

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) A.Q. Docket No. 07-0103
)
Roy Joseph Simon, d/b/a)
Joe Simon Enterprises, Inc.,)
)
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 May 7, 2007. The Administrator alleges that Roy Joseph Simon, d/b/a Joe Simon Enterprises, Inc., committed violations of sections 901-905 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. § 1901 note) [hereinafter the Commercial Transportation of Equine for Slaughter Act] and the regulations issued under the Commercial Transportation of Equine for Slaughter Act (9 C.F.R. pt. 88) [hereinafter the Regulations]. On June 15, 2007, Mr. Simon filed a timely answer denying the allegations in the Complaint.

On October 21 and 22, 2008, then Chief Administrative Law Judge Marc R. Hillson [hereinafter the Chief ALJ]¹ conducted a hearing in Minneapolis, Minnesota. On August 5, 2009, after the parties filed post-hearing briefs, the Chief ALJ issued a Decision in which he found Mr. Simon committed numerous violations of the Commercial Transportation of Equine for Slaughter Act and the Regulations and assessed Mr. Simon a \$36,500 civil penalty.

The Administrator received the Chief ALJ's Decision on August 6, 2009.² Mr. Simon received the Chief ALJ's Decision on August 11, 2009.³ On September 10, 2009, the Administrator filed "Complainant's Appeal Petition" [hereinafter Appeal Petition] and a brief in support of the Appeal Petition. On December 4, 2009, Mr. Simon filed "Respondent's Combined Response to Complainant's Appeal Petition Pursuant to 7 C.F.R. § 1.145(b), or, in the Alternative, Petition to Reopen Hearing, for Rehearing, or Reargument of Proceeding for Limited Purposes Pursuant to 7 C.F.R. § 1.146" [hereinafter Response to the Administrator's Appeal Petition] and a brief in support of the Response to the Administrator's Appeal Petition. On December 7, 2009, the Hearing Clerk transmitted the record to me for consideration and decision.

¹The Chief ALJ retired from federal service effective January 2, 2010.

²United States Department of Agriculture, Office of Administrative Law Judges, Hearing Clerk's Office, Request for Special Service, dated August 6, 2009.

³United States Postal Service Domestic Return Receipt for article number 7004 1160 0004 4085 9735.

CONCLUSIONS BY THE JUDICIAL OFFICER

The Administrator's Appeal Petition

The rules of practice applicable to the instant proceeding⁴ provide that a party must appeal an administrative law judge's written decision to the Judicial Officer within 30 days after that party receives service of the written 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, . . . 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). Therefore, the Administrator was required to file his Appeal Petition with the Hearing Clerk no later than 30 days after receiving service of the Chief ALJ's decision: namely, no later than September 8, 2009.⁵ Instead, the Administrator filed the

⁴The rules of practice applicable to the instant proceeding are 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].

⁵The Administrator received service of the Chief ALJ's Decision on August 6, 2009. Thirty days after the date the Administrator received service of the Chief ALJ's Decision was Saturday, September 5, 2009. The Rules of Practice provide 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

(continued...)

Appeal Petition 2 days late, on September 10, 2009. Therefore, I deny the Administrator's Appeal Petition as untimely.

Mr. Simon's Response to the Administrator's Appeal

The Rules of Practice provide that an administrative law judge's decision becomes final and effective 35 days after service upon the respondent, as follows:

§ 1.142 Post-hearing procedure.

....

(c) *Judge's decision.* . . .

....

(4) The Judge's decision shall become final and effective without further proceedings . . . if the decision is in writing, 35 days after the date of service thereof upon the respondent, unless there is an appeal to the Judicial Officer by a party to the proceeding pursuant to § 1.145[.]

7 C.F.R. § 1.142(c)(4). Neither the Administrator nor Mr. Simon appealed the Chief ALJ's Decision to the Judicial Officer within 30 days after receiving service of the Chief ALJ's Decision, as provided in 7 C.F.R. § 1.145. Therefore, the Chief ALJ's Decision became final and effective 35 days after the Hearing Clerk served Mr. Simon with the Chief ALJ's Decision. The Hearing Clerk served Mr. Simon with the Chief ALJ's

⁵(...continued)

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, September 5, 2009, was, because of the Labor Day holiday, Tuesday, September 8, 2009. Therefore, the Administrator was required to file the Appeal Petition with the Hearing Clerk no later than September 8, 2009.

Decision on August 11, 2009,⁶ and the Chief ALJ's Decision became final and effective on September 15, 2009. The Judicial Officer has no jurisdiction over a proceeding after an administrative law judge's decision becomes final and effective. Therefore, I have no jurisdiction to consider Mr. Simon's Response to the Administrator's Appeal Petition.

For the foregoing reasons, the following Order is issued.

ORDER

1. The Administrator's Appeal Petition, filed September 10, 2009, is denied.
2. The Chief ALJ's Decision, filed August 5, 2009, is the final decision in the instant proceeding.

Done at Washington, DC

June 23, 2010

William G. Jenson
Judicial Officer

⁶See note 3.