

Office of the Secretary of Transportation

§ 98.8

(c) Before beginning an administrative disciplinary proceeding, the Departmental counsel shall provide the former employee with actual notice of the institution of a proceeding. This notice must include:

(1) A statement of allegations and the basis for those allegations, which statement must be sufficiently detailed to enable the former employee to prepare an adequate defense;

(2) Notification of the right to a hearing;

(3) An explanation of the method by which a hearing may be requested; and

(4) A statement of the possible sanctions that may be imposed if a violation by the former employee is found to have occurred.

§ 98.5 Former employee response to notice.

(a) Within 30 working days after service of a notice pursuant to § 98.4(c), the former employee may submit to the Departmental counsel in writing:

(1) A request for a hearing, which, if not all issues are disputed by the former employee, should specify those issues that are;

(2) Any evidence and arguments in lieu of a hearing or

(3) A statement that the allegations are true and set forth any factors that should be considered in determining the administrative sanction to be imposed.

(b) The Department shall deem the right to a hearing to have been waived by the former employee if the former employee does not submit a request under paragraph (b)(1) of this section within 30 working days after service of notice pursuant to § 98.4(c).

§ 98.6 Examiner.

(a) The presiding official at a hearing held under this part and the deciding official under § 98.9 of this part (hereinafter referred to as the "examiner") shall be designated by the Secretary.

(b) The examiner shall not have been involved in any of the events specified in the allegations, shall not have been involved in the investigation of the allegations and the institution of the proceedings under this part, and shall not be or have been employed by the administration, or the Office of the

Secretary if applicable, in which the alleged violation occurred.

§ 98.7 Hearing.

(a) The examiner shall, within 30 working days of a request for a hearing under § 98.5(b), schedule the hearing for a reasonable time, date, and place. The examiner shall grant any delays or continuances that the examiner determines to be necessary and appropriate for fair resolution of the case, with due regard to the former employee's need for adequate time to prepare a defense and for expeditious resolution of allegations that may be damaging to that former employee's reputation.

(b) The following rights shall be granted to a former employee who requests a hearing under § 98.5(b):

(1) To represent oneself or to be represented by counsel.

(2) To introduce and examine witnesses and to submit physical evidence.

(3) To confront and cross-examine adverse witnesses.

(4) To present oral argument.

(5) To obtain a transcript or recording of the hearing on request from the official reporter upon payment of the fees fixed therefor.

(c) In a hearing under this part, the Federal Rules of Civil Procedure and Evidence do not apply. However, the examiner may make such orders and determinations regarding discovery, admissibility of evidence, conduct of examination and cross-examination, and similar matters the examiner deems necessary or appropriate to ensure orderliness in the proceedings and fundamental fairness to the parties.

§ 98.8 Decision by examiner.

(a) In a hearing under § 98.7 of this part, the Departmental counsel must establish a violation by a preponderance of the evidence.

(b) The examiner shall make a decision exclusively on matters of record in the proceeding and shall set forth in the decision:

(1) All findings of fact relevant to the matters at issue;

(2) All conclusions of law relevant to the matters at issue; and

(3) The sanction to be imposed, if any.