

AGENCY CHANGES TO AN ALJ'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

A review of the authority of state administrative agencies to change an administrative law judge's proposed findings of fact and conclusions of law and appellate decisions concerning such authority.

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TODAY'S OUTLINE

POINTS OF DISCUSSION

- 1) Background and SOAH Hearings
- 2) Specific Agencies that Utilize SOAH
- 3) Other Agencies
- 4) Practice Tips
- 5) Upcoming Case

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Background – Findings of Fact and Conclusions of Law

2001.141(b)

- *A decision or order that may become final under Section 2001.144 must include findings of fact and conclusions of law, separately stated.*

2001.141(c)

- *Findings of fact may be based only on the evidence and on matters that are officially noticed.*

2001.141(d)

- *Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings.*

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SOAH Hearings and APA

2001.058(a)

This section applies only to an administrative law judge employed by SOAH

2001.058(e)

A state agency may change a finding of fact or conclusion of law made by the ALJ, or may vacate or modify an order issued by the ALJ, only if the agency determines:

-One of Three Reasons Applies-

The agency shall state in writing the specific reason and legal basis for a change made under this subsection.

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The Three Reasons

1. *ALJ did not properly apply applicable law, agency rules, written agency policies, or prior decisions*
2. *A prior agency decision that the ALJ relied is incorrect or should be changed*
3. *A technical error in a finding of fact should be changed*

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Findings of Fact

Basic Facts and Ultimate Facts

Basic Facts – who did what, where, when, how, why, etc..

Ultimate Facts – usually track agency rules or statutory language

Can an Agency change these facts based on evidentiary reasons?

Can an Agency add new facts?

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