

## § 320.40

prescribed in this section, the Board may waive this requirement if along with the final appeal, the party 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 party has good cause for not filing the final appeal form within the time limit prescribed, the Board will consider the appeal to have been filed in a timely manner. The Board will use the standards found in §320.10(e) of this part in determining if good cause exists.

(b) 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 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; 68 FR 6820, Feb. 11, 2003]

### **§ 320.40 Procedure before the Board on appeal from a decision of a hearings officer.**

Upon the filing of an appeal to the Board from a decision of a hearings officer, the Secretary to the Board shall notify all parties to the decision of the hearings officer that an appeal has been filed. The parties shall not have the right to submit additional evidence, except that:

(a) The Board may permit the submission of additional evidence upon a showing by a party that he or she has additional evidence to present which, for valid reasons, he or she was unable to present at an earlier stage;

(b) The Board may request the submission of additional evidence; and

(c) The Board may designate any employee of the Board to take additional evidence and to report his or her findings to the Board. Any such additional evidence shall be submitted in such manner as the Board may indicate and shall be included in the record.

(d) Any party may submit additional argument in writing with the appeal to

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the Board. No party shall have the right to an oral presentation before the Board except where the Board so permits. Such presentation may be limited in form, subject matter, length, and time as the Board may indicate to the parties.

[56 FR 65681, Dec. 18, 1991, as amended at 67 FR 77158, Dec. 17, 2002]

### **§ 320.41 Procedure before Board after submission of report by hearings officer.**

(a) After submission to the Board of a hearings officer's report, in an appeal involving employee status or the creditability of compensation, any party to the proceeding may, within twenty days after the mailing to him of a copy of the report, file with the Board and serve upon other parties by mailing to their last addresses of record such exceptions in writing as he desires to make to the hearings officer's findings of fact and conclusions of law. Each exception shall specifically designate the particular finding of fact or conclusion of law to which exception is taken, and shall set forth in detail the grounds of the exception. General exceptions and exceptions not specifically directed to particular findings of fact or conclusions of law will not be considered. Each party shall have ten days after the receipt of exceptions taken by other parties in which to file with the Board replies to the exceptions. The Board may, upon the application of any party and for cause shown, extend the time for filing and serving of exceptions or filing of replies thereto. The hearings officer's report shall be advisory but shall be presumed to be correct. Findings of fact to which no exceptions are taken will, subject only to the power of the Board to reject or modify, stand confirmed.

(b) Further argument will not be permitted except upon a showing by any party that he has arguments to present which for valid reasons he was unable to present at an earlier stage, and in cases in which the Board requests further elaboration of arguments. In such cases, the further argument shall be submitted orally or in writing, as the Board may indicate in each case, and shall be subject to such restrictions as

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to form, subject matter, length, and time as the Board may indicate.

### § 320.42 Decision of Board.

The decision of the Board, whether on an appeal to the Board from a decision of a hearings officer, or after submission of a report by a hearings officer, shall be made upon the basis of the record established in accordance with the foregoing sections. Notice of such decision, together with the Board's findings of fact and conclusions of law in connection therewith, shall, within 15 days from the date on which the decision is made, be mailed to the parties at the latest addresses furnished by them. Subject only to judicial review in accordance with § 320.45, the decision of the Board shall be final and conclusive for all purposes:

(a) With respect to the initial determination involved, and

(b) With respect to other initial determinations, irrespective of whether they have been appealed, which involve the same parties and which were based on the same issue or issues determined in the decision of the Board. In a case in which there has been a hearings officer's report, in an appeal involving employee status or the creditability of compensation, the decision of the Board on all issues determined in such decision shall be final and conclusively establish all rights and obligations, arising under the Act, of every party notified as hereinabove provided of his or her right to participate in the proceedings.

[Board Order 66-84, 31 FR 10181, July 28, 1966, as amended at 56 FR 65681, Dec. 18, 1991]

### § 320.45 Judicial review.

Upon being notified of a decision of the Board made (a) upon review, on the Board's own motion, of a decision of a hearings officer, or (b) upon an appeal to the Board, an aggrieved party may obtain judicial review of such final decision, by filing a petition for review within ninety days after the date on which notice of such decision was mailed to him, or within such further time as the Board may allow, in the U.S. Court of Appeals for the circuit in which the party resides or will have had his principal place of business or principal executive office, or in the

U.S. Court of Appeals for the Seventh Circuit or in the Court of Appeals for the District of Columbia.

[Board Order 58-142, 23 FR 9090, Nov. 22, 1958, as amended at 56 FR 65682, Dec. 18, 1991]

### § 320.48 Representatives of parties.

In the event a party to any proceeding within the Board, under the preceding regulations in this part, desires to be represented by another person, he shall file with the Board prior to the time of such representation a power of attorney signed by him and naming such other person as the person authorized to represent him: *Provided, however,* That without requiring such power of attorney the Board may recognize as the duly authorized representative of the claimant the person designated by the claimant's railway labor organization to act in behalf of members of that organization on such matters whenever such representative acts or appears for such claimant.

### § 320.49 Determination of date of filing.

(a) *General rule.* Except as otherwise provided in paragraph (b) of this section, for purposes of this part, a document or form is filed on the day it is received by an office of the Board or by an employee of the Board who is authorized to receive it at a place other than one of the Board's offices.

(b) *Other dates of filing.* The Board will also accept as the date of filing the date a document or form is mailed to the Board by the United States mail, if using the date the Board receives it would result in the loss or lessening of rights. The date shown by a U.S. postmark will be used as the date of mailing. If the postmark is unreadable, or there is no postmark, the Board will consider other evidence of when the document or form was mailed to the Board.

(c) *Use of electronic mail.* By agreement between a base-year employer and the Board, any document required to be filed with the Board or any notice required to be sent to the employer may be transmitted by electronic mail.

[67 FR 77153, Dec. 17, 2002]