

§ 33.11

motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision must be stayed pending the ALJ's decision on the motion.

(f) If, on such a motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision under 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 §33.38.

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

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

(j) The Department head decides expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(k) If the Department head decides that extraordinary circumstances excuse the defendant's failure to file a timely answer, the Department head remands the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the Department head decides that the defendant's failure to file a timely answer is not excused, the Department head reinstates the initial decision of the ALJ, which becomes final and binding upon the parties 30 days after the Department head issues that decision.

(Authority: 31 U.S.C. 3809)

34 CFR Subtitle A (7-1-04 Edition)

§33.11 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

(Authority: 31 U.S.C. 3803(d)(2); 3809)

§33.12 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 §33.8. At the same time, the ALJ shall send a copy of the notice to the representative for the Government.

(b) The notice must 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.

(Authority: 31 U.S.C. 3803(g)(2)(A))

§33.13 Parties to the hearing.

(a) The parties to the hearing are the defendant and the Department.

(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.

(Authority: 31 U.S.C. 3803(g)(2))

§33.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the Department who takes part in investigating, preparing, or presenting a particular case may not, in that case or a factually related case:

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the Department head, except as a witness or a representative in public proceedings; or