

§ 498.221

20 CFR Ch. III (4-1-08 Edition)

notice of appeal with the DAB and instructions for how to file such appeal. If the ALJ cannot issue an initial decision within the 60 days, the ALJ will notify the parties of the reason for the delay and will set a new deadline.

(d) Unless an appeal or request for extension pursuant to § 498.221(a) is filed with the DAB, the initial decision of the ALJ becomes final and binding on the parties 30 days after the ALJ serves the parties with a copy of the decision. If service is by mail, the date of service will be deemed to be five days from the date of mailing.

[61 FR 65472, Dec. 13, 1996]

§ 498.221 Appeal to DAB.

(a) Any party may appeal the decision of the ALJ to the DAB by filing a notice of appeal with the DAB within 30 days of the date of service of the initial decision. The DAB may extend the initial 30-day period for a period of time not to exceed 30 days if a party files with the DAB a request for an extension within the initial 30-day period and shows good cause.

(b) If a party files a timely notice of appeal with the DAB, the ALJ will forward the record of the proceeding to the DAB.

(c) A notice of appeal will be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions, and identifying which finding of fact and conclusions of law the party is taking exception to. Any party may file a brief in opposition to exceptions, which may raise any relevant issue not addressed in the exceptions, within 30 days of receiving the notice of appeal and accompanying brief. The DAB may permit the parties to file reply briefs.

(d) There is no right to appear personally before the DAB, or to appeal to the DAB any interlocutory ruling by the ALJ.

(e) No party or person (except employees of the DAB) will communicate in any way with members of the DAB on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

(f) The DAB will not consider any issue not raised in the parties' briefs, nor any issue in the briefs that could have been, but was not, raised before the ALJ.

(g) If any party demonstrates to the satisfaction of the DAB that additional evidence not presented at such hearing is relevant and material and that there were reasonable grounds for the failure to adduce such evidence at such hearing, the DAB may remand the matter to the ALJ for consideration of such additional evidence.

(h) The DAB may remand a case to an ALJ for further proceedings, or may issue a recommended decision to decline review or affirm, increase, reduce, or reverse any penalty or assessment determined by the ALJ.

(i) When the DAB reviews a case, it will limit its review to whether the ALJ's initial decision is supported by substantial evidence on the whole record or contained error of law.

(j) Within 60 days after the time for submission of briefs or, if permitted, reply briefs has expired, the DAB will issue to each party to the appeal and to the Commissioner a copy of the DAB's recommended decision and a statement describing the right of any respondent who is found liable to seek judicial review upon a final decision.

[61 FR 65472, Dec. 13, 1996]

§ 498.222 Final decision of the Commissioner.

(a) Except with respect to any penalty or assessment remanded to the ALJ, the DAB's recommended decision, including a recommended decision to decline review of the initial decision, shall become the final decision of the Commissioner 60 days after the date on which the DAB serves the parties to the appeal and the Commissioner with a copy of the recommended decision, unless the Commissioner reverses or modifies the DAB's recommended decision within that 60-day period. If the Commissioner reverses or modifies the DAB's recommended decision, the Commissioner's decision is final and binding on the parties. In either event, a copy of the final decision will be served on the parties. If service is by mail, the date of service will be deemed