

issued by the Board within 30 days of the date of issuance, unless another time period is specified in the Board's order.

(b) *Where to File.* The petition must be filed with the Clerk. Copies will be sent by the Clerk to the Director, the Appellant and his or her Representative in the time period specified by the Board.

(c) *Content of petition.* The petition must be in writing. The petition must contain the docket number, specify the matters claimed to have been erroneously decided, provide a statement of the facts upon which the petitioner relies, and a discussion of applicable law. New evidence will not be considered by the Board in a petition for reconsideration.

(d) *Panel.* The panel of judges who heard and decided the appeal will rule on the petition for reconsideration. If any member of the original panel is unavailable, the Chief Judge may designate a new panel member. The decision or order of the Board will stand as final unless vacated or modified by the vote of at least two members of the reconsideration panel.

(e) *Answer.* Upon the filing of a petition for reconsideration, Appellant or the Director may file an answer to the petition within such time as fixed by the Board.

(f) *Oral argument and decision on reconsideration.* An oral argument may be allowed at the discretion of the Board upon application of the Appellant or Director or the Board may proceed to address the matter upon the papers filed. The Board shall grant or deny the petition for reconsideration and issue such orders as it deems appropriate.

**§ 501.8 Clerk of the Office of the Appellate Boards; docket of proceedings; records.**

(a) *Location and business hours.* The Office of the Clerk of the Appellate Boards is located at 200 Constitution Avenue, NW., Washington, DC 20210. The Office of the Clerk is open during business hours on all days except Saturdays, Sundays and Federal holidays, from 8:30 a.m. to 5 p.m.

(b) *Docket.* The Clerk will maintain a docket containing a record of all proceedings before the Board. Each dock-

eted appeal will be assigned a number in chronological order based upon the date on which the notice of appeal is received. While the Board generally hears appeals in the order docketed, the Board retains discretion to change the order in which a particular appeal will be considered. The Clerk will prepare a calendar of cases submitted or awaiting oral argument and such other records as may be required by the Board.

(c) *Publication of decisions.* Final decisions of the Board will be published in such form as to be readily available for inspection by the general public.

**§ 501.9 Representation; appearances and fees.**

(a) *Representation.* In any proceeding before the Board, an Appellant may appear in person or by appointing a duly authorized individual as his or her Representative.

(1) *Counsel.* The designated Representative may be an attorney who has been admitted to practice and who is in good standing with any court of competent jurisdiction.

(2) *Lay representative.* A non-attorney Representative may represent an Appellant before the Board. He or she may be an accredited Representative of an employee organization.

(3) *Former members of the Board and other employees of the Department of Labor.* A former judge of the Board is not allowed to participate as counsel or other Representative before the Board in any proceeding until two years from the termination of his or her status as a judge of the Board. The practice of a former judge or other former employee of the Department of Labor is governed by 29 CFR Part 0, Subpart B.

(b) *Appearance.* No individual may appear as a Representative in a proceeding before the Board without first filing with the Clerk a written authorization signed by the Appellant to be represented. When accepted by the Board, such Representative will continue to be recognized unless the Representative withdraws or abandons such capacity or the Appellant directs otherwise.

(c) *Change of address.* Each Appellant and Representative authorized to appear before the Board must give the

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Clerk written notice of any change to the address or telephone number of the Appellant or Representative. Such notice must identify the docket number and name of each pending appeal for that Appellant, or, in the case of a Representative, in which he or she is a Representative before the Board. Absent such notice, the mailing of documents to the address most recently provided to the Board will be fully effective.

(d) *Debarment of Counsel or Representative.* In any proceeding, whenever the Board finds that a person acting as counsel or other Representative for the Appellant or the Director, is guilty of unethical or unprofessional conduct, the Board may order that such person be excluded from further acting as counsel or Representative in such proceeding. Such order may be appealed to the Secretary of Labor or his or her designee, but proceedings before the Board will not be delayed or suspended pending disposition of such appeal. However, the Board may suspend the proceeding of an appeal for a reasonable time for the purpose of enabling Appellant or the Director to obtain different counsel or other Representative. Whenever the Board has issued an order precluding a person from further acting as counsel or Representative in a proceeding, the Board will, within a reasonable time, submit to the Secretary of Labor or his or her designee a report of the facts and circumstances surrounding the issuance of such order. The Board will recommend what action the Secretary of Labor should take in

regard to the appearance of such person as counsel or Representative in other proceedings before the Board. Before any action is taken debarring a person as counsel or Representative from other proceedings, he or she will be furnished notice and the opportunity to be heard on the matter.

(e) *Fees for attorney, Representative, or other services.* No claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. Under 18 U.S.C. 292, collecting a fee without the approval of the Board may constitute a misdemeanor, subject to fine or imprisonment for up to a year or both. No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. No fee for service will be approved except upon written application to the Clerk, supported by a statement of the extent and nature of the necessary work performed before the Board on behalf of the Appellant. The fee application will be served by the Clerk on the Appellant and a time set in which a response may be filed. Except where such fee is *de minimis*, the fee request will be evaluated with consideration of the following factors:

- (1) Usefulness of the Representative's services;
- (2) The nature and complexity of the appeal;
- (3) The capacity in which the Representative has appeared;
- (4) The actual time spent in connection with the Board appeal; and
- (5) Customary local charges for similar services.