

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
Danny Burks, an individual;) HPA Docket No. 17-0027
Hayden Burks, an individual;¹ and) HPA Docket No. 17-0028
Sonny McCarter, an individual,²) HPA Docket No. 17-0029
)
Respondents.)

REC'D - USDA/DALJ/OHC
2019 MAY 7 PM2:32

**ORDER GRANTING COMPLAINANT'S
MOTION TO LIFT STAY ORDER AS TO DANNY BURKS**

On April 12, 2019, Complainant, the Administrator of the Animal and Plant Health Inspection Service ("APHIS"), filed a motion to lift the Stay Order ("Motion") issued by the Judicial Officer in the above-captioned matter on October 2, 2017. The Motion was based on section 1.143 of the Rules of Practice (7 C.F.R. § 1.143(b)), on all the pleadings and papers on file in this docket, and on the following asserted material facts:

1. On May 30, 2017, the Chief Administrative Law Judge issued a default decision and order ("Initial Decision and Order") in this case.
2. On July 19, 2017, the Judicial Officer issued a decision and order affirming the Initial Decision and Order.
3. On July 31, 2017, Respondent Danny Burks filed a petition for reconsideration. On August 22, 2017, the Judicial Officer denied the petition for reconsideration.
4. On September 21, 2017, Respondent Danny Burks filed a petition for review of the Judicial Officer's decision in the United States Court of Appeals for the Sixth Circuit.

¹ On December 19, 2017, a Consent Decision and Order was filed in HPA Docket No. 17-0029, which resolved this case as to Respondent Sonny McCarter.

² On March 31, 2017, a Consent Decision and Order was filed in HPA Docket No. 17-0028, which resolved this case as to Respondent Hayden Burks.

Burks v. U.S. Dep't of Agric., No. 17-4003 (6th Cir. 2017). On the same date, Respondent Danny Burks filed a request that the Judicial Officer issue a stay order.

5. On October 2, 2017, the Judicial Officer issued an order staying the July 19, 2017 Order pending the outcome of proceedings for judicial review. The Judicial Officer stated that “[t]his Stay Order as to Danny Burks shall remain effective until lifted by the Judicial Officer or vacated by a court of competent jurisdiction.” Stay Order at 2.
6. On May 30, 2018, the Court of Appeals denied Respondent Danny Burks’s petition for review. On July 23, 2018, the Court of Appeals issued its mandate.

Motion at 1-2.

Copies of the Court of Appeals order and mandate were attached to Complainant’s Motion. Respondent Danny Burks did not seek further review of the decision of the Court of Appeals, and the time for doing so has expired. Further, Respondent Danny Burks has not filed a response to Complainant’s Motion.³

Complainant’s Motion to Lift Stay Order is supported by good cause; accordingly, the Judicial Officer’s October 2, 2017 Stay Order as to Danny Burks is hereby LIFTED.

Copies of this Order shall be served by the Hearing Clerk upon each of the parties, with courtesy copies provided via email where available.

Issued this 7th day of May 2019, in Washington, D.C.


Bobbie J. McCartney
Judicial Officer

³ Pursuant to the Rules of Practice, “[w]ithin 20 days after service of any written motion or request . . . an opposing party may file a response to the motion or request.” 7 C.F.R. § 11.143(d). The Hearing Clerk’s records reflect that Respondents’ counsel was served with the Motion on April 16, 2019; therefore, Respondent had until May 6, 2019 to file a response thereto. Respondent has not filed a response.

Hearing Clerk's Office
U.S. Department of Agriculture
South Building, Room 1031
1400 Independence Avenue, S.W.
Washington, D.C. 20250-9203
Tel: 202-720-4443
Fax: 202-720-9776
SM.OHA.HearingClerks@OHA.USDA.GOV