

§ 26.14

action may serve as a complaint provided the notice states it is also a complaint and complies with paragraph (b) of this section.

(d) *Timing.* When the notice does not serve as a complaint, the complaint shall be served on or before the 30th day after the referral to a hearing officer or a request for hearing is made, or within any other time period designated by the hearing officer.

§ 26.14 Answer.

(a) Respondent shall file an answer within 30 days of receipt of the complaint, unless otherwise specified in this title or ordered by the hearing officer.

(b) The answer shall:

(1) Respond specifically to each factual allegation contained in the complaint;

(2) Specifically plead any affirmative defense; and

(3) Set forth any mitigating factors or extenuating circumstances.

(c) A general denial shall not be permitted. Allegations are admitted when not specifically denied in respondent's answer.

§ 26.15 Amendments and supplemental pleadings.

(a) *Amendments.* (1) By right: The Department may amend its complaint without leave at any time within 30 days of the date the complaint is filed or at any time before respondent's responsive pleading is filed, whichever is later. Respondent may amend its answer without leave at any time within 30 days of filing of its answer. A party shall plead in response to an amended pleading within 15 days of receipt of the amended pleading.

(2) By leave: Upon conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, the hearing officer may allow amendments to pleadings upon motion of any party.

(3) Conformance to evidence: When issues not raised by the pleadings, but reasonably within the scope of the proceeding initiated by the complaint, are tried by express or implied consent to the parties, they shall be treated in all respects as if they had been raised in the pleadings, and amendments of the

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pleadings necessary to make them conform to the evidence shall be allowed at any time.

(b) *Supplemental pleadings.* The hearing officer may, upon reasonable notice, permit service of a supplemental pleading concerning transactions, occurrences, or events that have happened or been discovered since the date of prior pleadings.

§ 26.16 Motions.

(a) *Motions.* Requests for rulings or actions to be taken by the hearing officer should be made, wherever appropriate, in the form of a motion. All motions from the commencement of the action until the issuance of a decision shall be addressed to the hearing officer, and shall be served upon all parties to the proceeding.

(b) *Content.* All written motions shall state the particular order, ruling, or action desired and the grounds for granting the motion. The parties may submit a proposed order with any motion.

(c) *Responses to motions.* Within 10 days after receipt of any written motion, or within any other period as may be designated by the hearing officer, the opposing party shall respond to the motion and set forth any objections to the motion. Failure to file a timely response to the motion may constitute a party's consent to the granting of the motion. The moving party shall have no right to reply, except as permitted by the hearing officer.

(d) *Motions for extensions of time.* Either party may file a motion for extension. At the discretion of the hearing officer, a motion for an extension of time may be granted for good cause at any time, notwithstanding an objection or any reply to the motion consistent with the provisions of § 26.2(c)(5) and (7). The hearing officer may waive the requirements of this section as to motions for extensions of time.

(e) *Oral argument.* The hearing officer may order oral argument on any motion.

(f) *Motions for summary judgment.* (1) A party claiming relief or a party against whom relief is sought may timely move, with or without supporting affidavits, for summary judgment on all or part of the claim.

(2) Objections in the consideration of summary judgment motions or answers thereto based upon a failure to strictly comply with the provisions of Rule 56 of the Federal Rules of Civil Procedure may, at the discretion of the hearing officer, be overruled.

(g) *Motions for dismissal.* When a motion to dismiss the proceeding is granted, the hearing officer shall issue a determination and order in accordance with the provisions of § 26.25.

DISCOVERY

§ 26.17 Prehearing conference.

(a) *Prehearing conference.* The hearing officer may, sua sponte or at the request of any party, direct counsel for all parties to confer with the hearing officer before the hearing for the purpose of considering:

- (1) Simplification and clarification of the issues;
- (2) Stipulations and admissions of fact and of the contents and authenticity of documents;
- (3) The disclosure of the names of witnesses;
- (4) Matters of which official notice will be taken;
- (5) Other matters as may aid in the orderly disposition of the proceeding, including disclosure of the documents or other physical exhibits that will be introduced into evidence in the course of the proceeding.

(b) *Recordation of prehearing conference.* The prehearing conference shall, at the request of any party, be recorded or transcribed.

(c) *Order on prehearing conference.* The hearing officer shall enter in the record an order that states the rulings upon matters considered during the conference, together with appropriate directions to the parties. The order shall control the subsequent course of the proceeding, subject to modifications upon good cause shown.

§ 26.18 Discovery.

(a) *General.* The parties are encouraged to engage in voluntary discovery procedures, which may commence at any time after an answer has been filed. Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense

of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. For good cause, the hearing officer may order discovery of any matter relevant to the subject matter involved in the action. To be relevant, information need not be admissible at the hearing, if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. Each party shall bear its own expenses associated with discovery. Discovery may include:

- (1) Requests for production of documents as set forth in § 26.19;
- (2) Depositions as set forth in § 26.20;
- (3) Written interrogatories as set forth in § 26.21; and
- (4) Requests for admissions as set forth in § 26.22.

(b) *Supplementation of responses.* A party who has responded to a request for discovery with a response is under a duty to timely amend a prior response to an interrogatory, request for production, or request for admission if so ordered by the hearing officer, or if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(c) *Requesting an order.* In connection with any discovery procedure, by motion addressed to the hearing officer and upon a showing of a good faith attempt to resolve the issue without the hearing officer's intervention, either party may:

- (1) Request an order compelling a response with respect to any objection to or other failure to respond to the discovery requested or any part thereof, or any failure to respond as specifically requested, or
- (2) Request a protective order limiting the scope, methods, time and place for discovery, and provisions for protecting privileged information or documents.

(d) *Limitations.* (1) By order, the hearing officer may set or alter limits on the number of document requests,