

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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| In re: |) | Docket No. 09-0175 |
| |) | |
| Bodie S. Knapp, an individual |) | |
| d/b/a The Wild Side; and |) | |
| Kimberly G. Finley, |) | |
| an individual, |) | Ruling Denying Mr. Knapp's Motion |
| |) | to Strike the Administrator's |
| Respondents |) | Appeal Petition |

DISCUSSION

On December 20, 2011, Bodie S. Knapp filed Respondent's Motion to Strike Appeal Petition asserting Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], did not request an extension of time within which to file an appeal petition until after the time for filing the Administrator's appeal petition had expired. Mr. Knapp requests that I strike the Administrator's appeal petition as late-filed and affirm Chief Administrative Law Judge Peter M. Davenport's [hereinafter the Chief ALJ] Decision and Order.

On January 9, 2012, the Administrator filed Complainant's Response to Motion to Strike Appeal Petition asserting his October 27, 2011, request for an extension of time

within which to file an appeal petition was filed before the time for filing an appeal petition had expired. The Administrator contends, therefore, Complainant's Petition for Appeal of Initial Decision as to Respondent Bodie S. Knapp was timely filed and requests that I deny Respondent's Motion to Strike Appeal Petition. On January 26, 2012, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration of, and a ruling on, Respondent's Motion to Strike Appeal Petition.

Mr. Knapp contends the Chief ALJ is the Administrator's employee, and, since the Administrator's employee had notice of, and was in receipt of, the Chief ALJ's Decision and Order on the date the Chief ALJ issued the Decision and Order, September 26, 2011, the Administrator's 30-day period for filing an appeal petition began to run on September 26, 2011, and expired on October 25, 2011.

The delegations of authority by the Secretary of Agriculture and the General Officers of the United States Department of Agriculture establish that the Chief ALJ is not an employee of the Administrator (7 C.F.R. pt. 2). Instead, the Office of Administrative Law Judges derives its authority directly from the Secretary of Agriculture (7 C.F.R. § 2.27) and the Administrator derives authority from the Under Secretary for Marketing and Regulatory Programs (7 C.F.R. § 2.80). Therefore, I reject Mr. Knapp's contentions that the Chief ALJ is the Administrator's employee and that the Administrator's 30-day period for filing an appeal petition began to run as soon as the Chief ALJ issued the Decision and Order.

The rules of practice applicable to this proceeding¹ provide that a party may file an appeal of an administrative law judge's written decision within 30 days after receiving service of that decision (7 C.F.R. § 1.145(a)). The record before me establishes that the Chief ALJ issued a Decision and Order on September 26, 2011,² and filed the Decision and Order with the Hearing Clerk on September 27, 2011.³ The Hearing Clerk served counsel for the Administrator with the Chief ALJ's Decision and Order on September 29, 2011.⁴ Thirty days after the date the Hearing Clerk served counsel for the Administrator with the Chief ALJ's Decision and Order was Saturday, October 29, 2011. 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, as follows:

¹The 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. §§ 1.130-1.151) [hereinafter the Rules of Practice].

²Chief ALJ's Decision and Order at 23.

³See the Office of the Hearing Clerk's time and date stamp establishing that the Office of the Hearing Clerk received the Chief ALJ's Decision and Order on September 27, 2011, at 9:46 a.m. (Chief ALJ's Decision and Order at 1).

⁴See Office of the Hearing Clerk's Request for Special Service signed by Ada Quick establishing that the Hearing Clerk delivered the Chief ALJ's Decision and Order by messenger to the counsel for the Administrator's office on September 29, 2011. Counsel for the Administrator asserts the Hearing Clerk served her with the Chief ALJ's Decision and Order on September 28, 2011 (Complainant's Response to Motion to Strike Appeal Pet. at 1). Even if I were to find the Hearing Clerk served counsel for the Administrator with the Chief ALJ's Decision and Order on September 28, 2011, that finding would not change my ruling on Respondent's Motion to Strike Appeal Petition.

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

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(h) *Computation of time.* Saturdays, Sundays and Federal holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided*, That, when such time expires on a Saturday, Sunday, or Federal holiday, such period shall be extended to include the next following business day.

7 C.F.R. § 1.147(h). The next business day after Saturday, October 29, 2011, was Monday, October 31, 2011. Thus, before any extension of time was granted, the Administrator's appeal petition was required to be filed with the Hearing Clerk no later than October 31, 2011. Therefore, I reject Mr. Knapp's contention that the Administrator's request for an extension of time within which to file an appeal petition, which the Administrator filed with the Hearing Clerk on October 27, 2011, was filed after the time for filing the Administrator's appeal petition had expired.

RULING

Respondent's Motion to Strike Appeal Petition, filed December 20, 2011, is denied.

Done at Washington, DC

January 30, 2012

William G. Jenson
Judicial Officer