

ZAJI OBATALA ZAJRADHARA,
 Complainant,
 v.
 HDH CO., LTD,
 Respondent.

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8 U.S.C. § 1324b Proceeding
 OCAHO Case No. 2022B00009

ORDER ON COMPLAINANT'S MOTION FOR EXTENSION OF TIME

I. BACKGROUND

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

Respondent, on October 14, 2022, the Court issued an order addressing a number of outstanding motions, and then stayed the case. *Zajradhara v. HDH Co., Ltd.*, 16 OCAHO no. 1417c (2023). On November 8, 2023, the Court issued an Order on Respondent’s Motion to Dismiss, in which the Court lifted the stay of proceedings, and dismissed the case. In this Order, the Court provided “Appeal Information,” including that the Order would become the final agency order unless modified, vacated, or remanded by the Attorney General, and that “[a]ny person aggrieved by the final order has sixty days from the date of entry of the final order to petition for review 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[.]” Order on Resp’t’s Mot. Dismiss 5 (citing 8 U.S.C. § 1324b(i)(1); and then citing 28 C.F.R. § 68.57).²

On December 11, 2023, Complainant filed a “Laymans’ Motion for Extension to Reply Fed. R. Civ. P. 12(b).” In this Motion, Complainant asks the Court for an “additional 21–45 days to respond” due to personal circumstances and because he is “trying to fully understand how [he] might appeal this finding; because, [he] didn’t have any money to respond via the mail.” Mot. for Extension 1.

On December 12, 2023, the Court issued an Amended Order on Respondent’s Motion to Dismiss, specifying that it was solely correcting for clerical errors. *Zajradhara v. HDH Co., Ltd.*, 16 OCAHO no. 1417d (2023); *see* 28 C.F.R. § 68.52(f).

II. DISCUSSION

Although Complainant is not entirely clear in his motion what he is seeking, it would appear that he is seeking more time to appeal. As noted in the appeal information provided with the final order in this case, Complainant had sixty days to file a petition for review, so at the time he filed this motion, there was still almost a month remaining to file a petition for review. His request was premature since he had the time he sought, and this Court is not aware of whether he subsequently filed a petition for review.³

database “FIMOCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

² OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

³ Although administrative agencies may sometimes reissue final orders following service issues, resulting in a re-set of the appeals deadline, *see, e.g., Firmansjah v. Ashcroft*, 347 F.3d 625 (7th Cir. 2003), here, the issuance of the Amended Order did not affect the regulatory deadline for filing an appeal. “According to well-established case law construing a similar rule in the Federal Rules of Civil Procedure, *see* Fed. R. Civ. P. 60(a), an amended judgment does not toll or renew the period for filing an appeal . . . if that amended judgment solely corrects clerical or non-substantive errors.” *United States v. Buffalo Transp., Inc.*, 11 OCAHO no. 1263a, 3 n.2 (2015) (CAHO order) (citations omitted). Further, there are no service issues alleged in the motion.

Further, Complainant has not identified, nor has the Court located, a source of authority permitting OCAHO ALJs to extend the time to file an appeal with a Federal Circuit Court of Appeals in a case arising under § 1324b. The sixty-day deadline to file an appeal is mandated by statute and by OCAHO's Rules of Practice and Procedure, and neither the statute nor the regulations provide a mechanism for the Court to extend or alter this time. *Compare* 8 U.S.C. § 1324b(i)(1) and 28 C.F.R. § 68.57 (providing sixty days for an aggrieved party to seek review with the Court of Appeals) *with* 28 C.F.R. § 68.11(b) (providing ten days "or such other period as the [ALJ] may fix" to respond to a motion); *see also* *United States v. Corrales Hernandez*, 17 OCAHO no. 1454d, 2 (2023) (CAHO order) (finding no legal authorization for the Chief Administrative Hearing Officer (CAHO) to unilaterally extend the statutory deadline for CAHO review of an ALJ order); *cf.* *United States v. Frimmel Mgmt., LLC*, 12 OCAHO no. 1271d, 2–7 (2017) (finding authority for OCAHO ALJs to stay enforcement of a final decision pending judicial review from 5 U.S.C. § 705, Fed. R. App. P. 18(a)(1), and other statutory and regulatory authority).⁴

For these reasons, Complainant's "Laymans' Motion for Extension to Reply Fed. R. Civ. P. 12(b)" is DENIED.

SO ORDERED.

Dated and entered on January 25, 2024.

Honorable Jean C. King
Chief Administrative Law Judge

⁴ *See also Harrow v. Dep't of Defense*, No. 2022-2254, 2023 WL 1987934, at *1, 2023 U.S. App. LEXIS 3445, at *3 (Fed. Cir. 2023) (noting that Fed. R. App. P. 4(a)(5), which provides that federal district courts may extend the time to file a notice of appeal upon a showing of excusable neglect or good cause, "only permits *district courts* to extend the time to appeal, consistent with 28 U.S.C. § 2107(c)," not administrative agencies, which are "generally limited to the exercise of powers delegated them by Congress") (citations omitted); Fed. R. App. P. 20 (providing that Rules 3–14 do not "apply to the review or enforcement of an agency order").