

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

The Inspector General of the Social Security Administration,<sup>1</sup>

v.

Chester Davis,

Respondent.

Docket No. C-13-728

ALJ Ruling No. 2014-8

Date: October 28, 2013

**ORDER OF DISMISSAL**

The Inspector General (I.G.) of the Social Security Administration determined that Respondent, Chester Davis, violated 42 U.S.C. § 1320a-8, and proposed to impose a civil monetary penalty on Respondent. Respondent filed a request for hearing (RFH) before an administrative law judge. Because Respondent failed to timely respond to the I.G.'s June 18, 2013 discovery request and August 14, 2013 Motion to Dismiss, and my August 20, 2013 Order, I dismiss Respondent's RFH for abandonment.

**I. Background**

By letter dated February 26, 2013, the I.G. stated that he proposed to impose a total civil monetary penalty of \$30,000 on Respondent pursuant to 42 U.S.C. § 1320a-8. Respondent timely filed a RFH with the Departmental Appeals Board, Civil Remedies Division. In a May 7, 2013 letter, the Director of the Civil Remedies Division informed the parties that I scheduled a telephonic prehearing conference for June 5, 2013. Because the I.G. had a scheduling conflict, I set May 22, 2013, as the new date for the conference.

---

<sup>1</sup> I modified the caption in this case to conform it to the regulations. *See* 20 C.F.R. § 498.202(b); *see also* 20 C.F.R. § 498.101 (definition of *Inspector General*).

Respondent appeared pro se at the May 22 prehearing conference and asked if his sister, Ms. Wanda Davis Cooks, could assist him in the preparation of document production requests. Counsel for the I.G. indicated that she had no objection to Respondent receiving assistance from his sister. I stated that Respondent should carefully review and sign any documents prepared by Ms. Wanda Davis Cooks and Respondent should send his written requests for documents to the I.G. as soon as possible. May 24, 2013 Order Scheduling Submission of Briefs and Documents ¶ 4. (May 24 Order).

During the prehearing 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, the parties had until July 2, 2013, to produce any documents requested by the other party. May 24 Order ¶ 7.

On July 12, 2013, the I.G. submitted to me and served on Respondent, via certified mail, a Motion to Dismiss Respondent's RFH. The I.G. asserted that on June 18, 2013, the I.G. served on Respondent a Request for the Production of Documents, but that Respondent had not responded to the request or contacted the counsel for the I.G. to request clarification or explain when he could provide the requested documents. The I.G. sought dismissal of the RFH due to abandonment. *See* 20 C.F.R. § 498.202(f)(2). In the alternative, the I.G. requested that I impose a sanction on Respondent. *See id.* § 498.214.

In an unsigned letter dated July 24, 2013, Respondent asserted that he did not abandon his RFH. Respondent indicated that his inability to comply with the deadline for discovery was due to health issues and the use of medications that allegedly made it difficult to communicate. Respondent stated that his health had improved and that he "can be punctual and on time from now on to get this hearing finished."

On August 14, 2013, the I.G. renewed its Motion to Dismiss. The I.G. asserted that Respondent still had not submitted any documents to the I.G. and that "there is no indication Respondent intends to comply with any, or part, of the document request." On August 20, 2013, I issued an Order requiring Respondent to submit documentation supporting his response to the I.G.'s July 12 Motion to Dismiss. I provided 10 days for Respondent to submit this documentation and indicated that after receipt of the documentation, I would rule on the I.G.'s Motion to Dismiss. I also stated that if Respondent failed to timely respond to my Order, I may dismiss his RFH for abandonment. The Civil Remedies Division has not received any documentation from Respondent in response to my August 20 Order.

## II. Issue

Whether Respondent's RFH should be dismissed for abandonment.

## III. Discussion

Unlike most of the Social Security Administration'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 the parties to cases arising under 42 U.S.C. § 1320a-8 may "[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. 42 U.S.C. § 1320a-8(b)(4)(A); 20 C.F.R. § 498.214.

In the present case, I discussed discovery with the parties at the May 22 prehearing conference and established July 2, 2013, as the date by which the parties must complete discovery. May 24 Order. However, it is uncontested that Respondent did not respond to the I.G.'s discovery request. Although Respondent stated in his July 24 response that he is now able to proceed with the case, Respondent has not filed any other documents in this case.

A ruling on the I.G.'s July 12 and August 14 Motions to Dismiss is now ripe. 20 C.F.R. § 498.213(c), (d). Respondent has failed to comply with a discovery request made pursuant to the regulations and my May 24, 2013 Order. By itself, this 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 the I.G.'s August 14 Motion to Dismiss and to comply with my August 20 Order for Respondent to provide support for his July 24 response to the I.G.'s July 12 Motion to Dismiss. 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). Because it appears that Respondent has decided to abandon his RFH, I must dismiss his RFH.

**IV. Conclusion**

The I.G.'s Motion to Dismiss is granted and Respondent's RFH is dismissed.

It is so ordered.

\_\_\_\_\_  
/s/  
Scott Anderson  
Administrative Law Judge