

# Decisions, decisions, decisions, Part 3: Oral hearings and review

**L**ast month's column briefly outlined the three avenues of appeal that an employee or survivor may use to challenge an adverse formal decision issued by OWCP. As noted last month, not all avenues are available for all decisions. The formal decision should outline which avenues are available for that decision. This month's column will explore the first avenue of appeal: oral hearings and reviews of the written record.

Available avenues of appeal may be requested in any order, except that an oral hearing or review of the written record may not be held if the claimant has previously submitted a reconsideration request on the same decision. A request for an oral hearing or review of the written record must be submitted in writing within 30 days (as determined by postmark) of the date of the decision for which the hearing is sought, to the address specified in the decision. The date of the decision counts as Day 1. While no special form is required to request an oral hearing or review of the written record, the claimant should provide the date of the decision he or she is appealing and the issue to be addressed by the hearing representative.

Claimants pursuing this avenue of appeal have the option of electing either an oral hearing before a hearing representative or a review of the case file by the hearing representative.

**Oral hearings are scheduled not more than 100 miles** from a claimant's home except in unusual circumstances. OWCP's regulations permit an oral hearing to be conducted by telephone or videoconference at the discretion of the hearing representative assigned to the case.

A written notice specifying the date, time and place for the hearing will be mailed, at least 30 days prior to the scheduled hearing, to the claimant, his or her representative and the employing agency. A representative of the employing agency may attend the hearing as an observer but may not otherwise participate unless requested to do so by the claimant.

The hearing is an informal non-adversarial proceeding that is not governed by formal legal rules of evidence or procedures: "the hearing representative may conduct the hearing in such manner as to best ascertain the rights of the claimant."<sup>1</sup> The hearing will be recorded, transcribed and made part of the case record. All testimony is taken under oath.

A claimant may be represented by any responsible individual at an OWCP hearing: a friend, an attorney, an NALC branch officer, or a shop steward. Only one representative is permitted. The representative should be knowledgeable about the FECA, fully familiar with the claim, and have prior experience with FECA hearings.

OWCP will furnish a copy of the transcript to the claimant or his or her representative and to the employing agency. Both the claimant and the employing agency have 20 days from the date the transcript is sent to send in comments. Any comments that the employing agency sends to OWCP it must also send to the claimant, who will be given an additional 20 days from the date they are sent to respond to the comments.

OWCP's regulations also provide that the hearing will remain open for the submission of additional evidence until 30 days after the hearing is held, unless the hearing representative, at his or her discretion, grants an extension. A copy of the decision will be mailed to the claimant, his or her representative and the employing agency.

**If the claimant chooses review of the written record in lieu** of an oral hearing, the hearing representative will review the case record and any additional evidence submitted by the claimant and the employing agency. New evidence and arguments may be submitted at any time up to the date specified by the hearing representative. The hearing representative also may conduct any investigation he or she deems necessary to address the issue being appealed.

In a manner similar to oral hearings, in reviews of the written record the hearing representative will send a copy of all pertinent material to the employing agency, which will have 20 days from the date it is sent to comment. Any comments that the employing agency sends to OWCP it must also send to the claimant, who will be given an additional 20 days from the date they are sent to respond to the comments.

**Next month's column will discuss when and why** claimants should request an oral hearing and strategies that they should follow in preparing for and participating in the hearing. 

1. 120 CFR 10.617(c)