

§ 1905.23

by affidavits setting forth the alleged grounds for disqualification. The Chief Hearing Examiner shall rule upon the motion.

(d) *Contumacious conduct; failure or refusal to appear or obey the rulings of a presiding hearing examiner.* (1) Contumacious conduct at any hearing before the hearing examiner shall be grounds for exclusion from the hearing.

(2) If a witness or a party refuses to answer a question after being directed to do so, or refuses to obey an order to provide or permit discovery, the hearing examiner may make such orders with regard to the refusal as are just and appropriate, including an order denying the application of an applicant or regulating the contents of the record of the hearing.

(e) *Referral to Federal Rules of Civil Procedure.* On any procedural question not regulated by this part, the Act, or the Administrative Procedure Act, a hearing examiner shall be guided to the extent practicable by any pertinent provisions of the Federal Rules of Civil Procedure.

§ 1905.23 Prehearing conferences.

(a) *Convening a conference.* Upon his own motion or the motion of a party, the hearing examiner may direct the parties or their counsel to meet with him for a conference to consider:

- (1) Simplification of the issues;
- (2) Necessity or desirability of amendments to documents for purposes of clarification, simplification, or limitation;
- (3) Stipulations, admissions of fact, and of contents and authenticity of documents;
- (4) Limitation of the number of parties and of expert witnesses; and
- (5) Such other matters as may tend to expedite the disposition of the proceeding, and to assure a just conclusion thereof.

(b) *Record of conference.* The hearing examiner shall make an order which recites the action taken at the conference, the amendments allowed to any documents which have been filed, and the agreements made between the parties as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements; and such order

29 CFR Ch. XVII (7-1-10 Edition)

when entered controls the subsequent course of the hearing, unless modified at the hearing, to prevent manifest injustice.

§ 1905.24 Consent findings and rules or orders.

(a) *General.* At any time before the reception of evidence in any hearing, or during any hearing a reasonable opportunity may be afforded to permit negotiation by the parties of an agreement containing consent findings and a rule or order disposing of the whole or any part of the proceeding. The allowance of such opportunity and the duration thereof shall be in the discretion of the presiding hearing examiner, after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement which will result in a just disposition of the issues involved.

(b) *Contents.* Any agreement containing consent findings and rule or order disposing of a proceeding shall also provide:

- (1) That the rule or order shall have the same force and effect as if made after a full hearing;
- (2) That the entire record on which any rule or order may be based shall consist solely of the application and the agreement;
- (3) A waiver of any further procedural steps before the hearing examiner and the Assistant Secretary; and
- (4) A waiver of any right to challenge or contest the validity of the findings and of the rule or order made in accordance with the agreement.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their counsel may:

- (1) Submit the proposed agreement to the presiding hearing examiner for his consideration; or
- (2) Inform the presiding hearing examiner that agreement cannot be reached.

(d) *Disposition.* In the event an agreement containing consent findings and rule or order is submitted within the time allowed therefor, the presiding hearing examiner may accept such agreement by issuing his decision based upon the agreed findings.