

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

7 Eleven Inc. and All-Star Employee, Inc.
d/b/a 7-Eleven Store 10407B
Docket No. A-18-112
Decision No. 2896
September 18, 2018

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

On August 12, 2018, 7 Eleven Inc. and All Star Employee, Inc. d/b/a 7-Eleven Store 10407B (Respondent) filed a “Notice of Appeal and Request for Hearing” with the Appellate Division of the Departmental Appeals Board (Board). Respondent’s appeal is from a July 25, 2018 order issued by an administrative law judge (ALJ). The July 25th order¹ affirms a May 2, 2018 Initial Decision and Default Judgment (Initial Decision) in which the ALJ sustained a determination by the Center for Tobacco Products (CTP) of the U.S. Food and Drug Administration to impose a civil money penalty against Respondent for violating laws or regulations governing the sale and distribution of tobacco products.²

Applicable regulations required Respondent to file its notice of appeal with the Appellate Division no later than August 24, 2018 (that is, within 30 days after the ALJ issued the order affirming the Initial Decision). 21 C.F.R. § 17.47(b). The regulations also required Respondent to submit with the notice of appeal a “written brief” identifying its “exceptions” (objections) to the Initial Decision and stating the basis for each exception. *Id.* § 17.47(c). Respondent’s notice of appeal was timely filed but unaccompanied by a written brief stating exceptions to the ALJ’s Initial Decision and July 25, 2018 order.

On August 23, 2018, Respondent filed a document titled “Appellate Brief and Notice for Rehearing” with the ALJ, who treated it as a motion for reconsideration of his July 25th order. On September 17, 2018, the ALJ issued an “Order Denying Respondent’s Motion for Reconsideration.” The proceeding before the ALJ having concluded, Respondent’s appeal of the ALJ’s actions is now ripe for decision.

¹ The title of the July 25, 2018 order is “Order Affirming Initial Decision and Default Judgment and Dismissing Case.” The order was served electronically on the parties via DAB E-File.

² A typographical error in the ALJ’s Order Affirming Initial Decision and Default Judgment and Dismissing Case indicates that the Initial Decision was issued on May 5, 2018. In fact, the ALJ issued the Initial Decision on May 2, 2018.

We have examined the record of the proceeding conducted by the ALJ. We have also considered the arguments in the August 23, 2018 “Appellate Brief and Notice for Rehearing” (treating that document as the Respondent’s brief in support of the appeal). Based on our review of the entire record, we find no basis to modify or overturn the ALJ’s Initial Decision and July 25, 2018 order affirming that decision. We therefore decline review of those actions. The 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