

Judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as he deems appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the date of commencement of the period for filing a motion for reconsideration under §4.126.

(e) *Motions for reconsideration in cases arising under §4.113.* Motions for reconsideration of cases decided under either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure need not be decided within the time period prescribed by this §4.113 for the initial decision of the appeal, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this rule.

§4.114 Settling of the record.

(a) A case submitted on the record pursuant to §4.112 shall be ready for decision when the parties are so notified by the Board. A case which is heard shall be ready for decision upon receipt of transcript, or upon receipt of briefs when briefs are to be submitted. At any time prior to the date that a case is ready for decision, either party, upon notice to the other, may supplement the record with documents and exhibits deemed relevant and material by the Board. The Board upon its own initiative may call upon either party, with appropriate notice to the other, for evidence deemed by it to be relevant and material. The weight to be attached to any evidence of record will rest within the sound discretion of the Board. Either party at any stage of the proceeding, on notice to the other party, may object to the relevancy or materiality of documents in the record or offered into the record.

(b) The Board record shall consist of the appeal file described in §4.104(b) and any additional material, pleadings, prehearing briefs, record of prehearing, or presubmission conferences, depositions, interrogatories, admissions, transcripts of hearing, hearing exhib-

its, and posthearing briefs, as may thereafter be developed pursuant to these rules. In deciding appeals the Board, in addition to considering the Board record, may take official notice of facts within general knowledge.

(c) This record will at all times be available for inspection by the parties at an appropriate time and place. In the interest of convenience, prior arrangements for inspection of the file should be made with the Recorder of the Board. Copies of material in the record may be furnished to appellant as provided in part 2 of this subtitle.

§4.115 Discovery—depositions.

(a) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the board may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, and those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) *When depositions permitted.* After an appeal has been docketed, the parties may mutually agree to, or the Board may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for such an order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) *Orders on depositions.* The time, place, and manner of taking depositions shall be, as mutually agreed by the parties, or, failing such agreement, governed by order of the Board.

(d) *Use as evidence.* No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal unless and until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify

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personally at the hearing. In such instances, however, the depositions may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted on the record, the Board may in its discretion receive depositions as evidence in supplementation of that record.

(e) *Expenses.* Each party shall bear its own expenses associated with the taking of any deposition.

§4.116 Interrogatories to parties; inspection of documents; admission of facts.

Under appropriate circumstances, but not as a matter of course, the Board will entertain applications for permission to serve written interrogatories upon the opposing party, applications for an order to produce and permit the inspection of designated documents, and applications for permission to serve upon the opposing party a request for the admission of specified facts. Such applications shall be reviewed and approved only to the extent and upon such terms as the Board in its discretion considers to be consistent with the objective of securing just and inexpensive determination of appeals without unnecessary delay, and essential to the proper pursuit of that objective in the particular case.

§4.117 Service of papers.

A copy of all pleadings, briefs, motions, letters, or other papers filed with the Board, shall be served upon the other party at the time of filing. Service of papers may be made personally or by mailing in a sealed envelope addressed to the other party. Any paper filed with the Board shall show on its face, or in the letter transmitting the same, that a copy thereof has been served upon the other party. When the other party is represented by counsel, such service shall be made upon him, and service upon counsel shall be deemed to be service upon the party he represents.

HEARING PROCEDURE RULES

§4.118 Hearings—where and when held.

Hearings may be held in Arlington, Virginia, or upon timely request and

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for good cause shown, the Board may in its discretion set the hearing on an appeal at a location other than Arlington, Virginia. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals and other pertinent factors. However, where it is apparent that no issue of fact is presented in an appeal proceeding, the Board may deny a request for hearing. On request or motion by either party and for good cause shown, the Board may in its discretion adjust the date of a hearing.

§4.119 Notice of hearings.

The parties shall be given at least 15 days' notice of the time and place set for hearings. In scheduling hearings, the Board will give due regard to the desires of the parties, and to the requirement for just and prompt determination of appeals. Receipt of a notice of hearing shall be promptly acknowledged by the parties. A party failing to acknowledge a notice of hearing shall be deemed to have consented to the indicated time and place of hearing.

§4.120 Subpoenas. (See §4.100(a)(2).)

(a) *General.* Upon written request of either party filed with the docket clerk or on his own initiative, the Administrative Judge to whom a case is assigned or who is otherwise designated by the Chairman may issue a subpoena requiring:

(1) *Testimony at a deposition*—the deposing of a witness, in the city or county where he resides or is employed or transacts his business in person, or at another location convenient for him that is specifically determined by the Board;

(2) *Testimony at a hearing*—the attendance of a witness for the purpose of taking testimony at a hearing; and

(3) *Production of books and papers*—in addition to paragraphs (a) (1) and (2) of this section, the production by the witness at the deposition or hearing of books and papers designated in the subpoena.

(b) *Voluntary cooperation.* Each party is expected (1) to cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena,