

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)	
TIMOTHY C. PIGFORD, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	97-1978 (PLF)
MIKE JOHANNNS, SECRETARY,)	
THE UNITED STATES DEPARTMENT)	
OF AGRICULTURE,)	
)	
Defendant.)	
_____)	
_____)	
CECIL BREWINGTON, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	98-1693 (PLF)
MIKE JOHANNNS,)	
)	
Defendant.)	
_____)	

ARBITRATOR’S NINTH REPORT ON THE LATE-CLAIM PETITION PROCESS

The Court has held that “all putative class members seeking permission to late file under Section 5(g) of the Consent Decree are directed to review the terms of that provision, as interpreted by the Court and the Arbitrator. If, having reviewed the requirements for eligibility under Section 5(g), petitioners believe that they are entitled to late file, petitioners must seek permission directly from the Arbitrator, Michael K. Lewis.” *Pigford v. Veneman*, 201 F. Supp. 2d 139 (D.D.C. May 10, 2002); see also, *Pigford v. Glickman*, No. 97-1978 (D.D.C. Dec. 20, 1999); *Pigford v. Glickman*, No. 97-1978 (D.D.C. Jul. 14, 2000). This is

the Arbitrator's ninth semi-annual report on the status of the review of late-claim petitions pursuant to Paragraph 5(g) of the Consent Decree.

Background

Since December 20, 1999, the Arbitrator has had the responsibility of determining whether a putative claimant who missed the October 12, 1999 deadline may file a late claim. A putative claimant may file late if he "demonstrates that his failure to submit a timely claim was due to extraordinary circumstances beyond his control." Consent Decree, ¶5(g). In the Memorandum Opinion and Order of November 26, 2001, the Court found that the Arbitrator's "late-claim petition processes are more than sufficient to ensure that Section 5(g) of the Consent Decree is properly and justly applied and to assure that fair process is afforded." *Pigford v. Veneman*, 173 F. Supp. 2d 38, 40 (D.D.C. 2001). As a result, the Court has declared that "it has retained no authority to review the Arbitrator's rulings on petitions to late file... Nor has it retained authority to control or review the procedures that the Arbitrator employs to reach his decisions." *Pigford v. Veneman*, 2003 U.S. Dist. LEXIS 9210, *4 (D.D.C. Jun. 4, 2003). Further, the Court ruled that it "will not consider any such petition, either at the first instance or following denial and/or reconsideration by the Arbitrator." *Pigford v. Veneman*, No. 97-1798 (D. D.C., filed Sept. 13, 2004).

On August 9, 2005 and September 1, 2005, the Court again had occasion to pass upon the Arbitrator's authority. *Pigford v. Johanns*, No. 97-1798 (D. D.C., filed Aug. 9, 2005) (docket numbers 1168, 1171, 1172 & 1173); *Pigford v. Johanns*, No. 97-1798 (D. D.C., filed Sept. 1, 2005). In those orders, the Court reaffirmed the Arbitrator's processes and decisions, denying fourteen motions by individuals seeking to overturn rulings of the Arbitrator in their petitions and requests for reconsideration.

Processes and Procedures

Forms & Filing

Since the issuance of the First Report, there have been no changes to the procedures relating to the filing of a petition to file a late claim. Approximately 66,000 petitions were filed by the September 15, 2000 deadline, and an additional 7,800 putative claimants filed petitions after that deadline. Only a few putative late claimants have been able to convince the Arbitrator that the Facilitator or the Arbitrator misread the postmark on their late claim petition. All other late claims postmarked after September 15, 2000 have been rejected as outside the scope of the July 14, 2000 order.

Categorization & Research

The categorization and research methods described in the first report remain in use. The Arbitrator continues to use the same criteria in the review process. On January 3, 2005, the Court reaffirmed its finding that notice of the Consent Decree was adequate. *Pigford v. Veneman*, No. 97-1798 at 19-24 (D. D.C., filed January 3, 2005).¹ In August and September 2005, the Court denied motions from fourteen would-be late claimants² who asserted that lack of notice was sufficient to require approval of their late-claim petitions, the Court reaffirmed its finding regarding adequacy of the notice. *Pigford v. Johanns*, No. 97-1798 (D. D.C., filed Aug. 9, 2005) (docket numbers 1168, 1171, 1172 & 1173); *Pigford v. Johanns*, No. 97-1798 (D. D.C., filed Sept. 1, 2005). As the notice was adequate, the

¹ The Arbitrator is unaware of any pending appeal or motion for reconsideration of that order and thus considers it to be the final word from the Court on the issue of timeliness.

² *Pigford v. Johanns*, No 97-1978 (docket numbers 1174, 1175, 1176, 1178, 1187, 1188, 1189, 1190, 1191, 1192, 1993, 1194, 1195, 1196, 1197, 1198, 1199 & 1200).

Arbitrator must continue to hold that lack of knowledge of the settlement cannot amount to extraordinary circumstances beyond a petitioner's control.

As of March 31, 2004, the Arbitrator had completed all initial decisions on the petitions and notified the petitioners. Although the Arbitrator had utilized researchers to investigate late claim petitions where further research was necessary to make an informed decision, they are no longer needed. Any additional timely petitions discovered after this point have been and will continue to be reviewed on a priority basis; only one such petition has been discovered since the last report. Of the 65,952 timely petitions, 63,836 were denied and 2,116 were approved.³

Reconsideration

As described in prior reports, putative claimants whose late claim petitions are denied may make a written request for reconsideration. The reconsideration process remains as described in those reports.

Putative claimants have a 60-day window in which to submit a request for reconsideration. A total of 23,936 requests for reconsideration have been filed, 20,685 of which were sent within the 60-day deadline. As the numbers indicate, slightly under one-third of all denied petitioners have made timely requests for reconsideration. As of the date of this report, the period for filing timely requests for reconsideration has expired.⁴ All timely requests for reconsideration have been recorded by the Facilitator and forwarded to the Arbitrator.

³ The Claims Facilitator continues to review the petitions to consolidate duplicates.

⁴ On rare occasions, the Arbitrator has permitted the resetting of the 60 day window in circumstances in

Requests for reconsideration were distributed to researchers for investigation. The researchers reviewed the underlying petition, the information from any interviews with the petitioner, any previously submitted documentation, and the information submitted with the request for reconsideration. Researchers contacted some of the putative claimants for further clarification. Upon completing his or her investigation, each researcher drafted an individually tailored response to the request for reconsideration for the Arbitrator's review. All requests for reconsideration have been investigated by researchers and have been returned to the Arbitrator's office for further review.

As of the filing of the Eighth Report on July 11, 2005, the Arbitrator had made decisions regarding 10,745 reconsideration requests. As of the filing of this report, the Arbitrator has made decisions in a total of 17,279 reconsideration requests, approving a total of 113 petitions.⁵ The Arbitrator's decision on a reconsidered petition is final.

which the petitioner was not properly notified of the initial rejection and of the opportunity to request reconsideration.

⁵ In the Eighth Report, the Arbitrator reported the approval of 140 petitions. The apparent decrease in the number of approved requests for reconsideration captured in this report results from the consolidation of duplicate petitions.

Results to Date

The status of the late claim process is presented below in tabular form. As noted in the Fourth Report, as of May 27, 2003, the Claims Facilitator began including Late Claim Petition information in its weekly status report. The Facilitator reports the number of affidavits and requests for reconsideration filed. The Arbitrator is using the Claims Facilitator's methodology, which inflates all petition numbers due to the fact that individual petitioners have filed multiple petitions to file claims and requests for reconsideration.

Approximate number of Petitions to File Late Claims:	73,800
Approximate number filed before Sept. 15, 2000:	66,000
Number of petitions approved:	2,116
Number of petitions denied:	63,836
Approximate number of Requests for Reconsideration:	24,000
Approximate number filed within 60 days:	20,700
Number of reconsideration requests decided:	17,279
Number of reconsideration requests resulting in approval of petition:	113

Conclusion

The Arbitrator's review of late claim petitions is proceeding consistent with the Arbitrator's previous reports. As noted in the Sixth Report on the Late-Claim Petition Process, he has notified nearly all those who will have prevailed on their request for reconsideration of his decision. The Arbitrator is conducting a thorough review of the remainder to ensure that no petitioner who should prevail upon reconsideration is overlooked. As things stand now, all those who do not prevail on their request for

reconsideration will receive detailed letters explaining the Arbitrator's decision by the end of January 2006.

Date: November 30, 2005

Respectfully submitted,

/s/ _____
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