

WAC 170-03-0350 Authority of the administrative law judge. (1)

The ALJ must hear and decide the issues de novo (anew) based on what is presented during the hearing, provided that the ALJ's authority shall be limited to determining whether the sanction imposed or action taken by the department was warranted and/or justified under the evidence presented during the hearing. The ALJ shall not have authority to substitute or impose an alternative sanction, remedy or action.

(2) As needed, the ALJ may:

(a) Administer oaths and affirmations;

(b) Determine the order for presenting evidence;

(c) Issue subpoenas and protective orders as provided in the Administrative Procedure Act;

(d) Rule on objections, motions, and other procedural matters;

(e) Rule on motions for summary judgment;

(f) Rule on offers of proof and receive relevant evidence;

(g) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;

(h) Question witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;

(i) Request additional exhibits and/or testimony following a finding that the additional evidence is necessary to complete the record provided all parties are given a full opportunity for cross-examination and/or rebuttal;

(j) Take official notice of facts pursuant to RCW 34.05.452(5);

(k) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;

(l) Permit or require oral argument or briefs and determine the time limits for submission thereof;

(m) Issue an order of default pursuant to RCW 34.05.440;

(n) Hold prehearing conferences;

(o) Allow a party to waive rights given by chapter 34.05 RCW or these rules unless another law prevents it;

(p) Decide whether a party has a right to a hearing;

(q) Permit and regulate the taking of discovery;

(r) Consider granting a stay if authorized by law or DEL rule;

and

(s) Take any other action necessary and authorized by any applicable statute or rule.

(3) The ALJ may, upon his or her own motion or the motion of any party, order that multiple administrative proceedings be consolidated for hearing if they involve common issues or parties.

(4) The ALJ may waive any of the department's procedural rules, other than a rule relating to jurisdiction, for any party not represented by legal counsel or a lay representative upon specific findings that:

(a) The waiver is necessary to avoid manifest injustice to the unrepresented party; and

(b) That the waiver would not prejudice any other party.

(5) The ALJ shall make findings of fact based on the preponderance of the evidence unless otherwise required by law.

[Statutory Authority: Chapter 43.215 RCW, RCW 34.05.220, chapter 34.05 RCW, 2006 c 265. WSR 08-06-102, § 170-03-0350, filed 3/5/08, effective 4/5/08.]