

Decisions, decisions, decisions, Part 4: Oral hearings, continued

This month's column continues August's discussion of oral hearings. Before selecting an avenue of appeal of an adverse decision, claimants or their representatives should understand the actual reason for the denial or disallowance. While OWCP procedures require the claims examiner to explain the basis of any adverse decision, these explanations may be couched in bureaucratic language that the claimant has a hard time understanding. If claimants have any doubts about the reason for the denial, they should consult with their local branch OWCP specialist or business agent's office.

The basic purpose of an oral hearing is to provide the employee or survivor with an opportunity to support his or her claim and clarify information in the record. Because the hearing is informal, non-adversarial and interactive, it is a good venue in cases where there is evidence in the file that needs to be explained.

Hearing representatives are often more experienced than other claims examiners. They can respond to the claimant's questions and provide guidance to the claimant regarding deficiencies in the case and the sort of evidence that the claimant will need to produce to overcome the deficiencies.

This is significant since the hearing remains open for 30 days after the hearing is held for the submittal of additional evidence. The hearing representative may even request the submission of specific evidence. The hearing representative, at his or her sole discretion, may also grant one extension beyond the 30 days.

An oral hearing is also a good venue in cases where the issues are more complex. For example, if the claim is denied for a performance of duty issue, such as in the case of an emotional reaction claim, it will be easier at oral hearing to address direct questions from the hearing representative and present clarifying testimony from the claimant, his or her co-workers, or any other witnesses to the issue at hand.

A hearing is the only appeal route that permits oral testimony by witnesses. And it is the only part of the claims process where a claimant may request a subpoena. The

granting or denial of such a request is at the discretion of the hearing representative. The hearing representative may issue subpoenas for the attendance and testimony of witnesses, and for the production of books, records, correspondence, papers and other relevant documents. Subpoenas are issued for documents only if they are relevant and cannot be obtained by other means. They are issued for witnesses only where oral testimony is the best way to ascertain the facts. The hearing representative will not issue a subpoena for the attendance of employees of OWCP acting in their official capacities as decision makers or policy administrators.

Claimants or their representatives must submit the request for a subpoena in writing to the hearing representative as early as possible but no later than 60 days after the date of the original hearing request. They should explain in the request for a subpoena why the testimony or evidence is directly relevant to the issues at hand and why a subpoena is the best or only way to obtain such evidence or testimony.

Witnesses who are not employees or former employees of the federal government shall be paid the same fees and mileage as are paid for the same services in the District Court of the United States, where the subpoena is returnable. The fee for an expert witness shall not exceed the local customary fee for such services. Where OWCP has asked that the witness submit evidence into the case record or asked that the witness attend the hearing, OWCP shall pay the fees and mileage. Where the claimant has requested the subpoena, and where the witness has submitted evidence into the record at the request of the claimant, the claimant shall pay the fees and mileage.

A decision to deny a subpoena can be appealed only as part of an appeal of any adverse decision which results from the hearing.

Next month's column will conclude our discussion of hearings and review with suggestions and strategies that claimants should follow in preparing for and participating in the hearing. ✕