UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	HPA Docket No. 16-0026
	)	
Rocky Roy McCoy,	)	
	)	**Order Denying Petition**
Respondent	)	**for Reconsideration**

PROCEDURAL HISTORY

On June 14, 2016, Rocky Roy McCoy filed a Petition for Reconsideration of the Decision of the Judicial Officer [Petition for Reconsideration] requesting that I reconsider *McCoy*, HPA Docket No. 16-0026, 2016 WL 3434032 (U.S.D.A. June 2, 2016) (Pet. for Recons. at 3). On June 16, 2016, Kevin Shea, Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [Administrator], filed Complainant's Opposition to Respondent's Petition for Reconsideration of the Decision of the Judicial Officer. On June 17, 2016, the Hearing Clerk, Office of Administrative Law Judges, United States Department of Agriculture [Hearing Clerk], transmitted the record to the Office of the Judicial Officer for consideration of, and a ruling on, Mr. McCoy's Petition for Reconsideration.

DISCUSSION

The rules of practice applicable to this proceeding[1] provide that a party to a proceeding may file a petition for reconsideration of the decision of the Judicial Officer.[2] The purpose of a petition for reconsideration is to seek correction of manifest errors of law or fact. Petitions for

[1]The rules of practice applicable to this proceeding are 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].

[2]7 C.F.R. § 1.146(a)(3).

reconsideration are not to be used as vehicles merely for registering disagreement with the Judicial Officer's decisions. A petition for reconsideration is only granted, absent highly unusual circumstances, if the Judicial Officer has committed error or if there is an intervening change in the controlling law.

Mr. McCoy raises five issues in his Petition for Reconsideration. First, Mr. McCoy asserts the Complaint does not advise him that he may represent himself or obtain counsel (Pet. for Recons. at 1).

I agree with Mr. McCoy's assertion that the Complaint does not advise him that he may appear pro se or obtain counsel to represent him. However, Mr. McCoy does not cite any authority and I cannot locate any authority requiring that a complaint include advice regarding the right of a respondent to appear pro se or to obtain counsel. The Rules of Practice set forth the required contents of a complaint, but do not require that a complaint contain advice regarding the right of a respondent to appear pro se or to obtain counsel, as follows:

> **§ 1.135 Contents of complaint or petition for review.**
>
> (a) *Complaint.* A complaint filed pursuant to § 1.133(b) shall state briefly and clearly the nature of the proceeding, the identification of the complainant and the respondent, the legal authority and jurisdiction under which the proceeding is instituted, the allegations of fact and provisions of law which constitute a basis for the proceeding, and the nature of the relief sought.

7 C.F.R. § 1.135(a). Therefore, I reject Mr. McCoy's contention that the Complaint is not adequate because it does not include advice regarding Mr. McCoy's right to appear pro se or to obtain counsel.

Moreover, I note that on February 12, 2016, when the Hearing Clerk served Mr. McCoy with the Complaint,[3] the Hearing Clerk also served Mr. McCoy with the Rules of Practice and the Hearing Clerk's service letter, dated December 11, 2015. The Rules of Practice provide that the parties may appear in person or by attorney of record,[4] and the Hearing Clerk's December 11, 2015, service letter informs Mr. McCoy that he may represent himself or obtain legal counsel.

Second, Mr. McCoy contends I erroneously found the objections raised in his April 6, 2016, Memorandum of Law in Support of Respondent's Response and Objection to Motion for Adoption of Proposed Decision and Order [Memorandum of Law] were not timely filed. Mr. McCoy asserts he timely filed an objection to the Administrator's Motion for Adoption of Proposed Decision and Order [Motion for Default Decision] on April 5, 2016, and his April 6, 2016, Memorandum of Law merely supplements that April 5, 2016, objection. (Pet. for Recons. at 2).

The record establishes Mr. McCoy was required to file objections to the Administrator's Motion for Default Decision no later than April 5, 2016.[5] Mr. McCoy filed a timely objection to the Administrator's Motion for Default Decision on March 22, 2016,[6] and, on April 6, 2016,

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

[4]7 C.F.R. § 1.141(c).

[5]The Hearing Clerk served Mr. McCoy with the Administrator's Motion for Default Decision and the Administrator's Proposed Decision and Order Upon Admission of Facts by Reason of Default [Proposed Default Decision] on March 16, 2016 (United States Postal Service Domestic Return Receipt for article number 7004 2510 0003 7022 7886); 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 the Administrator's Proposed Default Decision no later than April 5, 2016.

[6]As discussed in McCoy, HPA Docket No. 16-0026, 2016 WL 3434032, at *3 (U.S.D.A. June 2, 2016), Mr. McCoy's March 22, 2016, objection to the Administrator's Motion for Default Decision has no merit.

Mr. McCoy filed the Memorandum of Law which contains additional objections to the Administrator's Motion for Default Decision. I find nothing in the record indicating that Mr. McCoy filed an objection to the Administrator's Motion for Default Decision on April 5, 2016, as Mr. McCoy contends. Therefore, I reject Mr. McCoy's contention that the April 6, 2016, Memorandum of Law was timely filed because it merely supplements an April 5, 2016, objection to the Administrator's Motion for Default Decision.[7]

Third, Mr. McCoy contends I erroneously disregarded Administrative Law Judge Jill S. Clifton's [ALJ] finding that Mr. McCoy's late-filed response to the Complaint[8] did not prejudice the Administrator (Pet. for Recons. at 2).

The ALJ found the Administrator was not prejudiced by Mr. McCoy's late-filed response to the Complaint and cited this lack of prejudice as a basis for denial of the Administrator's Motion for Default Decision.[9] I did not disregard the ALJ's finding, as Mr. McCoy contends. Instead, I considered the lack of prejudice to the Administrator but stated 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.[10] I found nothing in the record indicating that I should deviate from the usual practice

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[7]Even if I were to find Mr. McCoy's April 6, 2016, Memorandum of Law timely filed, that finding would not alter the disposition of this proceeding. As discussed in McCoy, HPA Docket No. 16-0026, 2016 WL 3434032, at *3-5 (U.S.D.A. June 2, 2016), Mr. McCoy's April 6, 2016, Memorandum of Law does not contain meritorious objections to the Administrator's Motion for Default Decision.

[8]The Hearing Clerk served Mr. McCoy with the Complaint on February 12, 2016 (United States Postal Service Domestic Return Receipt for article number 7004 2510 0003 7022 7732). Pursuant to the Rules of Practice, Mr. McCoy was required to file an answer to the Complaint no later than March 3, 2016 (7 C.F.R. § 1.136(a)). Mr. McCoy filed Respondent's Answer to Complaint on March 22, 2016.

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

[10]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

of rejecting lack of prejudice to the complainant as a basis for denying the complainant's motion for a default decision.[11] Therefore, I reject Mr. McCoy's contention that I disregarded the ALJ's finding that Mr. McCoy's late-filed response to the Complaint did not prejudice the Administrator.

Fourth, Mr. McCoy contends I erroneously failed to defer to the ALJ's finding that financial difficulties prevented Mr. McCoy from immediately procuring counsel to represent him in this proceeding (Pet. for Recons. at 2).

The ALJ found Mr. McCoy's financial difficulties prevented him from immediately procuring counsel to represent him in this proceeding.[12] Contrary to Mr. McCoy's contention, I deferred to the ALJ's finding, but I concluded Mr. McCoy's financial difficulties are not meritorious reasons for denying the Administrator's Motion for Default Decision, as follows:

> 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.

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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).

[11]McCoy, HPA Docket No. 16-0026, 2016 WL 3434032, at *5 (U.S.D.A. June 2, 2016).

[12]ALJ's Ruling Denying Default Judgment ¶ 7 at 2.

McCoy, HPA Docket No. 16-0026, 2016 WL 3434032, at *4 (U.S.D.A. June 2, 2016). Therefore, I reject Mr. McCoy's assertion that I failed to defer to the ALJ's finding that financial difficulties prevented Mr. McCoy from immediately procuring counsel.

Fifth, Mr. McCoy contends allowing the Administrator to file the Complaint two years after Mr. McCoy's alleged violation of the Horse Protection Act and then requiring Mr. McCoy to adhere to the time limits in the Rules of Practice, is inequitable (Pet. for Recons. at 2).

The Rules of Practice do not provide for equitable relief.[13] The Administrator filed the Complaint on December 11, 2015, alleging Mr. McCoy violated the Horse Protection Act on or about March 14, 2014.[14] An action on behalf of the United States in its governmental capacity is not subject to a time limitation absent enactment of a limitation. Mr. McCoy does not direct me to any enactment which establishes a time limitation on the Administrator's institution of an administrative disciplinary proceeding under the Horse Protection Act. Even assuming the statute of limitations in 28 U.S.C. § 2462 applies, this proceeding would not be barred as the Administrator instituted this proceeding one year eight months 27 days after Mr. McCoy's alleged Horse Protection Act violation, well within the five-year period set forth in 28 U.S.C. § 2462.

In contrast, 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

[13]Arends, AWA Docket No. 11-0147, 70 Agric. Dec. 839, 855 (U.S.D.A. Nov. 15, 2011). See also, Hoggan, AMA Docket No. M 136-7, 35 Agric. Dec. 1812, 1817-19 (U.S.D.A. Dec. 10, 1976) (stating neither the administrative law judges nor the Judicial Officer can provide equitable relief under the Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted from Marketing Orders).

[14]Compl. ¶ II at 1.

complaint.[15] Further, pursuant to 7 C.F.R. § 1.139, the failure to file a timely answer constitutes a waiver of hearing.

Pursuant to the Rules of Practice, the decision of the Judicial Officer is automatically stayed pending the determination to grant or deny a timely-filed petition for reconsideration.[16] Mr. McCoy's Petition for Reconsideration was timely filed and automatically stayed *McCoy*, HPA Docket No. 16-0026, 2016 WL 3434032 (U.S.D.A. June 2, 2016). Therefore, since Mr. McCoy's Petition for Reconsideration is denied, I lift the automatic stay, and the Order in *McCoy*, HPA Docket No. 16-0026, 2016 WL 3434032 (U.S.D.A. June 2, 2016), is reinstated.

For the foregoing reasons, the following Order is issued.

ORDER

Mr. McCoy's Petition for Reconsideration, filed June 14, 2016, is denied.

Done at Washington, DC

June 23, 2016

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William G. Jenson
Judicial Officer

[15] 7 C.F.R. § 1.136(c).

[16] 7 C.F.R. § 1.146(b).