

United States Postal Service

§ 955.31

§ 955.26 Representation of the parties.

(a) The term *appellant* means a party that has filed an appeal for resolution by the Board. An individual appellant may appear before the Board in his or her own behalf, a corporation may appear before the Board by an officer thereof, a partnership or joint venture may appear before the Board by a member thereof, or any of these may appear before the Board by an attorney at law duly licensed in any state, commonwealth, territory of the United States, or in the District of Columbia. An attorney representing an appellant shall file a written notice of appearance with the Board, including his or her address, telephone number, fax number, and jurisdiction in which the attorney is licensed to practice law.

(b) The term *respondent* means the U.S. Postal Service. Postal Service counsel, who shall be an attorney at law licensed to practice in a state, commonwealth, or territory of the United States, or in the District of Columbia, designated by the General Counsel, will represent the interest of the Postal Service before the Board. Postal Service counsel shall file a written notice of appearance with the Board, including his or her address, telephone number, fax number, and jurisdiction in which the attorney is licensed to practice law.

(c) References to contractor, appellant, contracting officer, respondent and parties shall include respective counsel for the parties, as soon as appropriate notices of appearance have been filed with the Board. A self-represented party or an attorney representing either party shall inform the Board promptly of any change in his or her address, telephone number, or fax number.

§ 955.27 Withdrawal of attorney.

Any attorney for either party who has filed a notice of appearance and who wishes to withdraw from a case must file a motion or notice which includes the name, address, telephone number, and fax number of the person who will assume responsibility for representation of the party in question.

§ 955.28 Suspension.

(a) Whenever at any time it appears that the parties are in agreement as to disposition of the controversy, the Board may suspend further processing of the appeal: *Provided, however*, That if the Board is advised thereafter by either party that the controversy has not been disposed of by agreement, the case shall be restored to the Board's active docket.

(b) The Board may in its discretion suspend proceedings to permit a contracting officer to issue a decision when an appeal has been taken from the contracting officer's failure to render a timely decision, or for other good cause.

§ 955.29 Decisions.

Decisions of the Board will be made in writing and sent simultaneously to both parties. The rules of the Board and all final orders and decisions shall be open for public inspection at the offices of the Board, and may be made available on its official Web site and to commercial publishers. Decisions of the Board will be made solely upon the record, as described in § 955.14.

§ 955.30 Motion for reconsideration.

A motion for reconsideration, if filed by either party, shall set forth specifically the ground or grounds relied upon to sustain the motion, and shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

§ 955.31 Dismissal without prejudice.

In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. In any such case where the suspension has continued, or it appears that it will continue, for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within

§ 955.32

three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

§ 955.32 Dismissal for failure to prosecute.

Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may issue an order requiring the offending party to show cause why the appeal should not be either dismissed or granted, as appropriate. If the offending party shall fail to show such cause, the Board may take such action as it deems reasonable and proper under the circumstances.

§ 955.33 *Ex parte* communications.

No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members nor to *ex parte* communications concerning the Board's administrative functions or procedures.

§ 955.34 Sanctions.

(a) All parties and their attorneys must obey directions and orders prescribed by the Board and adhere to standards of conduct applicable to such parties and attorneys. As to an attorney, the standards include the rules of professional conduct and ethics of the jurisdictions in which that attorney is licensed to practice, to the extent that those rules are relevant to conduct affecting the integrity of the Board, its process, or its proceedings.

(b) If any party or its attorney fails to comply with any direction or order issued by the Board, or engages in misconduct affecting the Board, its process, or its proceedings, the Board may issue such orders as are just, including the imposition of appropriate sanctions. Sanctions may include:

39 CFR Ch. I (7-1-11 Edition)

(1) Taking the facts pertaining to the matter in dispute to be established for the purpose of the case;

(2) Forbidding challenge of the accuracy of any evidence;

(3) Refusing to allow the disobedient party to support or oppose designated claims or defenses;

(4) Prohibiting the disobedient party from introducing in evidence designated documents or testimony;

(5) Striking pleadings or parts thereof, or staying further proceedings until the order is obeyed;

(6) Dismissing or granting the case or any part thereof;

(7) Imposing such other sanctions as the Board deems appropriate.

(c) In addition, the Board may sanction individual attorneys for a violation of any Board order or direction or standard of conduct applicable to such individual where the violation seriously affects the integrity of the Board, its process, or its proceedings. Sanctions may be public or private, and may include admonishment, disqualification from a particular matter, disqualification from practice before the Board in accordance with 39 CFR Part 951, referral to an appropriate licensing authority, or such other action as circumstances may warrant.

§ 955.35 Subpoenas.

(a) *General.* Upon written request of either party filed with the Recorder, or on the Board's own initiative, the Board may issue a subpoena requiring:

(1) *Testimony at a deposition.* The deposing of a witness in the city or county where the witness resides or is employed or transacts business in person, or at another convenient location as determined by the Board;

(2) *Testimony at a hearing.* The attendance of a witness for the purpose of taking testimony at a hearing; or

(3) *Production of books and papers.* The production by a witness of books, papers, documents, electronically stored information, and other tangible and intangible things designated in the subpoena.

(b) *Voluntary cooperation.* Each party is expected: