

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

AK, Inc. d/b/a Tesoro
Docket No. A-17-105
Decision No. 2815
September 1, 2017

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

This case is before the Departmental Appeals Board (DAB) on a notice filed by AK, Inc. d/b/a Tesoro (Respondent) seeking to appeal a June 19, 2017 initial decision of an Administrative Law Judge, *AK, Inc. d/b/a Tesoro*, DAB TB1509 (2017) (ALJ Decision). The ALJ entered default judgment against Respondent imposing a civil money penalty of \$2,200 after Respondent did not file an Answer, or request an extension of time within which to file an Answer, to a Complaint by the Center for Tobacco Products (CTP) that alleged that Respondent violated regulations prohibiting the sale of tobacco products to minors and requiring verification of the purchaser's age through photo identification four times within 24 months.

We decline to review the ALJ Decision because Respondent did not file with the Board a notice of appeal in the manner or time required by the applicable regulations. A notice of appeal "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* ("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). A notice of appeal "may be filed at any time within the 30 days after the [ALJ] issues an initial 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).

Instead, Respondent filed with the Board only an Answer, dated July 31, 2017, using the form sent to it with the Civil Remedies Division Guidance Establishing Procedures. Respondent's submission does not allege any error in the ALJ Decision. In addition, Respondent filed this submission with the Board via DAB E-File on August 3, 2017,^{*} more than 30 days after June 19, 2017, the date the ALJ Decision was issued and served on Respondent via DAB E-File. Respondent did not request an extension of time to file a notice of appeal that met the content requirements in the regulations, much less allege good cause for such an extension.

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/

Susan S. Yim

/s/

Christopher S. Randolph
Presiding Board Member

^{*} Respondent e-mailed the same document to the director of the DAB's Appellate Division on July 31, 2017, stating "Attached please find an appeal form for the decision on T-17-3602. I will follow this e-mail with a phone call for some clarification if needed." However, in response to a telephone inquiry by the director on August 2, 2017, Respondent asked that the Board disregard the e-mail.