

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) Docket No. 16-0167
)
Ferrell Oden,)
)
Petitioner) **Decision and Order**

PROCEDURAL HISTORY

On August 25, 2016, Ferrell Oden instituted this proceeding by filing a “Petition for Review and Formal Hearing on the Merits” [Petition for Review]. Mr. Oden seeks a decision by an administrative law judge on the merits regarding “issue[s] 2 and 3 of the attached finding of discrimination.” Mr. Oden failed to attach the referenced “finding of discrimination” to his Petition for Review; however, subsequent filings in this proceeding reveal that Mr. Oden’s reference to the nonexistent attachment is a reference to *Oden v. Vilsack*, FAD No. 09-2094, issued by the Assistant Secretary for Civil Rights, United States Department of Agriculture [ASCR], on November 19, 2010. Mr. Oden cites “7 C.F.R. 15 Part D” as the jurisdictional basis for this proceeding. The Code of Federal Regulations does not include regulations identified as “7 C.F.R. 15 Part D”; however, the ASCR issued *Oden v. Vilsack*, FAD No. 09-2094 (Nov. 19, 2010), in accordance with 7 C.F.R. pt. 15d. I, therefore, infer that Mr. Oden filed his Petition to Review of *Oden v. Vilsack*, FAD No. 09-2094 (Nov. 19, 2010), pursuant to 7 C.F.R. pt. 15d.

On September 15, 2016, the ASCR filed an “Agency Response” in which the ASCR contends that Mr. Oden failed to assert cognizable jurisdiction for the Office of Administrative

Law Judges to entertain this proceeding and that, even if the Office of Administrative Law Judges had jurisdiction to entertain this proceeding, the doctrine of *res judicata* would preclude review by the Office of Administrative Law Judges. On September 28, 2016, Mr. Oden filed “Petitioner’s Response to Agency’s Motion to Dismiss” in which Mr. Oden asserts “[t]he agency failed to provide the petitioner with his right to appeal to the administrative law judge when it gave a partial finding of discrimination” and “[t]he law does not permit *res judicata* when only a single issue was presented and accepted by both parties.”

Administrative Law Judge Jill S. Clifton [ALJ] issued *Oden*, Docket No. 16-0167, 2016 WL 6235799 (U.S.D.A. Sept. 30, 2016) (Dismissal (With Prejudice)), in which the ALJ dismissed this proceeding because “Administrative Law Judges have no authority to grant the relief requested, as stated in the Agency Response” and the doctrine of *res judicata* precludes consideration of Mr. Oden’s Petition for Review.

On October 13, 2016, Mr. Oden filed “Petitioner’s Appeal to the Judicial Officer” [Appeal Petition], and, on November 1, 2016, the ASCR filed an “Agency Response to Appeal to Judicial Officer.” On November 3, 2016, the Hearing Clerk, Office of Administrative Law Judges, United States Department of Agriculture, transmitted the record to the Office of the Judicial Officer for consideration and decision.

DISCUSSION

The regulations in 7 C.F.R. pt. 15d set forth the nondiscrimination policy of the United States Department of Agriculture [USDA] in programs and activities conducted by USDA.¹ Any person who believes that he or she has been subjected to practices prohibited by 7 C.F.R. pt. 15d may file a written complaint with the Office of the Assistant Secretary for Civil Rights, which

¹ 7 C.F.R. § 15d.1.

office will investigate the complaint.² The ASCR will then make a final determination as to the merits of any complaint under 7 C.F.R. pt. 15d and as to the corrective actions required to resolve the complaint.³ The regulations in 7 C.F.R. pt. 15d do not provide for review of the ASCR's final determination by the Office of Administrative Law Judges. Moreover, the Secretary of Agriculture has not delegated authority to the Office of Administrative Law Judges to review the ASCR's final determinations issued under 7 C.F.R. pt. 15d.⁴ Therefore, I affirm the ALJ's dismissal of this proceeding based upon the ALJ's lack of jurisdiction to grant the relief Mr. Oden requests.

Further, even if I were to conclude that the Office of Administrative Law Judge's has authority to review final determinations issued by the ASCR under 7 C.F.R. pt. 15d (which I do not so conclude), I would dismiss this proceeding based upon the doctrine of *res judicata*. Mr. Oden seeks review of *Oden v. Vilsack*, FAD No. 09-2094 (Nov. 19, 2010); however, the record before me indicates that *Oden v. Vilsack*, FAD No. 09-2094 (Nov. 19, 2010), was the subject of litigation in the United States Court of Appeals for the Eleventh Circuit and dismissed with prejudice pursuant to a settlement agreement.⁵

For the foregoing reasons, the following Order is issued.

ORDER

1. The ALJ's dismissal of this proceeding, filed September 30, 2016, is affirmed.

² 7 C.F.R. § 15d.5(a)-(b).

³ 7 C.F.R. § 15d.5(b).

⁴ See 7 C.F.R. § 2.27, which sets forth the authority delegated by the Secretary of Agriculture to the Office of Administrative Law Judges.

⁵ See the ASCR's September 28, 2016 filing, which includes a copy of an Order filed in *Oden v. U.S. Dep't Agric.*, Case No. 13-14129-EE (11th Cir. July 21, 2015) (stating "the parties filed in this Court a 'Stipulation of Dismissal with Prejudice,' which is construed as a joint motion to dismiss this appeal with prejudice" and "[w]e hereby . . . GRANT the joint motion to dismiss this appeal with prejudice").

2. Mr. Oden's Appeal Petition, filed October 13, 2016, is dismissed.

Done at Washington, DC

November 14, 2016

William G. Jenson
Judicial Officer