

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P. & S. Docket No. D-12-0033
)
Douglas Butler,)
) **Order Granting in Part**
) **Petition to Reopen**
Respondent)

On November 26, 2012, Douglas Butler filed Respondent's Petition to Reopen requesting remand of this proceeding to Chief Administrative Law Judge Peter M. Davenport [hereinafter the Chief ALJ] for a new hearing in light of the jury's November 1, 2012, findings in *Pollock v. Butler*, Vermont Superior Court, Addison Civil Division, Docket No. 236-10-11 (Respondent's Pet. to Reopen at 2 ¶ 12). Mr. Butler attached the jury verdict form entered in *Pollock v. Butler* to Respondent's Petition to Reopen, which form contains the jury findings.

On December 17, 2012, Alan R. Christian, Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture [hereinafter the Deputy Administrator], filed Complainant's

Response to Petition to Reopen. The Deputy Administrator opposes Mr. Butler's request to remand this proceeding to the Chief ALJ for a new 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), which are applicable to the instant proceeding, set forth the requirements for a petition to reopen, 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. . . .*

(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)(2). Mr. Butler filed Respondent's Petition to Reopen prior to the issuance of the decision of the Judicial Officer. Respondent's Petition to Reopen identifies the nature and purpose of the evidence to be adduced. Moreover, the evidence to be adduced is not merely cumulative and could not have been adduced at the hearing as the jury in *Pollock v. Butler* did not return a verdict until November 1, 2012, after the June 5th and 6th, 2012, hearing conducted by the Chief ALJ in the instant proceeding.

Under these circumstances, I reopen this proceeding and receive in evidence the November 1, 2012, jury verdict form entered in *Pollock v. Butler*. However, the jury verdict form entered in *Pollock v. Butler* contains the jury's findings that are relevant to the instant proceeding; therefore, I decline to remand the proceeding to the Chief ALJ for a new hearing.

For the foregoing reasons, the following Order is issued.

ORDER

Respondent's Petition to Reopen filed November 26, 2012, is granted in part. The proceeding is reopened and the jury verdict form entered in *Pollock v. Butler*, Vermont Superior Court, Addison Civil Division, Docket No. 236-10-11, is received in evidence.

Done at Washington, DC

January 15, 2013

William G. Jenson
Judicial Officer