

(b) The FAA may participate as *amicus curiae* at any time in the proceedings, at the FAA's discretion. At the request of the FAA, copies of all pleadings in a case must be sent to the FAA, whether or not the FAA is participating in the proceeding.

§ 1979.109 Decision and orders of the administrative law judge.

(a) The decision of the administrative law judge will contain appropriate findings, conclusions, and an order pertaining to the remedies provided in paragraph (b) of this section, as appropriate. A determination that a violation has occurred may only be made if the complainant has demonstrated that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint. Relief may not be ordered if the named person demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of any protected behavior. Neither the Assistant Secretary's determination to dismiss a complaint without completing an investigation pursuant to § 1979.104(b) nor the Assistant Secretary's determination to proceed with an investigation is subject to review by the administrative law judge, and a complaint may not be remanded for the completion of an investigation or for additional findings on the basis that a determination to dismiss was made in error. Rather, if there otherwise is jurisdiction, the administrative law judge shall hear the case on the merits.

(b) If the administrative law judge concludes that the party charged has violated the law, the order shall direct the party charged to take appropriate affirmative action to abate the violation, including, where appropriate, reinstatement of the complainant to that person's former position, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and compensatory damages. At the request of the complainant, the administrative law judge shall assess against the named person all costs and expenses (including attorney's and expert witness fees) reasonably incurred. If, upon the request of the named person, the administrative

law judge determines that a complaint was frivolous or was brought in bad faith, the judge may award to the named person a reasonable attorney's fee, not exceeding \$1,000.

(c) The decision will be served upon all parties to the proceeding. Any administrative law judge's decision requiring reinstatement or lifting an order of reinstatement by the Assistant Secretary shall be effective immediately upon receipt of the decision by the named person, and may not be stayed. All other portions of the judge's order shall be effective ten business days after the date of the decision unless a timely petition for review has been filed with the Administrative Review Board.

§ 1979.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the administrative law judge, or a named person alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file a written petition for review with the Administrative Review Board ("the Board"), which has been delegated the authority to act for the Secretary and issue final decisions under this part. The decision of the administrative law judge shall become the final order of the Secretary unless, pursuant to this section, a petition for review is timely filed with the Board. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily shall be deemed to have been waived by the parties. To be effective, a petition must be filed within ten business days of the date of the decision of the administrative law judge. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the Board. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational