

## § 410.651

there is no information before the presiding officer or the Social Security Administration showing that an individual who is not a party may be prejudiced by the Social Security Administration's determination which is the subject of the request for hearing: *Provided*; That if, within 60 days after the date notice of such dismissal is mailed to the original party at his last known address any such other individual states in writing that he desires a hearing on such claim and shows that he may be prejudiced by the Social Security Administration's initial determination, then the dismissal of the request for hearing shall be vacated.

[36 FR 23760, Dec. 14, 1971, as amended at 37 FR 20653, Sept. 30, 1972; 41 FR 54753, Dec. 15, 1976; 62 FR 38453, July 18, 1997]

### § 410.651 Notice of dismissal and right to request review thereon.

Notice of the Administrative Law Judge's dismissal action shall be given to the parties or mailed to them at their last known addresses. Such notice shall advise the parties of their right to request review of the dismissal action by the Appeals Council (see § 410.660).

### § 410.652 Effect of dismissal.

The dismissal of a request for hearing shall be final and binding unless vacated (see § 410.653).

### § 410.653 Vacation of dismissal of request for hearing.

A presiding officer or the Appeals Council may, on request of the party and for good cause shown, vacate any dismissal of a request for hearing at any time within 60 days after the date of receipt of the notice of dismissal by the party requesting the hearing at his last known address. For purposes of this section, the date of receipt of the dismissal notice shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary. In any case where a presiding officer has dismissed the hearing request, the Appeals Council may, on its own motion, within 60 days after the mailing of such notice, review such

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dismissal and may, in its discretion vacate such dismissal.

[41 FR 54753, Dec. 15, 1976]

### § 410.654 Administrative Law Judge's decision or certification to Appeals Council.

As soon as practicable after the close of a hearing, the Administrative Law Judge, except as herein provided, shall make a decision in the case or certify the case with a recommended decision to the Appeals Council for decision (see §§ 410.657 through 410.659). If the Administrative Law Judge makes a decision in the case, such decision shall be based upon the evidence adduced at the hearing (§§ 410.636 through 410.646, inclusive) or otherwise included in the hearing record (see § 410.647). The decision shall be made in writing and contain findings of fact and a statement of reasons. A copy of the decision shall be mailed to the parties at their last known addresses.

### § 410.655 Effect of Administrative Law Judge's decision.

The decision of the Administrative Law Judge provided for in § 410.654, shall be final and binding upon all parties to the hearing unless it is reviewed by the Appeals Council (see §§ 410.663 through 410.665) or unless it is revised in accordance with § 410.671, or unless the expedited appeals process is used, in accordance with § 410.629a. If a party's request for review of the Administrative Law Judge's decision is denied (see § 410.662) or is dismissed (see § 410.667), such decision shall be final and binding upon all parties to the hearing unless a civil action is filed in a district court of the United States, as is provided in section 205(g) of the Social Security Act, as incorporated in the Federal Coal Mine Health and Safety Act by section 413(b) of that Act (see § 410.670a), or unless the decision is revised in accordance with § 410.671.

[40 FR 53388, Nov. 18, 1975]

### § 410.656 Removal of hearing to Appeals Council.

The Appeals Council on its own motion may remove to itself any request for hearing pending before an Administrative Law Judge. The hearing on any

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matter so removed to the Appeals Council shall be conducted in accordance with the requirements of §§410.637 to 410.653, inclusive. Notice of such removal shall be mailed to the parties at their last known addresses.

### **§410.657 Appeals Council proceedings on certification and review; procedure before Appeals Council on certification by the Administrative Law Judge.**

When a case has been certified to the Appeals Council by an Administrative Law Judge with his recommended decision (see §410.654), the Administrative Law Judge shall mail notice of such action to the parties at their last known addresses. The parties shall be notified of their right to file with the Appeals Council within 10 days from the date of mailing of the recommended decision, briefs or other written statements of exceptions or allegations as to applicable fact and law, except in the case of suspension or disqualification (see §410.694(b)). Upon request of any party made within such 10-day period, a 10-day extension of time for filing such briefs or statements shall be granted and, upon a showing of good cause, such 10-day period may be extended, as appropriate. Where there is more than one party, copies of such briefs or written statements shall be filed in sufficient number that they may be made available to any party requesting a copy or any other party designated by the Appeals Council. Copies or a statement of the contents of the documents or other written evidence received in evidence in the hearing record, and a copy of the transcript of oral evidence adduced at the hearing, if any, or a condensed statement thereof shall be made available to any party upon request, upon payment of the cost, or if such cost is not readily determinable, the estimated amount thereof, unless, for good cause shown, such payment is waived. When a case has been certified to the Appeals Council by an Administrative Law Judge for decision any party shall be given, upon his request, a reasonable opportunity to appear before the Appeals Council for the purpose of presenting oral argument.

### **§410.658 Evidence in proceeding before Appeals Council.**

Evidence in addition to that admitted into the hearing record by the Administrative Law Judge may not be received as evidence except where it appears to the Appeals Council that such additional evidence may affect its decision. If no additional material is presented, but such evidence is available and may affect its decision, the Appeals Council shall receive such evidence or designate an Administrative Law Judge or member of the Appeals Council before whom the evidence shall be introduced. Before such additional evidence is received, notice that evidence will be received with respect to certain matters shall be mailed to the parties, unless such notice is waived, at their last known addresses, and the parties shall be given a reasonable opportunity to present evidence which is relevant and material to such matters. When the additional evidence is presented to an Administrative Law Judge or a member of the Appeals Council, a transcript or a condensed statement of such evidence shall be made available to any party upon request, upon payment of the cost, or if such cost is not readily determinable, the estimated amount thereof, unless, for good cause shown, such payment is waived.

### **§410.659 Decision of Appeals Council.**

The decision of the Appeals Council, when a case has been certified to it by an Administrative Law Judge along with his recommended decision, shall be made in accordance with the provisions of §410.665.

### **§410.660 Right to request review of Administrative Law Judge's decision or dismissal.**

If an Administrative Law Judge has made a decision, as provided in §410.654, or dismissed a request for hearing, as provided in §§410.648 through 410.650, any party thereto may request the Appeals Council to review such decision or dismissal.

### **§410.661 Time and place of filing request.**

The request for review shall be made in writing and filed with an office of the Social Security Administration, or