

§ 35.38

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 35.3 of this part;

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 35.31 of this part.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the Director. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the Secretary, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the Department and shall be final and binding on the parties 30 days after it is issued by the ALJ.

§ 35.38 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision

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that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the Department and shall be final and binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the Secretary in accordance with § 35.39 of this part.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the Department and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the Secretary in accordance with § 35.39 of this part.

§ 35.39 Appeal to the Secretary of the Interior.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the Secretary by filing a notice of appeal with the Director in accordance with this section.

(b)(1) A notice of appeal may be filed at any time within 30 days after the ALJ issues an initial decision. However, if another party files a motion for reconsideration under § 35.38 of this part, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

(2) If a motion for reconsideration is timely filed, a notice of appeal may be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) The Director may extend the initial 30 day period for an additional 30 days if the defendant files with the Director a request for an extension within the initial 30 day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the Director and the time for filing motions for reconsideration under § 35.38 of this part has expired, the ALJ shall forward the record of the proceeding to the Director.