

G. STIPULATIONS

OVERVIEW:

Pursuant to § [2423.26](#), all parties may jointly submit a motion to the ALJ or Authority when they agree that no material issue of fact exists, and request that the matter be ruled on based on the parties' stipulations of fact.

OBJECTIVE:

To provide criteria to identify and process those limited number of ULP cases which, after the RD has issued a complaint, are appropriate candidates for either an ALJ's or the Authority's ruling based on the parties' stipulations of fact.

1. CRITERIA FOR TRANSFER OF CASE TO THE AUTHORITY:

Pursuant to § [2423.26](#)(a), and (c), transfer of the case to the Authority based upon the parties' stipulation is appropriate when based on the following criteria:

- a. *All parties agree that no material issue of fact exists;*
- b. *Stipulation provides an adequate basis for application of clear, established precedent, e.g., mid-contract bargaining; and*
- c. *A decision by an ALJ would not assist the Authority in resolving the case.*

2. TRIAL ATTORNEY TASKS IN ENSURING THAT CASE MEETS THE ABOVE CRITERIA AND IN DEVELOPING STIPULATION:

- a. *The Trial Attorney assigned to the case has thoroughly researched the point of law at issue, and concludes that the case is appropriate for submission to the Authority based on the parties' stipulation.*

That is, the Trial Attorney has researched the point of law at issue and concludes that it is well-settled and knows the material facts

that must be presented to the Authority to decide the case and includes those facts in the stipulation.

If all material facts are not presented, the Authority may deny the motion to decide the case by stipulation. See § [2423.26\(d\)](#); Cf. Bureau of Indian Affairs, Uintah Ouray Area Office, Ft. Duchesne, Utah, 52 FLRA No. 60, 52 FLRA 629, 647-48 (1996) (Chair Segal's dissent) (Chair would have remanded case under prior regulations which permitted remands because she was unable to determine from stipulated facts whether information requested met the particularized-need test applicable under § [7114\(b\)\(4\)](#)).

- b. *The Trial Attorney ensures that the parties agree on the material facts but disagree as to the appropriate law, i.e., Respondent has admitted all factual allegations in the complaint.*

This most frequently occurs where the allegation is a violation of § [7116\(a\)\(5\)](#), e.g., midtem bargaining where there is a conflict among the circuits.

- c. *The Trial Attorney ensures that the facts stipulated, including any attached exhibits incorporated therein, must be sufficiently detailed and internally consistent to allow the Authority to make the necessary findings.*

Otherwise, the Authority will likely deny the motion to decide the case by stipulation. Cf. Federal Aviation Administration, Washington, D.C., 52 FLRA No. 51, 52 FLRA 548, 552-54 (1996) (under prior regulations case remanded because majority of Members could not determine what proposal was submitted to the agency that led to its refusal to bargain); U.S. Department of Justice, Immigration and Naturalization Service, Chicago District Office, Chicago, Illinois, 52 FLRA No. 66, 52 FLRA 686, 691-93 (1996) (Authority remanded case to develop record because unable to assess defense based on the contract); Social Security Administration, Baltimore, Maryland, 55 FLRA No. 43, 55 FLRA 246, 249 (1999) (remand necessary to determine whether Respondent delayed compliance with an arbitration award and thus committed a ULP).

As stated above, the Authority will not remand cases. The practice is to deny the parties' motion to decide the case by

stipulation. If the Authority grants the parties' motion, the case will be decided by stipulation.

- d. *The Trial Attorney ensures that the case does not present any issue related to the resolution of the credibility of evidence.*

For example, cases based upon an alleged § [7116\(a\)\(2\)](#) violation are not candidates for transfer to the Authority based upon stipulations of fact.

- e. *The Trial Attorney ensures that the parties do not stipulate to legal conclusions, e.g., the impact of a change in a condition of employment.*

- f. *The Trial Attorney ensures that every stipulation contains an agreement stating that if the Authority denies the joint motion to consider the case based on the stipulations of facts, the case will be referred to the ALJ. If the ALJ denies the motion as well, the parties have the option of either (1) making the stipulation a joint exhibit or (2) withdrawing the stipulation.*

 *The Trial Attorney discusses all litigation strategy with the RA. Specifically, given the facts and circumstances of a particular case, consideration must be given to whether to file a joint motion to rule on a case based on the parties' stipulations of fact or whether to file a motion for summary judgment. In every case, the RA and Trial Attorney must balance the effort required to develop stipulations of fact against the possibility that the Authority will deny the parties' motion.*

3. CRITERIA FOR STIPULATIONS TO THE ALJ:

- a. *All parties agree that no material issue of fact exists; and*
- b. *Decision of ALJ would help Authority to resolve case, i.e., case precedent is not well settled.*

4. PROCESSING REQUIREMENTS:

An original and four copies, unless filing is by facsimile in which case one legible copy is filed.

§§ [2423.24](#) and [2423.25](#).

Q [Part 1, Chapter F](#) concerning Motions for Summary Judgment.