

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 18-2453

Jessie Carter

Plaintiff - Appellant

v.

Department of Agriculture, and its representatives in their official capacity at the USDA

Defendant - Appellee

Appeal from U.S. District Court for the Eastern District of Arkansas - Pine Bluff
(5:18-cv-00108-BRW)

JUDGMENT

Before COLLOTON, WOLLMAN, and KELLY, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

May 16, 2019

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

United States Court of Appeals
For the Eighth Circuit

No. 18-2453

Jessie Carter,

Plaintiff - Appellant,

v.

Department of Agriculture, and its representatives in their official capacity at the USDA,

Defendant - Appellee.

Appeal from United States District Court
for the Eastern District of Arkansas - Pine Bluff

Submitted: April 18, 2019

Filed: May 16, 2019

[Unpublished]

Before COLLOTON, WOLLMAN, and KELLY, Circuit Judges.

PER CURIAM.

Jessie Carter appeals the district court's¹ dismissal of his pro se action against the United States Department of Agriculture seeking relief under the Administrative

¹The Honorable Billy Roy Wilson, United States District Judge for the Eastern District of Arkansas.

Procedures Act. Having carefully reviewed the record and Carter's arguments on appeal, we find no basis for reversal. Accordingly, we affirm. *See* 8th Cir. R. 47B.

United States Court of Appeals
For The Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
St. Louis, Missouri 63102

Michael E. Gans
Clerk of Court

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May 16, 2019

Jessie Carter
253 Dallas 236
P.O. Box 173
Sparkman, AR 71763

RE: 18-2453 Jessie Carter v. Department of Agriculture

Dear Sir:

The court today issued an opinion in this case. Judgment in accordance with the opinion was also entered today. The opinion will be released to the public at 10:00 a.m. today. Please hold the opinion in confidence until that time.

Please review Federal Rules of Appellate Procedure and the Eighth Circuit Rules on post-submission procedure to ensure that any contemplated filing is timely and in compliance with the rules. Note particularly that petitions for rehearing and petitions for rehearing en banc must be received in the clerk's office within 45 days of the date of the entry of judgment. Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. No grace period for mailing is allowed, and the date of the postmark is irrelevant, for pro-se-filed petitions. Any petition for rehearing or petition for rehearing en banc which is not received within the 45 day period for filing permitted by FRAP 40 may be denied as untimely.

Michael E. Gans
Clerk of Court

JMM

Enclosure(s)

cc: Ms. Jamie Goss Dempsey
Mr. Jim McCormack
Mr. Mark W. Webb

District Court/Agency Case Number(s): 5:18-cv-00108-BRW

**IN THE UNITED STATES DISTRICT COURT
EASTERN DIVISION OF ARKANSAS
PINE BLUFF DIVISION**

JESSIE CARTER

PLAINTIFF

VS.

5:18-cv-00108-BRW

DEPARTMENT OF AGRICULTURE

DEFENDANT

ORDER

The reasons set out in Defendant's Motion to Dismiss (Doc. No. 10) are well-taken.

Accordingly, the motion is GRANTED and this case is DISMISSED.

IT IS SO ORDERED this 4th day of May, 2018.

/s/ Billy Roy Wilson
UNITED STATES DISTRICT JUDGE

US DISTRICT COURT
WESTERN DIST ARKANSAS
FILED

JAN 05 2018

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

DOUGLAS F. YOUNG, Clerk
By Deputy Clerk

JESSIE CARTER PLAINTIFF]
V.]
USDA, and its REPRESENTATIVES in their]
official capacity at the USDA]
DEFENDANTS]

No.

18-1004

COMPLAINT AGAINST USDA and its REPRESENTATIVES ...

This complaint is filed by Jessie Carter, and in accord/pursuant to U.S.C. 702 (Title 5, Part 1, Chapter 7). Under this Statute, I request a review of information and statements, used by Defendants that were;

1. Not in accord with USDA policy,
2. Defendants directed/recommended actions adverse to Plaintiff, without asking or understanding situation,
3. Defendants made written statements that showed only part of the law, then writing in the remainder, with something that is in conflict with USDA policy,
4. Used documents that were not consistent with USDA policy,
5. Has not followed stated/sworn policy with Plaintiff,

USDA and its Representatives, have acted in excess of their authority at times, and have withheld information at other times. These acts, and non-action, by USDA, have the effect of discrimination in character, which is simply treating Plaintiff differently than others. USDA and it's Representatives, did these acts 'Knowingly'.

These actions have caused, and were the basis, that lead to Plaintiff being placed on "Permanent Exclusion List of Providers". Being on this list means, Plaintiff can never again work in chosen field. Any, and all programs operated thru Arkansas Dept. of Human Services (ADHS), are off limits to Plaintiff, because of actions of Defendants. It has taken a long time, and also intervention from The Court, to finally get confirmation of what the law/policy really is on the subject of CFR 226.6 which has been documented thru The Court.

Under 5 USC 706, Plaintiff is confident that The Court ; " shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action."

With the information received from Ms. Jennifer Weatherly at USDA, which shows from 1995 thru 2001, all individuals and institutions were to only remain on National Disqualified List (NDL) for 7 years, since they were terminated from participation, if there was no debt owed. Ms. Weatherly conferred with others in the USDA before rendering this information. I take this information to be fact, as it reads in the CODE OF FEDERAL REGULATIONS, 226.6 (7).

Enclosed please find packet of documents, showing, information from Ms. Weatherly (USDA), also various documentation from USDA Representatives, at different times, that shows the methods being used to retain an individual on the NDL, causing Plaintiff to be placed on Permanent Exclusion List. Had USDA's stated policy, by Ms. Weatherly been followed, there would be no complaint.


This complaint as filed, requests The Court to declare judgement in favor of Plaintiff, and relief in the form of;

1. Replacement of former certification, (programs were taken due to USDA's abuse of authority), and programs,
2. Written confirmation that Plaintiff did not violate CFR 226.6
3. Defendants shall cause Plaintiff to be removed from List of Permanently Excluded Providers.

For the acts and deeds, of the Defendants, that show improper use of regulations and recommendations, that are not in accord with USDA policy. Plaintiff asks The Court to find Defendants liable for Plaintiff's cause of action.

May The Court understand that Plaintiff is not by any means an Attorney, or Lawyer of any kind. Nor does Plaintiff have any help, or advice from such. For these reasons, Plaintiff respectfully request The Court allow for Plaintiff's, sometimes misspelled words, and if the meaning is not clear on any subject, allow Plaintiff to clarify/explain.

JESSIE CARTER
PLAINTIFF
P.O. Box 173
Sparkman, Ar. 71763


12-26-2017

List of Names, Responsible Parties;

Mr. Curtis Curry-SNP Director for State of Arkansas
Mr. Ronald Rhodes-Director USDA Regional SW Office-Dallas
Ms. Betty Veasley-SNP Director USDA SW Regional Office -Dallas
MS. Ellen Walberg-FNS SW Regional Office -Dallas
MR. Alfred V. Escota- Civil Rights Director- Dallas
Ms. Jennifer Weatherly -USDA FOIA Official-Virginia

+

1 MR. WALKER: That is not true at all.
2 And there have been no hearings. We had a
3 settlement of this case in Federal Court.
4 There was no Federal Court determination of
5 any kind regarding Ms. Whitaker. And we are
6 in Federal Court now on that issue.

7 MS. HARLAN: Can I respond to that?

8 MR. WALKER: Among others.

9 MS. HARLAN: He is not in Federal Court
10 regarding whether or not -- I will just
11 withdraw that. Ms. Whitaker has had, I know,
12 at least two cases in front of Federal Court.
13 I'm thinking both of them got dismissed, but
14 I don't know. And I do know she had an
15 administrative hearing and she appealed that
16 to Circuit Court and it did not go, she did
17 not win.

18 HEARING EXAMINER DYER: I have heard the
19 arguments. I don't think that I can look
20 behind anything that involves a prior
21 placement of someone on the National
22 Disqualification List. Otherwise, then we
23 would have to hear all of that testimony
24 here, and essentially reopen that entire
25 record. This appeal is of a decision, as

1 best I understand it, dated February 18th of
2 2005, of a serious deficiency. And it
3 appears that the reason the deficiency was
4 issued is because of Ms. Whitaker being on
5 the national list. If it is established that
6 she was on the national list, and if it is
7 established that she met the definition of "a
8 principal" or a --

9 MR. WALKER: Has to be a principal.

10 HEARING EXAMINER DYER: A principal or a
11 -- I want to make sure I'm getting this
12 correct. A responsible principal or a
13 responsible individual, then I think those
14 are the issues that I have to consider today.

15 MR. WALKER: All right.

16 HEARING EXAMINER DYER: I think the
17 issue is just that narrow. And I can't go
18 back and re-try or re-explore how she got on
19 that list, because then we start back into
20 things that I don't think are part of this
21 appeal. So, we are going to move forward on
22 the issue of whether or not Ms. Whitaker --

23 MR. WALKER: Your Honor, why don't we
24 take five minutes?

25 HEARING EXAMINER DYER: -- is a

- 1 A By this office.
- 2 Q So, you all sent this in in 2004?
- 3 A You all didn't send it, no.
- 4 Q Just a moment.
- 5 A No, no.
- 6 Q Just a moment. Were you the director, or did you
7 become the director in March of 2004?
- 8 A I was the director in 2004.
- 9 Q About March?
- 10 A March, yes.
- 11 Q All right. Okay. Now, did you ask that she be
12 placed, at that time, on the National Disqualified
13 List?
- 14 A No.
- 15 Q Did you ask at that time that the Sparkman
16 Learning Center be placed on a National Disqualified
17 List?
- 18 A No.
- 19 Q Did you ask that the time be extended for
20 Sparkman to be on the National Disqualified List?
- 21 A No.
- 22 Q Now, according to this document, Sparkman should
23 have come off of the National Disqualified List in
24 February of 2004, according to this document; would
25 you not agree?

1 A If you request to be removed.

2 Q All right. Now, since that becomes pertinent,
3 can you draw my attention to the particular provision
4 that says, "If you request to be removed"?

5 A There is not a provision, but this was a decision
6 made by the original office in the Washington, D.C.
7 office.

8 Q Just a moment. With respect to federal
9 regulations, regional office administrative decisions
10 do not overrule the federal regulations, do they?

11 A Because there is -- regional?

12 Q Just a moment. The federal regulations are the
13 law, aren't they?

14 A Right.

15 Q Now, the regional interpretations are simply the
16 regional interpretations, aren't they?

17 A Right.

18 Q Now, the regional office, you are saying, in
19 2004, made a decision to circumvent or disregard the
20 federal regulations; is that correct?

21 A No.

22 Q Well, by what authority did the regional office
23 disregard the provision saying --

24 MS. HARLAN: I'm going to object. Mr.
25 Curry would have no way of knowing why the

1 federal office did what they did.

2 MR. WALKER: That is right.

3 HEARING EXAMINER DYER: Sustained.

4 MR. WALKER: That is right.

5 BY MR. WALKER:

6 Q Now, let me ask you, do you have some
7 documentation to establish that the regional office
8 decided to prolong the time for both the Sparkman
9 Learning Center and Ms. Whitaker to be on the National
10 Disqualified List? Do you have any documentation?

11 A I don't have any documentation where they
12 prolonged the time.

13 Q Well, no. Where they extended -- where they made
14 the time run more than seven years?

15 A I'm not aware that they made the time run more
16 than seven years.

17 Q All right, then. Now, she finished with you, and
18 I think I'm going to finish with you shortly. There
19 are four letters that you say were written. Now, Ms.
20 Blakney -- you heard Ms. Blakney's testimony?

21 A Uh-huh. (Indicated yes.)

22 Q When you talked to Mr. Carter about Ms.
23 Whitaker's participation, it was with respect to her
24 being chief operating officer of the Sparkman Learning
25 Center in the Child and Adult Care Food Care Program,

1 introduce this, we will let him do that.

2 MR. WALKER: Well, no. Did you provide
3 it to us?

4 MS. HARLAN: No, sir, we did not. We
5 didn't realize that you were going to make
6 this an issue. Again, the issue is not that
7 → she is on -- the issue is what happened
8 because she is on the list. We took the
9 actions that we took because she is on the
10 list.

11 MR. WALKER: Now, I don't -- Ms. Harlan
12 just can't resist the temptation to be a
13 witness. If I could just see the list, I
14 would appreciate it.

15 MS. HARLAN: (Complies.)

16 MR. WALKER: Thank you.

17 BY MR. WALKER:

18 Q Since you were talking about that list, is this
19 the document that you were relying on?

20 A Yes.

21 Q And it indicates that Ms. Whitaker was on the
22 list as of 1993?

23 A 2-20, 1993.

24 Q And what is meant by "no"?

25 A I would have to have a full screen. I don't

**Additional material
from this filing is
available in the
Clerk's Office.**