

§ 320.25

(e) *Rescheduling the hearing.* If the hearings officer finds either that a notice of objection was timely filed showing good cause to reschedule the hearing, or that the party has within 10 days following the date of the hearing filed a motion showing good cause for failure to appear and to file a notice of objection, the hearings officer shall reschedule the hearing. If the hearings officer finds that the hearing shall not be rescheduled, he or she shall so notify the party in writing.

[53 FR 2488, Jan. 28, 1988]

§ 320.25 Hearing of appeal.

(a) *Manner of conducting hearing.* The hearing shall be informal, fair, and impartial, and shall be conducted in such manner as to ascertain the substantial rights of the parties. The hearing shall not be open to the public.

(b) *Evidence presented in support of appeal.* (1) Any party, or his or her representative, shall be afforded full opportunity to present evidence upon any controversial question of fact, orally or in writing or by means of exhibits; to examine and cross-examine witnesses; and to present argument in support of the appeal.

(2) The formal rules of evidence shall not apply; however, the hearings officer may exclude evidence which he or she finds is irrelevant or repetitious. Any evidence excluded by the hearings officer shall be described and that description made part of the record.

(3) If, in the judgment of the hearings officer, evidence not offered is available and is relevant and material to the merits of the claim, the hearings officer may obtain such evidence upon his or her own initiative. If new evidence is obtained after an oral hearing, other than evidence submitted by a party or his representative, the hearings officer shall provide the parties or their representatives with a copy of such evidence. In such event, any party shall have 30 days to submit rebuttal evidence or argument or to request a supplemental hearing to confront and challenge such new evidence. Any party may move for an extension of time to submit rebuttal evidence or argument and the hearings officer may grant the motion upon a showing of good cause.

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(c) *Where no oral hearing required.* Where the hearings officer finds that no factual issues are presented by an appeal, and the only issues raised by the parties are issues concerning the application or interpretation of law, the parties or their representatives shall be afforded full opportunity to submit written argument in support of their position but no oral hearing shall be held.

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

[Board Order 58-142, 23 FR 9090, Nov. 22, 1958, as amended at 56 FR 65681, Dec. 18, 1991; 67 FR 77157, Dec. 17, 2002]

§ 320.28 Record of evidence considered.

The hearings officer will make a record of the material evidence. The record will include the applications, written statements, reports, and other documents that were used in making the determination under review and any other additional evidence the appellant or any other party to the hearing presents in writing. If a hearing was held in the appeal, the tape recording of the hearing will be part of the record while the appeal is pending. The hearings officer's decision will be based on the record. The entire record at any time during the pendency of the appeal shall be available for examination by any party or by his or her duly authorized representative.

[67 FR 77157, Dec. 17, 2002]

§ 320.30 Decision or report of hearings officer.

As soon as practicable after the completion of the record, the hearings officer shall render his decision, or submit his report to the Board, as may be appropriate in the case. The decision or report shall be based on the record and shall be in writing. Such decision shall contain a brief statement of (a) the issue or issues raised, (b) the evidence submitted, (c) findings of fact, (d) the decision made, and (e) the reasons therefor. Such report shall contain a statement of (1) the issue or issues raised, (2) the evidence submitted, (3) findings of fact, (4) conclusions of law, (5) recommendations as to the decision