

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

February 7, 2024

DUVAUGHN JOSEPH LOWDEN, JR.,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2023B00063
)	
ANN ARBOR ELECTRICAL JATC,)	
Respondent.)	
)	

Appearances: DuVaughn Joseph Lowden, Jr., pro se Complainant
Robert L. Duston, Esq., for Respondent

ORDER GRANTING RESPONDENT’S MOTION FOR LEAVE TO FILE ANSWER

This case arises under the employment discrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. Complainant, DuVaughn Joseph Lowden, Jr., filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO), alleging that Respondent, Ann Arbor Electrical JATC, discriminated against him based on his citizenship status in violation of § 1324b(a)(1).

On June 20, 2023, Respondent received the Notice of Case Assignment for Complaint Alleging Unlawful Employment (NOCA) and a copy of the complaint. The answer was due no later than July 20, 2023. *See* 28 C.F.R. §§ 68.3(b), 68.9(a).¹ The Court granted a request to extend the answer deadline to August 21, 2023. *Lowden v. Ann Arbor Elec. JATC Training Ctr.*, 18 OCAHO no. 1490 (2023).²

¹ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

² 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

On August 21, 2023, Respondent filed a Motion to Dismiss the Complaint.

On August 28, 2023, Respondent filed its Answer to the Complaint, and a Motion for Leave to File Answer Out of Time. As its proffer of good cause to accept its late-filed Answer, Respondent explains it incorrectly assumed a motion to dismiss would delay the answer filing deadline. Mot. Leave 1. Respondent’s counsel acknowledged its Answer was filed seven days late, and counsel took “full responsibility for this oversight,” and asks the Court not to penalize Respondent for this error. *Id.* at 1–2.

As Respondent notes, “OCAHO’s rules are clear that, ‘[t]he filing of a motion to dismiss does not affect the time period for filing an answer.’” *United States v. Mendoza Maintenance Grp., Inc.*, 18 OCAHO no. 1516, 3 (2024) (citing 28 C.F.R. § 68.10(a)). “In this way, OCAHO’s rules differ from the Federal Rules of Civil Procedure,” because “[u]nder the Federal Rules of Civil Procedure, a motion to dismiss filed under Rule 12 tolls the responsive pleading deadline until the motion is decided.” *Id.* (quoting *Ackermann v. Mindlance*, 17 OCAHO no. 1462a, 2 (2023)) (internal quotations omitted).

When a Respondent fails to file an answer, the Court may enter default judgment. *See generally United States v. Quickstuff, LLC*, 11 OCAHO no. 1265, 4 (2015). Because the Court will exercise its discretion and GRANT Respondent’s Motion for Leave to File Answer. The Court will not enter default judgment, and will accept the Answer.

Respondent’s proffer of good cause is sufficient here. The Court considered the reasonableness of the error, and that Respondent’s counsel took responsibility for the oversight. Further, Respondent’s counsel provided the answer relatively close in time to the deadline. *See generally Heath v. Tringapps, Inc.*, 15 OCAHO no. 1410, 2 (2022) (finding good cause where Respondent “admitted to its error on a procedural time requirement—that a motion to dismiss would toll the filing of an answer,” and filed an answer quickly after the Court’s order to show cause). Respondent’s conduct demonstrates that it intends to defend against this action. *See United States v. Sanchez*, 13 OCAHO no. 1331, 2 (2019).

Respondent’s Motion to Dismiss the Complaint remains pending.

SO ORDERED.

Dated and entered on February 7, 2024.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge