

§ 2204.308

the Secretary had an opportunity to introduce evidence supporting the citation or notification of proposed penalty (for example, a citation was withdrawn or settled before an evidentiary hearing was held), the Secretary may supplement the record with affidavits or other documentary evidence of substantial justification.

(b) A request that the judge order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

[46 FR 48080, Sept. 30, 1981, as amended at 52 FR 5457, Feb. 23, 1987]

§ 2204.308 Decision.

The preparation and issuance of decision shall be in accordance with § 2200.90. Additionally, the judge's decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the Secretary's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust.

§ 2204.309 Commission review.

Commission review shall be in accordance with §§ 2200.91 and 2200.92. The applicant, the Secretary, or both may seek review of the judge's decision on the fee application, and the Commission may grant such petitions for review or direct review of the decision on the Commission's own initiative. The Commission delegates to each of its members the authority to order review of a judge's decision concerning a fee application. Whether to review a decision is a matter within the discretion of each member of the Commission. If the Commission does not direct review, the judge's decision on the application shall become a final decision of the Commission 30 days after it is received and docketed by the Executive Secretary of the Commission. If review is directed, the Commission shall issue a

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final decision on the application or remand the application to the judge for further proceedings.

§ 2204.310 Waiver.

After reasonable notice to the parties, the Commission may waive, for good cause shown, any provision contained in this part as long as the waiver is consistent with the terms and purpose of the EAJA.

§ 2204.311 Payment of award.

An applicant seeking payment of an award shall submit to the officer designated by the Secretary a copy of the Commission's final decision granting the award.

PART 2205—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

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AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 22892, 22896, June 23, 1986, unless otherwise noted.

§ 2205.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which