



Issue Date: 16 April 2020

Case No.: 2020-MIS-00007

In Re:

**IMPLEMENTATION OF ELECTRONIC SERVICE
DURING COVID-19 PANDEMIC**

ADMINISTRATIVE NOTICE

In view of the risks presented by the novel coronavirus COVID-19, the Office of Administrative Law Judges (OALJ), United States Department of Labor (DOL), has taken a number of actions to modify current hearing procedures. One action was to put a hold on issuance of decisions, with certain exceptions, through April 15, 2020, in view of the difficulties parties were having receiving mail. OALJ will resume issuing decisions on April 16, 2020 serving a copy on the parties by email, unless email addresses are not available.¹

This Administrative Notice provides information on how electronic service will be implemented.

How Electronic Service Will Be Made²

Where the Administrative Record contains the email addresses of the parties, attorneys and/or non-attorney representatives who appeared in the case, or where such email addresses are otherwise reliably known by the presiding ALJ, OALJ will use those email addresses to send a notice when a document has been issued by the presiding ALJ. These individuals will then be able to download the document and the accompanying service sheet from a secure website using a password. Service is deemed made upon transmission of the email notice unless OALJ learns that it did not reach the person to be served. *See* 29 C.F.R. § 18.30(a)(2)(ii)(E). An individual may opt-out of electronic service if he or she provides the presiding ALJ an explanation of the circumstances that prevents receipt of service in this manner, and the ALJ approves the request. Individuals may also substitute the email address contained in the record for a different email address by notifying the presiding judge. Individuals may email or fax such opt-out requests or modifications of email addresses following the instructions found at https://www.oalj.dol.gov/FILING_BY_EMAIL.HTML.

¹ *See Supplemental Administrative Order and Notice in re Suspension of Hearings and Procedural Deadlines Due to COVID-19 Pandemic*, 2020-MIS-00006 (Chief ALJ Apr. 10, 2020).

² Attorneys from the Office of the Solicitor will be served at National or Regional office email addresses established for receipt of electronic service.

Electronic Service in Lieu of Certified Mail

DOL regulations direct service of certain types of documents by certified mail.³ However, OALJ's national and district offices are all currently self-quarantining, operating remotely, and unable to utilize certified mail. Accordingly, until further notice, OALJ will use electronic service in lieu of certified mail on those parties with an email address in order to continue administrative-adjudication operations without jeopardizing the safety of those involved. OALJ will record transmission of the email notice and the opening of the document being served – in effect mirroring electronically what happens with conventional hard-copy certified mail. Where an essential party's email address cannot be determined, OALJ will refrain from serving a document that is directed by regulation to be served by certified mail until it is again possible for the document to be served by certified mail, or the ALJ is able to serve the document in some other manner that ensures receipt.

SO NOTICED.

STEPHEN R. HENLEY
Chief Administrative Law Judge
Chair, Board of Alien Labor Certification Appeals

³ For example, a requirement specific to cases arising under the Black Lung Benefits Act is that the regulations direct the ALJ to “serve the decision and order on all parties to the claim by certified mail.” 20 C.F.R. § 725.478. Because OALJ will not be using conventional, hard-copy certified mail for the indefinite future, the provisions of 20 C.F.R. § 725.311(d) and 725.479(d) may apply. Specifically, the 30-day period for requesting reconsideration or appealing the decision to the Benefits Review Board (BRB) would appear to commence upon actual receipt of the decision. Moreover, it appears that pursuant to 29 C.F.R. § 18.30(a)(2)(ii)(E), service would be effective “*upon transmission*” unless the serving party learns the transmission did not reach the person to be served.

This technical invocation of 20 C.F.R. §§ 725.311(d) and 725.479(d) to calculate time limitations appears academic as the District Director is now taking service of ALJs' black lung decisions via email. Thus, the ALJ's decision is issued, served on, received by, and filed with the District Director all on the same date. Pursuant to 20 C.F.R. § 725.478 the ALJ's decision is filed and becomes effective upon receipt by the District Director. Pursuant to 20 C.F.R. §§ 725.479 and 725.481 parties have 30 days after filing of the decision and order with the District Director to either file a request for reconsideration or to file a notice of appeal with the Benefits Review Board.

Since both the District Director and the parties will receive the ALJ's decision upon email transmission essentially simultaneously, it appears that the 30 day period is the same regardless of whether conventional hard-copy certified mail or email notification is used to serve the ALJ's decision on the parties in black lung cases.