

ZAJI OBATALA ZAJRADHARA,
 Complainant,
 v.
 LI YONG HONG CORPORATION,
 Respondent.

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8 U.S.C. § 1324b Proceeding
 OCAHO Case No. 2021B00043

This case was last before this Court on August 1, 2024, when this Court issued an Order of Dismissal, dismissing the Complaint due to abandonment. *Zajradhara v. Li Yong Hong Corp.*, 17 OCAHO no. 1472c (2024).¹ The Complainant had failed to respond to an Order to Show Cause issued in September 2021. On January 31, 2023, the Administrative Law Judge (ALJ) issued an order finding that the Complaint was abandoned but staying proceedings. *Zajradhara v. Li Yong Hong Corp.*, 17 OCAHO no. 1472 (2023). On June 27, 2024, this ALJ issued a Notice of Potential Dismissal – Abandonment. *Zajradhara v. Li Yong Hong Corp.*, 17 OCAHO no. 1472b (2024). In the June 2024 Notice, this ALJ lifted the stay put in place in 2023, and provided the Complainant a final opportunity to respond to the finding of abandonment. *Id.* at 2. This ALJ noted that if the Complainant intended to pursue the case, he should show cause by July 27, 2024, as to “1) whether the Court has subject matter jurisdiction over his claims; specifically, how many employees Respondent had at the time of the alleged discrimination; and 2) why he did not timely respond to

¹ 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>.

the Order to Show Cause.” *Id.* at 3. When Complainant did not respond, the Court dismissed the case as abandoned.

On August 12, 2024, Complainant filed “Laymans’ Motion for Extension to Respond to Order RE: ‘Abandonment’”. Motion Ex’t. In the motion, Complainant states that he had forgotten that the case was active, and he did not believe he had received the Court’s order to show cause. *Id.* at 2. He has since requested documents from the Department of Labor in the Commonwealth of the Northern Mariana Islands (CNMI) and seeks an extension of fourteen to twenty-one days. *Id.* The certificate of service indicates that the motion was sent on July 22, 2024, from Saipan where Complainant is located. *Id.* at 5.

While it appears that Complainant sent the filing in response to the Notice of Abandonment, because the Court has now dismissed the case, the Court will convert the motion into a motion for reconsideration.

“While the OCAHO rules do not specifically address a motion for reconsideration, OCAHO caselaw has permitted reconsideration requests in 274b cases.” *Heath v. Optnation*, 14 OCAHO no. 1374a, 3 (2021) (citing *United States v. Four Star Knitting*, 5 OCAHO no. 815, 711, 716 (1995); *M.S. v. Dave S.B. Hoon – John Wayne Cancer Inst.*, 12 OCAHO no. 1305b, 3–4 (2018)). See also *Zajradhara v. GIG Partners*, 14 OCAHO no. 1363d, 2 (2021).

OCAHO’s regulations allow for using the Federal Rules of Civil Procedure as a general guideline for OCAHO cases. 28 C.F.R. § 68.1. The Federal Rules of Civil Procedure have two provisions that allow for reopening: Rule 59(e) and Rule 60(b). *Id.* “For a motion for reconsideration brought under Rule 59(e), the moving party must present newly discovered evidence that was previously unavailable, clear error that was manifestly unjust, or an intervening change in controlling law.” *Gig Partners*, 14 OCAHO no. 1363d at 3 (citing *Zimmerman v. City of Oakland*, 255 F.3d 734, 740 (9th Cir. 2001)). Additionally, Rule 60(b)(2) is similar, and allows for reopening if there is “newly discovered evidence that, with reasonable diligence, could not have been discovered in time[.]” *Id.* However, relief under Rule 60(b) should be utilized “‘sparingly’ and only where necessary ‘to prevent manifest injustice.’” *United States v. Wilson*, 27 F. App’x 852, 853 (9th Cir. 2001) (quoting *Greenawalt v. Stewart*, 105 F.3d 1268, 1273 (9th Cir.1997)).

Complaint seeks additional time to obtain the information sought by the Court, and asserts that he did not receive the Order to Show Cause. Mot. Ex’t 2. Assuming Complainant is referring to the September 2021 Order to Show Cause, Complainant has explained why he did not timely respond to it. Given the significant delays with mail to and from Saipan and this Court, it appears that the Court did not allow sufficient time for Complainant to timely respond to its June 2024 notice. Complainant did attempt to comply, asking for an extension shortly after receiving the Court’s order. Therefore, the Court will reopen proceedings pursuant to Rule 59(e).

The inquiry that precipitated the first Order to Show Cause remains, however, as Complainant has not pled, nor provided evidence of, the number of employees Respondent had at the time of the alleged discrimination.² Without sufficiently pled facts, the Court cannot determine whether it has jurisdiction to adjudicate Complainant's § 1324b claims.

Complainant must file his response to this Order within 60 days from the date provided in the certificate of service for this Order. If Complainant does not provide a response within that time, the case may be dismissed as abandoned. *See* 28 C.F.R. § 68.37(b)(1).

SO ORDERED.

Dated and entered on September 10, 2024.

Honorable Jean C. King
Chief Administrative Law Judge

² As a forum of limited jurisdiction, this Court may only hear cases of discrimination based on citizenship status when the employer employs more than three individuals, and for national origin discrimination, claims against employers employing between four and fourteen individuals. *See United States v. Facebook, Inc.*, 14 OCAHO no. 1386b, 6–7 (2021); 8 U.S.C. §§ 1324b(a)(1)(A), (a)(2)(A), (a)(2)(B). Without sufficiently pled facts, the Court cannot determine whether it has jurisdiction to adjudicate Complainant's § 1324b claims. *See Li Yong Hong Corporation*, 17 OCAHO no. 1472 at 1-2, 1 n.1.