

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

May 1, 2024

ZAJI OBATALA ZAJRADHARA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2024B00062
)	
HANTANG ENTERTAINMENT CORP.,)	
Respondent.)	
_____)	

Appearances: Zaji Obatala Zajradhara, pro se Complainant
Steven P. Pixley, Esq., for Respondent

ORDER TO SHOW CAUSE AND STAY OF PROCEEDINGS

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. Complainant, Zaji Obatala Zajradhara, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on March 7, 2024. Complainant alleges that Respondent, Hantang Entertainment Corp., discriminated against him in violation of 8 U.S.C. § 1324b(a)(1) when he was not hired for a sales supervisor position. Respondent filed an Answer and Motion to Dismiss on April 16, 2024. Complainant did not file an opposition to the Motion to Dismiss.

In the motion to dismiss, Respondent argues that the complaint should be dismissed because Complainant did not file the Complaint with OCAHO within ninety days of the Immigrant and Employee Rights Section (IER)’s letter of determination, as required. Ans. & Mot. Dismiss 2.

Pursuant to 28 C.F.R. § 44.303(c), after a Complainant files a charge with IER asserting discrimination in violation of 8 U.S.C. § 1324b(a)(1), IER may send a letter to a Complainant indicating that IER will not file a complaint with respect to such charge. 8 U.S.C. §1324b(d). Then, the Complainant may file a Complaint with OCAHO provided he files within ninety days after his receipt of the IER letter of determination. 28 C.F.R. § 68.4(c); see *Lopez v. James Jung, Hallmark Cleaners*, 10 OCAHO no. 1171, 1-3 (2013) (dismissing Complaint as untimely filed).

On the first page of the Complaint, Complainant indicates that he received the letter from IER on November 9, 2023. Compl. 1. Attached to the Complaint is the IER determination letter, also

dated November 9, 2023, stating that it accepted as complete Complainant's discrimination charge on October 30, 2023, but that it was dismissing his charge. *Id.* at 12. The letter states that Complainant must file the complaint within 90 days of receipt of the letter. *Id.* The letter was sent by both certified mail and email. *Id.* Ninety days after November 9, 2023, is February 7, 2024. As Complainant filed his Complaint with this office on March 7, 2024, his Complaint is untimely.

Once a defendant alleges that a complaint is untimely filed, the burden falls on the plaintiff to show otherwise. *Hajiani v. Ali Props., LLC, Airport Shell*, 10 OCAHO no. 1188, 5 (2013) (citing *Green v. Union Foundry Co.*, 281 F.3d 1229, 1233-34 (11th Cir. 2002)). "Because it is well settled that employment discrimination filing periods are generally subject to equitable doctrines, *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 113-14 (2002), a litigant who fails to satisfy the timely filing requirement may under appropriate circumstances be relieved of that failure." *Id.* OCAHO case law and the Federal jurisprudence supporting it make clear that equitable remedies are sparingly applied. *Goel v. Indotronix Int'l Corp.*, 9 OCAHO no. 1102, 11 (2003). "Equitable tolling applies when the plaintiff is prevented from asserting a claim by wrongful conduct on the part of the defendant, or when extraordinary circumstances beyond the plaintiff's control made it impossible to file a claim on time." *Stoll v. Runyon*, 165 F.3d 1238, 1242 (9th Cir. 1999) (citation omitted). "Courts have been generally unforgiving, however, when a late filing is due to claimant's failure to exercise due diligence in preserving his legal rights." *Scholar v. Pac. Bell*, 963 F.2d 264, 267-68 (9th Cir. 1992).

Given that Complainant is pro se, and the motion to dismiss was embedded with the Answer, the Court will issue an Order to Show Cause to Complainant, permitting Complainant to explain the circumstances of his late filing. A failure to respond and demonstrate that equitable tolling should apply may result in dismissal of the Complaint as untimely filed.

In the Motion to Dismiss, Respondent also argues that Complainant was not qualified for the position and Respondent's decision to not hire Complainant was based entirely upon non-discriminatory reasons. These issues are more appropriately addressed in a summary decision motion submitted after the parties have had a chance to conduct discovery. Finally, given the pendency of this motion, which, if granted, is dispositive, the Court will stay the case, including the initiation of discovery, and will not set a prehearing conference or case schedule at this time. *See* 8 C.F.R. § 68.5(a).

IT IS SO ORDERED that Complainant must explain the circumstances of his late filing of the Complaint by May 22, 2024.

SO ORDERED.

Dated and entered on May 1, 2024.

Honorable Jean C. King
Chief Administrative Law Judge