

875—5.22(88) Motion for summary decision.

5.22(1) Any party may, at least 20 days before the date fixed for any hearing, move with or without supporting affidavits for a summary decision in favor of the moving party on all or any part of the proceeding. Any other party may, within ten days after service of the motion, serve opposing affidavits or countermove for summary decision. The hearing examiner may discretionarily set the matter for argument and call for the submission of briefs.

5.22(2) The filing of any documents under subrule 5.22(1) shall be with the commissioner, and copies of any such documents shall be served in accordance with rule 875—5.15(88).

5.22(3) The hearing examiner may grant the motion if the pleadings, affidavits, material obtained by discovery or otherwise obtained, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision. The hearing examiner may deny such motion whenever the moving party denies access to information by means of discovery to a party opposing the motion.

5.22(4) Affidavits shall set forth such facts as would be admissible in evidence in the hearing and show affirmatively that the affiant is competent to testify to the matters stated therein. When a motion for summary decision is made and supported as provided in this rule, a party opposing the motion may not rest upon the mere allegations or denials of its own pleading. The response of the party opposing the motion must set forth specific facts showing that there is a genuine issue of fact for the hearing.

5.22(5) Should it appear from the affidavits of a party opposing the motion that the opposing party cannot for reasons stated present by affidavit facts essential to justify the opposition, the hearing examiner may deny the motion for summary decision or may order a continuance to permit affidavits to be obtained or discovery to be had or may make such other order as is just.

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