

§ 681.30 Are ex parte communications between a party and the ALJ permitted?

Ex parte communications between a party and the ALJ are not permitted unless the other party consents to such a communication taking place. This does not prohibit a party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 681.31 Are there sanctions for misconduct?

(a) The ALJ may sanction a person, including any party or representative, for failing to comply with an order, or for engaging in other misconduct that interferes with the speedy, orderly, and fair conduct of a hearing.

(b) Any such sanction shall reasonably relate to the severity and nature of the misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such a request.

(d) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

(e) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

§ 681.32 Are post-hearing briefs required?

Post-hearing briefs are not required, but the ALJ may permit them at his or her discretion.

DECISIONS AND APPEALS

§ 681.33 How is the case decided?

(a) The ALJ will issue an initial decision based only on the record. It will contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The ALJ will serve the initial decision on all parties within 90 days after the close of the hearing or, if the filing of post-hearing briefs were permitted, within 90 days after the final post-hearing brief was filed.

(c) The findings of fact must include a finding on each of the following issues:

(1) Whether any one or more of the claims or statements identified in the complaint violate this part; and

(2) If the defendant is liable for penalties or assessments, the appropriate amount of any such penalties or assessments, considering any mitigating or aggravating factors.

(d) The initial decision will include a description of the right of a defendant found liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head.

§ 681.34 How are penalty and assessment amounts determined?

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the authority head, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Although not exhaustive, the following factors are among those that may influence the ALJ and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;