

§ 404.958

found by the administrative law judge for your failure to appear; or

(ii) Neither you nor the person you designate to act as your representative appears at the time and place set for the hearing and within 10 days after the administrative law judge mails you a notice asking why you did not appear, you do not give a good reason for the failure to appear.

(2) In determining good cause or good reason under this paragraph, we will consider any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have.

(c) The administrative law judge decides that there is cause to dismiss a hearing request entirely or to refuse to consider any one or more of the issues because—

(1) The doctrine of *res judicata* applies in that we have made a previous determination or decision under this subpart about your rights on the same facts and on the same issue or issues, and this previous determination or decision has become final by either administrative or judicial action;

(2) The person requesting a hearing has no right to it under § 404.930;

(3) You did not request a hearing within the stated time period and we have not extended the time for requesting a hearing under § 404.933(c); or

(4) You die, there are no other parties, and we have no information to show that another person may be adversely affected by the determination that was to be reviewed at the hearing. However, dismissal of the hearing request will be vacated if, within 60 days after the date of the dismissal, another person submits a written request for a hearing on the claim and shows that he or she may be adversely affected by the determination that was to be reviewed at the hearing.

[45 FR 52081, Aug. 5, 1980, as amended at 50 FR 21438, May 24, 1985; 51 FR 303, Jan. 3, 1986; 59 FR 1634, Jan. 12, 1994]

§ 404.958 Notice of dismissal of a request for a hearing before an administrative law judge.

We shall mail a written notice of the dismissal of the hearing request to all parties at their last known address. The notice will state that there is a

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right to request that the Appeals Council vacate the dismissal action.

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

§ 404.959 Effect of dismissal of a request for a hearing before an administrative law judge.

The dismissal of a request for a hearing is binding, unless it is vacated by an administrative law judge or the Appeals Council.

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

§ 404.960 Vacating a dismissal of a request for a hearing before an administrative law judge.

An administrative law judge or the Appeals Council may vacate any dismissal of a hearing request if, within 60 days after the date you receive the dismissal notice, you request that the dismissal be vacated and show good cause why the hearing request should not have been dismissed. The Appeals Council itself may decide within 60 days after the notice of dismissal is mailed to vacate the dismissal. The Appeals Council shall advise you in writing of any action it takes.

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

§ 404.961 Prehearing and posthearing conferences.

The administrative law judge may decide on his or her own, or at the request of any party to the hearing, to hold a prehearing or posthearing conference to facilitate the hearing or the hearing decision. The administrative law judge shall tell the parties of the time, place and purpose of the conference at least seven days before the conference date, unless the parties have indicated in writing that they do not wish to receive a written notice of the conference. At the conference, the administrative law judge may consider matters in addition to those stated in the notice, if the parties consent in writing. A record of the conference will be made. The administrative law judge shall issue an order stating all agreements and actions resulting from the conference. If the parties do not object, the agreements and actions become