

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:)	
)	
Social Security Administration,)	Date: August 25, 2009
)	
Petitioner,)	
)	
- v. -)	Docket No. C-09-132
)	Decision No. CR1996
Ron Adams,)	
)	
Respondent.)	

RECOMMENDED DECISION

I recommend that the determination by the Social Security Administration Inspector General (SSA I.G.) to impose civil money penalties totaling \$15,000 against Respondent Ron Adams be sustained. I issue this recommended decision based on the unopposed evidence offered by the SSA I.G. showing that Respondent lied repeatedly to the Social Security Administration (SSA) about his work activities in connection with his applications for disability insurance benefits.

I. Background

On October 15, 2008, the SSA I.G. sent a notice to Respondent advising him that he was proposing to impose \$15,000 in civil money penalties against him. Respondent requested a hearing and the case was assigned to me for a hearing and a decision.

I held a pre-hearing conference and issued an order which established a schedule for the conduct of discovery and for pre-hearing exchanges of proposed exhibits and briefs. The SSA I.G. complied with my order, timely serving a discovery request on Respondent and filing a pre-hearing exchange.

However, Respondent has failed to participate in this case from its inception. He provided nothing in response to the SSA I.G.'s discovery request, stating only that he possessed nothing responsive to the request. He failed to file a pre-hearing exchange despite the fact that I repeatedly directed him to do so. He filed no response to an Order to Show Cause which I issued on July 20, 2009.¹ Thus, the SSA I.G.'s evidence is unopposed by Respondent.

The SSA I.G. filed 20 proposed exhibits with his pre-hearing exchange, which he identified as SSA I.G. Ex. 1 – SSA I.G. Ex. 20. I receive these exhibits into evidence.

II. Issues, findings of fact and conclusions of law

A. Issues

Respondent failed to provide any evidence or argument despite my repeatedly directing him to do so. I could dismiss his hearing request for abandonment and/or as a sanction for his refusal to comply with my pre-hearing orders. 20 C.F.R. §§ 498.202(f)(2); 498.214(a)(1), (2), (b)(5). However, I am electing instead to issue a recommended decision that addresses the merits of this case in light of the overwhelming and unopposed evidence offered by the SSA I.G.

The issues are whether:

1. Respondent made willfully false or misleading statements to SSA in connection with his applications for disability benefits; and if so, whether
2. Civil money penalties totaling \$15,000 are reasonable.

B. Findings of fact and conclusions of law

I make findings of fact and conclusions of law (Findings) to support my recommended decision in this case. I set forth each Finding below as a separate heading.

1. Respondent lied to SSA about his work activities in connection with his applications for disability insurance benefits.

This case is brought pursuant to section 1129(a)(1) of the Social Security Act (Act). In relevant part the section provides that any person who knowingly makes or causes to be made a false statement in connection with a benefits application shall be subject to a civil money penalty of not more than \$5,000 for each such false statement.

¹ The history of Respondent's non-cooperation is recited in the Order to Show Cause.

Respondent is a landscaper by profession and has run a tree removal service. He filed applications for disability and Supplemental Security Income (SSI) benefits with SSA in December 2007 and January 2008. In his applications he asserted that he was unable to work due to various medical conditions. These applications included forms which were filed on Respondent's behalf via the Internet in which it was alleged that he: (1) could not stand for long periods and could not do heavy lifting; became unable to work beginning on January 1, 2001 due to his alleged impairments; and (3) had not worked since 2001 due to his alleged impairments.² He also contended that his last employment was with a firm known as Adams Tree Landscaping and that this work lasted from June 1970 through January 2001. SSA I.G. Ex. 4; SSA I.G. Ex. 5.

On February 12, 2008, an adjudicator with the State Disability Determination Service (DDS) spoke with Respondent by telephone. The adjudicator asked Respondent if he was working, remarking to Respondent that he could hear noises over the telephone that sounded as if Respondent was at a job site. SSA I.G. Ex. 9. Respondent denied that he was working and told the DDS adjudicator that he had not worked for years due to a bulging disc in his spine. *Id.*

The unopposed evidence introduced by the I.G. shows that the Respondent made statements in his disability applications and in subsequent communications with SSA or the DDS which were false. The DDS adjudicator found that, as of February 2008, Respondent had a current business listing in the local yellow pages, giving his business address and phone numbers as the same address and phone numbers as were shown in Respondent's disability applications. SSA I.G. Ex. 9. A claims representative in the Warner Robins, Georgia SSA field office reported that he had seen Respondent working from time to time and using a work truck while working. *Id.*

Notwithstanding Respondent's claim that he wasn't working, he filed an application for an Occupational Tax License in January 2008. SSA I.G. Ex. 12. He was also photographed on multiple occasions while working for his landscaping business. SSA I.G. Ex. 13. In December 2007, Respondent visited the Houston Medical Center and, during that visit, he asserted that he ran a tree service and that he drove a new Bobcat.³ SSA I.G. Ex. 7.

² Respondent signed an appointment of representative form in which he clearly acknowledged that he was giving the representative authority to make all statements on his behalf. SSA I.G. Ex. 3. Statements made on Respondent's behalf by the representative must be imputed directly to Respondent in the absence of any evidence establishing that the representative exceeded her authority.

³ I take notice that a Bobcat is a small, tractor-like vehicle that can be used for landscaping work.

In March 2008 Respondent was involved in an altercation with one of his employees over disputed wages which resulted in the employee calling the police. SSA I.G. Ex. 14, at 5-6. On March 6, 2008, a report was filed with the police alleging that Respondent had committed insurance fraud. *Id.* at 7-9. The police reports and related documents list Respondent's employer as Adams Tree and Heavy Equipment (Owner). *Id.* at 5-13. In February 2008 Respondent signed a contract proposal and an invoice in his capacity as owner of Adams Tree and Heavy Equipment. *Id.* at 35-36.

The unopposed evidence not only belies Respondent's several assertions that he had not worked since January 2001, but it establishes that he lied, brazenly and systematically, about his work activity. There is no possibility here that Respondent could have made a statement that was false in fact but honest in purpose. The persistence with which Respondent denied working in the face of overwhelming evidence that Respondent not only continued to work but that he actively owned and managed a business enterprise leaves no doubt as to his intent.

Furthermore, Respondent's lies about his work activity were material to his applications for disability benefits. Had Respondent reported his work activities honestly to SSA he would have been determined not to be eligible for either disability benefits or SSI. Not working is a necessary element of disability entitlement. An individual who works is not entitled to disability benefits no matter the severity of that individual's medical impairments. Not working is also a necessary element of SSI eligibility based on disability.

2. Civil money penalties totaling \$15,000 are reasonable.

Section 1129(a)(1) of the Act authorizes the imposition of a civil money penalty of up to \$5,000 for each statement that is willfully and materially false. In this case the SSA I.G. determined to impose penalties totaling \$15,000.

The unopposed evidence amply justifies the penalties that the SSA I.G. determined to impose. First, Respondent lied on multiple occasions:

- He lied in his December 2007 application for disability and SSI benefits and in associated documents filed via the Internet when he asserted that he was unable to work due to medical impairments.
- He lied a second time in that application when he stated that he hadn't worked since 2001. He lied a third time when he asserted that he last worked for Adams Tree Landscaping in January 2001.

- Respondent repeated these lies in his January 2008 application for disability and SSI benefits and in associated documents filed via the Internet.
- He lied on February 12, 2008 when he told the DDS adjudicator that he hadn't worked in years due to a bulging disc in his spine.

Had the SSA I.G. determined to impose civil money penalties for each of these many lies, the number of penalties and the amount imposed – assuming that amount was the maximum of \$5,000 for each false statement – would have greatly exceeded the \$15,000 that the SSA I.G. determined to impose in this case. Consequently, the penalties the SSA I.G. determined to impose against Petitioner, are in fact, modest given the persistence with which Petitioner lied to SSA and the DDS.

Second, the amount of the penalties is reasonable when measured against regulatory factors that are established for determining civil money penalty amounts.

Civil money penalty amounts are governed by factors that are set forth at 20 C.F.R. § 498.106(a)(1)-(5). These factors include: (1) the nature of the false statements and the circumstances under which they were made; (2) the degree of the individual's culpability; (3) the individual's financial condition; (4) the individual's history of prior offenses; and (5) such other matters that justice may require. The unopposed evidence shows that Respondent's false statements were highly material, blatant, and brazen. Respondent willfully and deliberately lied in order to fraudulently obtain benefits to which he had no entitlement at all. The character of Respondent's fraud and his obviously high level of culpability strongly support imposition of the full amount determined by the SSA I.G.

Moreover, Respondent has offered nothing to show that penalties of \$15,000 are unreasonable. He has offered no evidence to establish that he would suffer an unreasonable financial hardship as a consequence of these penalties being imposed.⁴ Nor has he offered any evidence about other circumstances that might compel reduction of the penalty amounts.

/s/
Steven T. Kessel
Administrative Law Judge

⁴ In connection with this case the SSA I.G. sent Respondent a financial disclosure form in order to determine whether he lacked the wherewithal to pay penalties totaling \$15,000. SSA I.G. Ex. 2. Respondent did not complete and submit the form.