

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	Docket No. 16-0160
)	
Roy Day,)	
)	
Petitioner)	Decision and Order

PROCEDURAL HISTORY

On August 24, 2016, Roy Day instituted this proceeding by filing a “Request for a Formal Hearing before the Administrative Law Judge Immediate Injunction of Offsets of Wrongfully Taken in Violation of the Pigford Consent Decree” [sic] [Request for Hearing]. Mr. Day alleges that the United States Department of Agriculture [USDA] failed to pay him “\$12,500 in taxes as ordered by stipulation” and that USDA denied him loans. Mr. Day cites as the jurisdictional bases for this proceeding the Equal Credit Opportunity Act (15 U.S.C. §§ 1691-1691f); section 741(b)(1) of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999;¹ the Pigford Remedy Act of 2007; section 14012 of the Food Energy and Conservation Act; and 7 C.F.R. pt. 15f. (Req. for Hr’g at 1.) Mr. Day requests “an injunction against the offsets and reimbursement for money that has been wrongfully offset against him” as well as “further damages due to the fact that he has been denied for loans.” (Req. for Hr’g at 1-2.)

¹ Section 741 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, was enacted in Division A, section 101(a) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. No. 105-277 (7 C.F.R. § 15f.4).

Mr. Day also seeks a copy of the “running records”² and a hearing before an administrative law judge. Mr. Day states that, within twenty-one days after receipt of a copy of the running records, he will “present his complaint with causes of action.” (Req. for Hr’g at 1, 3.)

On September 13, 2016, the ASCR filed an “Agency Response” in which the ASCR contends that Mr. Day failed to assert cognizable jurisdiction for the Office of Administrative Law Judges to entertain this proceeding and requested dismissal of Mr. Day’s Request for Hearing. On September 21, 2016, Mr. Day filed “Petitioner’s Response to Agency’s Motion to Dismiss” in which Mr. Day asserts that he “has the right to have a hearing before the administrative law judge on the merits” and that the ASCR “failed to produce any statutory or rulemaking to supersede a clear mandate from Congress in its effort to provide relief for the black farmer.” (Petitioner’s Resp. to Agency Mot. to Dismiss at 6.) The ALJ issued *Day*, Docket No. 16-0160, 2016 WL 6235794 (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.”

On September 22, 2016, Mr. Day filed “Petitioner’s Appeal to Judicial Officer” [Appeal Petition].³ On October 11, 2016, the ASCR filed an “Agency Response to Appeal to Judicial

² Mr. Day does not indicate what he means by “running records.” The record before me consists of documents filed by Mr. Day and the Assistant Secretary for Civil Rights [ASCR] and a dismissal filed by Administrative Law Judge Jill S. Clifton [ALJ]. Mr. Day should have a copy of all the documents he filed, and the record establishes that the Hearing Clerk, Office of Administrative Law Judges, USDA [Hearing Clerk], served Mr. Day with a copy of each document filed by the ASCR and the dismissal filed by the ALJ.

³ Mr. Day asserts that he brings this proceeding through his representative, Corey Lea (Req. for Hr’g at 1); however, Mr. Lea signed Mr. Day’s Appeal Petition as “Corey Lea Representative for Bernice Atchison[.]” Nonetheless, I treat the September 22, 2016 filing as an Appeal Petition filed by Mr. Lea on behalf of Mr. Day.

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

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 Mr. Day's 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 Mr. Day has 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 Mr. Day requests.

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. Mr. Day's Appeal Petition, filed September 22, 2016, is dismissed.

Done at Washington, DC

November 3, 2016

William G. Jenson
Judicial Officer

⁸ 7 C.F.R. § 15f.5.