

(e) A statement of the specific relief requested.

§ 4.1264 Response to application.

(a) Except as provided in § 4.1266(b), all parties to the proceeding to which the application relates shall have 5 days from the date of receipt of the application to file a written response.

(b) Except as provided in § 4.1266(b), the administrative law judge may hold a hearing on any issue raised by the application if he deems it appropriate.

§ 4.1265 Determination on application concerning a notice of violation issued pursuant to section 521(a)(3) of the act.

Where an application has been filed requesting temporary relief from a notice of violation issued under section 521(a)(3) of the act, the administrative law judge shall expeditiously issue an order or decision granting or denying such relief.

§ 4.1266 Determination on application concerning an order of cessation.

(a) If the 5-day requirement of section 525(c) of the act is waived, the administrative law judge shall expeditiously conduct a hearing and render a decision on the application.

(b) If there is no waiver of the 5-day requirement of section 525(c) of the act, the following special rules shall apply—

(1) The 5-day time for decision shall not begin to run until the application is filed pursuant to § 4.1262 or a copy of the application is received by the field solicitor for the region in which the mine site subject to the order is located, whichever occurs at a later date (see § 4.1109 for addresses);

(2) The application shall include an affidavit stating that telephone notice has been given to the field office of OSM serving the state in which the minesite subject to the order is located. The telephone notice shall identify the mine, the mine operator, the date and number of the order from which relief is requested, the name of the OSM inspector involved, and the

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name and telephone number of the applicant. OSM's field offices and their numbers follow:

Albuquerque Field Office (serving Arizona, California, and New Mexico) (505) 248-5070.

Big Stone Gap Field Office (serving Virginia) (276) 523-4303.

Birmingham Field Office (serving Alabama and Mississippi) (205) 290-7282 (ext. 16).

Casper Field Office (serving Idaho, Montana, North Dakota, South Dakota, and Wyoming) (307) 261-6550.

Charleston Field Office (serving West Virginia) (304) 347-7158.

Columbus Team Office (serving Maryland, Michigan, and Ohio) (412) 937-2153.

Harrisburg Field Office (serving Massachusetts, Pennsylvania, and Rhode Island) (717) 782-4036.

Knoxville Field Office (serving Georgia, Tennessee, and North Carolina) (865) 545-4103 (ext. 186).

Lexington Field Office (serving Kentucky) (859) 260-8402.

Mid-Continent Regional Coordinating Center (serving Iowa, Kansas, and Missouri) (618) 463-6460.

Olympia Office (serving Washington) (360) 753-9538.

Tulsa Field Office (serving Arkansas, Louisiana, Oklahoma, and Texas) (918) 581-6431 (ext. 23).

Western Regional Coordinating Center (serving Alaska, Colorado, Oregon, and Utah) (303) 844-1400 (ext. 1424).

(3) Prior to or at the hearing, the applicant shall file with OHA an affidavit stating the date upon which the copy of the application was delivered to the office of the field solicitor or the applicant may make an oral statement at the hearing setting forth that information. For purposes of the affidavit or statement the applicant may rely upon telephone confirmation by the office of the field solicitor that the application was received.

(4) In addition to the service requirements of § 4.1266(b) (1) and (2), the applicant shall serve any other parties with a copy of the application simultaneously with the filing of the application. If service is accomplished by mail, the applicant shall inform such other parties by telephone at the time of mailing that an application is being