

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

Y.Y.,)	
)	
Complainant,)	
)	8 U.S.C. § 1324b Proceeding
v.)	
)	OCAHO Case No. 2021B00013
ZUORA, INC.,)	
)	
Respondent.)	
_____)	

Appearances: Y.Y., pro se, Complainant
Sean M. McCrory, Esq., and Shelby K. Taylor, Esq., for Respondent

FINAL ORDER OF DISMISSAL

I. PROCEDURAL HISTORY

On January 4, 2021, Complainant, Y.Y., filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) alleging that Respondent, Zuora, Inc., fired him due to his citizenship status and national origin and retaliated against him, all in violation of the anti-discrimination provisions of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a(a)(1)(B).

On March 25, 2021, the Court issued an Order to Show Cause directing Respondent to file a response demonstrating good cause for its failure to file an answer to the complaint on time. Respondent responded to the Order to Show Cause and, on December 10, 2021, the Court accepted Respondent's answer and discharged the Order to Show Cause after finding that Respondent had demonstrated good cause for its failure to file a timely answer. *Y.Y. v Zuora, Inc.*, 15 OCAHO no. 1402 (2021).¹

¹ Citations to OCAHO precedents reflect the volume number and the case number of the particular decision. Pinpoint citations to OCAHO precedents subsequent to Volume 8, where the decision has not yet been reprinted in a bound volume, are to

On January 11, 2022, the Court issued an Order for Prehearing Statements and Scheduling Initial Prehearing Conference. The Court held the telephonic prehearing conference on February 10, 2022, pursuant to 28 C.F.R. § 68.13.² During the conference, the Court noted that the complaint did not state how many employees Respondent employed and explained that it needed this information to determine whether OCAHO or the Equal Employment Opportunity Commission (“EEOC”) had jurisdiction over Complainant’s national origin discrimination claim. The Court ordered Complainant to file its prehearing statement by February 28, 2022. The Court also set a schedule for the case, including deadlines for the completion of discovery and the filing of motions. Lastly, the Court set the matter for an in-person hearing. Complainant failed to file a prehearing statement with the Court as ordered.

On February 18, 2022, the Court issued an Order to Show Cause, ordering Complainant to show cause as to why his allegation of national origin discrimination against Respondent should not be dismissed. The Court explained that OCAHO may lack jurisdiction over the claim and ordered Complainant to provide the Court in writing with information regarding the number of employees employed by Respondent. The Court further ordered Complainant to provide the Court with information and documentation pertaining to his charges against Respondent pending before the EEOC. Complainant did not respond to the Order to Show Cause.

On April 13, 2022, Complainant filed a document entitled “Complaint Withdrawal Form.” In this filing, Complainant stated, in part, the following:

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 through the Westlaw database “FIM-OCAHO,” the LexisNexis database “OCAHO,” or OCAHO’s homepage on the United States Department of Justice’s website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

² OCAHO’s Rules of Practice and Procedure for Administrative Hearings are available on OCAHO’s homepage on the United States Department of Justice’s website. See <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

I . . . hereby WITHDRAW the Discrimination that I signed on January 4, 2021. I have not received promises, rewards or concessions that might have influenced me to withdraw my complaint.

I voluntarily withdraw the request for an investigation and any consent that I may have granted for release of information. I . . . do not wish to proceed with the Discrimination Complaint that I filed against Zuora Inc. . . . because:

I have already filed the same lawsuit at Texas Eastern District Court The latest status of the case is ORDER granting[] Motion to Transfer to Arbitration.

Compl. Withdrawal Form 1. On July 14, 2022, the Court issued an order scheduling a prehearing conference on Complainant's "Complaint Withdrawal Form." *Y.Y. v Zuora, Inc.*, 15 OCAHO no. 1402a (2022). The Court directed the parties to review before the conference Federal Rule of Civil Procedure 41(a) regarding dismissals of actions. *Id.* at 4. On July 26, 2022, the parties filed a Joint Stipulation of Dismissal with Prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii).

On August 3, 2022, the Court held a telephonic prehearing conference regarding the parties' filings. *Y.Y. v Zuora, Inc.*, 15 OCAHO no. 1402b (2022). Complainant failed to appear at the conference. *Id.* at 1. During the conference, Respondent's counsel indicated that Respondent did not oppose Complainant's "Complaint Withdrawal Form." *Id.* After acknowledging that it had received the parties' Joint Stipulation of Dismissal with Prejudice, the Court directed Respondent to re-file the stipulation with a certificate of service as required by 28 C.F.R. § 68.6(a). *Id.* The Court reminded Respondent to serve the parties' stipulation on Complainant and the Immigrant and Employee Rights Section (IER) of the United States Department of Justice's Civil Rights Division. *Id.* at 2. As a one-time courtesy, the Court permitted Respondent to e-mail the filing to the Court. *Id.*

On August 4, 2022, Respondent re-filed the parties' Joint Stipulation of Dismissal with Prejudice with a certificate of service and the electronic signatures of both parties. Complainant then sought to re-file his "Complainant Withdrawal Form" and communicate with the Court and Respondent by e-mail regarding the parties' Joint Stipulation of Dismissal with Prejudice. OCAHO rejected Complainant's filing for failing to comply with its regulations governing the service

and filing of documents, 28 C.F.R. § 68.6, and the form of pleadings, 28 C.F.R. § 68.7.

On September 8, 2022, the Court held another telephonic prehearing conference.³ During the conference, Complainant explained that he was pursuing his claims against Respondent in the United States District Court for the Eastern District of Texas and wanted to leave this forum. He confirmed to the Court that he agreed to the parties' Joint Stipulation of Dismissal with Prejudice. The Court found that the parties' clear intentions were to leave this forum through the joint stipulation of dismissal.

II. LEGAL STANDARDS AND DISCUSSION

Pending before the Court are Complainant's "Complaint Withdrawal Form," which the Court construes as a motion to withdraw the complaint, and the parties' Joint Stipulation of Dismissal with Prejudice filed pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii).

Although Complainant's motion to withdraw the complaint is unopposed, OCAHO's Rules of Practice and Procedure for Administrative Hearings only provide for dismissal of complaints under three circumstances: (1) "[w]here the parties or their authorized representatives or their counsel have entered into a proposed settlement agreement" pursuant to 28 C.F.R. § 68.14(a); (2) where a party abandons a complaint or a request for hearing it filed pursuant to 28 C.F.R. § 68.37(b); and (3) where a party fails to appear at a hearing and the Court enters a default decision pursuant to 28 C.F.R. § 68.37(c). OCAHO's rules do not contain a specific provision regarding a motion to withdraw a complaint.

OCAHO's rules do provide, however, that the Court can use the Federal Rules of Civil Procedure "as a general guideline in any situation not provided for or controlled by these rules, by the Administrative Procedure Act, or by any other applicable statute, executive order, or regulation." 28 C.F.R. § 68.1. While Complainant's motion to withdraw the complaint was pending, the parties filed the Joint Stipulation of Dismissal with Prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii). Rule 41(a)(1)(A)(ii) provides that "the plaintiff may

³ The Court issued an order memorializing the conference on September 14, 2022, pursuant to 28 C.F.R. § 68.13(c).

dismiss an action without a court order by filing . . . a stipulation of dismissal signed by all parties who have appeared.”

The parties’ stipulation before the Court was executed on August 4, 2022, and bears both parties’ electronic signatures in conformity with Rule 41(a)(1)(A)(ii). During prehearing conferences in this matter, the Court confirmed the parties’ voluntary intention to leave this forum due to ongoing litigation in federal court. The Court also verified Complainant’s understanding of the effect of a dismissal with prejudice. *See* Fed. R. Civ. P. 41(a)(1)(B) (explaining that “[u]nless the notice or stipulation states otherwise, the dismissal is without prejudice.”).

The Court therefore finds that Complainant, with Respondent’s agreement, has notified the Court of the voluntary dismissal of this action in conformity with Federal Rule of Civil Procedure 41(a)(1)(A)(ii). The parties’ stipulation provides that each party shall be solely responsible for its own attorneys’ fees and costs such that there are no other anticipated motions or requests in this matter. *See* Joint Stipulation of Dismissal with Prejudice 1. Thus, the Court accepts the parties’ Joint Stipulation of Dismissal with Prejudice, the effect of which is the dismissal of this case. Dismissal moots Complainant’s motion to withdraw the complaint.

III. ORDERS

IT IS SO ORDERED that, given the parties’ Joint Stipulation of Dismissal with Prejudice, this action is DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that Complainant’s motion to withdraw the complaint is DENIED AS MOOT.

SO ORDERED.

Dated and entered on September 14, 2022.

Honorable Carol A. Bell
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.