

Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division

Anita Kennedy
Docket No. A-15-62
June 3, 2015

RECOMMENDED DECISION DECLINING REVIEW

This case is before the Departmental Appeals Board (DAB) on a notice of appeal filed by Anita Kennedy (Respondent). Respondent appealed a ruling issued by an Administrative Law Judge (ALJ), *Anita Kennedy, Dismissal*, ALJ Ruling No. 2015-10 (March 3, 2015). In that ruling, the ALJ dismissed Respondent's request for hearing pursuant to 20 C.F.R. § 498.202(f)(1), which requires an ALJ to dismiss a hearing request if it is not filed in a timely manner and the respondent fails to demonstrate good cause for such failure. The ALJ found that Respondent filed an untimely hearing request and did not establish good cause for failing to file her hearing request timely.

The regulations governing appeals to the DAB in administrative proceedings to enforce section 1129 of the Social Security Act provide that the DAB "will limit its review to whether the ALJ's initial decision is supported by substantial evidence on the whole record or contained error of law." 20 C.F.R. § 498.221(i). The DAB may remand a case to the ALJ for further proceedings or may issue to the Commissioner of Social Security (the Commissioner) a recommended decision to decline review or affirm, increase, reduce, or reverse the penalty determined by the ALJ. 20 C.F.R. § 498.221(h).

We considered each of the contentions made by Respondent in the brief accompanying her notice of appeal and examined the record. Applying the appropriate standard of review, we find no basis to disturb the ALJ's ruling dismissing Respondent's request for hearing. Consequently, we issue this recommended decision to decline review of the ALJ's March 3, 2015 ruling.

This recommended decision becomes the final decision of the Commissioner 60 days after the date on which it is served on the parties and the Commissioner, unless the Commissioner reverses or modifies the recommended decision within that 60-day period. 20 C.F.R. § 498.222(a). If the Commissioner does not reverse or modify the recommended decision, the DAB will serve a copy of the Commissioner's final decision on the parties. If the Commissioner reverses or modifies the recommended decision, the Commissioner shall serve a copy of her final decision on Respondent.

Appeal Rights

Pursuant to section 1129(d)(1) of the Act, a person adversely affected by a final decision of the Commissioner may appeal that decision by filing a petition for judicial review in the appropriate United States Court of Appeals. 42 U.S.C. § 1320a-8(d)(1). The petition for judicial review must be filed within 60 days after the person is served with a copy of the Commissioner's final decision. 20 C.F.R. § 498.222(c)(1). If a petition for judicial review is filed, a copy of the filed petition must be sent by certified mail, return receipt requested, to Social Security Administration's General Counsel at the following address:

Social Security Administration
Office of the General Counsel
Office of General Law
6401 Security Blvd.
Room 617 Altmeyer Bldg.
Baltimore, MD 21235

See 20 C.F.R. § 498.222(c)(2).

/s/

Sheila Ann Hegy

/s/

Constance B. Tobias

/s/

Susan S. Yim
Presiding Board Member