

### § 30.316

### 20 CFR Ch. I (4–1–10 Edition)

death or illness of the claimant's parent, spouse, or child prevents the claimant from attending the hearing as scheduled, a postponement may be granted in the discretion of the FAB if the claimant or the representative provides at least 24 hours notice and a reasonable explanation supporting his or her inability to attend the scheduled hearing.

(c) At any time after requesting a hearing, the claimant can request a change to a review of the written record by making a written request to the FAB. Once such a change is made, no further opportunity for a hearing will be provided.

#### **§ 30.316 How does the FAB issue a final decision on a claim?**

(a) If the claimant does not file a written statement that objects to the recommended decision and/or requests a hearing within the period of time allotted in § 30.310, or if the claimant waives any objections to all or part of the recommended decision, the FAB may issue a final decision accepting the recommendation of the district office, either in whole or in part (see §§ 30.311, 30.312 and 30.314(b)).

(b) If the claimant objects to all or part of the recommended decision, the FAB reviewer will issue a final decision on the claim after either the hearing or the review of the written record, and after completing such further development of the case as he or she may deem necessary.

(c) Any recommended decision (or part thereof) that is pending either a hearing or a review of the written record for more than one year from the date the FAB received the written statement described in § 30.310(a), or the date the Director reopened the claim for issuance of a new final decision pursuant to § 30.320(a), shall be considered a final decision of the FAB on the one-year anniversary of such date. Any recommended decision described in § 30.311 that is pending at the FAB for more than one year from the date that the period of time described in § 30.310 expired shall be considered a final decision of the FAB on the one-year anniversary of such date.

(d) The decision of the FAB, whether issued pursuant to paragraph (a), (b) or

(c) of this section, shall be final upon the date of issuance of such decision, unless a timely request for reconsideration under § 30.319 has been filed.

(e) A copy of the final decision of the FAB will be mailed to the claimant's last known address and to the claimant's designated representative before OWCP, if any. Notification to either the claimant or the representative will be considered notification to both parties.

#### **§ 30.317 Can the FAB request a further response from the claimant or return a claim to the district office?**

At any time before the issuance of its final decision, the FAB may request that the claimant submit additional evidence or argument, or return the claim to the district office for further development and/or issuance of a newly recommended decision without issuing a final decision, whether or not requested to do so by the claimant.

#### **§ 30.318 Can the FAB consider objections to HHS's reconstruction of a radiation dose or to the guidelines OWCP uses to determine if a claimed cancer was at least as likely as not related to employment?**

(a) If the claimant objects to HHS's reconstruction of the radiation dose to which the employee was exposed, the FAB will evaluate the factual findings upon which HHS based its dose reconstruction. If these factual findings do not appear to be supported by substantial evidence, the claim will be returned to the district office for referral to HHS for further consideration.

(b) The methodology used by HHS in arriving at reasonable estimates of the radiation doses received by an employee, established by regulations issued by HHS at 42 CFR part 82, is binding on the FAB. The FAB reviewer may determine, however, that objections concerning the application of that methodology should be considered by HHS and may return the case to the district office for referral to HHS for such consideration.

(c) The methodology that OWCP uses to determine if a claimed cancer was at least as likely as not related to employment at a DOE facility, an atomic weapons employer facility, or a RECA

section 5 facility, established by regulations issued by HHS at 42 CFR part 81, is also binding on the FAB (see §30.213). However, since OWCP applies this methodology when it makes these determinations, the FAB reviewer may consider objections to the manner in which OWCP applied HHS's regulatory guidelines.

**§ 30.319 May a claimant request reconsideration of a final decision of the FAB?**

(a) A claimant may request reconsideration of a final decision of the FAB by filing a written request with the FAB within 30 days from the date of issuance of such decision. If a timely request for reconsideration is made, the decision in question will no longer be considered "final" under §30.316(d).

(b) For purposes of determining whether the written request referred to in paragraph (a) of this section has been timely filed with the FAB, the request will be considered to be "filed" on the date that the claimant mails it to the FAB, as determined by postmark, or on the date that such written request is actually received by the FAB, whichever is the earliest determinable date.

(c) A hearing is not available as part of the reconsideration process. If the FAB grants the request for reconsideration, it will consider the written record of the claim again and issue a new final decision on the claim. A new final decision that is issued after the FAB grants a request for reconsideration will be "final" upon the date of issuance of such new decision.

(1) Instead of issuing a new final decision after granting a request for reconsideration, the FAB may return the claim to the district office for further development as provided in §30.317.

(2) If the FAB denies the request for reconsideration, the FAB decision that formed the basis for the request will be considered "final" upon the date the request is denied, and no further requests for reconsideration of that particular final decision of the FAB will be entertained.

(d) A claimant may not seek judicial review of a decision on his or her claim under EEOICPA until OWCP's decision on the claim is final pursuant to either

§30.316(d) (for claims in which no request for reconsideration was filed with the FAB) or paragraph (c) of this section (for claims in which a request for reconsideration was filed with the FAB).

REOPENING CLAIMS

**§ 30.320 Can a claim be reopened after the FAB has issued a final decision?**

(a) At any time after the FAB has issued a final decision pursuant to §30.316, and without regard to whether new evidence or information is presented or obtained, the Director for Energy Employees Occupational Illness Compensation may reopen a claim and return it to the FAB for issuance of a new final decision, or to the district office for such further development as may be necessary, to be followed by a new recommended decision. The Director may also vacate any other type of decision issued by the FAB.

(b) At any time after the FAB has issued a final decision pursuant to §30.316, a claimant may file a written request that the Director for Energy Employees Occupational Illness Compensation reopen his or her claim, provided that the claimant also submits new evidence of either covered employment or exposure to a toxic substance, or identifies either a change in the PoC guidelines, a change in the dose reconstruction methods or an addition of a class of employees to the Special Exposure Cohort.

(1) If the Director concludes that the evidence submitted or matter identified in support of the claimant's request is material to the claim, the Director will reopen the claim and return it to the district office for such further development as may be necessary, to be followed by a new recommended decision.

(2) New evidence of a medical condition described in subpart C of these regulations is not sufficient to support a written request to reopen a claim for such a condition under paragraph (b) of this section.

(c) The decision whether or not to reopen a claim under this section is solely within the discretion of the Director