

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) HPA Docket No. 15-0041  
)  
Tracy Essary, )  
) **Order Denying Petition**  
) **For Reconsideration**  
Respondent )

**PROCEDURAL HISTORY**

On August 10, 2016, Tracy Essary filed a Petition for Reconsideration requesting that I reconsider *Essary*, HPA Docket No. 15-0041, 2016 WL 3434034 (U.S.D.A. June 15, 2016). On August 26, 2016, the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, filed a reply in opposition to Mr. Essary's Petition for Reconsideration,<sup>1</sup> and, on August 29, 2016, the Hearing Clerk, Office of Administrative Law Judges, United States Department of Agriculture [Hearing Clerk], transmitted the record to the Office of the Judicial Officer for a ruling on Mr. Essary's Petition for Reconsideration.

**CONCLUSION BY THE JUDICIAL OFFICER**

On July 14, 2016, the Hearing Clerk served Mr. Essary with *Essary*, HPA Docket No. 15-0041, 2016 WL 3434034 (U.S.D.A. June 15, 2016).<sup>2</sup> The rules of practice applicable to this proceeding<sup>3</sup> provide that a petition for reconsideration must be filed within ten days after the

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<sup>1</sup>Complainant's Reply to Resp't's Pet. for Recons.

<sup>2</sup>*See* United States Postal Service Domestic Return Receipt for article number 7013 3020 0001 0700 7757.

<sup>3</sup>The rules of practice applicable to this proceeding are the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§

date of service of the Judicial Officer's decision, as follows:

**§ 1.146 Petitions for reopening hearing; for rehearing or reargument of proceeding; or for reconsideration of the decision of the Judicial Officer.**

(a) *Petition requisite. . . .*

. . . .

(3) *Petition to rehear or reargue proceeding, or to reconsider the decision of the Judicial Officer.* A petition to rehear or reargue the proceeding or to reconsider the decision of the Judicial Officer shall be filed within 10 days after the date of service of such decision upon the party filing the petition. Every petition must state specifically the matters claimed to have been erroneously decided and alleged errors must be briefly stated.

7 C.F.R. § 1.146(a)(3). Therefore, Mr. Essary was required to file his Petition for Reconsideration no later than July 25, 2016.<sup>4</sup> On August 10, 2016, Mr. Essary filed his Petition for Reconsideration of *Essary*, HPA Docket No. 15-0041, 2016 WL 3434034 (U.S.D.A. June 15, 2016). Mr. Essary's Petition for Reconsideration was not timely filed. Accordingly, Mr. Essary's Petition for Reconsideration is denied.<sup>5</sup>

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1.130-.151) [Rules of Practice].

<sup>4</sup>Ten days after the date the Hearing Clerk served Mr. Essary with *Essary*, HPA Docket No. 15-0041, 2016 WL 3434034 (U.S.D.A. June 15, 2016), was Sunday, July 24, 2016. The Rules of Practice provide that when the time for filing a document or paper expires on a Sunday, the time for filing shall be extended to the next business day (7 C.F.R. § 1.147(h)). The next business day after Sunday, July 24, 2016, was Monday, July 25, 2016.

<sup>5</sup>Kriegel, Inc. (Order Den. Pet. to Reconsider), OFPA Docket Nos. 15-0050 and 15-0051, 2015 WL 9500721 (U.S.D.A. Dec. 15, 2015) (denying, as late-filed, the respondents' petition to reconsider filed four days after it was required to be filed); Mitchell (Order Den. Pet. to Reconsider), AWA Docket No. 09-0084, 70 Agric. Dec. 409 (U.S.D.A. Mar. 8, 2011) (denying, as late-filed, the respondent's petition to reconsider filed twenty-four days after the Hearing Clerk served the respondent with the decision and order); Sergiojan (Order Den. Pet. to Reconsider), AWA Docket No. 07-0119, 69 Agric. Dec. 1438 (U.S.D.A. Aug. 3, 2010) (denying, as late-filed, the respondent's petition to reconsider filed twenty-two days after the Hearing Clerk served the respondent with the order denying late appeal); Noble (Order Den. Mot. for Recons.), A.Q. Docket No. 09-0033, 69 Agric. Dec. 518 (U.S.D.A. Jan. 20, 2010) (denying, as late-filed, the respondent's motion to reconsider filed nineteen days after the Hearing Clerk served the respondent with the order

Moreover, even if I were to find Mr. Essary's Petition for Reconsideration timely filed (which I do not so find), I would deny the Petition for Reconsideration because Mr. Essary failed to identify any matters that I erroneously decided in *Essary*, HPA Docket No. 15-0041, 2016 WL 3434034 (U.S.D.A. June 15, 2016), as required by 7 C.F.R. § 1.146(a)(3).<sup>6</sup>

For the foregoing reasons, the following Order is issued.

### **ORDER**

Mr. Essary's Petition for Reconsideration, filed August 10, 2016, is denied. This Order shall become effective upon service on Mr. Essary.

Done at Washington, DC

August 29, 2016

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William G. Jenson  
Judicial Officer

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denying late appeal); Stanley (Order Den. Pet. for Recons.), A.Q. Docket No. 06-0007, 65 Agric. Dec. 1171 (U.S.D.A. Dec. 5, 2006) (denying, as late-filed, a petition to reconsider filed thirteen days after the date the Hearing Clerk served the respondents with the decision and order); Heartland Kennels, Inc. (Order Den. Second Pet. for Recons.), AWA Docket No. 02-0004, 61 Agric. Dec. 562 (U.S.D.A. Dec. 17, 2002) (denying, as late-filed, a petition to reconsider filed fifty days after the date the Hearing Clerk served the respondents with the decision and order); Finch (Order Den. Pet. for Recons.), AWA Docket No. 02-0014, 61 Agric. Dec. 593 (U.S.D.A. Dec. 16, 2002) (denying, as late-filed, a petition to reconsider filed fifteen days after the date the Hearing Clerk served the respondent with the decision and order).

<sup>6</sup>See Mr. Essary's Petition for Reconsideration, which states in its entirety: "I Am Filing For A Petition For Reconsideration Please."