

CECIL BREWINGTON,  
Plaintiff,  
v.  
TOM VILSACK, Secretary,  
United States Department of Agriculture,<sup>1</sup>  
Defendant.

This matter is before the Court on the defendant’s motion to dismiss the complaint for failure to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure (“Mot.”); the *pro se* plaintiff’s opposition thereto (“Opp.”); and the defendant’s reply (“Reply”). The Court will grant the defendant’s motion and dismiss this case.

<sup>1</sup> The complaint names Edward T. Schafer, former Secretary of Agriculture, as the party defendant. The Court now substitutes Tom Vilsack, Mr. Schafer's successor, pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

On June 18, 2008, Congress enacted the Food, Conservation, and Energy Act of 2008 (“FCEA”). Mr. Brewington contends that Section 14012 of the FCEA, see Pub. L. No. 110-246, 122 Stat. 1651, 2209, permits him to renew in this Court the discrimination claim rejected by the arbitrator in June 2005. See, e.g., Complaint at 17 (“Compl.”); see also Opp. at 6. The USDA has moved to dismiss Mr. Brewington’s complaint, arguing that he is not among the limited number of individuals eligible to seek relief under Section 14012. See Mot. at 7-8; see also Reply at 4-5.

Mr. Brewington’s case does not differ in any material respect from the case of Lucious Abrams, another Pigford class member who filed suit in this Court pursuant to Section 14012 of the FCEA.<sup>2</sup> In a Memorandum Opinion issued on August 24, 2009, the Court explained that Mr. Abrams – who, like Mr. Brewington, sought to renew in this Court a claim of discrimination previously dismissed by the arbitrator – had failed to state a claim. Specifically, Mr. Abrams had failed to state a claim because (1) Section 14012 permits only those individuals “who previously submitted a late-filing request under [paragraph] 5(g) of the [Pigford Consent Decree],” FCEA § 14012(a)(4), to file a discrimination suit against the USDA in this Court; (2) Mr. Abrams admittedly did not submit a “late-filing request” under paragraph 5(g); and thus (3) Mr. Abrams did not fall within the class of individuals that Section 14012 was intended to benefit. See Abrams v. Vilsack, Civil Action No. 08-1760, Memorandum Opinion at 8-9 (D.D.C. Aug. 24, 2009).

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<sup>2</sup> The facts of the two cases are nearly identical. So too are the legal arguments proffered by Mr. Brewington in this case and Mr. Abrams in his case. (Indeed, it appears that the same person may have drafted both plaintiffs’ pleadings and papers.) Moreover, the USDA’s arguments for dismissing Mr. Brewington’s complaint are indistinguishable from its arguments for dismissing Mr. Abrams’ complaint.

The foregoing analysis applies with equal force to Mr. Brewington's complaint. Thus, the Court hereby incorporates the analysis and conclusion contained in its Memorandum Opinion of August 24, 2009 in Civil Action No. 08-1760. Accordingly, Mr. Brewington's complaint – like Mr. Abrams' complaint – must be dismissed for failure to state a claim.

An Order consistent with this Memorandum Opinion shall issue this same day.

SO ORDERED.

/s/ \_\_\_\_\_  
PAUL L. FRIEDMAN  
United States District Judge

DATE: August 24, 2009