

## Social Security Administration

## § 410.705

*Good cause* may be established in the following situations:

(1) Circumstances beyond the individual's control, such as extended illness, mental or physical incapacity, or communication difficulties; or

(2) Incorrect or incomplete information furnished the individual by the Social Security Administration; or

(3) Unusual or unavoidable circumstances, the nature of which demonstrate that the individual could not reasonably be expected to have been aware of the need to respond within this time period.

*Good cause* for failure to respond timely does not exist when there is evidence of record that the individual was informed that he or she should respond timely and the individual failed to do so because of negligence or intent not to respond.

(e) *Changing election.* After a claimant has elected review by the Social Security Administration, he or she may change the election any time prior to the date an initial determination is made. If a claimant has elected review by the Office of Workers' Compensation Programs, the claimant may change the election if the Social Security Administration has not yet forwarded the file to the Office of Workers' Compensation Programs. Once the file is forwarded to the Office of Workers' Compensation Programs, a claimant's right to change the election from the Office of Workers' Compensation Programs to the Social Security Administration is governed by the regulations of DOL.

(f) *Social Security Administration review elected.* (1) If review by the Social Security Administration is requested, a complete review of the evidence on file will be made to see if the file establishes entitlement to benefits under the BLBRA of 1977. Evidence on file is information in the black lung claims file, in the social security title II and title XVI disability claims files, or in a person's earnings record, as of March 1, 1978. In the case of a pending claim which is being appealed, this review will not be delayed because of the pending claim. If it is determined that eligibility to benefits can be established, the claims file, including all evidence and other pertinent material in the

claims file, will be transferred to the Office of Worker's Compensation Programs for processing and assignment of liability in accordance with regulations published by DOL at 20 CFR part 727. The decision of the Social Security Administration approving the claim will be binding upon the Office of Worker's Compensation Programs as an initial determination of the claim. The Social Security Administration will notify the claimant of its approval. If the claimant disagrees with any part of the Social Security Administration's determination of approval, the claimant may request review of this determination by the Office of Worker's Compensation Programs. The Social Security Administration has no authority under the BLBRA of 1977 to process an appeal of any determination made by it in reviewing these denied and pending part B claims.

(2) If it is determined that the evidence on file is insufficient to support an award of benefits, the claims file, including all evidence and other pertinent material in the claims file, will be transferred to the Office of Worker's Compensation Programs for further review in accordance with regulations published at 20 CFR part 727. The Social Security Administration will notify the claimant of this action.

(g) *DOL, Office of Workers' Compensation Programs review elected.* If review by the Office of Workers' Compensation Programs is requested, the claims file and all pertinent material will be forwarded to the Office of Workers' Compensation Programs, without review by the Social Security Administration, for processing by the Office of Workers' Compensation Programs in accordance with regulations published at 20 CFR part 727.

[43 FR 34781, Aug. 7, 1978, as amended at 44 FR 10058, Feb. 16, 1979; 44 FR 12164, Mar. 6, 1979; 62 FR 38454, July 18, 1997]

### § 410.705 Duplicate claims.

(a) *Approved by the Social Security Administration—denied or pending with the Office of Workers' Compensation Programs.* A person whose part B claim for benefits was approved by the Social Security Administration and who also filed a part C claim with the Office of Workers' Compensation Programs

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which is pending or has been denied shall be entitled to a review of the part C claim by the Office of Workers' Compensation Programs under the BLBRA of 1977.

(b) *Denied or pending with the Social Security Administration—approved by the Office of Workers' Compensation Programs.* A person who has filed a part B claim with the Social Security Administration which is pending or has been denied and who has also filed a part C claim with the Office of Workers' Compensation Programs, which has been approved, shall be entitled, upon request, to a review of the pending or denied part B claim in light of the BLBRA of 1977 by either the Social Security Administration or the Office of Workers' Compensation Programs, in accordance with this subpart.

(c) *Pending or denied by the Social Security Administration and the Office of Workers' Compensation Programs.* A person who has filed a claim both with the Social Security Administration and the Office of Workers' Compensation Programs and whose claims are either pending with or have been denied by both agencies shall have the claim reviewed under the BLBRA of 1977 by the Social Security Administration if such review is requested by the claimant. If the claim is not approved by the Social Security Administration it shall be forwarded to the Office of Workers' Compensation Programs for further review as provided in § 410.704(e)(2). During the pendency of review proceedings by the Social Security Administration, if any, no action shall be taken by the Secretary of Labor with respect to the part C claim which is pending or has been denied by DOL. If the claimant does not respond to notification of his or her right to review by the Social Security Administration within 6 months of the notice (see § 410.704(c)) unless the period is enlarged for good cause shown, the Office of Workers' Compensation Programs shall proceed under DOL's regulations at 20 CFR part 727 to review the claim originally filed with the Secretary of Labor. If the claimant, upon notification by the Social Security Administration of his or her right to review (see § 410.704(a)) requests that the claim originally filed with the Social Security Administra-

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tion be forwarded to the Office of Workers' Compensation Programs for review, or if more than one claim has been filed with the Secretary of Labor by the same claimant, such claims shall be merged and processed with the first claim filed with the Office of Workers' Compensation Programs.

### § 410.706 Effect of the Social Security Administration determination of entitlement.

Under section 435 of the BLBRA of 1977 a determination of entitlement made by the Social Security Administration under this subpart G is binding on the Office of Workers' Compensation Programs as an initial determination of eligibility.

### § 410.707 Hearings and appeals.

The review of any determination made by the Social Security Administration of a claim under this subpart will be made by the Office of Workers' Compensation Programs. If the Social Security Administration does not approve the claim following its review under this subpart, the claim will be referred to the Office of Worker's Compensation Programs, and the Office of Workers' Compensation Programs will automatically review the claim. The Office of Workers' Compensation Programs will provide an opportunity for the claimant to submit additional evidence if it is needed to approve the claim. See § 410.704(e)(2) of this subpart. If the Social Security Administration approves the claim but the claimant disagrees with any part of the Social Security Administration's determination, he or she may request the Office of Workers' Compensation Programs to review the Social Security Administration's determination. See § 410.704 (e)(1) of this subpart.

## PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

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