

a written statement or deposition. The party offering a written statement must provide all other parties with a copy of the written statement along with the last known address of the witness. Sufficient time must be allowed for other parties to subpoena the witness for cross-examination at the hearing. Prior written statements and deposition transcripts of witnesses identified to testify at the hearing must be exchanged as provided in §308.521(a) of this subpart.

(c) The ALJ will exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

(1) Make the interrogation and presentation effective for the ascertainment of the truth;

(2) Avoid needless consumption of time; and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The ALJ will permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination will be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ will order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of:

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party appearing for the entity pro se or designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Corporation engaged in assisting the representative for the Corporation.

§ 308.533 Evidence.

(a) The ALJ will determine the admissibility of evidence.

(b) Except as provided in this subpart, the ALJ will not be bound by the Federal Rules of Evidence (28 U.S.C. App.). However, the ALJ may apply the Federal Rules of Evidence where appropriate, e.g., to exclude unreliable evidence.

(c) The ALJ will exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under federal law.

(f) Evidence concerning offers of compromise or settlement will be inadmissible to the extent provided in rule 408 of the Federal Rules of Evidence.

(g) The ALJ will permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record must be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to §308.523 of this subpart.

§ 308.534 The record.

(a) The hearing will be recorded by audio or videotape and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits, and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the Board.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to §308.523 of this subpart.

§ 308.535 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ will fix the time for filing