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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

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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.

§ 260.1 Initial decisions.

(a) *General.* Claims for benefits shall be adjudicated and initial decisions made by the Board 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 Board 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

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(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 Board 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 Board 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 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:

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(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 reasonable 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; 67 FR 77153, Dec. 17, 2002]

§ 260.2 Initial decisions on the amount of service and compensation credited to an employee.

Within 30 days after receipt of a timely request by an employee for amendment with respect to the number of service months and amount of compensation credited to the employee by the Board under the Railroad Retirement Act and the Railroad Unemployment Insurance Act, the Board shall appoint a qualified employee to make a determination with respect to such

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matter. The employee appointed by the Board shall promptly render a decision. Written notice of such decision shall be communicated to the employee within 30 days after such decision is made. Such decision 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 service months and compensation maintained under the Railroad Retirement Act shall be filed within four years after the date on which the report of service months and compensation was required to be made to the Board by the employee's employer. See § 211.16 of this chapter.

[67 FR 77153, Dec. 17, 2002]

§ 260.3 Request for reconsideration of initial decision.

(a) *Right to file request for reconsideration.* Every claimant shall have the right to file a request for reconsideration of an initial decision described in § 260.1(a) or 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 may be filed with any office of the Board within 60 days from the date on which notice of the initial decision is

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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.

(c) *Right to further review of initial decision.* The right to further review of an initial decision 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;

(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; or

(6) The claimant thought that his or her representative had requested reconsideration.

(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 Board 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 decision 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; 67 FR 77153, Dec. 17, 2002]

§ 260.4 Request for waiver of recovery of an overpayment and/or for reconsideration of an initial erroneous payment decision.

(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 decision, 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 a personal conference.* A request for reconsideration of an erroneous payment decision must be filed in accordance with § 260.3(b) of this part. A request for waiver of recovery of an overpayment decision and for a personal conference under this section shall be in writing and addressed to the field office of the Board set forth in the initial decision letter or to the Debt Recovery Manager and shall be filed within 60 calendar days from the date on which notice of the overpayment decision was sent to the beneficiary. The beneficiary shall state in the request whether he or she elects to have a personal conference. If the beneficiary does not elect to have a personal conference with respect to his or her request for waiver of recovery or for reconsideration of the overpayment decision, he or she may, along with the

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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 overpayment decision.* The right to further review of an initial overpayment decision shall be forfeited unless a written request for reconsideration is filed within the time period prescribed in §260.3(b) of this part (60 days) or good cause, as defined in section 260.3(d) of this part, is shown by the beneficiary for failing to file a timely request for reconsideration. Nothing in this section shall be taken to mean that waiver of recovery will not be considered in these cases where the request for waiver is not filed within 60 days, but action to recover the erroneous payment will not be deferred if such a request is not filed within 60 days. Any amounts recovered prior to the date on which the request for waiver as permitted under the preceding sentence is filed shall not be waived under part 255 of this chapter.

(d) *Delay in commencement of recovery of erroneous payment.* Where a timely request for waiver or reconsideration is filed as provided in this section, the Board 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 personal conference under this section, the Board shall promptly arrange for the selection of a Board employee to conduct a personal conference in the case. The employee designated to conduct the personal conference under this section shall not have had any prior involvement with the initial erroneous payment decision and shall conduct the personal conference in a fair and impartial manner. The employee designated to conduct the personal conference under this section shall promptly schedule a time and place for the personal conference and promptly notify the beneficiary of such. If the beneficiary agrees, the personal conference may be conducted by telephone.

(f) *Personal conference.* The beneficiary shall upon request have the op-

portunity to review, prior to the personal conference, his or her claim folder and all documents pertinent to the issues raised. A personal conference conducted under this section shall be informal. At the personal conference 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 personal conference; and

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

(g) *Preparation of recommended decision.* Upon completion of the personal conference the employee who conducts the personal conference 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.

(h) *Timely review.* The Board 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 and/or waiver is filed or the date that the summary of the case is received from the employee who conducts the personal conference, whichever is later.

(i) *Right to appeal adverse decision.* If the Board renders a decision adverse to the beneficiary, he or she may appeal the decision to the Bureau of Hearings and Appeals, as provided in §260.5 of this part.

(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

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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; 67 FR 77153, Dec. 17, 2002]

§ 260.5 Appeal from a reconsideration decision.

(a) *General.* Every claimant shall have a right to appeal to the Bureau of Hearings and Appeals from any reconsideration decision with which he or she disagrees.

(b) *Appeal from a reconsideration decision.* Appeal from a reconsideration decision 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. Any written request stating an intent to appeal which is received within the 60-day period will protect the claimant's right to appeal, provided that the claimant files the appeal form within the later of the 60-day period following the date of the reconsideration decision, or the 30-day period following the date of the letter sending the form to the claimant.

(c) *Right to review of a reconsideration decision.* The right to review of a reconsideration decision 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 with 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 prescribed in § 260.3(d) of this part.

(d) *Delay in the commencement of recovery of erroneous payment.* Where a timely appeal seeking waiver of recovery of an erroneous payment has been filed with the Bureau of Hearings and

Appeals, the Board 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 appeal seeking waiver has been made and notice thereof has been mailed to the claimant.

(e) *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 a 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.

(f) *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.

(g) *Evidence presented in support of appeal.* (1) The appellant, or his or her representative, shall be afforded full opportunity to present testimony, or written evidence or exhibits upon any controversial question of fact; to examine and cross-examine witnesses; and to present argument in support of the appeal.

(2) The formal rules of evidence shall not apply; however, the hearings officer may exclude evidence which he or she finds is irrelevant or repetitious. Any evidence excluded by the hearings officer shall be described and that description made part of the record.

(3) 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

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hearings officer may obtain such evidence upon his or her own initiative. If new evidence is obtained after an oral hearing, other than evidence submitted by the appellant or his or her representative, the hearings officer shall provide the appellant or his or her representative with a copy of such evidence. 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.

(h) *Submission of written argument in lieu of oral hearings.* 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.

(i) *Conduct of an oral hearing.* (1) In any case in which an oral hearing is to be held, the hearings officer shall schedule a time and place for the conduct of the hearing. At the discretion of the hearings officer, any hearing required under this part may be held in person, by telephone conference call, or by video teleconferencing as described in §260.5(1). The hearing shall not be open to the public. The hearings officer shall promptly notify by mail the party or parties to the proceeding as to the 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) If the appellant objects to the time or place of the hearing, he or she must notify the hearings officer no later than 5 calendar days before the time set for the hearing. The appellant must state the reason for his or her objection. If at all possible, the request should be in writing. The hearings officer will change the time or place of the hearing if he or she finds there is good cause to do so.

(3) The hearings officer shall rule on any objection timely filed by a party under paragraph (i) of this section 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. If an individual objects to having a hearing by video teleconferencing, the hearings officer will find the individual's wish not to appear by video teleconferencing to be a good reason for changing the time or place of the scheduled hearing and will reschedule the hearing for a time or place where either a telephone conference call or an in person hearing will be held. The hearings officer may also 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.

(j) *Record of evidence considered.* The hearings officer will make a record of the material evidence. The record will include the applications, written statements, reports, and other documents

that were used in making the determination under review and any other additional evidence the appellant or any other party to the hearing presents in writing. If a hearing was held in the appeal, the tape recording of the hearing will be part of the record while the appeal is pending. The hearings officer's decision will be based on the record. The entire record at any time during the pendency of the appeal shall be available for examination by the appellant or by his or her duly authorized representative.

(k) *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 request an extension of time to submit evidence and the hearings officer will grant the request 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.

(l) *Hearing by telephone or video teleconferencing.* As stated in paragraph (i)(1) of this section, at the discretion of the hearings officer, any hearing required under this part may be conducted in person, by telephone conference call, or by video teleconferencing. The hearings officer may determine the hearing should be conducted by telephone conference call or video teleconferencing if use of these methods would be more efficient than conducting an in person hearing and the hearings officer does not determine that there is a circumstance in the particular case preventing the use of these methodologies to conduct the hearing.

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

[67 FR 77154, Dec. 17, 2002 as amended at 71 FR 55283, Sept. 22, 2006]

§ 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.

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§ 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 office 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 office which issued the initial decision for the purpose of reconsideration of that decision would be warranted, the hearings officer shall give that office 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 office 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 office 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 office to which a case is referred determines to revise its initial decision in whole or in part, that office shall notify the appellant of such determination. If the revised determination is wholly favorable to 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 office 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 office 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 office.

[47 FR 36809, Aug. 24, 1982, as amended at 67 FR 77155, Dec. 17, 2002]

§ 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. Any written request stating an intent to appeal which is received within the 60-day period will protect the claimant's right to appeal, *Provided that* the claimant files the appeal form within the later of the 60-day period following the date of the hearing officer's decision, or the 30-day period following the date of the letter sending the form to the claimant.

(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

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time prescribed in this section, the Board may waive this requirement if, along with the final appeal form, the appellant in writing requests an extension 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) *Delay in the commencement of recovery of erroneous payment.* Where a timely appeal seeking waiver of recovery of an erroneous payment has been filed with the three-member Board, the Board 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 appeal seeking waiver has been made and notice thereof has been mailed to the claimant.

(e) *Submission of additional evidence.* Upon final appeal to the Board, the appellant shall not have the right to submit additional evidence. However, the Board may grant a request to submit new evidence where new and material evidence is available that, despite due diligence, was not available before the decision of the hearings officer was issued. The Board may also obtain new evidence on its own motion. Upon admission of new evidence, the Board, at its discretion, may:

(1) Vacate the decision of the hearings officer and remand the case to the Bureau of Hearings and Appeals for issuance of a new decision. The decision of the hearings officer on remand may be appealed to the Board in the manner described in paragraph (b) of this section; or

(2) Return the case to the hearings officer for further consideration with direction to submit a recommended decision to the Board.

(f) *Decision of the Board.* The decision of the Board shall be made upon the record of evidence developed by the hearings officer and any additional evidence admitted pursuant to paragraph

(e) of this section. The appellant may submit additional argument in writing with the appeal to the Board. The appellant shall have no right to an oral presentation before the Board except where the Board so permits. Such presentation shall be limited in form, subject matter, length, and time as the Board may indicate to the appellant.

(g) *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.

(h) *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; 67 FR 77155, Dec. 17, 2002; 68 FR 6820, Feb. 11, 2003]

§260.10 Determination of date of filing.

(a) *General rule.* Except as otherwise provided in paragraph (b) of this section, for purposes of this part, a document or form is filed on the day it is received by an office of the Board or by an employee of the Board who is authorized to receive it at a place other than one of the Board's offices.

(b) *Other dates of filing.* The Board will also accept as the date of filing the date a document or form is mailed to the Board by the United States mail, if using the date the Board receives it would result in the loss or lessening of

rights. The date shown by a U.S. postmark will be used as the date of mailing. If the postmark is unreadable, or there is no postmark, the Board will consider other evidence of when the document or form was mailed to the Board.

[67 FR 77156, Dec. 17, 2002]

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.

§261.2 Conditions for reopening.

A final decision may be reopened:

(a) Within 12 months of the date of the notice of such decision, for any reason;

(b) Within four years of the date of the notice of such decision, if there is new and material evidence or there was adjudicative error not consistent with the evidence of record at the time of adjudication; or

(c) At any time if:

(1) The decision was obtained by fraud or similar fault;

(2) Another person files a claim on the same record of compensation and allowance of the claim adversely affects the first claim;

(3) A person previously determined to be dead on whose earnings record a survivor annuity is based is found to be alive;

(4) A claim was denied because of the absence of proof of death of the employee, and the death is later established:

(i) By reason of an unexplained absence from his or her residence for a period of 7 years; or

(ii) By location or identification of his or her body;

(5) The Social Security Administration has awarded duplicate benefits on the same record of compensation;

(6) The decision was that the claimant did not have an insured status, and compensation has been credited to the employee's record of compensation in accordance with part 211 of this chapter:

(i) To enter items transferred by the Social Security Administration which were credited under the Social Security Act when they should have been credited to the employee's railroad retirement compensation record; or

(ii) To correct an error made in the allocation of earnings to an individual which, if properly allocated, would