



Issue Date: 17 December 2007

Case No. 2008-MIS-00001

In the Matter of

**DELEGATION OF AUTHORITY
TO ISSUE SUBPOENAS**

ADMINISTRATIVE ORDER

The Administrative Procedure Act (APA), 5 U.S.C. § 555(d) provides that agency subpoenas authorized by law shall be issued to a party on request and, when required by rules of procedure, on a statement or showing of general relevance and reasonable scope of the evidence sought. The APA provides at 5 U.S.C. § 556 that, subject to published rules of the agency and within its powers, employees presiding at hearings may issue subpoenas authorized by law.

The Department of Labor has published Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges, 29 C.F.R. Part 18. The general rule governing subpoenas is found at 29 C.F.R. § 18.24. Section 18.24(a) provides that “the Chief Administrative Law Judge or the presiding administrative law judge, as appropriate, may issue subpoenas as authorized by statute or law upon written application of a party requiring attendance of witnesses and production of relevant papers, books, documents, or tangible things in their possession and under their control.”

The longstanding practice before the Office of Administrative Law Judges is that parties are to direct subpoena requests to the presiding administrative law judge. Subpoena requests are to be directed to the Chief Administrative Law Judge only when (1) the Chief Judge is the presiding judge, (2) the case has not yet been assigned to a presiding judge, (3) the presiding judge is not available to render a timely decision on a request for a subpoena, (4) the subpoena request relates to a Longshore and Harbor Workers’ Compensation Act claim pending before the Office of Workers’ Compensation

Programs (OWCP),¹ or (5) extraordinary circumstances mandate that the Chief Judge issue the subpoena.

In order to promote the effective and efficient administration of the hearing process, I hereby delegate to the Deputy Chief Administrative Law Judge,² Associate Chief Administrative Law Judges, and District Chief Administrative Law Judges, the authority to entertain, rule on, and issue subpoenas as authorized by law in those instances in which the Chief Judge would normally entertain the subpoena request.³ In practical terms, this means that the Associate Chief Administrative Law Judges would issue subpoenas under the delegation when the Chief Judge is not available or where the subpoena request arises in a matter under their management responsibility. The District Chief Judges would issue subpoenas under the delegation in matters assigned to a district office, or in the case of a matter still pending before OWCP, in the OWCP region or regions coinciding with the district office's typical caseload.⁴

SO ORDERED.

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JOHN M. VITTON
Chief Administrative Law Judge

¹ See *Maine v. Brady-Hamilton Stevedore Co.*, 18 BRBS 129 (1986) (*en banc*); *Butler v. Ingalls Shipbuilding, Inc.*, 28 BRBS 114 (1994) (OALJ has the exclusive authority to issue subpoenas, whether the case is before the OWCP or the OALJ).

² The position of Deputy Chief Judge is vacant.

³ See regarding the authority of agency officer to delegate functions *United States v. Marshall Durbin & Co. of Haleyville*, 363 F.2d 1 (5th Cir. 1966) and *United States v. Custodian of Records, Southwestern Fertility Center*, 743 F.Supp. 783 (W.D.Ok. 1990).

⁴ Although Department of Labor administrative law judges have nationwide jurisdiction, the District Chief Judges know, through practical experience, where their caseload typically occurs. In those instances in which ambiguity exists, the District Chief Judge should coordinate with the Chief Judge or other delegates to determine which delegate should entertain the subpoena request.