

The Department of Health and Human Services

**DEPARTMENTAL APPEALS BOARD**

Civil Remedies Division

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In the case of:	)	
	)	
Social Security Administration,	)	Date: February 19, 2010
	)	
- v. -	)	
	)	
Bonnie Gale Porter,	)	Docket No. C-08-635
	)	Decision No. CR2068
Respondent.	)	
_____	)	

**DECISION**

I sustain the determination of the Social Security Administration Inspector General (SSA I.G.) to impose civil money penalties of \$22,000 against Respondent Bonnie Gale Porter. I find that Respondent made several false statements or misrepresentations concerning her alleged earnings in order to augment her earnings record and to qualify for Social Security disability benefits. The number of false statements made by Respondent, her culpability for them, and the absence of mitigating evidence all amply support the civil money penalty amount.

**I. Background**

In this case the SSA I.G. alleges that Respondent contravened section 1129 of the Social Security Act (Act). In relevant part the section provides for civil money penalties of up to \$5000 for each material statement that an individual makes for use in determining initial entitlement or continuing right to Social Security benefits that the individual knows or should know is either false or misleading or that the individual makes with knowing disregard for its truth. Act, section 1129(a)(1)(A), (B). The SSA I.G. alleges that, in applying for Social Security disability benefits in 2008, Respondent made false statements concerning her work history and earnings in order to augment her earnings record and to make her eligible to receive benefits.

Respondent requested a hearing and the case was assigned to me for a hearing and a decision. On November 2, 2009, at Respondent's request, I held a hearing by telephone. At the hearing I received into evidence exhibits which were identified as OIG Ex. 1 – OIG Ex. 26 and R. Ex. 1 – R. Ex. 19.

## **II. Issues, findings of fact and conclusions of law**

### **A. Issues**

The issues in this case are whether:

1. Respondent made statements in support of her application for Social Security disability benefits that she knew or should have known were materially false; and
2. Civil money penalties of \$22,000 are reasonable.

### **B. Findings of fact and conclusions of law**

I make the following findings of fact and conclusions of law (Findings).

- 1. Respondent made statements in support of her application for Social Security disability benefits that she knew or should have known were materially false.*

On January 16, 2008, Respondent filed an application for Social Security disability benefits. OIG Ex. 1. In her application she asserted that wages should be posted to her earnings record for certain employers for specific periods of time and in specific amounts. *Id.* at 2-3. Among other things, Respondent asserted that:

- In 1989 she worked for Highland Framers, Inc. and that her Social Security wages were \$2497.50.
- In 1990 she also worked for Highland Framers, and that her Social Security wages were \$484.00.
- In 1990 she worked for Robin Christensen Construction and that her Social Security wages were \$5793.90.
- In 1990 she worked for S.W. Construction, Inc. and that her Social Security wages were \$3456.00.

- In 1991 she worked for Connolly Construction Company and that her Social Security wages were \$6996.75.
- In 1992 she worked for D. and S. Construction Co. and that her Social Security wages were \$3924.25.<sup>1</sup>

In her application Respondent acknowledged that she knew that anyone making a false statement or representation of a criminal fact was subject to legal penalties and she affirmed that all of the information that she gave in connection with her benefits claim was true. *Id.* at 3.

As support for her contentions concerning her alleged past work activity Respondent offered the Social Security Administration six W-2 forms showing work done by a “B.G. Porter” at Highland Framers, Robin Christensen Construction, S.W. Construction, Inc., Connolly Construction Company, and D. and S. Construction Co. OIG Ex. 3, at 1-6. The W-2 forms showed that “B.G. Porter” had worked for these employers during the years when Respondent claimed to have worked for them and showed that “B.G. Porter” received wages in the amounts claimed by Respondent as her wages from these employers.<sup>2</sup>

In fact, and as is established by the preponderance of the evidence in this case, Respondent’s assertions about her employment history with these companies were untrue. The preponderance of the evidence proves that Respondent was not the “B.G. Porter” whose name appears on the W-2 forms. Rather, “B.G. Porter” was Respondent’s husband, Thomas Porter, who had worked for these companies under the assumed name of “B.G. Porter” during the time periods at issue. He had adopted the pseudonym of “B.G. Porter” and reported his earnings using his wife’s (Respondent’s) Social Security number. OIG Ex. 17. Years after the fact, Respondent has now falsely claimed the wages as her own in order to establish sufficient earnings and quarters of coverage to make her eligible to receive Social Security disability benefits.

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<sup>1</sup> Respondent also contended that she had worked for other employers between 1989 and 1993 (Homeclub, Inc., Moreno Valley Animal Friends, and Animal Control Specialists). The SSA I.G. initially asserted that Respondent made false statements about her work for these employers. However, Respondent produced evidence establishing her work for these employers and the SSA I.G. has withdrawn its allegations concerning her work for them.

<sup>2</sup> Respondent also offered W-2 forms for Animal Control Specialists, Moreno Valley Animal Friends, and Homeclub, Inc. Unlike the other six W-2s, which all show earnings attributed to “B.G. Porter”, The Animal Control Specialists and Moreno Valley Animal Friends W-2s attribute wages to “Gale Porter.” The Homeclub, Inc. W-2 shows earnings attributed to “Bonnie G. Porter.” *Id.*

Thomas Porter had been receiving Social Security disability benefits since 1979. As a general rule, working while receiving such benefits renders the beneficiary ineligible to receive them. Mr. Porter knew that and, in a scheme to defraud the Social Security Administration, he returned to work in 1984 under the pseudonym of “B.G. Porter.” OIG Ex. 17. In order to further his fraud Thomas Porter used his wife’s (Respondent’s) Social Security number on his tax withholding forms. *Id.* at 7-8. After an investigation Mr. Porter was arrested, was charged with defrauding the Social Security Administration, and was ultimately convicted.<sup>3</sup> OIG Ex. 21. In 2002, the Social Security Administration removed from Respondent’s Social Security earnings record the wages and earnings that Mr. Porter had fraudulently attributed to her Social Security number. OIG Ex. 4; OIG Ex. 5.

There exists substantial and persuasive evidence that corroborates that the wages claimed by Respondent in her 2008 disability benefits application were earned by her husband and not by her. Thomas Porter admitted to investigators for the Social Security Administration that he had worked under a pseudonym and had his earnings credited to his wife’s account in order to conceal his work activity. OIG Ex. 17, at 8; OIG Ex. 18, at 2. Furthermore, the use of the pseudonym “B.G. Porter” on the W-2 forms later claimed by Respondent as reflecting her own work is inconsistent with the way in which Respondent reported her name in forms issued by companies for which she actually did work (“Gale Porter” or “Bonnie G. Porter”) and strongly suggests that someone other than Respondent provided the information used to generate the W-2 forms that are at issue here.

Moreover, Respondent made no protest of the Social Security Administration’s determination in 2002 to remove “B.G. Porter’s” wages from her earnings record. It was only in 2008, when it was in her self interest to claim these wages as her own, that Respondent asserted that she was the “B.G. Porter” to whom the various employers had paid wages for services.

Respondent now contends that she, in fact, worked for the various employers who paid wages to “B.G. Porter.” She has not produced any corroborating evidence in the form of pay stubs, work records, or other documentation. Rather, her entire case is based on her assertion that she often worked in the construction industry (all of the firms whose wages are at issue are construction companies) as part of crews of workers. According to Respondent, all of the firms followed a policy of “one crew one check.” The idea, according to her, was that only one member of a group of workers would fill out

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<sup>3</sup> The fraud committed by Mr. Porter was substantial. As a result of working under his wife’s identity, he fraudulently obtained over \$173,559 in benefits for himself, Respondent, and his family. OIG Ex. 17, at 3. To this day there remains an outstanding overpayment owed by him to the Social Security Administration of more than \$86,000. OIG Ex. 26.

employment forms and be registered as an employee of a construction firm. That person would then be paid for the services of all of the members of a crew and would distribute pay to each member of the crew based on that individual's work. Tr. at 19-20. Thus, according to Respondent, "B.G. Porter" is a pseudonym for more than one individual, but she was always part of the crew that received "B.G. Porter's" wages.

Respondent has not provided persuasive evidence supporting her assertion and I find it to be untrue. She called no representative from any of the companies whose wages are at issue as a supporting witness and she introduced no documents that supported her claim.

Respondent produced a witness, Mr. Thomas Grogan, who testified that he sometimes worked alongside Respondent as part of a construction crew. However, Mr. Grogan did not corroborate Respondent's assertion that "B.G. Porter" was a pseudonym for crews on which Respondent worked. He provided no evidence to corroborate Respondent's assertion that the six W-2s in question documented wages earned by her for various named employers during specific periods of time. Furthermore, Mr. Grogan initially denied any knowledge of the "one crew one check" practice asserted by Respondent. He later stated that it happened once in a while, but it was not "normal practice." He testified that when he worked on a construction crew he was paid by check directly from his employer. Tr. at 30-31.

I conclude that Respondent failed to establish any affirmative defense proving that she did not make deliberately and materially false and misleading statements to the Social Security Administration. I find that to be so even if I accept her contention that there exists or existed a "one crew one check" practice in the construction industry and even if I accept her claim that she performed work as part of a "B.G. Porter" crew.

When Respondent applied for disability benefits she asserted that she had received *all* of the wages paid to "B.G. Porter" from various construction firms and she offered the W-2 forms for "B.G. Porter" as proof of that assertion. If, assuming for argument's sake, Respondent actually worked as part of a "B.G. Porter" crew, she would have earned only a fraction of the wages she subsequently claimed to be her own earnings. I note that Respondent's witness Mr. Grogan testified that, typically, he and Respondent would work together as part of a crew of four or five individuals. Thus, even if I accept Respondent's assertions on their face, they confirm that she willfully and fraudulently overstated her earnings in order to qualify for Social Security disability benefits.

## ***2. Civil money penalties of \$22,000 are reasonable.***

The Act allows for a civil money penalty of up to \$5000 for each materially and willfully false statement uttered by an individual in connection with a benefits claim. Act, section 1129(a)(1). The penalties totaling \$22,000 that the SSA I.G. seeks to impose against Respondent are well below the maximum that the law would permit in this case.

Respondent committed multiple frauds against the Social Security Administration. Her fraudulent assertions about the six W-2 forms made out to "B.G. Porter" by themselves support, possibly, civil money penalties totaling \$30,000.

I find penalties of \$22,000 to be reasonable. The fraud that Respondent committed was willful and it was serious and the total penalty amount is commensurate with that fraud. Respondent has offered no evidence that serves to mitigate the penalties. She has not shown that her false statements were anything other than part of a deliberate and fraudulent scheme. She has demonstrated no recognition of, or remorse for, the degree of her culpability as is evidence by her continued contentions that I find, frankly, to be preposterous. She has not proved that the penalties demanded by the SSA I.G. would work an unreasonable financial hardship on her. Indeed, the SSA I.G. has offered evidence showing that Respondent and her husband have substantial assets. OIG Ex. 16, at 16.

/s/

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Steven T. Kessel  
Administrative Law Judge