

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P & S Docket No. D-10-0296
)
H.D. Edwards,)
)
Respondent) **Order Denying Late Appeal**

PROCEDURAL HISTORY

Alan R. Christian, Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture [hereinafter the Deputy Administrator], instituted this disciplinary administrative proceeding by filing a Complaint on May 27, 2010. The Deputy Administrator instituted the proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181-229b) [hereinafter the Packers and Stockyards Act]; the regulations issued under the Packers and Stockyards Act (9 C.F.R. pt. 201) [hereinafter the Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

The Deputy Administrator alleges H.D. Edwards: (1) operated as a dealer, buying and selling livestock, in commerce, for his own account, without maintaining an adequate

bond or bond equivalent, in willful violation of 7 U.S.C. § 213(a) and 9 C.F.R. § 201.29; and (2) purchased livestock and failed to pay, when due, the full purchase price of the livestock, in willful violation of 7 U.S.C. §§ 213(a) and 228b (Compl. ¶¶ II-V). On June 28, 2010, H.D. Edwards filed a response to the Complaint in which he denied the material allegations of the Complaint.

On December 5, 2011, Administrative Law Judge Jill S. Clifton [hereinafter the ALJ] conducted a hearing in Tucson, Arizona. H.D. Edwards appeared pro se. Brian P. Sylvester, Office of the General Counsel, United States Department of Agriculture, Washington, DC, represented the Deputy Administrator. H.D. Edwards testified on behalf of himself. The Deputy Administrator called four witnesses.¹ H.D. Edwards introduced one exhibit, which was admitted into evidence. The Deputy Administrator introduced 21 exhibits, which were admitted into evidence.

The parties agreed to the ALJ's issuance of an oral decision (Tr. 299). At the close of the hearing, the ALJ issued an oral decision concluding that H.D. Edwards violated the Packers and Stockyards Act and the Regulations, as alleged in the Complaint, and ordering H.D. Edwards to cease and desist from violating the Packers and Stockyards Act and the Regulations (Tr. 299-310). On December 21, 2011, the Deputy Administrator filed a motion requesting that the ALJ reconsider the December 5, 2011, oral decision.

¹Transcript references are designated "Tr."

On January 5, 2012, H.D. Edwards filed a response opposing the Deputy Administrator's motion for reconsideration.

On January 6, 2012, the ALJ issued a written Decision and Order in which the ALJ reiterated the conclusion that H.D. Edwards violated the Packers and Stockyards Act and the Regulations, as alleged in the Complaint, and again ordered H.D. Edwards to cease and desist from violating the Packers and Stockyards Act and the Regulations (ALJ's Decision and Order at 5-7 ¶¶ 19, 23). On January 31, 2012, the Deputy Administrator filed Complainant's Appeal Petition. On March 5, 2012, H.D. Edwards filed a response to Complainant's Appeal Petition. On March 7, 2012, 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 an administrative law judge may issue a decision orally at the close of the hearing,² that the issuance date of an oral decision is the date the oral decision is announced,³ and that the oral decision becomes effective 35 days after the issuance of the decision.⁴

²7 C.F.R. § 1.142(c)(1).

³7 C.F.R. § 1.142(c)(2).

⁴7 C.F.R. § 1.142(c)(4).

The ALJ announced the oral decision at the close of the hearing on December 5, 2011.⁵ Therefore, the issuance date of the ALJ's decision is December 5, 2011, and the effective date of the ALJ's decision is January 9, 2012. The Deputy Administrator filed an appeal petition on January 31, 2012, 22 days after the ALJ's December 5, 2011, decision became effective. 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.⁶ Therefore, I have no jurisdiction to hear the Deputy Administrator's appeal petition.

⁵The ALJ subsequently issued a written Decision and Order but did not vacate the oral decision announced at the close of the December 5, 2011, hearing.

⁶*See, e.g., In re Timothy Mays* (Order Denying Late Appeal), ___ Agric. Dec. ___, slip op. at 4 (Feb. 5, 2010) (dismissing the respondent's appeal petition filed 1 week after the administrative law judge's decision became final); *In re David L. Noble* (Order Denying Late Appeal), 68 Agric. Dec. 1060 (2009) (dismissing the respondent's appeal petition filed 1 day after the administrative law judge's decision became final); *In re Michael Claude Edwards* (Order Denying Late Appeal), 66 Agric. Dec. 1362 (2007) (dismissing the respondent's appeal petition filed 6 days after the administrative law judge's decision became final); *In re Tung Wan Co.* (Order Denying Late Appeal), 66 Agric. Dec. 939 (2007) (dismissing the respondent's appeal petition filed 41 days after the chief administrative law judge's decision became final); *In re Tim Gray* (Order Denying Late Appeal), 64 Agric. Dec. 1699 (2005) (dismissing the respondent's appeal petition filed 1 day after the chief administrative law judge's decision became final); *In re Jozset Mokos* (Order Denying Late Appeal), 64 Agric. Dec. 1647 (2005) (dismissing the respondent's appeal petition filed 6 days after the chief administrative law judge's decision became final); *In re Ross Blackstock* (Order Denying Late Appeal), 63 Agric. Dec. 818 (2004) (dismissing the respondent's appeal petition filed 2 days after the administrative law judge's decision became final); *In re David Gilbert* (Order Denying Late Appeal), 63 Agric. Dec. 807 (2004) (dismissing the respondent's appeal petition filed 1 day after the administrative law judge's decision became final); *In re Vega Nunez* (Order Denying Late Appeal), 63 Agric. Dec. 766 (2004) (dismissing the respondent's appeal petition filed on the day the administrative law judge's decision became final).

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 the Deputy Administrator's filing an appeal petition after the ALJ's decision became final.

The jurisdictional bar under the Rules of Practice, which precludes the Judicial Officer from hearing an appeal that is filed after an administrative law judge's decision becomes final, is consistent with the judicial construction of the Administrative Orders Review Act ("Hobbs Act"). As stated in *Illinois Cent. Gulf R.R. v. ICC*, 720 F.2d 958, 960 (7th Cir. 1983) (footnote omitted):

The Administrative Orders Review Act ("Hobbs Act") requires a petition to review a final order of an administrative agency to be brought within sixty days of the entry of the order. 28 U.S.C. § 2344 (1976). This sixty-day time limit is jurisdictional in nature and may not be enlarged by the courts. *Natural Resources Defense Council v. Nuclear Regulatory Commission*, 666 F.2d 595, 602 (D.C. Cir. 1981). The purpose of the time limit is to impart finality into the administrative process, thereby conserving administrative resources and protecting the reliance interests of those who might conform their conduct to the administrative regulations. *Id.* at 602.^[7]

⁷*Accord Brazoria County v. EEOC*, 391 F.3d 685, 688 (5th Cir. 2004) (stating the 60-day period to file a petition for review of an agency order in 28 U.S.C. § 2344 is jurisdictional and cannot be judicially altered or expanded); *Jem Broad. Co. v. FCC*, 22 F.3d 320, 324-26 (D.C. Cir. 1994) (stating the court's baseline standard long has been that statutory limitations on petitions for review are jurisdictional in nature and

(continued...)

Accordingly, the Deputy Administrator's appeal petition must be denied since it is too late for the matter to be further considered.

For the foregoing reasons, the following Order is issued.

ORDER

The Deputy Administrator's appeal petition, filed January 31, 2012, is denied.

Done at Washington, DC

March 15, 2012

William G. Jenson
Judicial Officer

⁷(...continued)
appellant's petition filed after the 60-day limitation in the Hobbs Act will not be entertained); *Friends of Sierra R.R. v. ICC*, 881 F.2d 663, 666 (9th Cir. 1989) (stating the time limit in 28 U.S.C. § 2344 is jurisdictional), *cert. denied sub nom. Tuolumne Park & Recreation Dist. v. ICC*, 493 U.S. 1093 (1990); *California Ass'n of the Physically Handicapped v. FCC*, 833 F.2d 1333, 1334 (9th Cir. 1988) (holding the time limit in 28 U.S.C. § 2344 is jurisdictional).