

**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)
ANNE VENEMAN, SECRETARY,)	
THE UNITED STATES DEPARTMENT)	
OF AGRICULTURE,)	
)	
Defendant.)	
_____)	
_____)	
CECIL BREWINGTON, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	98-1693 (PLF)
ANNE VENEMAN,)	
)	
Defendant.)	
_____)	

ARBITRATOR'S EIGHTH 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. Veneman*, No. 97-1978 (D.D.C. Dec. 20, 1999); *Pigford v. Veneman*, No. 97-1978 (D.D.C. Jul. 14, 2000). This is

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

Background

Since December 20, 1999, the Arbitrator has had the responsibility to determine 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). Recently, 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).

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 As the notice was adequate, the 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. Currently, one researcher investigates late claim petitions where further research is necessary to make an informed decision. Any additional timely petitions discovered after this point have been and will continue to be reviewed on a priority basis. Of the 65,951 timely petitions, 63,820 were denied and 2,131 were approved.²

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. The Arbitrator is aware of an April 28, 2005 letter to the Court captioned "Motion for Contempt and Order" requesting that the Court overturn the Arbitrator's denial of the putative claimant's late-claim petition on the ground that she lacked adequate notice. No action has been taken in response to this letter.

² There was a decrease by five in the number of timely petitions counted. The reason is that duplicate petitions were consolidated following an audit of the files by the Facilitator. Such duplications tended to occur throughout this process typically either where a) the petitioner used two different mailing addresses without obvious cross-referencing information and b) where multiple representatives sought to file on behalf of the same putative claimant. Upon the discovery of duplicates, the Arbitrator reviews the file to ensure that the correct decision has been or will be made in light of the totality of the evidence.

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 24,255 requests for reconsideration have been filed, 21,026 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. The Facilitator began forwarding the requests for reconsideration to the Arbitrator in August 2002. As of the date of this report, the period for filing timely requests for reconsideration has largely expired; those that have emerged as a result of the Facilitator's audit are given the full 60 day window.³ As timely requests for reconsideration are filed, they are recorded by the Facilitator and forwarded to the Arbitrator.

Requests for reconsideration are distributed to researchers for investigation. The researchers review 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 also may contact the putative claimant for further clarification. Upon completing his or her investigation, each researcher is responsible for drafting an individually tailored response to the request for reconsideration for the Arbitrator's review. All requests for reconsideration forwarded by the Facilitator to date

³ On occasion, the Arbitrator will permit the resetting of the 60 day window where it is discovered that the petitioner was not properly notified of the initial rejection and the opportunity to request reconsideration.

have been investigated by researchers and have been returned to the Arbitrator's office for further review.

As of the filing of the Seventh Report on December 1, 2004, decisions had been made in 3,015 reconsideration requests, with 138 requests resulting in approved petitions. As of July 7, 2005, decisions had been made in 10,745 reconsideration requests, with 140 requests resulting in approved petitions. The Arbitrator's decision on a reconsidered petition is final.

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:	2,131
Number of petitions denied:	63,820
Approximate number of Requests for Reconsideration:	24,300
Approximate number filed within 60 days:	21,000
Number of reconsideration requests decided:	10,745
Number of reconsideration requests resulting in approval of petition:	140

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 2005.

Date: July 11, 2005

Respectfully submitted,

/s/

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