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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	P. & S. Docket No. 15-0057
	)	
Hubert Dennis Edwards,	)	
	)	
Respondent	)	**Order Denying Late Appeal**

PROCEDURAL HISTORY

Susan B. Keith, Deputy Administrator, Packers and Stockyard Program, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture [the Deputy Administrator], instituted this disciplinary administrative proceeding by filing a Complaint on January 15, 2015. The Deputy Administrator instituted the proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181-229b) [the Packers and Stockyards Act]; the regulations issued pursuant to the Packers and Stockyards Act (9 C.F.R. pt. 201) [the Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary of Agriculture Under Various Statutes (7 C.F.R. §§ 1.130-.151) [the Rules of Practice].

The Deputy Administrator alleges Hubert Dennis Edwards willfully violated the Packers and Stockyards Act and the Regulations.[1] On February 11, 2015, Mr. Edwards filed an answer in which he denied the material allegations of the Complaint. On June 23, 2015, the Deputy Administrator filed a Motion for Summary Judgment, and on August 14, 2015, Mr. Edwards

[1]Compl. ¶¶ II-V.

filed a response in opposition to the Deputy Administrator's Motion for Summary Judgment.

On December 15, 2015, Acting Chief Administrative Law Judge Janice K. Bullard [the Chief ALJ] issued a Decision and Order on Grant of Summary Judgment [Decision and Order]: (1) concluding Mr. Edwards willfully violated the Packers and Stockyards Act and the Regulations, as alleged in the Complaint; (2) ordering Mr. Edwards to cease and desist from violating the Packers and Stockyards Act and the Regulations; (3) prohibiting Mr. Edwards from engaging in activities for which registration is required under the Packers and Stockyards Act until Mr. Edwards demonstrates to the Grain Inspection, Packers and Stockyards Administration that he has an adequate bond or bond equivalent and is in full compliance with the Packers and Stockyards Act; and (4) assessing Mr. Edwards a $12,500 civil penalty.[2]

On December 21, 2015, the Hearing Clerk served Mr. Edwards with the Chief ALJ's Decision and Order by certified mail.[3] On January 28, 2016, Mr. Edwards appealed the Chief ALJ's Decision and Order to the Judicial Officer. On February 2, 2016, the Deputy Administrator filed Complainant's Response in Opposition to Respondent's Appeal Petition. On February 4, 2016, 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 limit the time during which a party may appeal an administrative law judge's written decision to the Judicial Officer to a 30-day period after the party receives

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[2]Chief ALJ's Decision and Order at 18-19.

[3]United States Postal Service Tracking for article number 7004 2510 0003 7022 7640.

service of the administrative law judge's written decision.[4] The Hearing Clerk served Mr. Edwards with the Chief ALJ's Decision and Order on December 21, 2015;[5] therefore, Mr. Edwards was required to file an appeal petition with the Hearing Clerk no later than January 20, 2016. Instead, Mr. Edwards filed his appeal petition with the Hearing Clerk on January 28, 2016. Therefore, I find Mr. Edwards's appeal petition is late-filed.

Moreover, in accordance with the Rules of Practice, the Chief ALJ's Decision and Order became final 35 days after the Hearing Clerk served Mr. Edwards with the Chief ALJ's Decision and Order,[6] and, under the Rules of Practice, the Judicial Officer has no jurisdiction to hear an appeal that is filed after an administrative law judge's decision becomes final.[7] The Hearing

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[4]7 C.F.R. § 1.145(a).

[5]See note 3.

[6]7 C.F.R. § 1.142(c)(4); Chief ALJ's Decision and Order at 19.

[7]*E.g.*, Rosberg (Order Denying Late Appeal), FMIA Docket Nos. 14-0094, 14-0095, 2014 WL 7405834 (U.S.D.A. Sept. 10, 2014) (dismissing the respondents' appeal petition filed 1 day after the administrative law judge's decision became final); Piedmont Livestock, Inc. (Order Denying Late Appeal), P. & S. Docket No. 13-0087, 2013 WL 8214626 (U.S.D.A. Apr. 29, 2013) (dismissing Piedmont Livestock, Inc.'s appeal petition filed 3 days after the chief administrative law judge's decision became final and dismissing Joseph Ray Jones's appeal petition filed 1 day after the chief administrative law judge's decision became final); Custom Cuts, Inc. (Order Denying Late Appeal), PACA Docket Nos. 12-0443, 12-0444, 2013 WL 8213598 (U.S.D.A. Feb. 20, 2013) (dismissing the respondents' appeal petition filed 1 month 27 days after the chief administrative law judge's decision became final); Self (Order Denying Late Appeal), P. & S. Docket No. D-12-0167, 71 Agric. Dec. 1169 (U.S.D.A. Sept. 24, 2012) (dismissing the respondent's appeal petition filed 18 days after the chief administrative law judge's decision became final); Mays (Order Denying Late Appeal), FCIA Docket No. 08-0153, 69 Agric. Dec. 631 (U.S.D.A. Feb. 5, 2010) (dismissing the respondent's appeal petition filed 1 week after the administrative law judge's decision became final); Noble (Order Denying Late Appeal), A.Q. Docket No. 09-0033, 68 Agric. Dec. 1060 (U.S.D.A. Dec. 17, 2009) (dismissing the respondent's appeal petition filed 1 day after the administrative law judge's decision became final); Edwards (Order Denying Late Appeal), P. & S. Docket No. D-06-0020, 66 Agric. Dec. 1362 (U.S.D.A. Oct. 30, 2007) (dismissing the respondent's appeal petition filed 6 days after the

Clerk served Mr. Edwards with the Chief ALJ's Decision and Order on December 21, 2015;[8] therefore, the Chief ALJ's Decision and Order became final on January 25, 2016. Mr. Edwards filed his appeal petition on January 28, 2016. Therefore, I have no jurisdiction to hear Mr. Edwards'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. Therefore, under the Rules of Practice, I cannot extend the time for Mr. Edwards's filing an appeal petition after the Chief ALJ's Decision and Order became final. Accordingly, Mr. Edwards's appeal petition must be denied.

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administrative law judge's decision became final); Tung Wan Co. (Order Denying Late Appeal), PACA Docket No. D-06-0019, 66 Agric. Dec. 939 (U.S.D.A. Apr. 25, 2007) (dismissing the respondent's appeal petition filed 41 days after the chief administrative law judge's decision became final); Gray (Order Denying Late Appeal), HPA Docket No. 01-D022, 64 Agric. Dec. 1699 (U.S.D.A. Oct. 17, 2005) (dismissing the respondent's appeal petition filed 1 day after the chief administrative law judge's decision became final); Mokos (Order Denying Late Appeal), A.Q. Docket No. 03-0003, 64 Agric. Dec. 1647 (U.S.D.A. Sept. 6, 2005) (dismissing the respondent's appeal petition filed 6 days after the chief administrative law judge's decision became final); Blackstock (Order Denying Late Appeal), FCIA Docket No. 02-0007, 63 Agric. Dec. 818 (U.S.D.A. July 13, 2004) (dismissing the respondent's appeal petition filed 2 days after the administrative law judge's decision became final); Gilbert (Order Denying Late Appeal), AWA Docket No. 04-0001, 63 Agric. Dec. 807 (U.S.D.A. Nov. 30, 2004) (dismissing the respondent's appeal petition filed 1 day after the administrative law judge's decision became final); Nunez (Order Denying Late Appeal), A.Q. Docket No. 03-0002, 63 Agric. Dec. 766 (U.S.D.A. Sept. 8, 2004) (dismissing the respondent's appeal petition filed on the day the administrative law judge's decision became final).

[8]See note 3.

For the foregoing reasons, the following Order is issued.

ORDER

1. Mr. Edwards's appeal petition, filed January 28, 2016, is denied.

2. The Chief ALJ's Decision and Order, issued December 15, 2015, is the final decision in this proceeding.

Done at Washington, DC

February 10, 2016

[redacted]

William G. Jenson
Judicial Officer