

§ 957.16

39 CFR Ch. I (7-1-06 Edition)

§ 957.16 Evidence.

(a) Except as otherwise provided in the rules in this part, the rules of evidence governing civil proceedings in matters not involving trial by jury in the courts of the United States shall govern. However, such rules may be relaxed to the extent that the Judicial Officer deems proper to insure a fair hearing.

(b) Testimony shall be under oath or affirmation and witnesses shall be subject to cross-examination.

(c) Agreed statements of fact may be received in evidence.

(d) Official notice or knowledge may be taken of the types of matters of which judicial notice or knowledge may be taken.

(e) The written statement of a competent witness may be received in evidence: *Provided*, That such statement is relevant to the issues, that the witness shall testify under oath at the hearing that the statement is in all respects true, and, in the case of expert witnesses, that the statement correctly states his or her opinion or knowledge concerning the matters in question.

[36 FR 11574, June 16, 1971, as amended at 63 FR 66051, Dec. 1, 1998]

§ 957.17 Witness fees.

The Postal Service does not pay fees and expenses for Respondent's witnesses or for depositions requested by Respondent.

§ 957.18 Depositions.

(a) Not later than 7 days prior to the scheduled date of the hearing any party may file application with the Recorder for the taking of testimony by deposition. In support of such application the applicant shall submit under oath or affirmation a statement setting out the reasons why such testimony should be taken by deposition, the time and the place, and the name and address of the witness whose deposition is desired, the subject matter of the testimony of each witness, its relevancy, and the name and address of the person before whom the deposition is to be taken.

(b) If the application be granted, the order for the taking of the deposition will specify the time and place thereof,

the name of the witness, the person before whom the deposition is to be taken and any other necessary information.

(c) Each witness testifying upon deposition shall be duly sworn, and the adverse party shall have the right to cross-examine. The questions and answers together with all objections, shall be reduced to writing and, unless waived by stipulation of the parties, shall be read to and subscribed by the witness in the presence of the deposition officer who shall certify it in the usual form. The deposition officer shall file the testimony taken by deposition as directed in the order. The deposition officer shall put the witness on oath. All objections made at the time of examination shall be noted by the deposition officer and the evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, a party may transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim. Objections to relevancy or materiality of testimony, or to 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 the parties and errors of any kind which might be obviated, cured or removed if promptly presented, are waived unless timely objection is made at the taking of the deposition.

(d) At the hearing any part or all of the deposition may be offered in evidence by any party who was present or represented at the taking of the deposition or who had notice thereof. If the deposition is not offered and received in evidence, it shall not be considered as a part of the record in the proceeding. The admissibility of depositions or parts thereof shall be governed by the rules of evidence.

(e) The party requesting the deposition shall pay all fees required to be paid to witnesses and the deposition officer, and shall provide an original and one copy of the deposition for the official record, and shall serve one copy upon the opposing party.

(f) Within the United States or within a territory or insular possession, subject to the dominion of the United

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States, depositions may be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held; within a foreign country, depositions may be taken before a secretary of an embassy or legation, consul general, vice consul or consular agent of the United States, or any other person designated in the order for the taking of a deposition.

(g) Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examination. When a deposition is taken upon written interrogatories and cross-interrogatories, none of the parties shall be present or represented, and no person, other than the witness, a stenographic reporter, and the officer shall be present at the examination of the witness, which fact shall be certified by the officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness' own words.

[36 FR 11574, June 16, 1971, as amended at 63 FR 66051, Dec. 1, 1998]

§ 957.19 Transcript.

(a) Hearings shall be stenographically reported by a contract reporter of the Postal Service under the supervision of the Judicial Officer. Argument upon any matter may be excluded from the transcript by order of the Judicial Officer. A copy of the transcript shall be a part of the record and the sole official transcript of the proceeding. Copies of the transcript may be obtained by the Respondent from the reporter upon the payment of a reasonable price therefor. Copies of parts of the official record other than the transcript may be obtained from the librarian of the Postal Service or the Recorder.

(b) Changes in the official transcript may be made only when they involve errors affecting substance and then only in the manner herein provided. No physical changes shall be made in or upon the official transcript, or copies thereof, which have been filed with the record. Within 10 days after the receipt by any party of a copy of the official transcript, or any part thereof, the

party may file a motion requesting correction of the transcript. Opposing counsel shall, within such time as may be specified by the Judicial Officer, notify the Judicial Officer in writing of his or her concurrence or disagreement with the requested corrections. Failure to interpose timely objection to a proposed correction shall be considered to be concurrence. Thereafter, the Judicial Officer shall by order specify the corrections to be made in the transcript. The Judicial Officer on his or her own initiative may order corrections to be made in the transcript with prompt notice to the parties of the proceeding. Any changes ordered by the Judicial Officer other than the agreement of the parties shall be subject to objection and exception.

[36 FR 11574, June 16, 1971, as amended at 63 FR 66051, Dec. 1, 1998]

§ 957.20 Proposed findings and conclusions.

(a) Each party to a proceeding, except one who fails to appear at the hearing may, unless at the discretion of the Judicial Officer such is not appropriate, submit proposed findings of fact, conclusions of law and supporting reasons either in oral or written form in the discretion of the Judicial Officer. The Judicial Officer may also require parties to any proceeding to submit proposed findings of fact and conclusions of law with supporting reasons. Unless given orally the date set for filing of proposed findings of fact and conclusions of law shall be within 15 days after the delivery of the official transcript to the Recorder who shall notify both parties of the date of its receipt. The filing date for proposed findings shall be the same for both parties. If not submitted by such date, or unless extension of time for the filing thereof is granted, they will not be included in the record or given consideration.

(b) Except when presented orally before the close of the hearing, proposed findings of fact shall be set forth in serially numbered paragraphs and shall state with particularity all evidentiary facts in the record with appropriate citations to the transcript or exhibits supporting the proposed findings. Each