

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) AWA Docket No. 09-0128  
)  
Brian Karl Turner, an individual, )  
)  
Respondent ) **Remand Order**

Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], instituted this proceeding on June 4, 2009, by filing an “Order to Show Cause Why Animal Welfare License 88-C-0158 Should Not Be Terminated” [hereinafter Order to Show Cause]. On December 22, 2009, after Brian Karl Turner filed a response to the Order to Show Cause, the Administrator filed a motion for summary judgment. Administrative Law Judge Victor W. Palmer [hereinafter the ALJ] extended the time for Mr. Turner’s filing a response to the Administrator’s motion for summary judgment to February 2, 2010.<sup>1</sup>

On March 1, 2010, the ALJ issued a Decision and Order in which he found Mr. Turner had not filed a response to the Administrator’s motion for summary judgment and granted the motion for summary judgment. Mr. Turner appealed the ALJ’s Decision

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<sup>1</sup>See the ALJ’s January 5, 2010, “Order and Notice to the Parties.”

and Order stating he had filed a timely response to the Administrator's motion for summary judgment.

On April 7, 2010, the Hearing Clerk informed the Legal Technician employed by the Office of the Judicial Officer that, on January 21, 2010, Mr. Turner had filed a response to the Administrator's motion for summary judgment with the Hearing Clerk but that Mr. Turner's response had been mis-filed. The Hearing Clerk transmitted the original of Mr. Turner's response to the Administrator's motion for summary judgment to me and requested that I properly file Mr. Turner's response in the record, which I have done.

As the ALJ did not have an opportunity to consider Mr. Turner's timely response to the Administrator's motion for summary judgment, I vacate the ALJ's March 1, 2010, Decision and Order and remand the instant proceeding to the ALJ for consideration of Mr. Turner's response.

For the foregoing reasons, the following Remand Order is issued.

**REMAND ORDER**

1. The ALJ's March 1, 2010, Decision and Order is vacated.
2. The instant matter is remanded to the ALJ for further proceedings in accordance with the applicable rules of practice.<sup>2</sup>

Done at Washington, DC

April 7, 2010

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William G. Jenson  
Judicial Officer

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<sup>2</sup>The rules of practice applicable to the instant proceeding are the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151).