

(k) *Extension of time to submit evidence.* Except where the hearings officer has determined that additional evidence not offered by the appellant at or prior to the hearing is available, the record shall be closed as of the conclusion of the hearing. The appellant may request an extension of time to submit evidence and the hearings officer will grant the request upon a showing of good cause for failure to have submitted the evidence earlier. The extension shall be for a period not exceeding 30 days.

(l) *Hearing by telephone.* At the discretion of the hearings officer, any hearing required under this part may be conducted by telephone conference.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 3220-0007)

[67 FR 77154, Dec. 17, 2002]

§ 260.6 Time limits for issuing a hearing decision.

(a) *General.* The hearings officer shall make every effort to issue a decision within 45 days after the hearing is held.

(b) *Submission of additional evidence.* If the hearings officer requests additional evidence, he or she shall do so within 30 days after the hearing is held and he or she shall make every effort to issue the hearing decision within 45 days after the additional evidence is received and the period for comment has ended. If the claimant wishes to submit additional evidence or written statements of fact or law, the hearings officer shall make every effort to issue the hearing decision within 45 days after the written statements are received or the additional evidence is received and the period for comment has ended.

(c) *Supplemental hearing.* If on the basis of additional evidence the hearings officer decides a supplemental hearing is necessary, the supplemental hearing will be held within 30 days after the receipt of the additional evidence and the hearings officer shall make every effort to issue a decision within 30 days after the supplemental hearing is held.

(d) *Reassignment of case to another hearings officer.* If, after a hearing has been held, it is necessary to reassign a case to another hearings officer due to

the unavailability of the original hearings officer (e.g., resignation, retirement, illness), the case will be promptly reassigned. The new hearings officer shall make every effort to issue a hearing decision within 30 days after the reassignment.

§ 260.7 Time limits for issuing a decision when a hearing is not held.

If a claimant waives his or her right to appear at a hearing and the hearings officer does not schedule the case for hearing, or the evidence in the record supports a favorable decision without a hearing, or a hearing is not required pursuant to § 260.5(g), the hearings officer shall make every effort to issue a decision within 90 days from the date the appeal is filed: *Provided, however,* that if the hearings officer requests additional evidence it shall be requested within 45 days of the filing of the appeal and the hearings officer shall make every effort to issue a decision within 30 days after the additional evidence is received and the appellant comments on the evidence, or if no comment is received after the close of the comment period.

§ 260.8 Pre-hearing case review.

(a) *General.* The hearings officer assigned to a case may, prior to an oral hearing, upon his or her own motion, refer the case back to the office of the Board which issued the initial decision for the purpose of reconsideration of that decision, where the hearings officer finds that:

(1) Additional evidence pertinent to the resolution of the issues on appeal was submitted by the appellant at the time the appeal was filed, or subsequent thereto; or

(2) Additional evidence pertinent to the resolution of the issues on appeal is available and should be procured; or

(3) There is some other indication in the record that the initial decision may be revised in a manner favorable to the appellant.

(b) *Referral of case for further review by initial adjudicating unit.* Where the hearings officer finds that referral of a case back to the office which issued the initial decision for the purpose of reconsideration of that decision would be warranted, the hearings officer shall

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give that office the reason for such referral, together with specific directions as to the handling of the case on reconsideration.

(c) *Reconsideration of case by initial adjudicating unit.* The office to which a case is referred shall promptly undertake any additional development required, and shall make a determination as to whether the initial determination may be revised in whole or in part in a manner favorable to the appellant. Upon issuance of its determination, the office in question shall return the case along with a copy of its decision to the hearings officer.

(d) *Revision of initial decision in whole or in part.* Where the office to which a case is referred determines to revise its initial decision in whole or in part, that office shall notify the appellant of such determination. If the revised determination is wholly favorable to the appellant, he or she shall be notified that the appeal to the Bureau of Hearings and Appeals will be dismissed by the hearings officer assigned to the case. If the revised decision is partially favorable to the appellant, the notice shall inform the appellant that the hearings officer will proceed with the portion of the appellant's case not revised in his or her favor, unless the appellant should request dismissal of the appeal.

(e) *Timely conduct of oral hearing.* The fact that a case on appeal has been referred back to the office which issued the initial decision in the case shall not delay the conduct of a hearing scheduled with respect to the appeal, unless the appellant agrees to a delay. If it appears that the office to which a case has been referred will not have completed its reconsideration of the case prior to the date of a scheduled hearing on an appeal and the appellant has not agreed to a delay in the conduct of the hearing, the hearings officer shall proceed with the hearing and the handling of the case as though the case had not been referred back to the office.

[47 FR 36809, Aug. 24, 1982, as amended at 67 FR 77155, Dec. 17, 2002]

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§ 260.9 Final appeal from a decision of the hearings officer.

(a) *General.* Every appellant shall have a right to a final appeal to the Railroad Retirement Board from any decision of a hearings officer by which he or she claims to be aggrieved.

(b) *Appeal from decision of hearings officer.* Final appeal from a decision of a hearings officer shall be made by the execution and filing of the final appeal form prescribed by the Board. Such appeal must be filed with the Board within 60 days from the date upon which notice of the decision of the hearings officer is mailed to the appellant at the last address furnished by him or her. Any written request stating an intent to appeal which is received within the 60-day period will protect the claimant's right to appeal, *Provided that* the claimant files the appeal form within the later of the 60-day period following the date of the hearing officer's decision, or the 30-day period following the date of the letter sending the form to the claimant.

(c) *Timely filing.* The right to further review of a decision of a hearings officer shall be forfeited unless formal final appeal is filed in the manner and within the time prescribed in § 260.9(b). However, when a claimant fails to file an appeal before the Board within the time prescribed in this section, the Board may waive this requirement if, along with the final appeal form, the appellant in writing requests an extension of time. The request for an extension of time must give the reasons why the final appeal form was not filed within the time limit prescribed in this section. If in the judgment of the Board the reasons given establish that the appellant had good cause for not filing the final appeal form within the time prescribed, the Board will consider the appeal to have been filed in a timely manner. The Board will use the standards found in § 260.3(d) of this chapter in determining if good cause exists.

(d) *Delay in the commencement of recovery of erroneous payment.* Where a timely appeal seeking waiver of recovery of an erroneous payment has been filed with the three-member Board, the Board shall not commence recovery of the erroneous payment by suspension