

Office of Personnel Management

§ 801.317

(b) A witness who is summoned and responds is entitled to the same witness and mileage fees as are paid for like service in the courts of the United States. The party at whose instance the testimony is taken shall pay the witness and mileage fees.

§ 801.313 Subpena.

(a) On the request of a party and for good cause shown, a hearing officer may issue a subpoena for the appearance of a witness or for the production of documentary evidence.

(b) A hearing officer may quash a subpoena for good cause shown.

(c) The party at whose request a subpoena is issued is responsible for arranging for service. The officer or person making service shall show the original subpoena to the person served, read the subpoena to him if he is unable to read, and deliver a copy of the subpoena to him.

(d) When a U.S. Marshal or his deputy serves a subpoena, he shall evidence the service by his return on the subpoena. When someone other than a U.S. Marshal or his deputy serves a subpoena, the person serving the subpoena shall make an affidavit, stating the date, time, and the manner of service, and shall return the affidavit on, or with, the original subpoena in accordance with the form thereon. When the U.S. Marshal, his deputy, or other person, as appropriate, cannot serve the subpoena, he shall state his reason for the failure on the original subpoena. When the person named in the subpoena accepts service of the subpoena in writing, no other evidence of return is necessary. The person responsible for serving a subpoena shall return the original subpoena, bearing or accompanied by the required return, affidavit, statement, or acceptance of service, to the officer presiding at the hearing at which the person subpoenaed is required to appear.

§ 801.314 Evidence.

(a) The application of the challenged person is prima facie evidence that he has the qualifications that are stated in the application.

(b) Rules of evidence are not strictly applied but the hearing officer shall ex-

clude irrelevant or unduly repetitious evidence.

(c) Each exhibit of a documentary character shall be submitted to the hearing officer, duly marked, and made a part of the record. An exhibit does not become evidence unless received in evidence by the hearing officer.

§ 801.315 Decision.

The hearing officer who presided at the hearing, unless he has become unavailable, shall decide the case on the record. If no hearing is held, the hearing officer to whom the challenge was assigned shall decide the case on the record. The decision shall be in writing and shall state the reasons or basis for the decision. Copies of the decision shall be served on the parties. The decision shall be issued not more than 15 days after the challenge is docketed under § 801.305. The record, including the decision, shall be certified as true and complete by the hearing officer and forwarded to the Examiner (State Supervisor), U.S. Office of Personnel Management in the State involved at the address set out in appendix C to this part. It shall be available to interested persons at that office.

§ 801.316 Action after challenge is sustained.

When a hearing officer sustains a challenge, he shall, after the courts have finally sustained his decision or the time for petitioning for a court review of that decision has expired, instruct an examiner to remove the name of the challenged person from the eligibility list and cancel that person's certificate evidencing his eligibility to vote. The examiner shall notify the challenged person, the appropriate election official, the Attorney General, and the attorney general of the appropriate State of his action.

§ 801.317 Appeal.

There is no administrative appeal from the decision of a hearing officer or from any of his rulings. A petition for review of the decision of a hearing officer may be filed in court as provided in the Act.