

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Social Security Administration,

Petitioner,

v.

Autimece Rhone,

Respondent.

Docket No. C-13-466

ALJ Ruling No. 2013-20

Date: August 27, 2013

ORDER OF DISMISSAL

The Social Security Administration (SSA) determined that Respondent, Autimece Rhone, violated 42 U.S.C. § 1320a-8, and proposed to impose a civil monetary penalty on Respondent. Respondent requested a hearing before an administrative law judge. Because Respondent failed to timely respond to SSA's discovery request and subsequent motion to dismiss, I dismiss Respondent's RFH for abandonment.

I. Background

By letter dated February 15, 2013, SSA notified Respondent that it proposed to impose a total civil monetary penalty of \$105,258 on her pursuant to 42 U.S.C. § 1320a-8. Respondent timely filed a request for hearing (RFH) with the Departmental Appeals Board, Civil Remedies Division (CRD). In a March 12, 2013 letter, the CRD Director informed the parties that I would hold a telephonic prehearing conference on April 3, 2013. Because SSA counsel had a scheduling conflict, I set April 17, 2013, as the new date for the conference.

Respondent appeared pro se at the April 17, 2013 prehearing conference. I asked Respondent whether she intended to hire an attorney to represent her in this matter. It became apparent that Respondent had another separate and distinct proceeding pending with SSA. Because Respondent thought that the attorney she retained for the other SSA proceeding would represent her in this one, I decided to reset the prehearing conference for May 15, 2013. I also decided to send Respondent copies of all of the documents in CRD's file for this case, which included: SSA's February 15, 2013 notice proposing the penalty; CRD's March 12, 2013 letter acknowledging Respondent's RFH; SSA counsel's March 21, 2013 notice of entry of appearance; and CRD's March 28, 2013 letter resetting the prehearing conference for April 17, 2013. I directed Respondent to contact her attorney and provide him with these documents as soon as possible. I told Respondent that I was not requiring her to hire an attorney, but that I was providing her with time to determine whether her attorney will represent her in this matter and whether, after discussing the terms of representation, she will hire him. I specifically instructed Respondent that it was her responsibility to talk to her attorney, provide him with copies of the documents I sent, and confirm with him whether he would represent her. *See* April 18, 2013 Order Summarizing Results of Prehearing Conference Call.

At the May 15, 2013 prehearing conference, Respondent confirmed that she would represent herself in this case. During that conference, I provided Respondent with information concerning the proceedings in this case and established a schedule for discovery and the submission of briefs, proposed exhibits, and witness lists. In regard to discovery, I gave the parties until July 19, 2013, to produce any documents requested by the other party or to request an extension of time. *See* May 15, 2013 Prehearing Order and Order Summarizing Prehearing Conference (May 15 Order).

On July 26, 2013, SSA submitted to CRD and served on Respondent, via UPS overnight delivery service, a motion to dismiss Respondent's RFH. SSA asserted that on May 21, 2013, SSA served on Respondent a Request for the Production of Documents, but that Respondent had not responded to the request or sought additional time to respond to the request. SSA requested dismissal of the RFH due to abandonment or, in the alternative, that I impose a sanction on Respondent. *See* 20 C.F.R. §§ 498.202(f)(2), 498.214.

II. Issue

Whether Respondent's RFH should be dismissed for abandonment.

III. Discussion

Unlike most of SSA's proceedings, which are informal and nonadversarial, proceedings under 42 U.S.C. § 1320a-8 are adversarial. *Compare* 20 C.F.R. §§ 404.900(b), 405.1(c),

408.1000(b), 416.1400(b) *with* 20 C.F.R. §§ 498.203, 498.205, 498.208, 498.215. Discovery is often permitted in adversarial proceedings, and proceedings under 42 U.S.C. § 1320a-8 provide parties with the right to “[c]onduct discovery of documents” by making “a request to another party for production of documents which are relevant and material to the issues before the [administrative law judge].” *Id.* §§ 498.203(a)(3), 498.207(a). Further, a party receiving a discovery request may seek a protective order from the administrative law judge. *Id.* § 498.207(d). The administrative law judge may impose sanctions on a party who refuses to provide or permit discovery. *Id.* § 498.214.

In the present case, I discussed discovery with the parties at the May 15, 2013 prehearing conference and established July 19, 2013, as that date by which the parties must either comply with a document request from the other party or request an extension of time. *See id.* § 498.206(b)(8). My May 15 Order to the parties included this information. *See id.* § 498.206(c). However, SSA asserts in its motion to dismiss that Respondent did not respond to the discovery request that SSA sent to Respondent in May 2013.

CRD has no record of Respondent responding to SSA’s discovery request, filing a request for an extension of time to comply with the discovery request, or filing a motion for a protective order. Further, CRD did not receive any response from Respondent to SSA’s motion to dismiss. A ruling on the motion is now ripe. *Id.* § 498.213(c), (d).

Respondent has failed to comply with discovery requests made pursuant to the regulations and my May 15, 2013 Order. This by itself is probably insufficient to dismiss an RFH. *See* 42 U.S.C. § 1320a-8(b)(4)(A); 20 C.F.R. § 498.214(b)(1). However, Respondent has also failed to respond to SSA’s motion to dismiss. Based on her failure twice to meet deadlines for responding to SSA, it appears that Respondent has decided to absent herself from this proceeding and, therefore, to have abandoned her RFH.

IV. Conclusion

An administrative law judge “shall dismiss a hearing request where . . . [t]he respondent withdraws or abandons respondent’s request for a hearing.” 20 C.F.R. § 498.202(f)(2). Therefore, SSA’s unopposed motion to dismiss is GRANTED and Respondent’s RFH is dismissed with prejudice.

It is so ordered.

/s/
Scott Anderson
Administrative Law Judge