

39 CFR PART 961--RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO EMPLOYEE HEARING PETITIONS UNDER SECTION 5 OF THE DEBT COLLECTION ACT

Section

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Authority: 39 U.S.C. 204, 401; 5 U.S.C. 5514(a).

Source: 51 FR 1251, Jan. 10, 1986, unless otherwise noted.

Sec. 961.1 Authority for rules. These rules are issued by the Judicial Officer pursuant to authority delegated by the Postmaster General.

Sec. 961.2 Scope of rules. The rules in this part apply to the hearing provided by section 5 of the Debt Collection Act of 1982, as amended, 5 U.S.C. 5514(a), on the Postal Service's determination of the existence or amount of an employee debt to the Postal Service, or of the terms of the employee's debt repayment schedule. In addition, these rules, as appropriate, apply to a hearing under section 5 of the Debt Collection Act when an Administrative Law Judge or an Administrative Judge in the Judicial Officer Department is designated as the Hearing Official for a creditor Federal agency other than the Postal Service pursuant to an agreement between the Postal Service and that agency.

Section 961.3 Definitions.

- (a) "Employee" refers to a current employee of the Postal Service or another Federal agency who is alleged to be indebted to the Postal Service or another creditor Federal agency and whose hearing under section 5 of the Debt Collection Act is being conducted under these rules.
- (b) "General Counsel" refers to the General Counsel of the Postal Service, and includes a designated representative.
- (c) "Hearing Official" refers to an Administrative Law Judge qualified to hear cases under the Administrative Procedure Act, an Administrative Judge appointed under the Contract Disputes Act of 1978, or any other qualified person not under the control or supervision of the Postmaster General, who is designated by the Judicial Officer to conduct the hearing under section 5 of the Debt Collection Act of 1982, as amended, 5 U.S.C. 5514(a).
- (d) "Judicial Officer" refers to the Judicial Officer or Acting Judicial Officer of the United States Postal Service.
- (e) "Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act" refers to the formal written notice required by section 5 of the Debt Collection Act before involuntary collection deductions can be taken from an employee's salary.
- (f) "Postmaster/Installation Head" refers to the Postal Service official who is authorized under the Postal Service Employee and Labor Relations Manual to make the initial determination of employee indebtedness and to issue the "Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act."
- (g) "Recorder" refers to the Recorder, Judicial Officer Department, U. S. Postal Service, 475 L'Enfant Plaza, S. W., Washington, DC 20260-6100.

Sec. 961.4 Employee Petition for a hearing and supplement to petition.

- (a) If an employee desires a hearing, prescribed by section 5 of the Debt Collection Act, on the Postal Service's determination of the existence or amount of a debt, or on the involuntary repayment terms proposed by the Postal Service, the employee must file a written, signed petition with the Recorder, Judicial Officer Department, U. S. Postal Service, 475 L'Enfant Plaza, S. W., Washington, DC 20260-6100, on or before the fifteenth (15th) calendar day following the employee's receipt of the Postal Service's "Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act."
- (b) The hearing petition is to include the following:
- (1) The words, "Petition for Hearing Under the Debt Collection Act," prominently captioned at the top of the first page;
 - (2) The name of the employee petitioner and the employee's work and home addresses, and work and home telephone numbers; or other address and telephone number where the employee may be contacted about the hearing proceedings;
 - (3) A statement of the date the employee received the "Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act," and a copy of the Notice;
 - (4) A statement indicating whether the employee requests an oral hearing or a hearing based solely on written submissions;
 - (5) If the employee requests an oral hearing, a statement of the evidence he or she will produce which makes an oral hearing necessary, including a list of witnesses, with their addresses, whom the employee expects to call; the proposed city for the hearing site, with justification for holding the hearing in that city; and recommended alternative dates for the hearing; which should be within 40 days from filing the Petition;
 - (6) A statement of the grounds upon which the employee objects to the Postal Service's determination of the existence or amount of the debt, or to the proposed offset schedule. This statement should identify and explain with reasonable specificity and brevity the facts, evidence, and legal arguments, if any, which the employee believes support his or her position;
 - (7) Copies of all records in the employee's possession which relate to the debt; and
 - (8) If an employee contends that the Postal Service's proposed offset schedule would result in a severe financial hardship on the employee and his or her spouse and dependents, an alternative offset schedule, and a statement and supporting documents indicating for the employee and his or her spouse and dependents for the 1 year preceding the Postal Service's notice and for the repayment period proposed by the employee in his or her alternative offset schedule, their total income from all sources; assets; liabilities; number of dependents; and expenses for food, housing, clothing, transportation, medical care, and exceptional expenses, if any.
- (c) The employee may, if necessary, file with the Recorder, additional information as a Supplement to the Petition on or before the thirtieth (30th) calendar day following the employee's receipt of the Postal Service's "Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act."

Section 961.5 Effect of Petition filing. Upon receipt and docketing of the employee's Petition for a hearing, the Recorder will notify the Postmaster/Installation Head and the General Counsel that the Petition has been filed and that pursuant to section 5 of the Debt Collection Act, a timely-filed Petition for a hearing stays further collection action.

Section 961.6 Filing, docketing and serving documents; computation of time; representation of parties.

- (a) **Filing.** All documents relating to the Debt Collection Act hearing proceedings must be filed by the employee or the General Counsel with the Recorder. (Normal Recorder office business hours are between 8:15 a.m. and 4:45 p.m., eastern standard or daylight saving time as appropriate during the year.) The Recorder will transmit a copy of each document filed to the other party, and the original to the Hearing Official.
- (b) **Docketing.** The Recorder will maintain a docket record of Debt Collection Act hearing petition proceedings and will assign each employee Petition a docket number. After notification of the docket number, the employee and General Counsel should refer to it on any further filings regarding the Petition.
- (c) **Time computation.** A filing period under the rules in this part excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or legal holiday, in which event the period runs until the close of business on the next business day.
- (d) **Representation of parties.** After the filing of the Petition, further document transmittals for, or communications with, the Postmaster/Installation Head or Postal Service shall be through their representative, the General Counsel, or, if an appropriate notice of appearance is filed, the General Counsel's designee. If a notice of appearance by an attorney authorized to practice law in any of the United States or the District of Columbia or a territory of the United States is filed on behalf of an employee, further transmissions of documents and other communications with the employee shall be made through his or her attorney rather than directly with the employee.

Section 961.7 Answer to Petition and Supplement to Petition. If the employee's Petition states reasons to support the employee's position, within 15 days from notice of the Petition, the General Counsel shall file an Answer to the Petition, and attach all available relevant records and documents in support of the Postal Service's claim, and a list of witnesses the Postal Service intends to call if an oral hearing is granted. If the employee files a Supplement to the Petition, the General Counsel, within ten (10) calendar days from the filing of the Supplement with the Recorder must file any Supplemental Answer and records to support the position of the Postal Service.

Section 961.8 Hearing Official authority and responsibilities. The Hearing Official shall provide a full and fair hearing. The proceedings must be expedited to ensure issuance of the final decision no later than 60 days after the filing of the employee's hearing Petition. The Hearing Official's authority includes, but is not limited to, the following:

- (a) Ruling on all offers, motions or requests by the parties;
- (b) Issuing any notices, orders or memoranda to the parties concerning the hearing proceedings;
- (c) Using telephone conferences with the parties to expedite the proceedings. A memorandum of a telephone conference will be transmitted to both parties;
- (d) Determining if an oral hearing should be held; and setting the place, date and time for the hearing or the taking of testimony by telephone conference;
- (e) Administering oaths or affirmation to witnesses, and conducting the hearing in a manner to maintain discipline and decorum while assuring that relevant, reliable and probative evidence is elicited on the issues in dispute, but irrelevant, immaterial or repetitious evidence is excluded;
- (f) Establishing the record in the case;
- (g) Issuing the final decision orally or in writing no later than sixty (60) days after the filing of the employee's hearing Petition. When an oral decision is rendered, a written confirmation will thereafter be sent to the parties. The decision must include the determination of the amount and validity of the alleged debt and, where applicable, the repayment schedule. It should also include findings and reasons.

Sec. 961.9 Effect of Hearing Official's decision; motion for reconsideration. The Hearing Official's decision shall be the final administrative determination on the employee's debt or repayment schedule. No reconsideration of the decision will be allowed unless a motion for reconsideration is filed by either party within 10 days from receipt of the decision and shows good reasons for reconsideration. Reconsideration will be allowed only in the discretion of the Hearing Official. A motion for reconsideration by the employee will not operate to stay the collection action authorized by the Hearing Official's decision.

Sec. 961.10 Waiver of employee rights. The Hearing Official may determine the employee has waived his or her right to a hearing and the employee's pay shall be offset in accordance with the Postal Service's offset schedule, if the employee:

- (a) Files a Petition for hearing after the end of the 15-day period allowed by the Act for filing the Petition, and fails to demonstrate to the satisfaction of the Hearing Official good cause for the delay;
- (b) Has received notice to appear at an oral hearing but fails to do so without showing circumstances beyond the employee's control;
- (c) Fails to file required submissions or to comply with orders of the Hearing Official, and the failure makes it difficult or impossible to hold the hearing or to issue the decision within the statutory time;
- (d) Files a withdrawal of his her Petition for a hearing with the Recorder.

Section 961.11 Ex parte communications. Ex parte communications between a Hearing Official or his staff and a party shall not be made. This prohibition does not apply to procedural matters. A memorandum of any communication between the Hearing Official and a party will be transmitted to both parties.