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(b) No subpoena will be issued for attendance of employees of OWCP acting in their official capacities as decision-makers or policy administrators. For hearings taking the form of a review of the written record, no subpoena for the appearance of witnesses will be considered.

(c) The hearing representative issues the subpoena under his or her own name. It may be served in person or by certified mail, return receipt requested (or equivalent service from a commercial carrier), addressed to the person to be served at his or her last known principal place of business or residence. A decision to deny a subpoena can only be appealed as part of an appeal of any adverse decision which results from the hearing.

§ 10.620 Who pays the costs associated with subpoenas?

(a) Witnesses who are not employees or former employees of the Federal Government shall be paid the same fees and mileage as paid for like services in the District Court of the United States where the subpoena is returnable, except that expert witnesses shall be paid a fee not to exceed the local customary fee for such services.

(b) Where OWCP asked that the witness submit evidence into the case record or asked that the witness attend, OWCP shall pay the fees and mileage. Where the claimant requested the subpoena, and where the witness submitted evidence into the record at the request of the claimant, the claimant shall pay the fees and mileage.

§ 10.621 What is the employer's role when an oral hearing has been requested?

(a) The employer may send one (or more, if deemed appropriate by the hearing representative) representative(s) to observe the proceeding, but the agency representative cannot give testimony or argument or otherwise participate in the hearing, except where the claimant or the hearing representative specifically asks the agency representative to testify.

(b) The hearing representative may deny a request by the claimant that the agency representative testify where the claimant cannot show that the testimony would be relevant or where the agency representative does not have the appropriate level of knowledge to provide such evidence at the hearing. The employer may also comment on the hearing transcript, as described in § 10.617(e).

§ 10.622 May a claimant or representative withdraw a request for or postpone a hearing?

(a) The claimant and/or representative may withdraw the hearing request at any time up to and including the day the hearing is held, or the decision issued. Withdrawing the hearing request means the record is returned to the jurisdiction of the district office and no further requests for a hearing on the underlying decision will be considered.

(b) OWCP will entertain any reasonable request for scheduling the oral hearing, including whether to participate by teleconference, videoconference or other electronic means, but such requests should be made at the time of the original application for hearing. Scheduling (including format) is at the sole discretion of the hearing representative, and is not reviewable.

(c) Once the oral hearing is scheduled and OWCP has mailed appropriate written notice to the claimant and representative, OWCP will, upon submission of proper written documentation of unavoidable serious scheduling conflicts (such as court-ordered appearances/trials, jury duty or previously scheduled outpatient procedures), entertain requests from a claimant or his representative for rescheduling as long as the hearing can be rescheduled on the same monthly docket, generally no more than 7 days after the originally scheduled time. When a request to postpone a scheduled hearing under this subsection cannot be accommodated on the docket, no further opportunity for an oral hearing will be provided. Instead, the hearing will take the form of a review of the written record and a decision issued accordingly.

(d) Where the claimant or representative is hospitalized for a non-elective reason or where the death of the claimant's or representative's parent,

spouse, child or other immediate family prevents attendance at the hearing, OWCP will, upon submission of proper documentation, grant a postponement beyond one monthly docket.

(e) Decisions regarding rescheduling under paragraphs (b) through (d) of this section are within the sole discretion of the hearing representative and are not reviewable.

(f) A claimant who fails to appear at a scheduled hearing may request in writing within 10 days after the date set for the hearing that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing. Where good cause is shown for failure to appear at the second scheduled hearing, review of the matter will proceed as a review of the written record.

REVIEW BY THE EMPLOYEES' COMPENSATION APPEALS BOARD (ECAB)

§ 10.625 What kinds of decisions may be appealed?

Only final decisions of OWCP may be appealed to the ECAB. However, certain types of final decisions, described in this part as not subject to further review, cannot be appealed to the ECAB. Decisions that are not appealable to the ECAB include: Decisions concerning the amounts payable for medical services, decisions concerning exclusion and reinstatement of medical providers, decisions by the Director to review an award on his or her own motion, and denials of subpoenas independent of the appeal of the underlying decision. In appeals before the ECAB, attorneys from the Office of the Solicitor of Labor shall represent OWCP.

§ 10.626 Who has jurisdiction of cases on appeal to the ECAB?

While a case is on appeal to the ECAB, OWCP has no jurisdiction over the claim with respect to issues which directly relate to the issue or issues on appeal. The OWCP continues to administer the claim and retains jurisdiction over issues unrelated to the issue or issues on appeal and issues which arise after the appeal as a result of ongoing administration of the case. Such issues would include, for example, the ability to terminate benefits where an individual returns to work while an appeal is pending at the ECAB. ECAB's rules of procedure are found at part 501 of this title.

Subpart H—Special Provisions

REPRESENTATION

§ 10.700 May a claimant designate a representative?

(a) The claims process under the FECA is informal. Unlike many workers' compensation laws, the employer is not a party to the claim, and OWCP acts as an impartial evaluator of the evidence. Nevertheless, a claimant may appoint one individual to represent his or her interests, but the appointment must be in writing.

(b) There can be only one representative at any one time, so after one representative has been properly appointed, OWCP will not recognize another individual as representative until the claimant withdraws the authorization of the first individual. In addition, OWCP will recognize only certain types of individuals (see § 10.701); however if the representative is an attorney, OWCP may communicate with any member of that attorney's recognized law firm.

(c) A properly appointed representative who is recognized by OWCP may make a request or give direction to OWCP regarding the claims process, including a hearing. This authority includes presenting or eliciting evidence, making arguments on facts or the law, and obtaining information from the case file, to the same extent as the claimant.

§ 10.701 Who may serve as a representative?

A claimant may authorize any individual to represent him or her in regard to a claim under the FECA, unless that individual's service as a representative would violate any applicable provision of law (such as 18 U.S.C. 205 and