

Secretary anticipates using at the hearing.

(3) Within 30 calendar days after a case is designated for Simplified Proceedings, the Secretary shall provide to the employer any exculpatory evidence in the Secretary's possession.

(4) The Judge shall act expeditiously on any claim by the employer that the Secretary improperly withheld or redacted any portion of the documents, photographs, or videotapes on the grounds of confidentiality or privilege.

(b) *Disclosure to the Secretary.* Where the employer raises an affirmative defense, the presiding Judge shall order the employer to disclose to the Secretary such documents relevant to the affirmative defense as the Judge deems appropriate.

[60 FR 41809, Aug. 14, 1995, as amended at 62 FR 40934, July 31, 1997; 70 FR 22792, May 3, 2005]

#### § 2200.207 Pre-hearing conference.

(a) *When held.* As early as practicable after the employer has received the documents set forth in § 2200.206(a)(1), the presiding Judge will order and conduct a pre-hearing conference. At the discretion of the Judge, the pre-hearing conference may be held in person, or by telephone or electronic means.

(b) *Content.* At the pre-hearing conference, the parties will discuss the following: settlement of the case; the narrowing of issues; an agreed statement of issues and facts; defenses; witnesses and exhibits; motions; and any other pertinent matter. Except under extraordinary circumstances, any affirmative defenses not raised at the pre-hearing conference may not be raised later. At the conclusion of the conference, the Judge will issue an order setting forth any agreements reached by the parties and will specify in the order the issues to be addressed by the parties at the hearing.

[60 FR 41809, Aug. 14, 1995, as amended at 62 FR 40934, July 31, 1997]

#### § 2200.208 Discovery.

Discovery, including requests for admissions, will only be allowed under the conditions and time limits set by the Judge.

#### § 2200.209 Hearing.

(a) *Procedures.* As soon as practicable after the conclusion of the pre-hearing conference, the Judge will hold a hearing on any issue that remains in dispute. The hearing will be in accordance with subpart E of these rules, except for § 2200.60, 2200.73, and 2200.74 which will not apply.

(b) *Agreements.* At the beginning of the hearing, the Judge will enter into the record all agreements reached by the parties as well as defenses raised during the pre-hearing conference. The parties and the Judge then will attempt to resolve or narrow the remaining issues. The Judge will enter into the record any further agreements reached by the parties.

(c) *Evidence.* The Judge will receive oral, physical, or documentary evidence that is not irrelevant, unduly repetitious or unreliable. Testimony will be given under oath or affirmation. The Federal Rules of Evidence do not apply.

(d) *Reporter.* A reporter will be present at the hearing. An official verbatim transcript of the hearing will be prepared and filed with the Judge. Parties may purchase copies of the transcript from the reporter.

(e) *Oral and written argument.* Each party may present oral argument at the close of the hearing. Post-hearing briefs will not be allowed except by order of the Judge.

(f) *Judge's decision.* Where practicable, the Judge will render his or her decision from the bench. In rendering his or her decision from the bench, the Judge shall state the issues in the case and make clear both his or her findings of fact and conclusions of law on the record. The Judge shall reduce his or her order in the matter to writing and transmit it to the parties as soon as practicable, but no later than 45 days after the hearing. All relevant transcript paragraphs and pages shall be excerpted and included in the decision. Alternatively, within 45 days of the hearing, the Judge will issue a written decision. The decision will be in accordance with § 2200.90. If additional time is needed, approval of the Chief is required.

(g) *Filing of Judge's decision with the Executive Secretary.* When the Judge