

Procedure for Telephonic Testimony in Formal Cases

Rule 1: Purpose and scope.

In-person testimony is normally preferable to testimony by telephone; however, there can be reasons to justify receiving testimony by telephone. This policy is promulgated to provide the conditions under which testimony by telephone may be scheduled and received, to safeguard the due process rights of the parties, and to ensure that testimony by telephone is received under uniformly applied rules. Testimony by telephone may be received only if granted by the Regional Manager or presiding ALJ and specifically authorized by this policy.

Rule 2: Scheduling of telephonic testimony.

(a) The BHA may schedule, on its own motion, or on the motion of either party, testimony by telephone of a party or witness when it appears from the record that the party or witness is located at least 50 miles from the location at which the tribunal will conduct the hearing, without regard to state boundaries.

(b) The BHA may schedule testimony by telephone of a party or witness, at the request of one or more parties, when one of the following applies:

(1) The parties consent to the receipt of testimony by telephone.

(2) The party or witness is reasonably unable to testify in person due to a compelling employment, transportation, or health reason, or other compelling problem.

(c) The only party(ies) or witness(es) who may testify by telephone will be a party(ies) or witness(es) authorized to testify by telephone as specified in the ALJ's written order from the BHA, or a party(ies) or witness(es) specified by the consent of the parties and approved by the ALJ. The testimony of every other party or witness shall be received in person.

(d) The BHA will promptly rule on a request that testimony be taken by telephone. The basis for the request, the position of the parties, if known, and the ruling will be documented on the record.

(e) A party or witness scheduled to testify by telephone will be permitted to testify in person.

Rule 3: Procedures subsequent to scheduling.

(a) If a party moves to withdraw consent to the receipt of testimony by telephone prior to the taking of testimony, the BHA will allow the withdrawal if it is found that the consent was not freely and knowingly given.

(b) An objection to the receipt of testimony by telephone shall set forth the reasons in support thereof and shall be promptly communicated to the BHA, but may not be asserted subsequent to the taking of testimony.

(c) The BHA will promptly rule on objections to testimony by telephone after a reasonable attempt to obtain the position of the other party. The basis for the objection, the position of the other party, if known, and the ruling will be documented on the record.

Rule 4: Notice of testimony by telephone.

(a) When testimony by telephone is to be taken, the BHA will mail the order granting telephonic testimony to the parties and, if known, to their counsel or authorized agent in advance of the hearing. The hearing order will indicate:

(1) The date and time of the hearing in prevailing Eastern time.

(2) The names of counsel, authorized agent, parties and witnesses, if known, who are scheduled to appear or testify by telephone.

(3) The telephonic testimony will be recorded.

(b) A party intending to testify, to offer the testimony of witnesses, or to be represented by telephone, shall, in advance of the beginning of the hearing, supply the BHA with the name, location and telephone number of the persons who will so appear.

(c) When any testimony will be given from or with the aid of a document not previously distributed, the party expecting to introduce the document shall deliver it to the BHA and the other party and, if known, counsel or authorized agent before or at the beginning of the testimony. The BHA may require that the documents be delivered in advance of the hearing.

Rule 5: Conduct of a telephonic hearing.

(a) Before testimony is received, all parties will have the right to object to the telephonic testimony and to request that the witness appear in person.

(b) A party may pursue an objection to telephonic testimony at the hearing and shall set forth reasons in support thereof. If the objection is sustained, the BHA will reschedule the hearing at a later date, either in person or by telephone. If the objection is not sustained, the BHA may proceed with the hearing.

(c) At the start of the hearing, the BHA will state on the record the time and telephone numbers at which the BHA initiates the contact with any party, witness, legal counsel or authorized agent who is to testify or appear by telephone.

(d) The proceedings of the hearing will be recorded either via audio recording or steno graphically to preserve the record. A person testifying or appearing by telephone will be advised by the BHA that the proceedings are being recorded.

(e) The BHA will permit parties a reasonable opportunity to question other parties or witnesses testifying by telephone for the purpose of verifying the identity of the parties or witnesses.

(f) A party or witness not identified to the BHA and all other parties before the beginning of the testimony will not be permitted to testify by telephone. Testimony taken or given in violation of this section will be excluded from consideration.

(g) A person may not prompt or direct the testimony of a witness testifying by telephone. Testimony taken or given in violation of this section may be excluded from consideration by the BHA, with or without an objection from a party.

(h) A document not listed and provided as required by the applicable BHA rules may not be admitted nor testimony given or taken from it unless consent has been requested from and given by all parties and the BHA. Testimony taken or given in violation of this section will be excluded from consideration, as will the document.

(i) The oath or affirmation administered to parties or witnesses testifying by telephone shall indicate that the parties or witnesses will not testify from documents that are not in the record and that their testimony will not be prompted or directed during the hearing by any other person.

Rule 6: Representation by telephone.

The counsel or authorized agent of a party may appear at a hearing by telephone, provided prior written approval from the BHA has been obtained.