

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) FCIA Docket No. 08-0153
)
Timothy Mays, d/b/a CT Farms,)
)
Respondent) **Order Denying Late Appeal**

PROCEDURAL HISTORY

Eldon Gould, Manager, Federal Crop Insurance Corporation [hereinafter the Manager], instituted this administrative proceeding by filing a Complaint on June 30, 2008. The Manager instituted the proceeding under the Federal Crop Insurance Act, as amended (7 U.S.C. §§ 1501-1524) [hereinafter the Federal Crop Insurance Act]; regulations promulgated under the Federal Crop Insurance Act (7 C.F.R. pt. 400) [hereinafter the Regulations]; 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 Manager alleged that Timothy Mays violated the Federal Crop Insurance Act and the Regulations. On August 1, 2008, Mr. Mays filed a response in which he denied the allegations of the Complaint.

Administrative Law Judge Peter M. Davenport [hereinafter the ALJ] conducted a 2-day hearing on March 24, 2009, in Roanoke, Virginia, and on August 13, 2009, in

Abingdon, Virginia. Mark R. Simpson, Office of the General Counsel, United States Department of Agriculture, Atlanta, Georgia, represented the Manager. Terry G. Kilgore, Gate City, Virginia, represented Mr. Mays. On October 8, 2009, Mr. Mays filed a post-hearing brief, and on October 9, 2009, the Manager filed a post-hearing brief.

On November 13, 2009, the ALJ issued a Decision and Order: (1) concluding Mr. Mays violated the Federal Crop Insurance Act and the Regulations; (2) disqualifying Mr. Mays individually and as controlling partner of CT Farms for 5 years from receiving any monetary or non-monetary benefit under seven specific statutory provisions and any law that provides assistance to a producer of an agricultural commodity affected by a crop loss or a decline in the prices of agricultural commodities; and (3) assessing Mr. Mays a \$24,421 civil fine (Decision and Order at 9-11). On November 17, 2009, the ALJ issued a Supplemental Order amending the identity of the entity to which Mr. Mays was required to pay the civil fine and the address to which Mr. Mays was required to send the payment of the civil fine. The Hearing Clerk served Mr. Mays with the ALJ's Decision and Order and Supplemental Order on November 23, 2009.¹

On December 23, 2009, Mr. Mays mailed an appeal of the ALJ's Decision and Order, as amended by the ALJ's Supplemental Order, to the Hearing Clerk.² On

¹United States Postal Service Domestic Return Receipt for article number 7007 0710 0001 3860 8644 and United States Postal Service Track & Confirm for article number 7004 1160 0004 4087 9061.

²Mr. Mays' appeal petition is dated December 23, 2009, and the United States
(continued...)

January 4, 2010, Mr. Mays' appeal to the Judicial Officer was filed with the Hearing Clerk. On January 25, 2010, the Manager filed a Response to Appeal. On January 28, 2010, 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 by filing an appeal petition with the Hearing Clerk within 30 days after service; therefore, Mr. Mays was required to file his appeal petition with the Hearing Clerk no later than December 23, 2009. Instead, Mr. Mays mailed the appeal petition to the Hearing Clerk on December 23, 2009. The Rules of Practice provide that a document is deemed to be filed when it reaches the Hearing Clerk, as follows:

§ 1.147 Filing; service; extensions of time; and computations of time.

....

(g) *Effective date of filing.* Any document or paper required or authorized under the rules in this part to be filed shall be deemed to be filed at the time when it reaches the Hearing Clerk[.]

7 C.F.R. § 1.147(g). The Office of the Hearing Clerk stamped Mr. Mays' appeal petition as having been received at 3:43 p.m., January 4, 2010. The most reliable evidence of the

²(...continued)

Postal Service mailing envelope which contained Mr. Mays' appeal petition indicates Mr. Mays mailed the appeal petition at Lebanon, Virginia, on December 23, 2009.

date and time a document reaches the Hearing Clerk is the date and time stamped by the Office of the Hearing Clerk on that document.³ Therefore, I find Mr. Mays filed the appeal petition 12 days late.

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.⁴ The ALJ's Decision and Order, as amended by the ALJ's Supplemental Order, became final on December 28, 2009.⁵

³*In re Lion Raisins* (Decision as to Lion Raisins, Inc; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; and Bruce Lion) __ Agric. Dec. ___, slip op. at 60-61 (Apr. 17, 2009); *In re Bruce Lion* (Ruling Granting Complainant's Motion Not to Consider Reply to Complainant's Appeal Petition; and Order Vacating the Administrative Law Judge's Initial Decision and Remanding Proceeding to the Administrative Law Judge), 65 Agric. Dec. 1214, 1221 (2006).

⁴*See, e.g., In re David L. Noble*, __ Agric. Dec. ___ (Dec. 17, 2009) (dismissing the respondent's appeal petition filed 1 day after the administrative law judge's decision became final); *In re Michael Claude Edwards*, 66 Agric. Dec. 1362 (2007) (dismissing the respondent's appeal petition filed 6 days after the administrative law judge's decision became final); *In re Tung Wan Co.*, 66 Agric. Dec. 939 (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 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); *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 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).

⁵See 7 C.F.R. § 1.142(c)(4).

Mr. Mays filed his appeal petition on January 4, 2010, 1 week after the ALJ's Decision and Order, as amended by the ALJ's Supplemental Order, became final. Therefore, I have no jurisdiction to hear Mr. Mays' 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 jurisdiction has not 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 Mr. Mays' filing an appeal petition after the ALJ's Decision and Order, as amended by the ALJ's Supplemental 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 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.^[6]

Accordingly, Mr. Mays' appeal petition must be denied. For the foregoing reasons, the following Order is issued.

ORDER

1. Timothy Mays' appeal petition, filed January 4, 2010, is denied.
2. Administrative Law Judge Peter M. Davenport's Decision and Order, dated November 13, 2009, as amended by Administrative Law Judge Peter M. Davenport's Supplemental Order, dated November 17, 2009, is the final decision in this proceeding.

Done at Washington, DC

February 5, 2010

William G. Jenson
Judicial Officer

⁶*Accord Brazoria County v. EEOC*, 391 F.3d 685, 688 (5th Cir. 2004) (stating the 60-day period to file a petition for review of an agency order in 28 U.S.C. § 2344 is jurisdictional and cannot be judicially altered or expanded); *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).