

## § 320.12

(f) *Requests made after 60 days.* Nothing in this section shall be taken to mean that waiver of recovery will not be considered in those cases where the request for waiver is not filed within 60 days, but action to recover the erroneous payment will not be deferred if such request is not filed within 60 days, and any amount of the erroneous payment recovered prior to the date on which the request is filed shall not be subject to waiver under part 340 of this chapter. Further, it shall not be considered that a claimant prejudices his or her request for waiver by tendering all or a portion of an erroneous payment or by selecting a particular method of repaying the debt. However, no waiver consideration shall be given to a debt which is settled by compromise.

(g) *Evidence provided by base-year employer(s) and most recent employer, if different.* In making a decision under paragraph (d) of this section, the Debt Recovery Manager shall consider all evidence of record including any evidence submitted by the claimant's base-year employer(s) and the most recent employer, if different. Where a claimant has requested waiver the Manager shall notify his or her base-year employer(s) and the most recent employer, if different, of the right to submit, within 30 days, any information which may be pertinent to the waiver decision.

[56 FR 65680, Dec. 18, 1991, as amended at 67 FR 77156, Dec. 17, 2002]

## § 320.12 Appeal to the Bureau of Hearings and Appeals.

(a) Any party aggrieved by a decision under § 320.10 of this part or a claimant aggrieved by a decision under § 320.11 of this part may appeal such decision to the Bureau of Hearings and Appeals. Such an appeal shall be made by filing the form prescribed by the Board for such purpose. The appeal must be filed with the Bureau of Hearings and Appeals within 60 days from the date upon which notice of the decision on reconsideration or waiver of recovery was mailed to either a claimant or the base year employer(s). Any written request stating an intent to appeal which is received within the 60-day period will protect the claimant's or base-year employer's right to appeal, *Provided that*

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the claimant or base-year employer files the appeal form within the later of the 60-day period from the date of the reconsideration decision, or the 30-day period following the date of the Board's letter sending the appeal form to the claimant or base-year employer.

(b) If no appeal is filed within the time limits specified in paragraph (a) of this section, the decision of the adjudicating office under §§ 320.10 or 320.11 of this part shall be considered final and no further review of such decision shall be available unless the hearings officer finds that there was good cause for the failure to file a timely appeal as described in § 320.10 of this part.

(c) Where a timely appeal seeking waiver of recovery of an erroneous payment has been filed with the Bureau of Hearings and Appeals, the Board shall not commence recovery of the erroneous payment by suspension or reduction of a monthly benefit payable by the Board until a decision with respect to such appeal seeking waiver has been made and notice thereof has been mailed to the claimant.

[67 FR 77157, Dec. 17, 2002]

## § 320.18 Hearings officer.

Within a reasonable time after a party has filed a properly executed appeal, the Director of Hearings and Appeals shall appoint a hearings officer to act in the appeal. Such hearings officer shall not have any interest in the parties or in the outcome of the proceeding, shall not have directly participated in the initial determination from which the appeal is made, and shall not have any other interest in the matter which might prevent a fair and impartial hearing. In any case in which employee status or creditability of compensation is an issue, the hearings officer shall receive evidence and report to the Board thereon with recommendations. In all other cases, the hearings officer shall consider and decide the appeal; in each such case where the hearings officer determines that an issue of fact exists, the parties shall have the right to a hearing.

[56 FR 65680, Dec. 18, 1991]