

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWA Docket No. 15-0180
)
Oxcart Industry Services, Inc.,)
d/b/a Lisa's Critters for Seniors,)
)
Petitioner) **Order Dismissing Appeal**

PROCEDURAL HISTORY

On December 7, 2015, Oxcart Industry Services, Inc., filed Petitioner/Applicant's Motion for Summary Decision [Motion for Summary Decision]. On December 31, 2015, the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [Administrator], filed a response in opposition to Oxcart Industry Services, Inc.'s Motion for Summary Decision.

On January 8, 2016, Acting Chief Administrative Law Judge Janice K. Bullard [Chief ALJ] issued an Order Denying Motion for Summary Decision and Resetting Deadlines for Submissions [Order Denying Motion for Summary Decision]. On February 8, 2016, Oxcart Industry Services, Inc., appealed the Chief ALJ's Order Denying Motion for Summary Decision to the Judicial Officer. On February 9, 2016, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision.

CONCLUSIONS BY THE JUDICIAL OFFICER

Based upon a careful consideration of the record, I conclude Oxcart Industry Services, Inc.'s appeal of the Chief ALJ's January 8, 2016, Order Denying Motion for Summary Decision must be dismissed.

The rules of practice applicable to this proceeding¹ provide only for appeal of an administrative law judge's decision to the Judicial Officer and limit the time during which a party may file an appeal to a 30-day period after receiving service of an administrative law judge's written decision and to a 30-day period after issuance of an administrative law judge's oral decision, as follows:

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk.

7 C.F.R. § 1.145(a). The Rules of Practice define the word "decision," as follows:

1.132 Definitions.

As used in this subpart, the terms as defined in the statute under which the proceeding is conducted and in the regulations, standards, instructions, or orders issued thereunder, shall apply with equal force and effect. In addition and except as may be provided otherwise in this subpart:

....

Decision means: (1) The Judge's initial decision made in accordance with the provisions of 5 U.S.C. 556 and 557, and includes the Judge's (i) findings and conclusions and the reasons or basis therefor on all material issues of fact, law

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-.151) [the Rules of Practice].

or discretion, (ii) order, and (iii) rulings on proposed findings, conclusions and orders submitted by the parties; and

(2) The decision and order by the Judicial Officer upon appeal of the Judge's decision.

7 C.F.R. § 1.132.

The Chief ALJ's January 8, 2016, Order Denying Motion for Summary Decision is not a "decision" as that word is defined in the Rules of Practice. Moreover, the Chief ALJ has not yet issued an initial decision in this proceeding in accordance with 5 U.S.C. §§ 556 and 557.

Therefore, Oxcart Industry Services, Inc.'s February 8, 2016, appeal petition must be rejected as premature.

The Rules of Practice provide that, within specified time limits after the administrative law judge has issued a decision, a party who disagrees with any ruling by the administrative law judge may appeal the administrative law judge's decision to the Judicial Officer;² however, the Rules of Practice do not permit an interlocutory appeal of an administrative law judge's ruling.³

²7 C.F.R. § 1.145(a).

³Spinale (Order Dismissing Interlocutory Appeal), PACA Docket No. D-09-0189, PACA-APP Docket No. 10-0138, 2014 WL 4311072 (U.S.D.A. Aug. 5, 2014) (dismissing the respondents' interlocutory appeal of an administrative law judge's ruling denying the respondents' request for continuance of the hearing); Lion Raisins, Inc. (Order Dismissing Appeal as to Al Lion, Jr., Dan Lion, and Jeff Lion), I&G Docket No. 01-0001, 63 Agric. Dec. 830, 834 (U.S.D.A. July 28, 2004) (dismissing the respondents' interlocutory appeal of an administrative law judge's ruling denying the respondents' motion for summary judgment); Velasam Veal Connection (Order Dismissing Appeal), FMIA Docket No. 96-8, PPIA Docket No. 96-7, 55 Agric. Dec. 300, 304 (U.S.D.A. June 25, 1996) (dismissing the respondents' interlocutory appeal of an administrative law judge's postponement of a ruling on respondents' request for reinstatement of inspection services and immediate hearing); Feuerstein, D.V.M. (Order Dismissing Appeal), V.A. Docket No. 88-2, 48 Agric. Dec. 896 (U.S.D.A. Dec. 19, 1989) (dismissing the respondent's interlocutory appeal of an administrative law judge's ruling denying the respondent's motion to dismiss); Landmark Beef Processors, Inc. (Order Dismissing Appeal), P. & S. Docket No. 6174, 43 Agric. Dec. 1541 (U.S.D.A. Oct. 2, 1984) (dismissing the respondent's interlocutory appeal filed prior to the respondent's receiving service of an

administrative law judge's decision); *LeaVell* (Order Dismissing Appeal by Respondent Spencer Livestock, Inc.), P. & S. Docket No. 5707, 40 Agric. Dec. 783 (U.S.D.A. Dec. 4, 1980) (dismissing the respondent's interlocutory appeal of an administrative law judge's ruling denying the respondent's motion to dismiss).

For the foregoing reasons, the following Order is issued.

ORDER

Oxcart Industry Services, Inc.'s February 8, 2016, appeal of the Chief ALJ's January 8, 2016, Order Denying Motion for Summary Decision, is dismissed.

Done at Washington, DC

February 11, 2016

William G. Jenson
Judicial Officer