

## **CHAPTER 98-02-04 POSTHEARING PROCEDURE**

### **Section**

98-02-04-01	Posthearing Briefs and Proposed Findings
98-02-04-02	Agency Consideration of Information Not Presented at Formal Hearing [Reserved]
98-02-04-03	Findings of Fact, Conclusions of Law, and Order of Agency [Reserved]
98-02-04-04	Petition for Reconsideration [Reserved]
98-02-04-05	Effectiveness of Orders [Reserved]
98-02-04-06	Final Orders, Decisions on Appeal
98-02-04-07	Petition to Reopen the Hearing

### **98-02-04-01. Posthearing briefs and proposed findings.**

At the conclusion of the hearing, any party may request an opportunity to submit proposed findings of fact and conclusions of law and briefs. The hearing officer may direct the parties to submit proposed findings of fact and conclusions of law and briefs. The hearing officer shall fix the time for filing and service and the order of filing, and may direct that briefs be filed simultaneously or sequentially. When it is ordered that proposed findings of fact and conclusions of law and briefs be filed and served by the party initiating the proceeding, and that party fails to comply, the hearing officer may recommend to the agency head that the proceeding be dismissed. Briefs may not incorporate evidentiary materials through appendices or other attachments unless those items were received in evidence during the course of the hearing.

**History:** Effective January 1, 1992; amended effective April 1, 1998.

**General Authority:** NDCC 54-57-05

**Law Implemented:** NDCC 28-32-35, 54-57-04

### **98-02-04-02. Agency consideration of information not presented at formal hearing.**

[Reserved] See North Dakota Century Code section 28-32-25 for statutory requirements.

### **98-02-04-03. Findings of fact, conclusions of law, and order of agency.**

[Reserved] See North Dakota Century Code section 28-32-39 for statutory requirements.

### **98-02-04-04. Petition for reconsideration.**

[Reserved] See North Dakota Century Code section 28-32-40 for statutory requirements.

### **98-02-04-05. Effectiveness of orders.**

[Reserved] See North Dakota Century Code section 28-32-41 for statutory requirements.

### **98-02-04-06. Final orders, decisions on appeal.**

If a recommended order is issued by a hearing officer outside the agency, the agency shall provide to that hearing officer a signed copy of the final order, as soon after its issuance as possible, as well as a copy of the findings of fact and conclusions of law on which the final order is based, if different than the recommended findings of fact and conclusions of law of the hearing officer. If a recommended order is issued by a hearing officer outside the agency and the agency's final order is appealed, the agency shall provide to that hearing officer a copy of any decision issued by the court on appeal, as soon after its issuance as possible.

**History:** Effective April 1, 1998.

**General Authority:** NDCC 54-57-05

**Law Implemented:** NDCC 28-32-39, 28-32-42, 28-32-44, 28-32-46, 28-32-49, 54-57-05

**98-02-04-07. Petition to reopen the hearing.**

1. If a hearing officer issues either a recommended or final order and the hearing officer has not yet issued the order, any party may petition the hearing officer to reopen the hearing.
2. The petitioning party must submit with the petition to reopen the hearing a statement of specific grounds upon which reopening is requested or a statement of further showing to be made in the hearing. The petition and any statement will be considered a part of the record in the proceeding.
3. Specific grounds or a further showing sufficient to reopen a hearing include:
  - a. Any irregularities of procedure of or by the hearing officer or any party, any order of the hearing officer, or any abuse of discretion of the hearing officer by which any party was prevented from having a fair hearing.
  - b. Accident or surprise which ordinary prudence could not have guarded against.
  - c. Newly discovered evidence material to the party submitting the petition which the party could not with reasonable diligence have discovered or produced at the hearing.
4. The hearing officer may deny the petition or grant the petition on such terms as the hearing officer may prescribe.
5. If a hearing officer issues a recommended order and has already issued the recommended order, any petition to reopen the hearing must be made to the agency.
6. If a hearing officer issues a recommended order, the recommended order has already been issued, and a party submits to the agency a petition to reopen the hearing, the agency may designate a hearing officer to deny or grant the petition to reopen the hearing under subsections 3 and 4. If available, the hearing officer designated shall be the same hearing officer that conducted the hearing.
7. If a hearing officer issues a recommended order, the final order has already been issued by the agency, and a party submits to the agency a petition to reopen the hearing, the agency may treat the petition as a petition for reconsideration under North Dakota Century Code section 28-32-40.
8. A petition to reopen the hearing is deemed denied if a hearing officer or the agency does not dispose of it within thirty days of the filing of the petition.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 57-54-05

**Law Implemented:** NDCC 28-32-31, 28-32-35, 28-32-36, 28-32-40