

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States
Department of Housing and Urban
Development, on behalf of
Clayton, Jerri, Justin and
Bradly Zilisch,

Charging Party,

v.

Lois Ludwig,

Respondent.

HUDALJ 05-93-1324-1

**INITIAL DECISION AND ORDER ON
APPLICATION FOR ATTORNEY FEES**

On April 1, 1997, I issued an Initial Decision and Order ("Decision") dismissing the charge of discrimination against Respondent based on the Charging Party's failure to prove by a preponderance of the evidence that Respondent engaged in discrimination. *See* 24 C.F.R. § 180.405 (c). The Secretary took no action, and therefore, the Decision became the final agency decision on May 1, 1997. *See* 24 C.F.R. §§ 180.405(a), 180.670 (b)(2), 180.680 (b)(2).

On June 5, 1997, Respondent filed an application for fees and costs under the Equal Access to Justice Act ("EAJA"), 5 U.S.C. § 504. *See* 42 U.S.C. § 3612 (p); 14 C.F.R. Part 14; 24 C.F.R. § 180.705 (a); *see also* 24 C.F.R. § 180.405 (d).¹ EAJA provides that "[a] party seeking an award of fees and other expenses shall, *within thirty days* of a final agency disposition in the adversary adjudication, submit to the agency an application." 5 U.S.C. § 504 (a)(2) (emphasis added); *see also* 24 C.F.R. § 14.215 (a) ("An application may be filed whenever the applicant has prevailed in the proceeding. . . *but in no case later than 30 days after the Department's final disposition of the*

¹ Respondent evidently failed to serve the Charging Party with a copy of her application. Accordingly, I sent a copy to the Charging Party and ordered it to file any response not later than July 9, 1997. The Charging Party responded timely on that date.

proceeding.") (emphasis added). This thirty-day limitation is a jurisdictional requirement which cannot be waived or modified. See, e.g., *Long Island Radio Co. v. NLRB*, 841 F.2d 474 (2d Cir. 1988); *Monark Boat Co. v. NLRB*, 708 F.2d 1322 (8th Cir. 1983). Because Respondent's June 5, 1997, application was filed more than 30 days after the agency decision became final, it is untimely.

Conclusion and Order

It is ORDERED that Respondent's application is *dismissed* for lack of jurisdiction.

/s/

WILLIAM C. CREGAR
Administrative Law Judge

Dated: July 16, 1997

