

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) Docket No. **17-0003**
Leo Jackson)
)
Petitioner) **Dismissal (With Prejudice)**

Appearances:

Mr. Corey Lea, representative for Mr. Leo Jackson, Petitioner; and

Mr. Juan Carlos Alarcon, Esq. with the Office of the General Counsel, Civil Rights
Litigation Division, United States Department of Agriculture, Washington D.C.

1. The "Petitioners Request for a Formal Hearing before the Administrative Law Judge", filed October 6, 2016, of Petitioner Leo Jackson is before me. The writing methods used by Corey Lea, Petitioner's representative, confound me; perhaps Corey Lea's approach to legal work is careless: (a) the Petition is Respectfully Submitted by Corey Lea, Representative for Bernice Atchison. [I expected to read "Leo Jackson" instead of Bernice Atchison.] (b) Corey Lea certifies that a copy (of the Petition) was sent to Luscious Abrams, and that a copy (of the Petition) was sent to RC Abrams. [I expected to read "Leo Jackson" instead of Luscious Abrams and RC Abrams.]

2. I have carefully reviewed Petitioner's Request and the Agency Response filed October 31, 2016, a copy of which is attached.

3. I conclude that Administrative Law Judges have no authority to grant the relief requested, as stated in the Agency Response. Consequently, the case of Leo Jackson, Petitioner, is DISMISSED (With Prejudice).

Copies of this Dismissal (With Prejudice) order shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 2nd day of November 2016



Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
Stop 9203 South Building Room 1031
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LEO JACKSON
Petitioner

Docket No. 17-0003

Agency Response

On or around October 6, 2016, Petitioner Leo Jackson (“Petitioner”) filed a “Request for a Formal Hearing before the Administrative Law Judge” with the U.S. Department of Agriculture, Office of the Administrative Law Judges (“OALJ”)¹. On October 11, 2016, OALJ issued a notice to the Assistant Secretary for Civil Rights (“Agency”) requesting a response within 20 days. The Agency timely files this response.

Petitioner requests a hearing to be held at a federal courthouse pursuant to 7 C.F.R. part 15f (“Section 741”)². *See* Petitioner’s Request.

Petitioner failed to identify valid legal authority and jurisdiction for this action

Under 7 C.F.R. § 1.131, there are nearly fifty statutes which expressly afford an individual a hearing before an Administrative Law Judge. None of them apply to Petitioner’s request. *See* 7 C.F.R. § 1.131. As no action may be brought unless authorized, jurisdiction cannot be assumed absent express statutory or regulatory grant. *See Reid v. United States*, 211 U.S. 529, 538 (1909); *Munro v. United States*, 303 U.S. 36, 41 (1938); *United States v.*

¹ The Agency notes that Petitioner’s representative, Mr. Corey Lea, has filed at least thirty other requests for OALJ Hearings on behalf of other individuals largely asserting Section 741 provides the basis for the requests. The OALJ has issued at least 16 dismissals with prejudice explaining why OALJ has no jurisdiction to hold hearings on these discrimination complaints. Most of these dismissals were issued prior to the filing of the instant hearing request on October 6, 2016, which asserts the same statutes and cases that were asserted in the dismissed cases. Thus, the Agency posits that Mr. Lea is frivolously filing this and other requests for hearing in which he can have no reasonable expectation of prevailing.

² Petitioner also refers to Sections 14011 and 14012 of the Food Energy and Conservation Act, the Administrative Procedures Act, *Benoit v. U.S.D.A.* 08-5434 and *Johnson v. USDA* 15-1796. None of the aforementioned legislation, or case law has any relevance whatsoever to OALJ’s jurisdiction to hear these allegations of discrimination.

Sherwood, 312 U.S. 584, 290 (1941); *United States v. Testan*, 424 U.S. 392, 399 (1976); and *Hercules, Inc. v. United States*, 516 U.S. 417, 422 (1996). Petitioner has not identified a statutory jurisdictional basis which would entitle her to a hearing before the OALJ.

Petitioner's citations of "Section 741" does not establish a statutory jurisdictional basis for this request. *See* 7 C.F.R. § 15(f) ("Section 741"). 7 C.F.R. Part 15f applies to complaints of discrimination filed with USDA prior to July 1, 1997, alleging discriminatory acts from 1981 to 1997. The period for filing a Section 741 complaint request under the authorized waiver of the ECOA Statute of Limitations expired on October 21, 2000. 7 C.F.R Part 15f ("you have until October 21, 2000 to file your Section 741 complaint"). USDA no longer has authority under the terms of the statutory waiver to accept Section 741 complaint requests, unless such a complaint has already been docketed under part 15f by USDA or a request was filed with USDA prior to October 21, 2000. 7 C.F.R § 15f.5 is clear that Section 741 complaint requests filed under part 15f are no longer accepted by USDA. *See generally* 68 Fed. Reg. 7411 (February 14, 2003).

As Petitioner fails to assert cognizable jurisdiction for OALJ to hear this action, the request should be dismissed with prejudice.

Date: October 31, 2016

Respectfully submitted,


JUAN CARLOS ALARCON, Esq.
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AGENCY'S NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that Juan Carlos Alarcon, United States Department of Agriculture, Office of the General Counsel, Civil Rights Employment and Labor Litigation Division, hereby enters his appearance as counsel of record for the Agency in the above-captioned matter. The Clerk and all parties are requested to address all papers served on the Agency as follows:

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Date: October 31, 2016

Respectfully submitted,


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