

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

October 23, 2023

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 2023A00076
)	
TX POLLO FELIZ LLC,)	
Respondent.)	
_____)	

Appearances: Omiga Cape, Esq., for Complainant
Jodi Goodwin, Esq., for Respondent

ORDER DENYING COMPLAINANT’S MOTION FOR DEFAULT JUDGMENT

I. BACKGROUND

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

On July 12, 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 violated § 1324a(a)(1)(B).

On August 7, 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 12, 2023, the Court received a U.S. Mail certified return receipt indicating service on Respondent business. Separately, USPS website's certified mail tracking service indicates Respondent business received the NOCA and its attached documents on that date.

On August 14, 2023, Respondent's counsel received the NOCA and its attached documents (confirmed both by the U.S. Postal Service tracking number data and the Respondent's counsel's statement during the October 2, 2023 prehearing conference).

On September 13, 2023, Respondent, through counsel, filed an answer.

On September 18, 2023, Complainant filed a Motion for Default Judgment, arguing it is entitled to default judgment because Respondent failed to file an answer within 30 days of receipt of the complaint.² C's Mot. for Default Judgment, 2.

On September 28, 2023, the response period elapsed.³ Respondent did not file a written response. At the October 2, 2023 prehearing conference (after the response period had elapsed), the Respondent's counsel did inform the Court she believed her answer to be timely filed based on the date she received the NOCA and attached Complaint.

II. LEGAL STANDARDS

A. Timeliness of the Answer

The Court must, as a threshold matter, determine whether the Answer was timely filed. To determine timeliness, the Court looks at when service of the complaint occurred as answers are due "[w]ithin 30 days after the service of a complaint." 28 C.F.R. § 68.9(a).

A complaint may be served by "delivering a copy to the individual party, partner of a party, officer of a corporate party, registered agent . . . of a corporate party, *or* attorney or representative of record of a party." 28 C.F.R. § 68.3(a)(1) (emphasis added). "Service of complaint and notice of hearing is complete upon receipt by addressee." 28 C.F.R. § 68.3(b). Notably, the regulation does not require both Respondent and counsel receive the complaint to calculate the answer deadline; nor does it indicate service on anyone other than an attorney/representative is merely a courtesy.

² Based on the date mailed and the date received by the Court it is entirely possible (and perhaps even likely) that Complainant filed its motion in advance of receiving the Respondent's answer.

³ 28 C.F.R. § 68.11(b) ("Within ten (10) days after a written motion is served, or within such other period as the Administrative Law Judge may fix, any party to the proceeding may file a response in support of, or in opposition to, the motion.").

When considering whether to accept “untimely filed submissions, the Court employs a standard of good cause.” *United States v. Corrales-Hernandez*, 17 OCAHO no. 1454, 3 (2022). To determine whether there is good cause to accept a late-filed answer, the Court considers the circumstances under which the answer was late-filed.⁴

B. Propriety of Default Judgment

The Court may enter default judgment when a respondent fails to timely file its answer. 28 C.F.R. § 68.9(b). However, default judgment may not be appropriate in all circumstances where a respondent fails to meet a procedural time requirement. *See Nickman v. Mesa Air Grp.*, 9 OCAHO no. 1106, 2-4 (2004) (vacating entry of default and accepting late answer where there was a short delay and complainant had not objected to the late filing); *United States v. Torres*, 13 OCAHO no. 1347, 2 (2020) (vacating entry of default where pro se respondent filed late answer while serving a term of imprisonment); *Alvin J. Griffin, III v. All Desert Appliances d/b/a ADA Repair, Inc.*, 14 OCAHO 1370b, 12 (2021) (denying complainant’s motion for default judgment where complainant calculated the deadline for respondent’s answer to the amended complaint incorrectly and offered no other reason to support default judgment).

III. DISCUSSION

A. Respondent’s Answer is Untimely

Respondent takes the position her answer was timely filed by way of calculating the deadline based on the date she received the Complaint; however, such an approach is inconsistent with the plain language in the governing regulation. In this case, service on the actual Respondent started the clock because the regulation contemplates the prospect of service on either a party or their representative. The correct date from which the deadline is calculated is August 12, 2023 (not August 14, 2023), making the September 13, 2023 date of filing untimely.

B. Under These Circumstances, Default Judgment is Inappropriate.

While the Court has discretion to enter default judgment when an answer is not timely filed, in this instance it declines to do so. The Respondent’s counsel appears to have made an error in calculating the answer deadline, the result of which caused her to miss the deadline by a matter of days. Accepting an answer under these circumstances is consistent with prior precedential cases.

⁴ For example, the Court can consider the party’s intent, or whether the untimely nature of the filing created an unreasonable delay or otherwise amounted to prejudice to the opposing party. *See id.* at 4-5; *Woods v. Philips North America, LLC*, 14 OCAHO no. 1371 (2020); *United States v. Red Apple Enter., Inc.*, 17 OCAHO no. 1477, 2 (2023) (“Given the five-day length of the delay, and the early stage of the proceedings, the Court does not find a danger of prejudice.”); *United States v. MRD Landscaping & Maint. Corp.*, 15 OCAHO no. 1407c, 5 (2022).

See Corrales-Hernandez, 17 OCAHO no. 1454 at 3; *Red Apple Enter., Inc.*, 17 OCAHO no. 1477 at 2; *Woods*, 14 OCAHO no. 1371 at 2-3.

Furthermore, the untimely answer did not result in a delay or otherwise adversely impact the proceedings. It was filed before the first prehearing conference and did not impact case scheduling or other procedural matters. As was demonstrated by the filing of an answer and active participation in the prehearing conference, this Respondent clearly desires an opportunity to have access to the hearing process to which it is entitled under statute. 8 U.S.C. § 1324a(e)(3)(A). Default judgment is too harsh a remedy under these circumstances, and is, thus inappropriate.

The Respondent's Answer is ACCEPTED and the Complainant's Motion for Default Judgment is DENIED.

SO ORDERED

Dated and entered on October 23, 2023.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge