

§ 31.11

(c) In addition, the ALJ shall assume the facts alleged in the complaint to be true, and, if such facts establish liability under § 31.3, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to answer on time, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from answering, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to answer on time, the ALJ shall withdraw the initial decision in paragraph (c) of this section, if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 31.38.

(h) The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal in accordance with § 31.26 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.

(i) If the defendant files a timely notice of appeal, the Docket Clerk shall forward two copies of the notice of appeal to the authority head, and shall forward or make available the record of the proceeding to the authority head.

(j) The authority head shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to answer on time based solely on the record before the ALJ.

(k) If the authority head decides that extraordinary circumstances excused

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the defendant's failure to answer on time, the authority head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the authority head decides that the defendant's failure to answer on time 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 decision.

§ 31.11 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall refer the matter to an ALJ by filing the complaint and answer in accordance with § 31.26.

§ 31.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 31.8. At the time, the ALJ shall send a copy of such notice to the representative for the Government and shall file a copy with the Docket Clerk.

(b) Such notice shall include—

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

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

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

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

(5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and

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

§ 31.13 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and the authority.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 31.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or