

## § 681.11

(i) The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal with the authority head within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(j) If the defendant files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(k) The authority head shall decide expeditiously, based solely on the record before the ALJ, whether extraordinary circumstances excuse the defendant's failure to file a timely answer.

(l) If the authority head decides that extraordinary circumstances excused the defendant's failure to file a timely answer, the authority head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(m) If the authority head decides that the defendant's failure to file a timely answer is not excused, the authority head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such a decision.

## § 681.11 What happens once an answer is filed?

(a) When the reviewing official receives an answer, he or she must file concurrently, the complaint and the answer with the ALJ, along with a designation of NSF's representative.

(b) When the ALJ receives the complaint and the answer, the ALJ will promptly serve a notice of hearing upon the defendant and the NSF representative, in the same manner as the complaint, which is described in § 681.8. The notice of oral hearing must be served within six years of the date on which the claim or statement is made.

(c) The notice must include:

(1) The tentative date, time, and place of the hearing;

(2) The legal authority and jurisdiction under which the hearing is being held;

(3) The matters of fact and law to be asserted;

## 45 CFR Ch. VI (10-1-12 Edition)

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the defendant's representative and the representative for NSF; and

(6) Such other matters as the ALJ deems appropriate.

### HEARING PROCEDURES

## § 681.12 What kind of hearing is contemplated?

The hearing is a formal proceeding conducted by the ALJ during which a defendant will have the opportunity to cross-examine witnesses, present testimony, and dispute liability.

## § 681.13 At the hearing, what rights do the parties have?

Each party has the right to:

(a) Be represented by a representative;

(b) Request a pre-hearing conference and participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law which will be made a part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing, as permitted by the ALJ.

## § 681.14 What is the role of the ALJ?

An ALJ retained by NSF serves as the presiding officer at all hearings.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider