

Wage and Hour Division, Labor

§ 500.265

(c) The decision of the Administrative Law Judge shall be limited to a determination whether the respondent has violated the Act or these regulations, and the appropriateness of the remedy or remedies imposed by the Secretary. The Administrative Law Judge shall not render determinations on the legality of a regulatory provision or the constitutionality of a statutory provision.

(d) The decision of the Administrative Law Judge, for purposes of the Equal Access to Justice Act (5 U.S.C. 504), shall be limited to determinations of attorney fees and/or other litigation expenses in adversary proceedings requested pursuant to §500.212 which involve the modification, suspension or revocation of a Certificate of Registration issued under the Act and these Regulations, and/or the imposition of a civil money penalty assessed for a violation of the Act or these Regulations. The Administrative Law Judge shall have no power or authority to award attorney fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act or Regulations issued thereunder in any proceeding under MSPA or these Regulations involving the refusal to issue or renew a Certificate of Registration.

(e) The decision of the Administrative Law Judge shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material issue presented on the record. The decision shall also include an appropriate order which may be to affirm, deny, reverse, or modify, in whole or in part, the determination of the Secretary. The reason or reasons for such order shall be stated in the decision.

(f) The Administrative Law Judge shall transmit to the Chief Administrative Law Judge the entire record including the decision. The Chief Administrative Law Judge shall serve copies of the decision on each of the parties.

(g) The decision when served shall constitute the final order of the Secretary unless the Secretary, pursuant to section 103(b)(2) or section 503(b)(2) of the Act, modifies or vacates the decision and order of the Administrative Law Judge.

(h) Except as provided in §§500.263 through 500.268, the administrative remedies available to the parties under the Act will be exhausted upon service of the decision of the Administrative Law Judge.

[48 FR 36741, Aug. 12, 1983, as amended at 61 FR 24866, May 16, 1996]

MODIFICATION OR VACATION OF ORDER OF ADMINISTRATIVE LAW JUDGE

§ 500.263 Authority of the Secretary.

The Secretary may modify or vacate the Decision and Order of the Administrative Law Judge whenever he concludes that the Decision and Order:

(a) Is inconsistent with a policy or precedent established by the Department of Labor,

(b) Encompasses determinations not within the scope of the authority of the Administrative Law Judge,

(c) Awards attorney fees and/or other litigation expenses pursuant to the Equal Access to Justice Act which are unjustified or excessive, or

(d) Otherwise warrants modifying or vacating.

[54 FR 13330, Mar. 31, 1989]

§ 500.264 Procedures for initiating review.

(a) Within twenty (20) days after the date of the decision of the Administrative Law Judge, the respondent, the Administrator, or any other party desiring review thereof, may file with the Secretary an original and two copies of a petition for issuance of a Notice of Intent as described under §500.265. The petition shall be in writing and shall contain a concise and plain statement specifying the grounds on which review is sought. A copy of the Decision and Order of the Administrative Law Judge shall be attached to the petition.

(b) Copies of the petition shall be served upon all parties to the proceeding and on the Chief Administrative Law Judge.

[54 FR 13330, Mar. 31, 1989]

§ 500.265 Implementation by the Secretary.

(a) Whenever, on the Secretary's own motion or upon acceptance of a party's petition, the Secretary believes that a