

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

November 26, 2014

OSWALD WOODE,)	
Complainant,)	
)	8 U.S.C. § 1324b Proceeding
v.)	OCAHO Case No. 14B00046
)	
CENTRAL REGIONAL HOSPITAL)	
NCDHHS AGENCY,)	
Respondent.)	
_____)	

FINAL ORDER AND DECISION

I. PROCEDURAL HISTORY

This is an action arising under the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324b (2006) (INA) in which Oswald Woode (Woode) is the complainant and Central Regional Hospital, North Carolina Department of Health and Human Services (CRH or the hospital) is the respondent. Woode filed a complaint alleging that CRH fired him because of his citizenship status and national origin, and retaliated against him because he planned to file a complaint.

CRH filed an answer denying the material allegations of the complaint, and pleading several affirmative defenses, including a defense stating that the complaint should be dismissed because Woode failed to file a charge with the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) within 180 days of the alleged discriminatory acts. The complaint and accompanying attachments reflect that Woode filed a charge with the Office of Special Counsel (OSC) on January 21, 2014 in which he asserted a variety of alleged discriminatory acts starting in May 2006 and continuing until August 25, 2012. A letter from OSC dated February 24, 2014 notified Woode that his charge was not timely filed, and was dismissed with prejudice.

The governing statute provides that no complaint may be filed respecting any unfair immigration-related employment practice occurring more than 180 days prior to the date of the filing of the charge with OSC. 8 U.S.C. § 1324b(d)(3). The filing of a timely OSC charge is thus a condition

precedent to the filing of a private action with OCAHO. *Aguirre v. KDI Am. Prods., Inc.*, 6 OCAHO no. 882, 632, 644 (1996); *Bozoghlanian v. Raytheon Co. Electromagnetic Sys. Div.*, 4 OCAHO no. 660, 602, 609 (1994).¹ Because the filing periods for employment discrimination cases are generally subject to equitable doctrines, *National R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 112-14 (2002), this office issued a Notice and Inquiry to Woode, giving him the opportunity to provide evidence and/or set forth specific facts demonstrating why his OSC charge should be considered timely, or to provide reasons for its untimeliness. Woode responded to the notice and inquiry, and CRH filed a timely response and motion to dismiss. The issue is fully briefed and ready for resolution.

II. BACKGROUND INFORMATION

Oswald Woode is a United States citizen who was employed as a forensic health care technician at the respondent's hospital in Raleigh, North Carolina starting in February 2004. His complaint alleges that unfair employment practices occurred throughout his tenure from 2004 through 2012. He complains that he was fired several times without cause, but the gravamen of his complaint involves a Personnel Action Request form (PAR) that Woode claims falsely stated he "involuntarily resigned" when his "work visa expired." Woode says he was a United States citizen at the time and that he did not discover the falsified information on the form until May 2012, when he requested his personnel records so he could file a complaint with the Equal Employment Opportunity Commission (EEOC).

Woode filed at least two petitions against CRH in the North Carolina Office of Administrative Hearings (NCOAH), the most recent of which was dismissed by order on December 4, 2012. Woode also filed a charge of discrimination with the EEOC, and the commission issued him a letter on October 28, 2013, informing Woode that he had the right to sue the hospital within ninety days in federal or state court. Woode filed his OSC charge on January 21, 2014, and OSC dismissed his charge with prejudice on February 24, 2014, finding that it was not filed within 180 days of the alleged discrimination.

¹ 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 been 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 <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

III. THE POSITIONS OF THE PARTIES

Woode acknowledges that he filed his OSC charge late, but says he did not have control over when he filed it. He says that he “had to go through a legal process originating from a charge or complaint made by the Complainant in May, 2012.” Woode says that he filed a charge with EEOC, then received a right-to-sue letter on October 28, 2013 notifying him that he could sue the hospital in a federal or state court within ninety days of the letter’s receipt. Woode argues that because his OSC charge was filed within 90 days of the EEOC right-to-sue letter, it should be considered timely.

The hospital asserts that OCAHO lacks jurisdiction over the claim not only because Woode’s charge was untimely, but also because any claim arising out of Woode’s employment relationship with the hospital occurring before December 2011 is barred by the December 9, 2011 order in Woode’s first NCOAH case, and because the complaint arises out of the same events as those alleged in Woode’s EEOC complaint it is barred by the no-overlap provision of 8 U.S.C. § 1324b(b)(2).

IV. DISCUSSION AND ANALYSIS

Woode’s complaint will be dismissed. In *International Union of Electrical Workers v. Robbins & Myers, Inc.*, 429 U.S. 229, 236-37 (1976), the court observed that the argument that the pendency of grievance or arbitration proceedings could toll the filing period for an EEOC claim was “virtually foreclosed” by the decisions in *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454 (1975) and *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974) (employee may fully pursue remedies under both Title VII and collective bargaining agreement).

As explained in *Railway Express*, where two legally independent remedies are equally available to an aggrieved employee, resort to one of those remedies does not toll the limitations period for another, different remedy. 421 U.S. at 459, 466. Thus the court held that filing a charge with EEOC is not a prerequisite for the filing of a complaint pursuant to 42 U.S.C. § 1981, and did not toll the running of the § 1981 limitations period. *Cf. Del. State Coll. v. Ricks*, 449 U.S. 250, 261 (1980) (pending appeal to the Board of Trustees about the denial of tenure did not toll the time for filing with EEOC).

Similarly here, filing a charge with EEOC does not toll the running of the limitations period for filing with OSC. Contrary to Woode’s claim that he had to exhaust the EEOC process first, filing with EEOC is not a condition precedent to the filing of a charge with OSC. An EEOC right-to-sue letter, moreover, expressly authorizes its recipient to file a complaint in federal or

state court, and OSC is neither. In accordance with *Railway Express*, where two statutes provide legally independent remedies, there is no barrier to pursuing both statutory remedies simultaneously. There is, however, a condition precedent to filing a complaint in this forum, and that condition is the filing of a timely charge with OSC. 8 U.S.C. § 1324b(d)(3).

Woode's OSC charge was not filed until January 21, 2014, so events occurring prior to July 25, 2013 cannot properly be the subject of a complaint in this forum. All the events Woode complained of fall outside the 180-day limitations period.

ORDER

Because Woode's charge with the Office of Special Counsel for Immigration-Related Unfair Employment Practices was not filed within 180 days of the alleged unfair employment practices his complaint is dismissed with prejudice pursuant to 8 U.S.C. § 1324b(d)(3).

SO ORDERED.

Dated and entered this 26th day of November, 2014.

Ellen K. Thomas
Administrative Law Judge

Appeal Information

In accordance with the provisions of 8 U.S.C. § 1324b(g)(1), this Order shall become final upon issuance and service upon the parties, unless, as provided for under the provisions of 8 U.S.C. § 1324b(i), any person aggrieved by such Order files a timely petition for review of that Order 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, and does so no later than 60 days after the entry of such Order. Such a petition must conform to the requirements of Rule 15 of the Federal Rules of Appellate Procedure.