



## I-2-4-25. Dismissal Due to Claimant's Failure to Appear

Last Update: 2/7/14 ([Transmittal I-2-104](#))

### A. Failure to Appear — Introduction

An administrative law judge (ALJ) may generally dismiss a request for hearing (RH) based on failure to appear in the following circumstances, except when a parent or guardian appears at the hearing on behalf of a claimant who is a minor. An ALJ's attempts to develop good cause, and any responses received, must be associated in the B section of the claim(s) folder.

#### 1. Neither Claimant Nor Representative Appears

An ALJ may dismiss an RH when neither the claimant nor the appointed representative, if any, appears at the time and place of a scheduled hearing and neither shows good cause for the absence. For authority, see [20 CFR 404.957\(b\)](#), [416.1457\(b\)](#) and [405.380](#). Except in the circumstances set forth in this provision, an ALJ will develop whether there is good cause for the failure to appear.

#### 2. Neither Claimant Nor Representative Appears on Time

An ALJ may also dismiss an RH on the basis of failure to appear when an unrepresented claimant, or the claimant and his or her representative, fails to appear on time for the hearing. However, the ALJ must first develop whether there is good cause for the tardiness.

**NOTE:** If a claimant appears at the hearing office (HO) after the time set for hearing, HO staff will document the appearance on the Form SSA-5002 found in Hearings, Appeals, and Litigation Law (HALLEX) manual [I-2-4-91](#), and associate the completed form in the B section of the file. Whenever possible, staff must notify the ALJ while the claimant is still at the HO. In this situation, the ALJ has discretion to make a finding of good cause and proceed with the hearing, or to develop good cause using the procedures in this section. If the ALJ does not find good cause, he or she must exhibit the completed Form SSA-5002 and make specific reference to its contents in the dismissal order.

#### 3. Third Party Appears on Behalf of Minor or Age 18 Claimant

Occasionally, a claimant may fail to appear at the hearing, but a parent or guardian who has not been appointed as a representative will appear at the hearing on the claimant's behalf. If an appointed representative is present, the ALJ will proceed as noted in HALLEX [I-2-4-25 D](#) below. If the parent or guardian indicates the claimant is late, the ALJ will proceed as noted in HALLEX [I-2-4-25 A.2](#).

The ALJ will not proceed with the hearing if:

- The claimant is age 18 or older, and
- The claim is an initial application for adult disability benefits or based on the continuation thereof.

If the hearing cannot proceed, the next appropriate action depends on whether the claimant returned the acknowledgement of hearing form. See HALLEX [I-2-3-20](#). If the claimant responded and indicated he or she would appear at the hearing, the ALJ may dismiss the request for hearing. If the claimant was not the person who responded to the acknowledgement of hearing form, or the acknowledgement form was not returned, see the procedures noted in [I-2-4-25 C](#) below.

If the claimant is a minor, a parent or guardian may appear at the hearing on the claimant's behalf.

**NOTE:****B. Definition of Good Cause for Failure to Appear**

The term "good cause" refers to a reasonable explanation for failing to comply with a requirement. When determining whether good cause exists for failure to appear, the ALJ must base the decision on the circumstances of each individual case. In doing so, the ALJ must consider any physical, mental, educational, or linguistic limitations that may have prevented the claimant from appearing at the scheduled time and place of the hearing, akin to the requirements for consideration of good cause for late filing in [20 CFR 404.911](#), [416.1411](#), [405.20](#), and Social Security Ruling 91-5p.

**C. Considering Good Cause for Failure to Appear****1. Circumstances That Generally Establish Good Cause**

There are no set criteria for determining what constitutes good cause for failure to appear at the time and place of a scheduled hearing. However, good cause generally exists in any one of the following three circumstances.

**a. No Proper Notification of the Scheduled Hearing**

Good cause for failure to appear at the scheduled time and place of hearing generally exists when the claimant did not receive proper notification of the scheduled hearing.

Before dismissing an RH for failure to appear, the ALJ must determine whether there is evidence in the record that shows the claimant was properly notified of the time and place set for the hearing, as described in [HALLEX I-2-3-20](#). The ALJ will consider the following:

- If the claimant has an appointed representative, notification to the representative is sufficient to establish notification to the claimant.
- If the follow up contact was made by telephone, the ALJ must ensure the proper documentation is in the file, as noted in [HALLEX I-2-3-20](#).
- If the claimant alleges he or she reported a new address to another agency component such as the field office or teleservice center but the notice of hearing was sent to an outdated address, the ALJ will review the queries noted in [HALLEX I-2-3-15 B](#) and carefully consider the allegation.

If the record does not show there was proper notification of the scheduled hearing, the ALJ must reschedule the hearing and provide proper notification of the rescheduled hearing.

If the claimant or appointed representative received proper notification and neither appears at the time of the scheduled hearing, see [HALLEX I-2-4-25 C.3.a.](#) below.

**NOTE:** Regardless of a failure to appear, if a preponderance of the evidence supports a fully favorable decision on every issue, the ALJ will consider whether it is appropriate to issue a fully favorable decision instead of dismissing the RH.

**b. Unforeseeable Event**

Good cause for failing to appear at the scheduled time and place of hearing generally exists when an unforeseeable event occurred that did not provide the claimant or the appointed representative enough time to notify the ALJ and request a postponement before the scheduled hearing.

**c. Withdrawal of Representation Without Sufficient Notice**

Good cause for failure to appear at the scheduled time and place of hearing generally exists when the appointed representative:

- Withdrew representation shortly before the scheduled hearing (approximately a week or less before the scheduled hearing), or appeared at the hearing and withdrew as representative, and
- There is no indication in the record that the claimant was aware the representative would not be appearing at the hearing on his or her behalf.

In this circumstance, the ALJ must develop for good cause. See [HALLEX I-2-4-25 D](#) below.

**NOTE:** Depending on the circumstances, an ALJ may also find that special circumstances support a finding of good cause when the representative withdrew more than a week before the hearing and the

claimant was unaware of the withdrawal.

## 2. Procedures to Develop Good Cause

To develop good cause, the HO will:

- Send a Form HA-L90, Request To Show Cause For Failure To Appear, to the claimant and the appointed representative, if any;
- Give the claimant and appointed representative 10 days from the date of the Form HA-L90 to respond; and
- Provide an additional 5 days for mailing time before proceeding.

It is important to check for any update to the claimant's address before sending the Form HA-L90 and associate the updated queries in the D section of the file. In addition to querying the Case Processing and Management System (CPMS), the HO staff must check the Personal Communications (PCOM) system queries, including:

- the Full Master Beneficiary Record (FACT) for title II cases,
- the Supplemental Security Income Display (SSID) for title XVI cases,
- the Modernized Development Worksheet (MDW) for either title,
- the Customer Service Record (CSR) for either title, and
- the Prisoner Update Processing System (PUPS) for either title.

**NOTE:** In some cases, an updated address may also be found on medical evidence. Additionally, when applicable, the HO will use the instructions in HALLEX [I-2-5-69 C](#) for verifying inmate information on the Internet.

## 3. When Developing Good Cause Is Not Necessary

If neither the claimant nor the appointed representative, if any, appears at the scheduled hearing, the ALJ may dismiss the RH without developing good cause in the following circumstances.

### a. Claimant Received the Notice of Hearing

The ALJ need not develop good cause if the record shows that the claimant received the Notice of Hearing and the claimant does not have a physical, mental, educational, or linguistic limitation that may affect his or her ability to understand the Notice of Hearing. If those criteria are met, the ALJ can generally presume the claimant fully understands the possible consequences of his or her failure to appear at the time and place of a scheduled hearing. The Notice of Hearing notifies a claimant that the RH may be dismissed without further notice if neither the claimant nor the appointed representative, if any, appears at the scheduled hearing.

**NOTE:** For instruction when the representative appears without the claimant, see HALLEX [I-2-4-25 D](#) below.

### b. Claimant Did Not Return Acknowledgment Form

It is unnecessary to develop good cause when:

- the claimant did not return the acknowledgment form sent with the Notice of Hearing,
- the contact procedures required by [20 CFR 404.938](#) and [416.1438](#) were followed (as described in HALLEX [I-2-3-20](#)), and
- there is no indication of good cause for failure to appear.

Any documentation generated to comply with the regulatory procedures must be associated in the B section of the claim(s) file if the ALJ issues a dismissal. Documentation may include copies of letters sent to the claimant, reports of contact documenting telephone calls, and re-mailed copies of the Notice of Hearing and acknowledgement form. An ALJ may not use a Form HA-L90 after the fact as an alternative to following proper notice procedures prior to the hearing. A Form HA-L90 is unnecessary if the ALJ followed all the contact procedures prior to the hearing.

### c. Claimant's Whereabouts Are Unknown

If the Notice of Hearing is returned to the HO as undeliverable, all attempts to contact the claimant by other means are unsuccessful, and it is concluded that the claimant's whereabouts are unknown, the ALJ may dismiss the RH after:

- Verifying that the address used on the Notice of Hearing and any other contact correspondence is the most recent address in CPMS and on the PCOM system queries, including the FACT for title II cases, the SSID for title XVI cases, the MDW for either title, the CSR for either title, and the PUPS for either title; and
- Ensuring that all attempts to contact the claimant are clearly documented in the B section of the claim(s) folder and the documentation is exhibited. For example, any envelopes returned by the post office as undeliverable must be associated with the claim(s) folder, as well as any statements made by individuals regarding the absence or disappearance of the claimant.

An ALJ may not dismiss the RH until after the time scheduled for the hearing because the claimant may learn of the scheduled hearing in another way and appear. If the claimant does not appear at the scheduled hearing, the ALJ may dismiss the RH but must describe all efforts to contact the claimant in the dismissal order.

## **D. Appointed Representative Appears at Hearing Without the Claimant**

### **1. Representative Withdraws From Representing the Claimant at the Hearing**

In some cases, an appointed representative will appear at the time and place of the scheduled hearing but will withdraw as representative if the claimant does not appear. If the claimant did not appear at the hearing but notified the HO that he or she is aware the representative was going to withdraw, the ALJ may dismiss the RH. However, if the HO did not receive notification from the claimant indicating he or she was aware the representative was going to withdraw at the hearing, the ALJ must develop good cause for failure to appear.

If the claimant alleges he or she did not appear at the hearing because the claimant believed the representative was appearing on his or her behalf, or the claimant otherwise indicates he or she wants to proceed with the hearing, the ALJ will generally find good cause for failure to appear, and the ALJ will reschedule the hearing. However, if the claimant does not respond to the Form HA-L90, the ALJ may dismiss the RH.

**NOTE 1:** If a preponderance of the evidence supports an on-the-record fully favorable decision on every issue, the ALJ will consider whether it is more appropriate to issue a decision under [20 CFR 404.948](#) and [416.1448](#) rather than dismiss the RH.

**NOTE 2:** In egregious situations, a representative's failure to notify the claimant of the withdrawal before the hearing may constitute misconduct or may establish a pattern of possible misconduct under [20 CFR 404.1740](#) and [416.1540](#). For more information on making referrals for alleged representative misconduct, see [HALLEX I-1-1-50](#).

### **2. Representative Continues to Represent the Claimant During the Hearing**

If an appointed representative appears at the scheduled hearing without the claimant and continues to represent the claimant during the hearing, dismissal is never appropriate. However, the ALJ may determine that the claimant has constructively waived the right to appear at the hearing if:

- The representative is unable to locate the claimant;
- The Notice of Hearing was mailed to the claimant's last known address; and
- The contact procedures required by [20 CFR 404.938](#) and [416.1438](#), as described in [HALLEX I-2-3-20](#), have been followed.

#### **a. Constructive Waiver of Right to Appear**

If the ALJ finds that the claimant has constructively waived the right to appear at the hearing, the ALJ need not proceed with the hearing and may choose to issue a decision on the record. However, if medical expert or vocational expert testimony is needed to resolve the case, the ALJ may choose to proceed with the hearing, accepting the testimony of the witness(es) and allowing the appointed representative to question the witness(es) and make arguments on the claimant's behalf.

In any event, the ALJ will advise the appointed representative, either on the record during the hearing or in writing thereafter, that he or she will not send a Request to Show Cause for Failure to Appear to the claimant because the claimant has constructively waived the right to appear at hearing. When done in writing, the ALJ must associate the writing with the record.

**b. No Constructive Waiver**

If the ALJ finds that the claimant has not constructively waived the right to appear at the hearing, the ALJ may choose to proceed with the hearing, accepting the testimony of the witness(es) and allowing the appointed representative to question the witness(es) and make arguments on the claimant's behalf. The ALJ will advise the appointed representative that a Request to Show Cause for Failure to Appear will be sent to the claimant to ask why he or she did not appear at the scheduled hearing and whether a supplemental hearing should be held. After the 10-day comment period expires (with an additional five days for mailing time), the ALJ will either:

- Determine that the claimant has constructively waived his or her right to appear for a hearing (if the claimant fails to respond to the Request to Show Cause for Failure to Appear or fails to show good cause for failure to appear at the scheduled hearing), and issue a decision based on the evidence of record; or
- Offer the claimant a supplemental hearing to provide testimony if the claimant establishes good cause for failure to appear at the scheduled hearing.

**E. Claimant Requests Change in the Time or Place of the Hearing**

Subject to [20 CFR 404.936](#), [405.317](#), or [416.1436](#), if a claimant or his or her appointed representative, if any, requests that the ALJ change the time or place set for the hearing, the ALJ will consider whether the claimant or representative has good cause for requesting the change.

- If the ALJ finds there is not good cause for changing the time or place of the scheduled hearing, the ALJ will notify the claimant or appointed representative, if any, of his or her finding.
- If the ALJ finds there is good cause for changing the time or place of the scheduled hearing, the ALJ will notify the claimant of the time and place of the rescheduled hearing.

If, after proper notification of the scheduled hearing (see HALLEX [I-2-3-20](#) and [I-2-4-25 C](#) above), neither the claimant nor the representative appears at the time and place set for the hearing, the ALJ must determine whether the claimant or representative received the notice of hearing. If the ALJ finds that the claimant or representative did receive the notice, the ALJ may dismiss the RH for failure to appear under the circumstances noted in [I-2-4-25 C.3.](#) above.

**F. Claimant Waived Right to Oral Hearing — ALJ Nevertheless Scheduled Hearing**

The ALJ may not dismiss an RH for failure to appear if the claimant waived the right to an oral hearing and the ALJ nevertheless scheduled a hearing. In this situation, the ALJ must decide the case based on the evidence of record.

