

§ 134.805

(e) *Dismissal*. An appeal petition that does not meet all the requirements of this section may be dismissed by the Judge at his or her own initiative or upon motion of the SBA.

§ 134.805 After the appeal petition is filed.

(a) The AA/OHA will assign a Judge to adjudicate the case. If mediation is requested or offered, the AA/OHA will assign a different person to mediate the case.

(b) OHA will issue and serve upon the Employee and the SBA a notice and order informing the parties that an appeal has been filed, and setting the date for SBA's response and the close of record.

(c) The rules for amendments to pleadings and supplemental pleadings are in § 134.207.

(d) Unless otherwise instructed, OHA will serve all orders and the decision by U.S. Mail upon the Employee at his or her home address, or upon the attorney if represented by an attorney.

§ 134.806 Mediation.

Either the Employee or the SBA may request mediation, or OHA may offer mediation. OHA may designate a Judge or an OHA attorney to serve as a mediator. If the parties reach a settlement through mediation, they may file a joint motion to dismiss the appeal based on that settlement. If the parties do not reach a settlement, the mediation will conclude and the appeal will go to adjudication. An OHA-provided mediator will not be involved in a subsequent adjudication.

§ 134.807 SBA response.

(a) If the appeal goes to adjudication, SBA will file and serve the SBA's response to the appeal and a copy of the Dispute File.

(b) Unless the Judge orders a different date (either on his or her own initiative or on motion by a party), the SBA must file any response to the appeal petition no later than 15 days from the conclusion of mediation or 45 days from the filing of the appeal petition, whichever is later.

(c) The SBA's response and the Dispute File are normally the last submissions in an appeal, although the Judge

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may order or permit additional submissions. If a party wishes to file an additional submission, the party must file and serve a motion (see § 134.211) accompanied by the proposed submission.

§ 134.808 The decision.

(a) The Judge will decide the appeal within 45 calendar days (if practicable) from close of record. The decision will affirm, modify, remand, or reverse the AMO's decision.

(b) The standard of review and burden of proof will be determined by the specific issue presented.

(c) OHA's decision is an initial decision which becomes the final decision of the SBA 30 calendar days after issuance, unless a party files a request for review pursuant to § 134.809.

(d) OHA's decision is not precedential and it will not be published.

§ 134.809 Review of initial decision.

The Request for Review (RFR) process is the same as in § 134.228 except that, for OIG employees:

(a) The RFR must be served on the Counsel to the Inspector General rather than on the Associate General Counsel for General Law; and

(b) The deciding official is the Inspector General (or designee) rather than the Administrator.

PART 136—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE SMALL BUSINESS ADMINISTRATION

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