

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:) FMIA Docket No. 05-0002
) PPIA Docket No. 05-0003
 Frank Craig and Jean Craig,)
 d/b/a Frank's Wholesale Meats,)
)
 Respondents) **Order Denying Petition to Reconsider**

PROCEDURAL HISTORY

Barbara Masters, Acting Administrator, Food Safety and Inspection Service, United States Department of Agriculture [hereinafter Complainant], instituted this disciplinary administrative proceeding by filing a Complaint for Suspension of Federal Meat and Poultry Inspection Service [hereinafter the Complaint] on April 12, 2005. Complainant instituted the proceeding under the Federal Meat Inspection Act, as amended (21 U.S.C. §§ 601-695) [hereinafter the Federal Meat Inspection Act]; the Poultry Products Inspection Act, as amended (21 U.S.C. §§ 451-471) [hereinafter the Poultry Products Inspection Act]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) and the Rules of Practice (9 C.F.R. pt. 500) [hereinafter the Rules of Practice].

Complainant alleges that on March 23, 2005, April 4, 2005, and April 5, 2005, Respondent Frank Craig intimidated and interfered with Food Safety and Inspection Service employees performing duties under the Federal Meat Inspection Act and the Poultry Products Inspection Act.¹ Complainant seeks an order indefinitely suspending inspection services under the Federal Meat Inspection Act and the Poultry Products Inspection Act from Frank Craig and Jean Craig, d/b/a Frank's Wholesale Meats [hereinafter Respondents], and Frank's Wholesale Meats, its owners, officers, operators, partners, affiliates, successors, and assigns.² On April 29, 2005, Respondents filed a response to the Complaint denying the material allegations of the Complaint.³

On October 24-26, 2006, Chief Administrative Law Judge Marc R. Hillson [hereinafter the Chief ALJ] presided at a hearing conducted in Washington, DC, and Diamond Bar, California. Carlyne S. Cockrum and Rick D. Herndon, Office of the General Counsel, United States Department of Agriculture, represented Complainant. Respondents refused to participate in the hearing. The Chief ALJ issued a decision orally at the close of the hearing in which the Chief ALJ concluded Frank's Wholesale Meats harassed, intimidated, threatened, and interfered with Food Safety and Inspection Service employees performing duties under the Federal Meat Inspection Act and the Poultry

¹Compl. ¶ III.

²Compl. at 5.

³Answers to Complaint for Suspension of Federal Meat & Poultry Inspection Service.

Products Inspection Act and ordered the indefinite suspension of inspection services under title I of the Federal Meat Inspection Act and under the Poultry Products Inspection Act from Respondents and Frank's Wholesale Meats, its owners, officers, directors, partners, successors, and assigns.

The Chief ALJ excerpted from the transcript the decision orally announced at the close of the October 24-26, 2006, hearing, and on November 15, 2006, filed the written excerpt. On November 22, 2006, Respondents appealed to the Judicial Officer.⁴ On December 8, 2006, Complainant filed a response to Respondents' Appeal Petition.⁵ On December 11, 2006, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

On February 21, 2007, I issued a Decision and Order affirming the Chief ALJ's October 26, 2006, oral decision.⁶ On March 8, 2007, Respondents filed a petition to reconsider *In re Frank Craig*, __ Agric. Dec. ____ (Feb. 21, 2007).⁷ On March 27, 2007, Complainant filed a response to Respondents' Petition to Reconsider,⁸ and the Hearing

⁴Letter dated November 21, 2006, from Respondent Frank Craig to the Chief ALJ [hereinafter Respondents' Appeal Petition].

⁵Response in Opposition to Appeal Petition.

⁶*In re Frank Craig*, __ Agric. Dec. ____ (Feb. 21, 2007).

⁷Letter dated March 7, 2007, from Respondent Frank Craig to Joyce A. Dawson, Hearing Clerk [hereinafter Petition to Reconsider].

⁸Response in Opposition to Petition for Reconsideration.

Clerk transmitted the record to the Office of the Judicial Officer for a ruling on Respondents' Petition to Reconsider. Based upon a careful consideration of the record, I deny Respondents' Petition to Reconsider.

CONCLUSION BY THE JUDICIAL OFFICER ON RECONSIDERATION

Section 1.146(a)(3) of the Rules of Practice (7 C.F.R. § 1.146(a)(3)) provides a petition to reconsider must state specifically the matters claimed to be erroneously decided and briefly state the alleged errors. Respondents' Petition to Reconsider does not state the matters claimed to be erroneously decided or the alleged errors in *In re Frank Craig*, ___ Agric. Dec. ___ (Feb. 21, 2007). Instead, Respondents' Petition to Reconsider consists of a series of allegations of United States Department of Agriculture wrong-doing that provides no basis for reconsideration of *In re Frank Craig*, ___ Agric. Dec. ___ (Feb. 21, 2007).

For the foregoing reason and the reasons set forth in *In re Frank Craig*, ___ Agric. Dec. ___ (Feb. 21, 2007), Respondents' Petition to Reconsider is denied.

Section 1.146(b) of the Rules of Practice (7 C.F.R. § 1.146(b)) provides that the decision of the Judicial Officer shall automatically be stayed pending the determination to grant or deny a timely-filed petition to reconsider. Respondents' Petition to Reconsider was timely filed and automatically stayed *In re Frank Craig*, ___ Agric. Dec. ___ (Feb. 21, 2007). Therefore, since Respondents' Petition to Reconsider is denied, I hereby lift the automatic stay, and the Order in *In re Frank Craig*, ___ Agric. Dec. ___ (Feb. 21, 2007), is

reinstated; except that the effective date of the Order is the date indicated in the Order in this Order Denying Petition to Reconsider.

For the foregoing reasons, the following Order should be issued.

ORDER

Inspection services under title I of the Federal Meat Inspection Act and under the Poultry Products Inspection Act are suspended indefinitely from Respondents and Frank's Wholesale Meats, its owners, officers, directors, operators, partners, affiliates, successors, and assigns, elected or incorporated. This Order shall become effective 30 days after service of the Order on Respondents.

Done at Washington, DC

March 29, 2007

William G. Jenson
Judicial Officer