

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

Grady Gannam d/b/a Needful Things Smoke Shop  
Docket No. A-18-91  
Decision No. 2899  
October 4, 2018

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

This case is before the Departmental Appeals Board (DAB) on a notice filed by Grady Gannam d/b/a Needful Things Smoke Shop (Respondent) seeking to appeal an Order Denying a Motion to Reopen Default Judgment (Order) issued by an Administrative Law Judge (ALJ) on May 4, 2018. In that Order, the ALJ denied Respondent's motion because it failed to demonstrate that extraordinary circumstances prevented it from filing an answer in a timely manner. The ALJ's initial decision, *Grady Gannam d/b/a Needful Things Smoke Shop*, DAB TB2572 (2018), entered default judgment against Respondent and affirmed a \$559 civil money penalty imposed by the Center for Tobacco Products (CTP) for violations of regulations found at 21 C.F.R. Part 1140.

Either party "may appeal an initial decision, including a decision not to withdraw a default judgment..." *Id.* § 17.47(a). The notice of appeal must be filed within 30 days after the ALJ issues a decision. *Id.* § 17.47(b)(1). 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). Respondent was notified of the 30-day time requirement in the Guidelines for Appellate Review of Decision of Administrative Law Judges in Food and Drug Administration Tobacco Product Cases, which were included with both the May 4, 2018 Order and the March 29, 2018 Initial Decision and Default Judgment. To comply with the stated procedures, Respondent had to file an appeal by June 4, 2018. Respondent filed an appeal postmarked on June 19, 2018 – 46 days after the ALJ issued her Order. Respondent's appeal did not address the late filing nor request that the Board extend the initial 30-day filing period for an additional period of time.

On July 9, 2018, the Presiding Board Member (PBM) in this case issued an order requiring Respondent "to show cause on or before July 26, 2018 why this appeal should not be dismissed with prejudice for failure to file an appeal by the deadline set forth by the regulations." On August 21, 2018, the PBM issued a new order to show

cause, extending the deadline for Respondent to respond until September 3, 2018.<sup>1</sup> The August 21, 2018 order was returned to the DAB by the United States Postal Service, labeled “RETURN TO SENDER/UNCLAIMED/UNABLE TO FORWARD.” To date, Respondent has failed to respond to the PBM’s July 9, 2018 order.

Accordingly, we decline to review the Order 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 regulation. The ALJ’s initial decision becomes final and binding 30 days after this declination. *See* 21 C.F.R. §17.47(j).

/s/

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Constance B. Tobias

/s/

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Christopher S. Randolph

/s/

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Leslie A. Sussan  
Presiding Board Member

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<sup>1</sup> The first order to show cause, issued on July 9, 2018, was mailed to the same address that the ALJ mailed the initial decision and Order to, 823 Pacific Avenue, Santa Cruz, California 95060. The second order to show cause, issued on August 21, 2019, was mailed to the address provided by Respondent in his request for review, 728 Glorene Avenue, South Lake Tahoe, California 96150.