

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

The Inspector General of the Social Security Administration,

Petitioner,

v.

Donald Grady, Jr.,

Respondent.

Docket No. C-15-2312

Decision No. CR4633

Date: June 16, 2016

**DECISION**

In 2014, Respondent, Donald Grady, Jr., was receiving Social Security disability insurance benefits. He responded to questions posed by the Social Security Administration (SSA) about his impairments and abilities. The Inspector General (IG) for SSA now charges that he violated section 1129 of the Social Security Act (Act) because, in his responses, he knowingly made false statements and misrepresentations of material fact regarding his alleged disability, functional abilities, and activities. SSA proposes imposing against him a \$10,000 civil money penalty (CMP).

For the reasons set forth below, I agree that Respondent Grady knowingly misrepresented material facts to SSA for its use in determining his continuing eligibility for disability insurance benefits, and I consider \$10,000 a reasonable penalty.

## Background

Section 1129(a)(1) of the Act subjects to penalty any person (including an organization, agency, or other entity) who

(A) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II . . . that the person knows or should know is false or misleading,<sup>1</sup>

(B) makes such a statement or representation for such use with knowing disregard for the truth, or

(C) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the person knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under title II . . . if the person knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading  
 . . . .

*See also* 20 C.F.R. § 498.102(a) (authorizing the IG to impose a penalty against any person who has made a statement or representation of a material fact for use in determining any initial or continuing right to or amount of Title II benefits, and who knew, or should have known, that the statement or representation was false or misleading, or who omitted a material fact, or who made such a statement with “knowing disregard for the truth.”)

The Act defines a material fact as one that “the Commissioner of Social Security may consider in evaluating whether an applicant is entitled to benefits under title II . . . .” Act § 1129(a)(2); 20 C.F.R. § 498.101.

The Commissioner of Social Security has delegated to the IG the authority to impose penalties under section 1129. *See* 20 C.F.R. § 498.102.

In this case, the IG contends that, in responding to continuing-disability-review questions posed by SSA, Respondent Grady deliberately and repeatedly misrepresented his functional abilities so that he could continue receiving Social Security disability insurance benefits. By letter dated January 8, 2015, the IG advised Respondent of his

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<sup>1</sup> Title II of the Act governs the Social Security disability insurance program.

determination and the proposed penalty. SSA Ex. 8. Respondent requested a hearing. SSA Exs. 9, 10.

The IG submitted a brief (SSA Br.) and 21 exhibits (SSA Exs. 1-21). Respondent Grady submitted 13 exhibits (R. Exs. 1-13), which include, marked as R. Exs. 1 and 13, his responses to the IG's brief. Respondent submitted closing arguments.

I have admitted SSA Exs. 1-21, which include supplemental exhibits marked SSA Exs. 4.1 (video surveillance); 4.2 (screen shots from Respondent's business website); and 4.3 (postings from Respondent's Facebook page). I have also admitted R. Exs. 1-13. Summary of Prehearing Conference and Order (January 19, 2016). Each party submitted the written direct testimony of his witnesses (the IG has seven witnesses; Respondent Grady has twelve witnesses, including himself), but neither party asked that any witness be produced for cross-examination at an in-person hearing. An in-person hearing would therefore serve no purpose, and I decide this case based on the written record. Respondent letter (February 21, 2016); Order (February 22, 2016); *see* Order Scheduling Submission of Briefs and Documents at 2-3 ¶ 4 (June 11, 2015).

## Issues

The issues before me are:

1. Did Respondent Grady make, or cause to be made, to SSA a statement or representation of a material fact that he knew or should have known was false or misleading, for SSA's use in determining his right to Social Security Disability Insurance benefits (Title II) and/or the amount of those benefits, or did he omit a material fact or make such a statement with knowing disregard for the truth; and
2. if so, is the \$10,000 proposed penalty reasonable?

## Discussion

***1. Respondent Donald Grady, Jr. violated section 1129 of the Act because he knowingly made false statements and misrepresentations to SSA for its use in determining his ongoing eligibility for Social Security disability insurance benefits.***<sup>2</sup>

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<sup>2</sup> My findings of fact/conclusion of law are set forth, in italics and bold, in the discussion captions of this decision.

To satisfy the basic definition of “disability,” an individual must have a severe medically determinable physical or mental impairment that makes him unable to perform his past relevant work or any other substantial gainful work. 20 C.F.R. § 404.1505.

Respondent’s representations. After finding someone disabled, SSA must occasionally reevaluate the individual’s impairments to determine if he is still eligible for benefits, a process referred to as a “continuing disability review.” If medical or other evidence establishes that the recipient is no longer disabled, his benefits will end. 20 C.F.R. §§ 404.1589, 404.1590. In this case, Respondent Grady was receiving disability insurance benefits, and, in May 2014, he responded to questions on a Continuing Disability Review Report (Form SSA-454). Among his representations were the following:

- He listed as conditions that limit his ability to work: lower back, left leg, and buttock pain; right knee pain; depression and a mood disorder; degenerative disc disease; and weight gain. SSA Ex. 1 at 2, 3.
- He said that he wore a knee brace *all the time*, a back support when he was up for a long period, and used a cane when his knee was swollen and unstable. SSA Ex. 1 at 5.
- He claimed that, among other limitations, he had difficulty performing chores that required bending and was unable to bend to reach some areas while bathing; he could not perform activities that required prolonged standing (10 minutes or more), and he used a cane at times; lifting objects caused him back pain; he used a motorized carriage while shopping because he could not walk for long; he could not concentrate because of his pain and medication; he was easily frustrated and lost patience with people. SSA Ex. 1 at 6.
- He said that he opened a martial arts gym with the help of his wife “who runs it,” and that volunteer instructors assisted him “in teaching the physical part of martial arts that I can no longer do.” He said that he went to the gym from noon to 2:00 p.m. and from 5:00 p.m. to 9:00 p.m. He said that he “oversees” the instructors and rests in the afternoon. He reiterated that he is unable to sit or stand for long periods due to back and knee pain. He said that he spends much of his time lying on a sofa in the gym. SSA Ex. 1 at 8.

In a July 21, 2014 telephone conversation with an employee of the Florida Department of Health’s Division of Disability Determinations (state agency), Respondent Grady again described back and right knee pain. He said he had a left foot drop. He had several canes, keeping one in his car and using it whenever he has to go anywhere (but not inside his house or getting from his home to the car). He claimed that “he doesn’t get out much” and “is a hermit.” He said that he wore a brace on his right knee “at all times,”

both inside and outside his house and whenever he went anywhere. SSA Ex. 2. When asked how he typically spends his day, “he was quiet for a very long time.” He then said that he owned a martial arts studio where he goes three to five days a week and where he “oversees” six martial arts instructors. He said that he could no longer teach martial arts and spent most of the day on the studio sofa. He said that he doesn’t do “much of anything.” SSA Ex. 2.

The investigation. Because of disparities in Respondent Grady’s medical evidence, as well as inconsistencies in his statements to the state agency, state agency personnel launched an investigation. SSA Ex. 15 at 2 (Miller Decl. ¶ 4); SSA Ex. 16 at 1-2 (Andrews Decl. ¶ 3). On August 5, 2014, Thomas Montgomery, a financial crimes investigator for the state agency, began surveillance of Respondent’s residence. He observed – and videotaped – Respondent Grady leaving his house, walking without assistance, “with an unremarkable gait,” carrying two bags, one a gym bag. Respondent Grady put the bags and his dog in the car and drove to his martial arts studio. SSA Ex. 4 at 1; SSA Ex. 17 at 1-2 (Montgomery Decl. ¶1); *see* SSA Ex. 4.1.

On August 6, 2014, Investigator Montgomery returned to Respondent Grady’s house. Again, he observed – and videotaped – Respondent Grady leaving his house and walking to his car. Respondent Grady carried two bags – a black nylon bag and a bag full of groceries. Walking at “a brisk pace,” he retrieved his dog, who jumped into the car. Respondent Grady got into the car and drove to his martial arts studio. SSA Ex. 4 at 2-3; SSA Ex. 17 at 2 (Montgomery Decl. ¶ 2); *see* SSA Ex. 4.1.

Investigator Montgomery returned to Respondent Grady’s home on August 11, 2014, but Respondent was not there. The investigator went to Respondent Grady’s martial arts studio and saw his car parked there. SSA Ex. 4 at 3; SSA Ex. 17 at 3 (Montgomery Decl. ¶ 3).

On August 14, 2014, Investigator Montgomery again went to Respondent Grady’s home. He observed – and videotaped – Respondent Grady leaving his house, accompanied by a woman wearing hospital scrubs. Respondent Grady carried a gym bag and walked without an assistive device, “with an unremarkable gait.” He put the gym bag into the back seat, got into the passenger’s seat, and the woman drove him to the martial arts studio. SSA Ex. 4 at 3; SSA Ex. 17 at 3 (Montgomery Decl. ¶ 4).

Two other investigators, Lance Paul from the state agency and Jermaine Jack from SSA, went to Respondent Grady’s martial arts studio on August 29, 2014, apparently without revealing their purpose. Respondent Grady, who wore no knee brace and used no type of assistive device, greeted them and shook their hands “with a firm grip.” He spoke to the investigators about the gym and told them that he currently trains professional fighters in mixed martial arts. He walked with a slight limp but moved “briskly” from one training area to another, showing them the studio equipment. He squatted, bending at the knees,

while reaching into a locker to remove boxing gloves. He also squatted to demonstrate how to throw a heavy medicine ball (although without the ball itself). He told them that on Tuesday and Thursday evenings, between 6:00 and 9:00 p.m., he physically grappled with students in the octagon ring. He said that he would be willing to teach his techniques to local law enforcement agencies. “Fluidly using both arms and hands,” he demonstrated his technique for subduing someone into unconsciousness. He gave the agents his business card and said that he hoped to see them soon. SSA Ex. 6 at 2; SSA Ex. 19 (Paul Decl. ¶¶ 2-14); *see* SSA Ex. 4.1.

The investigators’ observations are corroborated by other evidence, including their videotape of the encounters described in their declarations. SSA Ex. 4.1. Investigator Montgomery and Program Specialist Jeanette Kerns also visited Respondent Grady’s business and Facebook websites. His business website lists Respondent Grady as one of three instructors. SSA Ex. 4.2 at 1. Respondent’s Facebook website describes Grady’s Family Mixed Martial Arts as a gym that teaches classes in a variety of martial arts/styles, including boxing, kickboxing, judo, wrestling, self-defense, and other disciplines. SSA Ex. 4.3 at 1. The Facebook website includes photographs of Respondent Grady actively engaged in what appear to be martial arts, including sparring (boxing) and wrestling. SSA Ex. 4.3 at 2, 3, 4, 6, 7, 8; SSA Ex. 17 at 4 (Montgomery Decl. ¶¶ 7, 8).

Thus, the IG presents compelling evidence that, contrary to his representations to SSA, Respondent Grady was able to walk – and often walked – without a knee brace or any assistive device. He was able to squat and bend and instructed students in mixed martial arts, which included sparring and “grappling” with them in the ring.

Respondent’s defenses. Respondent Grady denies responsibility for the statements he made during his July 21 interview, claiming that he did not remember what he said because he was heavily medicated and sleepy. R. Ex. 1 at 2-3. On the other hand, he repeats many of those statements. He and his witnesses maintain that he is disabled by chronic back and knee pain, as well as depression and a mood disorder. Notwithstanding the investigators’ recorded observations, Respondent reiterates that he keeps a cane in each of his cars and “usually” wears knee braces. R. Ex. 1 at 3. He concedes that he goes to his gym “that others are teaching in” but says that he is unable to do what he used to. R. Ex. 13 at 1. He defends his use of the word “hermit” to describe himself, arguing that it “seems to have different meanings to different people,” and does not preclude his going to the gym regularly: “Even a hermit gets up with his shell on his back and moves to another location when he needs to.” *Id.* He denies that he is a martial arts instructor but claims that he “teach[es] thru” others and provides a place of learning. R. Ex. 1 at 2.

Respondent’s wife, Sandra Grady, echoes Respondent’s testimony. R. Ex. 2. She claims that she has to help him shower because he is afraid of falling; that he cannot mow the lawn; that he cannot cook anything that requires him to stand for a long time. He has

canes, knee braces, and back support braces. R. Ex. 2 at 3. She insists that the investigators caught him on his “good days”; on other days, he wears his knee braces and back brace. She also maintains that the YouTube video, to which SSA alludes, was staged for demonstration purposes. R. Ex. 2 at 4.<sup>3</sup>

Respondent’s other witnesses, friends and associates from his gym, generally echo his claims, with some notable differences. They describe him as “honest” and support his claim that he is no longer able to do what he once did. They say that they have observed him in pain, but none claim that constant pain prevents him from functioning. At the same time, all seem to concede, at least tacitly, that he goes to the gym regularly and that he runs it. Many of his witnesses refer to him as an “instructor.” R. Ex. 5 (referring to Shihan Grady and “his other instructors”; “he keeps on trying to be a good instructor”); R. Ex. 6 (“We taught along side of [S]hihan Grady); R. Ex. 7 (“He is very good at directing students and . . . I could tell he just wanted to jump in and once in a while [he] did and was unable to come to the gym for a day or two. . . .”); R. Ex. 8 (“he has been my MMA [i]nstructor”); R. Ex. 10 (“I have been a student of Shihan Don Grady for four years”).

Whether Respondent is able to do what he once did is not the issue here. Whether his activities and abilities should disqualify him from receiving disability benefits is also beside the point. A disability recipient must accurately report his functional abilities and activities, and, based on his representations (and other factors), SSA determines whether he continues to qualify for benefits.

This record is characterized by glaring discrepancies between what Respondent told SSA and what the investigators observed and recorded. The videos, taken over several days, show some impairment: one calf appears smaller than the other, and Respondent occasionally walks with a slight limp. Yet, the videos also show Respondent on the ground, wrestling with an adolescent; they show him in the boxing ring, moving and pivoting, with a young boy. The videos show him bending and twisting with relative ease. Compelling evidence thus establishes that Respondent Grady made false statements and representations to SSA for its use in determining his ongoing eligibility for Social Security disability benefits. Contrary to his representations, he does not wear knee braces all the time, and is able to walk almost normally; he leaves his house regularly and goes to the gym where he teaches classes. He is also able to sit, bend, twist, and lift and carry objects.

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<sup>3</sup> She also says that her husband and his friends started the gym about four years earlier. R. Ex. 2 at 2. She does not repeat her husband’s claim that she “runs the gym.” To the contrary, she works full time as a nurse. R. Ex. 2.

**2. The IG proposes a reasonable penalty, \$10,000, against Respondent Grady.**

The IG may impose a CMP of not more than \$5,000 for each false statement or misrepresentation. Act § 1129(a)(1); 20 C.F.R. § 498.103(a).

I now apply the regulatory criteria to assess the appropriateness of the penalty. I am specifically authorized to affirm, deny, increase, or reduce the penalties proposed by the IG. 20 C.F.R. § 498.220. In determining the appropriateness of the penalty, I must consider: 1) the nature of the statements and representations and the circumstances under which they occurred; 2) the degree of culpability of the person committing the offense; 3) the history of prior offenses of the person committing the offense; 4) the financial condition of the person committing the offense; and 5) such other matters as justice may require. 20 C.F.R. § 498.106.

First, Respondent Grady has no history of prior offenses.

With respect to his financial condition, the respondent bears the burden of establishing that his financial condition prevents him from paying the penalty. *SSA v. Clara Sloan*, DAB CR1081 (2003); *Recommended Decision to Decline Review*, App. Div. Dkt. No. A-04-03 at 2 (Feb. 9, 2004) (finding “no basis to disturb the ALJ’s . . . legal conclusions.”). Respondent did not return to the IG a financial disclosure form for its use in determining his ability to pay a penalty. *See SSA Ex. 8*. Although he asserts that he is strapped financially, he has submitted to this forum no support for the claim.

With respect to the other factors, I find that Respondent has made more than two false statements to SSA. He deliberately exaggerated his impairment and minimized his activities and abilities. Without adequately explaining the obvious discrepancies between the investigators’ videos and his representations to SSA, Respondent doubles down and continues to maintain that he is unable to perform the tasks that the videos show him performing with relative ease. For this he is culpable.

Finally, I note that the integrity of the disability system depends on each claimant and beneficiary accurately describing his functional abilities, so that SSA can determine whether he qualifies or continues to qualify for benefits. Where, as here, a claimant misrepresents his functional capacity, he undermines the integrity of that system.



**Conclusion**

Respondent Grady violated section 1129 of the Act when he knowingly misrepresented material facts to SSA for its use in determining his continuing eligibility for Social Security disability insurance benefits. I consider the \$10,000 CMP reasonable.

/s/

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Carolyn Cozad Hughes  
Administrative Law Judge