

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:)	
)	
Social Security Administration,)	Date: May 30, 2008
Office of the Inspector General,)	
)	
- v. -)	Docket No. C-08-295
)	Decision No. CR1795
Steven Getchell,)	
)	
Respondent.)	

DECISION

The Inspector General for Social Security (I.G.) charges that Respondent, Steven Getchell, made false statements and/or misrepresentations of material fact when he applied for Social Security disability insurance benefits. For this reason the I.G. proposes to impose a civil money penalty against Respondent Getchell, and told him so in a notice letter dated December 11, 2007. Respondent Getchell appealed. The I.G. now asks that his appeal be dismissed as untimely. For the reasons set forth below, I grant the I.G.'s motion and dismiss this case.

Respondent Getchell has not established good cause for untimely filing, and his hearing request must therefore be dismissed.¹

No facts are in dispute. In its December 11, 2007 letter, the I.G. advised Respondent Getchell that, pursuant to section 1129 of the Social Security Act (SSA), the I.G. proposed imposing against him a civil money penalty (CMP) of \$60,000 because he knowingly made false or misleading statements in documents related to his application for Social Security disability benefits, and in a hearing before a Social Security

¹ I make this one finding of fact/conclusion of law to support my decision in this case.

Administrative Law Judge. I.G. Ex. 2. The letter advised Respondent of his right to request a hearing before an Administrative Law Judge (ALJ), and said that such request had to be filed within 60 days of his receiving the letter. The letter included a copy of the regulations governing these proceedings, and emphasized:

If you do not request a hearing within the 60-day period, the proposed civil money penalty will be imposed against you. You will have no right to an administrative appeal after that time.

(Emphasis in original) I.G. Ex. 2, at 5.

The I.G. sent the letter via Federal Express Overnight Mail to the address Respondent had provided. I.G. Ex. 2. He was residing with his parents in Ocala, Florida. On December 12, 2007, Federal Express delivered the letter to his house, and his mother signed for it. I.G. Ex. 2, at 7. To be timely, Respondent Getchell's hearing request should have been filed on or before February 11, 2008 (February 10 being a Sunday). No appeal was filed within that time. Respondent's attorney requested a hearing by letter dated February 13, 2008. On April 2, 2008, the I.G. filed its motion to dismiss the appeal as untimely. Respondent Getchell opposes.

Respondent Getchell does not dispute the untimeliness of his appeal, but argues that good cause excuses the late filing. According to Respondent, his attorney uses a case management software program that "automatically" adds five days mailing time to correspondence from the Social Security Administration. Unaware that the notice had been sent express mail (and that SSA could prove the date of receipt), Respondent gave himself 65 days in which to appeal without regard to the date of receipt.

The regulations mandate that a hearing request be filed within 60 days after notice is received by the respondent "or upon a showing of good cause," within the time permitted by the ALJ. 20 C.F.R. § 498.202(c)(2). The date of receipt is presumed to be five days after the date of the notice, "*unless there is a reasonable showing to the contrary.*" 20 C.F.R. § 498.202(e). The ALJ must dismiss an untimely hearing request when the respondent fails to demonstrate good cause. 20 C.F.R. § 498.202(f)(1).

The regulations do not define "good cause" but leave that determination to the discretion of the ALJ. Looking to regulations governing certain Social Security benefit appeals – 20 C.F.R. § 404.911; 20 C.F.R. § 404.933(c) – for guidance, many ALJs have ruled that "good cause" means circumstances beyond a party's ability to control. *See, e.g., Hillcrest Healthcare, L.L.C.*, DAB CR976 (2002), *aff'd* DAB No. 1879 (2003); *see also, SSA v. Parham*, DAB CR1600 (2007) and cases cited therein. Under those regulations, to

determine whether good cause exists, the ALJ considers 1) the circumstances that kept Respondent from making the request on time; 2) whether any SSA action misled him; 3) whether Respondent understood the requirements for filing; and 4) whether Respondent had any physical, mental, educational, or linguistic limitation that prevented him from filing a timely request, or from understanding or knowing about the need to file a timely request for review. 20 C.F.R. § 404.911.

Under this standard, Respondent Getchell's good cause claim fails. He has not claimed that meeting the filing deadline was beyond his control; he was perfectly capable of filing timely. He does not claim that he misunderstood the filing deadline. Indeed, SSA's notice to him left no room for misunderstanding. It said that he *must* file within 60 days of "the *date of receipt* of this letter," and warned that he would lose his hearing right if he failed to file the request within the 60 day period. I.G. Ex. 2, at 4-5. Respondent's disregard of that unambiguous warning does not constitute good cause.

I therefore find no good cause for extending Respondent's time to appeal, and dismiss this appeal pursuant to 20 C.F.R. § 498.202(f)(1).

/s/
Carolyn Cozad Hughes
Administrative Law Judge