

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

May 28, 2024

US TECH WORKERS ET. AL.,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	OCAHO Case No. 2024B00086
	)	
OAK STREET HEALTH,	)	
Respondent.	)	
_____	)	

Appearances: John M. Miano, JD, for Complainant  
Stephen H. Smalley, Esq. and Vanessa N. Garrido, Esq., for Respondent

ORDER GRANTING EXTENSION OF TIME

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324b. Complainant, US Tech Workers, et al., filed a complaint against Respondent, Northwestern Medicine, on March 19, 2024, alleging citizenship discrimination in hiring.

On April 8, 2024, the Chief Administrative Hearing Officer (CAHO) sent a copy of the Complaint and a Notice of Case Assignment for Complaint Alleging Unfair Immigration-Related Employment Practices (NOCA) to the Respondent by United States Postal Service (USPS) certified mail. The USPS tracking website indicates that the NOCA and Complaint were delivered on April 17, 2024.

On May 13, Complainant filed a Motion to Consolidate and for Leave to File a Consolidated Amended Complaint. On May 21, 2024, Respondent filed a Consent Motion for Extension of Time to File an Answer Or Other Responsive Pleading, as well as Respondent’s Consent Motion for Extension of Time to Respond to Complainant’s Motion.

The deadline to file an answer is May 17, 2024. Consent Mot. Extension Time Answer 1; *see also* 28 C.F.R. § 68.9(a).<sup>1</sup> Respondent did not timely file the answer. Respondent instead requests a twenty-one day extension to file an answer to the Complaint, or until June 7, 2024. Respondent states that it needs additional time to review the allegations contained in the Complaint and develop

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

a proper response, the motion is not made for purposes of undue delay, Respondent has not previously filed a motion, and Complainant's counsel was made aware of the extension request and had no objection. *Id.* at 1-2.

“[I]n assessing a timely request for extension, the showing required is good cause, but where the request is untimely made, the showing that must be made includes both good cause and excusable neglect. *United States v. Quickstuff, LLC*, 11 OCAHO no. 1265, 5 (2015)<sup>2</sup> (citing Federal Rule of Civil Procedure (Fed. R. Civ. P.) 6(b) and 4B Wright & Miller, § 1165 (3d ed. 2002 & Supp. 2014)). Because no answer has been filed, the case is already in default. *Id.* at 4. To set aside the default, the respondent must show good cause for failure to timely file an answer, whereas the untimely request requires an excusable neglect standard. *Id.* at 4-5. The principle is that the showing required to obtain an extension is a heavier one when the request is not timely made. *Id.*

Factors to consider in applying the excusable neglect standard are (1) the danger of prejudice to the non-movant, (2) the length of the delay and its impact on the judicial proceedings, (3) the reason for the delay (including whether the delay was within the control of the movant), and (4) the movant's good faith. *Id.* at 7 (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs., Ltd.*, 507 U.S. 380, 395, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993)); *see also Raymond v. Ameritech Corp.*, 442 F.3d 600, 605 (7th Cir. 2006) (applying *Pioneer* factors to Rule 6). Good cause, meanwhile, requires “a demonstration of good faith on the part of the party seeking an enlargement of time and some reasonable basis for noncompliance with the time specified in the rule.” *Tingling v. City of Richmond*, 13 OCAHO no. 1324c, 2 (2021) (citations omitted).

The Court finds that Respondent has not met the standard for an untimely extension request. In particular, while Respondent addressed the good cause factors, many of which overlap, Respondent did not address the reason for the delay.

Because the Court recognizes that the other factors are met, namely there is little danger of prejudice to the non-movant since it consented to the extension, the delay is relatively short, and there is no apparent concern with the movant's good faith, the Court will permit the Respondent to resubmit the motion by June 7, 2024, or, alternatively, file the answer with a good cause showing as to why the answer was untimely filed.

The motion for extension of time to respond to the Complainant's motion to consolidate, on the other hand, is timely. Pursuant to 28 C.F.R. § 68.11(b), a party may file a response to any motion within ten days after a written motion is served, making the response due May 23, 2024. As noted

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<sup>2</sup> 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 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 “FIM-OCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

above, the standard is good cause, and the Court finds that the standard has been met. *See* Consent Mot. Extension Time Mot. Consolidate 1. Given that Complainant agreed to the motion, it is the first extension, and a request for fourteen days is unlikely to impact the proceedings, the extension is granted. *See, e.g., United States v. Space Exploration Techs. Corp.*, 18 OCAHO no. 1499, 6-7 (2023) (finding good cause for extension of answer deadline where the motion was agreed, it was the first requested extension, and the request for 30 days was unlikely to substantially impact the proceedings).

Respondent's Consent Motion for Extension of Time to File an Answer Or Other Responsive Pleading is DENIED. Respondent must refile the motion or file an answer and show cause why the answer was untimely filed by June 7, 2024.

Respondent's Consent Motion for Extension of Time to Respond to Complainant's Motion is GRANTED, and Respondent's deadline to respond is EXTENDED until June 7, 2024.

SO ORDERED.

Dated and entered on May 28, 2024.

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Honorable Jean C. King  
Chief Administrative Law Judge