

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) HPA Docket No. 13-0308
)
Justin Jenne,)
) **Order Denying Petition**
) **to Reopen Hearing**
Respondent)

On March 11, 2014, Administrative Law Judge Janice K. Bullard [ALJ] conducted a hearing in this proceeding.¹ Thomas Neil Bolick, Office of the General Counsel, United States Department of Agriculture, Washington, DC, represented the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [Administrator]. Justin Jenne appeared pro se.² On July 29, 2014, the ALJ issued a Decision and Order.

¹References to the transcript of the March 11, 2014, hearing are designated as “Tr.” and the page number.

²Prior to the March 11, 2014, hearing, Dudley W. Taylor, Taylor & Knight, Knoxville, Tennessee, represented Mr. Jenne, but, in a March 6, 2014, conference call with the ALJ and Mr. Bolick, Mr. Taylor withdrew his representation of Mr. Jenne.

On September 8, 2014, Mr. Jenne filed an Appeal to Judicial Officer [Appeal Petition] and concurrently filed a Petition to Re-open Hearing for Submission of Additional Evidence [Petition to Reopen Hearing] requesting that the ALJ consider additional evidence that Mr. Jenne failed to adduce at the March 11, 2014, hearing. On October 30, 2014, the Administrator filed a response opposing Mr. Jenne's Petition to Reopen Hearing.³ On November 7, 2014, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for a ruling on Mr. Jenne's Petition to Reopen Hearing.

The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary of Agriculture Under Various Statutes (7 C.F.R. §§ 1.130-.151) [Rules of Practice], which are applicable to this proceeding, apportion jurisdiction to rule on a petition to reopen a hearing and set forth the requirements for a petition to reopen a hearing, as follows:

§ 1.146 Petitions for reopening hearing; for rehearing or reargument of proceeding; or for reconsideration of the decision of the Judicial Officer.

(a) *Petition requisite*—(1) *Filing; service; ruling.* Any such petition filed prior to the filing or an appeal of the Judge's decision pursuant to § 1.145 shall be ruled upon by the Judge, and any such petition filed thereafter shall be ruled upon by the Judicial Officer.

(2) *Petition to reopen hearing.* A petition to reopen a hearing to take further evidence may be filed at any time prior to the issuance of the decision of the Judicial Officer. Every such petition shall state briefly the nature and purpose of the evidence to be adduced, shall show that such evidence is not merely cumulative, and shall set forth a good reason why such evidence was not adduced at the hearing.

7 C.F.R. § 1.146(a)(1)-(2).

Mr. Jenne concurrently filed the Appeal Petition and the Petition to Reopen Hearing;

³Complainant's Response to Respondent's Appeal to Judicial Officer and Petition to Re-Open Hearing for Submission of Additional Evidence.

therefore, pursuant to 7 C.F.R. § 1.146(a)(1), jurisdiction to rule on Mr. Jenne's Petition to Reopen Hearing lies with the Judicial Officer.

Mr. Jenne attached to the Petition to Reopen Hearing the evidence he seeks to introduce and describes the purpose of the evidence to be introduced. Specifically, Mr. Jenne seeks to reopen the hearing to introduce: (1) Affidavit of Richard Wilhelm, dated September 5, 2014, in which Dr. Wilhelm describes the results of his August 27, 2012, examination of a horse known as "Led Zeppelin," the horse which is the subject of this proceeding; and (2) Affidavit of Justin R. Jenne, dated September 5, 2014, and supporting attachments, in which Mr. Jenne asserts, prior to the institution of this proceeding and *Jenne*, No. 13-0080, he had never been accused by the United States Department of Agriculture of violating the Horse Protection Act and he is unable to pay a civil penalty. Mr. Jenne offers the following as the reasons for his failure to adduce the evidence in question at the March 11, 2014, hearing:

2. Judge Bullard noted in her Decision that she held the record open for receipt of report of examination by Respondent's veterinarian, but that report was not submitted. The Respondent, who was not represented by counsel, was not aware of that fact until it was recently pointed out to Respondent by an attorney.

Pet. to Reopen Hearing ¶ 2 at 1.

Evidence of the results of Dr. Wilhelm's August 27, 2012, examination of Led Zeppelin; evidence that Mr. Jenne had not been accused by the United States Department of Agriculture of violating the Horse Protection Act prior to the institution of this proceeding and *Jenne*, No. 13-0080; and evidence of Mr. Jenne's inability to pay a civil penalty could have been adduced at the March 11, 2014, hearing. Moreover, the ALJ held the record open until May 16, 2014, for receipt of Dr. Wilhelm's report of his August 27, 2012, examination of Led Zeppelin

(Tr. at 186-87), and Dr. Wilhelm's report could have been adduced prior to May 16, 2014.

The Rules of Practice do not distinguish between persons who appear pro se and persons who are represented by counsel,⁴ and Mr. Jenne's status as a pro se litigant is not a good reason for his failure to adduce available evidence at the March 11, 2014, hearing.⁵ Moreover, Mr. Jenne was present when the ALJ explicitly stated the record would remain open until May 16, 2014, for receipt of Dr. Wilhelm's report regarding his August 27, 2012, examination of Led Zeppelin (Tr. at 186-87), and the record reveals no basis for Mr. Jenne's lack of awareness that the ALJ held the record open for receipt of Dr. Wilhelm's report.

Under these circumstances, I decline to reopen the hearing in this proceeding to receive in evidence the September 5, 2014, Affidavit of Richard Wilhelm or the September 5, 2014, Affidavit of Justin R. Jenne.

For the foregoing reasons, the following Order is issued.

ORDER

⁴Vigne, 68 Agric. Dec. 362, 364 (U.S.D.A. 2009) (Order Denying Pet. to Reconsider); Octagon Sequence of Eight, Inc., 66 Agric. Dec. 1283, 1286 (U.S.D.A. 2007) (Order Denying Pet. for Rehearing as to Lancelot Kollman Ramos); Knapp, 64 Agric. Dec. 253, 299 (U.S.D.A. 2005); Meyers, 58 Agric. Dec. 861, 865 (U.S.D.A. 1999) (Order Denying Pet. for Recons.).

⁵Cf. Vigne, 68 Agric. Dec. 362, 364 (U.S.D.A. 2009) (Order Denying Pet. to Reconsider) (holding the respondent's status as a pro se litigant is not a basis on which to set aside the respondent's waiver of the right to an oral hearing); Octagon Sequence of Eight, Inc., 66 Agric. Dec. 1283, 1286 (U.S.D.A. 2007) (Order Denying Pet. for Rehearing as to Lancelot Kollman Ramos) (holding the respondent's status as a pro se litigant is not a basis on which to grant the respondent's petition for rehearing or set aside the default decision); Noell, 58 Agric. Dec. 130, 146 (U.S.D.A. 1999) (stating lack of representation by counsel is not a basis for setting aside the default decision), *appeal dismissed sub nom. The Chimp Farm, Inc. v. U.S. Dep't of Agric.*, No. 00-10608-A (11th Cir. July 20, 2000); Byard, 56 Agric. Dec. 1543, 1559 (U.S.D.A. 1997) (Decision as to Byard) (stating the respondent's decision to proceed pro se does not operate as an excuse for the respondent's failure to file an answer).

Mr. Jenne's Petition to Reopen Hearing, filed September 8, 2014, is denied.

Done at Washington, DC

April 10, 2015

William G. Jenson
Judicial Officer