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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) Docket No. **17-0008**
Vesta Boone Washington)
)
Petitioner) **Dismissal (With Prejudice)**

Appearances:

Ms. Vesta Boone Washington, representing herself (appearing *pro se*), 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 Petition of Vesta Boone Washington, filed November 2, 2016, is entitled "Request for an Expedited Formal Hearing Before the Administrative Law Judge, Temporary Restraining Order and Preliminary Injunction".
2. I have carefully reviewed the Petition and the Agency Response filed November 9, 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.
4. The case regarding Petitioner Vesta Boone Washington 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 25th 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
1400 Independence Ave SW
Washington, DC 20250-9203
202-720-4443
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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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VESTA BOONE WASHINGTON
Petitioner

Docket No. 17-0008

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Agency Response

On or around November 2, 2016, Petitioner Vesta Boone Washington (“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”). On November 3, 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”)¹. *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. Unites States*, 303 U.S. 36, 41 (1938); *United States v. 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.

¹ 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.

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: November 9, 2016

Respectfully submitted,


J. CARLOS ALARCON, Esq.
Agency Representative
U.S. Department of Agriculture
Office of the General Counsel
Civil Rights, Labor and Employment Law
Room 3312-S (if by U.S. mail);
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UNITED STATES DEPARTMENT OF AGRICULTURE
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VESTA BOONE WASHINGTON
Petitioner

Docket No. 17-0008

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:

Juan Carlos Alarcon
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Date: November 9, 2016

Respectfully submitted,


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