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(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Presiding Officer as sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

[52 FR 12904, Apr. 20, 1987, as amended at 67 FR 62179, Oct. 4, 2002]

§ 962.14 Enforcement of subpoenas.

In the case of contumacy or refusal to obey a subpoena issued pursuant to §§ 962.9(b)(5) and 962.13, the district courts of the United States have jurisdiction to issue an appropriate order for the enforcement of such subpoena. Any failure to obey such order of the court may be punishable as contempt. In any case in which the Postal Service seeks the enforcement of a subpoena under this section, the Postal Service shall request the Attorney General to petition the district court for the district in which a hearing under this part is being conducted or in which the person receiving the subpoena resides or conducts business to issue such an order.

§ 962.15 Sanctions.

(a) The Presiding Officer may sanction a person, including any party or representative, for

(1) Failing to comply with a lawful order or prescribed procedure;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) Failure to comply with an order. When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the Presiding Officer may:

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(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) Prohibit such party from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought;

(3) Permit the requesting party to introduce secondary evidence concerning the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) Failure to prosecute or defend. If a party fails to prosecute or defend an action under this part commenced by service of a Complaint, the Presiding Officer may dismiss the action or enter an order of default.

(e) Failure to make timely filing. The Presiding Officer may refuse to consider any motion or other pleading, report, or response which is not filed in a timely fashion.

§ 962.16 Disqualification of reviewing official or presiding official.

If a Respondent believes, in good faith, that the Reviewing Official or Presiding Officer should be disqualified because of personal bias, or other reason, the Respondent may file a timely and sufficient affidavit alleging such belief with supporting evidence. If the Presiding Officer finds that such allegations concerning the Reviewing Official are meritorious, he may direct the Reviewing Official to disqualify himself and request the appointment of a new Reviewing Official. Where a Respondent seeks the disqualification of a Presiding Officer, such Presiding Officer, may, in his discretion, disqualify himself at any time during the proceeding. In the event a Reviewing Official or Presiding Officer withdraws from a hearing, the proceeding shall be stayed until the assignment of a new Reviewing Official or Presiding Officer.

§ 962.17 Ex parte communications.

Communications between a Presiding Officer and a party shall not be made on any matter in issue unless on notice and opportunity for all parties to participate. This prohibition does not apply to procedural matters. A memorandum of any communication between the Presiding Officer and a party shall

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be transmitted by the Presiding Officer to all parties.

§ 962.18 Post-hearing briefs.

Post-hearing briefs and reply briefs may be submitted upon such terms as established by the Presiding Officer at the conclusion of the hearing.

§ 962.19 Transcript of proceedings.

Testimony and argument at hearings shall be reported verbatim, unless the Presiding Officer orders otherwise. Transcripts or copies of the proceedings may be obtained by the parties at such rates as may be fixed by contract between the reporter and the Postal Service.

§ 962.20 Initial decision.

(a) After the conclusion of the hearing, and the receipt of briefs, if any, from the parties, the Presiding Officer shall issue a written initial decision, including his or her findings and determinations. Such decision shall include the findings of fact and conclusions of law which the Presiding Officer relied upon in determining whether the Respondent is liable under 31 U.S.C. 3802, and, if liability is found, shall set forth the amount of any penalties and assessments imposed.

(b) The Presiding Officer shall promptly send to each party a copy of his or her initial decision, and a statement describing the right of any person determined to be liable under 31 U.S.C. 3802, to appeal, in accordance with § 962.21, the decision of the Presiding Officer to the Judicial Officer.

(c) Unless the Respondent appeals the Presiding Officer's initial decision, such decision, including the findings and determinations, is final.

§ 962.21 Appeal of initial decision to judicial officer.

(a) *Notice of appeal and supporting brief.* (1) A Respondent may appeal an adverse initial decision by filing, within 30 days after the Presiding Officer issues an initial decision, a Notice of Appeal with the Recorder. The Judicial Officer may extend the filing period if the Respondent files a request for an extension within the initial 30-day period and demonstrates good cause for such extension.

(2) The Respondent's Notice of Appeal must be accompanied by a written brief specifying the Respondent's exceptions, and any reasons for such exceptions, to the Presiding Officer's initial decision.

(3) Within 30 days of receiving the Respondent's brief, the Reviewing Official may file with the Judicial Officer a response to the Respondent's specified exceptions to the Presiding Officer's initial decision.

(b) *Form of review.* (1) Review by the Judicial Officer will be based entirely on the record and written submissions.

(2) The Judicial Officer may affirm, reduce, reverse, or remand any penalty or assessment determined by the Presiding Officer.

(3) The Judicial Officer shall not consider any objection that was not raised in the hearing unless the interested party demonstrates that the failure to raise the objection before the Presiding Officer was caused by extraordinary circumstances.

(4) If any party demonstrates to the satisfaction of the Judicial Officer that additional evidence not presented at the hearing is material and that there were reasonable grounds for the failure to present such evidence, the Judicial Officer shall remand the matter to the Presiding Officer for consideration of such additional evidence.

(c) *Decision of judicial officer.* (1) The Judicial Officer shall promptly serve each party to the appeal with a copy of his decision and a statement describing the right to judicial review under 31 U.S.C. 3805 of any Respondent determined to be liable under 31 U.S.C. 3802.

(2) The decision of the Judicial Officer constitutes final agency action and becomes final and binding on the parties 60 days after it is issued unless a petition for judicial review is filed.

[52 FR 12904, Apr. 20, 1987, as amended at 67 FR 62179, Oct. 4, 2002]

§ 962.22 Form and filing of documents.

(a) Every pleading filed in a proceeding under this part must

(1) Contain a caption setting forth the title of the action, the docket number (after assignment by the Recorder), and a designation of the document (e.g., "Motion to Quash Subpoena");