

## § 2200.203

## 29 CFR Ch. XX (7–1–10 Edition)

(4) Not involving a fatality,  
(5) A hearing that is expected to take less than 2 days, or

(6) A small employer whether appearing pro se or represented by counsel.

(b) Those cases with an aggregate proposed penalty of more than \$20,000, but not more than \$30,000, if otherwise appropriate, may be selected for Simplified Proceedings at the discretion of the Chief Administrative Law Judge.

[62 FR 40934, July 31, 1997, as amended at 70 FR 22792, May 3, 2005; 74 FR 63987, Dec. 7, 2009]

### § 2200.203 Commencing Simplified Proceedings.

(a) *Selection.* Upon receipt of a Notice of Contest, the Chief Administrative Law Judge may, at his or her discretion, assign an appropriate case for Simplified Proceedings.

(b) *Party request.* Within 20 days of the notice of docketing, any party may request that the case be assigned for Simplified Proceedings. The request must be in writing. For example, “I request Simplified Proceedings” will suffice. The request must be sent to the Executive Secretary. Copies must be sent to each of the other parties.

(c) *Judge’s ruling on request.* The Chief Administrative Law Judge or the Judge assigned to the case may grant a party’s request and assign a case for Simplified Proceedings at his or her discretion. Such request shall be acted upon within 15 days of its receipt by the Judge.

(d) *Time for filing complaint or answer under § 2200.34.* If a party has requested Simplified Proceedings or the Judge has assigned the case for Simplified Proceedings, the times for filing a complaint or answer will not run. If a request for Simplified Proceedings is denied, the period for filing a complaint or answer will begin to run upon issuance of the notice denying Simplified Proceedings.

[60 FR 41809, Aug. 14, 1995, as amended at 62 FR 61012, Nov. 14, 1997; 70 FR 22792, May 3, 2005; 74 FR 63987, Dec. 7, 2009]

### § 2200.204 Discontinuance of Simplified Proceedings.

(a) *Procedure.* If it becomes apparent at any time that a case is not appropriate for Simplified Proceedings, the

Judge assigned to the case may, upon motion by any party or upon the Judge’s own motion, discontinue Simplified Proceedings and order the case to continue under conventional rules. Before discontinuing Simplified Proceedings, the Judge will consult with the Chief Administrative Law Judge.

(b) *Party motion.* At any time during the proceedings any party may request that Simplified Proceedings be discontinued and that the matter continue under conventional procedures. A motion to discontinue must be in writing and explain why the case is inappropriate for Simplified Proceedings. All other parties will have 7 days from the filing of the motion to state their agreement or disagreement and their reasons. Joint motions to return a case to conventional proceedings shall be granted by the Judge and do not require a showing of good cause.

(c) *Ruling.* If Simplified Proceedings are discontinued, the Judge may issue such orders as are necessary for an orderly continuation under conventional rules.

[60 FR 41809, Aug. 14, 1995, as amended at 70 FR 22792, May 3, 2005; 74 FR 63987, Dec. 7, 2009]

### § 2200.205 Filing of pleadings.

(a) *Complaint and answer.* Once a case is designated for Simplified Proceedings, the complaint and answer requirements are suspended. If the Secretary has filed a complaint under § 2200.34(a), a response to a petition under § 2200.37(d)(5), or a response to an employee contest under § 2200.38(a), and if Simplified Proceedings have been ordered, no response to these documents will be required.

(b) *Motions.* A primary purpose of Simplified Proceedings is to eliminate, as much as possible, motions and similar documents. A motion will not be viewed favorably if the subject of the motion has not been first discussed among the parties.

[60 FR 41809, Aug. 14, 1995, as amended at 70 FR 22792, May 3, 2005]

### § 2200.206 Disclosure of information.

(a) *Disclosure to employer.* (1) Within 12 working days after a case is designated for Simplified Proceedings, the

Secretary shall provide the employer, free of charge, copies of the narrative (Form OSHA 1-A) and the worksheet (Form OSHA 1-B), or their equivalents.

(2) Within 30 calendar days after a case is designated for Simplified Proceedings, the Secretary shall provide the employer with reproductions of any photographs or videotapes that the Secretary anticipates using at the hearing.

(3) Within 30 calendar days after a case is designated for Simplified Proceedings, the Secretary shall provide to the employer any exculpatory evidence in the Secretary's possession.

(4) The Judge shall act expeditiously on any claim by the employer that the Secretary improperly withheld or redacted any portion of the documents, photographs, or videotapes on the grounds of confidentiality or privilege.

(b) *Disclosure to the Secretary.* Where the employer raises an affirmative defense, the presiding Judge shall order the employer to disclose to the Secretary such documents relevant to the affirmative defense as the Judge deems appropriate.

[60 FR 41809, Aug. 14, 1995, as amended at 62 FR 40934, July 31, 1997; 70 FR 22792, May 3, 2005]

#### § 2200.207 Pre-hearing conference.

(a) *When held.* As early as practicable after the employer has received the documents set forth in §2200.206(a)(1), the presiding Judge will order and conduct a pre-hearing conference. At the discretion of the Judge, the pre-hearing conference may be held in person, or by telephone or electronic means.

(b) *Content.* At the pre-hearing conference, the parties will discuss the following: settlement of the case; the narrowing of issues; an agreed statement of issues and facts; defenses; witnesses and exhibits; motions; and any other pertinent matter. Except under extraordinary circumstances, any affirmative defenses not raised at the pre-hearing conference may not be raised later. At the conclusion of the conference, the Judge will issue an order setting forth any agreements reached by the parties and will specify in the

order the issues to be addressed by the parties at the hearing.

[60 FR 41809, Aug. 14, 1995, as amended at 62 FR 40934, July 31, 1997]

#### § 2200.208 Discovery.

Discovery, including requests for admissions, will only be allowed under the conditions and time limits set by the Judge.

#### § 2200.209 Hearing.

(a) *Procedures.* As soon as practicable after the conclusion of the pre-hearing conference, the Judge will hold a hearing on any issue that remains in dispute. The hearing will be in accordance with subpart E of these rules, except for §2200.60, 2200.73, and 2200.74 which will not apply.

(b) *Agreements.* At the beginning of the hearing, the Judge will enter into the record all agreements reached by the parties as well as defenses raised during the pre-hearing conference. The parties and the Judge then will attempt to resolve or narrow the remaining issues. The Judge will enter into the record any further agreements reached by the parties.

(c) *Evidence.* The Judge will receive oral, physical, or documentary evidence that is not irrelevant, unduly repetitious or unreliable. Testimony will be given under oath or affirmation. The Federal Rules of Evidence do not apply.

(d) *Reporter.* A reporter will be present at the hearing. An official verbatim transcript of the hearing will be prepared and filed with the Judge. Parties may purchase copies of the transcript from the reporter.

(e) *Oral and written argument.* Each party may present oral argument at the close of the hearing. Post-hearing briefs will not be allowed except by order of the Judge.

(f) *Judge's decision.* Where practicable, the Judge will render his or her decision from the bench. In rendering his or her decision from the bench, the Judge shall state the issues in the case and make clear both his or her findings of fact and conclusions of law on the record. The Judge shall reduce his or her order in the matter to writing and transmit it to the parties as soon as practicable, but no later than 45 days