

Evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice of the taking of the deposition, in accordance with the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of an expert witness may be used by any party for any purpose, unless the ALJ rules that such use is unfair or in violation of due process.

(3) The deposition of a party, or of anyone who at the time of the taking of the deposition was an officer, director, or duly authorized agent of a public or private corporation, partnership, or association that is a party, may be used by any other party for any purpose.

(4) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the ALJ finds:

(i) That the witness is dead;

(ii) That the witness is out of the United States or more than 100 miles from the place of hearing, unless it appears that the absence of the witness was procured by the party offering the deposition;

(iii) That the witness is unable to attend to testify because of age, sickness, infirmity, or imprisonment;

(iv) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(v) Whenever exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

(5) If a part of a deposition is offered in evidence by a party, any other party may require the party to introduce all of the deposition that is relevant to the part introduced. Any party may introduce any other part of the deposition.

(6) Substitution of parties does not affect the right to use depositions previously taken. If a proceeding has been dismissed and another proceeding involving the same subject matter is

later brought between the same parties or their representatives or successors in interest, all depositions lawfully taken in the former proceeding may be used in the latter proceeding.

(b) *Objections to admissibility.* Except as provided in this paragraph, objection may be made at the hearing to receiving in evidence any deposition or part of a deposition for any reason that would require the exclusion of the evidence if the witness were present and testifying.

(1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the basis of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed or cured if promptly presented, are waived unless reasonable objection is made at the taking of the deposition.

§ 180.525 Requests for production of documents or things for inspection or other purposes, including physical and mental examinations.

(a) Any party may serve on any other party a request to:

(1) Produce and/or permit the party, or a person acting on the party's behalf, to inspect and copy any designated documents, or to inspect and copy, test, or sample any tangible things that contain or may lead to relevant information and that are in the possession, custody, or control of the party upon whom the request is served.

(2) Permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, photographing, testing, or other purposes stated in paragraph (a)(1) of this section.

(b) Each request shall set forth with reasonable particularity the items or categories to be inspected and shall specify a reasonable time, place and

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manner for making the inspection and performing the related acts.

(c) Within 15 days after service of the request, the party upon whom the request is served shall serve a written response on the party submitting the request. The response shall state, with regard to each item or category, that inspection and related activities will be permitted as requested, unless there are objections, in which case the reasons for the objection shall be stated.

(d) Upon motion of any party, when the mental or physical condition (including the blood group) of a party or of a person in the custody or under the legal control of a party, is in controversy, the presiding ALJ may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made. A report of the examiner shall be made in accordance with Rule 35(b) of the Federal Rules of Civil Procedure.

§ 180.530 Requests for admissions.

(a) Any party may serve on any other party a written request for the admission of the truth of any matters relevant to the adjudication set forth in the request that relate to statements or opinions of fact or of application of law to fact, including the genuineness and authenticity of any documents described in or attached to the request.

(b) Each matter for which an admission is requested is admitted unless, within 15 days after service of the request, or within such time as the ALJ allows, the party to whom the request is directed serves on the requesting party a sworn written answer which:

(1) Specifically denies, in whole or in part, the matter for which an admission is requested;

(2) Sets forth in detail why the party cannot truthfully admit or deny the matter; or

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(3) States an objection that the matter is privileged, irrelevant or otherwise improper in whole or in part.

(c) An answering party may not give lack of information or knowledge as a reason for failure to admit or deny, unless he/she/it states that he/she/it has made a reasonable inquiry and that the information known to, or readily obtainable by, him/her/it is insufficient to enable the party to admit or deny.

(d) The party requesting admissions may move for a determination of the sufficiency of the answers or objections. Unless the ALJ determines that an objection is justified, the ALJ shall order that an answer be served. If the ALJ determines that an answer does not comply with the requirements of this section, the ALJ may order either that the matter is admitted or that an amended answer be served.

(e) Any matter admitted under this section is conclusively established unless, upon the motion of a party, the ALJ permits the withdrawal or amendment of the admission. Any admission made under this section is made for the purposes of the pending proceeding only, is not an admission by the party for any other purpose, and may not be used against the party in any other proceeding.

§ 180.535 Protective orders.

(a) Upon motion of a party or a person from whom discovery is sought or in accordance with §180.540(c), and for good cause shown, the ALJ may make appropriate orders to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense as a result of the requested discovery request. The order may direct that:

(1) The discovery may not be had;

(2) The discovery may be had only on specified terms and conditions, including at a designated time and place;

(3) The discovery may be had by a method of discovery other than that selected by the party seeking discovery;

(4) Certain matters may not be the subject of discovery, or the scope of discovery may be limited to certain matters;