

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) A.Q. Docket No. 09-0033
)
David L. Noble,)
d/b/a Noble Farms,)
)
Respondent) **Order Denying Late Appeal**

PROCEDURAL HISTORY

Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], instituted this administrative proceeding by filing a Complaint on November 20, 2008. The Administrator instituted the proceeding under the Animal Health Protection Act, as amended (7 U.S.C. §§ 8301-8321) [hereinafter the Animal Health Protection Act]; regulations promulgated under the Animal Health Protection Act (9 C.F.R. §§ 77.1-.41) [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) and the Rules of Practice Governing Proceedings Under Certain Acts (9 C.F.R. pt. 99) [hereinafter the Rules of Practice].

The Administrator alleges David L. Noble violated the Animal Health Protection Act and the Regulations. On April 22, 2009, Mr. Noble filed a timely response in which he admitted all the material allegations of the Complaint. On October 14, 2009, Administrative Law Judge Peter M. Davenport [hereinafter the ALJ] issued a Decision and Order: (1) concluding Mr. Noble violated the Animal Health Protection Act and the Regulations, as alleged in the Complaint; and (2) assessing Mr. Noble a \$5,000 civil penalty (Decision and Order at 2). The Hearing Clerk served Mr. Noble with the ALJ's Decision and Order on October 19, 2009.¹

On November 23, 2009, the Assistant Hearing Clerk issued a Notice of Effective Date of Default Decision and Order informing Mr. Noble and the Administrator that the ALJ's Decision and Order became effective on November 23, 2009. On November 24, 2009, Mr. Noble filed an appeal to the Judicial Officer. On December 14, 2009, the Administrator filed a Response to Appeal Petition. On December 15, 2009, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision.

CONCLUSION BY THE JUDICIAL OFFICER

Section 1.145(a) of the Rules of Practice (7 C.F.R. § 1.145(a)) provides that an administrative law judge's written decision must be appealed to the Judicial Officer within 30 days after service; therefore, Mr. Noble was required to file his appeal petition

¹United States Postal Service Domestic Return Receipt for article number 7004 2510 0003 7022 7480.

with the Hearing Clerk no later than November 18, 2009. 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.² The ALJ's Decision and Order became final on November 23, 2009. Mr. Noble filed his appeal petition on November 24, 2009, 1 day after the ALJ's Decision and Order became final. Therefore, I have no jurisdiction to hear Mr. Noble's appeal petition.

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.

²See, e.g., *In re Michael Claude Edwards*, 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.*, 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*, 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*, 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*, 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*, 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*, 63 Agric. Dec. 766 (2004) (dismissing the respondent's appeal petition filed on the day the administrative law judge's decision became final).

Therefore, under the Rules of Practice, I cannot extend the time for Mr. Noble's filing an appeal petition after the ALJ's Decision and Order became final.

Moreover, 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 602.³

Accordingly, Mr. Noble'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.

³*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 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).

ORDER

1. David L. Noble's appeal petition, filed November 24, 2009, is denied.
2. Administrative Law Judge Peter M. Davenport's Decision and Order, filed October 14, 2009, is the final decision in this proceeding.

Done at Washington, DC

December 17, 2009

William G. Jenson
Judicial Officer