

§ 404.1770 Decision by hearing officer.

(a) *General.* (1) After the close of the hearing, the hearing officer will issue a decision or certify the case to the Appeals Council. The decision must be in writing, will contain findings of fact and conclusions of law, and be based upon the evidence of record.

(2) In deciding whether a person has been, by reason of misconduct, disbarred or suspended by a court or bar, or disqualified from participating in or appearing before any Federal program or Federal agency, the hearing officer will consider the reasons for the disbarment, suspension, or disqualification action. If the action was taken for solely administrative reasons (e.g., failure to pay dues or to complete continuing legal education requirements), that will not disqualify the person from acting as a representative before us. However, this exception to disqualification does not apply if the administrative action was taken in lieu of disciplinary proceedings (e.g., acceptance of a voluntary resignation pending disciplinary action). Although the hearing officer will consider whether the disbarment, suspension, or disqualification action is based on misconduct when deciding whether a person should be disqualified from acting as a representative before us, the hearing officer will not re-examine or revise the factual or legal conclusions that led to the disbarment, suspension, or disqualification. For purposes of determining whether a person has been, by reason of misconduct, disqualified from participating in or appearing before any Federal program or Federal agency, disqualified refers to any action that prohibits a person from participating in or appearing before any Federal program or Federal agency, regardless of how long the prohibition lasts or the specific terminology used.

(3) If the hearing officer finds that the charges against the representative have been sustained, he or she will either—

(i) Suspend the representative for a specified period of not less than 1 year, nor more than 5 years, from the date of the decision; or

(ii) Disqualify the representative from acting as a representative in dealings with us until he or she may be re-

instated under § 404.1799. Disqualification is the sole sanction available if the charges have been sustained because the representative has been disbarred or suspended from any court or bar to which the representative was previously admitted to practice or disqualified from participating in or appearing before any Federal program or Federal agency, or because the representative has collected or received, and retains, a fee for representational services in excess of the amount authorized.

(4) The hearing officer shall mail a copy of the decision to the parties at their last known addresses. The notice will inform the parties of the right to request the Appeals Council to review the decision.

(b) *Effect of hearing officer's decision.* (1) The hearing officer's decision is final and binding unless reversed or modified by the Appeals Council upon review.

(2) If the final decision is that a person is disqualified from being a representative in dealings with us, he or she will not be permitted to represent anyone in dealings with us until authorized to do so under the provisions of § 404.1799.

(3) If the final decision is that a person is suspended for a specified period of time from being a representative in dealings with us, he or she will not be permitted to represent anyone in dealings with us during the period of suspension unless authorized to do so under the provisions of § 404.1799.

[45 FR 52090, Aug. 5, 1980, as amended at 56 FR 24132, May 29, 1991; 63 FR 41417, Aug. 4, 1998; 71 FR 2877, Jan. 18, 2006; 76 FR 80246, Dec. 23, 2011]

§ 404.1775 Requesting review of the hearing officer's decision.

(a) *General.* After the hearing officer issues a decision, either the representative or the other party to the hearing may ask the Appeals Council to review the decision.

(b) *Time and place of filing request for review.* The party requesting review will file the request for review in writing with the Appeals Council within 14 business days from the date the hearing officer mailed the notice. The party requesting review will certify that a