

HORSE PROTECTION ACT

COURT DECISION

WINSTON T. GROOVER, JR., a/k/a WINKY GROOVER v. USDA.

No. 04-4519.

Filed October 31, 2005.

(Cite as:

HPA – Soring – Horse protection – Entry – Unilaterally sore – Scar rule – Preponderance of the evidence – Burden of proof – Past recollection recorded – Weight of the evidence – Substantial evidence – Disqualification.

The court upheld the Decision of the Judicial Officer (JO). Upon review of the record, the court concluded that the JO's reliance on the opinions of two Veterinarians employed by USDA was substantial evidence and it can not be said that reliance on such evidence would have been unreasonable. The JO's decision weighed conflicting evidence and reached a conclusion that had a rational and a factual basis, and was in compliance with the law in this case.

**United States Court of Appeals
For the Sixth Circuit**

Before: SILER and CLAY, Circuit Judges; CARR, Chief District Judge.*

ORDER

Winston T. Groover, Jr. seeks review of a final order by the Secretary of the United States Department of Agriculture issued on December 13, 2004, under the Horse Protection Act of 1970, (HPA), 15 U.S.C. §§ 1821-31. The parties have waived oral argument and this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

On November 6, 2000, Bobby R. Acord, Administrator for the

*The Honorable James G. Carr, Chief United States District Judge for the Northern District of Ohio, sitting by designation.

Animal and Plant Health Inspection Service (APHIS), an agency of the United States Department of Agriculture, initiated a disciplinary proceeding under HPA against Beverly Burgess, Groover, and Groover Stables. The complaint alleged that on or about July 7, 2000, Groover and Groover Stables transported a horse known as "Stocks Clutch FCR" to the Cornersville Lions Club 54th Annual Horse Show in Comersville, Tennessee, while the horse was sore, for the purpose of showing or exhibiting the horse in that show, and exhibiting the horse in the show, in violation of 15 U.S.C. § 1824(1) and 1824(2)(A). The complaint further alleged that Burgess allowed Groover and Groover Stables to exhibit "Stocks Clutch FCR" while the horse was sore in violation of 15 U.S.C. § 1824(2)(D). Burgess, Groover, and Groover Stables denied the allegations in the complaint.

On April 21, 2004, an administrative law judge (ALJ) issued a Decision and Order concluding that Groover and Groover Stables violated § 1824(2)(A) by exhibiting "Stocks Clutch FCR" while the horse was sore. The ALJ assessed Groover a \$2,200 civil penalty and disqualified Groover from showing, exhibiting, or entering any horse, and from managing, judging, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction for one year. The ALJ dismissed the complaint against Burgess.

The ALJ's decision became final on May 31, 2004. Groover appealed the ALJ's decision to the Secretary of Agriculture on June 28, 2004. On November 15, 2004, the Secretary issued a final decision. The Secretary concluded that Groover violated HPA by exhibiting "Stocks Clutch FCR" while the horse was sore and assessed a \$2,200 civil penalty against him. The Secretary disqualified Groover for one year from horse industry activities as provided for by statute. Groover filed a timely petition for review on December 13, 2004. Groover contends that the Secretary's decision is not supported by substantial evidence.

Our review of an administrative decision regarding HPA is limited to a determination of whether proper legal standards were used and whether substantial evidence exists to support the decision. *Bobo v. U. S. Dep 't of Agric.*, 52 F.3d 1406, 1410 (6th Cir. 1995). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Substantial evidence means more than a scintilla, but less than a preponderance, and must be based on the

record taken as a whole. *Id.*

The facts establish that the APHIS employs veterinarians to serve as medical officers to monitor horse shows and to detect and document findings of sore horses. Dr. David Smith and Dr. Sylvia Taylor were the veterinarians working at the Cornersville Lions Club Horse Show.

Dr. Smith and Dr. Taylor conducted post-show examinations of the horses finishing in second and third place at the horse show on July 7, 2000. Both doctors examined "Stocks Clutch FCR" after the horse won second place in its class. Dr. Smith examined the horse first. He prepared an affidavit on July 8, 2000. Dr. Smith concluded that "stocks Clutch FCR" was sore along the lateral aspect of the left fore pastern and was in violation of the scar rule. He concluded that the horse was sored by mechanical and/or chemical means.

Without revealing the results of his examination, Dr. Smith asked Dr. Taylor to conduct an examination of "Stocks Clutch FCR." Dr. Taylor prepared an affidavit after her examination on July 7, 2000. Dr. Taylor concurred with Dr. Smith's findings that "Stocks Clutch FCR" exhibited a pain response and was sore in the left forefoot. Dr. Taylor also concurred in the finding that the horse exhibited scars on both front feet in violation of the scar rule. The veterinarians agreed that the horse was sore due to the use of chemical and/or mechanical means in violation of HPA.

HPA provides for Designated Qualified Persons (DQP) to be employed by horse industry organizations to detect if horses are sore. 15U.S.C. § 1823; 9 C.F.R. § 11.7. These individuals need not be veterinarians, but must attend USDA-certified training programs. DQPs examine every horse before they show, after they are shown, and at Tennessee Walking events. *See* 9 C.F.R. § 11.20. Mr. Charles Thomas and Mr. Andy Messick are employed as part-time DQPs by the National Horse Show Commission, the organization that managed the Cornersville show. Thomas and Messick are not veterinarians.

After the USDA veterinarians examined "Stocks Clutch FCR" and determined that the horse was sore, Groover requested that Thomas and Messick examine the horse. Messick, who examined "Stocks Clutch FCR" prior to the show, was the first DQP to examine the horse after the show. Messick examined "Stocks Clutch FCR" approximately five to ten minutes after the USDA veterinarians had completed their examinations. Messick found that the horse had soft, uniformly

thickened tissue and did not demonstrate a pain response upon palpation on the left or right forefoot. He also testified that he did not observe redness or swelling of the posterior pastern of either foot. Thomas also found no abnormal pain reactions when he palpated the horse's front pasterns, nor did he find that "Stocks Clutch FCR" was in violation of the scar rule.

Approximately two hours after the USDA veterinarians examined "Stocks Clutch FCR," Dr. Randall T. Baker, a veterinarian in private practice in Lewisburg, Tennessee, hired by Burgess, examined the horse. Dr. Baker found that "Stocks Clutch FCR" was not sore on its front pasterns. He believed that the scars on the pasterns did not violate HPA because he concluded that the tissue was pliable, despite hair loss and thickened epithelial tissue on both posterior pasterns. Dr. Baker detected no evidence of redness or swelling on either the left or right posterior pasterns.

The essence of Groover's appeal is a disagreement with the evidentiary findings of the Secretary. The Secretary was presented with conflicting evidence as to whether "Stocks Clutch FCR" was sore. In support of the Secretary's decision are the opinions of two USDA veterinarians who independently concluded that the horse was sore in violation of HPA. To support Groover's position are the opinions of two DQPs, who are not veterinarians, and the opinion of one private veterinarian hired by the horse's owner who examined the horse two hours after the event. These individuals concluded that "Stocks Clutch FCR" was not sore.

The court's standard of review is whether there is substantial evidence to support the Secretary's decision. *Bobo*, 52 F.3d at 1410-11. As two USDA veterinarians made independent examinations of the horse after it was shown and both reached the same conclusions, the Secretary's conclusion that "Stocks Clutch FCR" was sore is supported by substantial evidence. The Secretary's reliance on these opinions cannot be deemed to be unreasonable as the conflicting evidence consists of the opinions of two non-doctors and a veterinarian who examined the horse hours after the event. *Id.* at 1411. Thus, under *Bobo*, the Secretary's decision is supported by substantial evidence and must be upheld. *Id.*

Accordingly, the petition for review is denied.