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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	HPA Docket No. 17-0022
)	
Charles Gleghorn, an individual,)	
)	
Respondent)	Order Denying Late Appeal

PROCEDURAL HISTORY

Kevin Shea, Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [Administrator], instituted this disciplinary administrative proceeding by filing a Complaint on December 23, 2016. The Administrator instituted the proceeding under the Horse Protection Act, as amended (15 U.S.C. §§ 1821-1831) [the Horse Protection Act], and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary of Agriculture Under Various Statutes (7 C.F.R. §§ 1.130-.151) [the Rules of Practice].

The Administrator alleges, on or about August 27, 2016, and on or about August 28, 2016, Charles Gleghorn violated the Horse Protection Act.¹ The Hearing Clerk, Office of Administrative Law Judges, United States Department of Agriculture [Hearing Clerk], served Mr. Gleghorn with the Complaint and the Hearing Clerk's service letter on January 10, 2017.² Mr. Gleghorn failed to

¹ Compl. ¶¶ 22-24 at the fifth unnumbered page.

² United States Postal Service Domestic Return Receipt for article number [REDACTED] 5679.

file an answer to the Complaint within twenty days after the Hearing Clerk served Mr. Gleghorn with the Complaint, as required by 7 C.F.R. § 1.136(a).

On February 1, 2017, the Administrator filed a Motion for Adoption of Decision and Order by Reason of Default [Motion for Default Decision] and a proposed Decision and Order by Reason of Default [Proposed Default Decision]. On February 1, 2017, after the Administrator filed the Motion for Default Decision and the Proposed Default Decision, Mr. Gleghorn filed an untimely Answer. On February 9, 2017, Chief Administrative Law Judge Bobbie J. McCartney [Chief ALJ] issued a Decision and Order by Reason of Default [Decision] in which the Chief ALJ: (1) concluded Mr. Gleghorn violated the Horse Protection Act, as alleged in the Complaint; (2) assessed Mr. Gleghorn a \$6,600 civil penalty; and (3) disqualified Mr. Gleghorn from showing or exhibiting any horse in any horse show, horse exhibition, horse sale, or horse auction and from judging or managing any horse show, horse exhibition, horse sale, or horse auction for three years.³ On February 9, 2017, the Hearing Clerk, by electronic mail, served Mr. Gleghorn with the Chief ALJ's Decision and the Hearing Clerk's service letter.⁴

On March 27, 2017, Mr. Gleghorn filed a Motion to Enter Appearance and Set Aside Default Judgment and Accept Late Answer of Respondent, and on March 28, 2017, the Administrator filed a Response to Motions to Enter Appearance, Set Aside Default Judgment and File Late Answer. On April 18, 2017, the Chief ALJ issued an Order Denying Respondent's Motion to Set Aside Default Judgment and Accept Late Answer [Order] in which the Chief ALJ held, as Mr. Gleghorn filed his March 27, 2017 motion twelve days after the Chief ALJ's Decision

³ Chief ALJ's Decision at the fourth unnumbered page.

⁴ February 9, 2017 Certificate of Service signed by Renee Leach-Carlos, Hearing Clerk.

became final and effective, she “no longer [has] continuing jurisdiction to rule on [Mr. Gleghorn’s] Motion.”⁵

On May 3, 2017, Mr. Gleghorn filed an Appeal to Judicial Officer/and/or Motion to Reconsider to Vacate and Set Aside Judgment [Appeal Petition], and on May 23, 2017, the Administrator filed a Response to “Appeal to Judicial Officer/and/or Motion to Reconsider to Vacate and Set Aside Judgment.” On May 25, 2017, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

CONCLUSIONS BY THE JUDICIAL OFFICER

The Rules of Practice provide that a party may appeal an administrative law judge’s written decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk within thirty days after the Hearing Clerk serves that party with the written decision.⁶ The Hearing Clerk served Mr. Gleghorn with the Chief ALJ’s Decision on February 9, 2017;⁷ therefore, Mr. Gleghorn was required to file his Appeal Petition with the Hearing Clerk no later than March 13, 2017.⁸ Instead, Mr. Gleghorn filed his Appeal Petition with the Hearing Clerk on May 3, 2017. Therefore, I find Mr. Gleghorn’s Appeal Petition is late-filed.

⁵ Chief ALJ’s April 18, 2017 Order at the fourth unnumbered page.

⁶ 7 C.F.R. § 1.145(a).

⁷ *See supra* note 4.

⁸ Thirty days after the date the Hearing Clerk served Mr. Gleghorn with the Chief ALJ’s Decision was Saturday, March 11, 2017. The Rules of Practice provide, when the time for filing a document or paper expires on a Saturday, the time for filing shall be extended to the next business day. 7 C.F.R. § 1.147(h). The next business day after Saturday, March 11, 2017, was Monday, March 13, 2017.

Moreover, 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.⁹ The Chief ALJ's Decision became final thirty-five days after the Hearing Clerk served Mr. Gleghorn with the Chief ALJ's Decision.¹⁰ Thus, the Chief ALJ's Decision became final on March 16, 2017. Mr. Gleghorn filed his Appeal Petition on May 3, 2017. Therefore, I have no jurisdiction to hear Mr. Gleghorn's 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. Gleghorn's filing an appeal petition after the Chief ALJ's Decision became final. Accordingly, Mr. Gleghorn's Appeal Petition must be denied.

⁹ See, e.g., Britz, 2017 WL 550571 (U.S.D.A. 2017) (Order Den. Late Appeal as to Bruce Britz) (dismissing the respondent's appeal petition filed one day after the chief administrative law judge's decision became final); Edwards, 75 Agric. Dec. 280 (U.S.D.A. 2016) (Order Den. Late Appeal) (dismissing the respondent's appeal petition filed three days after the chief administrative law judge's decision became final); Rosberg, 73 Agric. Dec. 551 (U.S.D.A. 2014) (Order Den. Late Appeal) (dismissing the respondents' appeal petition filed one day after the administrative law judge's decision became final); Piedmont Livestock, Inc., 72 Agric. Dec. 422 (U.S.D.A. 2013) (Order Den. Late Appeal) (dismissing Piedmont Livestock, Inc.'s appeal petition filed three days after the chief administrative law judge's decision became final and dismissing Joseph Ray Jones's appeal petition filed one day after the chief administrative law judge's decision became final); Custom Cuts, Inc., 72 Agric. Dec. 484 (U.S.D.A. 2013) (Order Den. Late Appeal) (dismissing the respondents' appeal petition filed one month twenty-seven days after the chief administrative law judge's decision became final); Self, 71 Agric. Dec. 1169 (U.S.D.A. 2012) (Order Den. Late Appeal) (dismissing the respondent's appeal petition filed eighteen days after the chief administrative law judge's decision became final).

¹⁰ See 7 C.F.R. § 1.139; Chief ALJ's Decision at the fourth and fifth unnumbered pages.


For the foregoing reasons, the following Order is issued.

ORDER

1. Mr. Gleghorn's Appeal Petition, filed May 3, 2017, is denied.
2. The Chief ALJ's Decision, issued February 9, 2017, is the final decision in this proceeding.

Done at Washington, DC

May 30, 2017


William G. Jenson
Judicial Officer