

## § 32.45

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.

[71 FR 46037, Aug. 10, 2006, as amended at 78 FR 29234, May 20, 2013; 83 FR 22387, May 15, 2018]

### § 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

(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; and

(3) Shall (unless the Director should direct or allow otherwise) be the only individual (other than the claimant's representative, if any) who may examine the claimant.

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(e) 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, as amended at 83 FR 22387, May 15, 2018]

### § 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 F—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 34 U.S.C. 10286 or Public Law 107–37.

[71 FR 46037, Aug. 10, 2006, as amended at 83 FR 22387, May 15, 2018]

### § 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.