

§ 160.540 Evidence.

- (a) The ALJ must determine the admissibility of evidence.
- (b) Except as provided in this subpart, the ALJ is not bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, for example, to exclude unreliable evidence.
- (c) The ALJ must exclude irrelevant or 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 must be excluded if it is privileged under Federal law.
- (f) Evidence concerning offers of compromise or settlement are inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.
- (g) Evidence of crimes, wrongs, or acts other than those at issue in the instant case is admissible in order to show motive, opportunity, intent, knowledge, preparation, identity, lack of mistake, or existence of a scheme. This evidence is admissible regardless of whether the crimes, wrongs, or acts occurred during the statute of limitations period applicable to the acts or omissions that constitute the basis for liability in the case and regardless of whether they were referenced in the Secretary's notice of proposed determination under § 160.420 of this part.
- (h) The ALJ must permit the parties to introduce rebuttal witnesses and evidence.
- (i) All documents and other evidence offered or taken for the record must be open to examination by both parties, unless otherwise ordered by the ALJ for good cause shown.