

§ 81.43

“overnight” or “express” mail. If agreed upon by the parties, service of a copy of the petition may be made upon the other party by a method approved by the ALJ.

(2) Any petition submitted under this section in paper format must be accompanied by a statement certifying the date that the petition was served on the other party.

(e) A petition for review of an initial decision must—

(1) Identify the initial decision for which review is sought; and

(2) Include a statement of the reasons asserted by the party for affirming, modifying, setting aside, or remanding the initial decision in whole or in part.

(f)(1) A party may respond to a petition for review of an initial decision by filing a statement of its views on the issues raised in the petition, as provided for in this section, not later than 15 days after the date it receives the petition.

(2) If the ALJ has permitted the written submission to be filed in paper format, a party must serve a copy of its statement of views on the other party by hand delivery or mail and certify that it has done so pursuant to the provisions of paragraph (d) of this section.

(g)(1) The filing date for petitions under this section is the date the document is—

(i) Electronically filed; or

(ii) Hand-delivered or mailed, if permitted to file in paper format.

(2) If a scheduled filing date falls on a Saturday, Sunday, or a Federal holiday, the filing deadline is the next business day.

(Authority: 20 U.S.C. 1221e-3, 1234(f)(1), 1234a(e), and 3474(a))

[86 FR 52832, Sept. 23, 2021]

§ 81.43 Review by the Secretary.

(a)(1) The Secretary’s review of an initial decision is based on the record of the case, the initial decision, and any proper submissions of the parties or other participants in the case.

(2) During the Secretary’s review of the initial decision there shall not be any *ex parte* contact between the Secretary and individuals representing the Department or the recipient.

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(b) The ALJ’s findings of fact, if supported by substantial evidence, are conclusive.

(c) The Secretary may affirm, modify, set aside, or remand the ALJ’s initial decision.

(1) If the Secretary modifies, sets aside, or remands an initial decision, in whole or in part, the Secretary’s decision includes a statement of reasons that supports the Secretary’s decision.

(2)(i) The Secretary may remand the case to the ALJ with instructions to make additional findings of fact or conclusions of law, or both, based on the evidence of record. The Secretary may also remand the case to the ALJ for further briefing or for clarification or revision of the initial decision.

(ii) If a case is remanded, the ALJ shall make new or modified findings of fact or conclusions of law or otherwise modify the initial decision in accordance with the Secretary’s remand order.

(iii) A party may appeal a modified decision of the ALJ under the provisions of §§ 81.42 through 81.45. However, upon that review, the ALJ’s new or modified findings, if supported by substantial evidence, are conclusive.

(3) The Secretary, for good cause shown, may remand the case to the ALJ to take further evidence, and the ALJ may make new or modified findings of fact and may modify the initial decision based on that new evidence. These new or modified findings of fact are likewise conclusive if supported by substantial evidence.

(Authority: 5 U.S.C. 557(b); 20 U.S.C. 1221e-3, 1234(f)(1), 1234a(d), and 3474(a))

[58 FR 43474, Aug. 16, 1993, as amended at 60 FR 46494, Sept. 6, 1995]

§ 81.44 Final decision of the Department.

(a) The ALJ’s initial decision becomes the final decision of the Department 60 days after the recipient receives the ALJ’s decision unless the Secretary modifies, sets aside, or remands the decision during the 60-day period.

(b) If the Secretary modifies or sets aside the ALJ’s initial decision, a copy of the Secretary’s decision is provided to the parties by submission to OES. If