

Joint Board for the Enrollment of Actuaries

§ 901.45

any issue presented by the pleadings as so amended.

§ 901.41 Motions and requests.

Motions and requests may be filed with the Executive Director or with the Administrative Law Judge.

§ 901.42 Representation.

A respondent or proposed respondent may appear at conference or hearing in person or may be represented by counsel or other representative. The Executive Director may be represented by an attorney or other employee of the Treasury Department.

§ 901.43 Administrative Law Judge.

(a) *Appointment.* An administrative law judge, appointed as provided by section 11 of the Administrative Procedure Act, 60 Stat. 244 (5 U.S.C. 3105), shall conduct proceedings upon complaints for the suspension or termination of enrolled actuaries.

(b) *Powers of Administrative Law Judge.* Among other powers, the Administrative Law Judge shall have authority, in connection with any suspension or termination proceeding of an enrolled actuary, to do the following:

- (1) Administer oaths and affirmations;
- (2) Make rulings upon motions and requests, which may not be appealed before the close of a hearing except at the discretion of the Administrative Law Judge;
- (3) Determine the time and place of hearing and regulate its course of conduct;
- (4) Adopt rules of procedure and modify the same as required for the orderly disposition of proceedings;
- (5) Rule upon offers of proof, receive relevant evidence, and examine witnesses;
- (6) Take or authorize the taking of depositions;
- (7) Receive and consider oral or written argument on facts or law;
- (8) Hold or provide for the holding of conferences for the settlement or simplification of the issues by consent of the parties;
- (9) Perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding; and

- (10) Make initial decisions.

§ 901.44 Hearings.

(a) *In general.* The Administrative Law Judge shall preside at the hearing on a complaint for the suspension or termination of an enrolled actuary. Hearings shall be stenographically recorded and transcribed and the testimony of witnesses shall be taken under oath or affirmation. Hearings will be conducted pursuant to section 7 of the Administrative Procedure Act, 60 Stat. 241 (5 U.S.C. 556).

(b) *Failure to appear.* If either party to the proceeding fails to appear at the hearing, after due notice thereof has been sent to the parties, the Administrative Law Judge may make a decision against the absent party by default.

§ 901.45 Evidence.

(a) *In general.* The rules of evidence prevailing in courts of law and equity are not controlling in hearings on complaints for the suspension or the termination of the enrollment of enrolled actuaries. However, the Administrative Law Judge shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

(b) *Depositions.* The deposition of any witness taken pursuant to § 901.46 may be admitted.

(c) *Proof of documents.* Official documents, records, and papers of the Department of the Treasury, the Department of Labor, the Pension Benefit Guaranty Corporation, the Joint Board for the Enrollment of Actuaries or the Office of the Executive Director of the Joint Board for the Enrollment of Actuaries shall be admissible into evidence without the production of an officer or employee to authenticate them. Any such documents, records, and papers may be evidenced by a copy attested to or identified by an officer or employee of the Department of the Treasury, the Department of Labor, the Pension Benefit Guaranty Corporation, the Joint Board for the Enrollment of Actuaries, or the Office of the Executive Director of the Joint Board for the Enrollment of Actuaries, as the case may be.

§ 901.46

(d) *Exhibits.* If any document, record, or other paper is introduced into evidence as an exhibit, the Administrative Law Judge may authorize the withdrawal of the exhibit subject to any conditions which he/she deems proper.

(e) *Objections.* Objections to evidence shall state the grounds relied upon, and the record shall not include argument thereon, except as ordered by the Administrative Law Judge. Rulings on such objections shall be part of the record. No exception to the ruling is necessary to preserve the rights of the parties.

§ 901.46 Depositions.

Depositions for use at a hearing may, with the written approval of the Administrative Law Judge, be taken by either the Executive Director or the respondent or their duly authorized representatives. Depositions may be taken upon oral or written interrogatories, upon not less than 10 days written notice to the other party, before any officer duly authorized to administer an oath for general purposes or before an officer or employee of the Department of the Treasury, the Department of Labor, the Pension Benefit Guaranty Corporation, or the Joint Board who is authorized to administer an oath. Such notice shall state the names of the witnesses and the time and place where the depositions are to be taken. The requirement of 10 days notice may be waived by the parties in writing, and depositions may then be taken from the persons and at the times and places mutually agreed upon by the parties. When a deposition is taken upon written interrogatories, any cross-examination shall be upon written interrogatories. Copies of such written interrogatories shall be served upon the other party with the notice, and the copies of any written cross-interrogatories shall be mailed or delivered to the opposing party at least five days before the date of taking the depositions, unless the parties mutually agree otherwise. A party upon whose behalf a deposition is taken must file it with the Administrative Law Judge and serve one copy upon the opposing party. Expenses in the reporting of depositions shall be borne by the party

20 CFR Ch. VIII (4–1–11 Edition)

at whose instance the deposition is taken.

§ 901.47 Transcript.

In cases where the hearing is stenographically reported by a Government contract reporter, copies of the transcript may be obtained from the reporter at rates not to exceed the maximum rates fixed by contract between the Government and the reporter. Where the hearing is stenographically reported by a regular employee of the Department of the Treasury, the Department of Labor, the Pension Benefit Guaranty Corporation, or the Joint Board, a copy thereof will be supplied to the respondent either without charge or upon the payment of a reasonable fee. Copies of exhibits introduced at the hearing or at the taking of depositions will be supplied to parties upon the payment of a reasonable fee (31 U.S.C. 483a).

EFFECTIVE DATE NOTE: At 76 FR 17776, Mar. 31, 2011, § 901.47 was amended by revising the last sentence to read “Copies of exhibits introduced at the hearing or at the taking of depositions will be supplied to parties upon the payment of a reasonable fee (31 U.S.C. 9701).”, effective May 2, 2011.

§ 901.48 Proposed findings and conclusions.

Except in cases where the respondent has failed to answer the complaint or where a party has failed to appear at the hearing, the Administrative Law Judge, before making his/her decision, shall give the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor.

§ 901.49 Decision of the Administrative Law Judge.

As soon as practicable after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, the Administrative Law Judge shall make the initial decision in the case. The decision should be based solely upon the pleading, the testimony and exhibits received in evidence at the hearing or specifically authorized to be subsequently submitted under the applicable laws and regulations. The decision