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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	
	)	Docket No. **16-0161**
Eddie Wise	)	
	)	**Dismissal** (With Prejudice)
Petitioner	)	
	AND	
In re:	)	
	)	Docket No. **16-0162**
Dorothy Wise	)	
	)	**Dismissal** (With Prejudice)
Petitioner	)	

Appearances:

Mr. Corey Lea, representative for Petitioners Mr. Eddie Wise and Ms. Dorothy Wise, and

Mr. Juan Carlos Alarcon, Esq. with the Office of the General Counsel, Civil Rights Litigation Division, United States Department of Agriculture, Washington D.C.

1. The Petition of Eddie Wise and Dorothy Wise, filed August 24, 2016, is entitled "Complaint
Expedited Formal Hearing on Their Merits and Temporary Injunction".

2. The Notice of Appearance filed August 25, 2016, is that of a different Petitioner (Ferrell Clay Oden), NOT Eddie Wise and Dorothy Wise.

3. I have carefully reviewed the Agency Response filed September 13, 2016, a copy of which is attached; and the Response of Petitioners Eddie Wise and Dorothy Wise, filed September 16, 2016.

4. I conclude that Administrative Law Judges have no authority to grant the relief requested, as stated in the Agency Response. Further, the doctrine of *res judicata* would preclude consideration. The Agency Response cites *Eddie and Dorothy Wise v. Vilsack*

(E.D.NC. No. 10-cv-00197), which was affirmed in the U.S. Court of Appeals for the Fourth Circuit, No. 11-1271, November 1, 2012 (unpublished per curiam opinion), found at

http://www.ca4.uscourts.gov/Opinions/Unpublished/111271.U.pdf

5. I have previously concluded in a Decision regarding Eddie Wise that Administrative Law Judges have no authority to grant the relief requested, Docket No. 13-0325, October 29, 2013, found on the USDA Office of Administrative Law Judges website, at

http://www.oaljdecisions.dm.usda.gov/initial-2013

6. The case regarding Petitioners Eddie Wise and Dorothy Wise is DISMISSED (With Prejudice).

Copies of this Dismissal (With Prejudice) order shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 22nd day of September 2016

Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
Stop 9203 South Building Room 1031
1400 Independence Ave SW
Washington, DC 20250-9203
202-720-4443
FAX 202-720-9776
OALJHearingClerks@ocio.usda.gov

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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

EDDIE WISE, AND DOROTHY WISE
Petitioner

Docket Nos. 16-0161 and 16-0162

Agency Response

On or around August 23, 2016, Petitioners Eddie and Dorothy Wise ("Petitioners") filed a "complaint" with the U.S. Department of Agriculture, Office of the Administrative Law Judges ("OALJ"). On August 24, 2016, OALJ issued a notice to the Assistant Secretary for Civil Rights ("Agency") requesting a response within 20 days. The Agency timely files this response.

Petitioner requests a hearing to be held in Raleigh, North Carolina at a federal courthouse pursuant to 7 C.F.R. part 15f ("Section 741")[1]. *See* Petitioner's Petition for Review.

Petitioner failed to identify valid legal authority and jurisdiction for this action

Under 7 C.F.R. § 1.131, there are nearly fifty statutes which expressly afford an individual a hearing before an Administrative Law Judge. None of them apply to Petitioner's request. *See* 7 C.F.R. § 1.131. As no action may be brought unless authorized, jurisdiction cannot be assumed absent express statutory or regulatory grant. *See Reid v. United States*, 211 U.S. 529, 538 (1909); *Munro v. Unites States*, 303 U.S. 36, 41 (1938); *United States v. Sherwood*, 312 U.S. 584, 290 (1941); *United States v. Testan*, 424 U.S. 392, 399 (1976); and *Hercules, Inc. v. United States*, 516 U.S. 417, 422 (1996). Petitioner has not identified a statutory jurisdictional basis which would entitle her to a hearing before the OALJ.

[1] Petitioner also refers to the 2007 *Pigford* Remedy Act, the 2008 Farm Bill, the *Pigford* Consent Decree, and Lea v. USDA 11-080. None of the aforementioned legislation and proposed legislation has any relevance whatsoever to OALJ's jurisdiction to hear these allegations of discrimination. In fact, the OALJ case cited (Lea v USDA (11-0180)[sic], actually supports the Agency's position, in that OALJ dismissed that case for lack of jurisdiction as well.

Petitioner's citations of "Section 741" and the Equal Credit Opportunity Act ("ECOA") do not establish a statutory jurisdictional basis for this request. *See* 7 C.F.R. § 15(f) ("Section 741"). 7 C.F.R. Part 15f applies to complaints of discrimination filed with USDA prior to July 1, 1997, alleging discriminatory acts from 1981 to 1997. The period for filing a Section 741 complaint request under the authorized waiver of the ECOA Statute of Limitations expired on October 21, 2000. 7 C.F.R Part 15f ("you have until October 21, 2000 to file your Section 741 complaint"). USDA no longer has authority under the terms of the statutory waiver to accept Section 741 complaint requests, unless such a complaint has already been docketed under part 15f by USDA or a request was filed with USDA prior to October 21, 2000. 7 C.F.R § 15f.5 is clear that Section 741 complaint requests filed under part 15f are no longer accepted by USDA. *See generally* 68 Fed. Reg. 7411 (February 14, 2003).

Furthermore, the actions that the instant request asserts were discriminatory were already the subject of a decision by the U.S. District Court for the Eastern District of North Carolina in which the Court dismissed Petitioners' complaint with prejudice. *See Eddie and Dorothy Wise v. Vilsack, et al.* (E.D.NC. No. 10-CV-00197). Thus, even if there were jurisdiction to hear the petition, the doctrine of *res judicata* would preclude it.

As Petitioner fails to assert cognizable jurisdiction for OALJ to hear this action, the Petitioner's request should be dismissed.

Date: September 13, 2016

Respectfully submitted,

J. CARLOS ALARCON, Esq.
Agency Representative
U.S. Department of Agriculture
Office of the General Counsel

Civil Rights, Labor and Employment Law
Room 3312-S (if by U.S. mail);
1400 Independence Avenue, SW
Washington, D.C. 20250-1400

Tel.: (202) 690-2163
Fax: (202) 720-4089
Email: juan.alarcon@ogc.usda.gov

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BEFORE THE SECRETARY OF AGRICULTURE

EDDIE WISE, AND DOROTHY WISE
Petitioner

Docket No. 16-0161 and 16-0162

AGENCY'S NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that Juan Carlos Alarcon, United States Department of Agriculture, Office of the General Counsel, Civil Rights Employment and Labor Litigation Division, hereby enters his appearance as counsel of record for the Agency in the above-captioned matter. The Clerk and all parties are requested to address all papers served on the Agency as follows:

Juan Carlos Alarcon
United States Department of Agriculture
Office of General Counsel, Civil Rights Employment and Labor Litigation Division
Room 3312-S
Washington, DC 20250
202-690-2163
Juan.alarcon@ogc.usda.gov

Date: September 13, 2016

Respectfully submitted,

[redacted]

J. CARLOS ALARCON, Esq.
Agency Representative
U.S. Department of Agriculture
Office of the General Counsel
Civil Rights, Labor and Employment Law
Room 3312-S (if by U.S. mail);
1400 Independence Avenue, SW
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Tel.: (202) 690-2163
Fax: (202) 720-4089
Email: juan.alarcon@ogc.usda.go