

ZAJI OBATALA ZAJRADHARA,)
 Complainant,)
)
 v.) 8 U.S.C. § 1324b Proceeding
) OCAHO Case No. 2024B00063
)
 PURE WATER CORP., d/b/a MAJESTIC HOTEL)
 Respondent.)
)

ORDER DISCHARGING THE ORDER TO SHOW CAUSE

On March 7, 2024, Complainant, Zaji Obatala Zajradhara, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Pure Water Corp. Complainant alleges that Respondent engaged in citizenship status discrimination, national origin discrimination, and retaliation in violation of the antidiscrimination provisions of the Immigration and Nationality Act, as amended, 8 U.S.C. §§ 1324b(a)(1) and (a)(5).

The Chief Administrative Hearing Officer sent Respondent a Notice of Case Assignment for Complaint Alleging Unfair Immigration-Related Employment Practices (NOCA), as well as a copy of the Complaint, on March 18, 2024, via United States Postal Service (USPS) certified mail. The NOCA directed Respondent to file an answer within thirty (30) days or risk judgment by default. *Id.* at 3 (citing 28 C.F.R. §§ 68.3(b), 68.9, 68.9(b)).¹

After the Complaint and NOCA were returned to this office, this office resent the Complaint and NOCA. The USPS website's tracking service indicates that the Complaint and NOCA were "delivered, individual picked up at postal facility" on April 9, 2024. Therefore, an answer was due no later than May 9, 2024. 28 C.F.R. §§ 68.3(a), 68.3(b), 68.9(a).

¹ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2023).

When Respondent did not timely file an Answer, the Court issued an Order to Show Cause on June 20, 2024, ordering Respondent to submit an Answer and a filing demonstrating good cause for its failure to timely file an Answer by July 22, 2024. *Zajradhara v. Pure Water Corp.*, 20 OCAHO no. 1584, 2 (2024).²

On July 23, 2024, Respondent, via counsel, filed an Answer (dated July 11, 2024). On the same day, Respondent's counsel submitted a Notice of Entry of Appearance (also dated July 11, 2024), in which Respondent's counsel states that Respondent's Answer and Response to the Order to Show Cause were being sent concurrently. The Court received both the Answer and the Notice of Entry of Appearance, but did not receive the Response to the Order to Show Cause.

Given the representation that Respondent had filed the Response to the Order to Show Cause, the Court inquired about the filing. Respondent faxed a copy of the Response to the Order to Show Cause (dated July 11, 2024) on August 14, 2024. The Response contains a signed certificate of service indicating service by mail upon the Court and Complainant on July 11, 2024. Resp. Order Show Cause 3-4.

II. LAW AND ANALYSIS

A. Timeliness of Answer and Good Cause Filing

As a preliminary matter, Respondent's answer was one day late. Under the Order to Show Cause, Respondent's answer deadline was July 22, 2024, not July 23, 2024.

However, "the Court has discretion to accept late filings." *Zajradhara v. Guam Advance Enters., Inc.*, 18 OCAHO no. 1522a, 2 (2024); *see also United States v. Chilitto Pikin LLC*, 18 OCAHO no. 1486a, 5 (2024) (accepting a late filed good cause filing and answer where the filings were mail filed and received two days after the deadline). In this situation, the Court is cognizant of potential mail delays from Saipan. Here, a one-day difference "did not result in a delay or otherwise adversely impact the proceedings," especially as it was "filed before the first prehearing conference and did not impact case scheduling or other procedural matters." *United States v. Tx Pollo Feliz, LLC*, 18 OCAHO no. 1503, 4 (2023). The Respondent has indicated its intention to participate in this litigation. The Court therefore exercises its discretion and ACCEPTS the Answer.

Although it is unclear why the Response to the Order to Show Cause was not received by the Court at the same time as the Answer and Notice of Entry of Appearance, the certificate of service

² Citations to OCAHO precedents in precedents after volume eight, where the decision has not yet been reprinted in a bound volume, include the volume and case number of the particular decision followed by the 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>.

indicates it was mailed by the same method and on the same day as the Answer and Notice of Entry of Appearance. Resp. Order Show Cause 3-4. Given that the Court is now in receipt of the response and it appears that Complainant was timely served with the response, the Court ACCEPTS the Response to the Order to Show Cause.

B. The Order to Show Cause is Discharged

As the prior Order to Show Cause noted “[f]ailure of the respondent to file an answer within the time provided may be deemed to constitute a waiver of his or her right to appear and contest the allegations of the complaint. The Administrative Law Judge may enter a judgment by default.” 28 C.F.R. § 68.9(b). Default judgments are “generally disfavored, and doubt regarding entry of default should be resolved in a favor of a decision on the merits of the case.” *US Tech Workers v. Oak Street Health*, 19 OCAHO no. 1574a, 2 (2024) (citing *United States v. Vilardo Vineyards*, 11 OCAHO no. 1248, 5 (2015) (CAHO Order)), *United States v. Jabil Circuit*, 10 OCAHO no. 1146, 3 (2012) (CAHO Order)).

“A showing of good cause is a condition precedent to permitting a late answer, and where that showing is not made, a late answer may not be accepted.” *United States v. Steidle Lawn & Landscape, LLC*, 17 OCAHO no. 1457, 2 (2022). “In determining whether good cause to set aside an entry of default exists, OCAHO Administrative Law Judges (ALJs) have considered: (1) whether there was culpable or willful conduct; (2) whether setting the default aside would prejudice the adversary; and (3) whether the default party presents a meritorious defense to the action.” *US Tech Workers*, 19 OCAHO 1547a at 2 (citing *Nickman v. Mesa Air Grp.*, 9 OCAHO no. 1106, 2-3 (2004)).

In its Response to the Order to Show Cause, Respondent “admits that it did receive the Complaint . . . in April of this year.” Resp. Order Show Cause 1; *see also* Resp. Order Show Cause, Affidavit 1. As good cause for its failure to timely respond, Respondent explains that its authorized representative had mistakenly understood the 90-day letter from the Immigrant and Employee Rights Section (IER), which Respondent received in February or March 2024, meant that the case had been dismissed, because IER indicated that it was dismissing the charge and would not file a complaint on the Complainant’s behalf at OCAHO. *Id.* at 1-2. Respondent acknowledges it did not timely file a response to the Complaint, but argues that it was an “understandable mistake[.]” *Id.* at 2. Respondent also states that “it has strong defenses in this matter,” including lack of subject matter jurisdiction. *Id.*

Respondent’s filing indicates that the delayed filing of the answer was not willful, but rather the result of a misunderstanding of IER’s letter. Additionally, although the Answer was late, it was still filed before any initial prehearing conference or the setting of any case deadlines, and the Court finds that the Complainant would not be prejudiced by setting aside default. *See Tx Pollo Feliz*, 18 OCAHO no. 1503 at 4. Additionally, in its Answer, Respondent has raised a number of affirmative defenses. Answer 3-4. The Court therefore finds good cause to set aside the entry of default.

The Order to Show Cause is DISCHARGED and the Answer is ACCEPTED.

SO ORDERED.

Dated and entered on August 20, 2024.

Honorable Jean C. King
Chief Administrative Law Judge