

Subpart F—Hearing

§ 821.37 Notice of hearing.

(a) *Time and location of hearing.* The law judge to whom the proceeding is assigned (or the chief judge) shall set a reasonable date, time and place for the hearing. Except as provided with respect to emergency proceedings in § 821.56(a), a written notice of hearing shall be served on the parties at least 30 days in advance of the hearing. The law judge may set the hearing for a date fewer than 30 days after the date of the issuance of the notice of hearing if all of the parties consent to an earlier hearing date. In setting the date of the hearing, due regard shall be given to the parties' discovery needs. In setting the place of the hearing, due regard shall be given to the location of the subject incident, the convenience of the parties and their witnesses, and the conservation of Board funds. Another relevant factor in determining the place of the hearing is the convenience of the hearing site to scheduled transportation service. Only in the most extraordinary circumstances may consideration be given to locating a hearing in a foreign country.

(b) *Hearing in several sessions.* Where appropriate, the law judge may hold a hearing in more than one session, at the same or different locations.

§ 821.38 Evidence.

Each party shall have the right to present a case-in-chief, or defense, by oral and documentary evidence, to submit evidence in rebuttal, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Hearsay evidence (including hearsay within hearsay, where there are acceptable circumstantial indicia of trustworthiness) shall be admissible. All material and relevant evidence should be admitted, but the law judge may exclude unduly repetitious evidence.

§ 821.39 Argument and submissions.

At the hearing, the law judge shall give the parties adequate opportunity for the presentation of arguments in support of, or in opposition to, motions, objections and proposed rulings. Prior to the issuance of the initial de-

cision, the parties shall be afforded a reasonable opportunity to submit for consideration proposed findings and conclusions, and supporting reasons therefor.

§ 821.40 Record.

The transcript of testimony and exhibits, together with all papers, requests and rulings filed in the proceeding before the law judge, shall constitute the exclusive record of the proceeding. Copies of the transcript may be obtained by any party upon payment of the reasonable cost thereof. A copy of the transcript may be examined at the National Transportation Safety Board, Office of Administrative Law Judges, Public Docket Section.

Subpart G—Initial Decision

§ 821.42 Initial decision by law judge.

(a) *Written or oral decision.* The law judge may render his or her initial decision orally at the close of the hearing, or in writing at a later date, except as provided with respect to emergency proceedings in § 821.56(c).

(b) *Content.* The initial decision shall include findings and conclusions upon all material issues of fact, credibility of witnesses, law and discretion presented on the record, together with a statement of the reasons therefor.

(c) *Furnishing parties with, and issuance date of, oral decision.* If the initial decision is rendered orally, a copy thereof, excerpted from the hearing transcript, shall be furnished to the parties by the Office of Administrative Law Judges. Irrespective of the date on which the copy of the decision is transmitted to the parties, the issuance date of the decision shall be the date on which it was orally rendered.

§ 821.43 Effect of law judge's initial decision or appealable order and appeal therefrom.

If no appeal from the law judge's initial decision or appealable order is timely filed, the initial decision or order shall become final with respect to the parties, but shall not be binding precedent for the Board. The filing of a timely notice of appeal with the Board shall stay the effectiveness of the law judge's initial decision or order, unless

the basis for the decision or order is that the Board lacks jurisdiction.

Subpart H—Appeal From Initial Decision

§ 821.47 Notice of appeal.

(a) *Time within which to file notice of appeal.* A party may appeal from a law judge's initial decision or appealable order by filing with the Board, and simultaneously serving on the other parties, a notice of appeal, within 10 days after the date on which the oral initial decision was rendered or the written initial decision or appealable order was served (except as provided in §821.57(a) with respect to emergency proceedings). At any time before the time limit for filing an appeal from an initial decision or appealable order has passed, the law judge may, for good cause, reopen the matter on notice to the parties.

(b) *Request for reconsideration of law judge's initial decision or order.* A law judge may not reconsider an initial decision or appealable order after the time for appealing to the Board from the decision or order has expired, or after an appeal has been filed with the Board. However, a timely request for reconsideration by the law judge of the initial decision or appealable order, filed before an appeal to the Board is taken, will stay the deadline for filing an appeal until 10 days after the date on which the law judge serves his or her decision on the reconsideration request. For the purpose of this paragraph, if a request for reconsideration and a notice of appeal are filed on the same day, the reconsideration request will be deemed to have been filed first.

§ 821.48 Briefs and oral argument.

(a) *Appeal brief.* Except as provided in §821.57(b) with respect to emergency proceedings, each appeal must be perfected, within 50 days after the date on which the oral initial decision was rendered, or 30 days after the date on which the written initial decision or appealable order was served, by the filing, and simultaneous service on the other parties, of a brief in support of the appeal. An appeal may be dismissed by the Board, either on its own initiative or on motion of another party,

where a party who has filed a notice of appeal fails to perfect the appeal by filing a timely appeal brief.

(b) *Form and content of appeal brief.* (1) In addition to the general form requirements for documents set forth in §821.7(c)(2), the appeal brief must be typewritten, double-spaced, on 8½-by-11 inch paper. The appeal brief shall set forth the name, address and telephone number of the party, or the attorney or other representative filing the brief on the party's behalf. No appeal brief may contain more than 35 pages of text without prior leave of the General Counsel, upon a showing of good cause.

(2) The appeal brief shall enumerate the appealing party's objections to the law judge's initial decision or appealable order, and shall state the reasons for such objections, including any legal precedent relied upon in support thereof.

(3) Any error contained in the initial decision which is not objected to in the appeal brief may be deemed waived.

(c) *Reply brief.* Any other party to the proceeding may file a brief in reply to the appeal brief within 30 days after the date on which the appeal brief was served on that party (except as provided in §821.57(b) with respect to emergency proceedings). A copy of the reply brief shall simultaneously be served on the appealing party and any other parties to the proceeding. The form requirements governing the appeal brief set forth in paragraph (b)(1) also apply to the reply brief.

(d) *Other filings.* Subsequent to the filing of the appeal and reply briefs, the parties may file citations to supplemental authorities. This procedure may be used only for identifying new and relevant legal authority, and not to correct omissions in briefing or to respond to a reply brief. No argument may be included with such a filing. Such filing shall include a reference to the page of the brief to which the cited legal authority pertains. Any response shall be filed within 10 days of the date of service of the supplemental filing, and shall be similarly limited in scope. With these exceptions, the parties may make no other submissions, except by leave of the Board, upon on a showing of good cause.