

## § 821.11

Sunday, nor legal holiday. In all cases, Saturdays, Sundays, and legal holidays for the Board shall be included in the computation of time, except they shall not be included in computations of time respecting petitions for review of determinations as to the existence of emergencies under § 821.54 in subpart I of this part.

[65 FR 42639, July 11, 2000]

### § 821.11 Extension of time.

(a) Upon written request filed with the Board and served on all parties, or by oral request with any extension granted confirmed in writing and served on all parties, and for good cause shown, the chief judge, the law judge, or the Board may grant an extension of time to file any document except a petition for reconsideration.

(b) The Board's General Counsel is authorized to grant unopposed extensions on timely oral request without a showing of good cause in cases appealed to the Board from a decision of a law judge. Written confirmation of such a grant must promptly be sent by the requesting party to the Board and served on other parties.

(c) Extensions of time to file petitions for reconsideration will be granted only in extraordinary circumstances.

[59 FR 59047, Nov. 15, 1994]

### § 821.12 Amendment and withdrawal of pleadings.

(a) *Amendment.* At any time more than 15 days prior to the hearing, a party may amend his or her pleadings by filing the amended pleading with the Board and serving copies on the other parties. After that time, amendment shall be allowed only at the discretion of the law judge. In the case of amendment to an answerable pleading, the law judge shall allow the adverse party a reasonable time to object or answer. Amendments to complaints shall be consistent with the requirements of 49 U.S.C. 44709(c) and 44710(c).

(b) *Withdrawal.* Except in the case of withdrawal of an appeal to the Board, withdrawal of a petition for review, withdrawal of a complaint, or withdrawal of an appeal from an initial decision, a party may withdraw pleadings

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only on approval of a law judge or the Board.

[59 FR 59047, Nov. 15, 1994]

### § 821.13 Waivers.

Waivers of any rights provided by statute or regulation shall either be in writing, or by stipulation made at a hearing and entered into the record, and shall set forth their precise terms and conditions.

### § 821.14 Motions.

(a) *General.* An application to the Board or to a law judge for an order or ruling not otherwise provided for in this part shall be by motion. Prior to the assignment of a law judge, all motions shall be addressed to the chief law judge. Thereafter, and prior to the expiration of the period within which an appeal from the law judge's initial decision may be filed, or the certification of the record to the Board, all motions shall be addressed to the law judge. At all other times, motions shall be addressed to the Board, Office of General Counsel. All motions not specifically provided for in any other section of this part shall be made at an appropriate time, depending on the nature thereof and the relief requested.

(b) *Form and contents.* Unless made during a hearing, motions shall be made in writing, shall state with particularity the grounds for the relief sought, and the relief sought, and shall be accompanied by affidavits or other evidence relied upon. Motions introduced during hearings may be made orally on the record, unless the law judge directs otherwise.

(c) *Answers to motions.* Except when a motion is made during a hearing, any party may file an answer in support of or in opposition to a motion, accompanied by such affidavits or other evidence as he or she desires to rely upon, provided that the answer is filed with 15 days after the motion has been served upon him or her, or such other period as the Board or a law judge may fix. Where a motion is made during a hearing, the answer and the ruling thereon may be made at the hearing, or orally or in writing within such time as the law judge may fix.

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(d) *Oral argument; briefs.* No oral argument will be heard on motions unless the Board or the law judge directs otherwise. Written memoranda or briefs may be filed with motions or answers to motions, stating the points and authorities relied upon in support of the positions taken.

(e) *Disposition of motions.* Except as provided in paragraph (c) of this section for rulings on motions made at a hearing, the law judge shall pass upon all motions properly addressed to him or her, unless he or she finds that a prompt decision by the Board is essential to the proper conduct of the proceeding, in which case he or she may refer such motion to the Board for decision.

(f) *Effect of pendency of motions.* Except as provided in §§ 821.17(a) and 821.18, the filing or pendency of a motion shall not automatically alter or extend the time fixed in this part (or any extension granted thereunder) to take action by the parties.

[40 FR 30243, July 17, 1975, as amended at 54 FR 12203, Mar. 24, 1989; 59 FR 59047, Nov. 15, 1994]

### § 821.15 Motion to disqualify a Board Member.

A motion requesting a Board Member to disqualify himself shall be filed with the Board, supported by an affidavit setting forth grounds for disqualification. In nonemergency proceedings, where an appeal from an initial decision is filed, such motion shall be filed on or before the date on which the reply brief is due, pursuant to § 821.48(d). In emergency proceedings, where a notice of appeal has been filed, such motion shall be filed on or before the date the reply brief is due, pursuant to § 821.57(b). Failure to file a timely motion shall be deemed a waiver of any claim of disqualification. Application for leave to file an untimely motion may be made, accompanied by an affidavit setting forth in detail why the facts relied upon as grounds for disqualification were not known and could not have been discovered with reasonable diligence within the prescribed time.

### § 821.16 Appeals from law judge's interlocutory rulings and motions.

Rulings of law judges on motions may not be appealed to the Board prior to its consideration of the entire proceeding, except in extraordinary circumstances and with the consent of the law judge who made the ruling. An appeal shall be disallowed unless the law judge finds, either on the record or in writing, that to allow such an appeal is necessary to prevent substantial detriment to the public interest or undue prejudice to any party. If an appeal is allowed, any party may file a brief with the Board within such time as the law judge directs. No oral argument will be heard unless the Board directs otherwise. The rulings of the law judge on motion may be reviewed by the Board in connection with its appellate action in the proceeding, irrespective of the filing of an appeal from the motion or any action taken thereon.

### § 821.17 Motion to dismiss and for judgment on the pleadings.

(a) *General.* A motion to dismiss may be filed within the time limitation for filing an answer, except as otherwise provided in paragraph (d) of this section. If the motion is not granted in its entirety, the answer shall be filed within 10 days of service of the law judge's order on the motion.

(b) *Judgment on the pleadings.* A party may file a motion for judgment on the pleadings where no answer has been filed or where there are no issues to be resolved.

(c) *Appeal of dismissal orders and grants of motions for judgment on the pleadings.* When a law judge grants a motion for judgment on the pleadings or a motion to dismiss in lieu of an answer and terminates the proceeding without a hearing, an appeal of such order to the Board may be filed pursuant to the provisions of § 821.47. When a law judge grants a motion to dismiss in part, § 821.16 is applicable.

(d) *Motions to dismiss for lack of jurisdiction.* A motion to dismiss on the ground that the Board lacks jurisdiction may be made at any time.

[49 FR 28249, July 11, 1984]