

§ 1149.49 How is evidence presented at the hearing?

(a) The ALJ determines the admissibility of evidence.

(b) Except as provided in this part, the ALJ is not bound by the Federal Rules of Evidence. However, the ALJ may choose to apply the Federal Rules of Evidence where he/she deems appropriate, for example, to exclude unreliable evidence.

(c) The ALJ must exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) The following evidence concerning offers of compromise or settlement is inadmissible when offered to prove liability for, invalidity of, or amount of a claim that was disputed as to validity or amount, or to impeach through a prior inconsistent statement or contradiction:

(1) Providing, offer, or promising to provide a valuable consideration in compromising or attempting to compromise the claim;

(2) Accepting, offering, or promising to accept a valuable consideration in compromising or attempting to compromise the claim; and

(3) Conduct or statements made in compromise negotiations regarding the claim, except when offered in a criminal case and the negotiations related to a claim by a public office or authority in the exercise of regulatory, investigative, or enforcement authority.

(g) The ALJ must permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence taken for the record must be open to examination by all parties unless otherwise ordered by the ALJ.