

records or other documents pertinent to the matter under consideration.

(45 U.S.C. 231f(b)(5))

[43 FR 56889, Dec. 5, 1978, as amended at 48 FR 51447, Nov. 9, 1983; 57 FR 4366, Feb. 5, 1992]

§ 259.5 Appeals from decisions of the Board.

A party who claims to be aggrieved by a decision of the Board under this part may obtain review of such decision by filing a petition for review in the United States court of appeals for the circuit in which the party resides or has its principal place of business or principal executive office, in the United States Court of Appeals for the Seventh Circuit, or in the United States Court of Appeals for the District of Columbia. The petition for review must be filed within 90 days following the date on which the notice of the Board's decision was mailed to that party.

[43 FR 56889, Dec. 5, 1978. Redesignated at 57 FR 4366, Feb. 5, 1992]

§ 259.6 Finality of determinations issued under this part.

Any determination rendered by the Board at the initial or reconsideration stages shall be considered a final determination and shall be binding with respect to all parties unless reversed on reconsideration or upon judicial review. A final determination may be reopened at the request of a party who was, or could have been, a party to the final determination when the party alleges that the law or the facts upon which the final determination was based have changed sufficiently to warrant a contrary determination. Such a request shall be submitted to the Secretary to the Board, who shall consider such request as a request for an initial determination under § 259.1.

[57 FR 4366, Feb. 5, 1992]

PART 260—REQUESTS FOR RECONSIDERATION AND APPEALS WITHIN THE BOARD FROM DECISIONS ISSUED BY THE BUREAU OF DISABILITY AND MEDICARE OPERATIONS, BUREAU OF RETIREMENT BENEFITS, BUREAU OF SURVIVOR BENEFITS, OFFICE OF RETIREMENT AND SURVIVOR PROGRAMS, AND THE BUREAU OF RESEARCH AND EMPLOYMENT ACCOUNTS

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AUTHORITY: 45 U.S.C. 231f; 45 U.S.C. 231g; 45 U.S.C. 355.

SOURCE: 47 FR 36809, Aug. 24, 1982, unless otherwise noted.

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§ 260.1 Initial decisions by the Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits and Office of Retirement and Survivor Programs.

(a) *General.* Claims shall be adjudicated and initial decisions made by the Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits and Office of Retirement and Survivor Programs concerning:

- (1) Applications for benefits under the Railroad Retirement Act;
- (2) The withdrawal of an application;
- (3) A change in an annuity beginning date;
- (4) The termination of an annuity;
- (5) The modification of the amount of an annuity or lump-sum benefit;
- (6) The reinstatement of an annuity which had been terminated or modified;
- (7) The existence of an erroneous payment;
- (8) The recovery of the amount of an erroneous payment;
- (9) The eligibility of an individual for a supplemental annuity or the amount of such supplemental annuity;
- (10) Whether representative payment shall serve the best interests of an annuitant as a result of that individual's incapacity to manage his annuity payments; and
- (11) Who shall be designated or continued as representative payee on behalf of an annuitant.

(b) *Adjudication of claim and the issuance of initial decision.* Adjudication of a claim and the issuance of an initial decision shall be in accordance with instructions issued by the Director of the appropriate bureau or office and shall be made upon the basis of evidence submitted by the claimant and evidence otherwise available.

(c) *Recovery of erroneous payment.* A decision to recover the amount of an erroneous payment under paragraph (a)(8) of this section by suspension or reduction of a monthly benefit payable by the Board shall not be made prior to a date 30 calendar days after the date on which notice of the erroneous payment decision is sent to the beneficiary or payee of the benefit as provided in § 260.1(d)(6).

(d) *Notice of initial decision.* (1) In all cases except those described in paragraph (d)(2) through (4) and (6) of this section, written notice of an initial decision shall be mailed by the appropriate bureau or office to the claimant, annuitant or payee of an annuity at the individual's last known address within 30 calendar days after such decision is made. Such notice shall inform the claimant, annuitant or payee of an annuity of the reason(s) for the decision and such individual's right to reconsideration of such initial decision as provided in § 260.3.

(2) No notice of an initial decision by the appropriate bureau or office shall be required when the death of an annuitant causes the entitlement to an annuity to cease.

(3) When an initial decision is made that an annuitant's entitlement to a disability has ended, written notice of the decision shall be mailed to the annuitant or payee of an annuity at the annuitant's or payee's last known address. Such notice shall inform the annuitant or payee of an annuity:

(i) Of the date on which the recovery from disability is found to have occurred;

(ii) Of the reason(s) supporting such a finding of recovery;

(iii) That entitlement to the annuity ends on the last day of the second month after the month in which disability ends as described in § 220.181;

(iv) That the Board will stop payment of the annuitant's disability annuity with the last day of the second month following the month in which disability ends as described in § 220.181, or the last day of the first month following the month in which the notice provided by this paragraph is sent by the Board, whichever date is later;

(v) That any annuity payments received after entitlement has ended will have to be repaid unless waiver of recovery is appropriate;

(vi) That prior to the termination date of the annuity the annuitant or payee of an annuity may submit to the Board any information in writing which the annuitant or payee desires to be considered by the Board in its review;

(vii) That if no information in writing is received by the Board before the

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termination date the annuity will be terminated as scheduled on that date; and

(viii) That the annuitant or payee has the right to reconsideration of such decision as provided in § 260.3.

(4) When an initial decision would result in the termination of an annuity for which there are competing claims or as a result of the receipt by the Board of information from a source other than the annuitant or payee of an annuity, written notice of the proposed decision shall be mailed to the annuitant or payee of an annuity at such annuitant's or payee's last known address. Such notice shall inform the annuitant or payee of an annuity:

(i) Of the reason(s) for the annuity termination;

(ii) That the annuitant or payee has 30 calendar days from the date of the notice to submit to the Board any information in writing which such annuitant or payee desires to be considered by the Board in its review;

(iii) That payment of the annuity will either cease or a decision to continue payment of such annuity shall be made after the Board has considered any information in writing which may be submitted to the Board within 30 calendar days from the date of the notice;

(iv) That if no information in writing is received within 30 calendar days from the date of the notice, payment of the annuity will cease at the end of that 30-day period; and

(v) That the annuitant or payee has the right to reconsideration of such decision as provided in § 260.3.

(5) Whenever the Board receives any significant information in writing from an annuitant or payee of an annuity as a result of mailing the notice described in paragraph (d)(4) of this section, the Board shall forward a copy of such information to each of the individuals who has filed a competing claim for such annuity informing them that:

(i) The annuity will either be terminated at the specified time or a decision to continue payment of the annuity will be made by the Board; and

(ii) They may respond to such information and their response will be considered by the Board provided that it is received by the Board within a reason-

able time. When the Board decision in such case is to continue payment of the annuity, the Board shall send notice of such initial decision to each of the competing claimants in accordance with paragraph (d)(1) of this section.

(6) When an initial decision that an erroneous payment has been made to a beneficiary is made under paragraph (a)(7) of this section, written notice of that decision shall be mailed to the beneficiary or payee of the benefit at such beneficiary's or payee's last known address within 30 calendar days after such decision is made. Such notice shall inform the beneficiary or payee:

(i) Of the reason(s) for the decision;

(ii) Of the methods by which recovery may be made;

(iii) Of the possibility of waiver of recovery of the erroneous payment;

(iv) Of the conditions which must be met before waiver of recovery could be granted;

(v) That the beneficiary may request waiver of recovery of the erroneous payment and/or reconsideration of the erroneous payment decision as provided in § 260.4; and

(vi) Of the possibility of an oral hearing with respect to the issues of waiver of recovery and reconsideration of the erroneous payment decision.

[47 FR 36809, Aug. 24, 1982, as amended at 55 FR 39146, Sept. 25, 1990; 56 FR 13040, Mar. 28, 1991]

§ 260.2 Initial decisions by the Bureau of Research and Employment Accounts.

Within 30 days after receipt of a timely request by an employee for an amendment with respect to the amount of compensation credited to the employee by the Board under the Railroad Retirement Act and the Railroad Unemployment Insurance Act, the Director of Research and Employment Accounts shall appoint a qualified Board employee to make a determination with respect to such matter. The Board employee appointed by the director shall promptly render a decision. Written notice of such decision shall be communicated by the Director of Research and Employment Accounts to the employee within 30 days after such

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decision is made. Such notice shall include notification of the employee's right to reconsideration of the initial decision as provided in §260.3. For purposes of this section, a timely request to amend an employee's record of compensation maintained under the Railroad Retirement Act shall be filed within four years after the date on which the return of compensation was required to be made to the Board by the employee's employer. For purposes of this section, a timely request to amend an employee's record of compensation maintained under the Railroad Unemployment Insurance Act shall be filed within 18 months after the date on which the last return of compensation was required to be made covering any portion of the calendar year which includes the period during which the challenged payment was made.

[47 FR 36809, Aug. 24, 1982, as amended at 48 FR 51448, Nov. 9, 1983]

§ 260.3 Request for reconsideration of initial decision of the Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits, Office of Retirement and Survivor Programs, or Bureau of Research and Employment Accounts.

(a) *Right to file requests for reconsideration.* Every claimant shall have the right to file a request for reconsideration of an initial decision of the Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits or Office of Retirement and Survivor Programs described in §260.1(a) or an initial decision of the Bureau of Research and Employment Accounts described in §260.2. *Provided, however,* That:

(1) An individual under age 18 shall not have the right to reconsideration of a finding of incapacity to manage his or her annuity payments, but shall have the right to contest the finding that he or she is, in fact, under age 18;

(2) An individual who has been adjudged legally incompetent shall not have the right to reconsideration of a finding of incapacity to manage his or her annuity payments, but shall have the right to contest the fact of his or her having been adjudged legally incompetent; and

(3) An individual shall not have the right to reconsideration of a denial of his or her application to serve as representative payee on behalf of an annuitant. Such request for reconsideration shall be filed and disposed of in the manner prescribed in this section, except that a request for reconsideration of an initial erroneous payment decision under §260.1(a)(7) shall be filed and disposed of in the manner prescribed in §260.4.

(b) *Written request for reconsideration.* A written request for reconsideration must be filed with the appropriate bureau within 60 days from the date upon which notice of the initial decision is mailed to the claimant. The claimant shall state the basis for the reconsideration request and provide any additional evidence which is available. No hearing will be provided by the bureau conducting the reconsideration.

(c) *Right to further review of initial decision.* The right to further review of an initial decision of the Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits, Office of Retirement and Survivor Programs or Bureau of Research and Employment Accounts shall be forfeited unless a written request for reconsideration is filed within the time period prescribed in this section or good cause is shown by the claimant for failing to file a timely request for reconsideration.

(d) *Timely request for reconsideration.* In determining whether the claimant has good cause for failure to file a timely request for reconsideration the bureau director shall consider the circumstances which kept the claimant from filing the request on time and if any action by the Board misled the claimant. Examples of circumstances where good cause may exist include, but are not limited to:

(1) A serious illness which prevented the claimant from contacting the Board in person, in writing, or through a friend, relative or other person;

(2) A death or serious illness in the claimant's immediate family which prevented him or her from filing;

(3) The destruction of important and relevant records;

(4) A failure to be notified of a decision; or

(5) An unusual or unavoidable circumstance existed which demonstrates that the claimant would not have known of the need to file timely or which prevented the claimant from filing in a timely manner.

(e) *Impartial review.* The reconsideration of the initial decision shall be conducted by a person who shall not have any interest in the parties or in the outcome of the proceedings, shall not have directly participated in the initial decision which has been requested to be reconsidered and shall not have any other interest in the matter which might prevent a fair and impartial decision.

(f) *Timely review.* The director of the bureau to whom a request for reconsideration is directed shall make every effort to issue a decision upon reconsideration and send a copy of the decision to the claimant within 60 days of the date that the request for reconsideration is filed.

(g) *Right to appeal adverse decision.* If the reconsideration decision is adverse to the claimant, annuitant or payee, he or she shall be notified of his or her right to appeal the decision to the Bureau of Hearings and Appeals, as provided in § 260.5.

[47 FR 36809, Aug. 24, 1982, as amended at 48 FR 51448, Nov. 9, 1983; 55 FR 39146, Sept. 25, 1990]

§ 260.4 Request for waiver of recovery of an erroneous payment and/or reconsideration of an initial erroneous payment decision of the Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits or Office of Retirement and Survivor Programs.

(a) *General.* A beneficiary who has been determined to have received an erroneous payment under § 260.1(a)(7) shall have the right, upon the filing of a timely request in accordance with the requirements of this section, to request waiver of recovery of the erroneous payment and/or reconsideration of the erroneous payment decision. The beneficiary shall have the right to an informal oral hearing on the issue of waiver of recovery and/or reconsideration of the erroneous payment deci-

sion, before an employee of the Board designated to conduct such a hearing, prior to commencement of recovery by suspension or reduction of a monthly benefit.

(b) *Request for waiver of recovery and/or reconsideration of an erroneous payment decision and for an oral hearing.* A request for waiver of recovery and/or reconsideration of an erroneous payment decision and for an oral hearing under this section shall be in writing and addressed to the district office of the Board set forth in the initial decision letter or to the Director of the bureau or office which issued the erroneous payment decision. The request must be received by either the appropriate district office or the Director of the bureau or office which issued the erroneous payment decision within 30 calendar days from the date on which notice of the erroneous payment decision was sent to the beneficiary. The beneficiary shall state in the request whether he or she elects to have an oral hearing. If the beneficiary does not elect to have an oral hearing with respect to his or her request for waiver of recovery or for reconsideration of the erroneous payment decision, he or she may, along with the request, submit any evidence and argument which he or she would like to present in support of his or her case.

(c) *Right to further review of an initial erroneous payment decision.* The right to further review of an initial erroneous payment decision of the Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits or Office of Retirement and Survivor Programs shall be forfeited unless a written request for reconsideration is filed within the time period prescribed in this section or good cause is shown by the beneficiary for failing to file a timely request for reconsideration. Good cause for failure to file a timely request shall be determined by the Director of the bureau or office which issued the erroneous payment decision in the manner described in § 260.3(d).

(d) *Delay in the commencement of recovery of erroneous payment.* Where a

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timely request for waiver or reconsideration is filed as provided in this section, the Director of the bureau or office which issued the erroneous payment decision shall not commence recovery of the erroneous payment by suspension or reduction of a monthly benefit payable by the Board until a decision with respect to such request for waiver or reconsideration has been made and notice thereof mailed to the claimant.

(e) *Impartial review.* Upon receipt of a timely request for an oral hearing under this section, the Director of the bureau or office which issued the erroneous payment decision or his or her delegatee shall promptly arrange for the selection of a Board employee to conduct a hearing in the case. The employee designated to conduct a hearing under this section shall not have had any prior involvement with the initial erroneous payment decision and shall conduct the hearing in a fair and impartial manner. The employee designated to conduct a hearing under this section shall promptly schedule a time and place for the hearing and promptly notify the beneficiary of such.

(f) *Oral hearing.* The beneficiary shall upon request have the opportunity to review, prior to the hearing, his or her claim folder and all documents pertinent to the issues raised. A hearing conducted under this section shall be informal. At the hearing the beneficiary shall be afforded the following rights:

(1) To present his or her case orally and to submit evidence, whether through witnesses or documents;

(2) To cross-examine adverse witnesses who appear at the hearing; and

(3) To be represented by counsel or other person.

(g) *Preparation of recommended decision.* Upon completion of the hearing, the employee who conducts the hearing shall prepare a summary of the case including a statement of the facts, the employee's findings of fact and law, and a recommended decision. The summary of the case shall then be submitted to the Director of the bureau or office which issued the erroneous payment decision.

(h) *Timely review.* The Director of the bureau or office which issued the erro-

neous payment decision shall make every effort to render a decision with respect to the beneficiary's request for reconsideration of the initial erroneous payment determination and/or waiver of recovery and notify the beneficiary of that decision within 60 days of the date that the request for reconsideration is filed or the date that the summary of the case is received from the employee who conducts the hearing, whichever is later.

(i) *Right to appeal adverse decision.* If the Director of the bureau or office which issued the erroneous payment decision renders a decision adverse to the beneficiary, he or she shall further notify the beneficiary of the basis for such determination and that the beneficiary may appeal the decision to the Bureau of Hearings and Appeals, as provided in § 260.5.

(j) *Repayment is not a bar to requesting waiver and/or reconsideration.* The fact that a beneficiary may have notified the Board with respect to the method by which he or she could choose to have the recovery made, or the fact that such beneficiary may have actually tendered to the Board a portion or all of the amount of the erroneous payment, shall in no way operate to prejudice his or her right to request reconsideration of the initial erroneous payment determination or to request waiver of recovery.

[47 FR 36809, Aug. 24, 1982, as amended at 55 FR 39146, Sept. 25, 1990]

§ 260.5 Appeal from a reconsideration decision of the Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits, Office of Retirement and Survivor Programs or the Bureau of Research and Employment Accounts.

(a) *General.* Every claimant shall have a right to appeal to the Bureau of Hearings and Appeals from any reconsideration decision of the Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits, Office of Retirement and Survivor Programs or the Bureau of Research and Employment Accounts by which he or she claims to be aggrieved.

(b) *Appeal from a reconsideration decision.* Appeal from a reconsideration decision of the Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits, Office of Retirement and Survivor Programs or the Bureau of Research and Employment Accounts shall be made by filing the form prescribed by the Board for such purpose. Such appeal must be filed with the Bureau of Hearings and Appeals within 60 days from the date upon which notice of the reconsideration decision is mailed to the claimant.

(c) *Right to review of a reconsideration decision.* The right to review of a reconsideration decision of the Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits, Office of Retirement and Survivor Programs or the Bureau of Research and Employment Accounts shall be forfeited unless an appeal is filed in the manner and within the time prescribed in this section. However, when a claimant fails to file an appeal before the Bureau of Hearings and Appeals within the time prescribed in this section, the hearings officer may waive this requirement of timeliness. Such waiver shall only occur in cases where the claimant has made a showing of good cause for failure to file a timely appeal. Good cause for failure to file a timely appeal will be determined by a hearings officer in the manner described in § 260.3(d).

(d) *Impartial review.* Within 30 days after the claimant has filed a proper appeal, the Director of Hearings and Appeals shall appoint a hearings officer to act on the appeal. The Director of Hearings and Appeals may, if the Bureau of Hearings and Appeals' caseload dictates, appoint a qualified Board employee, other than a hearings officer assigned to the Bureau of Hearings and Appeals, to act as hearings officer with respect to a case. Such hearings officer shall not have any interest in the parties or in the outcome of the proceedings, shall not have directly participated in the initial decision or the reconsideration decision from which the appeal is made, and shall not have any other interest in the matter which might prevent a fair and impartial decision.

(e) *Power of hearings officer to conduct hearings.* In the development of appeals, the hearings officer shall have the power to hold hearings, require and compel the attendance of witnesses by subpoena or otherwise in accordance with the procedures set forth in part 258 of this chapter, administer oaths, rule on motions, take testimony, and make all necessary investigations.

(f) *Evidence presented in support of appeal.* The appellant, or his or her representative, shall be afforded full opportunity to present evidence upon any controversial question of fact, orally or in writing or by means of exhibits; to examine and cross-examine witnesses; and to present argument in support of the appeal. If, in the judgment of the hearings officer, evidence not offered by the appellant is available and is relevant and material to the merits of the claim, the hearings officer may obtain such evidence upon his or her own initiative. If new evidence is obtained subsequent to an oral hearing, other than evidence submitted by the appellant or his or her representative, the hearings officer shall notify the appellant or his or her representative that such evidence was obtained and shall describe the nature of the evidence in question. In such event, the appellant shall have 30 days to submit rebuttal evidence or argument or to request a supplemental hearing to confront and challenge such new evidence. The appellant may move for an extension of time to submit rebuttal evidence or argument and the hearings officer may grant the motion upon a showing of good cause. The hearings officer shall protect the record against scandal, impertinence, and irrelevancies, but the technical rules of evidence shall not apply.

(g) *Submission of written argument in lieu of oral hearing.* Where the hearings officer finds that no factual issues are presented by an appeal, and the only issues raised by the appellant are issues concerning the application or interpretation of law, the appellant or his or her representative shall be afforded full opportunity to submit written argument in support of the claim but no oral hearing shall be held.

(h) *Conduct of oral hearing.* (1) In any case in which an oral hearing is to be

held pursuant to the provisions of this section, the hearings officer shall schedule a time and place for the conduct of the hearing. The hearings officer shall promptly notify the party or parties to the proceeding by mail as to said time and place for the hearing. The notice shall include a statement of the specific issues involved in the case. The hearings officer shall make every effort to hold the hearing within 150 days after the date the appeal is filed.

(2) A party to the proceeding may object to the time and place of the hearing or as to the stated issues to be resolved by filing a written notice of objection with the hearings officer. The notice of objection shall clearly set forth the matter objected to and the reasons for such objection, and, if the matter objected to is the time and place of the hearing, said notice shall further state that party's choice as to the time and place for the hearing. Said notice of objection shall be filed at the earliest practicable time, but in no event shall said notice be filed later than five business days prior to the scheduled date of the hearing.

(3) The hearings officer shall rule on any objection timely filed by a party under this subsection and shall notify the party of his or her ruling thereon. The hearings officer may for good cause shown, or upon his or her own motion, reschedule the time and/or place of the hearing. The hearings officer also may limit or expand the issues to be resolved at the hearing.

(4) If neither a party nor his or her representative appears at the time and place scheduled for the hearing, that party shall be deemed to have waived his or her right to an oral hearing unless said party either filed with the hearings officer a notice of objection showing good cause why the hearing should have been rescheduled, which notice was timely filed but not ruled upon, or, within 10 days following the date on which the hearing was scheduled, said party files with the hearings officer a motion to reschedule the hearing showing good cause why neither the party nor his or her representative appeared at the hearing and further showing good cause as to why said party failed to file at the prescribed

time any notice of objection to the time and place of the hearing.

(5) If the hearings officer finds either that a notice of objection was timely filed showing good cause to reschedule the hearing, or that the party has within 10 days following the date of the hearing filed a motion showing good cause for failure to appear and to file a notice of objection, the hearings officer shall reschedule the hearing. If the hearings officer finds that the hearing shall not be rescheduled, he or she shall so notify the party in writing.

(i) *Preservation of evidence presented.* All evidence presented by the appellant and all evidence developed by the hearings officer shall be preserved. Such evidence, together with a record of the arguments, oral or written and the file previously created in the adjudication of the claim, shall constitute the record on appeal. After an appeal is filed, the compilation of the record shall be initiated by the inclusion therein of the file created in the adjudication of the claim; the compilation of the record shall be kept up-to-date by the prompt addition thereto of all parts of the record subsequently developed. The entire record shall be available for examination by the appellant or his or her representative at any time during the pendency of the appeal.

(j) *Extension of time to submit evidence.* Except where the hearings officer has determined that additional evidence not offered by the appellant at or prior to the hearing is available, the record shall be closed as of the conclusion of the hearing. The appellant may move for an extension of time to submit evidence and the hearings officer may grant the motion upon a showing of good cause for failure to have submitted the evidence earlier. The extension shall be for a period not exceeding 30 days.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 3220-0007)

[47 FR 36809, Aug. 24, 1982, as amended at 48 FR 51448, Nov. 9, 1983; 52 FR 11017, Apr. 6, 1987; 55 FR 39146, Sept. 25, 1990]

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§ 260.6 Time limits for issuing a hearing decision.

(a) *General.* The hearings officer shall make every effort to issue a decision within 45 days after the hearing is held.

(b) *Submission of additional evidence.* If the hearings officer requests additional evidence, he or she shall do so within 30 days after the hearing is held and he or she shall make every effort to issue the hearing decision within 45 days after the additional evidence is received and the period for comment has ended. If the claimant wishes to submit additional evidence or written statements of fact or law, the hearings officer shall make every effort to issue the hearing decision within 45 days after the written statements are received or the additional evidence is received and the period for comment has ended.

(c) *Supplemental hearing.* If on the basis of additional evidence the hearings officer decides a supplemental hearing is necessary, the supplemental hearing will be held within 30 days after the receipt of the additional evidence and the hearings officer shall make every effort to issue a decision within 30 days after the supplemental hearing is held.

(d) *Reassignment of case to another hearings officer.* If, after a hearing has been held, it is necessary to reassign a case to another hearings officer due to the unavailability of the original hearings officer (e.g., resignation, retirement, illness), the case will be promptly reassigned. The new hearings officer shall make every effort to issue a hearing decision within 30 days after the reassignment.

§ 260.7 Time limits for issuing a decision when a hearing is not held.

If a claimant waives his or her right to appear at a hearing and the hearings officer does not schedule the case for hearing, or the evidence in the record supports a favorable decision without a hearing, or a hearing is not required pursuant to § 260.5(g), the hearings officer shall make every effort to issue a decision within 90 days from the date the appeal is filed: *Provided, however,* that if the hearings officer requests additional evidence it shall be requested within 45 days of the filing of the appeal and the hearings officer shall

make every effort to issue a decision within 30 days after the additional evidence is received and the appellant comments on the evidence, or if no comment is received after the close of the comment period.

§ 260.8 Pre-hearing case review.

(a) *General.* The hearings officer assigned to a case may, prior to an oral hearing, upon his or her own motion, refer the case back to the bureau of the Board which issued the initial decision for the purpose of reconsideration of that decision, where the hearings officer finds that:

(1) Additional evidence pertinent to the resolution of the issues on appeal was submitted by the appellant at the time the appeal was filed, or subsequent thereto; or

(2) Additional evidence pertinent to the resolution of the issues on appeal is available and should be procured; or

(3) There is some other indication in the record that the initial decision may be revised in a manner favorable to the appellant.

(b) *Referral of case for further review by initial adjudicating unit.* Where the hearings officer finds that referral of a case back to the bureau which issued the initial decision for the purpose of reconsideration of that decision would be warranted, the hearings officer shall give that bureau the reason for such referral, together with specific directions as to the handling of the case on reconsideration.

(c) *Reconsideration of case by initial adjudicating unit.* The bureau to which a case is referred shall promptly undertake any additional development required, and shall make a determination as to whether the initial determination may be revised in whole or in part in a manner favorable to the appellant. Upon issuance of its determination, the bureau in question shall return the case along with a copy of its decision to the hearings officer.

(d) *Revision of initial decision in whole or in part.* Where the bureau to which a case is referred determines to revise its initial decision in whole or in part, that bureau shall notify the appellant of such determination. If the revised determination is wholly favorable to

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the appellant, he or she shall be notified that the appeal to the Bureau of Hearings and Appeals will be dismissed by the hearings officer assigned to the case. If the revised decision is partially favorable to the appellant, the notice shall inform the appellant that the hearings officer will proceed with the portion of the appellant's case not revised in his or her favor, unless the appellant should request dismissal of the appeal.

(e) *Timely conduct of oral hearing.* The fact that a case on appeal has been referred back to the bureau which issued the initial decision in the case shall not delay the conduct of a hearing scheduled with respect to the appeal, unless the appellant agrees to a delay. If it appears that the bureau to which a case has been referred will not have completed its reconsideration of the case prior to the date of a scheduled hearing on an appeal and the appellant has not agreed to a delay in the conduct of the hearing, the hearings officer shall proceed with the hearing and the handling of the case as though the case had not been referred back to the bureau.

§ 260.9 Final appeal from a decision of the hearings officer.

(a) *General.* Every appellant shall have a right to a final appeal to the Railroad Retirement Board from any decision of a hearings officer by which he or she claims to be aggrieved.

(b) *Appeal from decision of hearings officer.* Final appeal from a decision of a hearings officer shall be made by the execution and filing of the final appeal form prescribed by the Board. Such appeal must be filed with the Board within 60 days from the date upon which notice of the decision of the hearings officer is mailed to the appellant at the last address furnished by him or her.

(c) *Timely filing.* The right to further review of a decision of a hearings officer shall be forfeited unless formal final appeal is filed in the manner and within the time prescribed in § 260.9(b). However, when a claimant fails to file an appeal before the Board within the time prescribed in this section, the Board may waive this requirement if, along with the final appeal form, the appellant in writing requests an exten-

sion of time. The request for an extension of time must give the reasons why the final appeal form was not filed within the time limit prescribed in this section. If in the judgment of the Board the reasons given establish that the appellant had good cause for not filing the final appeal form within the time prescribed, the Board will consider the appeal to have been filed in a timely manner. The Board will use the standards found in § 260.3(d) of this chapter in determining if good cause exists.

(d) *Submission of additional evidence.* Upon final appeal to the Board, the appellant shall not have the right to submit additional evidence: *Provided, however,* that if upon final appeal to the Board the Board finds that new or better evidence is available, the Board may obtain such evidence in which event the appellant shall be advised with respect to such evidence and given an opportunity to submit rebuttal evidence and argument: *Provided further,* that in the event that pursuant to the preceding proviso, material evidence is developed which tends to show facts contrary to those found by the hearings officer, or in the event that the appellant shows that he is ready to present further material evidence, which for good reason he was not able to present to the hearings officer, the claim may be referred back to the hearings officer. Thereupon, the hearings officer shall develop additional evidence for inclusion in the record, review the entire case, and shall:

(1) Issue his or her decision on remand or

(2) Transmit the entire record to the Board together with his or her recommendation to the Board for final decision. All remand decisions are final intermediate level administrative decisions which dispose of the appeal before the Board and if an appellant is dissatisfied with a remand decision he or she must appeal that decision to the Board in the manner described in § 260.9(b).

(e) *Decision of the Board.* The decision of the Board shall be made upon the record of evidence and argument which has been made in the handling of the case before final appeal to the Board, with such additions as may be made pursuant to this section. Further argument will not be permitted except upon

a showing by the appellant that he or she has argument to present which for valid reasons he or she was unable to present at an earlier stage or in cases in which the Board requests further elaboration of the appellant's arguments. In such cases, the further argument shall be submitted orally or in writing, as the Board may indicate in each case, and shall be subject to such restrictions as to form, subject matter, length and time as the Board may indicate to the appellant.

(f) *Issuance of decision.* The Board shall make every effort to issue a decision within 90 days after the later of:

- (1) The date the final appeal is filed;
- (2) The date new or better evidence is obtained in accordance with §260.9(d) and the appellant has commented on it;
- (3) The date new or better evidence is obtained in accordance with §260.9(d) and after the close of the comment period;
- (4) The date further argument submitted in accordance with §260.9(e) is received; or
- (5) The date the record is returned to the Board following referral back to the hearings officer.

(g) *Review of decisions rendered prior to appeal to Board.* The Board may, on its own motion, review or cause to be reviewed any decision issued by a subordinate official or employee under this part.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 3220-0007)

[47 FR 36809, Aug. 24, 1982, as amended at 50 FR 19523, May 9, 1985; 52 FR 11017, Apr. 6, 1987]

§ 260.10 Determination of date of filing of appeal.

In determining whether an appeal has been made in accordance with the regulations in this part, the date of filing a duly executed appeal form prescribed by the Board shall be the date of its receipt at an office of the Board or the date of delivery for the purpose of transmission to the Board's main office in Chicago, Illinois, to any field agent specifically authorized by a regional director to receive custody thereof in the district where delivery is made, whichever date is earlier.

PART 261—ADMINISTRATIVE FINALITY

Sec.

- 261.1 Reopening and revising decisions.
- 261.2 Conditions for reopening.
- 261.3 Change of legal interpretation or administrative ruling.
- 261.4 Decisions which shall not be reopened.
- 261.5 Late completion of timely investigation.
- 261.6 Notice of revised decision.
- 261.7 Effect of revised decision.
- 261.8 Time and place to request review of a revised decision.
- 261.9 Finality of findings when later claim is filed on same earnings record.
- 261.10 Increase in future benefits where time period for reopening has expired.
- 261.11 Discretion of the three-member Board to reopen or not to reopen a final decision.

AUTHORITY: 45 U.S.C. 231f.

SOURCE: 62 FR 45713, Aug. 29, 1997, unless otherwise noted.

§ 261.1 Reopening and revising decisions.

(a) This part sets forth the Board's rules governing finality of decisions. After the expiration of the time limits for review as set forth in part 260 of this chapter, decisions of the agency may be reopened and revised under the conditions described in this part, by the bureau, office, or entity that made the earlier decision or by a bureau, office, or other entity at a higher level, which has the claim properly before it.

(b) A *final decision* as that term is used in this part means any decision of the type listed in §260.1 of this chapter where the time limits for review as set forth in part 260 of this chapter or in the Railroad Retirement Act have expired.

(c) *Reopening* a final decision under this part means a conscious determination on the part of the agency to reconsider an otherwise final decision for purposes of revising that decision.

(d) *New and material evidence* as that phrase is used in this part means evidence that may reasonably be expected to affect a final decision, which was unavailable to the agency at the time the decision was made, and which the claimant could not reasonably have been expected to have submitted at that time.