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and indicate why these facts could not be proven without issuing a subpoena.

(3) We will pay the cost of issuing the subpoena.

(4) We will pay subpoenaed witnesses the same fees and mileage they would receive if they had been subpoenaed by a Federal district court.

(e) *Witnesses at a hearing.* Witnesses may appear at a hearing in person or, when the conditions in § 404.936(c) exist, by video teleconferencing. They shall testify under oath or affirmation, unless the administrative law judge finds an important reason to excuse them from taking an oath or affirmation. The administrative law judge may ask the witnesses any questions material to the issues and shall allow the parties or their designated representatives to do so.

(f) *Collateral estoppel—issues previously decided.* An issue at your hearing may be a fact that has already been decided in one of our previous determinations or decisions in a claim involving the same parties, but arising under a different title of the Act or under the Federal Coal Mine Health and Safety Act. If this happens, the administrative law judge will not consider the issue again, but will accept the factual finding made in the previous determination or decision unless there are reasons to believe that it was wrong.

[45 FR 52081, Aug. 5, 1980, as amended at 51 FR 303, Jan. 3, 1986; 68 FR 5219, Feb. 3, 2003]

§ 404.951 When a record of a hearing before an administrative law judge is made.

The administrative law judge shall make a complete record of the hearing proceedings. The record will be prepared as a typed copy of the proceedings if—

(a) The case is sent to the Appeals Council without a decision or with a recommended decision by the administrative law judge;

(b) You seek judicial review of your case by filing an action in a Federal district court within the stated time period, unless we request the court to remand the case; or

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(c) An administrative law judge or the Appeals Council asks for a written record of the proceedings.

[45 FR 52081, Aug. 5, 1980, as amended at 51 FR 303, Jan. 3, 1986]

§ 404.952 Consolidated hearing before an administrative law judge.

(a) *General.* (1) A consolidated hearing may be held if—

(i) You have requested a hearing to decide your benefit rights under title II of the Act and you have also requested a hearing to decide your rights under another law we administer; and

(ii) One or more of the issues to be considered at the hearing you requested are the same issues that are involved in another claim you have pending before us.

(2) If the administrative law judge decides to hold the hearing on both claims, he or she decides both claims, even if we have not yet made an initial or reconsidered determination on the other claim.

(b) *Record, evidence, and decision.* There will be a single record at a consolidated hearing. This means that the evidence introduced in one case becomes evidence in the other(s). The administrative law judge may make either a separate or consolidated decision.

[45 FR 52081, Aug. 5, 1980, as amended at 51 FR 303, Jan. 3, 1986]

§ 404.953 The decision of an administrative law judge.

(a) *General.* The administrative law judge shall issue a written decision that gives the findings of fact and the reasons for the decision. The decision must be based on evidence offered at the hearing or otherwise included in the record. The administrative law judge shall mail a copy of the decision to all the parties at their last known address. The Appeals Council may also receive a copy of the decision.

(b) *Wholly favorable oral decision entered into the record at the hearing.* The administrative law judge may enter a wholly favorable oral decision into the record of the hearing proceedings. If the administrative law judge enters a wholly favorable oral decision into the record of the hearing proceedings, the administrative law judge may issue a