

**U.S. Department of Labor**

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DATE: June 16, 2008

FROM: **JOHN M. VITTON**  
Chief Administrative Law Judge

TO: **INTERESTED PARTIES**

SUBJECT: **MODIFICATION OF HEARING POLICY ON  
DEFENSE BASE ACT CASES ORIGINATING IN A WAR ZONE**

Since March 9, 2005, the policy of the Office of Administrative Law Judges has been that people hurt or killed in war zones in Iraq and Afghanistan would receive expeditious processing of their cases to the extent possible, *i.e.*, those cases would be set for hearing no later than 45-60 days from the time the notice of hearing was issued. Effective immediately, that policy has been modified as follows:

Any party in a Defense Base Act case who desires expedited processing of their claim by OALJ must now request such treatment in writing. They may do so in the LS-18 form filed with the District Director when requesting a hearing before this office or by writing OALJ after the case is docketed there. If a request for expedited consideration is made, the case will be expeditiously assigned to an ALJ for adjudication. The assigned ALJ will thereafter issue a notice scheduling the case for hearing within 60-90 days from the date of the notice.

If a written request for expedited processing in a Defense Base Act case is not made, the case will be scheduled as though it were a typical Longshore claim, *i.e.*, the hearing will be scheduled to commence approximately 120 days from the date of the notice of hearing, and discovery and pretrial exchanges and submissions will proceed as usual.

Notices of hearings in all Defense Base Act cases will now include the following language:

A. **INITIAL CONFERENCE.** Within fourteen (14) days from the date of this notice and prehearing order, the parties shall meet and confer with each other regarding the matters set forth in Fed. R. Civ. P. 26(f)(2). The requirement of Fed. R. Civ. P. 26(f)(2) that attorneys and unrepresented parties submit a written report outlining an agreed upon discovery plan is not applicable to this proceeding, and the filing of such a discovery plan with the undersigned judge is not required. Rather, the initial disclosures described below in paragraph B. are to be made within the prescribed period, and formal discovery is to be conducted in this matter pursuant to 29 C.F.R. Part 18 unless otherwise provided in this prehearing order.

The Initial Conference described herein may be held in person or, if the convenience of the parties dictates otherwise, via telephone or video conference. The attorneys of record and any unrepresented parties that have appeared in the case are jointly responsible for arranging the conference.

**B. INITIAL DISCLOSURE.** Within fourteen (14) days after the Initial Conference, and without awaiting a formal discovery request, the parties shall provide to all other parties the following documents and information to the extent that they have not previously been exchanged:

(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information — along with the subject(s) of that information — that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(ii) a copy — or a description by category and location — of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(iii) a computation of each category of damages claimed by the disclosing party — who must also make available for inspection and copying as under 29 C.F.R. § 18.19 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and

(iv) for inspection and copying as under 29 C.F.R. § 18.19, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

**C. REFERENCE TO RULE 26, FEDERAL RULES OF CIVIL PROCEDURE.**

Reference may be made to Fed. R. Civ. P. 26, where applicable, to address issues not specifically covered by this Prehearing Order. *See* 29 C.F.R. §§ 18.1(a), 18.29(a)(8). All disclosures must be made in writing, signed and served. The parties should be particularly mindful of the provisions of Fed. R. Civ. P. 26(a)(1)(E) with respect to unacceptable excuses for failing to make disclosures governed by Fed. R. Civ. P. 26(a)(1)(A).

As before, there is no minimum number of Defense Base Act cases required for an itinerary. The number of cases in a hearing itinerary will depend on the circumstances of the situation, and any decision regarding this matter will be made by the Chief Judge, the Associate

Chief Judge for Longshore, or the District Chief Judges consistent with the need to expedite war zone cases.