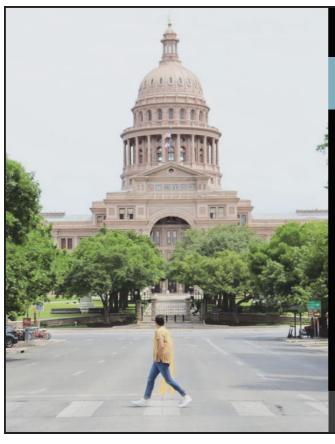


1



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

McElroy Sullivan Miller & Weber, LLP | 2021

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.

McElroy Sullivan Miller & Weber, LLP | 2021

3

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.

McElroy Sullivan Miller & Weber, LLP | 2021

The Three Reasons

- 1. ALJ did not properly apply applicable law, agency rules, written agency policies, or prior decisions
- 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

McElroy Sullivan Miller & Weber, LLP | 2021

5

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?

McElroy Sullivan Miller & Weber, LLP | 2021





Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the <u>UT Law CLE eLibrary (utcle.org/elibrary)</u>

Title search: Agency Changes of an ALJ's Findings of Fact and Conclusions of Law

Also available as part of the eCourse

<u>Current Trends in Operation and Compliance in Administrative Proceedings</u>

First appeared as part of the conference materials for the 16^{th} Annual Advanced Texas Administrative Law Seminar session "Agency Changes of an ALJ's Findings of Fact and Conclusions of Law"