

## Railroad Retirement Board

## § 320.25

file with the hearings officer an election to participate in the appeal. A claimant who fails to file an election in the time prescribed shall be barred from further participation in the appeal and shall forfeit any right of review as provided for in this part.

[56 FR 65680, Dec. 18, 1991]

### § 320.20 Powers of hearings officer.

In the development of an appeal, the hearings officer shall have the power to hold hearings, require and compel the attendance of witnesses, administer oaths, take testimony, and make all necessary investigations.

### § 320.22 Notice of hearing.

(a) *Notification of parties.* In any case in which an oral hearing is to be held, the hearings officer shall schedule a time and place for the conduct of the hearing. The hearings officer shall promptly notify the party or parties to the proceeding by mail as to said time and place for the hearing. The notice shall include a statement of the specific issues involved in the case. The hearings officer shall make every effort to hold the hearing within 150 days after the date the appeal is filed.

(b) *Notice of objection.* A party to the proceeding may object to the time and place of the hearing, or as to the stated issues to be resolved, by filing a written notice of objection with the hearings officer. The notice of objection shall clearly set forth the matter objected to and the reasons for such objection, and, if the matter objected to is the time and place of the hearing, said notice shall further state that party's choice as to the time and place for the hearing. Said notice of objection shall be filed at the earliest practicable time, but in no event shall said notice be filed later than five business days prior to the scheduled date of the hearing.

(c) *Ruling on objection.* The hearings officer shall rule on any objection timely filed by a party under this section and shall notify the party of his or her ruling thereon. The hearings officer may for good cause shown, or upon his or her own motion, reschedule the time and/or place of the hearing. The hearings officer also may limit or expand

the issues to be resolved at the hearing.

(d) *Failure to appear or to file objection.* If neither a party nor his or her representative appears at the time and place scheduled for the hearing, that party shall be deemed to have waived his or her right to an oral hearing unless said party either filed with the hearings officer a notice of objection showing good cause why the hearing should have been rescheduled, which notice was timely filed but not ruled upon, or, within 10 days following the date on which the hearing was scheduled, said party files with the hearings officer a motion to reschedule the hearing showing good cause why neither the party nor his or her representative appeared at the hearing and further showing good cause as to why said party failed to file at the prescribed time any notice of objection to the time and place of the hearing.

(e) *Rescheduling the hearing.* If the hearings officer finds either that a notice of objection was timely filed showing good cause to reschedule the hearing, or that the party has within 10 days following the date of the hearing filed a motion showing good cause for failure to appear and to file a notice of objection, the hearings officer shall reschedule the hearing. If the hearings officer finds that the hearing shall not be rescheduled, he or she shall so notify the party in writing.

[53 FR 2488, Jan. 28, 1988]

### § 320.25 Hearing of appeal.

(a) *Manner of conducting hearing.* The hearing shall be informal, fair, and impartial, and shall be conducted in such manner as to ascertain the substantial rights of the parties.

(b) *Compilation of evidence.* Any party, or his duly authorized representative, shall be afforded full opportunity to present further evidence upon any controversial question of fact, orally or in writing, or by means of exhibits; to examine and cross-examine witnesses, and to present argument. If, in the judgment of the hearings officer, evidence not offered is available and relevant, and is material to the merits of the appeal, the hearings officer shall

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obtain such evidence upon his own initiative. The hearings officer shall protect the record against scandal, impertinence and irrelevancies, but the technical rules of evidence shall not apply.

(c) *Where no oral hearing required.* Where the hearings officer finds that no factual issues are presented by an appeal, and the only issues raised by the parties are issues concerning the application or interpretation of law, the parties or their representatives shall be afforded full opportunity to submit written argument in support of their position but no oral hearing shall be held.

(d) *Hearing by telephone.* In the discretion of the hearings officer and with the approval of the Director of Hearings and Appeals and agreement of all parties, any hearing required under this part may be conducted by telephone conference.

[Board Order 58-142, 23 FR 9090, Nov. 22, 1958, as amended at 56 FR 65681, Dec. 18, 1991]

### § 320.28 Development of record.

All evidence presented by any party or by his duly authorized representative, and all evidence developed by the hearings officer, shall be preserved. Such evidence, together with a record of the arguments, oral or written, and the file previously made in the adjudication of the claim, shall constitute the record. After an appeal from an initial determination is filed, the compilation of the record shall be initiated by the inclusion therein of the file made in the adjudication of the claim; the compilation of the record shall be kept up to date by the prompt addition thereto of all parts of the record subsequently developed. The entire record at any time during the pendency of an appeal shall be available for examination by any party or by his duly authorized representative.

[42 FR 29302, June 8, 1977, as amended at 56 FR 65681, Dec. 18, 1991]

### § 320.30 Decision or report of hearings officer.

As soon as practicable after the completion of the record, the hearings officer shall render his decision, or submit his report to the Board, as may be appropriate in the case. The decision or

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report shall be based on the record and shall be in writing. Such decision shall contain a brief statement of (a) the issue or issues raised, (b) the evidence submitted, (c) findings of fact, (d) the decision made, and (e) the reasons therefor. Such report shall contain a statement of (1) the issue or issues raised, (2) the evidence submitted, (3) findings of fact, (4) conclusions of law, (5) recommendations as to the decision to be made by the Board, and (6) such discussion of the foregoing as the hearings officer may desire to present to the Board. Within 15 days after rendition of the decision or submission of the report, a copy of the decision or report shall be mailed to each party at the last address of record. In the case of a report, a copy of the transcript of the hearing, if any was held, shall also be mailed to each party.

[Board Order 66-84, 31 FR 10181, July 28, 1966, as amended at 56 FR 65681, Dec. 18, 1991]

### § 320.32 Effect of decision of hearings officer.

A decision of the hearings officer, subject to review as hereinafter provided, shall be binding upon any adjudicating office and upon all parties;

(a) With respect to the initial determination involved, and

(b) With respect to other initial determinations, irrespective of whether they have been appealed, which involved the same parties and which were based upon the same issue or issues determined in the decision of the hearings officer.

[56 FR 65681, Dec. 18, 1991]

### § 320.35 Review of decision of hearings officer on motion of Board.

The Board may, on its own motion, review a decision of the hearings officer on the basis of the evidence previously submitted in the case, and may designate any employee of the Board to take additional evidence and to report his findings to the Board.

### § 320.38 Appeal to Board from decision of hearings officer.

Any claimant aggrieved by a decision of the hearings officer and any base-year employer(s) whose employee was awarded benefits, who participated in