

provide regarding credibility to make credibility findings over and beyond those of the ALJ.

Response: As we stated above, and in the preambles to the NPRM and the final rules with request for comment, we have no plans to videotape hearings in which a party or witness appears by VTC. We will make audio recordings of these hearings using the same procedures we use in hearings in which all of the participants appear in person. The role of the Appeals Council in considering cases should not be affected by whether VTC was used in conducting an appearance or appearances at the hearing.

Comment: This same commenter asked what savings in real days we project to occur as a result of the use of VTC.

Response: As we noted above and in the prior preambles concerning these rules, the Iowa test results showed that processing time for hearings using VTC procedures was substantially less than for hearings conducted in person at remote sites. The processing time savings achieved by different hearing offices will vary depending on multiple factors, including the rate at which the office uses VTC in the hearings it conducts. Nationally, we expect that the overall effect of using VTC in reducing processing times will increase as we gradually rollout VTC and develop more effective VTC networks.

Comment: A commenter expressed the opinion that VTC is a viable alternative for hearings, provided it remains a choice and not a requirement, and that use of VTC should speed up the hearing process and save money.

Response: We agree with these views. We understand the aspect of this comment that deals with the maintenance of "choice" to be concerned with the claimant's retention of choice regarding the mode of his or her appearance, rather than the specific issue of whether the claimant should have veto authority over VTC appearances of expert witness. We discuss that issue in response to other comments.

Comment: Two commenters questioned whether claimants would find appearing by VTC satisfactory. One commenter thought that the ALJ hearing was already stressful enough for claimants and that adding a camera to the process will only make matters worse. Another thought that the camera "may not cut it" and that represented claimants will want to look the ALJ in the eye and tell their story in person.

Response: Our testing of VTC does not support the conclusion that claimants will find appearing by VTC to be

intimidating or unsatisfactory for the purpose of projecting their own credibility. As previously discussed (above and in the prior preambles for these rules), in our testing of VTC in Iowa a large percentage of claimants rated hearings using VTC procedures as "convenient" or "very convenient" and overall service as "good" or "very good." We also note that in commenting on the NPRM, a national organization of claimant representatives reported that one of its members who had represented several hundred claimants in the Iowa test now preferred VTC to in-person hearings because, among other benefits, VTC has a calming effect on his clients.

One of the reasons we retained the right of claimants to opt out of appearing personally by VTC in the final rules with request for comment was to promote claimant satisfaction with the hearing experience. As we noted in the preamble to those rules, claimants may have strong opinions about whether they can best project their own credibility by appearing in person or by VTC. Preserving an option for claimants to appear in person should increase their comfort level in appearing by VTC and help to ensure that they perceive the hearing process as fair.

Comment: Two commenters expressed concerns about the effectiveness of VTC proceedings for the purposes of inquiring fully into the facts. One thought that a "flickering and disembodied" view is no substitute for in-person observation at the hearing and that use of VTC will deprive hearing proceedings of the solemnity that encourages truth telling. Another commenter thought that the decisionmaker would lose the personal contact with the claimant that the commenter believes is needed to assess credibility.

Response: Under the final rules with request for comment, the ALJ has discretion to require in-person appearances, by the claimant or witnesses, in any case in which the ALJ determines that the immediacy of an in-person appearance is needed to inquire fully into the facts. Thus, the rules provide a mechanism to prevent use of VTC where an in-person appearance would be more appropriate.

We believe that any problems in assessing credibility in VTC proceedings would generally be associated with possible instances of inadequate VTC transmission. That was the case, for example, in the incident reported in a comment on the NPRM in which a claimant representative was dissatisfied with a VTC experience because the quality of the VTC transmission was not sufficient to allow the ALJ to perceive

the claimant's sweating and shortness of breath. We believe we can generally avoid problems of this type by assuring that our VTC facilities are of high quality. As we noted above and in the prior preambles for these rules, we plan to implement use of VTC in the servicing areas of hearing offices after the Associate Commissioner for Hearings and Appeals determines that appearances at hearings conducted in those areas can be conducted more efficiently by VTC than in person. Where problems do occur, we believe that it will frequently be possible to reach satisfactory solutions on an ad hoc basis, such as happened in the above noted example when the ALJ stipulated to the claimant's sweating and shortness of breath based on the representative's statement describing these conditions. Where technical problems occur and cannot be overcome, the hearing will be rescheduled, as happens when a problem in the audio recording equipment prevents the recording of a hearing.

Comment: One commenter opposed use of VTC on the basis that its use is complicated by technical issues, including problems involved in making the claim file available for review by the claimant and the additional costs associated with having dual staffs at two sites.

Response: The technical problems of concern to this commenter involve matters that we assessed in deciding that using VTC to conduct hearings is an efficient service delivery option. Our judgment in this regard included consideration of the need to establish VTC facilities and to have hearing monitors available at VTC sites to assist in the hearing proceedings. The technical issues we have considered also include the problems involved in ensuring that claimants who appear by VTC will have access to the record that is sufficient and equal to that of claimants who appear in person. We have addressed these problems by establishing procedures to provide the claimant and the representative a copy of the evidence of record or an opportunity to review the file at their local Social Security FO before the hearing is conducted, and/or through use of document cameras to display documents on the day of the hearing.⁵

⁵ We address these procedures, together with changes we are making in our standardized notices of hearing to advise claimants concerning the procedures, in HALLEX guidance that we have issued to implement our use of VTC procedures (HALLEX TI 1-5-1-16). (See <http://www.ssa.gov/OP-Home/hallex/I-05/I-5-1-16.html>, TI 1-5-1-16 ILE, and Attachment 3.)