

Here is an excerpt from the the law journal “**Journal of the National Association of Administrative Law Judiciary**”, Vol. 23, Issue 3, Article 1: **Manual for Administrative Law Judges**, by Morell E. Mullins, 1-15-2004, that discusses the choice of venue in a case like this. Of course a law journal article has not the force or effect of law, but I think this one is nevertheless interesting. I am not submitting this document for consideration by the Commission because it is untimely, filing-wise (of course I wish I had come across it sooner), and because doing so might violate the Commission's ex parte rules. Besides, I am sure the full Commission will follow the ALJ Handbook without my telling them to do so. Here's a link to the complete article:

<https://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1187&context=naalj>

I do feel that this article reinforces the arguments that I made regarding the choice of venue in my Petition for Review, where it states at pp. 67-68 (in pertinent part; emphasis supplied) as follows:

"2. Place of hearing. The APA, with respect to formal adjudicative hearings, provides expressly that 'due regard shall' be paid to the 'convenience and necessity of the parties' in fixing the place, and time, of hearings. 5 U.S.C. § 554 (b) (1994). Accordingly, the ALJ should consider holding the hearing in the field if anyone suggests it. Agency rules and unavailability of travel funds may override the ALJ's willingness to hold field hearings. [However, agency rules quite commonly track the APA with respect to the place of hearing. See, e.g., 7 C.F.R. § 47.15(c) (2003) (Department of Agriculture, reparation proceedings; "careful consideration to the convenience of the parties"); 10 C.F.R. § 2.703(b) (2003) (Nuclear Regulatory Commission, domestic licensing proceedings); 14 C.F.R. § 13.55 (2003) (FAA); 29 C.F.R. § 2200.60 (2003) (Occupational Safety & Health Review Commission, 'as little inconvenience and expense to the parties as is practicable'; 49 C.F.R. § 821.37 (2003) (N.T.S.B., air safety proceedings)].

In the absence of budget constraints or clearly applicable agency rules, factors to be considered are the convenience of interested persons, the suitability of the hearing facilities involved, and the locations of the parties and witnesses. (...) In some agencies such as the Social Security Administration and the Occupational Safety & Health Review Commission, the problem of travel is reduced by stationing ALJs in the field. *Even so, the ALJs of such agencies frequently travel in order to hold hearings at sites convenient to the parties and witnesses.* In agencies where field hearings are not fairly routine, the site of the hearing often is an ad hoc matter. *Especially in such agencies, another factor to be considered is the nature of the parties. For example, if a private party is seeking a lucrative privilege or a benefit such as a license, it may be fair to place the travel burden on him. However, if the agency threatens imposition of a sanction or withdrawal of a license, it may be more equitable to hold the hearing at the place requested by, or convenient to, the respondent.* An early determination of the place of the hearing benefits all parties. If a pre-hearing conference is held, the ALJ should announce the time and place of hearing either at the conference or in the conference report. If no conference is held, the announcement is made in the Notice of Hearing. In cases where a field hearing is scheduled, an order should be issued, and the parties notified.(...)