

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 11-0179

Ferrell C. Oden

Plaintiff

v.

U.S. Department of Agriculture  
Farm Service Agency and  
Office of the Assistant Secretary for Civil Rights,

Defendants

**Memorandum Opinion and Order of Dismissal**

On March 31, 2011, Ferrell Oden, the Plaintiff in this action, acting *pro se* filed an “Original Complaint” with the Hearing Clerk’s Office of the Office of Administrative Law Judges. The Complaint (a) asserts that the Plaintiff was discriminated against; (b) asserts that the Administrative Procedures Act was violated; (c) requests production of five volumes of documents alleged to be in the possession of the Office of the Assistant Secretary for Civil Rights; (d) requests an expedited hearing; and (e) seeks other unspecified relief. A copy of the Complaint was served upon the Assistant Secretary for Civil Rights who has since filed his Response.

In his Response, the Assistant Secretary for Civil Rights requests that the Complaint be dismissed for the reason that decisions of the Assistant Secretary for Civil Rights are not reviewable by the Office of Administrative Law Judges (OALJ) and further indicated that:

Neither the Administrative Procedures Act (APA), nor any other statutory or regulatory provision, provides the OALJ with authority to conduct a hearing on, or otherwise assume jurisdiction over the Complaint. Mr. Oden received a decision from the Assistant Secretary of Civil Rights (ASCR), dated November 19, 2010, in his civil rights complaint #08-2094, which was an administrative proceeding filed under USDA regulations, 7 CFR part 15d. Docket Entry No. X, p. 1

Similar to provisions contained in the Federal Rules of Civil Procedure requiring articulation of grounds for the court's jurisdiction,<sup>1</sup> §1.135(a) of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings before the Secretary of Agriculture, 7 C.F.R. §1.135(a) requires a complaint to “state briefly and clearly the nature of the proceeding, the identification of the complainant and the respondent, **the legal authority and jurisdiction under which the proceeding is instituted**, the allegations of fact and provisions of law which constitute a basis for proceeding, and the nature of the relief sought.” (Emphasis added). The “Original Complaint” filed in this action fails to set forth any substantive jurisdictional provision and cites only the APA as authority for the case being brought before OALJ.

Nearly fifty statutes exist which afford an individual or entity a hearing before an Administrative Law Judge under specific proceedings brought before the Secretary of Agriculture. (*See*: §1.131 of the Rules of Practice, 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); *Monro v. United States*, 303 U.S. 36, 41 (1938); *United States v. Sherwood*, 312 U.S. 584, 590 (1941); *United States v. Testan*, 424 U.S. 392, 399 (1976); and *Hercules, Inc. v. United States*, 516 U.S. 417, 422 (1996).

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<sup>1</sup> *See*: Civ. R. 8(a)(1), Federal Rules of Civil Procedure.

In his Memorandum in Opposition to the Motion to Dismiss, the Plaintiff suggests that Section 741 provides jurisdiction, citing “Docket No. 07-0196, *Wilkerson v. USDA*, Docket No. 10-0442 *Sanchez v. USDA*, [and] Docket No. 11-0035 *Flores v. USDA*.” The Plaintiff is correct that a number of Section 741 cases have been heard by Administrative Law Judges;<sup>2</sup> however, in many instances those cases were “eligible complaints” brought under a limited waiver of the statute of limitations which were then referred to OALJ by the Assistant Secretary of Administration for USDA under 7 C.F.R. §2.24(a)(1)(F)(ix). No such referral has been made in the instant action and the ASCR has retained jurisdiction of this action following action taken by the National Appeals Division (NAD).<sup>3</sup>

Accordingly, there being no jurisdictional grant of authority to hear the action, the Complaint will be found to be fatally deficient and this action will be **DISMISSED**.

Copies of this Opinion and Order will be served upon the parties by the Hearing Clerk.

May 3, 2011

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Peter M. Davenport  
Chief Administrative Law Judge

Copies to: Ferrell C. Oden  
Jeffrey Knishkowry, Esquire  
Dr. Joe Leonard, Jr.

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<sup>2</sup> Over 100 discrimination cases were heard by Administrative Law Judges from the U.S. Department of Housing and Urban Development. More recently, USDA Administrative Law Judges have heard such cases. *See: In re: Wilbur Wilkinson, ex rel. Ernest and Mollie Wilkerson*, 67 Agric. Dec. 241 (2008), *reversed by ASCR, In re Wilbur Wilkinson, et al. v. USDA*, 67 Agric. Dec. 1126 (2008); Pet. For Mandamus dismissed *sub nom. Wilkerson v. Vilsack*, 666 F. Supp 2d 118 (D.D.C. 2009); *In re: Robert A. Schwerdfeger*, 67 Agric. Dec. 244 (2008); and *Charles McDonald v. Vilsack*, 68 Agric. Dec. \_\_\_\_ (2010).

<sup>3</sup> In the past, the ASCR has reviewed Administrative Law Judge’s decisions in discrimination cases. *See, eg. In re Wilbur Wilkinson, et al. v. USDA*, 67 Agric. Dec. 1126 (2008).