

§ 405.410 Selecting claims for Decision Review Board review.

(a)(1) The Board may review your claim if the administrative law judge made a decision under §§ 405.340 or 405.370 of this part, regardless of whether the administrative law judge's decision was unfavorable, partially favorable, or wholly favorable to you.

(2) Claims the Board will review may include those where there is an increased likelihood of error or that involve the application of new policies, rules, or procedures. The Board will review both allowances and denials of benefits. It will not review claims based on the identity of the administrative law judge who decided the claim.

(b)(1) The Board may reopen claims under subpart G of this part without regard to the time limits therein, if, in the view of our effectuating component, the administrative law judge's decision cannot be effectuated because it contains a clerical error affecting the outcome of the claim, the decision is clearly inconsistent with the Act or our regulations, or the decision is unclear regarding a matter that affects the outcome of the claim.

(2) If the Board reopens your claim, it will do so no later than 60 days from the date of the administrative law judge's decision.

§ 405.415 Notification by the Decision Review Board.

When the Board reviews your claim, we will notify you. The notice will explain that the Board will review the decision and will complete its action on your claim within 90 days of the date you receive notice. The notice also will explain that if the Board does not complete its action on your claim within 90 days, the administrative law judge's decision will become our final decision.

§ 405.420 Effect of Decision Review Board action on the right to seek judicial review.

(a)(1) Subject to the provisions of paragraph (a)(2) of this section, if the Board reviews your claim, the administrative law judge's decision will not be our final decision.

(2) If the Board does not complete its review within 90 days of the date you

receive notice that the Board will review your claim, the administrative law judge's decision will become our final decision. If you are dissatisfied with this final decision, you may seek judicial review of the decision under section 205(g) of the Act within 60 days of the expiration of the 90-day time period. The Board will take no further action with respect to your claim, unless it determines that it can make a decision that is fully favorable to you under the provisions of paragraph (a)(3) of this section.

(3) If the administrative law judge's decision becomes our final decision under the provisions of paragraph (a)(2) of this section, but the Board determines that it can make a decision that is fully favorable to you, it will reopen the administrative law judge's decision in accordance with subpart G of this part without regard to the time limits therein, and revise it as appropriate. If you have already sought judicial review of the final decision under section 205(g) of the Act, the Board will notify the Office of the General Counsel, which will then take appropriate action to request that the court remand the claim for the purpose of issuing the Board's decision.

(4) Paragraphs (a)(2) and (3) of this section do not apply to dismissals that you have asked the Board to review. You must wait for the Board to take action. The appeal rights, if any, that will be available at that time depend on the nature of the Board's action and will be explained in the Board's notice.

(b)(1) When the Board reviews your claim, it will either make our final decision or remand the claim to an administrative law judge for further proceedings consistent with the Board's remand order.

(2) If the Board makes our final decision in your claim, it will send you notice of the decision, as explained in § 405.445. If you are dissatisfied with the final decision, you may seek judicial review of the decision under section 205(g) of the Act.

(3) If the Board remands your claim to an administrative law judge, the Board's remand order is not our final decision and you may not seek judicial

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review of the remand order under section 205(g) of the Act. The administrative law judge's decision after remand will become our final decision, unless the Board reviews the decision under § 405.410.

(c) The Board's action under § 405.427 on your request to vacate the administrative law judge's dismissal of your request for review is not subject to further review.

§ 405.425 Procedures before the Decision Review Board.

(a) The Board may limit the issues that it considers and when it does, will notify you of those issues.

(b) You may submit a written statement within 10 days of the date you receive notice of the Board's review or the Board may ask you to submit a written statement within a certain time period. The written statement may be no longer than 2,000 words, and if typed, the typeface must be 12 point font or larger. The written statement should briefly explain why you agree or disagree with the administrative law judge's decision and should cite applicable law and specific facts in the record.

§ 405.427 Procedures before the Decision Review Board in claims dismissed by an administrative law judge.

(a) If you are dissatisfied with the administrative law judge's action on your request to vacate a dismissal under § 405.382 of this part, you may request that the Board vacate it. The Board will not consider your request to vacate a dismissal until the administrative law judge has ruled on your request. Your request to the Decision Review Board must be in writing and must be filed within 60 days after the date you receive the notice of the administrative law judge's action under § 405.382 of this part.

(b) When you request the Board to review the administrative law judge's dismissal of your claim, you may submit additional evidence, but the Board will accept only evidence that is relevant to the dismissal issue. All other evidence will be returned to you.

(c)(1) If you request the Board to vacate the administrative law judge's dis-

missal of your request for a hearing, you may submit a written statement with the Board at the time that you ask the Board to vacate the dismissal order. The written statement may be no more than 2,000 words, and, if it is typed, the typeface must be 12 point font or larger. The written statement should briefly explain why you agree or disagree with the administrative law judge's decision and should cite to the relevant facts in the record and applicable law.

(2) If you file a written statement with the Board after you request it to vacate the dismissal, the Board will not consider your written statement and will return it to you without placing it in the record.

(d) If you request the Board to vacate the administrative law judge's dismissal of your request for a hearing, the Board will take one of the following actions:

(1) Vacate the administrative law judge's dismissal order. If the Board issues an order vacating the administrative law judge's dismissal order, it will remand the claim to the administrative law judge for further proceedings consistent with the Board's order, or

(2) Decline to vacate the dismissal order.

§ 405.430 Record before the Decision Review Board.

Subject to § 405.373(b) of this part, in claims reviewed by the Board, the record is closed as of the date of the administrative law judge's decision, and the Board will base its action on the same evidence that was before the administrative law judge. When it reviews a claim, the Board will consider only that evidence that was in the record before the administrative law judge.

§ 405.440 Actions that the Decision Review Board may take.

(a) *General.* The Board may review the administrative law judge's findings of fact and application of the law. It will apply the substantial evidence standard in reviewing the findings of fact, but review de novo the application of the law.