

**17A.15 Final decisions — proposed decisions — conclusiveness — review by the agency.**

1. When the agency presides at the reception of the evidence in a contested case, the decision of the agency is a final decision.

2. When the agency did not preside at the reception of the evidence in a contested case, the presiding officer shall make a proposed decision. Findings of fact shall be prepared by the officer presiding at the reception of the evidence in a contested case unless the officer becomes unavailable to the agency. If the officer is unavailable, the findings of fact may be prepared by another person qualified to be a presiding officer who has read the record, unless demeanor of witnesses is a substantial factor. If demeanor is a substantial factor and the presiding officer is unavailable, the portions of the hearing involving demeanor shall be heard again or the case shall be dismissed.

3. When the presiding officer makes a proposed decision, that decision then becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within the time provided by rule. On appeal from or review of the proposed decision, the agency has all the power which it would have in initially making the final decision except as it may limit the issues on notice to the parties or by rule. The agency may reverse or modify any finding of fact if a preponderance of the evidence will support a determination to reverse or modify such a finding, or may reverse or modify any conclusion of law that the agency finds to be in error. In cases where there is an appeal from a proposed decision or where a proposed decision is reviewed on motion of the agency, an opportunity shall be afforded to each party to file exceptions, present briefs and, with the consent of the agency, present oral arguments to the agency members who are to render the final decision.

4. This section shall not preclude an agency from instituting a system whereby the proposed decision of a presiding officer in a contested case may be appealed to, or reviewed on motion of, a body consisting of one or more persons that is between the presiding officer and the agency. If an agency institutes such a system of intermediate review, the proposed decision of the presiding officer becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the intermediate reviewing body within the time provided by rule. An intermediate reviewing body may be vested with all or a part of the power which it would have in initially making the decision. A decision of such an intermediate reviewing body is also a proposed decision and shall become the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within the time provided by rule. In cases where there is an appeal from a proposed decision rendered by a presiding officer to an intermediate reviewing body, or where such a proposed decision is reviewed on motion of an intermediate reviewing body, an opportunity shall be afforded to each party to file exceptions, present briefs and, with the consent of the intermediate reviewing body, present oral arguments to those who are to render the decision.

5. When an appeal from an agency decision in a contested case may be taken to another agency pursuant to statute, or a second agency may according to statute review on its own motion the decision in a contested case by the first agency, the appeal or review shall be deemed a continuous proceeding as though before one agency. A decision of the first agency in such a case is a proposed decision and shall become the final decision without further proceedings unless there is an appeal to, or review on motion of, the second agency within the time provided by statute or rule. In deciding an appeal from or review of a proposed decision of the first agency, the second agency shall have all those powers conferred upon it by statute and shall afford each party an opportunity to file exceptions, present briefs and, with its consent, present oral arguments to agency members who are to render the final decision.

[C75, 77, 79, 81, §17A.15]

98 Acts, ch 1202, §17, 46

Referred to in §10A.801, 17A.9, 86.24, 86.42, 331.394, 421.17