

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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| In re: |) | P. & S. Docket No. D-06-0020 |
| |) | |
| Michael Claude Edwards, d/b/a |) | |
| Michael Claude Edwards Livestock, |) | |
| |) | |
| Respondent |) | Order Denying Late Appeal |

PROCEDURAL HISTORY

Alan R. Christian, Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture [hereinafter the Deputy Administrator], instituted this administrative proceeding by filing a Complaint on June 12, 2006. The Deputy Administrator instituted the proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181-229b) [hereinafter the Packers and Stockyards Act]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

The Deputy Administrator alleges Michael Claude Edwards violated the Packers and Stockyards Act. On July 3, 2006, Michael Claude Edwards filed a response to the Complaint. On February 21, 2007, Administrative Law Judge Peter M. Davenport

[hereinafter the ALJ] presided over a hearing in Winston-Salem, North Carolina. Leah C. Battaglioli and Andrew Y. Stanton, Office of the General Counsel, United States Department of Agriculture, represented the Deputy Administrator. Michael Claude Edwards appeared pro se.

On May 3, 2007, after the parties filed post-hearing briefs, the ALJ issued a Decision and Order: (1) concluding Michael Claude Edwards violated the Packers and Stockyards Act; (2) ordering Michael Claude Edwards to cease and desist from violating the Packers and Stockyards Act; and (3) suspending Michael Claude Edwards as a registrant under the Packers and Stockyards Act (Decision and Order at 10-12). The Hearing Clerk served Michael Claude Edwards with the ALJ's Decision and Order on May 18, 2007.¹

On June 12, 2007, Michael Claude Edwards filed a request to appeal the ALJ's May 3, 2007, Decision and Order. I found Michael Claude Edwards' June 12, 2007, request to appeal the ALJ's May 3, 2007, Decision and Order constitutes a request for an extension of time within which to file an appeal petition and extended the time for filing Michael Claude Edwards' appeal petition to September 24, 2007 (Informal Order Extending Time for Filing Appeal Petition; Order Denying Complainant's Motion for Dismissal of Respondent's Appeal Petition). On October 1, 2007, Michael Claude

¹United States Postal Service Domestic Return Receipt for Article Number 7004 2510 0003 7121 7121.

Edwards filed an appeal petition. On October 15, 2007, the Deputy Administrator filed Complainant's Response to Respondent's Appeal Petition. On October 18, 2007, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision.

CONCLUSION BY THE JUDICIAL OFFICER

Section 1.145(a) of the Rules of Practice (7 C.F.R. § 1.145(a)) provides that an administrative law judge's written decision must be appealed to the Judicial Officer within 30 days after service. I found Michael Claude Edwards' June 12, 2007, request to file an appeal petition to be a timely request for an extension of time within which to file an appeal petition and granted Michael Claude Edwards an extension to September 24, 2007, within which to file his appeal petition. Michael Claude Edwards did not file his appeal petition until October 1, 2007.

The Judicial Officer has continuously and consistently held under the Rules of Practice that the Judicial Officer has no jurisdiction to hear an appeal that is filed after an administrative law judge's decision becomes final.² The ALJ's Decision and Order

²See, e.g., *In re Tung Wan Co.*, ___ Agric. Dec. ___ (Apr. 25, 2007) (dismissing the respondent's appeal petition filed 41 days after the chief administrative law judge's decision became final); *In re Tim Gray*, 64 Agric. Dec. 1699 (2005) (dismissing the respondent's appeal petition filed 1 day after the chief administrative law judge's decision became final); *In re Jozset Mokos*, 64 Agric. Dec. 1647 (2005) (dismissing the respondent's appeal petition filed 6 days after the chief administrative law judge's decision became final); *In re David Gilbert*, 63 Agric. Dec. 807 (2004) (dismissing the respondent's appeal petition filed 1 day after the administrative law judge's decision

(continued...)

became final on September 25, 2007. Michael Claude Edwards filed his appeal petition on October 1, 2007, 6 days after the ALJ's Decision and Order became final. Therefore, I have no jurisdiction to hear Michael Claude Edwards' appeal petition.

The Rules of Practice do not provide for an extension of time (for good cause or excusable neglect) for filing an appeal petition after an administrative law judge's decision has become final. The absence of such a provision in the Rules of Practice emphasizes that no such jurisdiction has been granted to the Judicial Officer to extend the time for filing an appeal after an administrative law judge's decision has become final. Therefore, under the Rules of Practice, I cannot extend the time for Michael Claude Edwards' filing an appeal petition after the ALJ's Decision and Order became final.

Moreover, the jurisdictional bar under the Rules of Practice, which precludes the Judicial Officer from hearing an appeal that is filed after an administrative law judge's decision becomes final, is consistent with the judicial construction of the Administrative Orders Review Act ("Hobbs Act"). As stated in *Illinois Cent. Gulf R.R. v. ICC*, 720 F.2d 958, 960 (7th Cir. 1983) (footnote omitted):

The Administrative Orders Review Act ("Hobbs Act") requires a petition to review a final order of an administrative agency to be brought within sixty days of the entry of the order. 28 U.S.C. § 2344 (1976). This

²(...continued)

became final); *In re Vega Nunez*, 63 Agric. Dec. 766 (2004) (dismissing the respondent's appeal petition filed on the day the administrative law judge's decision became final); *In re Ross Blackstock*, 63 Agric. Dec. 818 (2004) (dismissing the respondent's appeal petition filed 2 days after the administrative law judge's decision became final).

sixty-day time limit is jurisdictional in nature and may not be enlarged by the courts. *Natural Resources Defense Council v. Nuclear Regulatory Commission*, 666 F.2d 595, 602 (D.C. Cir. 1981). The purpose of the time limit is to impart finality into the administrative process, thereby conserving administrative resources and protecting the reliance interests of those who might conform their conduct to the administrative regulations. *Id.* at 602.^[3]

Accordingly, Michael Claude Edwards' appeal petition must be denied, since it is too late for the matter to be further considered.

For the foregoing reasons, the following Order is issued.

ORDER

1. Michael Claude Edwards' appeal petition, filed October 1, 2007, is denied.
2. Administrative Law Judge Peter M. Davenport's Decision and Order, filed May 3, 2007, is the final decision in this proceeding.

Done at Washington, DC

October 30, 2007

William G. Jenson
Judicial Officer

³*Accord Jem Broad. Co. v. FCC*, 22 F.3d 320, 324-26 (D.C. Cir. 1994) (stating the court's baseline standard long has been that statutory limitations on petitions for review are jurisdictional in nature and appellant's petition filed after the 60-day limitation in the Hobbs Act will not be entertained); *Friends of Sierra R.R. v. ICC*, 881 F.2d 663, 666 (9th Cir. 1989) (stating the time limit in 28 U.S.C. § 2344 is jurisdictional), *cert. denied sub nom. Tuolumne Park & Recreation Dist. v. ICC*, 493 U.S. 1093 (1990).