

**54 APPLICATION FOR REVIEW OF A REGIONAL DIRECTOR DECISION AND ORDER:** Section 2422.30(d) states that a party may file with the Authority an application for review of a Regional Director Decision and Order.

**54.1 Contents of the record:** Section 2422.30(e) sets forth the requirements for forwarding documents to the Authority when an application for review is filed/granted:

When no hearing has been conducted all material submitted to and considered by the Regional Director during the investigation becomes a part of the record. When a hearing has been conducted, the transcript and all material entered into evidence, including any posthearing briefs, become a part of the record.

***NOTE: Section 2422.30(e) does not instruct the regions to forward automatically the contents of the record to the Authority whenever an application for review is filed of a Regional Director's Decision and Order. Thus, when an application for review is filed with the Authority, neither the case file nor any other documents are forwarded to the Authority UNLESS specifically requested by the Authority.***

**54.1.1** When no hearing is held, the region does not wait for the Authority to request the file. Rather, the region transmits the representation case file directly to the Authority as follows:

- a. The representation case file is forwarded directly to the Office of Case Control by certified mail; nothing is removed from the file except as noted in part "b";
- b. The showing of interest is not forwarded with the file; [FLRA Form 52](#), summarizing the report on the showing of interest, is the only record of the showing of interest transmitted to the Authority; and
- c. Regional Offices may not submit "comments," sua sponte, addressing issues raised in applications for review.

**54.1.2** When a hearing has been held, the region waits for the Authority to request the record. The transcript, all material entered into evidence, including formal documents, exhibits, post hearing motions and briefs, become part of the record. **Neither the case file nor the Hearing Officer's Report is part of the official record and are not submitted to the Authority.** See

[HOG 4.1](#) and [17.1](#).

- 54.2 Filing an application for review:** Section 2422.31(a) requires that a party must file an application for review with the Authority within sixty (60) days of the Regional Director's Decision and Order. The sixty (60) day time limit provided for in 5 U.S.C. 7105(f) may not be extended or waived.
- 54.3 Contents of applications for review:** Section 2422.31(b) provides that an application for review must be sufficient to enable the Authority to rule on the application without recourse to the record. However, the Authority may, in its discretion, examine the record in evaluating the application. An application must specify the matters and rulings to which exceptions are taken, include a summary of evidence relating to any issue raised in the application, and make specific reference to page citations in the transcript if a hearing was held. An application may not raise any issue or rely on any facts not timely presented to the Hearing Officer or Regional Director.
- 54.4 Grounds for review:** Section 2422.31(c) states the Authority may grant an application for review only when the application demonstrates that review is warranted on one or more of the following grounds:
- a. The decision raises an issue for which there is an absence of precedent;
  - b. Established law or policy warrants reconsideration; or,
  - c. There is a genuine issue over whether the Regional Director has:
    - (i) Failed to apply established law;
    - (ii) Committed a prejudicial procedural error;
    - (iii) Committed a clear and prejudicial error concerning a substantial factual matter.
- 54.5 Amicus briefs to the Authority:** Occasionally the Authority provides interested parties, including the Office of the General Counsel, the opportunity to file briefs as amici curiae in a pending representation proceeding. On appropriate occasions, the Office of the General Counsel will submit a brief to the Authority on matters of concern to the Authority (see *Notice* in *Federal Register* dated November 22, 1994, providing interested parties with the opportunity to file briefs as amici curiae in *Naval Facilities Engineering Center, Port Hueneme, California* and the General Counsel's

subsequent brief). Regions may be called upon to prepare a brief to the Authority on behalf of the Office of the General Counsel.

**54.6 Opposition to application for review:** Section 2422.31(d) provides that a party may file with the Authority an opposition to an application for review within ten (10) days after the party is served with the application. A copy must be served on the Regional Director and all other parties, and a statement of service must be filed with the Authority.

**54.7 Regional Director Decision and Order becomes the Authority's action:** Section 2422.31(e) states that a Decision and Order of a Regional Director becomes the action of the Authority when:

- a. No application for review is filed with the Authority within sixty (60) days after the date of the Regional Director's Decision and Order; or
- b. A timely application for review is filed with the Authority, and the Authority does not undertake to grant review of the Regional Director's Decision and Order within sixty (60) days of the filing of the application; or
- c. The Authority denies an application for review of the Regional Director's Decision and Order.

For additional discussion concerning when the Regional Director's action becomes the final action of the Authority, see *Morale, Welfare and Recreation Directorate, Marine Corps Air Station, Cherry Point, North Carolina*, 48 FLRA 686 (1993).

**54.7.1** A waiver by the parties of their right to file an application for review of the Regional Director's Decision and Order is the equivalent of no application being filed at all [§ 2422.31(e)(1)]. See [CHM 53.10](#).

