

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

June 3, 2024

ZAJI OBATALA ZAJRADHARA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2024B00006
)	
GUAM ADVANCE ENTERPRISES, INC.,)	
Respondent.)	
_____)	

Appearances: Zaji Obatala Zajradhara, pro se Complainant
Jeffrey A. Cook, Esq., for Respondent

ORDER GRANTING RESPONDENT’S MOTION TO DISMISS

I. BACKGROUND

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. Complainant, Zaji Obatala Zajradhara, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on October 3, 2023. Complainant alleges that Respondent, Guam Advance Enterprises, Inc., discriminated and retaliated against him in violation of 8 U.S.C. §§ 1324b(a)(1) and (a)(5). In response to an Order to Show Cause, Respondent filed an Answer, and this Court discharged the Order to Show Cause and accepted the Answer on March 14, 2024. *Zajradhara v. Guam Advance Enters.*, 18 OCAHO no. 1522a (2024).¹ The Court set a case schedule, with discovery to close on June 11, 2024, dispositive motions to be filed by July 11, 2024, and responses by August 10, 2024. *Id.* at 6.

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 database “FIMOCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

On April 16, 2024, Complainant filed “Laymans’ Prehearing Statement Request for (ESI) Discovery Rule 34 and Rule 26(f).” On April 19, 2024, Respondent filed “Motion to Amend Answer and Motion to Dismiss for Failure to State a Claim Upon Which Relief May be Granted.” Complainant filed “Laymans’ Request for the Courts’ Intervention/Non-Responsiveness to Repeated Discovery Requests for (ESI) Discovery Rule 34 and Rule 26(f)” on May 7, 2024, and on May 14, 2024, Respondent filed a Response to Complainant’s motion.

II. MOTION TO AMEND AND MOTION TO DISMISS

Beginning with Respondent’s motion first, Respondent seeks to amend its answer to include the defenses that Complainant fails to state a claim upon which relief can be granted and that the Complaint is barred by the statute of limitations. Mot. to Am. & Dismiss. Respondent moves to dismiss the Complaint for failure to state a claim upon which relief can be granted because Complainant did not timely file his Complaint with OCAHO. *Id.* at 2-5. Complainant did not respond to the Motion to Amend and Motion to Dismiss in any filing accepted by this Court.

A. Amendment to Pleadings

OCAHO Rules of Practice and Procedure (Rules) provide that “[i]f a determination of a controversy on the merits will be facilitated thereby, the Administrative Law Judge may, upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, allow appropriate amendments to complaints and other pleadings at any time prior to the issuance of the Administrative Law Judge's final order.” 28 C.F.R. § 68.9(e). “The OCAHO rule is analogous to and is modeled upon Rule 15(a) of the Federal Rules of Civil Procedure, and accordingly it is appropriate to look for guidance to the case law developed by the federal courts in determining whether to permit requested amendments under Rule 15(a).” *United States v. WSC Plumbing, Inc.*, 9 OCAHO no. 1061, 6-7 (2000) (citations omitted).² OCAHO precedent is consistent with the Ninth Circuit in liberally allowing amendments to pleadings, particularly early in the case. *Id.* at 6; *United States v. Carter*, 6 OCAHO no. 865, 458, 461 (1996), *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987).

The Ninth Circuit has identified five relevant factors in determining whether to grant a motion to amend pleadings: “(1) bad faith by the movant; (2) undue delay; (3) prejudice to the non-moving party; (4) whether the movant has previously attempted to amend the pleading; and (5) whether the amendment would be futile.” *WSC Plumbing*, 9 OCAHO no. 1061, at 7 (citing *DCD Programs Ltd.*, 833 F.2d at 186 & n.3).

The factors in this case favor allowing the amendment. This case is still in the early stage as discovery is ongoing. Complainant has not identified any prejudice and the Court does not see any prejudice to allowing the amendments. The amendment is based on the same principles as the motion to dismiss, which was fully briefed. Thus, the amendment is not futile. The Respondent has not previously attempted to amend the pleadings and the Court can discern no bad faith. Accordingly, the Motion to Amend the Answer is granted.

² Because this action arose in Saipan, decisions of the United States Court of Appeals for the Ninth Circuit (Ninth Circuit) are pertinent. *See* 28 C.F.R. § 68.57.

B. Motion to Dismiss

The OCAHO rules expressly provide that an ALJ may dismiss a complaint based on a motion by the respondent for failure to state a claim upon which relief may be granted. 28 C.F.R. § 68.10 (2004). As noted by Respondent, a motion to dismiss based upon the ninety-day filing period is appropriately treated as a motion to dismiss for failure to state a claim. *Seaver v. Bae Systems*, 9 OCAHO no. 1111, 3 (2004). “In considering such a motion, the court must assume the truth of all facts alleged in the complaint and must allow the nonmoving party the benefit of all inferences that can be derived from the alleged facts.” *Id.* (citations omitted).

Pursuant to 28 C.F.R. § 44.303(c), after a Complainant files a charge with IER asserting discrimination in violation of 8 U.S.C. § 1324b(a)(1), IER may send a letter to a Complainant indicating that IER will not file a complaint with respect to such charge. *See also* 8 U.S.C. § 1324b(d)(2). Then, the Complainant may file a Complaint with OCAHO provided he files within ninety days after his receipt of the IER letter of determination. 28 C.F.R. § 68.4(c); *see Lopez v. James Jung, Hallmark Cleaners*, 10 OCAHO no. 1171, 1-3 (2013) (dismissing Complaint as untimely filed).

Once a Respondent alleges that a complaint is untimely filed, the burden falls on the Complainant to show otherwise. *Hajiani v. Ali Props., LLC, Airport Shell*, 10 OCAHO no. 1188, 5 (2013) (citing *Green v. Union Foundry Co.*, 281 F.3d 1229, 1233-34 (11th Cir. 2002)). “Because it is well settled that employment discrimination filing periods are generally subject to equitable doctrines, *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 113-14 (2002), a litigant who fails to satisfy the timely filing requirement may under appropriate circumstances be relieved of that failure.” *Id.* OCAHO case law and the Federal jurisprudence supporting it make clear that equitable remedies are sparingly applied. *Goel v. Indotronix Int’l Corp.*, 9 OCAHO no. 1102, 11 (2003). “Equitable tolling applies when the plaintiff is prevented from asserting a claim by wrongful conduct on the part of the defendant, or when extraordinary circumstances beyond the plaintiff’s control made it impossible to file a claim on time.” *Stoll v. Runyon*, 165 F.3d 1238, 1242 (9th Cir. 1999) (citation omitted). “Courts have been generally unforgiving, however, when a late filing is due to claimant’s failure ‘to exercise due diligence in preserving his legal rights.’” *Scholar v. Pac. Bell*, 963 F.2d 264, 268 (9th Cir. 1992).

The Complaint reflects that IER sent Complainant the right to sue letter on April 17, 2023, by first class mail and email. Compl. 1, 29. Complainant filed the Complaint with OCAHO on October 3, 2023, and it was signed by Complainant on September 25, 2023. The IER letter unambiguously stated that Complainant had ninety days from the date of receipt of the letter to file the charge with OCAHO. Ninety days after April 17, 2023, is July 16, 2023. Accordingly, Complainant did not timely file the Complaint.

“OCAHO precedent supports the dismissal of a complaint for untimeliness when a person fails to file the complaint within 90 days of receipt of the right-to-sue letter from [IER].” *Bae Systems*, 9 OCAHO no. 1111, at 6 (citations omitted). Complainant had ten days to respond to the motion, and although he filed another motion subsequent to Respondent’s motion, he did not address the untimely filing. *See* 28 C.F.R. § 68.11(b). The Complaint provides no indication that he attempted to file the Complaint earlier but it was defective, particularly given that he signed the Complaint

on September 25, 2023, and included a complaint he filed with what appears to be the DOD OIG hotline on August 3, 2023.

Accordingly, Respondent's Motion to Dismiss is GRANTED and the Complaint is DISMISSED without prejudice.

Because of this disposition of the motion, all other pending motions are DENIED as moot.

SO ORDERED.

Dated and entered on June 3, 2024.

Honorable Jean C. King
Chief Administrative Law Judge

APPEAL INFORMATION

This order shall become the final agency order unless modified, vacated, or remanded by the Attorney General. Provisions governing the Attorney General's review of this order are set forth at 28 C.F.R. pt. 68. Within sixty days of the entry of an Administrative Law Judge's final order, the Attorney General may direct the CAHO to refer any final order to the Attorney General for review, pursuant to 28 C.F.R. § 68.55.

Any 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. See 8 U.S.C. § 1324b(i)(1); 28 C.F.R. § 68.57. A petition for review must conform to the requirements of Rule 15 of the Federal Rules of Appellate Procedure.