

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

October 17, 2023

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 2023A00073
)	
R&V STEEL ERECTORS SYSTEMS, INC.,)	
Respondent.)	
_____)	

Appearances: Ricardo Cuellar, Esq., for Complainant
Jose Noe De Leon, pro se, for Respondent

ORDER SUMMARIZING PREHEARING CONFERENCE

I. PROCEDURAL HISTORY

This case arises under the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a.

On July 3, 2023, Complainant, the U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE), filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). Complainant alleges that Respondent, R & V Steel Erector Systems, Inc., failed to prepare and/or present Forms I-9 for 11 individuals, in violation of § 1324a(a)(1)(B).

On July 10, 2023, this office sent Respondent a Notice of Case Assignment for Complaint Alleging Unlawful Employment (NOCA), a copy of the complaint, the Notice of Intent to Fine (NIF), and Respondent’s request for a hearing, via certified U.S. mail. The NOCA directed that an answer was to be filed within 30 days of receipt of the complaint, that failure to answer could lead to default, and that proceedings would be governed by U.S. Department of Justice regulations.¹

¹ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2023).

On August 17, 2023, the Court issued an Order to Show Cause because the Respondent had failed to file an answer. The Court ordered Respondent to show good cause for its failure to timely file and answer and to file an answer pursuant to 28 C.F.R. § 68.37(b). On September 19, 2023, Respondent filed his Answer.

On October 11, 2023, the Court held a prehearing conference to discuss the procedural posture of the case and inform the parties of various programs and resources.

II. PREHEARING CONFERENCE SUMMARY

On October 11, 2023, the Court held a prehearing conference pursuant to 28 C.F.R. § 68.13(a).² Complainant's counsel joined the conference and Respondent attempted to join the conference but was ultimately unable to do so. The Court determined that covering the logistical topics intended for the prehearing conference would not prejudice Respondent (in part because the Respondent would receive this Order in which all covered topics would be memorialized and explained).

The conference covered the following topics: e-filing, the Settlement Officer Program, acceptance of the Answer and discharge of the Order to Show Cause, and the scheduling of a subsequent prehearing conference.

A. E-Filing

The Court first discussed OCAHO's e-filing pilot program.³ Parties may opt into OCAHO's e-filing pilot program, which allows parties to submit filings to the Court, and receive correspondence from the Court, via e-mail. Enclosed with this Order is a courtesy copy of the e-filing registration form for each party. To become an e-filing case, both parties must submit registration forms.

B. Settlement Officer Program

The Court explained OCAHO's Settlement Officer Program. This program is a free, voluntary alternative dispute resolution program akin to a mediation. Through the program, parties explore

² OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2023). OCAHO's regulations are available at: <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>. The Court encourages parties to carefully review OCAHO's regulations.

³ See Office of the Chief Administrative Hearing Officer Electronic Filing Pilot Program, 79 Fed. Reg. 31143 (May 30, 2014), available at https://www.justice.gov/eoir/pages/attachments/2015/03/24/79fedreg31143_05-30-2014.pdf (last accessed October 11, 2023).

voluntary resolution of issues. The settlement discussions are subject to the confidentiality provisions of 5 U.S.C. § 574. If the parties reach a settlement, the provisions of 28 C.F.R. § 68.14 apply. Both parties must submit written consent to refer this case to the Program.⁴ The parties can ask for a referral to the program up to 30 days prior to a hearing.

C. Respondent's Answer Accepted; Order to Show Cause Discharged

The Court accepted Respondent's filing as the Answer and discharges the DATE Order to Show Cause related to Respondent's Answer. The Court now memorializes this decision in this Order.

Under OCAHO case law, “[p]leadings filed by pro se litigants must be liberally construed.” *Robert Heath v. Optnation and an Anonymous Emp’r*, 14 OCAHO no. 1374a, 2 (2021). “If a party is not represented by counsel, the Court will attempt to construe that party’s response to a complaint as an answer even if the response does not comport with the traditional requirements of an answer.” *United States v. Advanced Digital Solutions Int’l, Inc.*, 14 OCAHO no. 1383, 3 (2020). Here, the Answer addressed the allegation and the proposed penalty. See 28 C.F.R. § 68.9(c). Although it was “not formatted so as to specifically admit or deny each factual allegation in the complaint, the Court [did not] require such precision,” considering Respondent’s pro se status. *Robert Paul Heath v. I-Services, Inc.*, 15 OCAHO no. 1413, 2 (2022). The Court therefore accepted Respondent’s filing as the Answer.

The Court notes that it accepted the Answer despite its non-compliant Certificate of Service. All filings submitted to the Court must be “accompanied by a certification indicating service to all parties of record.” 28 C.F.R. § 68.6(a). “The certification must also specify the manner and date of service” and include the signature of the person certifying service. OCAHO Practice Manual 3.2(c). Respondent’s Answer failed to specify the manner and date of service and did not include a signature.⁵ Respondent shall provide compliant Certificates of Service on the future. He may contact the Court if he has questions about compliance with this requirement.

Although the Answer was untimely, the Court found good cause for the delay. The Court has “broad discretion to find that Respondent demonstrated good cause for its failure to file a timely answer.” *Robert Paul Heath v. Tringapps, Inc.*, 15 OCAHO 1410a, 2 (2022). After the Court issued its August 17, 2023 order, Respondent timely responded and filed an answer that responds

⁴ <https://www.justice.gov/eoir/eoir-policy-manual/iv/4/7>; see also EOIR Policy Memorandum 20-16 describing the policies and procedures for use of settlement officers in OCAHO cases (<https://www.justice.gov/eoir/page/file/1300746/download>).

⁵ The OCAHO Practice Manual can be found at: <https://www.justice.gov/eoir/reference-materials/ocaho>. The Court encourages parties to carefully review OCAHO’s procedures.

to Complainant’s allegations. The Court “[took] into account Respondent’s pro se status” and its stated intentions to follow appropriate procedures going forward. *I-Services* at 3.

D. Additional Prehearing Conference

Because Complainant informed the Court that the parties are in active settlement discussions, the Court found it prudent to forgo setting a case schedule, so the parties can focus their efforts on reaching an agreement.

The Court set a prehearing conference on **November 14, 2023, at 8:30am PT (11:30am ET)**. Parties may join calling ###-###-####, then entering conference room number ###-###-### when prompted, and finally entering the security code ##### when prompted.

Respondent is encouraged to contact the Court in advance of the next prehearing conference to ask any questions related to use of the conference line.

SO ORDERED.

Dated and entered on October 17, 2023.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge

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

October 25, 2023

UNITED STATES OF AMERICA,)	
Complainant,)	
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v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 2023A00073
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R&V STEEL ERECTORS SYSTEMS, INC.,)	
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ERRATA

The Order Summarizing Prehearing Conference, issued on October 17, 2023, is hereby amended to correct the following:

1. Page 3 is corrected to read: “The Court accepted Respondent’s filing as the Answer and discharges the August 29, 2023 Order to Show Cause related to Respondent’s Answer.”

SO ORDERED.

Dated and entered on October 25, 2023.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge