day of the mediation period, shall be stayed during the mediation period. The Office shall notify in writing the covered employee and the employing office when the mediation period has ended.

(d) Independence of mediation process

No individual, who is appointed by the Executive Director to mediate, may conduct or aid in a hearing conducted under section 1405 of this title with respect to the same matter or shall be subject to subpoena or any other compulsory process with respect to the same matter.

(e) Master list of mediators

(1) Development and maintenance of master list

The Executive Director shall develop and maintain a master list of individuals who are experienced in adjudicating, arbitrating, or mediating the kinds of personnel and other matters for which mediation may be held under this section. Such list may include, but not be limited to, members of the bar of a State or the District of Columbia and retired judges of the United States courts.

(2) Consideration of candidates

In developing the master list under this subsection, the Executive Director shall consider candidates recommended by the Federal Mediation and Conciliation Service or the Administrative Conference of the United States.


(2018—Subsec. (a)(1), Pub. L. 114–6, § 2(a)(1), substituted ‘‘from the master list developed and maintained under subsection (e)’’ for ‘‘after considering recommendations by organizations composed primarily of individuals experienced in adjudicating or arbitrating personnel matters’’.


Amendment by Pub. L. 115–397 effective upon expiration of the 180-day period beginning on Dec. 21, 2018, with provisions for effect on pending proceedings, see section 401 of Pub. L. 115–397, set out as a note under section 1301 of this title.

Effective Date of 2015 Amendment

Pub. L. 114–6, § 2(d), Mar. 20, 2015, 129 Stat. 82, provided that: ‘‘The amendments made by this section [amending this section and sections 1404 and 1416 of this title] shall apply with respect to mediations and other proceedings which are first initiated after the date of the enactment of this Act [Mar. 20, 2015].’’

Statutory Notes and Related Subsidiaries

(a) Requirement for hearings to commence in Office

(1) Hearing required upon request

If, not later than 10 days after a hearing officer submits the report on the preliminary review of a claim under section 1402a(c) of this title, a covered employee submits a request to the Executive Director for a hearing under this section, the Executive Director shall appoint an independent hearing officer pursuant to subsection (c) to consider the claim and render a decision, and a hearing shall be commenced in the Office.

(2) Exceptions

Paragraph (1) does not apply with respect to the claim if—

(A) the hearing officer’s report on the preliminary review of the claim under section 1402a(c) of this title includes the determination that the individual filing the claim is not a covered employee who has stated a claim for which relief may be granted under this title (as described in section 1402a(d) of this title); or

(B) the covered employee files a civil action as provided in section 1408 of this title with respect to the claim.

(b) Dismissal

A hearing officer may dismiss any claim that the hearing officer finds to be frivolous or that
fails to state a claim upon which relief may be granted.

(c) Hearing officer

(1) Appointment

Upon the filing of a request for a hearing under subsection (a), the Executive Director shall appoint an independent hearing officer to consider the request for a hearing under subsection (a) and render a decision. No Member of the House of Representatives, Senator, officer of either the House of Representatives or the Senate, head of an employing office, member of the Board, or covered employee may be appointed to be a hearing officer. The Executive Director shall select hearing officers on a rotational or random basis from the lists developed under paragraph (2). Nothing in this section shall prevent the appointment of hearing officers as full-time employees of the Office or the selection of hearing officers on the basis of specialized expertise needed for particular matters.

(2) Lists

The Executive Director shall develop master lists, composed of—

(A) members of the bar of a State or the District of Columbia and retired judges of the United States courts who are experienced in adjudicating or arbitrating the kinds of personnel and other matters for which hearings may be held under this chapter, and

(B) individuals expert in technical matters relating to accessibility and usability by persons with disabilities or technical matters relating to occupational safety and health.

In developing lists, the Executive Director shall consider candidates recommended by the Federal Mediation and Conciliation Service or the Administrative Conference of the United States.

(3) Prohibiting hearing officer conducting preliminary review from conducting hearing

The Executive Director may not appoint a hearing officer to conduct a hearing under this section with respect to a claim if the hearing officer conducted the preliminary review with respect to the claim under section 1402a of this title.

(d) Hearing

Unless a claim is dismissed before a hearing, a hearing shall be—

(1) conducted in closed session on the record by the hearing officer;

(2) commenced no later than 90 days after the Executive Director receives the covered employee's request for the hearing under subsection (a), except that, upon mutual agreement of the parties or for good cause, the Office shall extend the time for commencing a hearing for not more than an additional 30 days; and

(3) conducted, except as specifically provided in this chapter and to the greatest extent practicable, in accordance with the principles and procedures set forth in sections 554 through 557 of title 5.

(e) Discovery

Reasonable prehearing discovery may be permitted at the discretion of the hearing officer.

(f) Subpoenas

(1) In general

At the request of a party, a hearing officer may issue subpoenas for the attendance of witnesses and for the production of correspondence, books, papers, documents, and other records. The attendance of witnesses and the production of records may be required from any place within the United States. Subpoenas shall be served in the manner provided under rule 45(b) of the Federal Rules of Civil Procedure.

(2) Objections

If a person refuses, on the basis of relevance, privilege, or other objection, to testify in response to a question or to produce records in connection with a proceeding before a hearing officer, the hearing officer shall rule on the objection. At the request of the witness or any party, the hearing officer shall (or on the hearing officer's own initiative, the hearing officer may) refer the ruling to the Board for review.

(3) Enforcement

(A) In general

If a person fails to comply with a subpoena, the Board may authorize the General Counsel to apply, in the name of the Office, to an appropriate United States district court for an order requiring that person to appear before the hearing officer to give testimony or produce records. The application may be made within the judicial district where the hearing is conducted or where that person is found, resides, or transacts business. Any failure to obey a lawful order of the district court issued pursuant to this section may be held by such court to be a civil contempt thereof.

(B) Service of process

Process in an action or contempt proceeding pursuant to subparagraph (A) may be served in any judicial district in which the person refusing or failing to comply, or threatening to refuse or not to comply, resides, transacts business, or may be found, and subpoenas for witnesses who are required to attend such proceedings may run into any other district.

(g) Decision

The hearing officer shall issue a written decision as expeditiously as possible, but in no case more than 90 days after the conclusion of the hearing. The written decision shall be transmitted by the Office to the parties. The decision shall state the issues raised in the claim, describe the evidence in the record, contain findings of fact and conclusions of law, contain a determination of whether a violation has occurred, and order such remedies as are appropriate pursuant to subchapter II. The decision shall be entered in the records of the Office. If a decision is not appealed under section 1406 of this title to the Board, the decision shall be considered the final decision of the Office.
(h) Precedents

A hearing officer who conducts a hearing under this section shall be guided by judicial decisions under the laws made applicable by section 1302 of this title and by Board decisions under this chapter.


Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsecs. (c)(2)(A), (d)(3), and (h), was in the original ‘‘this Act’’, meaning Pub. L. 104–1, Jan. 23, 1995, 109 Stat. 3 which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables.

Rule 45(b) of the Federal Rules of Civil Procedure, referred to in subsec. (f)(1), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Subchapter II, referred to in subsec. (g), was in the original ‘‘title II’’, meaning title II of Pub. L. 104–1, Jan. 23, 1995, 109 Stat. 7, which is classified principally to subchapter II of this chapter. For complete classification of title II to the Code, see Tables.

AMENDMENTS

2018—Pub. L. 115–397, §103(e)(1), struck out ‘‘Complaint and’’ before ‘‘Hearing’’ in section catchline.

Subsec. (a). Pub. L. 115–397, §103(b), amended subsec. (a) generally. Prior to amendment, subsec. (a) related to filing complaints by covered employees after completion of mediation under former section 1403 of this title.

Subsec. (c)(1). Pub. L. 115–397, §103(c)(2), which directed substitution of ‘‘request for a hearing under subsection (a)’’ for ‘‘complaint’’, was executed by making the substitution both places it appeared, to reflect the probable intent of Congress.

Subsec. (c)(3). Pub. L. 115–397, §103(c), added par. (3).


Subsec. (d)(2). Pub. L. 115–397, §103(d), added par. (2) and struck out former par. (2) which read as follows: ‘‘commenced no later than 60 days after filing of the complaint under subsection (a), except that the Office may, for good cause, extend up to an additional 30 days the time for commencing a hearing; and’’.

Subsec. (g). Pub. L. 115–397, §103(e)(4), substituted ‘‘claim’’ for ‘‘complaint’’.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–397 effective upon expiration of the 180-day period beginning on Dec. 21, 2018, with provisions for effect on pending proceedings, see section 401 of Pub. L. 115–397, set out as a note under section 1301 of this title.

§ 1406. Appeal to Board

(a) In general

Any party aggrieved by the decision of a hearing officer under section 1405(g) of this title may file a petition for review by the Board not later than 30 days after entry of the decision in the records of the Office.

(b) Parties’ opportunity to submit argument

The parties to the hearing upon which the decision of the hearing officer was made shall have a reasonable opportunity to be heard, through written submission and, in the discretion of the Board, through oral argument.

(c) Standard of review

The Board shall set aside a decision of a hearing officer if the Board determines that the decision was—

(1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(2) not made consistent with required procedures; or

(3) unsupported by substantial evidence.

(d) Record

In making determinations under subsection (c), the Board shall review the whole record, or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(e) Decision

The Board shall issue a written decision setting forth the reasons for its decision. The decision may affirm, reverse, or remand to the hearing officer for further proceedings. A decision that does not require further proceedings before a hearing officer shall be entered in the records of the Office as a final decision.


§ 1407. Judicial review of Board decisions and enforcement

(a) Jurisdiction

(1) Judicial review

The United States Court of Appeals for the Federal Circuit shall have jurisdiction over any proceeding commenced by a petition of—

(A) a party aggrieved by a final decision of the Board under section 1406(e) of this title in cases arising under part A of subchapter II,

(B) a charging individual or a respondent before the Board who files a petition under section 1311(d)(4) of this title,

(C) the General Counsel or a respondent before the Board who files a petition under section 1311(c)(5) of this title, or

(D) the General Counsel or a respondent before the Board who files a petition under section 1351(c)(3) of this title.

The court of appeals shall have exclusive jurisdiction to set aside, suspend (in whole or in part), to determine the validity of, or otherwise review the decision of the Board.

(2) Enforcement

The United States Court of Appeals for the Federal Circuit shall have jurisdiction over any petition of the General Counsel, filed in the name of the Office and at the direction of the Board, to enforce a final decision under section 1405(g) or 1406(e) of this title with respect to a violation of part A, B, C, or D of subchapter II.

(b) Procedures

(1) Respondents

(A) In any proceeding commenced by a petition filed under subsection (a)(1)(A) or (B), or filed by a party other than the General Counsel under subsection (a)(1)(C) or (D), the Office shall be named respondent and any party be-