

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

The Inspector General of the Social Security Administration,

Petitioner,

v.

Mohamed Benzabeh,

Respondent

Docket No. C-14-586

Ruling No. 2014-35

Date: July 10, 2014

RULING

On January 15, 2014, Respondent Mohamed Benzabeh filed a request for an administrative law judge (ALJ) hearing to challenge a September 10, 2013 determination by the Inspector General of the Social Security Administration (SSA IG) to impose a \$10,000 civil money penalty (CMP) against him.

SSA moves to dismiss Respondent Benzabeh's hearing request. SSA argues that Respondent's hearing request is untimely filed and that Respondent Benzabeh has not shown good cause for late filing.¹ For the reasons discussed below, I grant SSA's motion.

¹ In the alternative, the SSA IG argues that Respondent Benzabeh's hearing request does not raise an issue that is subject to ALJ review. I do not reach this issue because I find that Respondent Benzabeh has not demonstrated good cause for extending his time to request a hearing. However, if I were to reach this issue, I would find that Respondent Benzabeh's hearing request does not raise a reviewable issue. It does not identify the specific issues or findings of fact and conclusions of law with which Respondent

Discussion

In a letter dated September 10, 2013 (notice letter), the SSA IG advised Respondent Benzabeh that he proposed imposing a penalty-only CMP of \$10,000. The IG asserts that he made three attempts to mail the notice letter to Respondent but that Respondent would not claim the notice letter. The IG asserts further that on October 31, 2013, an SSA IG special agent personally hand-delivered the notice letter to Respondent Benzabeh. SSA IG Brief (Br.) at 4-5; SSA IG Exhibit (Ex.) 2.² On January 1, 2014, the SSA IG notified Respondent Benzabeh that, because Respondent Benzabeh had not filed a hearing request, the IG would impose the \$10,000 CMP. SSA IG Ex. 3.

Respondent Benzabeh does not dispute that: 1) he refused to claim the notice letter when it was sent to him via the U.S. mail; 2) he received the notice letter following personal service by an SSA IG special agent on October 31, 2013; 3) the notice letter informed him of his right to appeal within 60 days of the date he received it; and 4) by regulation, he had until no later than December 30, 2013 to file his hearing request.³ P. Hearing Request; SSA IG Br. at 3-5; *see* 20 C.F.R. § 498.202(c)(2). Instead, in his January 15, 2014 hearing request, he wrote:

I am sending this request to you to have an opportunity to file an appeal late. I was misled by my attorney as to the steps to take. I am pleading to have a good cause for filing this appeal late be accepted. Upon receiving correspondence dated September 10, 2013 I immediately took the papers to my attorney. She made me think she was taking care of this matter. Upon receiving the correspondence dated January 1, 2014[,] I contacted my attorney and she stated that she had tried to contact a Joscelyn on numerous occasions (my file I picked up from her has 11/17, 12/2, and 1/14 twice) and was unable to speak with her. She told me she would not be able to help me, so I picked up my file from her on January 14. I would greatly appreciate an opportunity to find a competent attorney to represent me in this matter.

Benzabeh disagrees; it does not state the basis for his contention that the specific issues or findings and conclusions are incorrect. 20 C.F.R. § 498.202(d).

² The SSA IG filed four attachments to his brief. I refer to them as SSA IG Exs. 1 through 4.

³ In error, the IG asserts that Respondent's hearing request was due no later than December 10, 2013. In fact, it was due no later than December 30, 2013. In any event, Respondent's hearing request, which is dated January 15, 2014, is untimely.

I held a pre-hearing conference on March 27, 2014. Respondent Benzabeh stated that he wanted to retain counsel, but had been having trouble doing so. I told him that I could not assist him in finding counsel and that the government would not pay for his counsel. I told him he was entitled to representation and that if he retained counsel, his counsel was to enter a notice of appearance. I set a briefing schedule on the IG's request to dismiss and warned the parties that failing to comply with my Order could lead to sanctions, including dismissal of Respondent Benzabeh's hearing request. March 27, 2014 Order; Social Security Act § 1128A(c)(4) (42 U.S.C. § 1320a-7a(c)(4)); *see also* 20 C.F.R. § 498.214(a)(1). The SSA IG timely filed a motion to dismiss and supporting arguments. Respondent Benzabeh failed to respond.

On May 21, 2014, I issued an Order to Show Cause requiring Respondent to explain why I should not dismiss the case for his failing to comply with my March 27, 2014 Order or otherwise defend the case. I also directed him to respond to the IG's motion to dismiss. He did neither. Instead, he asked for still more time to find an attorney.

Thus, Respondent did not comply with my May 21, 2014 Order to Show Cause or my March 27, 2014 Order. Respondent has had ample time to find an attorney or to present his own case.⁴

I am required to dismiss an untimely hearing request, unless the respondent shows good cause for untimely filing. 20 C.F.R. § 498.202(f)(1). The regulations do not define good cause, but leave that determination to my discretion. *See, e.g., Taos Living Ctr., DAB No. 2203 at 12 (2009)* (holding that the ALJ "has discretion to extend the period . . . to file . . . if . . . the ALJ finds 'good cause' for the late filing"). In other types of cases, however, the SSA has, by regulation, defined good cause as circumstances beyond a party's ability to control.⁵ 20 C.F.R. §§ 404.911, .933(c); 416.1411, .1433(c). I find it reasonable to apply that definition here. The regulations have been subject to notice-and-comment rulemaking and have been applied in a wide variety of cases. *See, e.g., Raj Ahluwalia, M.D., ALJ Ruling No. 2013-11 at 2-3 (2013)* (and cases cited therein).

⁴ Although I could have dismissed Respondent's case for failure to comply with my orders (*see* Social Security Act, section 1128A(c)(4) (42 U.S.C. § 1320a-7a(c)(4)), I do not do so here because I find for the IG on the merits of his motion to dismiss.

⁵ The regulations list factors for the ALJ to consider: 1) the circumstances that kept the affected party from making the request on time; 2) whether any SSA action misled him; 3) whether the affected party understood the requirements for filing; and 4) whether the affected party 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; 416.1411.

Reliance on such a long-accepted (and perhaps the only plainly-articulated) standard could hardly be considered an abuse of discretion.

Here, the SSA IG explained in the notice letter that Respondent Benzabeh had 60 days in which to request a hearing. He understood this and forwarded the notice letter to his attorney. His only argument is that his attorney failed to act. Respondent does not explain why his attorney did not file a hearing request, other than to assert, without any documentary or testamentary support, that she tried to contact SSA⁶ and that she could not otherwise help him. I do not find this argument to constitute good cause to extend Respondent Benzabeh's time to file his hearing request. An attorney's failure to file a timely hearing request is not a circumstance beyond a party's ability to control justifying an extension of time to file. *Karen Kay Parham*, App. Div. Dkt. No. A-07-109 (August 14, 2007) (finding that counsel's failure to represent effectively respondent was "avoidable human error" and did not constitute good cause); *see, e.g., NBM Healthcare, Inc.*, DAB No. 2477 (2012) (finding that counsels' claims that they "did not have time" to focus on ALJ notice do not constitute good cause). I therefore find that Respondent Benzabeh has not demonstrated good cause for extending the deadline for filing his admittedly out of time hearing request. Accordingly, this case is dismissed.

Regulations governing these procedures afford no further appeal rights for the dismissal of a hearing request. *See* 20 C.F.R. § 498.221 (providing hearing rights only for an initial decision); *see also Guidelines – Appellate Review of Decisions of Administrative Law Judges in Social Security Administration Cases to Which Procedures in 20 C.F.R. Part 498 Apply* at <http://www.hhs.gov/dab/divisions/appellate/guidelines/ssa.html>.

/s/

Carolyn Cozad Hughes
Administrative Law Judge

⁶ Respondent Benzabeh states in his hearing request that his attorney tried to reach SSA on several occasions during the 60-day period. Whether or not his counsel tried to contact SSA during this time, and whether or not SSA personnel failed to respond is immaterial to my decision. The regulatory requirement is clear that a hearing request has to be filed, in writing, within 60 days of a respondent's receipt of the notice letter. 20 C.F.R. § 498.202(c).