

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 13-0321

Justo E. Roque, Jr.,

Petitioner

v.

U.S. Department of Agriculture,
Office of the Assistant Secretary for Civil Rights, et al.

Respondents

Memorandum Opinion and Order of Dismissal

On August 12, 2013, Justo E. Roque, Jr., the Petitioner in this action, acting *pro se*, filed pleadings entitled “(The Brief for Petitioner(s) (FTCA), Title 28 U.S.C. §2675, Exhaust Administrative Remedies)(Tort Claims Act)” along with a “Notice of Appeal” directed to Ms. Aida Negron, Representative Secretary in the Office of the Assistant Secretary for Civil Rights with the Hearing Clerk’s Office of the Office of Administrative Law Judges. The pleadings appear to assert that the United States Department of Agriculture (USDA) wrongfully denied him participation in the Commodity Supplemental Food Program (CFSP) administered through USDA’s Food and Nutrition Service (FNS) because Petitioner did not meet the minimum age requirement of 60 years of age, a restriction specifically allowable under Section 6103 of the Age Discrimination Act of 1975.

Copies of the pleadings were served upon the Assistant Secretary for Civil Rights (ASCR), who has filed a Response indicating that the Petitioner failed to identify valid legal authority and basis for the action which he has brought.

Provisions similar to those contained in the Federal Rules of Civil Procedure requiring articulation of grounds for the court's jurisdiction,¹ are found in §1.135(a) of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings before the Secretary of Agriculture, 7 C.F.R. §1.135(a). That section requires a complaint (or other pleading initiating an action) to "state briefly and clearly the nature of the proceeding, the identification of the complainant and the respondent, **the legal authority and jurisdiction under which the proceeding is instituted**, the allegations of fact and provisions of law which constitute a basis for proceeding, and the nature of the relief sought." (Emphasis added).

Nearly fifty statutes exist which expressly afford an individual or entity a hearing before an Administrative Law Judge under specific proceedings brought before the Secretary of Agriculture. (*See*: §1.131 of the Rules of Practice, 7 C.F.R. §1.131) As no action may be brought unless specifically authorized, jurisdiction cannot be assumed absent express statutory or regulatory grant. *See: Reid v. United States*, 211 U.S. 529, 538 (1909); *Monro v. United States*, 303 U.S. 36, 41 (1938); *United States v. Sherwood*, 312 U.S. 584, 590 (1941); *United States v. Testan*, 424 U.S. 392, 399 (1976); and *Hercules, Inc. v. United States*, 516 U.S. 417, 422 (1996). No statute or regulation authorizing such an action requiring a hearing before an Administrative Law Judge within Section 1.131 has been cited.

¹ *See*: Civ. R. 8(a)(1), Federal Rules of Civil Procedure.

It is noted that Petitioner cited the Federal Tort Claims Act, 28 U.S.C. §2675 as putative authority for the action; however, that Act provides a limited waiver of sovereign immunity to redress claims only “for money damages against the United States for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the agency while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant with the law of the place where the act or omission occurred.....” *See*, 28 U.S.C. §2672. Jurisdiction for such tort actions however lies not with the Office of Administrative Law Judges but rather with the District Courts of the United States once a Federal agency has either finally denied the claim or within six months after the failure of an agency to make a final determination. The letter from Carl-Martin Ruiz dated June 17, 2013 attached to the pleadings expressly states “This is USDA’s final action regarding this matter.”

There being no jurisdictional grant of authority for the Office of Administrative Law Judges to hear the action, the pleadings will be found to be jurisdictionally deficient and this action will be **DISMISSED**.

Copies of this Opinion and Order will be served upon the parties by the Hearing Clerk.

September 12, 2013

Peter M. Davenport

Peter M. Davenport
Chief Administrative Law Judge

Copies to: Justo E. Roque, Jr.
J. Carlos Alarcon, Esquire
Dr. Joe Leonard, Jr.