

**U.S. Department of Agriculture  
Food and Nutrition Service  
Administrative Review Branch**

**Bps Fuel,**

**Appellant,**

**v.**

**Case Number: C0216654**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support the Retailer Operations Division's decision to permanently deny the application of Bps Fuel to participate in the Supplemental Nutrition Assistance Program (SNAP).

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it permanently denied the application of Bps Fuel.

**AUTHORITY**

7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1 provide that "A food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 ... may ... file a written request for review of the administrative action with FNS."

**CASE CHRONOLOGY**

On February 12, 2019, the Retailer Operations Division received an online application from Bps Fuel to participate in the SNAP as an authorized retail store. In response to question 16 of the application, the Appellant store answered "yes" to the question "Was any officer, owner, partner, member, and/or manager convicted of any crime after June 1, 1999?" The Appellant stated on the application that "5 U.S.C. § 552 (b)(6) & (b)(7)(C) HAD A MISDEMEANOR FOR PETTY THEFT, A MISUNDERSTANDING IN 2004. THE RESULT WAS A PROBATIONARY

PERIOD, NO TIME SERVED”

The Retailer Operations Division subsequently confirmed through court documents that **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, an owner of the Appellant store, was sentenced in 2004 under California Penal Code Section 484/488: Petty Theft for a theft committed on May 21, 2004. The sentencing order required the payment of a total fine **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

As a result of this information, in a letter dated March 18, 2019, the Retailer Operations Division informed the Appellant that the application of Bps Fuel to participate in the SNAP was permanently denied under 7 CFR § 278.1(k)(3) because the Appellant did not have the necessary business integrity under 7 CFR § 278.1(b)(3).

In a letter postmarked March 29, 2019, the Appellant, through counsel, requested an administrative review of the Retailer Operation Division’s decision to permanently deny the application of Bps Fuel. The request for administrative review was granted.

### STANDARD OF REVIEW

In appeals of adverse actions, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. That means an appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

### CONTROLLING LAW AND REGULATIONS

The controlling law in this matter is covered in the Food & Nutrition Act of 2008, as amended, 7 U.S.C. § 2018, and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.1(k) establishes the authority upon which the FNS shall deny the authorization of any firm authorized to participate in the program.

7 CFR § 278.1(b)(3)(i)(B) states:

FNS shall deny the authorization of any firm from participation in the program for a period of time as specified in paragraph (k) of this section based on consideration of information regarding the business integrity and reputation of the firm as follows ...

- (i) Conviction of or civil judgment against the owners, officers or managers of the firm for ... (B) Commission of embezzlement, **theft**, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice .... [Emphasis added.]

7 CFR § 278.1(k)(3)(i) states:

Firms for which records of criminal conviction or civil judgment exist that reflect on the business integrity of owners, officers, or managers as stipulated in § 278.1(b)(3)(i) **shall be denied authorization permanently** .... [Emphasis added]

### APPELLANT'S CONTENTIONS

The Appellant designated current counsel through a signed letter of representation. However, the authorized counsel, did not submit any contentions after submitting the request for administrative review. However, another attorney, allegedly representing the client, but without a signed letter of representation from the client, made several contentions which are summarized below. It should be noted that this second counsel did not respond to a request for a signed letter of representation; however, because these are the only contentions in the case they are included below:

- Cal. Pen. Code §488 is a misdemeanor. It would not bar the convicted owner from running for office in California or licensing in any number of fields. A misdemeanor is more serious than an infraction but less serious than a felony in California.
- The Federal regulation found at CFR 278.1(b)(3) and (k)(3) requires that FNS deny authorization of any firm participating as a SNAP retailer if there are records of a criminal conviction against the owners, officers, or managers for, "embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice." California draws a distinction between "theft," and "petty theft." Petty theft requires the value of the property stolen 5 U.S.C. § 552 (b)(6) & (b)(7)(C), the property was not taken directly off another person (such as a robbery or mugging offense), and the items stolen were not a gun or an automobile. Thus, a reasonable distinction can be drawn between "theft" as used in 7 CFR 278.1(b)(3) and the offense here because of the limitations placed in California on petty theft.
- Nearly 15 years ago, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) did something wrong. She did not seek to avoid responsibility for that wrongdoing, but fully admitted her crime. She has insisted on continuing her punishment long after the State of California would remove this stain from her record, if she asked them. She has not only led a blameless life since, she has gone over and beyond the call of duty to help women succeed in the difficult field of engineering. She has been publicly recognized for mentoring work. She is now a positive force for good. Her store would help people in an underserved neighborhood obtain proper food and nutrition.

The preceding may represent only a brief summary of the Appellant's contentions in this matter. However, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

### ANALYSIS AND FINDINGS

The case record documents that, in 2004, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, an owner of the Appellant store, was convicted of petty theft under California Penal Code Section 484/488 PC: Petty Theft. This review finds that the misdemeanor violation of the aforementioned state statute falls within the scope of a business integrity violation as contemplated by 7 CFR § 278.1(b)(3)(i) which states, in part:

FNS **shall deny the authorization of any firm** from participation in the program for a period of time as specified in paragraph (k) of this section **based on** consideration of information regarding **the business integrity and reputation of the firm** as follows ...

(i) **Conviction of or civil judgment against the owners**, officers or managers of the firm for:  
(B) Commission of embezzlement, **theft**, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice ....[Emphasis added.]

Further, the period of time is mandated by 7 CFR § 278.1(k)(3)(i) which states, in part:

Firms for which records of criminal conviction or civil judgment exist that reflect on the business integrity of owners, officers, or managers as stipulated in § 278.1(b)(3)(i) **shall be denied authorization permanently** .... [Emphasis added.]

The Federal regulations cited above make no distinction between misdemeanor or felony violations. Whether or not **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** can run for office in California or receive licensing from other agencies is not relevant to this case. In addition, unlike California law, the Federal SNAP regulations cited above do not make any distinction between theft and petty theft.

### **Scope of Business Integrity Regulations**

The Retailer Operations Division does not dispute that the Appellant store owner has completed restitution and other conditions related to her conviction in 2004. Nor is there any contention in the case that the Appellant has not led a model life since that offense. However, the USDA holds that the business integrity and reputation of a firm is critically important to the effective operation of the SNAP. Therefore, the criteria outlined in the regulations focuses on the business integrity and reputation of the owners, officers and management of firms seeking authorization in the SNAP. Prior convictions relating to business integrity, reflects on the ability of a firm to effectuate the purposes of, and abide by the rules governing, the program.

On this matter, the agency regulations **grant no discretion** to the Retailer Operations Division or to the administrative review officer. Under the strict language of the regulations, the fact that a convicted party has successfully fulfilled the terms of any sentencing, fines or adjudication for a business integrity conviction under 7 CFR § 278.1(b)(3)(i) or that such person may have not since that time committed any violations does not mean that the Appellant can now be authorized as a SNAP retailer. Under the circumstances of this case, the Federal SNAP regulation at 7 CFR § 278.1(k)(3)(i) grants no exceptions to a permanent denial for a business integrity conviction under 7 CFR § 278.1(b)(3)(i).

## **CONCLUSION**

The case record documents by a preponderance of the evidence that a store owner pleaded guilty to California Penal Code PC 484/488: Petty Theft and paid a fine. Based on the analysis above, the decision by the Retailer Operations Division to permanently deny the application of Bps Fuel to participate in the SNAP is sustained.

## **RIGHTS AND REMEDIES**

Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) addresses your right to a judicial review of this determination. Please note that if a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which you reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

Under the Freedom of Information Act, FNS is releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

RONALD C. GWINN  
Administrative Review Officer

May 7, 2019