

and conclusions, and the grounds therefor, upon all material issues of fact, credibility of witnesses, law, or discretion presented on the record, the appropriate order, and the reasons therefor.

(c) *Furnishing copy of oral decision and issuance date.* If the initial decision is rendered orally, a copy thereof, excerpted from the transcript of the record, shall be furnished the parties by the Office of Administrative Law Judges. Irrespective of the date of mailing of such copy, the issuance date of the decision shall be the actual date of the rendering of the oral decision.

[40 FR 30243, July 17, 1975, as amended at 59 FR 59049, Nov. 15, 1994]

§ 821.43 Effect of law judge's initial decision and filing of an appeal therefrom.

If an appeal from the initial decision is not timely filed with the Board by a party, the initial decision shall become final but shall not be precedent binding on the Board. The filing of a timely appeal shall stay the initial decision.

[59 FR 59049, Nov. 15, 1994]

Subpart H—Appeals from Initial Decisions

§ 821.47 Notice of appeal.

(a) A party may appeal from a law judge's order or from the initial decision by filing with the Board and serving on the other parties (pursuant to § 821.8) a notice of appeal within 10 days after an oral initial decision has been rendered or a written decision or a final or appealable (see § 821.16) order has been served. At any time before the date for filing an appeal from an initial decision or order has passed, the law judge or the Board may, for good cause shown, extend the time within which to file an appeal, and the law judge may also reopen the case for good cause on notice to the parties.

(b) A law judge may not reconsider his or her initial decision once the time for appealing to the Board from the initial decision has expired or once an appeal with the Board has been filed. However, a timely request for reconsideration by the law judge of his or her decision, filed before an appeal to

the Board has been taken, will stay the deadline for appealing to the Board until 10 days after the date the law judge serves his or her decision on the request. For the purpose of this section, a request for reconsideration submitted on the same date as a notice of appeal will be deemed to have been filed first.

[59 FR 59049, Nov. 15, 1994]

§ 821.48 Briefs and oral argument.

(a) *Appeal briefs.* Each appeal must be perfected within 50 days after an oral initial decision has been rendered, or 30 days after service of a written initial decision, by filing with the Board and serving on the other party a brief in support of the appeal. Appeals may be dismissed by the Board on its own initiative or on motion of the other party, in cases where a party who has filed a notice of appeal fails to perfect his or her appeal by filing a timely brief.

(b) *Contents of appeal brief.* Each appeal brief shall set forth in detail the objections to the initial decision, and shall state whether such objections are related to alleged errors in the law judge's findings of fact and conclusions or alleged errors in his or her order. It shall also state the reasons for such objections and the relief requested.

(c) *Waiver of objections on appeal.* Any error contained in the initial decision which is not objected to may be deemed to have been waived. Where any objection is based upon evidence of record, such objection need not be considered by the Board unless specific record citations to the pertinent evidence are furnished in the appeal brief.

(d) *Reply brief.* A brief in reply to the appeal brief may be filed by the other party within 30 days after the appeal brief has been served upon him or her. A copy of the reply brief shall be served upon the party who has appealed from the initial decision. Where the reply brief relies upon evidence of record, specific record citations to the pertinent evidence shall be furnished in the reply brief.

(e) *Other briefs.* Subsequent to brief filing, parties may file citations to supplemental authorities. This procedure may be used only for identifying new, relevant decisions, not to correct omissions in briefing or to respond to a

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reply. No argument may be included in such filings. Parties shall submit, with any decision, a reference to the page of the brief to which the decision pertains. Any response shall be filed within 10 days and shall be similarly limited. With this exception, no further briefs may be filed, except with specific permission of the Board and on a showing of good cause.

(f) *Oral argument.* Oral argument before the Board will normally not be held in proceedings under this part. However, when need therefor appears, the Board may permit oral argument, either on its own initiative or on motion of a party.

[40 FR 30248, July 17, 1975, as amended at 49 FR 28250, July 11, 1984, 59 FR 59049, Nov. 15, 1994; 60 FR 25620, May 12, 1995]

§ 821.49 Issues on appeal.

(a) On appeal, the Board will consider only the following issues:

(1) Are the findings of fact each supported by a preponderance of reliable, probative, and substantial evidence?

(2) Are conclusions made in accordance with law, precedent, and policy?

(3) Are the questions on appeal substantial?

(4) Have any prejudicial errors occurred?

(b) If the Board determines that the law judge erred in any respect or that his or her order in his or her initial decision should be changed, the Board may make any necessary findings and may issue an order in lieu of the law judge's order or may remand the case for such purposes as the Board may deem necessary. The Board on its own initiative may raise any issue, the resolution of which it deems important to a proper disposition of the proceedings. If necessary or appropriate, a reasonable opportunity shall be afforded the parties to comment.

[59 FR 59049, Nov. 15, 1994]

§ 821.50 Petitions for rehearing, reargument, reconsideration, or modification of an order of the Board.

(a) *General.* Any party to a proceeding may petition for rehearing, reargument, reconsideration, or modification of a Board order on appeal from an initial decision. Any such petitions shall be served on all other par-

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ties to the proceeding within 30 days after service of the Board's order on appeal from the initial decision. Initial decisions that have become final because they were not appealed may not be the subject of petitions under this section.

(b) *Timing and service.* The petition shall be filed with the Board and served on the parties within 30 days after service of the Board's order on appeal from the initial decision.

(c) *Contents.* The petition shall state briefly and specifically the matters of record alleged to have been erroneously decided, the ground or grounds relied upon, and the relief sought. If the petition is based, in whole or in part, on allegations as to the consequences that would result from the order of the Board, the basis of such allegations shall be set forth. If the petition is based, in whole or in part, upon new matter, it shall set forth such new matter and shall contain affidavits of prospective witnesses, authenticated documents, or both, or an explanation why such substantiation is unavailable, and shall explain why such new matter could not have been discovered by the exercise of due diligence prior to the date of the hearing.

(d) *Grounds for dismissal.* Repetitious petitions will not be entertained by the Board and will be summarily dismissed.

(e) *Reply to petition.* Within 15 days after the service of the petition upon an adverse party, he or she may reply thereto by filing a copy of the reply with the Board, with proof of service upon the petitioner.

(f) *Stay of effective date of order.* The filing of a petition under this section shall operate to stay the effective date of the Board order, unless otherwise ordered by the Board.

[40 FR 30243, July 17, 1975, as amended at 54 FR 12203, Mar. 24, 1989; 59 FR 59049, Nov. 15, 1994]

Subpart I—Rules Applicable to Emergency Proceedings and Other Immediately Effective Orders

SOURCE: 65 FR 42639, July 11, 2000, unless otherwise noted.