U.S. Railroad Retirement Board
844 North Rush Street
Chicago Illinois, 60611-2092

Phone: (312) 751-7139
TTY: (312) 751-4701
Web: http://www.rrb.gov

6.1.1 Scope of Chapter

This chapter covers the processing and disposition of requests for reconsideration and appeals of initial decisions made by the Office of Programs (OP) under the RR Act. See RCM 6.2.1 for the definition of an initial decision.

6.1.2 Right to Request Reconsideration

Every annuitant has the right to file a request for reconsideration of an initial OP decision (a partial award is not considered to be an initial decision), with the following exceptions:

(1) An individual under age 18 does not have the right to reconsideration of a finding of incapacity to manage his or her annuity payments, but does have the right to contest the finding that he or she is, in fact, under age 18;

(2) An individual who has been adjudged legally incompetent by a court does not have the right to reconsideration of a finding of incapacity to manage his or her annuity payments, but does have the right to contest the fact of his or her having been adjudged legally incompetent;

(3) An individual does not have the right to reconsideration of a denial of his or her application to serve as representative payee on behalf of an annuitant;

(4) An individual does not have the right to reconsideration when partial withholding or actuarial adjustment is implemented in the same amount the individual previously agreed to;

(5) An individual does not have the right to reconsideration when the annuity rate is being adjusted to remove partial withholding unless the rate is also being adjusted for some other reason;

(6) An individual does not have the right to reconsideration when the annuity is being reinstated after overpayment recovery by full withholding unless the annuity rate is being adjusted for some other reason; and

(7) An individual does not have the right to reconsideration on withholding made for a garnishment or legal partition.

(8) A person (other than a representative payee) who wrongfully negotiated a check or withdrew payments from a joint account after the employee's death is not entitled to waiver consideration or a personal conference.

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(9) An individual does not have the right to reconsideration when the annuity is being adjusted because of a Medicare premium adjustment.

6.1.3 Summary of Appeals Procedure

Outlined below are the basic steps in the appeals procedure for all initial decisions except for overpayment decisions. The appeals procedure for an overpayment decision differs in the reconsideration step. The difference is explained in section 6.1.4.

A. Right to Reconsideration - Every applicant or annuitant has the right to request reconsideration of an initial OP decision by someone other than the person who made the initial decision. To do this he must submit a written request for reconsideration within 60 days after the date of the initial decision notice. The request for reconsideration does not have to specifically refer to "reconsideration", however, it should clearly express the annuitant's desire for further action.

RCM 6.1.7 explains how to request reconsideration when no overpayment is involved.

B. Right of Appeal to H&A - If the applicant or annuitant is not satisfied with OP's reconsideration decision he may then appeal to the Bureau of Hearings and Appeals (H&A) by filing Form HA-1 within 60 days after the date of the reconsideration decision notice. Any written request stating an intent to appeal which is received within the 60-day period will protect the individual's right to appeal, provided that the individual files the appeal form (HA-1) within the later of the 60-day period following the date of the reconsideration decision, or the 30-day period following the date of the letter sending the HA-1 to the individual.

H&A gives the applicant or annuitant an opportunity to submit additional evidence in support of his claim. The applicant or annuitant may also be given a personal hearing before a hearings officer. The hearings officer then considers all of the evidence and renders a decision.

C. Right to Appeal to Board - If the applicant or annuitant is not satisfied with the H&A hearings officer's decision, he may appeal to the Board by filing Form HA-1 within 60 days from the date of the hearings officer's decision notice. The Board then reviews the case and renders a decision. Any written request stating an intent to appeal which is received within the 60-day period will protect the individual's right to appeal, provided that the individual files the appeal form (HA-1) within the later of the 60-day period following the date of the hearings officer's decision, or the 30-day period following the date of the letter sending the form to the individual.

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D. Right of Judicial Review - If the applicant or annuitant is not satisfied with the Board's decision, he may file suit in a Federal Appeals Court within one year from the date of the Board's decision notice.

6.1.4 Reconsideration of Overpayment Decisions

In addition to the right to request a review of the facts of an overpayment decision, an annuitant has the right to request waiver consideration.

In current entitlement overpayment cases the annuitant has the right to request a review of the facts, waiver consideration, or a personal conference in conjunction with either of these, within 60 days after the date of the overpayment notice.

In "no current" entitlement overpayment cases, the annuitant has the right to request reconsideration of the overpayment decision and/or waiver of the overpayment within 60 days after the date of the overpayment notice.

In cases where the overpayment letter is sent to the field office for telephone contact and mailing, the date of the overpayment notice is the date shown in the lower portion of the G-421b.

RCM 6.1.8 explains how to request reconsideration and/or waiver when an overpayment is involved.

6.1.5 Filing Date

The filing date of a reconsideration request, G-66a, or an HA-1 is the earliest of the following dates:

- The date it is received at a Board office; or
- The date it is received by an employee of the RRB who is authorized to receive it at a place other than one of the RRB offices.

If using the date the RRB receives the reconsideration request would result in the loss or lessening of rights, the RRB will also accept as the date of filing the date a document or form is mailed to the RRB by the United States mail. Use the date shown by a U.S. postmark as the date of mailing. Always attach the envelope to all reconsideration requests.

Late filing will be allowed only in situations where good cause for the delay is evident. In determining whether good cause for the delay exists, the circumstances which kept the

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annuitant from filing the request on time and any action by the Board which misled the annuitant, are to be considered.

Some examples of circumstances where good cause may exist are:

- Serious illness prevented the annuitant from contacting the Board in person, in writing, or through a friend, relative or other person;
- A death or serious illness in the annuitant's immediate family prevented timely filing;
- The destruction of important and relevant records;
- A failure to be notified of a decision;
- An unusual or unavoidable circumstance existed which demonstrates that the annuitant could not have known of the need to file timely or which prevented the claimant from filing in a timely manner.
- The annuitant thought that his or her representative had requested reconsideration.

If a late request for a review of the facts, waiver and/or personal conference is received by the field office and that request does not explain why the request was late, the field office must obtain from the annuitant a signed statement of explanation for the delay and any documentation he may have.

In late request situations the field office will decide whether good cause for delay exists. If good cause is evident the field will forward the request, the reason for delay statement and a statement which summarizes the field's reasoning for finding good cause to headquarters. If good cause is not evident, the field is responsible for releasing a denial letter to the annuitant. The letter includes appeals wording.

If a late request is received in headquarters and that request does not explain why the request was late, form letter RL-185e is released advising the annuitant what he/she must do if he/she believes there was good cause for late filing and wishes to pursue the reconsideration request. If the annuitant does not respond within 30 days of the contact, headquarters will then take the action described in RCM 6.1.10B.

6.1.6 Reconsideration

Every annuitant can request reconsideration of an initial Office of Programs (OP) decision as the first step of the appeals process. If the annuitant fails to make a timely request for reconsideration and good cause is not evident, the right to pursue any other step in the appeals process is forfeited. The annuitant can, however, request

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reconsideration of the decision that the request was not timely filed. The reconsideration of this issue is done in the office (headquarters or field) where the decision regarding untimely filing was made, but not by the same person who made that decision. If the decision regarding untimely filing is reversed, reconsideration of the initial decision can proceed.

If an overpayment is involved, waiver consideration and a personal conference (in current entitlement cases) may also be requested as a part of the reconsideration step. The requirements for requesting reconsideration in both non-overpayment and overpayment situations are given in sections 6.1.8 through 6.1.16.

6.1.7 Requesting Reconsideration

No Overpayment Involved

To request reconsideration, the annuitant must submit a written request for reconsideration which must be received at the Board within 60 days after the date of the initial decision. The request for reconsideration does not have to specifically refer to "reconsideration", however, it should clearly express the annuitant's desire for further action.

Overpayment Involved

The procedure for requesting reconsideration in an overpayment case depends on whether there is continuing entitlement to RR benefits.

A. No Continuing Entitlement to Benefits - In overpayment cases in which the overpaid annuitant is no longer entitled to RR benefits, the annuitant can request reconsideration of the overpayment decision and can also request waiver consideration. The option of a personal conference is not offered when no continuing entitlement exists. To request one or both, the annuitant must submit a written request within 60 days after the date of the overpayment notice.

B. Continuing Entitlement Exists - In overpayment cases in which the overpaid annuitant is still entitled to benefits, the overpaid annuitant can request a review of the facts (reconsideration), waiver consideration, and a personal conference in conjunction with either of the two. To request any of these, the annuitant must complete and return Form G-66a PC or a written request within 60 days after the date of the overpayment notice.

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6.1.9 Jurisdiction of Reconsideration Requests

The Debt Recovery Division of the Bureau of Fiscal Operations (BFO-DRD) is responsible for:

- cases where a waiver only is requested (including statements claiming hardship or not at fault) and
- cases where a personal conference is requested in conjunction with a waiver.

The reconsideration section (RECON) of OP is responsible for:

- cases where an overpayment exists and review of the facts only or a review of the facts and waiver are requested;
- cases where a personal conference is requested in conjunction with either a review only or a review and waiver;
- cases where no overpayment exists and reconsideration is requested.

RECON is responsible for reconsideration requests on disability and non-disability issues. (See the Disability Claims Manual for procedure on RECON handling of a disability or Medicare reconsideration request.)

When the reconsideration request is on an overpayment and waiver is also requested, RECON handles the request for review of the facts first. If RECON confirms the overpayment, the case is then sent to the Debt Recovery Division (DRD) for a decision on the request for waiver. In cases where a personal conference is also requested, RECON will send the case to DRD after the personal conference.

6.1.10 Processing Reconsideration Requests

A. Timely Request Made - Upon receipt of a timely request for reconsideration of an Office of Programs decision, including late requests with legitimate "good cause" conditions, review all the facts in the case leading up to the decision, as well as any new evidence which may have been submitted with the request. If an incorrect unrelated previous decision is discovered during the review, the examiner may only reopen that previous decision if reopening such decision is required or allowed in accordance with the reopening procedure in RCM 6.2.

If the initial decision is correct, prepare a complete explanation to the claimant using code paragraph 189. The following steps should be included in the written reconsideration decision:

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(1) Prepare a statement of jurisdictional factors, filing date of application, date of notice of the decision under review and date of request for reconsideration;

(2) State the basis of request for reconsideration, (i.e., the issue involved);

(3) Include a brief non-technical statement of the applicable provisions of the law and regulations along with specific references to the applicable sections of law, when necessary; use terms likely to be understood by the claimant;

(4) Prepare a statement of the facts and evidence as presented;

(5) Give conclusions based on the facts and applicable law and regulations.

Where the claimant has failed to respond to requests for additional evidence or information, include a statement that his failure to submit the requested information leaves us no alternative but to make a decision without the benefit of any additional evidence which might support his position.

RRB Regulations specify that every effort should be made to issue the reconsideration notice within 60 days from the filing date of the reconsideration request. If this deadline cannot be met due to unforeseen circumstances, notify the annuitant of the delay.

If the review indicates the initial decision was incorrect, release a letter advising the individual that we have changed our previous decision after reviewing the claim and that the case is being returned to the appropriate adjudication section for further processing. Then, prepare a note to file regarding the reconsideration decision and forward the file to the appropriate adjudication section for processing.

B. Timely Request Not Made - If a request for reconsideration is not submitted timely and good cause for the untimely filing is established by the debtor/claimant, refer to paragraph A of this section.

If a request for reconsideration is not submitted timely and good cause for the untimely filing is not established, inform the annuitant that the period for requesting reconsideration on the decision has lapsed, the reconsideration request is denied, and that the untimely filing decision may be appealed. (The annuitant does not have the right to further appeal the initial decision.) The denial letter should use code paragraph 190 or similar wording and incorporate appeals wording.

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If the untimely request for reconsideration also included correspondence in which the annuitant points out something with the claim that is obviously wrong, inform the annuitant that the case is being referred to the adjudication section for a response. The adjudication section will apply the reopening rules in RCM 6.2 in deciding whether corrective action should be taken.

6.1.11 Reconsideration Decision Notice Affirming Initial Decision When an Overpayment Is Involved

If, after reconsideration, you determine the initial decision is correct, prepare an explanation for the annuitant. The letter providing the explanation must include code paragraph 189, which gives the annuitant the right to appeal the reconsideration decision. The letter should also include the options available for repayment of the overpayment and provide the date payments will be suspended if full refund is not made or one of the other repayment options offered is not selected. If no current entitlement exists, the explanation letter should include Recon section code paragraph 600.4, which is equivalent to code paragraph 199.2. The Reconsideration section makes the appropriate entries on ASTRO and PARS for recovery purposes.

The following steps should be included in the written reconsideration decision:

(1) Prepare a statement of jurisdictional factors--filing date of application, date of notice of controversial initial determination and date of request for reconsideration;

(2) State the basis of request for reconsideration, (i.e., the issue involved);

(3) Include a brief non-technical statement of the applicable provisions of the law and regulation along with specific references to the applicable sections of law, when necessary; use terms likely to be understood by the claimant;

(4) Prepare a statement of the facts and evidence as presented;

(5) Give conclusions based on the facts and applicable law and regulations.

Where the claimant has failed to respond to requests for additional evidence or information, include a statement that his failure to submit the requested information leaves us no alternative but to make a decision without the benefit of any additional evidence which might support his position.

RRB Regulations specify that every effort should be made to issue the reconsideration notice within 60 days from the filing date of the reconsideration request. If this deadline cannot be met due to unforeseen circumstances, notify the annuitant of the delay.

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6.1.12 Processing Reconsideration Requests When Overpayment Is Incorrect

When a review of the case indicates that the overpayment was incorrect, the action to take on the reconsideration request is determined by the circumstances of the case.

A. Current Rate is Correct but Overpayment Amount is Incorrect - If the reason for the overpayment is the same, release a letter advising that we have completed our review. The letter should advise the overpaid person of the correct amount of the overpayment in addition to the options available for repayment and provide the date payments will be suspended if full refund is not made or one of the other repayment options is not selected. Include code paragraph 189 in the letter. Be sure to make the necessary entries in PARS so that the correct overpayment amount is reflected in that system.

If the overpayment is actually due to a different reason than originally stated, release a letter advising the overpaid person our review indicates that the overpayment previously stated was incorrect and that the case is being returned to the unit that has jurisdiction of the overpayment. The letter should also state that a corrected overpayment letter will be released and that the overpaid person will be afforded their rights again with the corrected overpayment letter. Code paragraph 189 should not be included in that letter.

When the overpayment is due to a different reason, the case should be sent to the unit having jurisdiction of the overpayment. Prepare a note to file stating the specific factors to consider when recalculating the correct overpayment amount. The note to file should also state that the corrected letter should inform the overpaid person that the corrected letter supersedes the earlier letter and that a form G-66 should be included.

B. Recurring Rate and Overpayment Amount Incorrect - Regardless of whether the reason for the overpayment is the same, release a letter advising the overpaid person our review indicates that the overpayment previously stated was incorrect and that the case is being returned to the unit that has jurisdiction of the overpayment. The letter should also state that a corrected overpayment letter will be released and that the overpaid person will be afforded their rights again with the corrected overpayment letter. Code paragraph 189 should not be included in that letter.

Prepare a note to file stating the specific factors to consider when recalculating the correct annuity rate and overpayment amount. The note to file should also state that the corrected letter should inform the overpaid person that the corrected letter supersedes the earlier letter and that a form G-66 should be

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included. The case should then be sent to the unit having jurisdiction of the overpayment.

6.1.13 Review of the Facts and a Personal Conference

If the overpaid person requests a review of facts and a personal conference, a review should be made in the same manner as if only a review was requested. (See RCM 6.1.12) If you determine the overpayment was computed correctly, instead of a review letter prepare a "Summary of Facts". The "Summary of Facts" is a guide for the manager or contact representative conducting the personal conference. The "Summary of Facts" should state the pertinent sections of the RRA and the United States Code equivalents. The "Summary of Facts" should also mention the options for repaying the overpayment and the time frame for recovery with the various options.

6.1.14 Handling After Personal Conference

After the personal conference is completed, the manager or contact representative who conducted the personal conference will prepare and image a summary of the conference on RRAILS Form FO PERS CONF REPORT and will E-MAIL Headquarters that the summary has been imaged. Field service will then return the case or e-file to RECON. RECON will evaluate any new material the overpaid person may have presented at the conference and answer any new questions raised. The reconsideration letter will then be prepared. Occasionally, the overpaid person will select a repayment method prior to the personal conference or at the personal conference. If so, RECON will take the appropriate actions to implement the method selected. Otherwise, the reconsideration letter will offer the appropriate repayment options.

NOTE: If the manager or contact representative who conducted the personal conference reports that the overpaid person now wants us to waive recovery of the overpayment, Recon will send the file to BFO-DRD. BFO-DRD will make a waiver decision and release a combined decision notice with appeal rights.

6.1.15 Handling When Case Has Been Referred To OIG

When a case has been referred to the Office of the Inspector General (OIG), the indication "OIG" will be shown on the PARS AREF table. When prosecution has been declined, "OIGX" will be shown on the PARS AREF table. When the case has been referred to the Department of Justice (DOJ), "OIGD" will be shown on the PARS AREF table.

When RECON receives a request for reconsideration and the PARS AREF table indicates that the case has been referred to the OIG, they will call the OIG and request

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the case. As long as a determination to refer the case to the DOJ has not yet been made, the case will be forwarded to RECON. RECON will handle the reconsideration request to completion and return the case to the OIG. If waiver was also requested and RECON affirms the overpayment, RECON will advise BFO-DRD to forward the case to the OIG's office after their waiver decision has been made.

If RECON determines that the overpayment amount is actually under $10,000 or fraud/fault is not involved, or there is no overpayment at all, they will send the OIG a memorandum to that effect. A copy of the memorandum will be filed down in the folder or imaged if no folder exists. The case does not need to go back to the OIG.

RECON will also release a memorandum to OIG if they determine the overpayment is incorrect and refer the case back to the operating section. The operating section will close out the erroneous overpayment posting on PARS and post a new overpayment document to PARS showing the correct amount. If the corrected overpayment amount meets the requirements for referral to the OIG, the operating section will again refer the case to OIG in the usual manner.

If there is a memorandum in the file from the OIG that they will not pursue an investigation, the case will not be referred back after RECON completes their decision unless that decision significantly increases the overpayment amount.

NOTE: If RECON is handling a case with an overpayment of $10,000 or more and fraud/fault is indicated, but no OIG referral was made, RECON should finish their action. If the overpayment is affirmed, the case should be remanded back to the retirement or survivor operating unit that released the overpayment letter for referral to the OIG. If the annuitant also requested waiver, RECON will forward the case to BFO-DRD and ask them to return the case to the operations unit for referral to OIG.

6.1.16 Handling When OIG Refers Case to DOJ

When the Office of Inspector (OIG) refers a case to the Department of Justice (DOJ) for possible fraud prosecution, the OIG will send a memorandum to BFO-DRD. BFO-DRD will update the AREF table on PARS to indicate that the case has been referred to the DOJ. A copy of the memorandum from the OIG will then be sent to the Reconsideration Unit (RECON). RECON should immediately cease their handling of the rights request. Likewise, any further development should cease.

When suspending RECON action because of referral to the DOJ, do not notify the annuitant. If the annuitant inquires about the status of the rights request, handle in the following manner:

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A. Written Inquiries – HQ personnel are to fax written inquiries to the OIG at 312/751-4342. Include the annuitant's claim number and the statement "Open Investigation" on the fax cover sheet. Forward the original to PSD/IDS to be imaged. Notate on the original that it was faxed to the OIG, initial and date.

B. Email Inquiries – HQ personnel should forward the email to Hotline@oig.rrb.gov. The subject line should include "Open Investigation" and the claim number. Make a copy of the email and forward it to PSD/IDS to be imaged. Notate on the original that it was faxed to the OIG, initial and date.

C. Telephone Calls – If an annuitant telephones HQs and wishes to discuss his/her case, advise the annuitant that **"We cannot provide the information over the telephone and a written request is required."** The written statement is needed by the OIG for documentation purposes. The statement should be sent to the U.S. Railroad Retirement Board, 844 N. Rush St., Chicago, IL 60611, Attention: RECON. When the statement is received, fax it to the OIG at 312/751-4342. Include the annuitant's claim number and the statement "Open Investigation" on the fax cover sheet. Forward the original statement to PSD/IDS to be imaged. Notate on the original that it was faxed to the OIG, initial and date.

D. Problems or Special Need Cases – If the annuitant insists on speaking to someone or this case needs special attention, call or email one of the contacts below. They will contact the OIG and obtain the requested information.

RBD Operations and Claims Analyst – x4759

SBD Operations and Claims Analyst – x3323

Director of Disability Benefits Section – x4801

Sickness and Unemployment Section Chief – x4708

UNDER NO CIRCUMSTANCES SHOULD HQ PERSONNEL FORWARD ANY ANNUITANT CALLS TO THE OIG OR GIVE OUT THE OIG'S PHONE NUMBER.

Note: You may take any non-overpayment related action on these cases, e.g. change of address, direct deposit, rate letter, etc. However, after performing the action, send an email to Hotline@oig.rrb.gov. Notate the action taken and date. The subject line should include "Open Investigation" and the claim number.

If the DOJ later declines to prosecute, the OIG will send another memorandum to BFO-DRD. BFO-DRD will update the AREF table on PARS and send a copy of the OIG memorandum to RECON. Action on the rights request and any necessary development can then be resumed.

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6.1.20 Right To Appeal to BHA

Every applicant or annuitant may appeal a reconsideration decision by completing and filing an HA-1 within 60 days from the date of the reconsideration decision notice. When an appeal is filed, the director of BHA appoints a hearings officer to act on the appeal.

6.1.21 Filing an Appeal

Form HA-1, Appeal Under RR Act, is the form the annuitant must complete to request an appeal of a reconsideration decision as well as an appeal of a BHA hearings officer's decision (see RCM 6.1.30ff regarding the latter.) In either case, the completed HA-1 must be received at an RRB office within 60 days after the date of the reconsideration decision or the hearings officer's decision.

Form HA-1 is available at any field office as well as RRB headquarters. Any requests for Form HA-1 received in headquarters to appeal either the reconsideration decision or a hearings officer's decision should be immediately referred to BHA for handling. As soon as claims processing personnel become aware that an HA-1 is being forwarded to headquarters by a field office, the file should immediately be forwarded to the bureau of hearings and appeals.

NOTE: A request for an HA-1 does not fulfill the requirement for filing an appeal within 60 days. BHA will make a determination (on an individual basis) regarding timely filing in any case in which a request is made within the 60-day period, but there is insufficient time (as determined by BHA) for release and return of the HA-1.

In accordance with Board Order 95-99, in any case where a Board Member, the General Counsel, the Inspector General, the Director of Programs, the Director of Administration, any other bureau or office head, or any RRB staff requires information regarding a specific case wherein an appeal has been filed with the Bureau of Hearings and Appeals, the request for information shall be directed to the Director of Hearings and Appeals in writing and shall not be directed to a hearings officer. The Director of Hearings and Appeals shall maintain a record of such contacts and inquiries.

6.1.22 Reconsideration Decision

Sustained By BHA

If the reconsideration decision is sustained by BHA, the hearings officer notifies the appellant in writing. Any correspondence received subsequent to the hearings officer's decision, which deals further with the merits of the claim, is under BHA's jurisdiction.

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Reversed By BHA

When BHA reverses a reconsideration decision, BHA routes the case to either BFO-DRD, the Director of Retirement Benefits, the Acting Director of Survivor Benefits or to DSUBD. Reversals of disability and HI (including Canadian HI) or SMI decisions are handled by DSUBD. All other reversals are handled by OP.

6.1.30 Right To Appeal

Every applicant or annuitant can appeal the hearings officer's decision by executing and filing an HA-1 within 60 days of the date that the hearings officer's decision is mailed to the appellant. The Board can also, on its own motion, review the hearings officer's decision in any case. In doing so, the Board can designate any Board employee to secure additional evidence and report the findings.

6.1.31 Hearings Officer's Decision

Sustained By Board

If the Board sustains the H&A hearings officer's decision, the Board notifies the applicant. Any correspondence received subsequently which deals further with the merits of the claim is referred with the claim folder to the Board members office for attention.

Reversed By Board

When the Board reverses the hearings officer's decision, the Board refers the file to either BFO-DRD the Director of Retirement Benefits or the Acting Director of Survivor Benefits. If the issue is disability or Medicare related, the Board refers the file to DSUBD for handling.