

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

FAUSTIN GNEZE ZOHOUIDY,)	
Complainant,)	
)	
)	8 U.S.C. § 1324b Proceeding
v.)	OCAHO Case No. 2023B00041
)	
THE GEORGIA DEPARTMENT OF LABOR,)	
Respondent.)	
)	

Appearances: Faustin Gneze Zohouidy, pro se Complainant
Katherine Stoff, Esq., for Respondent

ORDER ON RESPONDENT’S MOTION TO DISMISS COMPLAINT

I. BACKGROUND

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. On February 2, 2023, Complainant, Faustin Gneze Zohouidy filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). Complainant alleges that Respondent, the Georgia Department of Labor (GDOL), discriminated against him on account of citizenship status and national origin, and retaliated against him for exercising rights under 8 U.S.C. § 1324b.

On May 18, 2023, Respondent filed an answer and a motion to dismiss. Respondent’s motion to dismiss challenges, inter alia, the Court’s subject matter jurisdiction over Complainant’s claims based on Eleventh Amendment sovereign immunity.¹ Mot. Dismiss 3–6. Respondent did not file an opposition to the motion.

The Court permitted the parties until August 30, 2023 to provide supplemental motion to dismiss briefing. July 18, 2023 Status Conf. Order 2. Neither party did so.

¹ Respondent also argues that Complainant has failed to state any claims upon which relief may be granted under § 1324b. Mot. Dismiss 6–8.

For the reasons that follow, Respondent’s Motion to Dismiss Complaint is granted.²

II. STANDARDS OF LAW

Respondent moves the Court to dismiss the case for lack of subject matter jurisdiction pursuant to Federal Rules of Civil Procedure 12(b)(1).

“OCAHO’s governing regulations contemplate dismissal when a complainant fails to state a claim upon which relief can be granted, but don’t similarly contemplate dismissal on other grounds listed in the Federal Rules of Civil Procedure at Rule 12(b).” Yeung v. Wash. State Dep’t of Licensing, 17 OCAHO no. 1473b, 2 (2024) (citing 28 C.F.R. § 68.10(b)).³ “In such an instance, the Court may turn to the Federal Rules of Civil Procedure for guidance.” Id. (citing 28 C.F.R. § 68.1 (providing that the Federal Rules of Civil Procedure “may be used as a general guideline in any situation not provided for or controlled by these rules . . .”)); and then citing Seaver v. Bae Sys., 9 OCAHO no. 1111, 2 (2004) (citations omitted)).

The Eleventh Amendment to the U.S. Constitution provides: “[t]he judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.”

“The party seeking immunity from suit has the burden of establishing that the Eleventh Amendment applies to it.” Ugochi v. N.D. Dep’t of Human Servs., 12 OCAHO no. 1304, 5 (2017) (citing Reffell v. Prairie View A&M Univ., 9 OCAHO no. 1057, 3 n.5 (2000)). “Under OCAHO case law, it is well-established that ‘complaints against state agencies are routinely dismissed in this forum when the immunity defense is timely asserted.’” Hossain v. Job Serv. N.D., 14 OCAHO

² In a companion order, the Court granted Complainant’s motion to amend the Complaint to include several exhibits, including a letter from the Georgia Department of Labor, a name change decree, correspondence between Complainant’s former employer and the Georgia Department of Labor, a document showing proof of custody issued by the Forsyth County Sherriff’s office, and a rejection letter from OCAHO. Order on Complainant’s Mots. 4–6. The Court granted Complainant’s motion and amended the Complaint to include these documents. Id. at 6. Accordingly, the Court considers the Complaint and all documents submitted in the motion to amend in deciding the motion to dismiss. Id.

³ Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to Volume 8, where the decision has not yet reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1, and is accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database “FIM-OCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

no. 1352, 4 (2020) (citing Ugochi, 12 OCAHO no. 1304, at 4 (quoting Guerrero v. Cal. Dep't of Corr. & Rehab., 11 OCAHO no. 1264, 2–3 (2015))).

A party asserting that it is protected by sovereign immunity “must submit proof that it is, in fact, a ‘state entity.’” Wong-Opasi v. Tennessee, 8 OCAHO no. 1042, 643, 652 (2000) (citation omitted). “[S]tate agencies and entities may be understood to act as the state’s alter-ego, in which case the entity may invoke state sovereign immunity,” and “[b]ecause state law sets forth which entities are considered alter-egos of the state,” state law on the question “must be examined.” Elhaj-Chehade v. Univ. Of Tex., Sw. Med. Ctr. at Dallas, 8 OCAHO no. 1022, 305, 311, 313 (1999) (quoting D’Amico v. Erie Comm. College, 7 OCAHO no. 948, 436 (1997) (internal quotations omitted)).

III. ANALYSIS

Respondent argues that the GDOL is a “state agency that enjoys immunity under the Eleventh Amendment to the United States Constitution and general principles of sovereign immunity.” Resp. Mot. Dismiss 3–4. Respondent argues that Congress did not abrogate states’ immunity under 8 U.S.C. § 1324b, and that Georgia and the GDOL “have not waived their immunity to the IRCA.” Id. at 4–5. Finally, Respondent argues that the GDOL is an “arm of the state because the State of Georgia established it as an independent administrative agency with a Commissioner who is elected by state statute and funded through state appropriations.” Id. at 5–6 (citation omitted).

The Court finds that Respondent has met its burden to demonstrate that Eleventh Amendment sovereign immunity applies in this case.

First, Respondent has shown that it is a state entity. Under Eleventh Circuit law, courts use “four factors to determine whether an entity is an ‘arm of the State’ in carrying out a particular function: (1) how state law defines the entity; (2) what degree of control the State maintains over the entity; (3) where the entity derives its funds; and (4) who is responsible for judgments against the entity.” Manders v. Lee, 338 F.3d 1304, 1308 (11th Cir. 2003) (citations omitted). The Code of Georgia provides that the GDOL was “created and established [as] a separate and independent administrative agency”; that it is operated by an elected Commissioner with authority defined by state statute; and that the GDOL receives federal and state finances. *See* O.C.G.A. §§ 34-2-1, 34-2-3, 34-2-4, 34-2-5, and 34-2-6(a)(1). Given this state statutory scheme, district courts in the Eleventh Circuit have routinely found that the GDOL is an arm of the state entitled to sovereign immunity. *See, e.g.,* Bailey v. Ga. Dep’t of Labor, No. 1:15-CV-106-TWT-WEJ, 2016 WL 1166336 (N.D. Ga. Feb. 18, 2016), *report and recommendation adopted* 2016 WL 1162384 (N.D. Ga. Mar. 24, 2016); Webb v. Ga. Dep’t of Labor, No. 1:20-cv-04749-AT, 2020 WL 7485360 (N.D. Ga. Dec. 9, 2020); Ngando v. Butler, No. 1:22-CV-02447-ELR, 2023 WL 6370896 (N.D. Ga. Mar.

1, 2023); Willis v. Ga. Dep't of Labor, No. 1:17-cv-5255-TCB-JKL, 2018 WL 11446935 (N.D. Ga. 2018).

Second, “[i]t is well-established OCAHO precedent that Congress did not express any intent to abrogate the states’ sovereign immunity when it enacted 8 U.S.C. § 1324b.” Hossain, 14 OCAHO no. 1352, at 4 (citing Ugochi, 12 OCAHO no. 1304, at 5; and then citing Reffell, 9 OCAHO no. 1057, at 4 (collecting cases)) (internal quotations omitted). Further, “in Hensel v. Office of the Chief Administrative Hearing Officer, 38 F.3d 505, 508–09 (10th Cir. 1994), the United States Court of Appeals for the Tenth Circuit held that § 1324b did not abrogate either federal or state sovereign immunity, and no OCAHO decision since then has held otherwise.” Id. (citations omitted).

Finally, the GDOL has not waived its immunity to suit under 8 U.S.C. § 1324b, either expressly or otherwise.⁴ Eleventh Circuit precedent holds that immunity may be “surrendered” when “a state waives its Eleventh Amendment sovereign immunity and consents to suit in federal court.” Cox v. Robinson, No. 23-11201, 2023 WL 8948406, at *2 (11th Cir. Dec. 28, 2023) (quoting Harbert Int’l, Inc. v. James, 157 F.3d 1271, 1278 (11th Cir. 1998)). As Respondent notes, the State of Georgia “specifically preserved its immunity in its Constitution.” Resp. Mot. Dismiss 5 (quoting Ga. Const. Art. 1, Sec. II, Para. IX(e) (“[S]overeign immunity extends to the state and all of its departments and agencies . . . [and] can only be waived by an Act of the General Assembly which specifically provides that sovereign immunity is thereby waived and the extent of such waiver.”)). Further, in this case Respondent filed an Answer and Motion to Dismiss raising this defense, which although untimely, was ultimately accepted by the Court. *See* Order on Complainant’s Mots. 3.

Therefore, the Court finds that Respondent has met its burden to demonstrate that it is protected from suit in this matter by Eleventh Amendment Sovereign Immunity.⁵

IV. CONCLUSION

Respondent’s Motion to Dismiss Complaint is GRANTED, and Complainant’s complaint is DISMISSED with prejudice. This is a Final Order.

⁴ *But see* Yeung, 17 OCAHO no. 1473b, at 4–5 & 4 n.9 (discussing emerging case law in the federal courts and scholarship regarding whether and to what extent state sovereign immunity may be waived).

⁵ In light of this holding, the Court need not reach Respondent’s argument that Complainant has failed to state a claim.

SO ORDERED.

Dated and entered on April 30, 2024.

John A Henderson
Administrative Law Judge

Appeal Information

This order shall become the final agency order unless modified, vacated, or remanded by the Attorney General. Provisions governing the Attorney General's review of this order are set forth at 28 C.F.R. pt. 68. Within sixty days of the entry of an Administrative Law Judge's final order, the Attorney General may direct the CAHO to refer any final order to the Attorney General for review, pursuant to 28 C.F.R. § 68.55.

Any person aggrieved by the final order has sixty days from the date of entry of the final order to petition for review in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business. See 8 U.S.C. § 1324b(i)(1); 28 C.F.R. § 68.57. A petition for review must conform to the requirements of Rule 15 of the Federal Rules of Appellate Procedure.