

**Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division**

Andrew Louis Barrett
Docket No. A-19-74
Decision No. 2964
August 2, 2019

**DETERMINATION TO DECLINE REVIEW OF
ADMINISTRATIVE LAW JUDGE DECISION**

On April 26, 2019, Andrew Louis Barrett (Petitioner) filed a notice of appeal concerning the Administrative Law Judge’s April 23, 2019 decision (DAB CR5298), which sustained a 20-year exclusion imposed by the Inspector General (I.G.) under section 1128(a)(1) of the Social Security Act. In his April 26, 2019 appeal notice (filed electronically on DAB E-File), Petitioner requested a 30-day extension of time in which to submit a written brief setting out his exceptions to the ALJ’s decision. On May 6, 2019, the Presiding Board Member issued a letter (served on the parties via DAB E-File) granting Petitioner’s extension request and notifying him that the deadline to file his brief was June 24, 2019.¹ However, Petitioner did not file a written brief by the June 24, 2019 deadline, or at any time.

The regulations governing appeals of section 1128 exclusions provide that a notice of appeal to the Board must be “accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.” 42 C.F.R. § 1005.21(c). Those regulations further state that the Board “will not consider any issue not raised in the parties’ briefs, nor any issue in the briefs that could have been raised before the ALJ but was not.” *Id.* § 1005.21(e).

Because Petitioner has not filed a brief specifying exceptions to the ALJ’s April 23, 2019 decision, as section 1005.21(c) requires, we have determined that we need not render a separate decision. Pursuant to 42 C.F.R. § 1005.21(g), we therefore decline review of and summarily affirm the ALJ’s decision. That decision becomes final and binding 60 days from the date of service of this determination to decline review. See 42 C.F.R. § 1005.21(j).

¹ The Board’s May 17, 2019 letter states that, by filing the notice of appeal electronically using DAB E-File, the Appellant consented to accept appeal-related documents – including Board rulings and instructions – by that method.

Judicial review is available in an appropriate United States district court if a civil action is filed within 60 days after service of this determination to decline review. See sections 1128(f)(1) and 205(g) of the Social Security Act and 42 C.F.R. § 1005.21(k)(1).

_____/s/
Sheila Ann Hegy

_____/s/
Constance B. Tobias

_____/s/
Christopher S. Randolph
Presiding Board Member