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years of service accruing after December 31, 1995, in the railroad industry, an office of the Railroad Retirement Board.

(d) *Extension of time to request review.* If you want us to review the initial determination on your disability claim, but you do not request review timely, you may ask us for more time to request review. Your request for an extension of time must be in writing and must give the reasons the request for review was not filed, or cannot be filed, in time. If you show us that you have good cause for missing the deadline, we will extend the time period. To determine whether good cause exists, we will use the standards explained in § 405.20 of this part.

§ 405.215 Procedures before a Federal reviewing official.

(a) *General.* The Federal reviewing official will review existing evidence and accept and obtain new evidence in order to make a decision on your claim. The decision will be based on all evidence in the record.

(b) *Developing the record.* If you have additional evidence that you did not submit with your request for review, you should submit that evidence to the Federal reviewing official as soon as possible. If there is additional evidence that you wish to submit and you are having difficulty obtaining it, the Federal reviewing official may issue a subpoena for the evidence using the process and standards described in § 405.217. If the Federal reviewing official determines that additional evidence is necessary, we may obtain such evidence from other sources, including the State agency.

(c) *Seeking State agency clarification.* In reviewing your claim, if the Federal reviewing official determines that additional information, beyond that provided by the claimant, is necessary, the Federal reviewing official may obtain it from other sources, including the State agency or a treating source. The State agency will provide such clarification or additional information to the Federal reviewing official on a timely basis. In such circumstances, the Federal reviewing official will retain the authority to make the deci-

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sion as to whether or not you are disabled.

§ 405.217 Subpoenas.

(a) When it is reasonably necessary for the full presentation of a claim, we may issue subpoenas for the production of any documents that are relevant to an issue before the Federal reviewing official.

(b) To have documents subpoenaed, you must file a written request for a subpoena with us.

The written request must:

(1) Identify the documents with sufficient detail to find them;

(2) State the important facts that the document is expected to show; and

(3) Indicate why these facts could not be shown without that document.

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

(d) Within five days of receipt of a subpoena, the person against whom the subpoena is directed may ask us to withdraw or limit the scope of the subpoena, setting forth the reasons why the subpoena should be withdrawn or why it should be limited in scope.

(e) Upon failure of any person to comply with a subpoena, the Office of the General Counsel may seek enforcement of the subpoena under section 205(e) of the Act.

§ 405.220 Decision by the Federal reviewing official.

(a) The Federal reviewing official will make a decision based on all of the evidence. The written decision will explain in clear and understandable language the specific reasons for the decision, including an explanation as to why the Federal reviewing official agrees or disagrees with the rationale in the initial determination.

(b) Before making his or her decision, the Federal reviewing official may consult with a medical, psychological, or vocational expert through the Medical and Vocational Expert System if the Federal reviewing official determines that such consultation is necessary. If the Federal reviewing official disagrees with the initial determination, or if you submit, or the Federal reviewing official otherwise obtains, new and material medical evidence, the Federal reviewing official will consult with a

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medical or psychological expert through the Medical and Vocational Expert System before making a decision. At all times, the Federal reviewing official retains the authority to make the decision as to whether you are disabled under our rules.

§ 405.225 Notice of the Federal reviewing official's decision.

We will mail a written notice of the Federal reviewing official's decision to you at your last known address. We will inform you of your right to a hearing before an administrative law judge.

§ 405.230 Effect of the Federal reviewing official's decision.

The Federal reviewing official's decision is binding unless—

(a) You request a hearing before an administrative law judge under § 405.310 of this part within 60 days of the date you receive notice of the Federal reviewing official's decision and a decision is made by the administrative law judge,

(b) The expedited appeals process is used, or

(c) We revise the Federal reviewing official's decision under subpart G of this part.

§ 405.240 Sunset of this subpart.

(a) If you filed a request for review by a Federal reviewing official and we transferred your claim to the Office of the Federal Reviewing Official on or before March 23, 2008, the Federal reviewing official will review and issue a decision on your claim.

(b) If you have received an initial determination under subpart B of this part, we will process any request for additional administrative review not described in paragraph (a) of this section as either a request for reconsideration by the State agency or a request for hearing before an administrative law judge if your State uses the testing procedures under §§ 404.906 and 416.1406 of this chapter. In any hearing before an administrative law judge on your claim, and in any further review of your claim, we will follow the procedures in this part.

(c) This subpart will no longer be effective the day after a Federal reviewing official issues a decision on the last

of the claims accepted for review under paragraph (a) of this section.

(d) If compelling evidence shows that the Federal reviewing official process is efficient, effective, and sustainable given available Agency resources, the Commissioner may reinstate the Federal reviewing official process by publishing a notice of proposed rule-making and final rule in the FEDERAL REGISTER.

[73 FR 2415, Jan. 15, 2008; 73 FR 10381, Feb. 27, 2008]

Subpart D—Administrative Law Judge Hearing

§ 405.301 Hearing before an administrative law judge—general.

(a) This subpart explains what to do if you are dissatisfied with a decision by a Federal reviewing official, a reconsidered determination you received as a result of § 405.240 of this part, or an initial determination subject to a hearing by an administrative law judge under the procedures in this part as a result of § 404.906(b)(4) or § 416.1406(b)(4) of this chapter. In it, we describe how you may ask for a hearing before an administrative law judge, and what procedures we will follow when you ask for a hearing.

(b) The Commissioner will appoint an administrative law judge to conduct the hearing. If circumstances warrant after making the appointment (for example, if the administrative law judge becomes unavailable), the Commissioner may assign your claim to another administrative law judge.

(c) You may examine the evidence used in making the decision or determination under review, submit evidence, appear at the hearing, and present and question witnesses. The administrative law judge may ask you questions and will issue a decision based on the hearing record. If you waive your right to appear at the hearing, the administrative law judge will make a decision based on the evidence that is in the file, any new evidence that is timely submitted, and any evidence that the administrative law judge obtains.

[71 FR 16446, Mar. 31, 2006, as amended at 73 FR 2415, Jan. 15, 2008]