

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

RIDER F. GARCIA,)	
Complainant,)	
)	8 U.S.C. § 1324b Proceeding
v.)	
)	OCAHO Case No. 2021B00054
CAN-AM ELECTRIC, LLC,)	
Respondent.)	
)	

Appearances: Rider Garcia, *pro se*, Complainant
Stephen Collins, Esq., for Respondent

ORDER OF DISMISSAL

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. On August 26, 2021, Complainant, Rider F. Garcia filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) alleging that Respondent, Can-Am Electric, LLC, discriminated against him based on his citizenship status in violation of § 1324b.

On September 29, 2021, Complainant filed a Notice of Settlement requesting dismissal of the case.

The Notice of Settlement does not specify the grounds for dismissal. Pursuant to 28 C.F.R. § 68.14(a)(2), where parties have entered into a settlement agreement, they shall “[n]otify the Administrative Law Judge that the parties have reached a full settlement and have agreed to dismissal of the action. Dismissal of the action shall be subject to the approval of the Administrative Law Judge, who may require the filing of the settlement agreement.”

Complainant has complied with the requirements of 28 C.F.R. § 68.14(a)(2) by providing notice of settlement. In its October 19, 2021 Order, the undersigned directed the parties to submit a copy of the settlement agreement. To date, neither party has done so; accordingly, the Court has not reviewed the agreement, and therefore cannot base its determination on the agreement. Notwithstanding the procedural irregularity caused by the parties’ noncompliance with the Court’s Order, in this instance the undersigned finds it unnecessary to review the settlement agreement before granting dismissal of the case.

The motion for dismissal does not indicate whether the parties seek dismissal with or without prejudice. The regulations provide no direct guidance for instances when a motion for

dismissal is silent as to whether the movants seek it with or without prejudice, or more generally when the motion contains an ambiguous request for dismissal. 28 C.F.R. § 68.1 directs that the Federal Rules of Civil Procedure may be used as a general guideline when the regulations or statute provide no direct guidance.

Rule 41(a)(2) of the Federal Rules of Civil Procedure, which addresses dismissals of actions by court order, states that “an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.” Fed. R. Civ. P. 41(a)(2). The courts have generally concluded that a party which fails to indicate whether the settlement is with or without prejudice leaves the matter to the sound discretion of the court. *See, e.g., Hargis v. Foster*, 312 F.3d 404, 406 (9th Cir. 2003) (“In the instant case, [plaintiff] requested a dismissal without specifying whether he was requesting dismissal with or without prejudice, implicitly accepting either determination by the district court.”); *GF Gaming Corp. v. City of Black Hawk*, 405 F.3d 876, 888 (10th Cir. 2005) (“When a party seeking to voluntarily dismiss a claim pursuant to Rule 41(a)(2) is silent as to whether the dismissal is with or without prejudice, the district judge is required to interpret the motion one way or the other.”).

This analysis coheres with 28 C.F.R. § 68.14, which vests with the Court the ultimate authority to approve or disapprove a dismissal based on a settlement agreement, and which further provides that the Court may evaluate the “timeliness, form, and substance” of any proposed agreement. 28 C.F.R. §§ 68.14(a)(2), 68.14(c).

In the case presently before the Court, there is little in the record to indicate the parties’ intentions concerning the proposed dismissal. The case has not advanced beyond the filing of the complaint, and the motion for dismissal itself is an exercise in concision — it says little beyond that the parties have reached an agreement and seek dismissal of the action.

Insofar as the pleadings themselves offer no guidance, the Court considers the parties’ conduct while in this forum in evaluating the proposed dismissal. As previously noted, the parties have failed to comply with the Court’s prior Order concerning submission of the settlement agreement. The parties have also refused to provide notices of appearance, notwithstanding 28 C.F.R. § 68.33’s clear directive and the Court’s subsequent Order requiring these submissions. These actions suggest that the parties may remain noncompliant with the Court’s future orders if the matter were dismissed without prejudice and later reinstated. The parties’ conduct also indicate their own unwillingness to remain in the forum. These

considerations militate towards dismissal with prejudice. Accordingly, for the foregoing reasons the motion is GRANTED and this matter is DISMISSED WITH PREJUDICE.

SO ORDERED.

Dated and entered on December 9, 2021.

Honorable John A. Henderson
Administrative Law Judge