

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:)	HPA Docket No. 13-0080
)	
Justin R. Jenne, d/b/a Justin Jenne)	
Stables and Justin Jenne Stables)	
at Frazier and Frazier Farms,)	
)	
Respondent)	Order Denying Petition to Reopen Hearing

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

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.² On June 18, 2015, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for a ruling on Mr. Jenne's Petition to Reopen Hearing.

¹Prior 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 Ms. Deskins, Mr. Taylor withdrew his representation of Mr. Jenne.

²Complainant's Opposition to the Appeal to the Judicial Officer and Petition to Re-Open

Hearing for Submission of the Additional Evidence and Complainant's Appeal Petition.

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 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 of 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 his Appeal Petition and his Petition to Reopen Hearing. 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 the 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. 13-0308, 2015 WL 1776433 (U.S.D.A. Apr. 13, 2015), he had never been accused by the United States Department of Agriculture of violating the Horse Protection Act of 1970, as

amended (15 U.S.C. §§ 1821-1831) [Horse Protection Act], and he is unable to pay a civil penalty. Mr. Jenne offers the following as reasons for his failure to adduce the evidence in question at the March 11, 2014, hearing:

2. Judge Bullard noted in her Decision and Order that Respondent had not presented any evidence supporting a lesser penalty. Upon advice of counsel, Respondent believes that there are mitigating circumstances which he hopes that Judge Bullard will consider and issue a revised Decision and Order.

Pet. to Reopen Hearing ¶ 2 at 1.

Evidence of Mr. Jenne's compliance with the Horse Protection Act prior to the institution of this proceeding and *Jenne*, No. 13-0308, 2015 WL 1776433 (U.S.D.A. Apr. 13, 2015), and evidence of Mr. Jenne's inability to pay a civil penalty could have been adduced at the March 11, 2014, hearing. Mr. Jenne has not set forth a good reason for his failure to adduce available evidence at the March 11, 2014, hearing, as required by 7 C.F.R. § 1.146(a)(2).

Under these circumstances, I decline to reopen the instant proceeding to receive in evidence the September 5, 2014, Affidavit of Justin R. Jenne and accompanying financial records.

For the foregoing reasons, the following Order is issued.

ORDER

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

Done at Washington, DC

July 16, 2015

William G. Jenson
Judicial Officer