

§ 1921.13

adequate notice, at the hearing or by reference in the hearing examiner's decision of the matters so noticed, and shall be given adequate opportunity to show the contrary.

(d) *Oral argument before the hearing examiner.* Oral argument before the hearing examiner may be allowed. However, such argument may be limited by the hearing examiner to any extent that he finds necessary for the expeditious disposition of the proceeding.

(e) *Transcript.* Hearings shall be stenographically reported. Copies of the transcript may be obtained by the parties upon written application filed with the reporter, and upon the payment of fees at the rate provided in the agreement between the Assistant Secretary and the reporter.

Subpart D—Decision and Order

§ 1921.13 Decision of the hearing examiner.

(a) *Filing of transcript of evidence.* As soon as practicable after the close of the hearing, the reporter shall transmit to the Chief Hearing Examiner the copies of the transcript of the testimony and the exhibits introduced in evidence at the hearing except such copies of the transcript and exhibits as are forwarded to the hearing examiner.

(b) *Proposed findings of fact, conclusions, and orders.* Within 10 days after receipt of notice that the transcript of the testimony has been filed or such additional time as the hearing examiner may allow, each party may file with the hearing examiner proposed findings of fact, conclusions of law, and order, together with a supporting brief including the reasons for any proposals. Such proposals shall be served upon all parties, and shall contain adequate references to the record and authorities relied upon.

(c) *Decision of the hearing examiner.* Within a reasonable time after the termination of the time allowed for the filing of proposed findings of fact, conclusions of law, and orders, or after the date of submission of an agreement containing consent findings and order, the hearing examiner shall prepare his decision, which shall become the decision of the Assistant Secretary 20 days after service thereof unless exceptions

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are filed thereto, as provided in § 1921.14 except in cases dealt with in § 1921.8(b). Except in cases under § 1921.8(b) the decision of the hearing examiner shall include a statement of:

(1) Findings and conclusions, with reasons and bases, therefor, upon each material issue of fact, law, or discretion presented on the record, and

(2) An appropriate order.

Except in cases under § 1921.8(b), the decision of the hearing examiner shall be based upon a consideration of the whole record and supported by reliable, probative, and substantial evidence and upon the basis of the preponderance of the evidence.

§ 1921.14 Exceptions.

Within 20 days after the date of the decision of the hearing examiner, the parties may file exceptions thereto with supporting reasons. Any party who desires to take exception to any matter set out in that decision shall transmit his exceptions in writing to the Chief Hearing Examiner, referring to the specific findings of fact, conclusions of law, or order excepted to, and the specific pages of transcript relevant to the exceptions, and suggesting corrected findings of fact, conclusions of law, or order.

§ 1921.15 Transmittal of record.

Immediately following the period allowed for filing exceptions, the hearing examiner shall transmit the record of the proceeding to the Assistant Secretary. The record shall include: The pleadings, motions, and requests filed, and rulings thereon; the transcript of the testimony taken at the hearing, together with the exhibits filed; any documents or papers filed in connection with prehearing conferences; such proposed findings of fact, conclusions of law, and orders, and supporting reasons, as may have been filed in connection with the hearing; the hearing examiner's decision; and such exceptions, statements of objections, and briefs in support thereof, as may have been filed in the proceeding.

§ 1921.16 Decision and order of the Director.

(a) Upon the basis of and after due consideration of the whole record, the

Assistant Secretary shall render his decision, which shall adopt, modify, or set aside the findings, conclusions, and order contained in the decision of the hearing examiner, and shall include a statement of the reasons or bases for the action taken. With respect to the findings of fact, the Assistant Secretary shall upset only those findings that are clearly erroneous. Copies of the decision and order shall be served upon the parties.

(b) When a final order of the Assistant Secretary issued pursuant to § 1921.13(c) or paragraph (a) of this section has been in force for 2 years or more, a party may file with the Assistant Secretary a petition for modification or vacation of the order. Such petition must be in writing, and must be based upon satisfactory compliance with the order during the 24 months immediately preceding the filing thereof and upon such changes in conditions and circumstances as to demonstrate, if established, that a continuation of the order in full force and effect is no longer required to assure satisfactory compliance with the regulations under the order. Such changes in conditions and circumstances as are relied upon must be expressly set forth together with the reasons why petitioner believes relief is justified and the precise nature of the relief sought. The petition may be supported by affidavits as to matters of fact.

(c) If, after such investigation as the Assistant Secretary deems appropriate, in his judgment sufficient cause has been shown to justify the relief requested, he will enter an order granting relief. If in his judgment, sufficient cause has not been shown he shall so notify petitioner, who may then in writing request a hearing. Upon receipt of such request the Assistant Secretary will refer the petition with its supporting documents and the request to the Chief Hearing Examiner who will assign the matter for a hearing to be held on not less than 10 days notice at a time and place to be set by the hearing examiner. The Deputy Solicitor of Labor may file a pleading and otherwise appear in opposition to the petition. The hearing will be subject to all

of the provisions of §§ 1921.9 through 1921.22.

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Subpart E—Miscellaneous

§ 1921.17 Service; copies of documents and pleadings.

(a) *Manner of service.* Service upon any party shall be made by the party filing the pleading or document by delivering a copy or mailing a copy to the last known address. If the person upon whom service is made by mail resides 500 miles or more from the party effecting service, such mailing must be by airmail. When a party is represented by an attorney the service may be upon the attorney.

(b) *Proof of service.* A certificate of the person serving the pleading or other document by personal delivery or by mailing, setting forth the manner of said service shall be proof of the service of the pleading or other document.

(c) *Service upon Department, number of copies of pleading or other documents.* An original and three copies of all pleadings and other documents shall be filed with the Department of Labor, whether to the Assistant Solicitor in charge of trial litigation, the hearing examiner, or the Assistant Secretary, as the case may be.

§ 1921.18 Witnesses and fees.

Witnesses subpoenaed by any party shall be paid the same fees and mileage as are paid for like services in the District Courts of the United States. The witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

§ 1921.19 Depositions.

(a) *When, how, and by whom taken.* For good cause shown, the testimony of any witness may be taken by deposition in any proceeding, when a complaint has been filed, whether at issue or not. Depositions may be taken orally or upon written interrogatories before any person designated by the hearing examiner and having power to administer oaths.

(b) *Application.* Any party desiring to take the deposition of a witness shall make application in writing to the