

an administrative law judge, including a decision approving or rejecting a settlement agreement between the complainant and the respondent.

(2) Copies of pleadings in all cases, whether or not the Assistant Secretary is participating in the proceeding, must be sent to the Assistant Secretary, Occupational Safety and Health Administration, and to the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, 200 Constitution Ave., NW., N 2716, Washington, DC 20210.

(b) The Environmental Protection Agency, the Nuclear Regulatory Commission, and the Department of Energy, if interested in a proceeding, may participate as *amicus curiae* at any time in the proceedings, at the agency's discretion. At the request of the interested federal agency, copies of all pleadings in a case must be sent to the federal agency, whether or not the agency is participating in the proceeding.

§ 24.109 Decision and orders of the administrative law judge.

(a) The decision of the administrative law judge will contain appropriate findings, conclusions, and an order pertaining to the remedies provided in paragraph (c) of this section, as appropriate. In cases arising under the ERA, a determination that a violation has occurred may only be made if the complainant has demonstrated by a preponderance of the evidence that the protected activity was a contributing factor in the unfavorable personnel action alleged in the complaint. In cases arising under the other six statutes listed in § 24.100(a), a determination that a violation has occurred may only be made if the complainant has demonstrated by a preponderance of the evidence that the protected activity was a motivating factor in the unfavorable personnel action alleged in the complaint.

(b) In cases under the Energy Reorganization Act, if the complainant has demonstrated by a preponderance of the evidence that the protected activity was a contributing factor in the unfavorable personnel action alleged in the complaint, relief may not be ordered if the respondent demonstrates

by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of any protected activity. In cases under the other six statutes listed in § 24.100(a), even if the complainant has demonstrated by a preponderance of the evidence that the protected activity was a motivating factor in the unfavorable personnel action alleged in the complaint, relief may not be ordered if the respondent demonstrates by a preponderance of the evidence that it would have taken the same unfavorable personnel action in the absence of any protected activity.

(c) Neither the Assistant Secretary's determination to dismiss a complaint without completing an investigation pursuant to § 24.104(d) nor the Assistant Secretary's determination to proceed with an investigation is subject to review by the administrative law judge, and a complaint may not be remanded for the completion of an investigation or for additional findings on the basis that a determination to dismiss was made in error. Rather, if there otherwise is jurisdiction, the administrative law judge will hear the case on the merits.

(d)(1) If the administrative law judge concludes that the respondent has violated the law, the order shall direct the respondent to take appropriate affirmative action to abate the violation, including reinstatement of the complainant to that person's former position, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and compensatory damages. In cases arising under the Safe Drinking Water Act or the Toxic Substances Control Act, exemplary damages may also be awarded when appropriate. At the request of the complainant, the administrative law judge shall assess against the respondent, all costs and expenses (including attorney fees) reasonably incurred.

(2) In cases brought under the Energy Reorganization Act, when an administrative law judge issues a decision that the complaint has merit and orders the relief prescribed in paragraph (d)(1) of this section, the relief ordered, with the exception of compensatory damages, shall be effective immediately

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upon receipt, whether or not a petition for review is filed with the Administrative Review Board.

(3) If the administrative law judge determines that the respondent has not violated the law, an order will be issued denying the complaint.

(e) The decision will be served upon all parties to the proceeding. Any administrative law judge's decision issued under any of the statutes listed in § 24.100(a) will be effective 10 business days after the date of the decision unless a timely petition for review has been filed with the Administrative Review Board. An administrative law judge's order issued under the Energy Reorganization Act will be effective immediately upon receipt, except for that portion of the order awarding any compensatory damages.

§ 24.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the administrative law judge must file a written petition for review with the Administrative Review Board ("the Board"), U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210, which has been delegated the authority to act for the Secretary and issue final decisions under this part. The decision of the administrative law judge will become the final order of the Secretary unless, pursuant to this section, a timely petition for review is filed with the Board. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties. A petition must be filed within 10 business days of the date of the decision of the administrative law judge. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the Board. Copies of the petition for review and all briefs must be served on the Assistant Secretary,

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Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, 200 Constitution Ave., NW., N 2716, Washington, DC 20210.

(b) If a timely petition for review is filed pursuant to paragraph (a) of this section, and the Board, within 30 days of the filing of the petition, issues an order notifying the parties that the case has been accepted for review, the decision of the administrative law judge will be inoperative unless and until the Board issues an order adopting the decision, except that an order by an administrative law judge issued under the Energy Reorganization Act, other than that portion of the order awarding compensatory damages, will be effective while review is conducted by the Board, unless the Board grants a motion by the respondent to stay the order based on exceptional circumstances. The Board will specify the terms under which any briefs are to be filed. The Board will review the factual determinations of the administrative law judge under the substantial evidence standard. If a timely petition for review is *not* filed, or the Board denies review, the decision of the administrative law judge will become the final order of the Secretary and is not subject to judicial review.

(c) The final decision of the Board will be issued within 90 days of the filing of the complaint. The decision will be served upon all parties and the Chief Administrative Law Judge by mail to the last known address. The final decision will also be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, 200 Constitution Ave., NW., N 2716, Washington, DC 20210, even if the Assistant Secretary is not a party.

(d) If the Board concludes that the respondent has violated the law, the final order will order the respondent to take appropriate affirmative action to abate the violation, including reinstatement of the complainant to that person's former position, together with the compensation (including back pay), terms, conditions, and privileges of employment, and compensatory damages.