

§ 221.51 What are the parties' rights during the hearing?

Consistent with the provisions of this subpart, each party has the following rights during the hearing, as necessary to assure full and accurate disclosure of the facts:

- (a) To present direct and rebuttal evidence;
- (b) To make objections, motions, and arguments; and
- (c) To cross-examine witnesses and to conduct re-direct and re-cross examination as permitted by the ALJ.

§ 221.52 What are the requirements for presenting testimony?

(a) *Written direct testimony.* Unless otherwise ordered by the ALJ, all direct hearing testimony must be prepared and submitted in written form.

- (1) Prepared written testimony must:
 - (i) Have line numbers inserted in the left-hand margin of each page;
 - (ii) Be authenticated by an affidavit or declaration of the witness;
 - (iii) Be filed within 5 days after the date set for completion of discovery, unless the ALJ sets a different deadline; and
 - (iv) Be offered as an exhibit during the hearing.

(2) Any witness submitting written testimony must be available for cross-examination at the hearing.

(b) *Oral testimony.* Oral examination of a witness in a hearing, including on cross-examination or redirect, must be conducted under oath and in the presence of the ALJ, with an opportunity for all parties to question the witness.

(c) *Telephonic testimony.* The ALJ may by order allow a witness to testify by telephonic conference call.

(1) The arrangements for the call must let each party listen to and speak to the witness and each other within the hearing of the ALJ.

(2) The ALJ will ensure the full identification of each speaker so the reporter can create a proper record.

(3) The ALJ may issue a subpoena under § 221.47 directing a witness to testify by telephonic conference call.

§ 221.53 How may a party use a deposition in the hearing?

(a) *In general.* Subject to the provisions of this section, a party may use

in the hearing any part or all of a deposition taken under § 221.44 against any party who:

- (1) Was present or represented at the taking of the deposition; or
 - (2) Had reasonable notice of the taking of the deposition.
- (b) *Admissibility.* (1) No part of a deposition will be included in the hearing record, unless received in evidence by the ALJ.
- (2) The ALJ will exclude from evidence any question and response to which an objection:

- (i) Was noted at the taking of the deposition; and
- (ii) Would have been sustained if the witness had been personally present and testifying at a hearing.

(3) If a party offers only part of a deposition in evidence:

- (i) An adverse party may require the party to introduce any other part that ought in fairness to be considered with the part introduced; and
- (ii) Any other party may introduce any other parts.

(c) *Videotaped deposition.* If the deposition was recorded on videotape and is admitted into evidence, relevant portions will be played during the hearing and transcribed into the record by the reporter.

§ 221.54 What are the requirements for exhibits, official notice, and stipulations?

(a) *General.* (1) Except as provided in paragraphs (b) through (e) of this section, any material offered in evidence, other than oral testimony, must be offered in the form of an exhibit.

(2) Each exhibit offered by a party must be marked for identification.

(3) Any party who seeks to have an exhibit admitted into evidence must provide:

(i) The original of the exhibit to the reporter, unless the ALJ permits the substitution of a copy; and

(ii) A copy of the exhibit to the ALJ.

(b) *Material not offered.* If a document offered as an exhibit contains material not offered as evidence:

(1) The party offering the exhibit must:

- (i) Designate the matter offered as evidence;