

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) Docket No. 16-0144
)
Bernice Atchison,)
) **Order Dismissing Purported**
) **Appeal Petition**
Petitioner)

PROCEDURAL HISTORY

Administrative Law Judge Jill S. Clifton [ALJ] issued *Atchison*, Docket No. 16-0144, 75 Agric. Dec. ____ (U.S.D.A. Aug. 17, 2016) (Dismissal), in which the ALJ found that the Office of Administrative Law Judges has no authority to grant the relief requested by Bernice Atchison and dismissed Ms. Atchison's request for relief with prejudice. On August 19, 2016, Ms. Atchison appealed *Atchison*, Docket No. 16-0144, 75 Agric. Dec. ____ (U.S.D.A. Aug. 17, 2016) (Dismissal), to the Judicial Officer. On September 7, 2016, the Assistant Secretary for Civil Rights, United States Department of Agriculture, filed Agency Opposition to Appeal to Judicial Officer, and, on September 8, 2016, the Hearing Clerk, Office of Administrative Law Judges, United States Department of Agriculture [Hearing Clerk], transmitted the record to the Office of the Judicial Officer for consideration and decision.

On September 8, 2016, after the Hearing Clerk transmitted the record to the Office of the Judicial Officer, Ms. Atchison filed a reply to the Agency Opposition to Appeal to Judicial Officer. The rules of practice applicable to this proceeding¹ do not provide for filing a reply to a response

¹The rules of practice applicable to this proceeding are the Rules of Practice Governing

to an appeal petition, and Ms. Atchison failed to request leave to file a reply to the Agency Opposition to Appeal to Judicial Officer. Therefore, I have not considered Ms. Atchison's reply to the Agency Opposition to Appeal to Judicial Officer.

DISCUSSION

The Rules of Practice set forth requirements for an appeal petition, as follows:

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

7 C.F.R. § 1.145(a). Ms. Atchison's August 19, 2016, filing does not identify any error by the ALJ; does not identify any portion of the ALJ's August 17, 2016, Dismissal or any ruling by the ALJ with which Ms. Atchison disagrees; and does not allege any deprivation of rights. In short, Ms. Atchison's August 19, 2016, filing does not remotely conform to the requirements for an appeal petition set forth in 7 C.F.R. § 1.145(a).²

I have long held that purported appeal petitions that do not remotely conform to the

Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [Rules of Practice].

²See Ms. Atchison's August 19, 2016, filing entitled "Appeal To Judicial Officer In Re: Bernice Atchison," which states in its entirety: "Please acknowledge email upon receipt."

requirements of 7 C.F.R. § 1.145(a) are to be dismissed;³ therefore, Ms. Atchison's purported appeal petition is dismissed.

For the foregoing reason, the following Order is issued.

ORDER

Ms. Atchison's August 19, 2016, purported appeal petition is dismissed.

Done at Washington, DC

September 9, 2016

William G. Jenson
Judicial Officer

³Tierney, OFPA Docket No. 13-0196, 2014 WL 7534276 (U.S.D.A. Dec. 9, 2014) (Order Dismissing Purported Appeal Pet.); Estes, AWA Docket No. 11-0027, 2014 WL 4311065 (U.S.D.A. June 12, 2014) (Order Dismissing Purported Appeal Pet. and Cross-Appeal); Kasmiersky, P. & S. Docket No. 12-0600, 2014 WL 4311063 (U.S.D.A. June 9, 2014) (Order Dismissing Purported Appeal Pet.); Oasis Corp., PACA Docket No. D-12-0423, 2013 WL 8208340 (U.S.D.A. Jan. 25, 2013) (Order Dismissing Purported Appeal Pet.); Gentry, P. & S. Docket No. D-07-0152, 2009 WL 9534126 (U.S.D.A. Mar. 18, 2009) (Order Dismissing Purported Appeal Pet.); Breed, A.Q. Docket No. 89-72, 50 Agric. Dec. 675 (U.S.D.A. Jan. 11, 1991) (Order Dismissing Purported Appeal); Lall, P.Q. Docket No. 88-28, 49 Agric. Dec. 895 (U.S.D.A. July 5, 1990) (Order Dismissing Purported Appeal).