

ground for the action provided in section 5 of the Act of June 30, 1936 (41 U.S.C. 39) and, in the discretion of the Administrative Law Judge, for striking out all or part of the testimony which may have been given by such witness.

#### § 6.7 Appearances.

(a) *Representation.* The parties may appear in person, by counsel, or otherwise.

(b) *Failure to appear.* In the event that a party appears at the hearing and no party appears for the opposing side, the presiding Administrative Law Judge is authorized, if such party fails to show good cause for such failure to appear, to dismiss the case or to find the facts as alleged in the complaint and to enter a default judgment containing such findings, conclusions and order as are appropriate. Only where a petition for review of such default judgment cites alleged procedural irregularities in the proceeding below and not the merits of the case shall a non-appearing party be permitted to file such a petition for review. Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the Administrative Law Judge's decision.

#### § 6.8 Transmission of record.

If a petition for review of the Administrative Law Judge's decision is filed with the Administrative Review Board, the Chief Administrative Law Judge shall promptly transmit the record of the proceeding.

If a petition for review is not filed within the time prescribed in this part, the Chief Administrative Law Judge shall so advise the Administrator.

### Subpart B—Enforcement Proceedings Under the Service Contract Act (and Under the Contract Work Hours and Safety Standards Act for Contracts Subject to the Service Contract Act)

#### § 6.15 Complaints.

(a) Enforcement proceedings under the Service Contract Act and under the Contract Work Hours and Safety Standards Act for contracts subject to

the Service Contract Act, may be instituted by the Associate Solicitor for Fair Labor Standards or a Regional Solicitor by issuing a complaint and causing the complaint to be served upon the respondent.

(b) The complaint shall contain a clear and concise factual statement of the grounds for relief and the relief requested.

(c) The Administrative Law Judge shall notify the parties of the time and place for a hearing.

#### § 6.16 Answers.

(a) Within 30 days after the service of the complaint the respondent shall file an answer with the Chief Administrative Law Judge. The answer shall be signed by the respondent or his/her attorney.

(b) The answer shall (1) contain a statement of the facts which constitute the grounds of defense, and shall specifically admit, explain, or deny each of the allegations of the complaint unless the respondent is without knowledge, in which case the answer shall so state; or (2) state that the respondent admits all of the allegations of the complaint. The answer may contain a waiver of hearing. Failure to file an answer to or plead specifically to any allegation of the complaint shall constitute an admission of such allegation.

(c) Failure to file an answer shall constitute grounds for waiver of hearing and entry of a default judgment unless respondent shows good cause for such failure to file. In preparing the decision of default judgment the Administrative Law Judge shall adopt as findings of fact the material facts alleged in the complaint and shall order the appropriate relief and/or sanctions.

#### § 6.17 Amendments to pleadings.

At any time prior to the close of the hearing record, the complaint or answer may be amended with the permission of the Administrative Law Judge and on such terms as he/she may approve. When issues not raised by the pleadings are reasonably within the scope of the original complaint and are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings, and such amendments

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may be made as necessary to make them conform to the evidence. Such amendments shall be allowed when justice and the presentation of the merits are served thereby, provided there is no prejudice to the objecting party's presentation on the merits. A continuance in the hearing may be granted or the record left open to enable the new allegations to be addressed. The presiding Administrative Law Judge may, upon reasonable notice and upon such terms as are just, permit supplemental pleadings setting forth transactions, occurrences or events which have happened since the data of the pleadings and which are relevant to any of the issues involved.

### § 6.18 Consent findings and order.

(a) At any time prior to the receipt of evidence or, at the discretion of the Administrative Law Judge, prior to the issuance of the decision of the Administrative Law Judge, the parties may enter into consent findings and an order disposing of the processings in whole or in part.

(b) Any agreement containing consent findings and an order disposing of a proceeding in whole or in part shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the complaint and the agreement;

(3) A waiver of any further procedural steps before the Administrative Law Judge and Administrative Review Board regarding those matters which are the subject of the agreement; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) Within 30 days after receipt of an agreement containing consent findings and an order disposing of the disputed matter in whole, the Administrative Law Judge shall, if satisfied with its form and substance, accept such agreement by issuing a decision based upon the agreed findings and order. If such agreement disposes of only a part of the disputed matter, a hearing shall be

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conducted on the matters remaining in dispute.

### § 6.19 Decision of the Administrative Law Judge.

(a) *Proposed findings of fact, conclusions, and order.* Within 20 days of filing of the transcript of the testimony or such additional time as the Administrative Law Judge may allow each party may file with the Administrative Law Judge proposed findings of fact, conclusion of law, and order, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the Administrative Law Judge.* (1) Within a reasonable time after the time allowed for the filing of proposed findings of fact, conclusions of law, and order, or within 30 days after receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the Administrative Law Judge shall make his/her decision. If any aggrieved party desires review of the decision, a petition for review thereof shall be filed as provided in § 6.20 of this title, and such decision and order shall be inoperative unless and until the Administrative Review Board issues an order affirming the decision. The decision of the Administrative Law Judge shall include findings of fact and conclusions of law, with reasons and bases therefor, upon each material issue of fact, law, or discretion presented on the record. The decision of the Administrative Law Judge shall be based upon a consideration of the whole record, including any admissions made under §§ 6.16, 6.17 and 6.18 of this title. It shall be supported by reliable and probative evidence. Such decision shall be in accordance with the regulations and rulings contained in parts 4 and 5 and other pertinent parts of this title.

(2) If the respondent is found to have violated the Service Contract Act, the Administrative Law Judge shall include in his/her decision an order as to whether the respondent is to be relieved from the ineligible list as provided in section 5(a) of the Act, and, if