

forth in detail its disagreements, if any, with its opponent's statement and documents. The Recorder will send to each party a copy of the other party's comments.

**§965.7 Default.**

A party who fails to file the submittal required by §965.5 may be held in default and the presiding officer may issue an initial decision that mail be delivered to the other party.

**§965.8 Hearings.**

(a) In the discretion of the presiding officer an oral hearing may be granted at the request of either, or both, parties or on the presiding officer's own initiative if there is a dispute as to a material issue of fact which can only be resolved by examination of witnesses.

(b) Hearings are held at the headquarters of the U.S. Postal Service, 475 L'Enfant Plaza West, SW., Washington, DC 20260-6100, or at such other place as may be designated by the presiding officer.

**§965.9 Evidence.**

(a) In general, admissibility will hinge on relevancy and materiality. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

(b) Testimony shall be given under oath or affirmation and witnesses are subject to cross-examination.

(c) Agreed statements to fact are encouraged and may be received in evidence.

**§965.10 Transcript.**

Testimony and argument at hearings shall be reported verbatim, unless the presiding officer otherwise orders. Transcripts or copies of the proceedings are supplied to the parties at such rate as may be fixed by contract between the reporter and Postal Service.

**§965.11 Initial decision.**

The presiding officer shall render an initial decision in writing, based on the record, as expeditiously as possible, but to the extent practicable within 10

working days of closing of the record. The decision will be brief, containing summary findings of fact, conclusions of law, and reasons therefor. If there has been a hearing the presiding officer may in his discretion render an oral decision. A typed copy of such oral decision will subsequently be furnished to the parties to establish the date for commencement of time for requesting review of the initial decision.

**§965.12 Appeal.**

The initial or tentative decision will become final 10 days after its issuance and receipt by the parties unless the Judicial Officer, or by delegation the Associate Judicial Officer, in his sole discretion, grants review upon appeal of either party filed within that period, or on his own motion within that period. If an appeal is denied, the initial or tentative decision becomes the final agency decision on the issuance of such denial. The judicial Officer's decision on appeal is the final agency decision with no further agency review or appeal rights.

**§965.13 Compromise and informal disposition.**

Nothing in these rules precludes the compromise, settlement, and informal disposition of proceedings initiated under these rules at any time prior to the issuance of the final agency decision.

**§965.14 Public Information.**

The Law Librarian of the Postal Service maintains for public inspection in the Law Library copies of all initial, tentative, and final agency decisions and orders. The Recorder maintains the complete official record of every proceeding.

**PART 966—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO ADMINISTRATIVE OFFSETS INITIATED BY THE POSTAL INSPECTION SERVICE**

Sec.

966.1 Authority for rules.

966.2 Scope of rules.

966.3 Definitions.

966.4 Petition for a hearing and supplement to petition.

## § 966.1

39 CFR Ch. I (7-1-97 Edition)

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- 966.12 Waiver of rights.
- 966.13 Ex parte communications.

AUTHORITY: 39 U.S.C. 204, 401, 2601.  
SOURCE: 54 FR 15754, Apr. 19, 1989, unless otherwise noted.

### § 966.1 Authority for rules.

These rules of practice are issued by the Judicial Officer pursuant to authority delegated by the Postmaster General.

### § 966.2 Scope of rules.

The rules in this part apply to any petition filed by a former postal employee:

- (a) To challenge the Postal Service's determination that he or she is liable for a debt based on a loss from the mails or from Postal Service revenues; and/or
- (b) To challenge the administrative offset schedule proposed by the Postal Service for collecting any such debt.

### § 966.3 Definitions.

- (a) *Administrative Offset* refers to the withholding of money payable by the Postal Service or the United States to, or held by the Postal Service or the United States for, a former employee in order to satisfy a debt determined to be owed by the former employee to the Postal Service.
- (b) *Chief Postal Inspector* refers to the Chief Postal Inspector of the Inspection Service Department or his or her representative.
- (c) *Debt* refers to any amount determined by the Postal Service to be owed to the Postal Service by a former employee as a result of a loss from the mails or from Postal Service revenues.
- (d) *Former Employee* refers to an individual whose employment with the Postal Service has ceased. An employee is considered formally separated from the Postal Service rolls as of close of business on the effective date

of his or her separation Postal Service Form 50.

(e) *Hearing Official* refers to an Administrative Law Judge qualified to hear cases under the Administrative Procedure Act, an Administrative Judge appointed under the Contract Disputes Act of 1978, or any other qualified person licensed to practice law designated by the Judicial Officer to preside over a hearing conducted pursuant to these regulations.

(f) *Inspection Service* refers to the Inspection Service Department of the Postal Service.

(g) *Judicial Officer* refers to the Judicial Officer, Associate Judicial Officer, or Acting Judicial Officer of the Postal Service.

(h) *Reconsideration* refers to the review of a debt conducted by the Inspection Service at the request of the former employee alleged to be responsible for such debt following the former employee's receipt of a written request for payment.

(i) *Recorder* refers to the Recorder, Judicial Officer Department, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260-6100.

### § 966.4 Petition for a hearing and supplement to petition.

(a) A former employee, who is alleged to be responsible for a debt and who has previously requested and received reconsideration of the debt by the Inspection Service, may obtain review of:

(1) The Inspection Service's final determination of the existence or amount of the debt, or

(2) The administrative offset schedule proposed by the Inspection Service for collecting any such debt, by mailing, within thirty (30) calendar days of receiving written notice of the Inspection Service's determination upon reconsideration, a written, signed petition, requesting a written or oral hearing, to the Recorder, Judicial Officer Department, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260-6100.

A former employee must have previously requested the Inspection Service to reconsider the Postal Service's debt determination to be entitled to a hearing under this part.

(b) The petition must include the following:

(1) The words, "Petition for Review Under 39 CFR part 966";

(2) The former employee's name and social security number;

(3) The former employee's home address and telephone number, and any other address and telephone number at which the former employee may be contacted about these proceedings;

(4) A statement of the date the former employee received the Inspection Service's final notice of debt termination and a copy of the notice;

(5) A statement indicating whether the former employee elects an oral hearing or a decision based solely on written submissions;

(6) If the former employee requests an oral hearing, a statement describing the evidence he or she will produce which makes an oral hearing necessary, including a list of witnesses, with their addresses, whom the former employee expects to call; a summary of the testimony the witnesses are expected to present; the city requested for the hearing site, with justification for holding the hearing in that city; and at least three proposed dates for the hearing at least forty-five (45) days after the filing of the petition for review;

(7) A statement of the grounds upon which the former employee objects to the Postal Service's determination of the debt or to the administrative offset schedule proposed by the Postal Service for collecting any such debt. This statement should identify with reasonable specificity and brevity the facts, evidence, and legal arguments, if any, which support the former employee's position; and

(8) Copies of all records in the former employee's possession which relate to the debt and which the former employee may enter into the record of the hearing.

(c) The former employee may, if necessary, file with the Recorder additional information as a supplement to the petition at any time prior to the filing of the answer to the petition under § 966.7, or at such later time as permitted by the Hearing Official upon a showing of good cause.

#### **§ 966.5 Effect of petition filing.**

Upon receipt and docketing of the former employee's petition, the Recorder will notify the Chief Postal Inspector that the petition has been filed and that a timely filed petition stays further collection action.

#### **§ 966.6 Filing, docketing and serving documents; computation of time; representation of parties.**

(a) *Filing.* All documents required under this part must be filed by the former employee or the Chief Postal Inspector in triplicate with the Recorder. (Normal Recorder office business hours are between 8:15 a.m. and 4:45 p.m., eastern standard or daylight saving time as appropriate during the year.) The Recorder will transmit a copy of each document filed to the other party, and the original to the Hearing Official.

(b) *Docketing.* The Recorder will maintain a docket record of proceedings under this part and will assign each petition a docket number. After notification of the docket number, the former employee and Chief Postal Inspector should refer to it on any further filings regarding the petition.

(c) *Time computation.* A filing period under the rules in this part excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or legal holiday, in which event the period runs until the close of business on the next business day.

(d) *Representation of parties.* After the filing of the petition, further document transmittals for, or communications with, the Postal Service shall be through its representative, the Chief Postal Inspector. If a former employee is represented by an attorney authorized to practice law in any of the United States or the District of Columbia or a territory of the United States, further transmissions of documents and other communications with the former employee shall be made through his or her attorney rather than directly with the former employee.

#### **§ 966.7 Answer to petition.**

Within thirty (30) days from notice of the petition, the Chief Postal Inspector shall file an answer to the petition, and

attach all available relevant records and documents in support of the Postal Service's claim, or the administrative offset schedule proposed by the Postal Service for collecting any such claim; a list of witnesses the Postal Service intends to call if an oral hearing is requested and the request is granted; a synopsis of the testimony of each witness; a statement of concurrence or objection to the proposed location and dates for the oral hearing; and a statement of the basis for the determination of debt or offset schedule if not contained in the relevant records or documents. If the former employee files a supplement to the petition, the Chief Postal Inspector may file any supplemental answer and records to support the position of the Postal Service within twenty (20) calendar days from the date of receipt of the supplement filed with the Recorder.

**§ 966.8 Hearing Official authority and responsibilities.**

In conducting a hearing under this part, the Hearing Official's authority includes, but is not limited to, the following:

- (a) Ruling on all offers, motions, or requests by the parties;
- (b) Issuing any notices, orders, or memoranda to the parties concerning the hearing procedures;
- (c) Conducting telephone conferences with the parties to expedite the proceedings (a memorandum of a telephone conference will be transmitted to both parties);
- (d) Determining if an oral hearing is necessary and setting the place, date, and time for such hearing;
- (e) Administering oaths or affirmations to witnesses;
- (f) Conducting the hearing in a manner to maintain discipline and decorum while assuring that relevant, reliable and probative evidence is elicited on the issues in dispute, and that irrelevant, immaterial or repetitious evidence is excluded;
- (g) Establishing the record in the case;
- (h) Issuing an initial decision or one on remand; and
- (i) Granting, at the request of either party, reasonable time extensions.

**§ 966.9 Opportunity for oral hearing.**

An oral hearing generally will be held only in those cases which, in the opinion of the Hearing Official, cannot be resolved by a review of the documentary evidence, such as when the existence, or amount, of a debt turns on issues of credibility or veracity. When the Hearing Official determines that an oral hearing is not necessary, the decision shall be based solely on written submissions.

**§ 966.10 Initial decision.**

(a) After the receipt of written submissions or after the conclusion of the hearing and the receipt of any post-hearing briefs, the Hearing Official shall issue a written initial decision, including findings of fact and conclusions of law, which the Hearing Official relied upon in determining whether the former employee is indebted to the Postal Service, or in upholding or revising the administrative offset schedule proposed by the Postal Service for collecting a former employee's debt. When the Judicial Officer presides at a hearing he or she shall issue a final or a tentative decision. The initial or tentative decision shall become the final agency decision unless appeal is taken pursuant to § 966.11.

(b) The Hearing Official shall promptly send to each party a copy of the initial or tentative decision, and a statement describing the right of appeal to the Judicial Officer in accordance with § 966.11.

(c) Unless the former employee or Chief Postal Inspector appeals the Hearing Official's initial or tentative decision within thirty (30) days from receipt of the decision, such decision shall become the final agency decision, and an order to that effect will be issued by the Judicial Officer.

**§ 966.11 Appeal of initial or tentative decision to Judicial Officer.**

(a) *Notice of appeal and supporting brief.* (1) A former employee or the Chief Postal Inspector may appeal an adverse decision by a Hearing Official by filing a Notice of Appeal with the Recorder within thirty (30) days after receipt of the decision. The Judicial Officer may extend the filing period upon

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written application of either party for good cause shown.

(2) The Notice of Appeal must be accompanied by a written brief specifying exceptions to findings of fact and conclusions of law, and any reasons for such exceptions, to the Hearing Official's decision.

(3) No later than thirty (30) days after receiving the Notice of Appeal and accompanying brief, the opposing party may file a response with the Recorder.

(b) *Form of review.* (1) Review by the Judicial Officer will be based on the entire record and written submissions.

(2) Objections or new issues not raised in the hearing will not be considered unless the interested party demonstrates that the failure to raise the objection or issue before the Hearing Official was caused by extraordinary circumstances.

(3) The Judicial Officer shall have all powers of a Hearing Official and on appeal may order the hearing reopened for the presentation of additional evidence or, in his or her discretion, remand the case to the Hearing Official for further action.

(c) *Decision of Judicial Officer.* The Judicial Officer shall affirm, reverse, or modify any decision appealed under this section and shall promptly serve each party to the appeal with a copy of

this or her decision and a statement that such decision constitutes the final agency decision.

### **§966.12 Waiver of rights.**

The Hearing Official may determine the former employee has waived his or her right to a hearing and administrative offset may be initiated if the former employee:

(a) Files a petition for hearing after the end of the prescribed thirty (30) day period, and fails to demonstrate to the satisfaction of the Hearing Official good cause for the delay;

(b) Has received notice to appear at an oral hearing but fails to do so without showing circumstances beyond the former employee's control;

(c) Fails to file required submissions or to comply with orders of the Hearing Official; or

(d) Files a withdrawal of his or her petition for a hearing with the Recorder.

### **§966.13 Ex parte communications.**

Ex parte communications between a Hearing Official or his or her staff and a party shall not be made. This prohibition does not apply to procedural matters. A memorandum of any such procedural communication will be transmitted to both parties.