

§ 960.15

the answer is based on any alleged facts not already in the record of the proceeding, the Postal Service shall include with the answer either supporting affidavits or a request for further proceedings under § 960.19.

§ 960.15 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 960.19.

§ 960.16 Comments by other parties.

Any party to a proceeding other than the applicant and Postal Service may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 960.17 Settlement.

The applicant and the Postal Service may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded. If a prevailing party and Postal Service counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 960.18 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or Postal Service counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and

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

shall be conducted as promptly as possible. Whether or not the position of the agency was substantially justified shall be determined on the basis of the entire administrative record that is made in the adversary adjudication for which fees and other expenses are sought.

(b) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987]

§ 960.19 Decision.

(a) The adjudicative officer shall issue an initial decision on the application as promptly as possible after completion of proceedings on the application. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the Postal Service's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against the Postal Service and another agency, the decision shall allocate responsibility for payment of any award made between the Postal Service and the other agency, and shall explain the reasons for the allocation made.

(b) The Board of Contract Appeals shall issue its decision on the application as promptly as possible after completion of proceedings on the application. Whenever possible, the decision shall be made by the same Administrative Judge or panel that decided the contract appeal for which fees are sought. The decision shall be in the format described in paragraph (a) of this section.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987]