

[REDACTED]

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Privacy Act Protective Order¹**

Lester J. Levy, Esq.
Chief Adjudicator
c/o Poorman-Douglas Corporation
10300 SW Allen Boulevard
Beaverton, OR 97005

Re: Petition of [REDACTED]
Claim Number [REDACTED]

Dear Chief Adjudicator:

The Monitor has completed review of the Petition. For the following reasons, the Monitor will not direct reexamination of the Adjudicator's Decision.

I. PROCEDURAL POSTURE

This is a Track A matter involving a credit claim. The Adjudicator's Decision denied relief. The Claimant has petitioned the Monitor for review.

The following claim is before the Monitor for review:

1. Denial of Operating Loan in 1982.

II. THE RECORD FOR MONITOR REVIEW

The record upon petitioning for Monitor review consists of:

1. The Claim Sheet and Election Form ("Claim Sheet");
2. The United States Department of Agriculture's Response to the Claim ("USDA's Claim Response");
3. The Adjudicator's Decision ("Decision");

¹ *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999) (Second Amended Supplemental Privacy Act Protective Order, July 14, 2000) (copy available from the Facilitator).

4. The Petition for Monitor Review (“Petition”);
5. The Non-Petitioning Party’s Response (“Petition Response”); and
6. The following supplemental materials submitted for consideration and accepted by the Monitor into the record:²
 - a. Allegations regarding the purposes of two Emergency Loans received by the Claimant in 1982 (located in the Petition at pages 5-6);
 - b. Results of computer record searches (Current/Past Debts Inquiry and Name and Address Computer Searches) and an e-mail regarding the results of an archived records search (Microfiche) for Farmer A and Farmer B (attached to the Petition Response as Exhibits 1-4); and
 - c. Copies of USDA’s regulations regarding Emergency Loans (attached to the Petition Response as Exhibit 5).

III. SUBSTANTIVE STANDARD OF REVIEW

Under the Consent Decree, it is the duty of the Monitor to:

direct the [F]acilitator, Adjudicator, or [A]rbitrator to reexamine a claim where the Monitor determines that a clear and manifest error has occurred in the screening, adjudication, or arbitration of the claim and has resulted or is likely to result in a fundamental miscarriage of justice.³

The Monitor will find clear and manifest error where the Monitor, in reviewing the entire record, is left with the definite and firm conviction that a mistake has been made. If the error has resulted, or is likely to result, in a fundamental miscarriage of justice, the Monitor will direct reexamination.

IV. ANALYSIS OF CLAIM

The Monitor analyzed the claim under the tests for “clear and manifest error” and for “fundamental miscarriage of justice.”

² The decision to accept supplemental materials into the record is within the Monitor’s discretion. *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999) (Order of Reference, § 8(f), Apr. 4, 2000) (copy available from the Facilitator and also available at <http://www.dcd.uscourts.gov/district-court-2000.html>). A description of the supplemental materials submitted in this case and a brief explanation of the Monitor’s decision to accept or deny the materials is set forth in Appendix A.

³ *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999) (Consent Decree, ¶ 12(b)(iii), Apr. 14, 1999) (available from the Facilitator and at <http://www.dcd.uscourts.gov/district-court-1999.html>).

A. Claim One—Denial of Operating Loan in 1982

In the Claim Sheet, the Claimant states in 1982 he leased 200 acres of land to grow tomatoes and cucumbers.⁴ The Claimant alleges that in January 1982 he applied for a \$160,000 Operating Loan to purchase plants, seeds, fertilizer, and other expenses.⁵ The Claimant states he was denied an Operating Loan because the County Supervisor said he had too much existing debt to be able to repay the loan.⁶ The Claimant further states that he has always paid his debts.⁷ The Claimant names two white farmers, Farmer A and Farmer B, and alleges Farmer A had similar farming experience, applied for an Operating Loan and had no problem receiving the loan.⁸ The Claimant also states that Farmer B received an Operating Loan for which the only security required was his crop.⁹ The Claimant states further, "In 1982 on account of my continued application, re-applications and appeal for an operating loan, I did not receive a operating loan," resulting in lost time and inability to pay his debts for land and equipment.¹⁰ The Claimant estimates economic damages of \$109,000.¹¹

In its Claim Response, USDA indicates that the Claimant applied for an annual production loan on October 21, 1981, which was granted as a \$45,000 Emergency Loan on November 27, 1981.¹² USDA also states that the Claimant applied for an Emergency Loss Loan on March 23, 1982, which was granted as a \$62,120 Emergency Loan on June 21, 1982.¹³ Regarding Farmer A, USDA states that no loan file was available, and that a former County Supervisor stated that Farmer A did have loans with USDA that were paid in full prior to 1985.¹⁴ USDA states that no loan file was available for Farmer B, and that a

⁴ Claim Sheet, at 3.

⁵ Claim Sheet, at 3, 5.

⁶ Claim Sheet, at 3.

⁷ Claim Sheet, at 3.

⁸ Claim Sheet, at 5. For privacy purposes, references to the named allegedly similarly situated white farmers are coded in sequential alphabetical order. The Claimant also states that Farmer A sought funds for his truck crop operation growing tomatoes, cucumbers, and other truck crops and that "[a]pplications for operating loans for truck crops are similar in that they are routine and assist farmers in continuing existing operations." Claim Sheet, at 5.

⁹ Claim Sheet, at 5.

¹⁰ Claim Sheet, at 6.

¹¹ Claim Sheet, at 6.

¹² USDA's Claim Response, Track A Questionnaire on Class Member, response to questions 1-2 Ex. 2, 5 (stamped Nos. [REDACTED]00003-04, 19-21).

¹³ USDA's Claim Response, Track A Questionnaire on Class Member, response to questions 1-2, Ex. 1, 4-5 (stamped Nos. [REDACTED]00001-02, 9-18, 22-24).

¹⁴ USDA did not provide computer loan records for Farmer A. USDA's Claim Response, Track A Questionnaire on Similarly Situated White Farmer 2 of 2 (Farmer A), response to questions 1, 3, 6-8.

former County Supervisor stated that Farmer B did not apply for any loans and "definitely did not have loans with FmHA."¹⁵

In relevant part, the Adjudicator found that:

The USDA declaration states that both loans for which Claimant made application in 1982 were approved and funded. One application is dated October 21, 1981 for annual crop production. The other is dated March 23, 1982 as an emergency loss loan. Copies of both promissory notes are included which show the loans were funded on November 27, 1981, February 26, 1982, and June 21, 1982.

The claim is denied. Claimant alleged facts, which have been contradicted with declarations and documents from the USDA. The claim lacks substantial evidence to support a finding of discrimination.

In his Petition, the Claimant alleges that both the November 1981 and 1982 Emergency Loans were provided for crop losses from the previous year and not for his 1982 operating and production expenses.¹⁶

In its Petition Response, USDA argues that the Claimant's loan application dated October 21, 1981, requests funding for "Annual Crop Production" and the handwritten running record indicates that that Emergency Loan was granted to provide for the operating expenses of the Claimant during 1982.¹⁷ USDA also provides the results of computer searches (Current/Past Debts Inquiry, and Name and Address Computer Searches) for Farmer A and Farmer B, and an e-mail regarding the results of an archived records search (Microfiche) for Farmer A and Farmer B, all of which indicate that no loan records were available for either Farmer A or Farmer B.¹⁸

1. Clear and Manifest Error

The Monitor makes no finding of clear and manifest error.

The Claimant alleged that he was denied an Operating Loan in 1982.¹⁹ USDA's Claim Response indicated that the Claimant applied for an annual production loan on October 21, 1981, which was granted as a \$45,000 Emergency Loan on November 27, 1981.²⁰ USDA also stated that the Claimant applied for an Emergency Loss Loan on March 23, 1982,

¹⁵ USDA did not provide computer loan records for Farmer B. USDA's Claim Response, Track A Questionnaire on Similarly Situated White Farmer 1 of 2 (Farmer B), response to questions 1, 3, 6-8.

¹⁶ Petition, at 5-6.

¹⁷ Petition Response, at 2-3, Ex. 5.

¹⁸ Petition Response, Ex. 1-4.

¹⁹ Claim Sheet, at 3.

²⁰ USDA's Claim Response, Track A Questionnaire on Class Member, response to question 1-2 Ex. 1, 5 (stamped Nos. [REDACTED]00003-04, 19-21).

which was granted as a \$62,120 Emergency Loan on June 21, 1982.²¹ The Adjudicator found that USDA's records contradicted the Claimant's allegations and, therefore, the claim lacked substantial evidence to support a finding of discrimination.

In his Petition, the Claimant argued that both the November 1981 and June 1982 Emergency Loans were provided for crop losses for the previous year and not for his 1982 operating and production expenses.²² USDA asserted in its Petition Response that the Claimant's loan application dated October 21, 1981 requested funding for "Annual Crop Production" and the handwritten "running record" indicates that the loan closed in November of 1981 was for 1982 annual operating expenses of the Claimant.²³ The "running record" does not contain any indication that the Claimant applied for an Operating Loan in January 1982, and the handwritten notes reflect that the November 1981 Emergency Loan was intended to cover the Claimant's 1982 production expenses.²⁴ The running record also states that when the Claimant applied again in March 1982, the Claimant had run "short on production money." The Agency funded an additional Emergency Loan to help the Claimant complete his coop.²⁵ The Monitor does not find that the Adjudicator made a mistake in finding that USDA's records contradicted the Claimant's allegations.

USDA's records also fairly detract from the Claimant's allegations that Farmer A and Farmer B received Operating Loans. To prevail on a claim, a claimant must show by substantial evidence that his treatment was less favorable than that accorded a specifically identified, similarly situated white farmer.²⁶ The Claimant named two white farmers, Farmer A and Farmer B, and alleged that Farmers A and B received Operating Loans.²⁷ With its Petition Response, USDA provides the results of an unsuccessful records search (Current/Past Debts Inquiry, Name and Address Computer Searches) for Farmer A and Farmer B, as well as an e-mail regarding the results of an archived records search (Microfiche).²⁸ The lack of any archived loan records or computer loan records for Farmer A and Farmer B fairly detracts from the Claimant's allegations that Farmer A and

²¹ USDA's Claim Response, Track A Questionnaire on Class Member, response to question 1-2, Ex. 1, 4-5 (stamped Nos. [REDACTED]00001-02, 9-18, 22-24).

²² Petition, at 5-6.

²³ Petition Response, at 2-3, Ex. 5; USDA's Claim Response, Track A Questionnaire on Class Member, Ex. 1 (stamped Nos. [REDACTED]00003-04, 06-07).

²⁴ USDA's Claim Response, Track A Questionnaire on Class Member, Ex. 1 (stamped Nos. [REDACTED]00006-07). The Operating Loan regulations at that time permitted USDA to fund requests for Operating Loans with Emergency Loan funds. *See* 7 C.F.R. § 1941.29(a)(1982)

²⁵ USDA's Claim Response, Track A Questionnaire on Class Member, Ex. 1 (stamped Nos. [REDACTED]00006-07).

²⁶ Consent Decree, ¶ 9(a)(i)(C).

²⁷ Claim Sheet, at 5.

²⁸ Petition Response, Ex. 1-4.

Farmer B received Operating Loans. As a result, the claim does not meet an essential requirement of the Consent Decree.

The Monitor has carefully reviewed the evidence and the Adjudicator's conclusions. The Monitor does not have a firm and definite conviction that the Adjudicator made a mistake. Therefore, the Monitor finds no clear and manifest error regarding the Claimant's claim.

2. Fundamental Miscarriage of Justice

An analysis of fundamental miscarriage of justice is not necessary where the Monitor makes no finding of clear and manifest error.

V. CONCLUSION

The Monitor makes no finding of clear and manifest error resulting or likely to result in a fundamental miscarriage of justice.

Request for Reexamination for Claim # [REDACTED] is hereby DENIED.



Randi Ilyse Roth
Attorney at Law
Monitor

Appendix A
Supplemental Information

The Order of Reference in this case provides that:

The Monitor may consider additional materials submitted by the claimant or by the government with a Petition for Monitor Review of a Track A claim or with a response to such a Petition only when such materials address a potential flaw or mistake in the claims process that in the Monitor's opinion would result in a fundamental miscarriage of justice if left unaddressed.²⁹

The decision to accept additional materials into the record is within the Monitor's discretion.³⁰

1. Supplemental Material Submitted for Consideration

The Claimant submits allegations regarding the purposes of Emergency Loans granted in November 1981 and June 1982, and a cover letter from his counsel to the Office of the Monitor dated December 15, 2000.

USDA submits the results of computer searches (Current/Past Debts Inquiry, and Name and Address) for Farmer A and Farmer B, e-mails regarding the results of an archived records search (Microfiche) for Farmer A and Farmer B, and copies of USDA regulations concerning Emergency Loans.

2. Analysis of Supplemental Material

a. Allegations regarding the purposes of the Claimant's 1981 and 1982 Emergency Loans

The Claimant submits allegations that the Emergency Loans granted by USDA in November 1981 and June 1982 were both for crop losses suffered by the Claimant in 1981.³¹ The Claimant articulates as a "flaw or mistake in the claims process" preventing him from providing this information with his original Claim Sheet that USDA's response was inaccurate or misleading.³² The Monitor finds that this flaw or mistake is adequate.

If otherwise admissible supplemental information could contribute to the outcome of the decision, it would be a fundamental miscarriage of justice not to admit the information and

²⁹ *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999) (Order of Reference, § 8(e)(i), Apr. 4, 2000) (copy available from the Facilitator and also available at <http://www.dcd.uscourts.gov/district-court-2000.html>).

³⁰ *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999) (Order of Reference, § 8(e)(i), Apr. 4, 2000).

³¹ Petition, at 5-6.

³² Petition, at 4-6.

construct as complete a record as possible. The Monitor finds that this information could contribute to the outcome and, if omitted from the record, could result in a fundamental miscarriage of justice. These allegations will be admitted into the record.

b. Cover Letter from the Claimant's Counsel dated December 15, 2000

The Claimant submits a cover letter dated December 15, 2000, attached to his Petition. This cover letter is administrative, does not include supplemental information, and is irrelevant to the issues in this case. Therefore, it will not be admitted into the record.

c. Computer record searches for Farmer A and Farmer B

USDA submits the results of computer record search (Current/Past Debts Inquiry, and Name and Address) for Farmer A and Farmer B, as well as e-mails regarding the results of an archived records search (Microfiche) for Farmer A and Farmer B.³³ USDA states that time constraints imposed by the Consent Decree prohibited it from supplying this information in its initial response.³⁴ The Monitor finds that these time constraints constitute a flaw or mistake in the claims process that caused USDA not to submit the supplemental information with its original Claim Response.

If otherwise admissible supplemental information could contribute to the outcome of the decision, it would be a fundamental miscarriage of justice not to admit the information and construct as complete a record as possible. The Monitor finds that this information could contribute to the outcome and, if omitted from the record, could result in a fundamental miscarriage of justice. The computer records and e-mails regarding the results of an archived records search (Microfiche) for Farmer A and Farmer B will be admitted into the record.

d. USDA regulations regarding Emergency Loans

USDA also submits copies of USDA's regulations regarding Emergency Loans.³⁵ The regulations are available to the public and do not contain facts or allegations that must be subjected to the supplemental information analysis. The regulations are considered part of the record.

³³ Petition Response, Ex. 1-4.

³⁴ Petition Response, at 1.

³⁵ Petition Response, Ex. 5.

Appendix B

Encoding of Similarly Situated White Farmers

Farmer A = [REDACTED]

Farmer B = [REDACTED]