

## **I-2-8-40. Administrative Law Judge Conducts Hearing but Is Unavailable to Issue Decision**

Last Update: 5/16/08 (Transmittal I-2-71)

When an Administrative Law Judge (ALJ) who conducted a hearing in a case is not available to issue the decision because of death, retirement, resignation, illness which has caused the ALJ to be on leave for such illness for at least twenty days and which illness would keep the ALJ from fulfilling necessary duties, or other cause resulting in prolonged leave of twenty or more days, the Hearing Office Chief ALJ (HOCALJ) will reassign the case to another ALJ. The ALJ to whom the case is reassigned will review the record and determine whether or not another hearing is required to issue a decision. The ALJ's review will include all of the evidence of record, including the audio recording of the hearing.

- If the ALJ is prepared to issue a fully favorable decision, another hearing would not be necessary.
- If the ALJ is prepared to issue a less than fully favorable decision, another hearing may be necessary. For example, another hearing would be necessary if relevant vocational expert opinion was not obtained at the hearing, or the claimant alleges disabling pain, and the ALJ believes the claimant's credibility and demeanor could be a significant factor in deciding the case.

If the ALJ holds a new hearing, the ALJ will consider all pertinent documentary evidence admitted into the record at the prior hearing, the oral testimony at the prior hearing, and the evidence and testimony adduced at the new hearing. When a case is designated a critical case pursuant to HALLEX I-2-1-40, and the ALJ to whom such case is assigned is on leave for any reason for an extended period of time, the HOCALJ may, but is not required to, reassign the case to another ALJ. If reassignment is made, the ALJ to whom the case is reassigned will conduct the review in the same manner as for mandatory reassignment described above.

When an ALJ has approved a final decision draft but is unavailable to sign the final decision, the HOCALJ will have authority to sign the final decision/order on behalf of the ALJ who is temporarily unavailable to sign the final decision/order if the ALJ gave the HOCALJ prior affirmative written authorization to sign the decision/order for the ALJ

The authorization may be contained in an e-mail, fax, or other writing that includes all of the following:

- An affirmative statement that ALJ has read the decision/order; and
- An affirmative statement that the ALJ concurs with the decision/order as written, or, concurs with the decision/order with specified changes previously reviewed and approved by the ALJ before authorization; and
- An affirmative statement that "HOCALJ X" is authorized to sign the decision/order

The ALJ must sign any non email paper document affirmative written authorization with his/her "wet" signature. A **rubber** stamp or other mechanical signature is not acceptable or authorized under any circumstances. (See HALLEX I-2-8-1 General). If the above requirements are met, the HOCALJ would sign the decision/order "HOCALJ John Doe for ALJ Jane Smith."

The final decision/order signed by the HOCALJ, the draft decision/order approved by the ALJ and the ALJ's written authorization for the HOCALJ to sign the final decision/order on his/her behalf will be retained in the claims folder.