

§ 1955.32

(b) The administrative law judge shall enter 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. Such order shall limit the issues for hearing to those not disposed of by admissions or agreements, and control the subsequent course of the hearing, unless modified at the hearing to prevent manifest injustice.

§ 1955.32 Discovery.

(a)(1) At any time after the commencement of a proceeding under this part, but generally before the preliminary conference, if any, a party may request of any other party admissions that relate to statements or opinions of fact, or of the application of law to fact, including the genuineness of any document described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection or copying. The matter shall be deemed admitted unless within 30 days after service of the request, or within such shorter or longer time as the administrative law judge may prescribe, the party to whom the request is directed serves upon the party requesting the admission a specific written response.

(2) If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission and when good faith requires that a party qualify his answer or deny only a part of the matter on which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as the reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny.

(3) The party who has requested the admission may move to determine the

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sufficiency of the answers or objections. Unless the administrative law judge determines that an objection is justified, he may order either that the matter is admitted or that an amended answer be served. The administrative law judge may, in lieu of these orders, determine that final disposition of the requests be made at a preliminary conference, or at a designated time prior to the hearing. Any matter admitted under this section is conclusively established unless the administrative law judge on motion permits withdrawal or amendment of the admission. Copies of all requests and responses shall be served on all parties and filed with the administrative law judge.

(b)(1) The testimony of any witness may be taken by deposition. Depositions may be taken orally or upon written interrogatories before any person designated by the administrative law judge or having power to administer oaths.

(2) Any party desiring to take the deposition of a witness may make application in writing to the administrative law judge setting forth:

(i) The time when, the place where, and the name and post office address of the person before whom the deposition is to be taken;

(ii) The name and address of each witness; and

(iii) The subject matter concerning which each witness is expected to testify.

(3) Such notice as the administrative law judge may order shall be given by the party taking the deposition to every other party.

(c)(1) Each witness testifying upon deposition shall be sworn, and the parties not calling him shall have the right to cross-examine him. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing and shall be read to or by the witness unless such examination and reading are waived by the witness and the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness and certified by

the officer before whom the deposition was taken. Thereafter, the officer shall seal the deposition, with copies thereof, in an envelope and mail the same by registered or certified mail to the administrative law judge.

(2) Subject to such objections to the questions and answers as were noted at the time of taking the deposition, and to the provisions in §1955.40(b)(1), any part or all of a deposition may be offered into evidence by the party taking it as against any party who was present, represented at the taking of the deposition, or who had due notice thereof.

(d) Whenever appropriate to a just disposition of any issue in the proceeding the administrative law judge may allow discovery by any other appropriate procedure, such as by interrogatories upon a party or request for production of documents by a party.

(e) Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the administrative law judge may make any order which justice requires to limit or condition discovery in order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

§ 1955.33 Sanctions for failure to comply with orders.

(a) If a party or an official or agent of a party fails, without good cause, to comply with an order including, but not limited to, an order for the taking of a deposition, written interrogatories, the production of documents, or an order to comply with a subpoena, the administrative law judge or the Secretary or both, for the purpose of permitting resolution of relevant issues and disposition of the proceeding without unnecessary delay despite such failure, may take such action as is just, including but not limited to the following:

(1) Infer that the admission, testimony, documents, or other evidence would have been adverse to the party;

(2) Rule that for the purposes of the proceeding, the matter or matters concerning which the order or subpoena was issued be taken as established adversely to the party;

(3) Rule that the party may not introduce into evidence or otherwise rely, in support of any claim or defense, upon testimony by such party, officer or agent, or the documents or other evidence;

(4) Rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown;

(5) Rule that a pleading, or part of a pleading, on a motion or other submission by the party, concerning which the order or subpoena was issued, be stricken or that decision on the pleading be rendered against the party, or both.

(b) Any such action may be taken by written or oral order issued in the course of the proceeding or by inclusion in the initial decision of the administrative law judge or an order or opinion of the Secretary. The parties may seek, and the administrative law judge may grant, such of the foregoing means of relief or other appropriate relief as may be sufficient to compensate for the lack of withheld testimony, documents, or other evidence.

§ 1955.34 Fees of witnesses.

Witnesses, including witnesses for depositions, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Fees shall be paid by the party at whose instance the witness appears, and the person taking a deposition shall be paid by the party at whose instance the deposition is taken.

Subpart E—Hearing and Decision

§ 1955.40 Hearings.

(a)(1) Except as may be ordered otherwise by the administrative law judge, the Department of Labor shall proceed first at the hearing.

(2) The Department of Labor shall have the burden of proof to sustain the contentions alleged in the notice of proposed withdrawal, published under §1955.10(b)(1) but the proponent of any factual proposition shall be required to sustain the burden of proof with respect thereto.