

(f) Except as provided by §§13.21(e)(3) and 13.23(f), which concern subpoenas, the filing or pendency of a motion will not automatically alter or extend a deadline or return date.

#### § 13.29 Sanctions.

(a) The ALJ may sanction a Person, including any party or Representative, for:

- (1) Failing to comply with an order, rule, or procedure governing the proceeding;
- (2) Failing to prosecute or defend an action; or
- (3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Sanctions include but are not limited to those specifically set forth in paragraphs (c), (d), and (e) of this section. Any such sanction will reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may:

- (1) Draw an inference in favor of the requesting party with regard to the information sought;
- (2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;
- (3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and
- (4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part begun by service of a notice of hearing, the ALJ may dismiss the action or may issue an Initial Decision imposition penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other Document that is not filed in a timely fashion.

#### § 13.30 The hearing and burden of proof.

(a) The ALJ will conduct a hearing on the record in order to determine whether the Defendant is liable for a

civil penalty or assessment under § 13.3 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The Authority will prove Defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The Defendant will prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing will be open to the public unless otherwise ordered by the ALJ for good cause shown.

#### § 13.31 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the Authority Head, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the Authority Head in determining the amount of penalties and assessments to impose with respect to the misconduct (i.e., the false fictitious, or fraudulent Claims or Statements) charged in the Complaint:

- (1) The number of false, fictitious, or fraudulent Claims or Statements;
- (2) The time period over which such Claims or Statements were Made;
- (3) The degree of the Defendant's culpability with respect to the misconduct;
- (4) The amount of money or the value of the property, services, or Benefit falsely claimed;
- (5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;