

D. POST-HEARING MOTIONS

OVERVIEW:

After the hearing closes there are certain matters that the Trial Attorney addresses in post-hearing motions to the ALJ or the Authority.

OBJECTIVE:

To provide guidance concerning the type of motions that are filed post-hearing, both before an ALJD and after an ALJD but before an Authority decision.

1. BEFORE AN ALJD:

a. *Motion to strike:*

A motion to strike is filed by a party seeking to remove evidence and/or an argument from the record. A motion to strike is appropriate if a brief refers to matters not in evidence or part of the record. See [ATTACHMENT 3D](#) for an example of a Motion to Strike.

b. *Motion to reopen the record:*

See [Part 2, Chapter FF](#), above.

c. *Motion to correct the transcript:*

Upon receipt of the official transcript of a hearing, the Trial Attorney reads the transcript to ensure that the testimony and evidentiary rulings are accurately recorded. The Trial Attorney files a written Motion to Correct the Transcript with the ALJ if a correction needs to be made to the transcript. Pursuant to § [2423.21\(b\)\(4\)](#), this motion is filed within 10 days after receipt of the transcript.

See, e.g., [Veterans Administration, Washington, D.C. and Veterans Administration Medical Center, Leavenworth, Kansas](#), 32 FLRA No. 126, 32 FLRA 855, 861 n.1 (1988) (ALJD) (Granting GC's unopposed motion to correct the Transcript); and [Department of Veterans Affairs Medical Center, Denver Colorado](#), 52 FLRA No. 2, 52 FLRA 16, 30 n.2 (1996) (ALJ granted unopposed motion to correct the transcript).

2. EITHER BEFORE AN ALJD OR BEFORE AN AUTHORITY DECISION:

a. *Motion to Strike:*

The Trial Attorney files a Motion to Strike when a Respondent refers to matters or documents that were not made a part of the record either before the ALJ or included as part of a stipulation, and when a response to the GC's exceptions is untimely filed.

See [U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Ocean Service, Coast and Geodetic Survey, Aeronautical Charting Division, Washington, D.C.](#), 54 FLRA No. 92, 54 FLRA 987, 1004-05 n.10 (1998) (Authority granted GC's motion to strike two exhibits attached to Respondent's exceptions that were not presented to the ALJ); [SBA](#), 54 FLRA No. 83, 54 FLRA 837, 843-44 n.5 (1998) (Authority granted Respondent's motion to strike exhibits attached to Charging Party's exceptions which were pleadings or exhibits filed in other forums **but denied** motion to strike exhibits that were either matters of public record or matters already in the record in the case); [USDA Forest Service Pacific Northwest Region, Portland](#),

Oregon, 48 FLRA No. 89, 48 FLRA 857, 857 n.1 (1993) (FLRA granted the GC's motion to strike portions of the Respondent's brief which referred to documents not included as part of a stipulation); U.S. Department of Health and Human Services, Social Security Administration, 50 FLRA No. 50, 50 FLRA 296, 298 (1995) (motion to strike a response to exceptions that was untimely filed is appropriate).

b. *Motion for Expedited Treatment:*

At times the issues involved in a particular case are novel and may be the basis for decisions in other cases. In these instances, and after consultation with the Deputy GC, it is appropriate to file a motion with the presiding ALJ or the FLRA, as appropriate, requesting expedited treatment. There may also be particular cases where excessive delay might adversely impact the ability of the FLRA to remedy the ULP allegations. While temporary relief under the OGC's Injunction Policy (see [Part 1, Chapter E](#)) may not be appropriate, expedited treatment by the ALJ and/or the FLRA would be appropriate.

3. AFTER AN ALJD BUT BEFORE AN AUTHORITY DECISION:

Motion for Oral Argument to the Authority:

At times the issues involved in a particular case will significantly impact the Federal labor relations program. In these instances, and after consultation with the Deputy GC, it is appropriate to file a motion with the FLRA requesting permission to argue the case orally. Although § [2423.30](#)(e) provides for the right to argue orally before the ALJ, there is no automatic right to argue orally before the FLRA, and oral arguments have only occurred in a limited number of instances. Even if the request is denied, it will place the FLRA on notice that the case is significant.

 *The Authority may set oral argument sua sponte. See, e.g., Social Security Administration, 52 FLRA No. 114, 52 FLRA 1159, 1164 n.4 (1997) (in a novel case on remand from the D.C. Circuit, Authority published a Notice of Oral Argument and provided interested parties the opportunity to submit amicus curiae briefs).*

4. AFTER AN AUTHORITY DECISION:

Motion for Reconsideration:

After a final decision or order by the FLRA, a party who can establish "extraordinary circumstances" is permitted to file a motion for reconsideration with the FLRA under § [2429.17](#). Extraordinary circumstances have only been found in a limited number of situations which include:

- An intervening court decision or change in the law affected dispositive issues;
- Evidence, information or issues crucial to the decision, had not been presented to the Authority;
- The Authority had erred in its remedial order, process, conclusion of law, or factual finding; and
- A party has not been provided with an opportunity to address an issue raised **sua sponte** by the FLRA.

U.S. Department of the Air Force, 375th Combat Support Group, Scott Air Force Base, Illinois, 50 FLRA No. 16, 50 FLRA 84, 86-87 (1995) and cases cited at nn.1-7; United States Department of Agriculture, Farm Service Agency, Kansas City, Missouri, 55 FLRA No. 10, 55 FLRA 22, 24 (1998) (Authority rejected consideration of procedurally deficient document).

The Deputy GC is consulted on whether to file a Motion for Reconsideration.

-  (1) Mere disagreement with the FLRA's conclusion does not satisfy the extraordinary circumstances requirement. *Id.* at 87.
-  (2) The Trial Attorney files timely responses to all Motions for Reconsideration filed by the opposing party's counsel.

5. PROCESSING REQUIREMENTS:

See [Part 1, Chapter L](#) (subsection 1).

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[Part 1, Chapter E](#) concerning Injunctions;

[Part 1, Chapter L](#) concerning Pre-hearing Motions; and

[Part 2, Chapter FF](#) concerning Reopening of GC's Case.