

(4) The Coast Guard has granted effective relief satisfactory to the applicant.

(b) Administrative closure does not constitute a denial of relief. Applicants who believe their cases should not have been administratively closed by the Chair may resubmit their applications with a request for further consideration and a statement explaining why the applicant believes his or her case should be docketed and considered by the Board. A request for further consideration shall be regarded as a new application for the purposes of §§ 52.21 and 52.26.

(c) If the Chair administratively closes a case, the applicant shall be advised of the reason and of the right to resubmit his or her application.

#### **Subpart E—Submissions by the Coast Guard and Other Offices**

##### **§ 52.41 Assistance.**

The Board may request such advice, opinion, assistance, or use of the facilities of any other bureau, board, or office of the Department of Transportation as the Board deems necessary.

##### **§ 52.42 Views of the Coast Guard.**

(a) The Board shall transmit to the Commandant of the Coast Guard or his or her delegate a copy of each application for relief submitted and docketed under subpart C of this part, together with any briefs, memoranda, and documentary evidence submitted or obtained in the case.

(b) The Commandant of the Coast Guard or his or her delegate may forward to the Board a written advisory opinion presenting the views of the Coast Guard on any case before the Board.

(c) An advisory opinion furnished by the Coast Guard under this section shall not be binding upon the Board, but shall be considered by the Board, along with all other information and material submitted in the particular case, if it is received by the Board within 135 days of the date the application is complete. The Chair may, in his or her discretion, grant the Coast Guard an extension of the time provided for submitting the advisory opinion.

(d) The Board shall promptly send a copy of each submission made by the Coast Guard under this section to the applicant involved, subject to the limitations in §§ 52.42(c) and 52.43(c). Each applicant has 30 days, from the date the Board sends the submission, to submit to the Board a written rebuttal or response to the Coast Guard's advisory opinion or a written request for an

extension of the time to respond, subject to the provisions in § 52.26.

(e) Advisory opinions submitted by the Coast Guard and briefs submitted by applicants in response to the advisory opinions of the Coast Guard must be assembled in a manner that permits easy reproduction and may not exceed fifteen double-spaced typewritten pages in a type size with no more than twelve characters per inch. This limitation does not apply to supporting documentary evidence. In complex cases, the Chair may waive this limitation.

##### **§ 52.43 Requests for further information; submissions of classified, privileged, and sensitive information.**

(a) The Chair or the Board may ask the applicant to submit additional information not included in the application or response to the advisory opinion.

(b) The Chair or the Board may ask the Coast Guard or other Government office to submit any information, including reports of investigations, that the Chair or the Board deems relevant to an applicant's case.

(c) Whenever the Coast Guard or other Government office submits classified, privileged, or sensitive information to the Board in accordance with paragraph (b) of this section or § 52.42(b), it shall identify such information and also provide the Board with a copy of that part of the information that would be released to the applicant by the Coast Guard or other Government office if he or she requested it under 49 CFR parts 7 and 10. The Board shall forward only this redacted copy to the applicant.

#### **Subpart F—Hearings**

##### **§ 52.51 General provision.**

In each case in which the Chair determines that a hearing is warranted, the applicant will be entitled to be heard orally in person, by counsel, or in person with counsel.

##### **§ 52.52 Notice of hearing.**

(a) If the Chair determines that a hearing is warranted, the Chair shall notify the applicant that a hearing has been granted.

(b) The date of hearing shall be not less than 21 days from the date of this notification. Written notice stating the date, time, and place of the hearing shall be given to the applicant and the Coast Guard.

##### **§ 52.53 Witnesses.**

(a) In any case in which the Chair has granted a hearing, the applicant shall have the right to present witnesses.

(b) It is the responsibility of the applicant to notify his or her witnesses

and to ensure their appearance at the date, time, and place set for the hearing.

##### **§ 52.54 Expenses.**

No expenses of any nature whatsoever incurred by an applicant, his or her counsel, witnesses, or others acting on behalf of the applicant shall be paid by the Government, except that an applicant may be entitled to representation by a Coast Guard law specialist if the case has been processed under the Whistleblower Protection Act. 10 U.S.C. 1034(f)(3)(A).

##### **§ 52.55 Nonappearance.**

An applicant who fails without good cause to appear in person or by counsel at the appointed date, time, and place for hearing, is deemed to have waived the right to a hearing. The application is then considered by the Board on the basis of all the material of record.

##### **§ 52.56 Conduct of hearing.**

(a) The Chair or the Chair's designee shall conduct a hearing so as to ensure a full and fair presentation of the evidence.

(b) The hearing is not limited by legal rules of evidence, but reasonable standards of competency, relevancy, and materiality are observed for the receipt and consideration of evidence.

(c) All testimony shall be given under oath or affirmation.

##### **§ 52.57 Record of hearing.**

A hearing pursuant to this subpart in open session shall be recorded verbatim and, at the discretion of the Board or direction of the Secretary, shall be transcribed.

#### **Subpart G—Judgment and Disposition**

##### **§ 52.61 Deliberations and decision.**

(a) The Board is convened at the call of the Chair and its meetings are recessed or adjourned by order of the Chair. Only members of the Board and its staff may be present during the deliberations of the Board. The Board's deliberations are conducted in executive session and are not reported.

(b) When the Board finds that the facts have not been fully and fairly disclosed by the records, testimony, and any other evidence before the Board, the Board may request the applicant and/or the Coast Guard to obtain and submit such further evidence as it considers essential to a complete and impartial understanding of the facts and issues.

(c) Following the receipt of all evidence, the Chair shall cause to be prepared and shall submit to the Board for its consideration a draft decision containing proposed findings and conclusions and a proposed order. A