

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

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| In the Case of: |) | |
| |) | |
| Social Security Administration, |) | Date: December 4, 2007 |
| Office of the Inspector General, |) | |
| |) | |
| - v. - |) | Docket No. C-07-612 |
| |) | Decision No. CR1708 |
| Betty Lee, |) | |
| |) | |
| Respondent. |) | |

DECISION DISMISSING HEARING REQUEST

Because she has not raised an issue that may properly be addressed in a hearing before me, I dismiss Respondent Betty Lee’s hearing request.

Discussion

The Inspector General for Social Security (IG) charges that, in her 2004 applications for Social Security disability insurance benefits (DIB) and Supplemental Security Income benefits (SSI), Respondent, Betty Lee, repeatedly made false and misleading statements and/or misrepresentations of material facts that she knew or should have known were false or misleading, in violation of section 1129 of the Social Security Act (Act). According to the IG, Respondent Lee repeatedly claimed that she last worked on October 1, 2003. She made this claim in her applications, on multiple work history reports, and, under oath, at two administrative hearings before an administrative law judge. In fact, the IG alleges, Respondent Lee was and continues to be employed at the Holiday Inn Select in Richmond, Virginia.

The IG SSA proposes imposing a \$40,000 civil money penalty (CMP) pursuant to section 1129 of the Act, which subjects to penalty any person (including an organization, agency, or other entity)

who 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 . . . or benefits or payments under title XVI, that the person knows or should know omits a material fact or makes such a statement with knowing disregard for the truth

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 or Title XVI 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.”).

By letter dated June 25, 2007, the IG advised Respondent Lee of its determination and the proposed penalty. SSA Exhibit (Ex.) 21. In a letter dated July 16, 2007, Respondent Lee wrote that she wanted to “appeal the decision you made on my disability case.”

I convened a prehearing conference on August 27, 2007, at which I explained to Respondent Lee that the issue before me was whether the IG had a basis for imposing the CMP, and, if so, whether a \$40,000 CMP is appropriate. I emphasized during the conference and in my subsequent written order that:

this matter is **not** an appeal or re-adjudication of your denial of disability benefits. Rather, this is a penalty imposed against you for making false and misleading statements to SSA which you knew or should have known were false or misleading.

Order Scheduling Submission of Briefs and Documents (August 27, 2007).

In compliance with my order, the IG submitted its brief and exhibits. Respondent Lee has filed two brief submissions, dated October 25, 2007, and November 15, 2007. In each, she continues to discuss her medical condition, and claims that she suffers from Type 2 diabetes which precludes her from living a normal life. She asks that her case be reviewed by a medical person. Reviewing these submissions, along with her hearing request, it seems that, notwithstanding the explicit instructions given during the prehearing conference and in my August 27, 2007 order, Respondent Lee continues to ask that I review the denial of her claims for disability benefits. She says nothing about the IG’s charges.

Respondent Lee is entitled to review in this forum of the IG's determinations that she knowingly made false or misleading statements in her applications for disability benefits. She is entitled to review in this forum of the reasonableness of the proposed CMP. 20 C.F.R. § 498.202(a). However, I have no authority to review the sole issue that she raises in her hearing request, and supports in her subsequent submissions – whether her physical impairments entitle her to disability benefits. She may be entitled to such review, but not in this forum.

The regulations require that I dismiss a hearing request that fails to raise any issue that may properly be addressed in a hearing under 20 C.F.R. Part 498. 20 C.F.R. § 498.202(f)(3).

Conclusion

Because Respondent Lee has raised no issue that I am authorized to review, her request for hearing is dismissed.

/s/
Carolyn Cozad Hughes
Administrative Law Judge