

§ 410.648

the case. Even though all of the parties have filed a waiver of the right to appear and present evidence and contentions at a hearing before the Administrative Law Judge, the Administrative Law Judge may, nevertheless, give notice of a time and place and conduct a hearing as provided in §§ 410.636 to 410.646, inclusive, if he believes that the personal appearance and testimony of the party or parties would assist him to ascertain the facts in issue in the case.

(b) *Record as basis for decision.* Where all of the parties have waived their right to appear in person or through a representative and the Administrative Law Judge does not schedule an oral hearing, the decision shall be based on the record. Where a party residing outside the United States at a place not readily accessible to the United States does not indicate that he wishes to appear in person or through a representative before an Administrative Law Judge, and there are no other parties to the hearing who wish to appear, the Administrative Law Judge may decide the case on the record. In any case where the decision is to be based on the record, the Administrative Law Judge shall make a record of the relevant written evidence, including applications, written statements, certificates, affidavits, reports, and other documents which were considered in connection with the initial determination and reconsideration, and whatever additional relevant and material evidence the party or parties may present in writing for consideration by the Administrative Law Judge. Such documents shall be considered as all of the evidence in the case.

[37 FR 20652, Sept. 30, 1972]

§ 410.648 Dismissal of request for hearing; by application of party.

With the approval of the Administrative Law Judge at any time prior to the mailing of notice of the decision, a request for a hearing may be withdrawn or dismissed upon the application of the party or parties filing the request for such hearing. A party may request a dismissal by filing a written notice of such request with the Administrative Law Judge or orally stating such request at the hearing.

20 CFR Ch. III (4-1-01 Edition)

§ 410.649 Dismissal by abandonment of party.

With the approval of the Administrative Law Judge, a request for hearing may also be dismissed upon its abandonment by the party or parties who filed it. A party shall be deemed to have abandoned a request for hearing if neither the party nor his representative appears at the time and place fixed for the hearing and either (a) prior to the time for hearing such party does not show good cause as to why neither he nor his representative can appear or (b) within 10 days after the mailing of a notice to him by the Administrative Law Judge to show cause, such party does not show good cause for such failure to appear and failure to notify the Administrative Law Judge prior to the time fixed for hearing that he cannot appear.

§ 410.650 Dismissal for cause.

The presiding officer may, on his own motion, dismiss a hearing request, either entirely or as to any stated issue, under any of the following circumstances:

(a) *Res judicata.* Where there has been a previous determination or decision by the Commissioner with respect to the rights of the same party on the same facts pertinent to the same issue or issues which has become final either by judicial affirmance or, without judicial consideration, upon the claimant's failure timely to request reconsideration, hearing, or review, or to commence a civil action with respect to such determination or decision (see §§ 410.624, 410.631, 410.661, and 410.666).

(b) *No right to hearing.* Where the party requesting a hearing is not a proper party under § 410.632 or § 410.633 or does not otherwise have a right to a hearing under § 410.630. This would include, but is not limited to, an individual claiming as a representative payee appointed pursuant to § 410.581 (see § 410.615).

(c) *Hearing request not timely filed.* Where the party has failed to file a hearing request timely pursuant to § 410.631 and the time for filing such request has not been extended as provided in § 410.669.

(d) *Death of party.* Where the party who filed the hearing request dies and