

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
 Keith Blackburn) Docket No. 17-0094
)
 Respondent.)

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

Respondent, Keith Blackburn, timely petitioned the United States Court of Appeals For the Sixth Circuit (“the Sixth Circuit”) for review of a September 15, 2018 order of the United States Department of Agriculture (“USDA”) Judicial Officer denying reconsideration of his decision affirming an administrative law judge’s (“ALJ”) entry of default judgment for failure to file a timely answer to a complaint against Respondent for violation of the Horse Protection Act.

In a decision entered on June 21, 2018 in *Lucia v. SEC*, 138 S. Ct. 2044 (“*Lucia*”), the Supreme Court held that “ALJs of the Securities and Exchange Commission are ‘Officers of the United States, subject to the Appointments Clause.’ *Id.* at 2055. Because the petitioner in that case timely challenged the constitutional validity of the ALJ officer adjudicating his case, the Supreme Court held that he was entitled to a new hearing before a properly appointed ALJ who had not previously presided over his case. *Id.*

On appeal to the Sixth Circuit, USDA conceded that its ALJs are also Officers of the United States who must be appointed consistent with the Appointments Clause. USDA also acknowledged that the subject ALJ had not been properly appointed as required by *Lucia* at the time of the entry of the default decision and that Blackburn had timely challenged the constitutionality of the ALJ’s appointment in his administrative proceedings. USDA then moved


to remand the case for further proceedings, consistent with *Lucia*. Mr. Blackburn did not oppose remand.

Based on the foregoing, by Order filed September 11, 2018 (*Keith Blackburn v. AGRI*, Case No. 17-4102) the Sixth Circuit **GRANTED** USDA's motion to remand, **VACATED** the Judicial Officer's decision, and **REMANDED** this case for further proceedings consistent with the Supreme Court's decision in *Lucia*.

ORDER

In accordance with the Sixth Circuit's September 11, 2018 Order, this matter is hereby remanded to the Chief ALJ for further proceedings consistent with the Supreme Court's decision in *Lucia*.

Done at Washington DC
December 12, 2018


Bobbie J. McCartney
Judicial Officer

¹ This Order pertains only to Respondent Keith Blackburn (HPA Docket No. 17-0094). HPA Docket No. 17-0093 (Amy Blackburn) and HPA Docket NO. 17-0095 (Al Morgan) referenced in the case caption of the JO's September 15, 2017 Order Denying Petition to Reconsider As to Keith Blackburn are currently pending before the Chief Judge.