What Happens After an EEOICPA Recommended Decision?

I just received a recommended decision on my EEOICPA claim. What do I do next?

Read your recommended decision and the accompanying materials carefully. The decision may recommend acceptance, denial, or deferral of some or all of your claimed conditions, and different parts of the decision may require different actions. After the district office issues the recommended decision, your case file is sent to the Final Adjudication Branch (FAB), for review and issuance of a final decision. The next steps you take will depend on whether you agree or disagree with your recommended decision.

I AGREE With My Recommended Decision.

If you agree with the recommended decision, you may sign the waiver of objections form included with the decision, and return it to the FAB. By signing the form, you indicate that you are not going to challenge any of the conclusions in the recommended decision. This allows the FAB to take action on your case before the 60-day period for objecting to the recommended decision is over. Once the FAB receives a signed waiver (or waivers, where there is more than one survivor), a final decision should be issued within 30 days, along with any payment forms or medical benefits instructions.

You are not required to sign the waiver form. However, if you do not sign the waiver form, and do not file objections, the FAB will not be allowed to decide your case until the 60-day period for objections is over, which will mean a longer wait for you. After the FAB independently evaluates your case, you will receive a final decision (and if it is an acceptance, payment forms or medical benefits instructions).

I AGREE WITH PART of My Recommended Decision.

If you agree with part but disagree with another part of your recommended decision, you may waive your rights to object to accepted conditions and still object to denied conditions. You may sign what is called a "bifurcated waiver" describing your agreement and disagreement, and you may request a hearing or a review of the written record on the portion you disagree with. In this case, you may be issued two separate final decisions.

I DISAGREE With My Recommended Decision.

If you disagree with the decision, you have 60 days from the date of the recommended decision to file objections. These objections must be in writing and state the reasons for your disagreement. You may request a hearing on your objections as well, but you are not required to request a hearing.

How and when do I submit my objections?

Send your written objections to the DOL Central Mail Room as indicated in your recommended decision cover letter. The date of the postmark on the letter, or the date of the fax, must not be more than 60 days after the recommended decision date, or it will not be considered timely.

REVIEW OF THE WRITTEN RECORD

Can I file objections without requesting a hearing?

Yes. You are not required to go to a hearing if you have objections to the recommended decision. Instead, the FAB will take your objections into account in a "Review of the Written Record" (RWR). The RWR is an analysis of all the evidence in the case file, including any objections, to determine if the conclusions reached in the recommended decision are accurate. If the claimant objects to one portion of the recommended decision and agrees with the other portion, the FAB may issue a final decision on the accepted portion within 30 days, and then issue a separate final decision following the RWR on the objected portion. Recommended decisions addressing multiple claimants generally should be issued in the same final decision.

HEARINGS

May I request a hearing on any issue? When do I need to request a hearing?

Yes. You may request a hearing based on any disagreement you have with the recommended decision's conclusions. You have 60 calendar days from the date of the recommended decision, the same time that is allowed for filing objections, to file a request for a hearing. This request must be in writing. A hearing request is considered timely if it is postmarked no later than 60 days after the recommended decision. Timeliness is determined based on the postmark on the letter, or the earliest date received in the DEEOIC office or resource center as shown by the date stamp.

When will my hearing be scheduled? Where will it be held?

You will receive a "Notice of Hearing" with the date and location of the hearing. The notice will be mailed at least 30 days prior to the date set for your hearing. A hearing representative from the FAB will be assigned to conduct the hearing.

May I reschedule my hearing?

Rarely. The FAB may grant a postponement in very limited circumstances only, per program regulations. Your hearing may be postponed when you or your

authorized representative has a medical reason that prevents attendance, or when the death of the claimant's parent, spouse or child prevents attendance. The FAB will make every effort to accommodate timely requests to postpone a hearing.

You or your authorized representative should provide at least 24 hours notice and a reasonable explanation supporting your inability to attend the scheduled hearing. In such cases, a new hearing date and location will be set, and you will be notified.

What happens if I do not attend or cancel the hearing?
If you do not attend the hearing at the designated time and place, and do not contact the hearing representative to request a rescheduling based on a medical reason or death that prevents attendance, then the hearing will not be rescheduled. In that case the FAB will proceed with a RWR.

May I review my file before the hearing?
Yes. You may request a copy of your file at any time, and one copy is provided free of charge upon request. However, to ensure that you have time to review your file, please request a copy at least two weeks prior to the date of the hearing.

Will I be reimbursed for travel to the hearing?
No. While the FAB will try to set the hearing close to your location, you may be required to travel up to 200 miles roundtrip to attend the hearing. There is no payment to you for the expense of this travel. However, if you must travel more than 200 miles roundtrip, you will be reimbursed for reasonable and necessary travel expenses.

What happens at the hearing?
The hearing is scheduled for one hour. During that time, you (and your authorized representative or others) may explain your disagreement with the recommended decision to the hearing representative conducting the hearing. You may also submit documents to support your arguments. The hearing representative may have follow up questions for you as well, though this is not a cross examination. There will also be a court reporter transcribing the hearing.

I cannot or do not wish to appear in person. May I have a telephone or video hearing?
A hearing may be conducted by telephone at the FAB's discretion or by claimant request. Telephone hearings cannot be conducted on cell phones. Video hearings (or WebEx hearings) can be conducted from certain locations.

What are WebEx hearings?
WebEx hearings are hearings conducted over the internet, with video and telephone connections. You will travel to your local resource center, FAB or district office and a hearing representative will communicate with you over live internet video from a FAB office. You will be able to see and speak with the hearing representative the same as if you were in the same physical location. WebEx hearings are available in limited areas. You can check with the FAB to find out if WebEx hearings are conducted in your area.

Will the hearing be recorded or transcribed?
All testimony presented at any hearing will be made under oath or affirmation and the testimony will be transcribed by a court reporter and made part of the official record. You will receive a transcript of the hearing a few weeks after the hearing date. No independent video or audio recording of the hearing is allowed.

When may I submit additional evidence?
You may submit new evidence at any time, but sooner is better. Before the hearing, submit any additional evidence that you wish the FAB to consider. Any evidence submitted on the date of the hearing or within thirty (30) days after the hearing will also be carefully considered in the final decision.

May I submit evidence during the hearing if I have not previously submitted it to the HR?
You may submit any evidence you believe may be relevant to your case. The FAB will accept all testimony and evidence presented during the hearing.

May I have representation at the hearing?
Yes. You may have an authorized representative or any other person you designate to represent you at the hearing. Your representative can be an attorney, a family member, friend or whomever you choose. You are not, however, required to have a representative present at the hearing.

Please be advised that there are rules concerning the maximum fee an attorney may charge you.

May I have additional people attend the hearing with me?
Yes. You must notify your hearing representative at least one week prior to the date of the hearing if persons other than claimants or authorized representatives will be attending. All claimants who have requested a hearing must sign a waiver of confidentiality with respect to those people attending the hearing. Additionally, your hearing representative will need to determine whether proper room arrangements can be made to accommodate the number of people you wish to attend.

Who will represent the Department of Labor at the hearing?
Your FAB hearing representative will represent the DOL. However, the hearing is non-adversarial in nature.

If I need to do so, may I withdraw my request for a hearing?
Yes. At any time after requesting a hearing, you can request to change to a review of the written record (RWR) by making a written request to the Final Adjudication Branch. Once such a change is made, no hearing will be provided. Your hearing representative will then provide a RWR and final decision.

Is the hearing a formal legal proceeding?
The hearing is an informal process, and you are not bound by common law or statutory rules of evidence or by technical or formal rules of procedure. During the hearing, you may state your arguments and present any new written evidence and/or testimony in support of the claim. Oral testimony will be made under oath or affirmation and is recorded. The recording of the hearing proceedings is then transcribed for the file.

May I submit new evidence after the hearing?
Yes. You will have 20 days from the date you are mailed the transcript to provide written comments on its accuracy. The record will also remain open for 30 days after the hearing for additional evidence or argument, unless an extension of time is granted. Only one such extension may be granted.

When will I know the results of my hearing?
After the hearing, your hearing representative will evaluate the entire record and make findings based on the evidence, including testimony taken at the hearing, and will issue a written final decision.

FINAL DECISIONS

You will receive a final decision on your claim accepting, denying or remanding your case back to the district office. With an acceptance, you will be given payment forms and/or medical benefits instructions. Complete these requests carefully and immediately to receive your benefits.

What is a remand? Can I appeal a remand?
A remand is an order that sends your case back to the district office for further actions and the issuance of a new recommended decision. Remand orders are issued if the FAB finds a technical, procedural, or other error, or receives new information requiring a correction in the adjudication of the case. The remand order will state the reasons the case is being sent back to the district office and will state the actions that the district office should take on the case. You cannot repeal a remand order. Once the district office has completed the specified actions, you will receive another recommended decision, with the same rights to object or waive as discussed above.

What if I still disagree with the final decision issued after the RWR or the hearing?
You have the right to appeal a final decision, but not a remand order, if you still disagree with the conclusions. You may submit a request for reconsideration within 30 days of the final decision, and this will be evaluated by a FAB staff member with no prior involvement in your case. It must clearly state the grounds upon which reconsideration is being requested. Your request for reconsideration should be sent to the FAB.

What if I receive new information after my final decision has been issued? May I request a reopening of my claim?
Yes, you may request a reopening of your claim at any time, if you have new evidence or argument that may support a change in the outcome of your case. Examples may be new evidence of either covered employment or exposure to a toxic substance, a change in the probability of causation guidelines, a change in the dose reconstruction methods, or an addition of a class of employees to the Special Exposure Cohort. Your request to reopen the claim must be in writing and be sent, along with your supporting information, to the director of the district office handling your claim.

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Resource Centers

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