

WAC 468-300-815 Administrative hearing. (1) The WSF company security officer or his or her designee (hereinafter "hearing official") shall:

(a) Notify the appellant of the hearing date, time, and location;
(b) Conduct a hearing within ten business days of receipt of the notice of appeal; and

(c) Issue a written ruling upholding, rescinding, or modifying the no trespass warning notice no later than five business days after the hearing. The written ruling shall conform to the requirements of the Washington Administrative Procedure Act, chapter 34.05 RCW.

(2) The hearing official shall consider a sworn report or a declaration under penalty of perjury as authorized by RCW 9A.72.085, written by the individual who issued the no trespass warning notice, without further evidentiary foundation. This evidence creates a rebuttable presumption that the violation occurred and the burden thereafter rests with the appellant to overcome the presumption.

(3) The hearing official shall consider the no trespass warning notice and may consider any written or oral sworn testimony of the appellant or witnesses, as well as pictorial or demonstrative evidence offered by the appellant that the hearing official considers relevant and trustworthy. The hearing official may consider information that would not be admissible under the evidence rules in a court of law.

(4) The hearing official may issue subpoenas for the attendance of witnesses and the production of documents, and shall administer individual oaths to witnesses. The hearing official shall not issue a subpoena for the attendance of a witness at the request of the appellant unless the request is accompanied by the fee required by RCW 5.56.010 for a witness in district court. The appellant shall be responsible for serving any subpoena issued at the appellant's request.

(5) If, after the hearing, the hearing official is persuaded on a "more probable than not" basis that the violation did occur, the no trespass warning notice shall be upheld. However, if the appellant can establish that he or she necessarily requires access to the WSF property from which he or she is expelled for purposes of commuting to and from work, school, or necessary medical treatment, the hearing officer shall:

(a) Modify the terms of the no trespass warning notice to allow for travel at specified times only insofar as to limit the specific hardship caused by the expulsion; and

(b) Fine the individual two hundred fifty dollars for the first offense and five hundred dollars for each offense thereafter.

If, however, the violation is not proven on a "more probable than not" basis, then the hearing official shall rescind the no trespass warning notice. If the hearing official rescinds a no trespass warning notice, the no trespass warning notice shall not be considered a prior no trespass warning notice for purposes of WAC 468-300-806(3).

(6) The decision of the hearing official is final. Any appeal of the hearing official's decision may be made in conformance with the Washington Administrative Procedure Act, chapter 34.05 RCW.

(7) No determination of facts made by the hearing official under this section shall have any collateral estoppel effect on a subsequent criminal prosecution or civil proceeding and shall not preclude litigation of those same facts in a subsequent criminal prosecution or civil proceeding.

(8) In no event shall the hearing official be a person who is subordinate to the person who issued the no trespass warning notice.

[Statutory Authority: RCW 47.56.030 and 47.60.010. WSR 13-16-010, § 468-300-815, filed 7/25/13, effective 8/25/13.]