(2) Provide information as to Director appeals.

(c) Upon a claimant’s failure (without reasonable justification or excuse) to pursue in timely fashion the determination of his claim pursuant to his filed request therefor, the Director may, at his discretion, deem the request to be abandoned, as though never filed. Not less than thirty-three days prior thereto, the PSOB Office shall serve the claimant with notice of the Director’s intention to exercise such discretion.

§ 32.45 Hearings.

(a) Except with respect to a remand or referral, at the election of a claimant under subpart B or C of this part, the Hearing Officer shall hold a hearing, at a location agreeable to the claimant and the Officer (or, otherwise, at a location ruled by the Hearing Officer to be suitable), for the sole purposes of obtaining, consistent with §32.5(c),

(1) Evidence from the claimant and his fact or expert witnesses; and

(2) Such other evidence as the Hearing Officer, at his discretion, may rule to be necessary or useful.

(b) Unless, for good cause shown, the Director extends the time for filing, no election under paragraph (a) of this section shall be honored if it is filed with the PSOB Office later than ninety days after service of the notice described in §32.43(c).

(c) Not less than seven days prior to any hearing, the claimant shall file simultaneously with the PSOB Office and the Hearing Officer a list of all expected fact or expert witnesses and a brief summary of the evidence each witness is expected to provide.

(d) At any hearing, the Hearing Officer—

(1) May exclude any evidence whose probative value is substantially outweighed by considerations of undue delay, waste of time, or needless presentation of cumulative evidence; and

(2) Shall exclude witnesses (other than the claimant, or any person whose presence is shown by the claimant to be essential to the presentation of his claim), so that they cannot hear the testimony of other witnesses.

(3) Each hearing shall be recorded, and the original of the complete record or transcript thereof shall be made a part of the claim file.

(f) Unless, for good cause shown, the Director grants a waiver, a claimant’s failure to appear at a hearing (in person or through a representative) shall constitute a withdrawal of his election under paragraph (a) of this section.

(g) Upon a claimant’s failure to pursue in timely fashion his filed election under paragraph (a) of this section, the Director may, at his discretion, deem the same to be abandoned. Not less than thirty-three days prior thereto, the PSOB Office shall serve the claimant with notice of the Director’s intention to exercise such discretion.

[73 FR 76536, Dec. 17, 2008]

§ 32.46 Director appeal.

(a) In order to exhaust his administrative remedies, a claimant seeking relief from the denial of his claim shall appeal to the Director under subpart F of this part.

(b) Consistent with §32.8, any claim denial that is not appealed to the Director under paragraph (a) of this section shall constitute the final agency determination, unless the denial is reviewed otherwise under subpart F of this part.

Subpart—Director Appeals and Reviews

§ 32.51 Scope of subpart.

Consistent with §32.1, this subpart contains provisions applicable to Director appeals and reviews of claim approvals and denials made under subpart E of this part, and reviews of claim approvals under the Act, at 42 U.S.C. 3796c-1 or Public Law 107–37.

§ 32.52 Time for filing Director appeal.

(a) Unless, for good cause shown, the Director extends the time for filing, no Director appeal shall be considered if it is filed with the PSOB Office later than thirty-three days after the service of notice of the denial (under subpart E of this part) of a claim.

(b) A claimant may file with his Director appeal such supporting documentary, electronic, video, or other
nonphysical evidence and legal arguments as he may wish to provide.

[73 FR 76536, Dec. 17, 2008]

§ 32.53 Review.

(a) Upon the filing of the approval (under subpart E of this part) of a claim, the Director shall review the same.

(b) The Director may review—

(1) Any claim denial made under subpart E of this part; and

(2) Any claim approval made under the Act, at 42 U.S.C. 3796c-1 or Public Law 107-37.

(c) Unless the Director judges that it would be unnecessary, the PSOB Office shall serve notice upon the claimant (and upon any other claimant who may have filed a claim with respect to the same public safety officer) of the initiation of a review under paragraph (a) or (b) of this section. Unless the Director judges that it would be unnecessary, such notice shall—

(1) Indicate the principal factual findings or legal conclusions at issue; and

(2) Offer a reasonable opportunity for filing of evidence or legal arguments.

[73 FR 76536, Dec. 17, 2008]

§ 32.54 Director determination.

(a) Upon the Director's approving or denying a claim, the PSOB Office shall serve notice of the same simultaneously upon the claimant (and upon any other claimant who may have filed a claim with respect to the same public safety officer), and upon any Hearing Officer who made a determination with respect to the claim. In the event of a denial, such notice shall—

(1) Specify the factual findings and legal conclusions that support it; and

(2) Provide information as to judicial appeals (for the claimant or claimants).

(b) Upon a claimant's failure (without reasonable justification or excuse) to pursue in timely fashion the determination of his claim pursuant to his filed Director appeal, the Director may, at his discretion, deem the same to be abandoned, as though never filed. Not less than thirty-three days prior thereto, the PSOB Office shall serve the claimant with notice of the Director's intention to exercise such discretion.

(c) With respect to any claim before him, the Director, as appropriate, may—

(1) Remand the same to the PSOB Office, or to a Hearing Officer;

(2) Vacate any related determination under this part; or

(3) Refer any related matters to a Hearing Officer (as a special master), to recommend factual findings and dispositions in connection therewith.

[73 FR 76536, Dec. 17, 2008]

§ 32.55 Judicial appeal.

(a) Consistent with § 32.8, any approval or denial described in § 32.54(a) shall constitute the final agency determination.

(b) A claimant seeking relief from the denial of his claim may appeal judicially pursuant to the Act, at 42 U.S.C. 3796c-2.

[73 FR 76536, Dec. 17, 2008]