

(b) The ALJ may correct the transcript of the hearing by appropriate order.

§ 20.710 Proposed findings, closing arguments, and briefs.

(a) Before the ALJ closes the hearing, he or she may hear oral argument so far as he or she deems appropriate.

(b) Before the ALJ decides the case, and upon terms he or she finds reasonable, any party may file a brief, proposed findings of fact and conclusions of law, or both. Any party may waive this right. If all parties waive it, then the ALJ may issue an oral order at the close of the hearing.

(c) Any oral argument, brief, or proposed findings of fact and conclusions of law form part of the record of the proceeding, as described in § 20.903.

Subpart H—Evidence

§ 20.801 General.

Any party may present his or her case or defense by oral, documentary, or demonstrative evidence; submit rebuttal evidence; and conduct any cross-examination that may be necessary for a full and true disclosure of the facts.

§ 20.802 Admissibility of evidence.

(a) The ALJ may admit any relevant oral, documentary, or demonstrative evidence, unless privileged. Relevant evidence is evidence tending to make the existence of any material fact more probable or less probable than it would be without the evidence.

(b) The ALJ may exclude evidence if its probative value is substantially outweighed by the danger of prejudice, by confusion of the issues, or by reasonable concern for undue delay, waste of time, or needless presentation of cumulative evidence.

§ 20.803 Hearsay evidence.

Hearsay evidence is admissible in proceedings governed by this part. The ALJ may consider the fact that evidence is hearsay when determining its probative value.

§ 20.804 Objections and offers of proof.

(a) Any party objecting to the admission or exclusion of evidence shall concisely state the grounds. A ruling on

every objection must appear in the record. No party may raise an objection to the admission or exclusion of evidence on appeal unless he or she raised it before the ALJ.

(b) Whenever evidence is objected to, the party offering it may make an offer of proof, which must appear in the record.

§ 20.805 Proprietary information.

(a) The ALJ may limit introduction of evidence or issue such protective or other orders as in his or her judgment are consistent with the object of preventing undue disclosure of proprietary matters, including, among others, ones of a commercial nature.

(b) When the ALJ determines that information in a document containing proprietary matters should be made available to another party, the ALJ may direct the party possessing the document to prepare a non-proprietary summary or extract of it. The summary or extract may be admitted as evidence in the record.

(c) If the ALJ determines that a non-proprietary summary or extract is inadequate and that proprietary matters must form part of the record to avert prejudice to a party, the ALJ may so advise the parties and arrange access to the evidence for a party or representative.

§ 20.806 Official notice.

The ALJ may take official notice of such matters as could courts, or of other facts within the specialized knowledge of the Coast Guard as an expert body. When all or part of a decision rests on the official notice of a material fact not appearing in the evidence in the record, the decision must state as much; and any party, upon timely request, shall receive an opportunity to rebut the fact.

§ 20.807 Exhibits and documents.

(a) Each exhibit must be numbered and marked for identification by the party offering it. The original of each exhibit so marked, whether or not offered or admitted into evidence, must be filed and retained in the record of the proceeding, unless the ALJ permits the substitution of a copy. The party introducing each exhibit so marked

§ 20.808

shall supply a copy of the exhibit to the ALJ and to every party to the proceeding.

(b) Unless the ALJ directs otherwise, each party who would offer an exhibit upon direct examination shall make it available to every other party for inspection 15 days or more before the hearing. The ALJ will deem admitted the authenticity of each exhibit submitted before the hearing unless a party either files written objection and serves it on all parties or shows good cause for failure to do both.

(c) In class II civil penalty proceedings under 33 U.S.C. 1321(b)(6), each exhibit introduced by an interested person must be marked, and filed and retained in the record of the proceeding, unless the ALJ permits the substitution of a copy. The interested person shall supply a copy of the exhibit to the ALJ and to every party to the proceeding. The requirements of paragraph (b) of this section apply to any interested person who would offer an exhibit upon direct examination.

§ 20.808 Written testimony.

The ALJ may enter into the record the written testimony of a witness. The witness shall be, or have been, available for oral cross-examination. The statement must be sworn to, or affirmed, under penalty of perjury.

§ 20.809 Stipulations.

Any party or interested person may stipulate, in writing, at any stage of the proceeding, or orally at the hearing, to any pertinent fact or other matter fairly susceptible of stipulation. A stipulation binds all parties to it.

Subpart I—Decisions

§ 20.901 Summary decisions.

(a) Any party may move for a summary decision in all or any part of the proceeding on the grounds that there is no genuine issue of material fact and that the party is entitled to a decision as a matter of law. The party must file the motion no later than 15 days before the date fixed for the hearing and may include supporting affidavits with the motion. Any other party, 10 days or less after service of a motion for summary decision, may serve opposing affi-

33 CFR Ch. I (7–1–08 Edition)

davits or countermove for summary decision. The ALJ may set the matter for argument and call for the submission of briefs.

(b) The ALJ may grant the motion if the filed affidavits, the filed documents, the material obtained by discovery or otherwise, or matters officially noted show that there is no genuine issue of material fact and that a party is entitled to a summary decision as a matter of law.

(c) Each affidavit must set forth such matters as would be admissible in evidence and must show affirmatively that the affiant is competent to testify to the matters stated in the affidavit. Once a party has moved for summary decision and supported his or her motion as provided in this section, no party opposing the motion may rest upon the mere allegations or denials of facts contained in his or her own pleadings. The response to the motion, by affidavit or as otherwise provided in this section, must provide a specific basis to show that there is a genuine issue of material fact for the hearing.

(d) If it appears from the affidavit of a party opposing the motion that this party cannot, for reasons stated, present by affidavit matters essential to justify his or her opposition, the ALJ may deny the motion for summary decision, may order a continuance to enable the obtaining of information, or may make such other order as is just.

(e) No denial of all or any part of a motion for summary decision is subject to interlocutory appeal.

§ 20.902 Decisions of the ALJ.

(a) After closing the record of the proceeding, the ALJ shall prepare a decision containing—

(1) A finding on each material issue of fact and conclusion of law, and the basis for each finding;

(2) The disposition of the case, including any appropriate order;

(3) The date upon which the decision will become effective;

(4) A statement of further right to appeal; and,

(5) If no hearing was held, a statement of the right of any interested person to petition the Commandant to set aside the decision.