

## **5102 New or Additional Evidence**

### **(a)**

A party who files a board appeal, also known as a board appellant, has the right to file an application to present new or additional evidence. Except as otherwise provided in this rule or specified by the agency, the application shall be filed and served at the same time the board appeal is filed. If the agency extends the time to file a board appeal, the time to file and serve the application shall also be extended to the same date the board appeal is filed.

### **(b)**

A party who responds to a board appeal, also known as a board respondent, may file and serve an application to present new or additional evidence only if authorized by the agency. Prior to the board modifying or reversing the results of an administrative law judge's decision or order, the agency shall notify a board respondent that it is authorized to make an application to present new or additional evidence. If authorized, the board respondent shall file and serve the application within 12 days after the agency sends notice, or within such other time as the agency may specify.

### **(c)**

Notwithstanding (b) above, the board may correct a clerical error in a decision or order of an administrative law judge, or set aside the order or decision, without authorizing a board respondent to file an application to present new or additional

evidence.

**(d)**

An application to present new or additional evidence shall state the nature of the evidence, the materiality of such evidence, and the reasons why such evidence was not introduced at the hearing before the administrative law judge. If the new or additional evidence is documentary in nature, the applicant shall attach the evidence to the application. No such evidence shall be considered by the board unless the board admits it.

**(e)**

Whenever the board on its own motion or upon the application of a party grants the taking of new or additional evidence, the matter may be remanded to an administrative law judge for that purpose. The issues at such hearing shall be limited to those issues designated by the board.

**(f)**

However, if the matter is not remanded and only documentary evidence is to be admitted, the agency shall serve the evidence and give each party 10 days thereafter to file and serve a response to it.