

**Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division**

Joe Eideh d/b/a 7-Eleven 34428
Docket No. A-18-88
Decision No. 2879
July 13, 2018

**DECISION TO DECLINE REVIEW OF
ADMINISTRATIVE LAW JUDGE DECISION**

This case is before the Departmental Appeals Board (DAB) on a notice filed by Joe Eideh d/b/a 7-Eleven 34428 (Respondent) seeking to appeal a June 5, 2018 initial decision of an Administrative Law Judge, *Joe Eideh d/b/a 7-Eleven 34428*, DAB TB2782 (2018) (ALJ Decision). In that decision, the ALJ struck Respondent's answer to the complaint for failure to comply with judicial orders directing Respondent to respond to discovery requests made by the Center for Tobacco Products (CTP), and entered default judgment against Respondent, imposing a No-Tobacco-Sale Order for a period of 30 consecutive calendar days for six repeated violations of regulations found at 21 C.F.R. Part 1140 within a 36-month period.

We decline to review the ALJ Decision because Respondent did not file, within the 30-day time period for appealing an ALJ decision, a notice of appeal as required by the applicable regulations. A notice of appeal must "be accompanied by a written brief" and "must identify specific exceptions to the initial decision, must support each exception with citations to the record, and must explain the basis for each exception." 21 C.F.R. § 17.47(c); *see also Guidelines – Appellate Review of Decisions of Administrative Law Judges in Food and Drug Administration Tobacco Products Cases*¹ ("Your notice of appeal must be accompanied by a written brief specifying each finding of fact and conclusion of law with which you disagree, and your basis for contending that each such finding or conclusion is unsupported or incorrect.") (attached to ALJ Decision). The Board, "may, within [its] discretion, extend the initial 30-day period for an additional period of time if [the respondent] files a request for an extension within the initial 30-day period and shows good cause." *Id.* § 17.47(b)(2).

¹ A copy of the guidelines can be found at <https://www.hhs.gov/about/agencies/dab/different-appeals-at-dab/appeals-to-board/guidelines/fda-tobacco-decision-review/index.html>.

On June 23, 2018, Respondent submitted an initial filing that read in full:

Request for appeal
In response to the decision made in the case with doc # 17-6603
I am requesting an appeal.
Thanks
Joe [E]ideh
7-11 # 34428

Respondent's submission does not include a brief or allege any error in the ALJ Decision. Respondent has thus not identified any basis to disturb the ALJ's factual findings or legal conclusions on any issue, and the time for filing a notice of appeal, or for requesting an extension to file a notice of appeal, has expired. We therefore decline review of the ALJ's initial decision. Accordingly, the ALJ's initial decision becomes final and binding 30 days after this declination. *See* 21 C.F.R. §17.47(j).

_____/s/
Constance B. Tobias

_____/s/
Leslie A. Sussan

_____/s/
Christopher S. Randolph
Presiding Board Member