

Access to and Review of Personal Information in Systems of Records, 12 CFR part 261a.

(f) Within 180 days from the filing of the complaint, within the time period contained in a determination of the Commission's Office of Federal Operations on review of a dismissal, or within any period of extension provided for in paragraph (e) of this section, the Board shall notify the complainant that the investigation has been completed, shall provide the complainant with a copy of the investigative file, and shall notify the complainant that, within 30 days of the receipt of the investigative file, the complainant has the right to request a hearing before an administrative judge from the Commission or may receive an immediate final decision pursuant to § 268.209 of this part from the Board. In the absence of the required notice, the complainant may request a hearing under § 268.208 of this part at any time after 180 days has elapsed from the filing of the complaint.

[59 FR 16098, Apr. 6, 1994, as amended at 61 FR 252, Jan. 4, 1996]

§ 268.208 Hearings.

(a) *Requests.* When a complainant requests a hearing, the EEO Programs Director shall request the Commission to appoint an administrative judge to conduct a hearing in accordance with this section. Any hearing will be conducted by an administrative judge or hearing examiner with appropriate security clearances. Where the administrative judge determines that the complainant is raising or intends to pursue issues like or related to those raised in the complaint, but which the Board has not had an opportunity to address, the administrative judge shall remand any such issue for counseling in accordance with § 268.204 of this part or for such other processing as may be ordered by the administrative judge.

(b) *Discovery.* The administrative judge shall notify the parties of the right to seek discovery prior to the hearing and may issue such discovery orders as are appropriate. Unless the parties agree in writing concerning the methods and scope of discovery, the party seeking discovery shall request authorization from the administrative

judge prior to commencing discovery. Both parties are entitled to reasonable development of evidence on matters relevant to the issues raised in the complaint, but the administrative judge may reasonably limit the quantity and timing of discovery. Evidence may be developed through interrogatories, depositions, and requests for admissions, stipulations or production of documents. It shall be grounds for objection to producing evidence that the information sought by either party is irrelevant, overburdensome, repetitious, privileged, or that production would be unlawful.

(c) *Conduct of hearing.* The Board shall provide for the attendance at a hearing of all Board employees approved as witnesses by an administrative judge. Attendance at hearings will be limited to persons determined by the administrative judge to have direct knowledge relating to the complaint. Hearings are part of the investigative process and are thus closed to the public. The administrative judge shall have the power to regulate the conduct of a hearing, limit the number of witnesses where testimony would be repetitious, and exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing. The administrative judge shall receive into evidence information or documents relevant to the complaint. Rules of evidence shall not be applied strictly, but the administrative judge shall exclude irrelevant or repetitious evidence. The administrative judge or the Commission may refer to the Disciplinary Committee of the appropriate Bar Association any attorney or, upon reasonable notice and an opportunity to be heard, suspend or disqualify from representing complainants or agencies in hearings raising claims of discrimination any representative who refuses to follow the orders of an administrative judge, or who otherwise engages in improper conduct. The Board in such circumstances may take whatever action it deems appropriate to suspend or disqualify any such attorney or representative from appearing or practicing before the Board.

(d) *Evidentiary procedures.* The procedures in paragraphs (d) (1) through (3)

of this section apply to hearings of complaints:

(1) The complainant, the Board and any employee of the Board shall produce such documentary and testimonial evidence as the administrative judge deems necessary, consistent with applicable laws, regulations and policies of the Board. If documentary or testimonial evidence is needed for the hearing, and such documentary evidence is known to be contained in the files of another federal agency, or if the testimony of an employee of another federal agency is needed, then the administrative judge may seek assistance from appropriate sources in obtaining such documentary or testimonial evidence for the hearing.

(2) Administrative judges are authorized to administer oaths. Statements of witnesses shall be made under oath or affirmation or, alternatively, by written statement under penalty of perjury.

(3) When the complainant, or the Board or its employees fail without good cause shown to respond fully and in timely fashion to requests for documents, records, comparative data, statistics, affidavits, or the attendance of witness(es), the administrative judge may, in appropriate circumstances:

(i) Draw an adverse inference that the requested information, or the testimony of the requested witness, would have reflected unfavorably on the party refusing to provide the requested information;

(ii) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;

(iii) Exclude other evidence offered by the party failing to produce the requested information or witness;

(iv) Issue a finding fully or partially in favor of the opposing party; or

(v) Take such other actions as appropriate.

(e) *Findings and conclusions without hearing.* (1) If a party believes that some or all material facts are not in genuine dispute and there is no genuine issue as to credibility, the party may, at least 15 calendar days prior to the date of the hearing or at such earlier time as required by the administrative judge, file a statement with the admin-

istrative judge prior to the hearing setting forth the fact or facts and referring to the parts of the record relied on to support the statement. The statement must demonstrate that there is no genuine issue as to any such material fact. The party shall serve the statement on the opposing party.

(2) The opposing party may file an opposition within 15 calendar days of receipt of the statement in paragraph (e)(1) of this section. The opposition may refer to the record in the case to rebut the statement that a fact is not in dispute or may file an affidavit stating that the party cannot, for reasons stated, present facts to oppose the request. After considering the submissions, the administrative judge may order that discovery be permitted on the fact or facts involved, limit the hearing to the issues remaining in dispute, issue findings and conclusions without a hearing or make such other ruling as is appropriate.

(3) If the administrative judge determines upon his or her own initiative that some or all facts are not in genuine dispute, he or she may, after giving notice to the parties and providing them an opportunity to respond in writing within 15 calendar days, issue an order limiting the scope of the hearing or issue findings and conclusions without holding a hearing.

(f) *Record of hearing.* The hearing shall be recorded and the Board shall arrange and pay for verbatim transcripts. All documents submitted to, and accepted by, the administrative judge at the hearing shall be made part of the record of the hearing. If the Board submits a document that is accepted, it shall furnish a copy of the document to the complainant. If the complainant submits a document that is accepted, the administrative judge shall make the document available to the Board's representative for reproduction.

(g) *Findings and conclusions.* Unless the administrative judge makes a written determination that good cause exists for extending the time for issuing findings of fact and conclusions of law, within 180 days of a request for a hearing being received by the Commission, an administrative judge shall issue findings of fact and conclusions of law

on the merits of the complaint, and shall order appropriate relief where discrimination is found with regard to the matter that gave rise to the complaint. The administrative judge shall send copies of the entire record, including the transcript, and the findings and conclusions to the parties by certified mail, return receipt requested. Within 60 days of receipt of the findings and conclusions, the Board may reject or modify the findings and conclusions or the relief ordered by the administrative judge and issue a final decision in accordance with § 268.209 of this part. If the Board does not, within 60 days of receipt of the findings and conclusions, accept, reject or modify the findings and conclusions of the administrative judge, then the findings and conclusions of the administrative judge and the relief ordered shall become the final decision of the Board and the Board shall notify the complainant of the final decision in accordance with § 268.209 of this part.

§ 268.209 Final decisions.

(a) The EEO Programs Director shall notify the Board of Governors when a complaint is ripe for decision under this section. At the request of any member of the Board of Governors made within 3 business days of such notice, the Board of Governors shall make the decision on the complaint. If no such request is made, the Administrative Governor, or the Staff Director for Management if he or she is delegated the authority to do so under § 268.103(a)(2) of this part, shall make the decision on the complaint.

(b) The Board shall issue a final decision:

(1) Within 60 days of receiving notification that a complainant has requested an immediate decision in accordance with § 268.207(f) of this part;

(2) Within 60 days of the end of the 30-day period for the complainant to request a hearing or an immediate final decision where the complainant has not requested either a hearing or a final decision as provided by § 268.207(f) of this part;

(3) Within 60 days of receiving the findings and conclusions of an administrative judge under § 268.208(g) of this part;

(4) Within 30 days of receiving the written recommendation of an administrative judge to accept or reject the class complaint pursuant to § 268.305(c)(7) of this part;

(5) If it decides to vacate an agreement of resolution upon the selection of a member of the class pursuant to § 268.305(f)(4) of this part;

(6) Within 60 days of receiving findings and recommendations of an administrative judge following a class action hearing pursuant to the procedures stated under § 268.305(i) of this part;

(7) Within 90 days of receipt of a written claim by a class member pursuant to § 268.305(k)(3) of this part; or

(8) Within 30 days of receiving the EEOC decision pursuant to § 268.405(c) of this part.

(c) The final decision of the Board shall consist of findings by the Board on the merits of each issue in the complaint, or following review by the Commission, the reason or reasons for acceptance, modification or rejection of each finding in an EEOC decision. When discrimination is found and indicated in the final decision, appropriate remedies and relief in accordance with subpart E of this part will be addressed in the final decision.

(d) The final decision shall contain information regarding the right to file a request for review with the Commission of final decisions pursuant to paragraphs (b)(1) through (7) of this section and the procedures for filing a request for review with the Commission, the right to file a civil action in a United States District Court, including the name of the proper defendant in any such lawsuit, and the applicable time limits for reviews and lawsuits. A copy of EEOC Form 573, Notice of Appeal/Petition, shall be attached to the final decision pursuant to paragraphs (b)(1) through (7) of this section.

Subpart C—Provisions Applicable to Particular Complaints

§ 268.301 Age Discrimination in Employment Act.

(a) As an alternative to filing a complaint of discrimination on the basis of age under this part, an aggrieved person may file a civil action in a United