

assigned the case may in his or her discretion direct that a hearing with respect to a claim shall begin at one location and then later be reconvened at another date and place.

(d) The Chief Administrative Law Judge or administrative law judge assigned the case may change the time and place for a hearing, either on his or her own motion or for good cause shown by a party. The administrative law judge may adjourn or postpone the hearing for good cause shown, at any time prior to the mailing to the parties of the decision in the case. Unless otherwise agreed, at least 10 days notice shall be given to the parties of any change in the time or place of hearing.

(e) The Chief Administrative Law Judge may for good cause shown transfer a case from one administrative law judge to another.

§ 725.455 Hearing procedures; generally.

(a) *General.* The purpose of any hearing conducted under this subpart shall be to resolve contested issues of fact or law. Except as provided in § 725.421(b)(8), any findings or determinations made with respect to a claim by a district director shall not be considered by the administrative law judge.

(b) *Evidence.* The administrative law judge shall at the hearing inquire fully into all matters at issue, and shall not be bound by common law or statutory rules of evidence, or by technical or formal rules of procedure, except as provided by 5 U.S.C. 554 and this subpart. The administrative law judge shall receive into evidence the testimony of the witnesses and parties, the evidence submitted to the Office of Administrative Law Judges by the district director under § 725.421, and such additional evidence as may be submitted in accordance with the provisions of this subpart. The administrative law judge may entertain the objections of any party to the evidence submitted under this section.

(c) *Procedure.* The conduct of the hearing and the order in which allegations and evidence shall be presented shall be within the discretion of the administrative law judge and shall afford

the parties an opportunity for a fair hearing.

(d) *Oral argument and written allegations.* The parties, upon request, may be allowed a reasonable time for the presentation of oral argument at the hearing. Briefs or other written statements or allegations as to facts or law may be filed by any party with the permission of the administrative law judge. Copies of any brief or other written statement shall be filed with the administrative law judge and served on all parties by the submitting party.

§ 725.456 Introduction of documentary evidence.

(a) All documents transmitted to the Office of Administrative Law Judges under § 725.421 shall be placed into evidence by the administrative law judge, subject to objection by any party.

(b)(1) Documentary evidence pertaining to the liability of a potentially liable operator and/or the identification of a responsible operator which was not submitted to the district director shall not be admitted into the hearing record in the absence of extraordinary circumstances. Medical evidence in excess of the limitations contained in § 725.414 shall not be admitted into the hearing record in the absence of good cause.

(2) Subject to the limitations in paragraph (b)(1) of this section, any other documentary material, including medical reports, which was not submitted to the district director, may be received in evidence subject to the objection of any party, if such evidence is sent to all other parties at least 20 days before a hearing is held in connection with the claim.

(3) Documentary evidence, which is not exchanged with the parties in accordance with this paragraph, may be admitted at the hearing with the written consent of the parties or on the record at the hearing, or upon a showing of good cause why such evidence was not exchanged in accordance with this paragraph. If documentary evidence is not exchanged in accordance with paragraph (b)(2) of this section and the parties do not waive the 20-day requirement or good cause is not shown, the administrative law judge shall either exclude the late evidence

§ 725.457

from the record or remand the claim to the district director for consideration of such evidence.

(4) A medical report which is not made available to the parties in accordance with paragraph (b)(2) of this section shall not be admitted into evidence in any case unless the hearing record is kept open for at least 30 days after the hearing to permit the parties to take such action as each considers appropriate in response to such evidence. If, in the opinion of the administrative law judge, evidence is withheld from the parties for the purpose of delaying the adjudication of the claim, the administrative law judge may exclude such evidence from the hearing record and close the record at the conclusion of the hearing.

(c) Subject to paragraph (b) of this section, documentary evidence which the district director excludes from the record, and the objections to such evidence, may be submitted by the parties to the administrative law judge, who shall independently determine whether the evidence shall be admitted.

(1) If the evidence is admitted, the administrative law judge may, in his or her discretion, remand the claim to the district director for further consideration.

(2) If the evidence is admitted, the administrative law judge shall afford the opposing party or parties the opportunity to develop such additional documentary evidence as is necessary to protect the right of cross-examination.

(d) All medical records and reports submitted by any party shall be considered by the administrative law judge in accordance with the quality standards contained in part 718 of this subchapter.

(e) If the administrative law judge concludes that the complete pulmonary evaluation provided pursuant to § 725.406, or any part thereof, fails to comply with the applicable quality standards, or fails to address the relevant conditions of entitlement (see § 725.202(d)(2)(i) through (iv)) in a manner which permits resolution of the claim, the administrative law judge shall, in his or her discretion, remand the claim to the district director with instructions to develop only such addi-

20 CFR Ch. VI (4-1-12 Edition)

tional evidence as is required, or allow the parties a reasonable time to obtain and submit such evidence, before the termination of the hearing.

§ 725.457 Witnesses.

(a) Witnesses at the hearing shall testify under oath or affirmation. The administrative law judge and the parties may question witnesses with respect to any matters relevant and material to any contested issue. Any party who intends to present the testimony of an expert witness at a hearing, including any physician, regardless of whether the physician has previously prepared a medical report, shall so notify all other parties to the claim at least 10 days before the hearing. The failure to give notice of the appearance of an expert witness in accordance with this paragraph, unless notice is waived by all parties, shall preclude the presentation of testimony by such expert witness.

(b) No person shall be required to appear as a witness in any proceeding before an administrative law judge at a place more than 100 miles from his or her place of residence, unless the lawful mileage and witness fee for 1 day's attendance is paid in advance of the hearing date.

(c) No person shall be permitted to testify as a witness at the hearing, or pursuant to deposition or interrogatory under § 725.458, unless that person meets the requirements of § 725.414(c).

(1) In the case of a witness offering testimony relevant to the liability of the responsible operator, in the absence of extraordinary circumstances, the witness must have been identified as a potential hearing witness while the claim was pending before the district director.

(2) In the case of a physician offering testimony relevant to the physical condition of the miner, such physician must have prepared a medical report. Alternatively, in the absence of a showing of good cause under § 725.456(b)(1) of this part, a physician may offer testimony relevant to the physical condition of the miner only to the extent that the party offering the physician's testimony has submitted fewer medical reports than permitted by § 725.414. Such physician's opinion