

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Todd Rider, Ph.D.,

Complainant,

v.

Office of Research Integrity.

Docket No. C-12-928

ALJ Ruling No. 12-2

Date: August 13, 2012

**ORDER DISMISSING REQUEST FOR HEARING FOR LACK OF  
JURISDICTION**

THIS MATTER IS BEFORE ME on the following narrow issue: may an individual who is not the subject of an investigation conducted by the Office of Research Integrity (ORI), Department of Health and Human Services, and who is therefore not the “Respondent” in that investigation as that term is used in 42 C.F.R. § 93.225 *et seq.*, invoke the hearing process established at 42 C.F.R. Part 93, Subpart E to challenge ORI’s determination not to pursue research misconduct findings against another individual?

In the present situation, Todd Rider, Ph.D., seeks to appeal ORI’s determination not to pursue a research misconduct finding in ORI Case No. 2011-081. Some facts and dates in the case’s procedural history are absent from the record before me, but it is clear that Dr. Rider was the Complainant in that matter, and that he alleged unethical and improper use of his research data by another scientist, who thus became the Respondent in ORI Case No. 2011-801. Following the institutional investigation prescribed by 42 C.F.R. § 93.310 *et seq.* and the ORI review required by 42 C.F.R. §§ 93.402 and 93.403, ORI closed the case without a finding of research misconduct. See 42 C.F.R. § 93.403.

The date of ORI’s final action does not appear in this record, but it is clear that on April 24, 2012, Dr. Rider sent ORI an email in which he expressed his concern and

dissatisfaction with ORI's actions. ORI responded to Dr. Rider on May 16, 2012 and announced that it would not revisit the decision in ORI Case No. 2011-081. On June 12, 2012, Dr. Rider sent an email to the Departmental Appeals Board (Board) in which he stated: "I would like to appeal a decision made by the HHS Office of Research Integrity in a research misconduct case (ORI 2011-081)." Thus, to summarize: Dr. Rider was the Complainant in ORI Case No, 2011-081, *not* the Respondent. He was *not* the subject of allegations of research misconduct, but was instead the party who proffered those allegations. He seeks in this forum to challenge *not* a finding of misconduct, but instead to challenge ORI's determination *not to reach* such a finding.

Because initial responsibility for appeals under 42 C.F.R. Part 93, Subpart E falls to the Administrative Law Judges of the Board's Civil Remedies Division, Dr. Rider's email was treated as a request for hearing made pursuant to 42 C.F.R. § 93.501(b), then docketed as No. C-12-928 and assigned to me for resolution of the jurisdictional issue set out in the first paragraph of this Ruling and Decision. I wrote to both Dr. Rider and to ORI asking both to comment on that jurisdictional issue. Both have replied, and I have considered their replies in reaching the decision I announce here.

I find and conclude that because Dr. Rider is not the Respondent in the decision he seeks to challenge, he is not a proper party to an appeal taken pursuant to the terms of 42 C.F.R. Part 93, Subpart E, and has no standing to challenge the decision in ORI Case No. 2011-081. I further find and conclude that because Dr. Rider's email of June 12, 2012 does not properly invoke my jurisdiction pursuant to 42 C.F.R. § 93.501, I cannot consider the matters alleged in it. See 42 C.F.R. § 93.504(a)(3).

The terms of 42 C.F.R. Part 93 give effect to 42 U.S.C. § 289; the regulations provide a detailed and comprehensive plan for investigating alleged misconduct or fraud in research programs funded by certain federal grants. Definitions applicable to the process of investigation and review appear at 42 C.F.R. §§ 93.200 *et seq.*, and two definitions critical to the question before me appear there. The term "Complainant" is defined at 42 C.F.R. § 93.203, and it applies to Dr. Rider's role in this matter: he has been vigorous in pursuit of his fundamental allegation that another researcher made wrongful use of Dr. Rider's own work. The term "Respondent" appears at 42 C.F.R. § 93.225, and it plainly applies to the researcher against whom Dr. Rider's allegations were and are made.

When an allegation of misconduct is made against a Respondent, the regulations provide such a Respondent opportunities to refute or explain those charges. If, after the full panoply of proceedings has run its course, ORI finds that the allegations are sustained, ORI must issue a "charge letter" to a Respondent pursuant to 42 C.F.R. §§ 93.202 and 93.405. That "charge letter" is the procedural step by which the appeal process set out at 42 C.F.R. Part 93, Subpart E is invoked, and that process simply does not provide for review of ORI's determination to decline issuing a charge letter, or to decline in any other way reaching a finding of research misconduct. Every reference in the procedures

