

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

FAUSTIN GNEZE ZOHOUIDY,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2023B00041
)	
THE GEORGIA DEPARTMENT OF LABOR,)	
Respondent.)	
)	

Appearances: Faustin Gneze Zohouidy, pro se Complainant
Katherine Stoff, Esq., for Respondent

ORDER ON COMPLAINANT’S MOTIONS

I. INTRODUCTION

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. On February 2, 2023, Complainant, Faustin Gneze Zohouidy filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). Complainant alleges that Respondent, the Georgia Department of Labor, discriminated against him on account of citizenship status and national origin, and retaliated against him for exercising rights under 8 U.S.C. § 1324b. Compl. 8. On May 18, 2023, Respondent filed an answer and a motion to dismiss.

On June 26, 2023, the Court held a status conference. Conf. Order 1. That same day, Complainant fax-filed a “Motion to Accept Supporting Documents” (the June 26, 2023 motion). The motion requests that the Court “[e]nter an injunction ordering the Georgia Department of Labor to pay an award to Mr. Zohouidy for compensatory damages” and “accept the filing of additional documents.” C’s Mot. 1–2. Respondent did not file an opposition to the motion.

The Court construes Complainant’s June 26, 2023 motion as a motion for preliminary injunction and a motion to amend his complaint to include additional documents as exhibits.¹

¹ OCAHO caselaw instructs that the Court construe a pro se litigant’s pleadings liberally. Monty v. USA2GO Quick Stores, 16 OCAHO no. 1443a, 2 (2022) (citations omitted). The Court will do so here.

On October 23, 2023, Complainant filed a Motion for Default Judgment. Respondent filed a Response to Complainant’s Motion for Default Judgment on October 30, 2023.

For the reasons that follow, Complainant’s Motion for Default Judgment Motion and Motion for a Preliminary Injunction are denied. Complainant’s Motion to Amend the Complaint is granted.

II. MOTION FOR DEFAULT JUDGMENT

In his Motion for Default Judgment, Complainant requests that the Court find Respondent in default for failing to timely file an answer in this case.

On February 6, 2023, the Court sent Respondent a copy of the Complaint and a Notice of Case Assignment for Complaint Alleging Unlawful Employment (NOCA) via U.S. certified 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 the proceedings would be governed by U.S. Department of Justice regulations. The U.S. Postal Service website indicates that the NOCA and Complaint were delivered to Respondent on February 10, 2023, and therefore, Respondent’s answer was due no later than March 13, 2023. *See* 28 C.F.R. §§ 68.3(a), 68.9(a).² Respondent did not file an answer by that date.

On April 19, 2023 the Court issued an Order to Show Cause, directing Respondent by May 10, 2023 to file an answer in this case and show good cause for its failure to timely file an answer. Zohouidy v. Ga. Dep’t of Labor, 18 OCAHO no. 1480, 2 (2023).³ On April 27, 2023, a representative from the Georgia Department of Labor contacted the Court office and informed that while they received the Order to Show Cause, they have not received the Complaint or NOCA. Court staff thereafter sent Respondent a courtesy copy of the Complaint and NOCA.

Respondent filed an Answer and a Motion to Dismiss Complaint on May 18, 2023.

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

³ Citations to OCAHO precedents in bound volumes one through eight include the volume and case number of the particular decision followed by the specific page in the bound volume where the decision begins; the pinpoint citations which follow are to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents after volume eight, 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 through the Westlaw database “FIM OCAHO,” the LexisNexis database “OCAHO,” and on the United States Department of Justice’s website: <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

A party that does not answer a complaint within the time specified is in default, whether or not that fact is officially noted. *See United States v. Quickstuff, LLC*, 11 OCAHO no. 1265, 4 (2015) (citation omitted). Accordingly, before a late answer may be accepted the default must be excused. *Id.* (citation omitted). Even so, OCAHO generally disfavors default judgment, “and doubts regarding entry of default should be resolved in favor of a decision on the merits of the case.” *United States v. Steidle Lawn & Landscaping, LLC*, 17 OCAHO no. 1457a, 2 (2022) (citations omitted).

As a threshold matter, Respondent’s answer was filed eight days after the deadline set by the Court in its Order to Show Cause.⁴ The Court may accept late filings in an exercise of discretion. *See Villegas-Valenzuela v. INS*, 103 F.3d 805, 811 n.5 (9th Cir. 1996) (citing 28 C.F.R. § 68.11(b)) (“[T]he [OCAHO] ALJ maintains discretion to accept pleadings within a time period he may fix.”). The Court will exercise discretion and accept Respondent’s answer, despite its untimeliness. The Court considers the short eight-day delay in this act of discretion.

The Court finds that Respondent has shown good cause for its failure to timely file an answer. *See M.S. v. Dave S.B. Hoon-John Wayne Cancer Inst.*, 12 OCAHO no. 1305, 4–5 (2017) (discussing factors a judge should consider in determining whether “good cause” exists for vacating an entry of default). Respondent did not provide a good cause showing with its answer. However, in its Response to Complainant’s Motion for Default, Respondent explains that it did not receive the NOCA and Complaint initially. As soon as it received a courtesy copy it promptly engaged legal counsel to file a responsive pleading and participate in this case. *See Resp.* 3–4. Respondent further argues that the Court should not enter a judgment by default, given that Respondent is protected by Eleventh Amendment sovereign immunity from these proceedings. *Id.* at 4–5.

Respondent’s assertions suggest that its delay in filing an answer was not willful. Moreover, its participation in the prehearing conference demonstrates its intention to defend this matter. Respondent promptly contacted the Court upon receipt of the Order to Show Cause. *See Heath v. Tringapps, Inc.*, 15 OCAHO no. 1410a, 2 (2022) (finding good cause where Respondent filed an answer quickly after the Court’s order to show cause); *United States v. Sanchez*, 13 OCAHO no. 1331, 2 (2019) (noting that OCAHO generally discourages default judgment solely on failure to meet procedural time requirements). The Court also weighed that Respondent’s Answer raises affirmative defenses, including a sovereign immunity defense. Moreover, the record does not indicate that Complainant was prejudiced by Respondent’s delay in filing an answer.

⁴ Respondent asserts in its Response to Complainant’s Motion for Default that its “best recollection is that OCAHO granted Respondent an extension to file an answer through May 19, 2023.” *Resp.* 2. However, the Court does not have a record of such an extension.

Accordingly, Respondent's Answer is ACCEPTED, Complainant's Motion for Default Judgment is DENIED, and the Court's Order to Show Cause is DISCHARGED.

III. MOTION FOR PRELIMINARY INJUNCTION

Complainant seeks for the Court to enter a preliminary injunction against Respondent paying for "past and future economic and non-economic losses, including extreme [e]motional distress and mental anguish, impairment of the quality of life, and consequential losses." June 26, 2023 Mot. 2.

OCAHO precedent recognizes that the court may rule on preliminary requests for relief in 8 U.S.C. § 1324b cases (i.e., a preliminary injunction). See Banuelos v. Transp. Leasing Co., 1 OCAHO no. 148, 1043, 1045–48 (1990); e.g., Sperandio v. UPS, 15 OCAHO no. 1400d, 2–7 (2022); Zakarneh v. Intel Corp., 16 OCAHO no. 1414e, 3–5 (2022). To obtain a preliminary injunction, the movant must demonstrate: "(1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury; (3) that the threatened injury to the plaintiff outweighs the potential harm to the defendant; and (4) that the injunction will not disserve the public interest." Sperandio, 15 OCAHO no. 1400d, at 2 (quoting Palmer v. Braun, 287 F.3d 1324, 1329 (11th Cir. 2002)) (internal quotations omitted). "Because a preliminary injunction is 'an extraordinary and drastic remedy,' its grant is the exception rather than the rule, and plaintiff must clearly carry the burden of persuasion." Id. (quoting United States v. Lambert, 695 F.2d 536, 539 (11th Cir. 1983)).

Complainant has not met his burden for a preliminary injunction. Complainant has not shown that he has a substantial likelihood of success on the merits of his claims. Indeed, the pending Motion to Dismiss identifies that the Court may not have subject matter jurisdiction⁵ over this case. Complainant presents no contrary argument in his motion for a preliminary injunction. Moreover, Complainant's motion does not speak to the *future* harm courts consider in a preliminary injunction—he only describes past conduct by Respondent, and does not connect this past harm to any threatened future injury. Finally, Complainant offers no evidence demonstrating why the public interest would weigh in favor of granting his injunction.

Accordingly, the Court DENIES Complainant's motion for a preliminary injunction.

IV. MOTION FOR LEAVE TO AMEND COMPLAINT

⁵ Subject matter jurisdiction refers to "[j]urisdiction over the nature of the case and the type of relief sought; the extent to which a court can rule on the conduct of persons or the status of things." Jurisdiction, BLACK'S LAW DICTIONARY (11th ed. 2019).

Complainant also moves the Court to accept into the record his government-issued documents. *See* June 26, 2023 Mot. 1–2. These documents include: a Decision of Hearing Officer and Unemployment Records Wage Inquiry from the Georgia Department of Labor; a name change decree from the Superior Court of Fulton County; and a proof of custody from the Forsyth County Sherriff’s Office. *Id.* at 3–5, 7–9. Complainant also moves the Court to accept an ex-employer’s letter addressed to the Georgia Department of Labor, along with a OCAHO rejection notice. *Id.* at 6, 10–11.

According to Complainant, the attached documents are in support of his claim, which he generally describes as a conspiracy between his former employer and the Georgia state government to deny his unemployment benefits. *Id.* at 2–3, 9.

The Court construes Complainant’s request as a motion to have these documents considered with his complaint. Stated another way: Complainant appears to seek leave to amend his complaint to have the complaint include these documents.

With respect to complaints, OCAHO precedent directs that the Court may consider documents incorporated by reference. *Jarvis v. AK Steel*, 7 OCAHO no. 930, 111, 113–14 (1997) (citation omitted); *see also* Fed. R. Civ. P. 10(c)⁶ (“A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.”). If documents are incorporated into the complaint by reference, the Court may consider the documents when resolving a motion to dismiss. *Jarvis*, 7 OCAHO no. 930, at 113.

“OCAHO precedent requires that the complainant seek leave of court to amend the complaint if the respondent has already filed an answer.” *United States v. KLJ Leasing, LLC*, 16 OCAHO no. 1446, 2 (2022) (citations omitted); *see also* Fed. R. Civ. P. 15(a)(2).

OCAHO’s rules provide that the court may “allow appropriate amendments” to a complaint “[i]f a determination of a controversy on the merits will be facilitated thereby upon such conditions as are necessary to avoid prejudicing the public interests and the rights of the parties.” 28 C.F.R. § 68.9(e). “The Court is therefore charged with balancing those interests in determining whether to allow the proposed amendment.” *KLJ Leasing, LLC*, 16 OCAHO no. 1446, at 2 (citations omitted). Further, the Eleventh Circuit directs courts to consider, in considering whether to grant a motion to amend a complaint, “(1) undue delay, (2) bad faith or dilatory motive, (3) repeated failure to cure deficiencies by amendment, (4) undue prejudice to the opposing party by virtue of allowance of the amendment, and (5) futility.” *Blackburn v. Shire US Inc.*, 18 F.4th 1310, 1317–18 (11th Cir. 2021) (citations omitted).

⁶ The Federal Rules of Civil Procedure, and federal court case law interpreting those Rules, is permissive guidance in OCAHO proceedings. 28 C.F.R. § 68.1. As this case arises in Georgia, the Court may consult case law from the United States Court of Appeals for the Eleventh Circuit.

The Court finds that the proposed amendment (i.e., incorporation of the attached documents) facilitates a determination of a controversy on the merits. Complainant filed these documents only 3 months after his Complaint. There is no evidence that Complainant sought to amend in bad faith or with a dilatory motive, or because of repeated failure to cure deficiencies. Respondent has not opposed the motion, and the Court does not find undue prejudice to Respondent at this juncture. Addressing the final element, the court notes that Respondent's Motion to Dismiss is pending before the Court, and that the subject matter jurisdiction questions raised in the motion may be more fully addressed by consideration of Complainant's additional documents. *See* "The usual test for futility of a proposed amendment is whether or not the amendment would survive a motion to dismiss." Santiglia v. Sun Microsystems, Inc., 9 OCAHO no. 1097, 7 (2003) (citation omitted).

Accordingly, the Court GRANTS Complainant's motion for leave to amend the Complaint. The documents attached to Complainant's June 26, 2023 Motion are now incorporated into the Complaint, and may be considered by the Court in resolving the pending Motion to Dismiss.

SO ORDERED.

Dated and entered on April 30, 2024.

John A Henderson
Administrative Law Judge