

§ 1174.10 Default upon failure to file an answer.

(a) If the defendant does not file any answer within thirty days after service of the complaint, the reviewing official may refer the complaint to the ALJ.

(b) Once the reviewing official refers the complaint, the ALJ will promptly serve on the defendant a notice that the ALJ will issue an initial decision.

(c) The ALJ will assume the facts alleged in the complaint to be true and, if such facts establish liability under the statute, the ALJ will issue an initial decision imposing the maximum amount of penalties and assessments allowed under the PFCRA.

(d) Except as otherwise provided in this section, when a defendant fails to file a timely answer, the defendant waives any right to further review of the penalties and assessments the ALJ may impose in the initial decision.

(e) The initial decision becomes final thirty days after the ALJ issues it.

(f) At any time before an initial decision becomes final, a defendant may file a motion with the ALJ asking that the ALJ reopen the case. An ALJ may only reopen a case if he or she determines that the defendant set forth in the motion extraordinary circumstances that prevented the defendant from filing a timely answer. The initial decision will be stayed until the ALJ decides on the motion. The reviewing official may respond to the motion.

(g) If the ALJ determines that a defendant has demonstrated extraordinary circumstances that excuse his or her failure to file a timely answer, the ALJ will withdraw the initial decision and grant the defendant an opportunity to answer the complaint.

(h) The ALJ's decision to deny a defendant's motion to reopen a case is not subject to reconsideration under § 1174.35.

(i) The defendant may appeal the ALJ's decision denying a motion to reopen by filing a notice of appeal with the authority head within fifteen days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(j) If the defendant files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(k) The authority head shall decide expeditiously, based solely on the record before the ALJ, whether extraordinary circumstances excuse the defendant's failure to file a timely answer.

(l) If the authority head decides that extraordinary circumstances excuse the defendant's failure to file a timely answer, the authority head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(m) If the authority head decides that the circumstances do not excuse the defendant's failure to file a timely answer, the authority head shall reinstate the ALJ's initial decision, which shall

become final and binding upon the parties thirty days after the authority head issues such a decision.