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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the Administrative Law Judge at any time prior to the mailing of notice of the decision, a request for a hearing may be withdrawn or dismissed upon the application of the party or parties filing the request for such hearing.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

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there is no information before the presiding officer or the Social Security Administration showing that an individual who is not a party may be prejudiced by the Social Security Administration's determination which is the subject of the request for hearing: *Provided*; That if, within 60 days after the date notice of such dismissal is mailed to the original party at his last known address any such other individual states in writing that he desires a hearing on such claim and shows that he may be prejudiced by the Social Security Administration's initial determination, then the dismissal of the request for hearing shall be vacated.

[36 FR 23760, Dec. 14, 1971, as amended at 37 FR 20653, Sept. 30, 1972; 41 FR 54753, Dec. 15, 1976; 62 FR 38453, July 18, 1997]

§ 410.651 Notice of dismissal and right to request review thereon.

Notice of the Administrative Law Judge's dismissal action shall be given to the parties or mailed to them at their last known addresses. Such notice shall advise the parties of their right to request review of the dismissal action by the Appeals Council (see § 410.660).

§ 410.652 Effect of dismissal.

The dismissal of a request for hearing shall be final and binding unless vacated (see § 410.653).

§ 410.653 Vacation of dismissal of request for hearing.

A presiding officer or the Appeals Council may, on request of the party and for good cause shown, vacate any dismissal of a request for hearing at any time within 60 days after the date of receipt of the notice of dismissal by the party requesting the hearing at his last known address. For purposes of this section, the date of receipt of the dismissal notice shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary. In any case where a presiding officer has dismissed the hearing request, the Appeals Council may, on its own motion, within 60 days after the mailing of such notice, review such

dismissal and may, in its discretion vacate such dismissal.

[41 FR 54753, Dec. 15, 1976]

§ 410.654 Administrative Law Judge's decision or certification to Appeals Council.

As soon as practicable after the close of a hearing, the Administrative Law Judge, except as herein provided, shall make a decision in the case or certify the case with a recommended decision to the Appeals Council for decision (see §§ 410.657 through 410.659). If the Administrative Law Judge makes a decision in the case, such decision shall be based upon the evidence adduced at the hearing (§§ 410.636 through 410.646, inclusive) or otherwise included in the hearing record (see § 410.647). The decision shall be made in writing and contain findings of fact and a statement of reasons. A copy of the decision shall be mailed to the parties at their last known addresses.

§ 410.655 Effect of Administrative Law Judge's decision.

The decision of the Administrative Law Judge provided for in § 410.654, shall be final and binding upon all parties to the hearing unless it is reviewed by the Appeals Council (see §§ 410.663 through 410.665) or unless it is revised in accordance with § 410.671, or unless the expedited appeals process is used, in accordance with § 410.629a. If a party's request for review of the Administrative Law Judge's decision is denied (see § 410.662) or is dismissed (see § 410.667), such decision shall be final and binding upon all parties to the hearing unless a civil action is filed in a district court of the United States, as is provided in section 205(g) of the Social Security Act, as incorporated in the Federal Coal Mine Health and Safety Act by section 413(b) of that Act (see § 410.670a), or unless the decision is revised in accordance with § 410.671.

[40 FR 53388, Nov. 18, 1975]

§ 410.656 Removal of hearing to Appeals Council.

The Appeals Council on its own motion may remove to itself any request for hearing pending before an Administrative Law Judge. The hearing on any