

§ 1955.21

the proceeding. The allowance of such opportunity and the duration thereof shall be in the discretion of the administrative law judge, after consideration of the requirements of section 18 of the Act, 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.

(2) Any agreement containing consent findings and a rule or order disposing of a proceeding shall also provide:

(i) That the rule or order shall have the same force and effect as if made after a full hearing;

(ii) A waiver of any further procedural steps before the administrative law judge and the Secretary; and

(iii) 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.

(b)(1) On or before the expiration of the time granted for negotiations, the parties or their counsel may:

(i) Submit the proposed agreement to the administrative law judge for his consideration; or

(ii) Inform the administrative law judge that agreement cannot be reached.

(2) In the event an agreement containing consent findings and a rule or order is submitted within the time allowed therefor, the administrative law judge may accept such agreement by issuing his decision based upon the agreed findings. Such decision shall be published in the FEDERAL REGISTER.

§ 1955.21 Motion for a summary decision.

(a)(1) Any party may move, with or without supporting affidavits, for a summary decision on all or any part of the proceeding. Any other party may, within 10 days after service of the motion, serve opposing affidavits or file a cross motion for summary decision. The administrative law judge may, in his discretion, set the matter for argument and call for submission of briefs. The filing of any documents under this section shall be with the administrative law judge and copies of any such

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document shall be served on all the parties.

(2) The administrative law judge may grant such motion if the pleadings, affidavits, material obtained by discovery or otherwise obtained, or matters officially noticed, show that there is no genuine issue as to any material fact and that a party is entitled to summary decision. Affidavits shall set forth such facts as would be admissible in evidence in the hearing and shall show affirmatively that the affiant is competent to testify to the matters stated therein. When a motion for summary decision is made and supported as provided in paragraph (a)(1) of this section, the party opposing the motion may not rest upon the mere allegations or denials of his pleading; his response must set forth specific facts showing that there is a genuine issue of fact for the hearing.

(3) Should it appear from the affidavits of a party opposing the motion that he cannot, for reasons stated, present by affidavit facts essential to justify his opposition, the administrative law judge may refuse the application for summary decision or may order a continuance to permit affidavits to be obtained, or depositions to be taken, or discovery to be had, or may make such other order as is just.

(b)(1) The denial of all or any part of a motion or cross motion for summary decision by the administrative law judge shall not be subject to interlocutory appeal to the Secretary unless the administrative law judge certifies in writing:

(i) That the ruling involves an important question of law or policy as to which there is substantial ground for difference of opinion; and

(ii) That an immediate appeal from the ruling may materially advance the ultimate termination of the proceeding.

(2) The allowance of such an interlocutory appeal shall not stay the proceeding before the administrative law judge unless the Secretary so orders.

§ 1955.22 Summary decision.

(a)(1) Where no genuine issue of material fact is found to have been raised, the administrative law judge shall issue an initial decision to become