UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	HPA Docket No. 16-0026
	)	
Rocky Roy McCoy,	)	
	)	
Respondent	)	**Decision and Order**

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 11, 2015. The Administrator instituted the proceeding under the Horse Protection Act of 1970, as amended (15 U.S.C. §§ 1821-1831) [Horse Protection Act]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [Rules of Practice].

The Administrator alleges, on March 14, 2014, Rocky Roy McCoy violated 15 U.S.C. § 1824(2)(B) and (7) by entering, for the purpose of showing or exhibiting, a horse known as "Puttin It On the Line" as entry number 507, in class number 25, at the 46th Annual National Walking Horse Trainers' Show in Shelbyville, Tennessee, while Puttin It On the Line was sore and bearing a prohibited substance.[1]

On February 12, 2016, the Hearing Clerk, Office of Administrative Law Judges, United States Department of Agriculture [Hearing Clerk], by certified mail, served Mr. McCoy with the Complaint, the Rules of Practice, and the Hearing Clerk's service letter, dated December 11,

[1]Compl. ¶ II at 1.

2015.[2] Mr. McCoy failed to file an answer within 20 days after the Hearing Clerk served him with the Complaint, as required by 7 C.F.R. § 1.136(a).

On March 10, 2016, the Administrator filed a Motion for Adoption of Proposed Decision and Order [Motion for Default Decision] and a Proposed Decision and Order Upon Admission of Facts by Reason of Default [Proposed Default Decision]. The Hearing Clerk served Mr. McCoy with the Administrator's Motion for Default Decision and Proposed Default Decision on March 16, 2016.[3] On March 22, 2016, David F. Broderick and R. Taylor Broderick entered their appearance as counsel for Mr. McCoy,[4] Mr. McCoy filed Respondent's Answer to Complaint [Answer] in which he denied the material allegations of the Complaint,[5] and Mr. McCoy filed an objection to the Administrator's Motion for Default Decision.[6] On April 5, 2016, the Administrator filed a response to Mr. McCoy's March 22, 2016, objection to the Administrator's Motion for Default Decision.[7] On April 6, 2016, Mr. McCoy filed a Memorandum of Law in Support of Respondent's Response and Objection to Motion for Adoption of Proposed Decision and Order [Memorandum of Law].

---

[2]United States Postal Service Domestic Return Receipt for article number 7004 2510 0003 7022 7732.

[3]United States Postal Service Domestic Return Receipt for article number 7004 2510 0003 7022 7886.

[4]Entry of Appearance.

[5]On March 25, 2016, Mr. McCoy filed Respondent's Amended Answer to Complaint which is identical to Mr. McCoy's Answer except to correct the spelling of Mr. McCoy's street address.

[6]Respondent's Response and Objection to Motion for Adoption of Proposed Decision and Order.

[7]Complainant's Response to Respondent's Objection to Complainant's Proposed Decision and Order Upon Admission of Facts by Reason of Default.

On April 21, 2016, in accordance with 7 C.F.R. § 1.139, Administrative Law Judge Jill S. Clifton [ALJ] filed a Ruling Denying Default Judgment in which the ALJ found Mr. McCoy's objections to the Administrator's Proposed Default Decision meritorious and denied the Administrator's Motion for Default Decision.[8]

On April 28, 2016, the Administrator appealed the ALJ's Ruling Denying Default Judgment to the Judicial Officer,[9] and, on May 19, 2016, Mr. McCoy filed a response to the Administrator's Appeal Petition.[10] On May 20, 2016, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision. Based upon a careful consideration of the record, I reverse the ALJ's Ruling Denying Default Judgment and issue this Decision and Order based upon Mr. McCoy's failure to file an answer to the Complaint within the time prescribed in 7 C.F.R. § 1.136(a).

DECISION

Statement of the Case

Mr. McCoy failed to file an answer to the Complaint within the time prescribed in 7 C.F.R. § 1.136(a). The Rules of Practice provide the failure to file an answer within the time prescribed in 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint.[11] Further, pursuant to 7 C.F.R. § 1.139, the failure to file a timely answer constitutes

---

[8]ALJ's Ruling Denying Default Judgment ¶ 6 at 2.

[9]Complainant's Petition for Appeal of the Administrative Law Judge's Denial of Complainant's Motion for Default Decision and Brief in Support Thereof [Appeal Petition].

[10]Respondent's Response to Complainant's Petition for Appeal of the Administrative Law Judge's Denial of Complainants [sic] Motion for Default Decision and Brief in Support Thereof [Response to Appeal Petition].

[11]7 C.F.R. § 1.136(c).

a waiver of hearing. Accordingly, the material allegations of the Complaint are adopted as findings of fact. I issue this Decision and Order pursuant to 7 C.F.R. § 1.139.

Findings of Fact

1. Mr. McCoy is an individual whose mailing address is in Kentucky.

2. On March 14, 2014, Mr. McCoy entered, for the purpose of showing or exhibiting, a horse known as "Puttin It On the Line" as entry number 507, in class number 25, at the 46th Annual National Walking Horse Trainers' Show in Shelbyville, Tennessee, while Puttin It On the Line was sore and bearing a prohibited substance.

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction in this matter.

2. Mr. McCoy violated 15 U.S.C. § 1824(2)(B) and (7) by entering, for the purpose of showing or exhibiting, a horse known as "Puttin It On the Line" as entry number 507, in class number 25, at the 46th Annual National Walking Horse Trainers' Show in Shelbyville, Tennessee, while Puttin It On the Line was sore and bearing a prohibited substance.

3. The Order in this Decision and Order is justified by the Findings of Fact and authorized by the Horse Protection Act.

The Administrator's Appeal Petition

The Administrator contends the ALJ erroneously denied the Administrator's March 10, 2016, Motion for Default Decision. The Administrator requests that either I issue an order reversing the ALJ's April 21, 2016, Ruling Denying Default Judgment or I issue an order vacating the ALJ's April 21, 2016, Ruling Denying Default Judgment and remanding the proceeding to the ALJ for issuance of a decision in accordance with the Rules of Practice (Administrator's Appeal Pet. at 8).

The Administrator contends the ALJ erroneously found Mr. McCoy filed timely meritorious objections to the Administrator's March 10, 2016, Motion for Default Decision (Administrator's Appeal Pet. at 2-3).

The Rules of Practice provide, after a respondent has failed to file an answer, the complainant shall file a proposed decision and a motion for adoption of that proposed decision. The respondent may file objections to the complainant's proposed decision and motion for adoption of that proposed decision at any time within 20 days after the Hearing Clerk serves the respondent with the complainant's proposed decision and motion for adoption of that proposed decision.[12] The Hearing Clerk served Mr. McCoy with the Administrator's Motion for Default Decision and Proposed Default Decision on March 16, 2016;[13] therefore, Mr. McCoy was required to file objections to the Administrator's Motion for Default Decision and Proposed Default Decision no later than April 5, 2016.

On March 22, 2016, Mr. McCoy filed a timely objection to the Administrator's Motion for Default Decision, which states in its entirety, as follows:

> **RESPONDENT'S RESPONSE AND OBJECTION TO MOTION FOR ADOPTION OF PROPOSED DECISION AND ORDER**
>
> Comes now the Respondent, Rocky Roy McCoy, and for his Response and Objection to Motion for Adoption of Proposed Decision and Order states as follows:
>
> The Respondent objects to the entry of the Proposed Decision and Order as the Respondent has now filed an Entry of Appearance and Answer to the Complaint in this matter.
>
> As such, Respondent requests that the Motion for Adoption of Proposed Decision and Order be denied.

[12] 7 C.F.R. § 1.139.

[13] See note 3.

This the 22nd day of March, 2016.

BRODERICK & DAVENPORT, PLLC
921 College St.
P.O. Box 3100
Bowling Green, KY 42102-3100
Telephone: 270-782-6700
Fax: 270-782-3110
_____/s/_____
DAVID F. BRODERICK
R. TAYLOR BRODERICK

Neither the entry of appearance nor Mr. McCoy's late-filed Answer[14] constitutes a basis for denial of the Administrator's Motion for Default Decision,[15] as Mr. McCoy contends. Therefore, I find Respondent's Response and Objection to Motion for Adoption of Proposed Decision and Order, filed March 22, 2016, contains no meritorious objection to the Administrator's Motion for Default Decision.

On April 6, 2016, Mr. McCoy filed a Memorandum of Law in which Mr. McCoy raises additional objections to the Administrator's Motion for Default Decision. However, Mr. McCoy was required to file objections to the Administrator's Motion for Default Decision and Proposed Default Decision no later than April 5, 2016,[16] and Mr. McCoy's April 6, 2016, objections come

[14]The Hearing Clerk served Mr. McCoy with the Complaint on February 12, 2016; therefore, pursuant to 7 C.F.R. § 1.136(a), Mr. McCoy was required to file an answer no later than March 3, 2016. Mr. McCoy filed his Answer on March 22, 2016, 19 days after he was required to file his Answer.

[15]See, McCourt, AWA Docket No. 05-0003, 64 Agric. Dec. 223, 242 (U.S.D.A. Mar. 29, 2005) (stating a late-filed answer cannot cure a default).

[16]The Hearing Clerk served Mr. McCoy with the Administrator's Motion for Default Decision and Proposed Default Decision on March 16, 2016; therefore, pursuant to 7 C.F.R. § 1.139, Mr. McCoy was required to file objections to the Administrator's Motion for Default Decision and Proposed Default Decision no later than April 5, 2016. Mr. McCoy filed his Memorandum of Law on April 6, 2016, one day after he was required to file his objections to the Administrator's Motion for Default Decision and Proposed Default Decision.

too late to be considered. Therefore, I agree with the Administrator that the ALJ's consideration of the objections raised in Mr. McCoy's April 6, 2016, Memorandum of Law, is error. I conclude Mr. McCoy has failed to file timely meritorious objections to the Administrator's Motion for Default Decision and Proposed Default Decision.

The Administrator also contends, even if I were to find Mr. McCoy's April 6, 2016, Memorandum of Law timely filed, the Memorandum of Law does not contain meritorious objections to the Administrator's Motion for Default Decision and the ALJ's conclusions to the contrary are error and must be vacated or reversed (Administrator's Appeal Pet. at 3-4).

The ALJ found Mr. McCoy posited four meritorious objections to the Administrator's Motion for Default Decision in Mr. McCoy's April 6, 2016, Memorandum of Law. The ALJ adopted these four objections as "supporting reasons" for denial of the Administrator's Motion for Default Decision.

First, the ALJ found Mr. McCoy's financial difficulties, which prevented him from immediately procuring counsel, supporting reasons for denial of the Administrator's Motion for Default Decision:

> 7. Supporting Reason No. 1 for Denying Default Judgment: Respondent Rocky Roy McCoy's financial difficulties which kept him from immediately procuring counsel, have no doubt now been exacerbated by his having obtained counsel. I appreciate having good lawyers on both sides of a case, as we now have here. I do not prefer that Respondent Rocky Roy McCoy's expenditures to obtain counsel go to waste.

ALJ's Ruling Denying Default Judgment ¶ 7 at 2. Mr. McCoy could have filed an answer pro se or requested an extension of time within which to file an answer while he resolved the financial difficulties that prevented him from procuring counsel. The Rules of Practice do not require payment of a fee for filing an answer or a request for an extension of time and the cost to a pro se

respondent of filing an answer or a request for an extension of time is negligible. Therefore, I find Mr. McCoy's financial difficulties, which prevented him from procuring counsel immediately after the Hearing Clerk served him with the Complaint, are not meritorious reasons for denying the Administrator's Motion for Default Decision.

Second, the ALJ found the lack of prejudice to the Administrator a supporting reason for denying the Administrator's Motion for Default Decision:

> 8. Supporting Reason No. 2 for Denying Default Judgment: APHIS is not prejudiced by Rocky Roy McCoy being 2-1/2 weeks late in filing his Answer. If Rocky Roy McCoy, while he was representing himself (appearing *pro se*), had only known to telephone to request more time, he would have been instructed to file such request and would have been granted at least that 2-1/2 weeks.

ALJ's Ruling Denying Default Judgment ¶ 8 at 2. I have long held the lack of prejudice to the complainant is not a basis for denying the complainant's motion for a default decision.[17] Mr. McCoy, citing *Lion Raisins, Inc. v. U.S. Dep't of Agric.*, 2005 WL 6406066 (E.D. Cal. 2005), contends, where the complainant is not prejudiced by a late-filed answer, no default should be entered (Mr. McCoy's Response to Appeal Pet. at 2-3). However, unlike the instant proceeding, *Lion Raisins* is not a typical default case where a respondent fails to file a timely

[17]Heartland Kennels, Inc., AWA Docket No. 02-0004, 61 Agric. Dec. 492, 538-39 (U.S.D.A. Oct. 8, 2002) (stating, even if I were to find the complainant would not be prejudiced by setting aside the chief administrative law judge's default decision, that finding would not constitute a basis for setting aside the default decision); Noell, AWA Docket No. 98-0033, 58 Agric. Dec. 130, 146 (U.S.D.A. Jan. 6, 1999) (stating, even if I were to find the complainant would not be prejudiced by allowing the respondents to file a late answer, that finding would not constitute a basis for setting aside the default decision), *appeal dismissed sub nom.* The Chimp Farm, Inc. v. U.S. Dep't of Agric., No. 00-10608-A (11th Cir. July 20, 2000); Byard, HPA Docket No. 94-0038, 56 Agric. Dec. 1543, 1561-62 (U.S.D.A. Aug. 8, 1997) (rejecting the respondent's contention that the complainant must allege or prove prejudice to the complainant's ability to present its case before an administrative law judge may issue a default decision; stating the Rules of Practice do not require, as a prerequisite to the issuance of a default decision, that a respondent's failure to file a timely answer has prejudiced the complainant's ability to present its case).

response to a complaint, but rather a case in which a respondent filed a timely response to the complaint "through a technically procedurally ineffective method":

> USDA was made aware of Lion Raisins' intent to defend itself in the matter when it received the motion to dismiss. Having been made aware of this intent, albeit through a technically procedurally ineffective method, USDA cannot possibly claim it would be prejudiced by the denial of the default and allowing the answer to be filed. This is unlike the typical default case, in which prejudice may be found where a party has failed to respond at all. Additionally, the ALJ took judicial notice on her own motion of the fact that all parties, including herself, were involved in a second matter involving the same issues. The existence of this parallel action, in which Lion Raisins was "defending vigorously," AR 50 at 4, further demonstrates lack of prejudice because, as the ALJ noted, it would be "ludicrous" to contemplate that Lion Raisins would default. Accordingly, there can be no argument that USDA somehow relied to its detriment on Lion Raisins' failure to file an answer.

Lion Raisins, Inc. v. U.S. Dep't of Agric., 2005 WL 6406066, at *8 (E.D. Cal. 2005) (footnote omitted). Therefore, I find *Lion Raisins, Inc. v. U.S. Dep't of Agric.*, 2005 WL 6406066 (E.D. Cal. 2005), inapposite. Nothing in the record indicates that I should deviate from the usual practice of rejecting lack of prejudice to the complainant as a basis for denying a complainant's motion for a default decision. I find lack of prejudice to the Administrator is not a meritorious reason for denying the Administrator's Motion for Default Decision.

Third, the ALJ found her preference for a decision on the merits, as opposed to a default decision, a supporting reason for denying the Administrator's Motion for Default Decision:

> 9. Supporting Reason No. 3 for Denying Default Judgment: Default Judgments are not preferred, because they are not decided on the merits. I would prefer to hold a hearing and decide the issues based on evidence. Further, if the parties are given time to negotiate, many Horse Protection Act cases such as this are resolved by the parties themselves, who prepare and sign a proposed Consent Decision for the judge's consideration. When the judge issues a Consent Decision, there is no further litigation: there is no appeal to the Judicial Officer, and there is no appeal to the U.S. Court of Appeals.

ALJ's Ruling Denying Default Judgment ¶ 9 at 2. An administrative law judge's preference for a decision on the merits, as opposed to a default decision, is not a meritorious reason for denial of a complainant's motion for a default decision. While I share the ALJ's preference for a decision on the merits, as opposed to a default decision, that preference is not a meritorious reason for denial of the Administrator's Motion for Default Decision.

Fourth, the ALJ found her preference that Mr. McCoy be provided with an explanation of an issue that could arise in the proceeding, a supporting reason for denying the Administrator's Motion for Default Decision:

> 10. Supporting Reason No. 4 for Denying Default Judgment: Rocky Roy McCoy has already dealt with the same alleged Horse Protection Act violation through the Horse Industry Organization SHOW. *See* p. 3 of Rocky Roy McCoy's Memorandum of Law. While that action will not bar this action, I would prefer that some explanation be provided to Rocky Roy McCoy.

ALJ's Ruling Denying Default Judgment ¶ 10 at 2. An administrative law judge's preference that a respondent be provided with an explanation of an issue that could arise in a proceeding does not constitute a meritorious reason for denial of a complainant's motion for a default decision. Moreover, the denial of a complainant's motion for a default decision is not a necessary prerequisite to a respondent's receipt of an explanation of an issue that may arise in a proceeding. Often, an issue can be explained to a respondent without resort to a decision on the merits. The issue which the ALJ would prefer to have explained to Mr. McCoy has been discussed in previous decisions which are available to Mr. McCoy,[18] and, as the Administrator

[18]Black, HPA Docket No. 04-0003, 66 Agric. Dec. 1217, 1224-26 (U.S.D.A. Aug. 30, 2007), *aff'd sub nom.* Derickson v. U.S. Dep't of Agric., 546 F.3d 335 (6th Cir. 2008); McConnell, HPA Docket No. 99-0034, 64 Agric. Dec. 436, 467-69 (U.S.D.A. June 23, 2005), *aff'd*, 198 F. App'x 417 (6th Cir. 2006) (unpublished). *See also* Back, HPA Docket No. 08-0007, 69 Agric. Dec. 448, 450 (U.S.D.A. Mar. 17, 2010) (stating the issue of whether a sanction imposed by an entity other than the United States Department of Agriculture bars a subsequent

indicated,[19] Mr. McCoy's counsel may be able to provide Mr. McCoy with an explanation of the issue in question.

For the foregoing reasons, the following Order is issued.

ORDER

1. Mr. McCoy is assessed a $2,200 civil penalty. Mr. McCoy shall pay the civil penalty by certified check or money order, made payable to the "Treasurer of the United States" and sent to:

USDA, APHIS, MISCELLANEOUS
P.O. Box 979043
St. Louis, Missouri 63197-9000

Mr. McCoy's civil penalty payment shall be forwarded to, and received by, USDA, APHIS, MISCELLANEOUS within 60 days after service of this Order on Mr. McCoy. Mr. McCoy shall indicate on the certified check or money order that the payment is in reference to HPA Docket No. 16-0026.

2. Mr. McCoy is disqualified for one uninterrupted year from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, corporation, partnership, or other device, and from judging, managing, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction. "Participating" means engaging in any activity beyond that of a spectator, and includes, without limitation: (1) transporting, or arranging for the transportation of, horses to or from equine events; (2) personally giving

---

enforcement action by the Administrator for the same event has been previously considered and answered adversely to alleged violators of the Horse Protection Act by both the Judicial Officer and the United States Court of Appeals for the Sixth Circuit in McConnell), *aff'd*, 445 F. App'x 826 (6th Cir. 2011).

[19]Administrator's Appeal Pet. at 7.

instructions to exhibitors; (3) being present in the warm-up or inspection areas or in any area where spectators are not allowed; and (4) financing the participation of others in equine events. The disqualification shall continue after the end of the one-year disqualification period until the $2,200 civil penalty assessed against Mr. McCoy is paid in full. The disqualification of Mr. McCoy shall become effective on the 60th day after service of this Order on Mr. McCoy.

RIGHT TO SEEK JUDICIAL REVIEW

Mr. McCoy has the right to seek judicial review of the Order in this Decision and Order in the court of appeals of the United States for the circuit in which Mr. McCoy resides or has his place of business or in the United States Court of Appeals for the District of Columbia Circuit. Mr. McCoy must file a notice of appeal in such court within 30 days from the date of this Order and must simultaneously send a copy of any notice of appeal by certified mail to the Secretary of Agriculture.[20] The date of this Order is June 2, 2016.

Done at Washington, DC

June 2, 2016

_____

William G. Jenson
Judicial Officer

[20] 15 U.S.C. § 1825(b)(2), (c).