

## Merit Systems Protection Board

## § 1210.16

to find that a contested fact is more likely to be true than untrue.

(2) *Harmful error.* Error by the Department in the application of its procedures that is likely to have caused it to reach a conclusion different from the one it would have reached in the absence or cure of the error. The burden is on the appellant to show that the error was harmful, i.e., that it caused substantial harm or prejudice to his or her rights.

(d) *Efficiency of the service.* Pursuant to 5 CFR 9701.606, the Department may take an adverse action under subpart F of 5 CFR part 9701 only for such cause as will promote the efficiency of the service.

### § 1210.14 Initial disclosures; scope of discovery.

(a) *Initial disclosures.* Except to the extent otherwise directed by order, each party must, without awaiting a discovery request and within ten calendar days following the date of the Board's acknowledgment order, provide the following information to the other party:

(1) The Department must provide:

(i) The Departmental record required by 5 CFR 9701.612; and

(ii) The name and, if known, the address and telephone number of each individual likely to have discoverable information that the Department may use in support of its claims or defenses, identifying the subjects of such information.

(2)(i) The appellant must provide:

(A) A copy of, or a description by category or location of all documents in the possession, custody or control of the appellant that the appellant may use in support of his or her claims or defenses; and

(B) The name and, if known, the address and telephone number of each individual likely to have discoverable information that the appellant may use in support of his or her claims or defenses, identifying the subjects of the information.

(ii) Each party must make its initial disclosure based on the information then reasonably available to the party. A party is not excused from making its disclosures because it has not fully completed the investigation of its case,

because it challenges the sufficiency of the other party's disclosures or because the other party has not made its disclosures.

(b) *Scope of discovery.* The parties may seek discovery regarding any matter that is relevant to any of their claims or defenses. However, by motion, either party may seek to limit such discovery because the burden or expense of providing the material outweighs its benefit, or because the material sought is privileged, not relevant, unreasonably cumulative or duplicative, or can be secured from some other source that is more convenient, less burdensome, or less expensive.

### § 1210.15 Discovery procedures.

(a) *Responses to discovery requests.* Prior to filing a motion to limit discovery, the parties must confer and attempt to resolve any pending objection(s). To the extent not inconsistent with this subpart, and subject to modified time limits and procedures that may be set by the adjudicating official, the provisions of 5 CFR 1201.71 through 1201.85 govern discovery in cases under this subpart.

(b) *Limitations on discovery.* (1) Neither party may submit more than one set of interrogatories, one set of requests for production of documents, and one set of requests for admissions. The number of interrogatories or requests for production or admissions may not exceed 25 per pleading, including subparts. In addition, neither party may conduct/compel more than 2 depositions.

(2) Either party may file a motion requesting additional discovery. Such motion may be granted only if the party has shown necessity and good cause to warrant such additional discovery.

### § 1210.16 Intervention.

The Director may, as a matter of right at any time in the proceeding, intervene or otherwise participate in any proceeding under this Part in any case in which the Director believes that an erroneous decision will have a substantial impact on a civil service law, rule, regulation, or policy directive.