

IN THE MATTER OF: FRANK CRAIG AND JEAN CRAIG :

FRANK'S WHOLESALE MEATS

FMIA No.05-0002

PPIA No. 05-0003

In this decision I find that respondent, particularly through the actions of Frank Craig, have repeatedly engaged in the practice of harassing, intimidating, threatening and otherwise interfering with inspectors of USDA's Food Safety and Inspection Service(FSIS) during the performance of their official duties. Accordingly, I grant complainant FSIS's request to indefinitely suspend inspection services under the Federal Meat Inspection Act and Poultry Products Inspection Act.

Procedural Background.

This proceeding was instigated by the filing of a complaint by FSIS on April 12, 2005. Respondents filed a timely answer on April 28, 2005. On June 23,2006, complainant filed a Motion to Set an Oral Hearing. I held a telephone conference on June 26, 2006 to discuss this motion. When my secretary, Diane Green, called Mr. Craig to set up the telephone conference, he stated toher that he had no intention of participating in the conference or in any other procedure before USDA. I asked her to call him again and explain that I just wanted to set a date in place for an on-the-record public hearing but he reiterated to Ms. Green at length that the would not participate. Accordingly, I held a telephone conference without respondent's participation, and I scheduled a hearing to commence on October 24, 2006 in San Bernardino, California. I also entered an order ordering exchange of documents and witness lists by both parties. Complainants complied with this order but respondent's did not. On September 28, 2006 complainant moved to conduct a hearing by audio visual means as per Rule of Practice 1.141 (e). Once again, respondent indicated directly to Diane Green that he would not participate in the conference or the hearing. Accordingly I granted the motion. I conducted a hearing on October 24 and 25, via audio visual means. I, along with counsel for complainant, and a number of witnesses participated in Washington, D.C. while a majority of the witnesses appeared from Diamond Bar, California. With the high quality of the audio and video connection, I was able to closely observe the demeanor of all the witnesses.

Complainant called 15 witnesses and introduced 61 exhibits into evidence. At the conclusion of the hearing, complainants moved pursuant to 7 CFR 1.141(e) that respondent had failed to appear at the hearing without good cause, and therefore had been deemed to have waived the right to an oral hearing in the proceeding and to have admitted any facts which may have been presented at the hearing and has admitted all the material allegations of fact contained in the complaint. I granted that motion. Also at the conclusion of the hearing pursuant to 7 CFR 1.142(c) complainant moved for a decision and presented a proposed written decision and order for my consideration. Since I needed some time to read the exhibits and the proposed decision, I continued the hearing until today, October 26, to enter an oral decision instead.

Statutory Background.

The Federal Meat Inspection Act as amended 21 U.S.C. 601, et seq. (FMIA) and the Poultry Products Inspection Act, 21 U.S.C. 451, et seq. (PPIA) require inspections by federal inspection personnel during the processing of meat and poultry products that are being prepared for intrastate commerce in order to ensure that meat and poultry products are wholesome, not adulterated and are properly labeled. Additionally the FMIA and PPIA provide that federal inspectors shall have access at all times for purposes of examination and inspection, 7 to 21 U.S.C. Section 460(b) 606 and 642. Under the FMIA and PPIA FSIS has rule making authority to carry out the purposes of the acts, 21 U.S.C., Sections 462(b) and 621. Under this rule making authority, FSIS has interpreted the access provisions of the acts and has promulgated regulations which require federally inspected facilities to provide to FSIS inspection personnel a reasonably safe work environment which is free from interference, intimidation, assault and threats. The regulations provide for the suspension of inspection services in cases where intimidation, harassment or assaults occur, 9 CFR Section 300.6 and 500.6.

Summary of Pertinent Facts.

The witnesses of the FSIS testified as to the allegations in the complaint. Seven FSIS consumer safety inspectors testified as to the dealings with, in particular Frank Craig and portrayed

an individual who was frequently confrontational to inspectors, who yelled and screamed at inspectors, slammed doors, who drank frequently, who often mentioned that he had a gun and would use it to protect his business. FSIS supervisory and management personnel witnessed similar behavior on a regular basis. While this is an oral decision and not as detailed as a written decision tends to be, I think a further illustration of some aspects of Mr. Craig's conduct is necessary. On June 21, 2000, in San Leandro, California, Stuart Alexander, the owner of a sausage factory, murdered two FSIS inspectors and one state inspector in cold blood. He was subsequently sentenced to death and died in prison before the sentence could be carried out. This is not normally material but it is in this particular case. Thus, Charles Wheatley, an FSIS consumer safety inspector, who was the subject of Mr. Craig's wrath, when he mistakenly forgot to unlock a lock he had placed while inspecting equipment. Although he removed his lock 90 minutes later, it was evident that the device that was locked out wasn't even being used on that day. Nevertheless, on that day and the next day, when he noted a few violations by Frank's Meats' personnel, he was subject to ridicule, harassment, yelling and was told that he was part of the conspiracy against Frank. More importantly, in a conversation with Mr. Wheatley and his supervisor, Dr. Ali, Frank Craig compared himself to the murderer in San Leandro stating that he did not blame that owner for doing what he did and that USDA was pushing him like they did Alexander. The day before Craig's consultant, Andy Hale, had mentioned to Wheatley that Frank Craig had a gun. Wheatley and Dr. Ali timely documented these interactions in great detail and they are both very credible witnesses. A retired inspector, Joyce Mize, also a very credible witness, likewise testified to a series of incidents, going back to 1991 where Frank Craig attempted to interfere with her duties, screaming at her and trying to intimidate her. She testified that she could smell alcohol on his breath. She testified to a meeting at Frank's Meats, collaborated by Dr. Ali, who also attended, Dr. Ali being a front line supervisor, that Frank Craig, who had been asking Ali not to send Ms. Mize to his plant because he could not guarantee her safety. After this meeting in late 2000, Ms. Mize never returned to Frank's Meats. Every inspector, supervisor and manager who dealt with Frank Craig and testified at his hearing, testified that he was impossible to have a dialogue with due to his ranting and taking over all discussions. Dr. Neal Westgerdes, the district manager of the Alameda District stated that he met with seven inspectors on April 5, 2005 and that they all were reluctant to inspect Frank's Meats,. that Frank Craig continually impeded the inspection process and that the atmosphere was one of

"fear, intimidation and interference" including the frequent mention of the San Leandro killings and his sympathy for the killer.

Discussion.

Overwhelming evidence supports complainant's content in this case. While inspected parties are entitled to make their views known when they disagree with an inspector, an inspector is not required to function in a work environment where he or she is subject to harassment, abuse, interference with the performance of duties and threats. I specifically find that Frank Craig's statement of sympathy for the San Leandro murderer coupled with his letting people know he was armed and that the FSIS was pushing him in the same direction, constituted a threat which in itself would warrant suspension of the inspection activities.

Findings of fact.

1. Respondents now and at all times material herein were engaged in meat and poultry processing operations at their facility located at 651 North Waterman Avenue, San Bernardino, California. The facility known as Frank's Wholesale Meats is a small facility. The facility has a retail area and meat processing area on the first floor and a small meeting room and USDA inspection office on the second floor.
2. The respondents were granted a grant of inspection on January 29, 1985 pursuant to the FMIA and PPIA by the administrator of FSIS USDA. Under that grant of inspection, Frank's Wholesale Meats was designated as official establishment number 7741/P-7741. As a federally inspected facility requirements, they were required to comply with our requirements of the FMIA, PPIA and all regulations promulgated thereunder.
3. Beginning on April 19, 1991, FSIS inspection personnel began documenting numerous incidents in which Frank Craig, owner of the establishment, interfered with, harassed, threatened or intimidated FSIS inspection personnel during the performance of their official duties.
4. On December 4, 2000, FSIS suspended inspection services at Frank's Meats because of acts and statements made by Frank Craig to FSIS Inspector Joyce Mize and FSIS Circuit Supervisor, Dr.

Syed, on November 29 and December 4, 2000. His acts and statements intimidated and interfered with FSIS program personnel during the performance of their duties. On December 19, 2000, FSIS allowed the resumption of inspection services at respondent's facility, as Frank Craig provided written assurances to FSIS on December 18, 2000 that FSIS personnel would not be intimidated, threatened or interfered with by plant management or employees of Frank's Wholesale Meats.

5. Just two months later, on February 28, 2001, FSIS again suspended inspection services at respondent's facility because of threatening and intimidating acts and statements which Frank Craig made to FSIS inspection personnel at a program assessment meeting held on February 22, 2001 at respondent's facility. During this meeting Frank Craig made derogatory and threatening remarks about Inspector Joyce Mize and made comparisons between his inspection situation and that of a plant owner who had recently murdered two FSIS inspectors and a California State inspector in San Leandro, California.

6. Shortly thereafter, Frank Craig was given the opportunity to meet with FSIS and present information on how he intended to ensure the safety of FSIS program employees. During the mediation provided by FSIS, the Federal Mediation Consulting Service on March 6, 2001, Frank Craig made a written proposal to FSIS that he would refrain from any association with USDA inspectors and that he would direct Mike Craig, the plant manager who was also his son, to handle all activities in the establishment which require FSIS inspection and oversight. In this written proposal, Frank Craig also assured FSIS that inspectors would have no fear of intimidation, interference or threat.

7. Based on the March 6, 2001 written proposal Frank Craig signed an agreement on April 2, 2001, whereby he assured FSIS that among other things he would not interfere with FSIS inspectors or circuit supervisors face-to-face or electronically or otherwise; that no establishment operator, officer, employee or agent would intimidate or interfere with FSIS employees and that Mike Craig and Jean Craig, who is his wife, would be the designated officials to handle all interactions with FSIS inspection personnel. Based on the assurances on April 2, 2001, FSIS reinstated inspection services to the respondent on April 2, 2001.

8. After the reinstatement of inspection services, FSIS inspection personnel continued to document several incidents of intimidation and interference by Frank Craig and employees a few months after the agreement was signed by Frank Craig. On July 16, 2001, FSIS district manager, Dr. Murli

Prasad met with Frank Craig to address these incidents and to remind Frank Craig of the agreement that he had signed on April 2, 2001. This meeting was followed by a letter from Dr. Prasad to Frank Craig on October 5, 2001, reminding Frank Craig of his obligations under the agreement and the regulations prohibiting intimidation of and interference with FSIS inspection personnel.

9. On September 26, 2004, Jean Craig, wife of Frank Craig, wrote a letter to William Smith, assistant administrator office of field operations (FSIS) requesting that Frank Craig be reinstated as a point of contact with FSIS inspection personnel. Jean Craig stated that her request was based on the fact that her son was no longer employed at the facility and that she suffered from several medical ailments.

10. On December 4, 2004, FSIS granted Jean Craig's request and reinstated Frank Craig as a point of contact with FSIS inspection personnel, which would take place after a meeting with the FSIS district manager for the Alameda District.

11. On December 6, 2004, Dr. Neal Westgerdes, FSIS district manager for the Alameda District met with Frank Craig and discussed both FSIS concerns and the concerns of Frank Craig. Hereafter Frank Craig was reinstated as the point of contact.

12. Less than four months after Frank Craig was reinstated as a point of contact, FSIS inspection personnel again documented incidents of intimidation and interference by Mr. Frank Craig against FSIS Inspector Charles Wheatley on March 22, 23, and 30, 2005 and November 4, 2005. During these incidents, Frank Craig accused Mr. Wheatley of being part of a conspiracy, made reference to the recent murder of two FSIS inspectors and a California State inspector at the Santos Linguisa Factory, the same murders that I was talking about earlier in San Leandro, California by a plant owner and expressed sympathy for the person responsible for the murders, accused Mr. Wheatley of harassment in the performance of the duties, made derogatory remarks about his inspection and appearance in an attempt to embarrass and intimidate the inspector, attempted to intimidate the inspector by instructing his wife to write everything down that the inspector said and acted in a argumentative and hostile manner during the inspection.

13. On April 5, 2005, the district manager, Dr. Yudhbir, Sharma the front line supervisor, and Dr. Syed Ali, met with Frank Craig to discuss the incidents with Inspector Wheatley. During this meeting Frank Craig was argumentative, confrontational and hostile toward the FSIS personnel. Additionally, Frank Craig once again made reference to the murders of FSIS inspection personnel

and a California State inspector by a plant owner in San Leandro, California.

14. Based on the intimidating, threatening and harassing behavior of Frank Craig, FSIS suspended inspection services at Frank Wholesale Meats on April 6, 2005.

15. In written statements and exhibits and oral testimony at the hearing, FSIS inspectors stated that Frank Craig had often made references to the San Leandro FSIS inspectors and a California state inspector, often drank alcohol and appeared under the influence while FSIS inspection personnel were at the facility, continually engaged in argumentative and confrontational behavior toward inspectors in an attempt to intimidate and interfere with the inspection duties, and thus created an environment of hostility in the facility for FSIS inspectors.

16. FSIS inspectors also testified at the hearing that the plant is small. The retail area of the facility is close in proximity to the federally inspected processing area, that the USDA inspector's office is upstairs at the end of the hallway with limited access and the only way into the federally inspected processing area passes through the retail area. FSIS personnel have also testified that Frank Craig controls everything and everyone in the facility known as Frank's Wholesale Meats. Clearly Frank Craig intimidated his employees and even got his employees involved in interfering with FSIS inspection personnel during the performance of their inspection duties.

17. The testimony and exhibits presented in the hearing this matter and the allegations made in the complaint, clearly demonstrate that Frank Craig has repeatedly subjected FSIS inspection personal harassment and intimidation, threatening behavior and statements, and interference during the performance of the official duties in violation of the FMIA, PPIA and FSIS regulations. Further the evidence shows that Frank Craig's consumption of alcohol on the premises in the presence of FSIS personnel, his apparently obsession with the past murders of FSIS personnel, possession of guns on his person and the facility and professed belief of government conspiracy against him presents a hostile and potentially dangerous work environment for FSIS personnel.

Summary

A few other comments, before I give my order in this case. I was impressed with the FSIS documentation of everything that happened in a timely basis. The fact is that there were contemporaneous memos, I think you call them speed memos and other memos, statements taken

as soon as there was any indication that there was trouble in the facility, coupled with the consistent testimony and I found truthful demeanor of the witnesses that I saw, all had an impact in my making a decision. Also I want to say that if anything in this case, FSIS has bent over backwards to accommodate Frank's Meat's. I think in retrospect they almost went too far in terms of how well they tried to accommodate a person who had obviously constituted at least in my mind from the testimony I heard, a threat to the well being of the inspectors. They were there to conduct their duty, and should not be made to work where there was some real threat to inspectors. I think anyone who had to inspect that facility and given some of the things he said and some of things that he did I think FSIS was almost too accommodating to Mr. Craig and Frank's Wholesale Meats. Also, one other thing I want to mention form 4735 that's filled out for the complaints of harassment or intimidation or whatever, its called Reporting Assault, Harassment, Interference, Intimidation or Threat, Form 4735-4. I was struck by the fact that (a) there were a significant number of these forms with respect to Frank's Meats and I think the testimony of the people who filled out these forms indicated, I think, among all of them, maybe one other of these forms have been filled out against one other person during their entire tenure at FSIS. So I also find that significant. The conduct of Mr. Craig was not the typical conduct of a person who was inspected by a FSIS inspector.

Conclusions of Law.

1. Frank's Meats harassed, intimidated, threatened and interfered with FSIS inspectors engaged in the lawful performance of their duties.

2. The repeated nature of Frank's Meats conduct warrants indefinite suspension of inspection activities under FMIA and PPIA. Therefore I order that inspection services of FSIS inspection personnel under Title 1 of the FMIA and under the PPIA are suspended for an indefinite and unlimited time against respondents, Frank Craig and Jean Craig doing business as Frank's Wholesale Meats, its owners, officers, directors, partners, successors and assigns, elected or incorporated.

And that is my decision on this 26th day of October, 2006.

By Chief Administrative Law Judge, Marc R. Hillson