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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
 Steve Lane,) FCIA Docket No. 15-0043
)
 Respondent.)

**ORDER REMANDING CASE TO THE CHIEF JUDGE
FOR FURTHER ACTION**

Summary of Procedural History

On December 11, 2014, Brandon Willis, Manager of the Federal Crop Insurance Corporation (Manager), instituted this administrative proceeding by filing a Complaint against Steve Lane (Respondent) under the Federal Crop Insurance Act, as amended (7 U.S.C. §§ 1501-24); its Regulations codified at 7 C.F.R. §§ 400.451-458 (Regulations); and the Rules of Practice Governing Formal Adjudicatory Proceedings (7 C.F.R. §§ 1.130-.151) (Rules of Practice) instituted by the Secretary of the United States Department of Agriculture.

The Manager alleges that Respondent violated the Federal Crop Insurance Act and its Regulations by willfully and intentionally providing false or inaccurate information to the Great American Insurance Company (Great American) and to the United States Department of Agriculture, Risk Management Agency (Risk Management Agency or RMA) relative to his 2009 crop insurance policy.¹ On December 31, 2014, Respondent filed an Answer and Hearing Demand in which he denied the material allegations of the Complaint.

On June 23, 2015 through June 24, 2015, in Savannah, Georgia, Administrative Law Judge (ALJ), Janice K. Bullard conducted an oral hearing. George H. Rountree and Robert F.

¹ See Complaint ¶¶ III(c)-(d) at 9.

Mikell, with Brown Rountree PC, in Statesboro, Georgia, represented the Respondent. Mark R. Simpson, with the Office of the General Counsel, United States Department of Agriculture, in Atlanta, Georgia, represented the Manager. On September 25, 2015, Respondent filed a motion to reopen the record to submit additional post-hearing evidence, and, on October 26, 2015, the ALJ granted Respondent's motion and admitted post-hearing evidence to the record.

On April 5, 2016, after Respondent and the Manager filed post-hearing briefs,² the ALJ issued a Decision and Order: (1) concluding that Respondent willfully and intentionally provided false or inaccurate information to the Federal Crop Insurance Corporation or to Great American with respect to an insurance plan or policy under the Federal Crop Insurance Act; (2) disqualifying Respondent for five years from receiving any monetary or nonmonetary benefit under seven specific statutory provisions and any law that provides assistance to a producer of an agricultural commodity affected by a crop loss or a decline in the prices of agricultural commodities; and (3) imposing on Respondent a civil fine in the amount of \$11,000.³

On April 18, 2016, Respondent appealed the ALJ's Decision and Order to the Judicial Officer,⁴ and on May 19, 2016, the Manager filed a response thereto. On May 23, 2016, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

On April 5, 2017, based upon his consideration of the record, the Judicial Officer found that no change or modification of the ALJ's April 5, 2016 Decision and Order was

² The parties' post-hearing briefs include: Respondent's Written Closing Arguments; Complainant's Closing Argument; Respondent's Reply to Complainant's Closing Arguments; and Claimant's Response to Respondent's Reply to Complainant's Closing Argument.

³ See ALJ's Decision and Order, IV at 28, Order at 28-29.

⁴ Respondent appeal filings included Respondent's Appeal to Judicial Officer (Appeal Petition) and Respondent's Brief in Support of Appeal.

warranted and, accordingly, the Judicial Officer entered a Decision adopting the ALJ's April 5, 2016 Decision and Order as USDA's final order in this proceeding. The Rules of Practice provide, when the Judicial Officer finds no change or modification of the ALJ's decision is warranted, the Judicial Officer may adopt an ALJ's decision as the final order in a proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. *See* 7 C.F.R. § 1.145(i).

Respondent, timely filed an appeal of the ALJ's Decision and Order, as affirmed and adopted by the Judicial Officer, with the United States District Court for the Southern District of Georgia, Statesboro Division (CV 617-082) (District Court). By Order entered on September 6, 2018, the District Court **DENIED IN PART** and **GRANTED IN PART** the parties' cross motions for summary judgment. The Court found that the ALJ's decision regarding Respondent's 2009 crop insurance claim, was arbitrary and capricious, and thus **VACATED** that portion of the ALJ's decision. However, the Court found that the ALJ's decision regarding Respondent's failure to report his carryover tobacco was not arbitrary and capricious, and thus **AFFIRMED** that portion of the ALJ's decision. The District Court also **AFFIRMED** the ALJ's finding that issue preclusion does not apply and that the federally mandated arbitration between the Respondent and Great American did not preclude suit by the Government.

The District Court noted that its split finding might have implications for the sanctions that may be imposed by the ALJ in this case. *See* 7 C.F.R. §400.454(a)(4). Accordingly, the District Court **REMANDED** this case back to the ALJ, and/or the Judicial Officer, for purposes of determining the appropriate sanctions in light of the District Court's ruling. Citing *Black Warrior Riverkeeper, Inc. v. United States Army Corps of Engineers*, 781 F.3d

1271, 1290-91 (11th Cir. 2015) (finding that “remedy of remand without vacatur is within a reviewing court’s equity powers under the APA”), the District Court specifically held that the Court’s injunction entered pursuant to 5 U.S.C. § 705 **SHALL REMAIN IN PLACE** until the ALJ (and/or the Judicial Officer) determines the appropriate sanctions on remand.

For the foregoing reasons, the following Order is issued.

ORDER

This case is hereby **REMANDED** back to the Chief Judge for further action consistent with the District Court’s September 6, 2018 Order.

Done at Washington, D.C.
this 11th day of December 2018



Bobbie J. McCarty
Judicial Officer

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