

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	FMIA Docket No. 05-0002
)	PPIA Docket No. 05-0003
Frank Craig and Jean Craig,)	
d/b/a Frank's Wholesale Meats,)	
)	
Respondents)	Decision and Order

PROCEDURAL HISTORY

Barbara Masters, Acting Administrator, Food Safety and Inspection Service, United States Department of Agriculture [hereinafter Complainant], instituted this disciplinary administrative proceeding by filing a Complaint for Suspension of Federal Meat and Poultry Inspection Service [hereinafter the Complaint] on April 12, 2005. Complainant instituted the proceeding under the Federal Meat Inspection Act, as amended (21 U.S.C. §§ 601-695) [hereinafter the Federal Meat Inspection Act]; the Poultry Products Inspection Act, as amended (21 U.S.C. §§ 451-471) [hereinafter the Poultry Products Inspection Act]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) and the Rules of Practice (9 C.F.R. pt. 500) [hereinafter the Rules of Practice].

Complainant alleges that on March 23, 2005, April 4, 2005, and April 5, 2005, Respondent Frank Craig intimidated and interfered with Food Safety and Inspection Service employees performing duties under the Federal Meat Inspection Act and the Poultry Products Inspection Act.¹ Complainant seeks an order indefinitely suspending inspection services under the Federal Meat Inspection Act and the Poultry Products Inspection Act from Frank Craig and Jean Craig, d/b/a Frank's Wholesale Meats [hereinafter Respondents], and Frank's Wholesale Meats, its owners, officers, operators, partners, affiliates, successors, and assigns.² On April 29, 2005, Respondents filed a response to the Complaint denying the material allegations of the Complaint.³

On June 23, 2006, Complainant filed a motion requesting a date for oral hearing.⁴ On July 26, 2006, Chief Administrative Law Judge Marc R. Hillson [the Chief ALJ] held a telephone conference during which the Chief ALJ scheduled an oral hearing to be commenced October 24, 2006, in San Bernardino, California.⁵ Complainant's counsel participated in the July 26, 2006, telephone conference, but Respondents refused to

¹Compl. ¶ III.

²Compl. at 5.

³Answers to Complaint for Suspension of Federal Meat & Poultry Inspection Service [hereinafter the Answer].

⁴Motion To Set Oral Hearing.

⁵Summary of Telephone Conference; Scheduling of Oral Hearing and Scheduling Exchange Dates.

participate in the telephone conference.⁶ On September 28, 2006, Complainant filed a motion to conduct the hearing by audio-visual means in Washington, DC, and Diamond Bar, California.⁷ On October 6, 2006, the Chief ALJ held a second telephone conference during which the Chief ALJ granted Complainant's motion to conduct the hearing by audio-visual means at two locations, one in Washington, DC, and the other in Diamond Bar, California.⁸ Complainant's counsel participated in the October 6, 2006, telephone conference, but Respondents refused to participate in the telephone conference.⁹

On October 24-26, 2006, the Chief ALJ presided at a hearing conducted in Washington, DC, and Diamond Bar, California. Carlyne S. Cockrum and Rick D. Herndon, Office of the General Counsel, United States Department of Agriculture, represented Complainant.¹⁰ Respondents refused to participate in the hearing.¹¹ The Chief ALJ issued a decision orally at the close of the hearing in which the Chief ALJ concluded Frank's Wholesale Meats harassed, intimidated, threatened, and interfered with Food Safety and Inspection Service employees performing duties under the Federal Meat

⁶Summary of Telephone Conference; Scheduling of Oral Hearing and Scheduling Exchange Dates at 1 n.1.

⁷Motion to Conduct Hearing by Audio-Visual Means.

⁸Summary of Telephone Conference; and Scheduling of Audio-Visual Hearing.

⁹Summary of Telephone Conference; and Scheduling of Audio-Visual Hearing at 1.

¹⁰Tr. I at 7.

¹¹Tr. I at 7-10; Tr. II at 104-06; Tr. III at 4-6.

Inspection Act and the Poultry Products Inspection Act and ordered the indefinite suspension of inspection services under title I of the Federal Meat Inspection Act and under the Poultry Products Inspection Act from Respondents and Frank's Wholesale Meats, its owners, officers, directors, partners, successors, and assigns.¹²

The Chief ALJ excerpted from the transcript the decision orally announced at the close of the October 24-26, 2006, hearing, and on November 15, 2006, filed the written excerpt. On November 22, 2006, Respondents appealed to the Judicial Officer.¹³ On December 8, 2006, Complainant filed a response to Respondents' Appeal Petition.¹⁴ On December 11, 2006, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision.

Based upon a careful consideration of the record, I agree with the Chief ALJ's October 26, 2006, oral decision; therefore, I affirm the Chief ALJ's October 26, 2006, oral decision.

Complainant's exhibits are designated by "CX." The transcript is divided into three volumes, one volume for each day of the 3-day hearing. References to "Tr. I" are to the volume of the transcript that relates to the October 24, 2006, segment of the hearing; references to "Tr. II" are to the volume of the transcript that relates to the October 25,

¹²Tr. III at 24-25.

¹³Letter dated November 21, 2006, from Respondent Frank Craig to the Chief ALJ [hereinafter Respondents' Appeal Petition].

¹⁴Response in Opposition to Appeal Petition.

2006, segment of the hearing; and references to “Tr. III” are to the volume of the transcript that relates to the October 26, 2006, segment of the hearing.

DECISION

Statement of the Case

Respondents, after being duly notified, failed to appear at the October 24-26, 2006, hearing without good cause.¹⁵ Section 1.141(e) of the Rules of Practice (7 C.F.R. § 1.141(e)) provides that a respondent who, after being duly notified, fails to appear at a hearing, without good cause, shall be deemed to have waived the right to an oral hearing and to have admitted any facts which may be presented at the hearing. Section 1.141(e) of the Rules of Practice (7 C.F.R. § 1.141(e)) also provides that a respondent’s failure to appear at the hearing, without good cause, constitutes an admission of all the material allegations of fact contained in the complaint. Accordingly, the material allegations of fact contained in the Complaint and the facts presented at the October 24-26, 2006, hearing are adopted as findings of fact.

Findings of Fact

1. Respondents, at all times material to this proceeding, were engaged in meat and poultry processing operations at an establishment identified as Frank’s Wholesale Meats and located at 651 North Waterman Avenue, San Bernardino, California 92410.¹⁶

¹⁵Tr. I at 7-10; Tr. II at 104-06; Tr. III at 4-6.

¹⁶Compl. ¶ I(a)-(b); Answer ¶ I(a)-(b).

2. Respondents' establishment is a small processing facility. Respondents' establishment has a retail area on the first floor and a small meeting room and United States Department of Agriculture inspection office on the second floor.¹⁷

3. On January 28, 1985, the Food Safety and Inspection Service issued a grant of federal inspection pursuant to the Federal Meat Inspection Act and the Poultry Products Inspection Act to Frank's Wholesale Meats located at 651 North Waterman Avenue, San Bernardino, California 92410.¹⁸

4. Respondents' establishment has been designated as Official Establishment number 7741/P-7741.¹⁹

5. On April 18, 1991, Respondent Frank Craig interfered with and attempted to intimidate Joyce Mize, a Food Safety and Inspection Service inspector, when she was performing duties under the Federal Meat Inspection Act and the Poultry Products Inspection Act. Specifically, Respondent Frank Craig screamed at Joyce Mize and told Joyce Mize that she did not know what she was doing.²⁰

6. On January 23, 1995, Respondent Frank Craig interfered with and attempted to intimidate Joyce Mize, a Food Safety and Inspection Service inspector.

¹⁷Tr. I at 34-35, 74-76, 99, 118; Tr. II at 15.

¹⁸Compl. ¶ I(b); Answer ¶ I(b); CX 4; Tr. I at 33.

¹⁹Compl. ¶ I(b); Answer ¶ I(b); CX 4.

²⁰CX 18; Tr. I at 78-81.

Specifically, Respondent Frank Craig charged Joyce Mize in a hostile manner, criticized Joyce Mize's performance, and continually interrupted Joyce Mize.²¹

7. On June 21, 2000, Stuart Alexander, the owner of Santos Linguisa Factory, a sausage processor in San Leandro, California, murdered two Food Safety and Inspection Service employees and a California state employee while they were performing duties at the Santos Linguisa Factory.²²

8. On November 30, 2000, Respondent Frank Craig interfered with and attempted to intimidate Joyce Mize, a Food Safety and Inspection Service inspector, when she was performing duties under the Federal Meat Inspection Act and the Poultry Products Inspection Act. Specifically, Respondent Frank Craig screamed at Joyce Mize and threatened Joyce Mize.²³

9. On December 4, 2000, Joyce Mize and Dr. Syed Ali, Food Safety and Inspection Service circuit supervisor for the Riverside, California, circuit, met with Respondent Frank Craig to discuss Respondent Frank Craig's November 30, 2000, interference with and attempted intimidation of Joyce Mize. During the meeting, Respondent Frank Craig threatened Joyce Mize.²⁴

²¹CX 19; Tr. I at 82-87.

²²CX 1; Tr. I at 22-26.

²³CX 20-CX 22; Tr. I at 87-99; Tr. II at 40-49.

²⁴CX 22, CX 35, CX 48-CX 50; Tr. I at 94-95; Tr. II at 40-49.

10. On December 4, 2000, in accordance with the Federal Meat Inspection Act and the Poultry Products Inspection Act, the Food Safety and Inspection Service suspended federal inspection services at Respondents' establishment because of statements by Respondent Frank Craig to Joyce Mize, a Food Safety and Inspection Service inspector, on November 30, 2000, and December 4, 2000, and to Dr. Syed Ali, a Food Safety and Inspection Service circuit supervisor, on December 4, 2000.²⁵

11. On December 18, 2000, Respondent Frank Craig provided written assurance to the Food Safety and Inspection Service that Respondents and Respondents' employees would not intimidate, threaten, or interfere with Food Safety and Inspection Service employees in the future.²⁶

12. On December 19, 2000, the Food Safety and Inspection Service resumed federal inspection services at Respondents' establishment based on Respondent Frank Craig's December 18, 2000, written assurance to the Food Safety and Inspection Service that Respondents and Respondents' employees would not intimidate, threaten, or interfere with Food Safety and Inspection Service employees in the future.²⁷

13. On or about February 28, 2001, in accordance with the Federal Meat Inspection Act and the Poultry Products Inspection Act, the Food Safety and Inspection

²⁵Compl. ¶ II(a); CX 35, CX 48, CX 50; Tr. I at 226-28; Tr. II at 40-49.

²⁶CX 9.

²⁷Compl. ¶ II(a); CX 10; Tr. I at 44-46.

Service suspended federal inspection services at Respondents' establishment because of statements by Respondent Frank Craig to Food Safety and Inspection Service employees during a program assessment meeting at Respondents' establishment. During this meeting, Respondent Frank Craig made derogatory remarks about Food Safety and Inspection Service inspector Joyce Mize and made comparisons between his inspection situation and that of Stuart Alexander, the owner of the Santos Linguisa Factory, who murdered two Food Safety and Inspection Service employees and a California state employee.²⁸

14. On March 6, 2001, Respondent Frank Craig met with Food Safety and Inspection Service employees in a mediation session conducted by a mediator from the Federal Mediation & Conciliation Service. During the mediation, Respondent Frank Craig drafted a written proposal in which he offered to refrain from any association with United States Department of Agriculture inspectors and to direct Mike Craig, the manager of Frank's Wholesale Meats, who was also Respondents' son, to handle all inspection activities in Respondents' establishment.²⁹

15. Based on Respondent Frank Craig's March 6, 2001, proposal, Respondents, on April 2, 2001, entered into a written agreement with the Food Safety and Inspection Service in which Respondents agreed that no one associated with Respondents'

²⁸CX 11, CX 23, CX 27, CX 51-CX 52; Tr. I at 109-25, 154-56; Tr. II at 49-55.

²⁹CX 12, CX 25-26; Tr. I at 55-57, 134-46.

establishment would intimidate or interfere with Food Safety and Inspection Service employees performing duties under the Federal Meat Inspection Act and the Poultry Products Inspection Act. Respondents also agreed that Respondent Frank Craig would not communicate with Food Safety and Inspection Service in-plant employees or circuit supervisors. The written agreement allowed Respondents to continue federally-inspected operations at Respondents' establishment.³⁰

16. After the April 2001 reinstatement of federal inspection services, Food Safety and Inspection Service employees continued to document incidents of intimidation and interference by Respondent Frank Craig. On August 16, 2001, Dr. Murli M. Prasad, Food Safety and Inspection Service district manager, met with Respondent Frank Craig to discuss these incidents of intimidation and interference and to remind Respondent Frank Craig of the April 2, 2001, agreement. This meeting was followed by a letter from Dr. Prasad to Respondent Frank Craig on October 5, 2001, reminding Respondent Frank Craig of his obligations under the April 2, 2001, agreement and the regulations prohibiting intimidation of and interference with Food Safety and Inspection Service employees performing duties under the Federal Meat Inspection Act and the Poultry Products Inspection Act.³¹

³⁰Compl. ¶ II(a); Answer ¶ II(a); CX 12; Tr. I at 57-60.

³¹CX 37-CX 38; Tr. I at 230-38.

17. In a letter dated September 26, 2004, Respondent Jean Craig requested that the Food Safety and Inspection Service allow Respondent Frank Craig to resume a more responsible role in Respondents' establishment and to communicate with Food Safety and Inspection Service in-plant employees.³²

18. In September or October 2004, Respondent Frank Craig interfered with Charles Alcorn, a Food Safety and Inspection Service consumer safety inspector. Specifically, Respondent Frank Craig, in an angry and loud voice, instructed one of Respondents' employees to tell Charles Alcorn that he was not taking samples of ground beef correctly.³³

19. On or about December 1, 2004, the Food Safety and Inspection Service approved Respondent Jean Craig's request to allow Respondent Frank Craig to resume a more responsible role in Respondents' establishment and to communicate with Food Safety and Inspection Service in-plant employees. The Food Safety and Inspection Service informed Respondent Jean Craig that any intimidation of, or interference with, Food Safety and Inspection Service employees would result in an enforcement action in accordance with the Rules of Practice.³⁴

³²Compl. ¶ II(b); Answer ¶ II(b); CX 13; Tr. I at 60-62.

³³CX 42-CX 43; Tr. II at 9-12.

³⁴Compl. ¶ II(b); Answer ¶ II(b); CX 14; Tr. I at 62-63.

20. On December 6, 2004, Dr. Neal Westgerdes, Food Safety and Inspection Service district manager for the Alameda, California, district; Dr. Yudhbir Sharma, Food Safety and Inspection Service deputy district manager for the Alameda, California, district; and Dr. Syed Ali, Food Safety and Inspection Service circuit supervisor for the Riverside, California, circuit, met with Respondents to discuss the Food Safety and Inspection Service acceptance of Respondent Frank Craig as a contact person for Frank's Wholesale Meats.³⁵

21. On March 23, 2005, Respondent Frank Craig intimidated and interfered with Charles Wheatley, a Food Safety and Inspection Service consumer safety inspector, while Charles Wheatley was performing duties under the Federal Meat Inspection Act and the Poultry Products Inspection Act. Respondent Frank Craig's statements included references to Stuart Alexander's June 21, 2000, murder of two Food Safety and Inspection Service employees and a California state employee and comparisons between Respondent Frank Craig's inspection situation and that of Stuart Alexander.³⁶

22. On April 4, 2005, Respondent Frank Craig intimidated and interfered with Charles Wheatley, a Food Safety and Inspection Service consumer safety inspector, while Charles Wheatley was performing duties under the Federal Meat Inspection Act and the Poultry Products Inspection Act. Respondent Frank Craig engaged in unprofessional,

³⁵Compl. ¶ II(c); Answer ¶ II(c); CX 57 at 1, CX 58, CX 61 at 3; Tr. II at 81-88, 91-94.

³⁶Compl. ¶ III(a); CX 45, CX 47 at 2; Tr. II at 25-28.

argumentative, and confrontational behavior when Charles Wheatley attempted to speak with Respondent Frank Craig about food safety regulatory verification filings that showed insanitary conditions and practices at Respondents' establishment. Charles Wheatley was unable to complete his duties, and he left Respondents' establishment feeling harassed and intimidated. Dr. Syed Ali, the Food Safety and Inspection Service circuit supervisor for the Riverside, California, circuit, subsequently described Charles Wheatley as disturbed, distressed, upset, and shaken by the incident.³⁷

23. On April 5, 2005, Respondent Frank Craig intimidated and interfered with Food Safety and Inspection Service employees performing duties under the Federal Meat Inspection Act and the Poultry Products Inspection Act. Specifically, during a meeting with Dr. Neal Westgerdes, Food Safety and Inspection Service district manager for the Alameda, California, district; Dr. Yudhbir Sharma, Food Safety and Inspection Service deputy district manager for the Alameda, California, district; and Dr. Syed Ali, Food Safety and Inspection Service circuit supervisor for the Riverside, California, circuit, Respondent Frank Craig demonstrated hostility toward Food Safety and Inspection Service employees and became argumentative and confrontational. Respondent Frank Craig's statements included references to Stuart Alexander's June 21, 2000, murder of two Food Safety and Inspection Service employees and a California state employee.³⁸

³⁷Compl. ¶ III(b); CX 46-CX 47, CX 53-CX 54; Tr. II at 30-35, 61-63.

³⁸Compl. ¶ III(c); CX 57, CX 61; Tr. II at 84-88.

24. On April 6, 2005, the Food Safety and Inspection Service issued Respondents a Notice of Suspension in accordance with section 500.3 of the Rules of Practice (9 C.F.R. § 500.3) based on Respondent Frank Craig's repetitive intimidation of and interference with Food Safety and Inspection Service employees performing duties under the Federal Meat Inspection Act and the Poultry Products Inspection Act.³⁹

25. Respondent Frank Craig has a permit for a gun and, at times material to this proceeding, kept a gun at Respondents' establishment.⁴⁰

26. Respondent Frank Craig has made numerous references to Stuart Alexander's June 21, 2000, murder of two Food Safety and Inspection Service employees and a California state employee while they were performing duties at the Santos Linguisa Factory, in San Leandro, California. Many of Respondent Frank Craig's references to the June 21, 2000, murders include comparisons between Respondent Frank Craig's inspection situation and that of Stuart Alexander.⁴¹

³⁹Compl. ¶ IV(a); Answer ¶ IV(a); CX 60.

⁴⁰Compl. ¶ IV(b); Answer ¶ IV(b)(1); CX 22, CX 29, CX 32, CX 45 at 1-2, CX 46 at 2, CX 47 at 2, CX 53 at 1, CX 55, CX 61 at 2; Tr. I at 99-101, 137, 150-52, 168-71, 179-80, 220-21; Tr. II at 24-25, 69.

⁴¹Compl. ¶ IV(b); Answer ¶ IV(b)(2); CX 1, CX 5-CX 6, CX 11 at 1, CX 45 at 1, CX 51 at 4, CX 55, CX 57 at 2, CX 61 at 2; Tr. I at 22-26, 121-22, 219; Tr. II at 26, 60-65.

27. At times material to this proceeding, Respondent Frank Craig drank alcohol at Respondents' establishment and appeared under the influence while Food Safety and Inspection Service employees were present.⁴²

28. During the period April 18, 1991, through April 5, 2005, Respondent Frank Craig frequently argued with and confronted Food Safety and Inspection Service employees in a manner that intimidated and interfered with those Food Safety and Inspection Service employees, while those employees were performing duties under the Federal Meat Inspection Act and the Poultry Products Inspection Act.

29. Respondent Frank Craig has previously been placed on probation for the crime of assault with a deadly weapon.⁴³

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondents intimidated and interfered with Food Safety and Inspection Service employees performing duties under the Federal Meat Inspection Act and the Poultry Products Inspection Act.
3. Respondents' repeated intimidation of and interference with Food Safety and Inspection Service employees performing duties under the Federal Meat Inspection Act and the Poultry Products Inspection Act warrants the indefinite suspension of

⁴²Tr. I at 101, 105, 159-60; Tr. II at 15, 98.

⁴³Compl. ¶ IV(b).

inspection services under the Federal Meat Inspection Act and the Poultry Products Inspection Act from Respondents and Frank's Wholesale Meats.

Respondents' Appeal Petition

Respondents raise seven issues in Respondents' Appeal Petition. First, Respondents "appeal all the false allegations" (Respondents' Appeal Pet. at 1-3).

Respondents' denial of the allegations of the Complaint comes far too late to be considered. Respondents, after being duly notified, failed to appear at the October 24-26, 2006, hearing without good cause. Section 1.141(e) of the Rules of Practice (7 C.F.R. § 1.141(e)) provides that a respondent who, after being duly notified, fails to appear at a hearing, without good cause, shall be deemed to have waived the right to an oral hearing and to have admitted any facts which may be presented at the hearing. Section 1.141(e) of the Rules of Practice (7 C.F.R. § 1.141(e)) also provides that a respondent's failure to appear at the hearing, without good cause, constitutes an admission of all the material allegations of fact contained in the complaint. Respondents have not offered any reason for their failure to attend the October 24-26, 2006, hearing. Accordingly, the material allegations contained in the Complaint and the facts presented at the October 24-26, 2006, hearing are adopted as findings of fact.

Second, Respondents request I convene a grand jury (Respondents' Appeal Pet. at 1).

Authority to convene a grand jury is vested in the United States district courts;⁴⁴ I have no authority to convene a grand jury. Moreover, the function of a grand jury is to determine whether there is probable cause to believe a crime has been committed and to protect persons against unfounded criminal prosecution.⁴⁵ This proceeding is a civil administrative disciplinary proceeding. The results of a grand jury investigation would not be relevant to this proceeding.

Third, Respondents request that the United States Department of Agriculture provide an attorney to represent them (Respondents' Appeal Pet. at 1).

The Administrative Procedure Act provides that a party in an agency proceeding may appear by or with counsel, as follows:

§ 555. Ancillary matters

....

(b) . . . A party is entitled to appear in person or by or with counsel or other duly qualified representative in an agency proceeding.

5 U.S.C. § 555(b). However, a respondent who desires assistance of counsel in an agency proceeding bears the responsibility of obtaining counsel. Moreover, a respondent who is unable to obtain counsel has no right under the Constitution of the United States, the Administrative Procedure Act, or the Rules of Practice to have counsel provided by the

⁴⁴Fed. R. Crim. P. 6. *See also Switzer v. Coan*, 261 F.3d 985, 992 n.13 (10th Cir. 2001); *Korman v. United States*, 486 F.2d 926, 933 (7th Cir. 1973); *In re A & H Transp., Inc.*, 319 F.2d 69, 71 (4th Cir.), *cert. denied*, 375 U.S. 924 (1963).

⁴⁵*United States v. Calandra*, 414 U.S. 338, 343 (1974); *Branzburg v. Hayes*, 408 U.S. 665, 686-87 (1972).

government in a disciplinary administrative proceeding, such as one conducted under the

Federal Meat Inspection Act and the Poultry Products Inspection Act.⁴⁶ Therefore, I

⁴⁶*See generally Elliott v. SEC*, 36 F.3d 86, 88 (11th Cir. 1994) (per curiam) (rejecting petitioner's assertion of prejudice due to his lack of representation in an administrative proceeding before the Securities and Exchange Commission and stating there is no statutory or constitutional right to counsel in disciplinary administrative proceedings before the Securities and Exchange Commission); *Henry v. INS*, 8 F.3d 426, 440 (7th Cir. 1993) (stating it is well-settled that deportation hearings are in the nature of civil proceedings and aliens, therefore, have no constitutional right to counsel under the Sixth Amendment); *Michelson v. INS*, 897 F.2d 465, 467 (10th Cir. 1990) (stating a deportation proceeding is civil in nature; thus no Sixth Amendment right to counsel exists); *Lozada v. INS*, 857 F.2d 10, 13 (1st Cir. 1988) (stating because deportation proceedings are deemed to be civil, rather than criminal, in nature, petitioners have no constitutional right to counsel under the Sixth Amendment); *Sartain v. SEC*, 601 F.2d 1366, 1375 (9th Cir. 1979) (per curiam) (stating 5 U.S.C. § 555(b) and due process assure petitioner the right to obtain independent counsel and have counsel represent him in a civil administrative proceeding before the Securities and Exchange Commission, but the Securities and Exchange Commission is not obliged to provide petitioner with counsel); *Feeney v. SEC*, 564 F.2d 260, 262 (8th Cir. 1977) (rejecting petitioners' argument that the Securities and Exchange Commission erred in not providing appointed counsel for them and stating, assuming petitioners are indigent, the Constitution, the statutes, and prior case law do not require appointment of counsel at public expense in administrative proceedings of the type brought by the Securities and Exchange Commission), *cert. denied*, 435 U.S. 969 (1978); *Nees v. SEC*, 414 F.2d 211, 221 (9th Cir. 1969) (stating petitioner has a right under 5 U.S.C. § 555(b) to employ counsel to represent him in an administrative proceeding, but the government is not obligated to provide him with counsel); *Boruski v. SEC*, 340 F.2d 991, 992 (2d Cir.) (stating in administrative proceedings for revocation of registration of a broker-dealer, expulsion from membership in the National Association of Securities Dealers, Inc., and denial of registration as an investment advisor, there is no requirement that counsel be appointed because the administrative proceedings are not criminal), *cert. denied*, 381 U.S. 943 (1965); *Alvarez v. Bowen*, 704 F. Supp. 49, 52 (S.D.N.Y. 1989) (stating the Secretary of Health and Human Services is not obligated to furnish a claimant with an attorney to represent the claimant in a social security disability proceeding); *In re Steven Bourk* (Decision as to Steven Bourk and Carmella Bourk), 61 Agric. Dec. 25, 50-51 (2002) (stating a respondent who is unable to afford an attorney has no right under the Constitution of the United States, the Administrative Procedure Act, or the Rules of Practice to have counsel provided by the government in an administrative disciplinary proceeding conducted under

(continued...)

reject Respondents' request to have counsel provided to represent them.

Fourth, Respondents request "a starting point of" \$33,000,000 in monetary damages (Respondents' Appeal Pet. at 1).

I reject Respondents' request for monetary damages. This proceeding is an administrative disciplinary proceeding to determine whether an order should be issued indefinitely suspending inspection services under the Federal Meat Inspection Act and the Poultry Products Inspection Act. This proceeding is not the proper proceeding in which to seek money damages.

Fifth, Respondents contend they did not have sufficient time to prepare an appeal petition (Respondents' Appeal Pet. at 1-3).

⁴⁶(...continued)

the Animal Welfare Act); *In re Garland E. Samuel*, 57 Agric. Dec. 905, 911 (1998) (stating a respondent who is unable to afford an attorney has no right under the Constitution of the United States, the Administrative Procedure Act, or the Rules of Practice to have counsel provided by the government in an administrative disciplinary proceeding conducted under the Swine Health Protection Act); *In re Steven M. Samek*, 57 Agric. Dec. 185, 188 (1998) (Ruling Denying Motion to Appoint Public Defender as to Steven M. Samek) (stating a respondent who is unable to afford an attorney has no right under the Constitution of the United States, the Administrative Procedure Act, or the Rules of Practice to have counsel provided by the government in an administrative disciplinary proceeding conducted under the Animal Welfare Act); *In re Ray H. Mayer* (Decision as to Jim Doss), 43 Agric. Dec. 439, 442 (1984) (stating a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented, is not a criminal proceeding and the respondent, even if he cannot afford counsel, has no constitutional right to have counsel provided by the government), *appeal dismissed*, No. 84-4316 (5th Cir. July 25, 1984).

As an initial matter, Respondents' timely-filed appeal petition belies Respondents' contention that they did not have adequate time within which to prepare an appeal petition. Section 1.145(a) of the Rules of Practice (7 C.F.R. § 1.145(a)) provides that parties have 30 days after issuance of an oral decision within which to appeal to the Judicial Officer. The Chief ALJ issued an oral decision on October 26, 2006; therefore, Respondents had until November 27, 2006, to file an appeal petition with the Hearing Clerk.⁴⁷ The issues in this proceeding are not complex; therefore, I conclude Respondents had sufficient time within which to file an appeal petition.

Respondents assert they were not aware of the Chief ALJ's October 26, 2006, oral decision until November 20, 2006, when they received the written excerpt of the oral

⁴⁷Thirty days after October 26, 2006, was Saturday, November 25, 2006. Section 1.147(h) of the Rules of Practice provides that 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:

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

....

(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, November 25, 2006, was Monday, November 27, 2006. Therefore, Respondents were required to file Respondents' Appeal Petition no later than November 27, 2006.

decision, and the time between their receipt of the written excerpt and the time that their appeal petition was required to be filed was not an adequate time within which to file an appeal petition (Respondents' Appeal Pet. at 1).

The Hearing Clerk served Respondents with the Rules of Practice on April 19, 2005.⁴⁸ Therefore, Respondents had actual notice that section 1.142(c) of the Rules of Practice (7 C.F.R. § 1.142(c)) provides for the issuance of an oral decision at the close of a hearing or within a reasonable time after the close of the hearing and that, if the Chief ALJ issued an oral decision, Respondents would have 30 days after the issuance of the oral decision within which to file an appeal petition. Respondents failed to appear at the October 24-26, 2006, hearing without good cause and the record contains no indication that Respondents attempted to discern the disposition of the proceeding after the close of the hearing. A respondent who refuses to attend a hearing without good cause does so at his or her peril. Respondents alone are responsible for their ignorance of the oral decision prior to November 20, 2006. Therefore, I reject Respondents' contention that they were not provided sufficient time to file an appeal petition.

Sixth, Respondents contend the instant proceeding is designed to cover up slander, sexual harassment, bribery, and witness intimidation (Respondents' Appeal Pet. at 1).

⁴⁸United States Postal Service Domestic Return Receipt for Article Number 7004 1160 0001 9223 1254.

I reject Respondents' contention that Complainant instituted the instant proceeding to cover up slander, sexual harassment, bribery, and witness intimidation. In the absence of clear evidence to the contrary, public officers are presumed to have properly discharged their official duties.⁴⁹ Complainant is presumed to have instituted the instant

⁴⁹See *United States v. Mezzanatto*, 513 U.S. 196, 210 (1995) (stating the potential for abuse of prosecutorial bargaining power is an insufficient basis for foreclosing plea negotiation; the great majority of prosecutors are faithful to their duties and absent clear evidence to the contrary, courts presume that public officers properly discharge their duties); *INS v. Miranda*, 459 U.S. 14, 18 (1982) (per curiam) (stating, although the length of time to process the application is long, absent evidence to the contrary, the court cannot find that the delay was unwarranted); *United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 14-15 (1926) (stating a presumption of regularity supports the official acts of public officers, and, in the absence of clear evidence to the contrary, courts presume they have properly discharged their official duties); *Sunday Lake Iron Co. v. Wakefield TP*, 247 U.S. 350, 353 (1918) (stating the good faith of taxing officers and the validity of their actions are presumed; when assailed, the burden of proof is on the complaining party); *Chaney v. United States*, 406 F.2d 809, 813 (5th Cir.) (stating the presumption that the local selective service board considered the appellant's request for reopening in accordance with 32 C.F.R. § 1625.2 is a strong presumption that is only overcome by clear and convincing evidence), *cert. denied*, 396 U.S. 867 (1969); *Lawson Milk Co. v. Freeman*, 358 F.2d 647, 649 (6th Cir. 1966) (stating, without a showing that the action of the Secretary of Agriculture was arbitrary, the Secretary of Agriculture's action is presumed to be valid); *Donaldson v. United States*, 264 F.2d 804, 807 (6th Cir. 1959) (stating the presumption of regularity supports official acts of public officers and in the absence of clear evidence to the contrary, courts presume they have properly discharged their duties); *Panno v. United States*, 203 F.2d 504, 509 (9th Cir. 1953) (stating a presumption of regularity attaches to official acts of the Secretary of Agriculture in the exercise of his congressionally delegated duties); *Reines v. Woods*, 192 F.2d 83, 85 (Emer. Ct. App. 1951) (stating the presumption of regularity, which attaches to official acts, can be overcome only by clear evidence to the contrary); *NLRB v. Bibb Mfg. Co.*, 188 F.2d 825, 827 (5th Cir. 1951) (holding duly appointed police officers are presumed to discharge their duties lawfully and that presumption may only be overcome by clear and convincing evidence); *Woods v. Tate*, 171 F.2d 511, 513 (5th Cir. 1948) (concluding an order of the Acting Rent Director, Office of Price Administration, is presumably valid

(continued...)

⁴⁹(...continued)

and genuine in the absence of proof or testimony to the contrary); *Pasadena Research Laboratories, Inc. v. United States*, 169 F.2d 375, 381-82 (9th Cir.) (stating the presumption of regularity applies to methods used by government chemists and analysts and to the care and absence of tampering on the part of postal employees), *cert. denied*, 335 U.S. 853 (1948); *Laughlin v. Cummings*, 105 F.2d 71, 73 (D.C. Cir. 1939) (stating there is a strong presumption that public officers exercise their duties in accordance with law); *In re PMD Produce Brokerage Corp.* (Order Denying Pet. for Recons. and Pet. for New Hearing on Remand), 61 Agric. Dec. 389, 399 (2002) (stating an administrative law judge is presumed to have considered the record prior to the issuance of his or her decision); *In re Lamers Dairy, Inc.*, 60 Agric. Dec. 406, 435 (2001) (stating, in the absence of clear evidence to the contrary, administrative law judges are presumed to have adequately reviewed the record in a proceeding prior to the issuance of a decision in the proceeding), *aff'd*, No. 01-C-890 (E.D. Wis. Mar. 11, 2003), *aff'd*, 379 F.3d 466 (7th Cir. 2004), *cert. denied*, 544 U.S. 904 (2005); *In re Karl Mitchell* (Order Granting Complainant's Pet. for Recons.) 60 Agric. Dec. 647, 665-67 (2001) (holding, in the absence of clear evidence to the contrary, the Animal and Plant Health Inspection Service inspectors involved are presumed to be motivated only by the desire to properly discharge their official duties); *In re Greenville Packing Co.*, 59 Agric. Dec. 194, 220-22 (2000) (stating, in the absence of evidence to the contrary, Food Safety and Inspection Service inspectors are presumed to have properly issued process deficiency records), *aff'd in part and transferred in part*, No. 00-CV-1054 (N.D.N.Y. Sept. 4, 2001), *appeal withdrawn*, No. 01-6214 (2d Cir. Apr. 30, 2002); *In re Dwight L. Lane*, 59 Agric. Dec. 148, 177-78 (2000) (stating a United States Department of Agriculture hearing officer is presumed to have adequately reviewed the record and no inference is drawn from an erroneous decision that the hearing officer failed to properly discharge his official duty to review the record), *aff'd*, A2-00-84 (D.N.D. July 18, 2001), *aff'd*, 294 F.3d 1001 (8th Cir. 2002); *In re Marilyn Shepherd*, 57 Agric. Dec. 242, 280-82 (1998) (stating, in the absence of clear evidence to the contrary, United States Department of Agriculture inspectors and investigators are presumed to have properly discharged their duty to document violations of the Animal Welfare Act); *In re Auvil Fruit Co.*, 56 Agric. Dec. 1045, 1079 (1997) (stating, without a showing that the official acts of the Secretary of Agriculture are arbitrary, the Secretary of Agriculture's actions are presumed to be valid); *In re Kim Bennett*, 55 Agric. Dec. 176, 210-11 (1996) (stating, instead of presuming United States Department of Agriculture attorneys and investigators warped the viewpoint of United States Department of Agriculture veterinary medical officers, the court should have presumed that training of United States Department of Agriculture veterinary medical

(continued...)

proceeding in order to carry out the purposes of the Federal Meat Inspection Act and the Poultry Products Inspection Act, and Respondents provide no basis for their contention that Complainant instituted the proceeding to cover up slander, sexual harassment, bribery, and witness intimidation.

Seventh, Respondents contend the Chief ALJ ignored all of Respondents' documents and all of Respondents' witnesses (Respondents' Appeal Pet. at 1).

⁴⁹(...continued)

officers was proper because there is a presumption of regularity with respect to official acts of public officers); *In re C.I. Ferrie*, 54 Agric. Dec. 1033, 1053 (1995) (stating use of United States Department of Agriculture employees in connection with a referendum on the continuance of the Dairy Promotion and Research Order does not taint the referendum process, even if petitioners show some United States Department of Agriculture employees would lose their jobs upon defeat of the Dairy Promotion and Research Order, because a presumption of regularity exists with respect to official acts of public officers); *In re Mil-Key Farm, Inc.*, 54 Agric. Dec. 26, 55 (1995) (stating, without a showing that the official acts of the Secretary of Agriculture are arbitrary, the Secretary of Agriculture's actions are presumed to be valid); *In re Hershey Chocolate U.S.A.*, 53 Agric. Dec. 17, 55 (1994) (stating, without a showing that the official acts of the Secretary of Agriculture are arbitrary, the Secretary of Agriculture's actions are presumed to be valid), *aff'd*, No. 1:CV-94-945 (M.D. Pa. Feb. 3, 1995); *In re King Meat Co.*, 40 Agric. Dec. 1468, 1494 (1981) (stating there is a presumption of regularity with respect to the issuance of instructions as to grading methods and procedures by the Chief of the Meat Grading Branch, Food Safety and Quality Service, United States Department of Agriculture), *aff'd*, No. CV 81-6485 (C.D. Cal. Oct. 20, 1982), *remanded*, No. CV 81-6485 (C.D. Cal. Mar. 25, 1983) (to consider newly discovered evidence), *order on remand*, 42 Agric. Dec. 726 (1983), *aff'd*, No. CV 81-6485 (C.D. Cal. Aug. 11, 1983) (original order of Oct. 20, 1982, reinstated *nunc pro tunc*), *aff'd*, 742 F.2d 1462 (9th Cir. 1984) (unpublished) (not to be cited as precedent under 9th Circuit Rule 21); *In re Gold Bell-I&S Jersey Farms, Inc.*, 37 Agric. Dec. 1336, 1361 (1978) (rejecting respondent's theory that United States Department of Agriculture shell egg graders switched cases of eggs to discredit respondent, in view of the presumption of regularity supporting acts of public officials), *aff'd*, No. 78-3134 (D.N.J. May 25, 1979), *aff'd mem.*, 614 F.2d 770 (3d Cir. 1980).

As an initial matter, Respondents failed to appear at the October 24-26, 2006, hearing and no witnesses appeared on Respondents' behalf. As Respondents had no witnesses, I must reject Respondents' contention that the Chief ALJ erroneously ignored Respondents' witnesses. Moreover, I reject Respondents' contention that the Chief ALJ erroneously ignored Respondents' filings. In the absence of clear evidence to the contrary, public officers are presumed to have properly discharged their official duties.⁵⁰ Administrative law judges must consider the record in a proceeding prior to the issuance of a decision in that proceeding.⁵¹ An administrative law judge is presumed to have considered the record prior to the issuance of his or her decision, and Respondents provide no basis for their contention that the Chief ALJ erroneously ignored their filings.

**Indefinite Suspension of Inspection Services
From Frank's Wholesale Meats**

Complainant seeks an order indefinitely suspending inspection services under the Federal Meat Inspection Act and the Poultry Products Inspection Act from "Respondents and *its* owners, officers, operators, partners, affiliates, successors, or assigns"⁵² and the Chief ALJ ordered the indefinite suspension of "Frank Craig and Jean Craig doing business as Frank's Wholesale Meats, *its* owners, officers, directors, partners, successors

⁵⁰*Id.*

⁵¹*See* 5 U.S.C. § 556(d).

⁵²Compl. at 5 (emphasis added).

and assigns, elected or incorporated.”⁵³ The record indicates Respondents are individuals merely doing business as Frank’s Wholesale Meats and Frank’s Wholesale Meats has no legal existence. Nonetheless, I order the indefinite suspension of both Respondents and Frank’s Wholesale Meats because Frank’s Wholesale Meats applied for a grant of inspection and the Food Safety and Inspection Service issued a grant of inspection to Frank’s Wholesale Meats.⁵⁴

For the foregoing reasons, the following Order should be issued.

ORDER

Inspection services under title I of the Federal Meat Inspection Act and under the Poultry Products Inspection Act are suspended indefinitely from Respondents and Frank’s Wholesale Meats, its owners, officers, directors, operators, partners, affiliates, successors, and assigns, elected or incorporated. This Order shall become effective 30 days after service of the Order on Respondents.

Done at Washington, DC

February 21, 2007

William G. Jenson
Judicial Officer

⁵³Tr. III at 24-25 (emphasis added).

⁵⁴CX 4.