

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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|---------------|-----|---------------------------|
| In re: |) | Docket No. 16-0161 |
| |) | |
| Eddie Wise, |) | |
| |) | |
| Petitioner |) | Decision and Order |
| |) | |
| | and | |
| In re: |) | Docket No. 16-0162 |
| |) | |
| Dorothy Wise, |) | |
| |) | |
| Petitioner |) | Decision and Order |
| |) | |

PROCEDURAL HISTORY

On August 24, 2016, Eddie Wise and Dorothy Wise [Wises] instituted this proceeding by filing a “Complaint Expedited Formal Hearing on Ther [sic] Merits and Temporary Injunction” [Complaint]. The Wises allege that the United States Department of Agriculture [USDA]: (1) terminated financial assistance to the Wises; (2) discriminated against the Wises; (3) foreclosed on the Wises; (3) offset the Wises’ retirement; (4) seeks to take more money from the Wises by way of offset; (5) changed the Wises’ 2010 farm plan in order to deny the Wises a farm-operating loan; and (6) sold the Wises’ farm without a determination by an arbitrator or a formal hearing on the merits by an administrative law judge (Compl. at 1, 3-5). The Wises seek a copy of the “running

record,”¹ damages, and a hearing before an administrative law judge pursuant to 7 C.F.R. pt. 15f (Compl. at 5).

On September 13, 2016, the ASCR filed an “Agency Response” in which the ASCR contends that the Wises 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 has jurisdiction to entertain this proceeding, the doctrine of *res judicata* would preclude review by the Office of Administrative Law Judges. On September 16, 2016, the Wises filed “Petitioner’s [sic] Response to Agency Motion to Dismiss”² in which the Wises assert they have a right to a formal hearing before an administrative law judge pursuant to 7 C.F.R. pt. 15f.

The ALJ issued *Wise*, Docket Nos. 16-0161 and 16-0162, 2016 WL 6235795 (U.S.D.A. Sept. 22, 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 the Wises’ Complaint.

On September 23, 2016, the Wises filed “Petitioner’s [sic] Appeal to Judicial Officer” [Appeal Petition].³ On October 11, 2016, the ASCR filed an “Agency Response to Appeal to

¹ The Wises do not indicate what they mean by the “running record.” The record before me consists of documents filed by the Wises and the Assistant Secretary for Civil Rights [ASCR] and a dismissal filed by Administrative Law Judge Jill S. Clifton [ALJ]. The Wises should have a copy of all the documents they filed, and the record establishes that the Hearing Clerk, Office of Administrative Law Judges, USDA [Hearing Clerk], served the Wises with a copy of each document filed by the ASCR and the dismissal filed by the ALJ.

² The Wises assert that they bring this proceeding through their representative, Corey Lea (Compl. at 1); however, Mr. Lea signed “Petitioner’s [sic] Response to Agency Motion to Dismiss” as “Corey Lea, Plaintiff” (Petitioner’s [sic] Resp. to Agency Mot. To Dismiss at third unnumbered page). Nonetheless, I treat the “Petitioner’s [sic] Response to Agency Motion to Dismiss” as having been filed by Mr. Lea on behalf of the Wises.

³ The Wises assert that they bring this proceeding through their representative, Corey Lea (Compl. at 1); however, Mr. Lea signed the Wises’ Appeal Petition as “Corey Lea Representative for

Judicial Officer,” and, on October 13, 2016, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

DISCUSSION

The regulations in 7 C.F.R. pt. 15f set forth procedures for processing non-employment-related discrimination complaints that were filed with USDA prior to July 1, 1997 and that allege discrimination by USDA during the period beginning January 1, 1981 and ending December 31, 1996.⁴ The regulations also require the filing of a “Section 741 Complaint Request”⁵ prior to October 21, 2000.⁶ USDA has no authority to accept a Section 741 Complaint Request unless the Section 741 Complaint Request has already been docketed by USDA pursuant to 7 C.F.R. § 15f.5(a) or unless the Section 741 Complaint Request was filed with USDA prior to October 21, 2000.⁷

The time for filing the Wises’ Complaint expired on July 1, 1997, and the time for filing the Wises’ Section 741 Complaint Request expired on October 21, 2000. The Wises’ first filing in this proceeding, the Wises’ Complaint, was filed with the Hearing Clerk on August 24, 2016, nineteen years, one month, twenty-three days after the Wises’ Complaint was required to be filed and fifteen years, ten months, three days after the Wises’ Section 741 Complaint Request was required to be filed. Moreover, under 7 C.F.R. pt. 15f, the right to a hearing before an

Bernice Atchison” (Appeal Pet. at 6). Nonetheless, I treat the September 23, 2016 filing as an Appeal Petition filed by Mr. Lea on behalf of the Wises.

⁴ 7 C.F.R. §§ 15f.1-.2.

⁵ 7 C.F.R. § 15f.4 defines the term “Section 741 Complaint Request” as a request by a complainant to consider the complainant’s complaint under 7 C.F.R. pt. 15f.

⁶ 7 C.F.R. § 15f.5(c).

⁷ 7 C.F.R. § 15f.5(c); *see also*, 68 Fed. Reg. 7411 (Feb. 14, 2003).

administrative law judge is dependent upon the Wises' filing a Section 741 Complaint Request with the Docketing Clerk in USDA's Office of Civil Rights,⁸ and I find nothing in the record indicating that the Wises' have filed a Section 741 Complaint Request with the Docketing Clerk in USDA's Office of Civil Rights. Therefore, I conclude USDA has no authority to entertain this proceeding, and I affirm the ALJ's dismissal of this proceeding based upon the ALJ's lack of jurisdiction to grant the relief the Wises request.

The ASCR argued and the ALJ found that the doctrine of *res judicata* precludes USDA's consideration of the Wises' Complaint. The Wises' Complaint so lacks specificity that I cannot reach a conclusion regarding whether the doctrine of *res judicata* precludes consideration of the Wises' Complaint. However, as discussed above, the USDA has no authority to entertain this proceeding; therefore, a conclusion regarding the applicability of the doctrine of *res judicata* is not necessary for the proper disposition of this proceeding.

For the foregoing reasons, the following Order is issued.

ORDER

1. The ALJ's dismissal of this proceeding, filed September 22, 2016, is affirmed.
2. The Wises' Appeal Petition, filed September 23, 2016, is dismissed.

Done at Washington, DC

November 15, 2016

William G. Jenson
Judicial Officer

⁸ 7 C.F.R. § 15f.5.