

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

US TECH WORKERS ET AL.,)	
Complainant,)	
)	
)	8 U.S.C. § 1324b Proceeding
v.)	OCAHO Case No. 2024B00042
)	
CATERPILLAR INC.,)	
Respondent.)	
)	

Appearances: John M. Miano, Esq., for Complainant
Leon Rodriguez, Esq. and Dawn Lurie, Esq., for Respondent¹

ORDER ON MOTION FOR LEAVE TO REPLY AND FOR STAY OF PROCEEDINGS

I. BACKGROUND

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b.

On July 1, 2024, Respondent filed a Motion to Dismiss the Complaint. Complainant filed its opposition to the motion on July 11, 2024. Thereafter, Respondent filed a motion requesting leave to file a reply brief in support of its Motion to Dismiss on July 23, 2024. Complainant responded to this motion on July 26, 2024.

Respondent requests the Court's leave to file a reply brief to address several issues raised in Complainant's opposition to the Motion to Dismiss: 1) Respondent clarifies that Complainant seeks a declaratory judgment, not summary judgment, which Respondent argues is improper in this venue; and 2) Respondent argues that Complainant has not satisfied the burden for summary decision. Mot. Leave Reply 2–5.

¹ On July 26, 2024, Respondent's filed a motion to withdraw Attorney Edward North as counsel as this matter, as he has left the employ of Seyfarth Shaw LLP. The Court grants this request pursuant to 28 C.F.R. § 68.33(g). The appearances line and service list have been updated accordingly.

Complainant submitted a filing styled as a response to Respondent's motion for leave to reply; however, rather than addressing whether the Court should provide Respondent the requested leave, the filing instead responds to arguments raised by Respondent in its reply. Effectively, Complainant's submission constitutes a sur-reply.

II. LEAVE TO REPLY

Pursuant to 28 C.F.R. § 68.11(b), "[u]nless the Administrative Law Judge provides otherwise, no reply to a response, counter-response to a reply, or any further responsive document shall be filed." "[T]he decision whether to allow a reply or sur-reply 'is solely within the judge's discretion.'" United States v. Space Expl. Techs. Corp., 18 OCAHO no. 1499a, 4 (2023)² (quoting Diaz v. Pac. Mar. Assoc., 9 OCAHO no. 1108, 3 (2004)).

Given that Respondent's reply brief addresses new arguments raised in Complainant's response, the Court will exercise discretion to accept the filing in the interest of developing the record in this matter. *See, e.g.,* Sharma v. NVIDIA Corp., 17 OCAHO no. 1450j, 4 (2023) (granting request for leave to file a sur-reply "[i]n the interest of developing the record"); United States v. Walmart Inc. (Bethlehem), 17 OCAHO no. 1475d, 2 (2023) (granting leave to file a reply to "respond to new arguments" raised in a response brief). Accordingly, Respondent's reply brief has been accepted, and will be given due consideration in resolving the pending Motion to Dismiss.

As to Complainant's sur-reply, the Court will likewise exercise discretion to accept the filing for the same reasons outlined above. Complainant's submission addresses new arguments raised in Respondent's reply filing, and provides additional briefing on unique questions of law, building a record to assist the Court in reaching a determination.

Respondent's motion for leave to file a reply is GRANTED, and Complainant's sur-reply filing is ACCEPTED.

² 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>.

III. MOTION TO STAY PROCEEDINGS

On June 25, 2024, the Court issued an order issuing a stay of proceedings in this matter pending resolution of Complainant’s Motion to Consolidate and for Leave to File a Consolidated Amended Complaint. US Tech Workers v. Caterpillar Inc., 19 OCAHO no. 1559a (2024). Thereafter, Respondent filed a Motion to Dismiss and a Motion to Stay Proceedings on July 1, 2024. In its Motion to Stay Proceedings, Respondent argues that the Court should stay proceedings in this matter “until such time as this Court gains the constitutional authority to issue final orders on dispositive motions.” Mot. Stay Proceedings 1. Respondent argues that “OCAHO Administrative Law Judges (ALJs) are not constitutionally empowered to issue final orders in 8 U.S.C. § 1324b cases addressing non-administrative questions.” *Id.* at 4 (citing United States v. Arthrex, Inc., 141 S. Ct. 1970, 1986 (2021)). Respondent argues that OCAHO ALJs have previously issued stays of proceedings in light of Arthrex, Inc. *Id.* (citing, inter alia, Symplice v. New York City Health & Hospitals Corp., 18 OCAHO no. 1493a (2023)).

However, as the Court has recently explained:

On October 12, 2023, the Department of Justice published an interim final rule providing for review by the Attorney General of OCAHO Administrative Law Judge (ALJ) final orders in cases arising under 8 U.S.C. § 1324b. *See* Office of the Chief Administrative Hearing Officer, Review Procedures, 88 Fed. Reg. 70586 (Oct. 12, 2023) (codified at 28 C.F.R. pt. 68). The regulation resolved the issue identified in A.S. v. Amazon Web Servs., Inc. that led to the stay. As a result of this change to the regulation, this Court may proceed to a final case disposition in this matter.

Sinha v. Infosys Ltd., 14 OCAHO no. 1373d (2024). Given that the concerns raised in Arthrex, Inc., which led to stays of proceedings in the OCAHO cases identified by Respondent, have been addressed by the interim final rule, there is no need to issue a stay of proceedings on this ground. For this reason, and because the Court has already issued a stay of proceedings pending resolution of the Consolidation Motion, and has not yet set a case schedule, Respondent’s request is DENIED AS MOOT.

SO ORDERED.

Dated and entered August 29, 2024.

John A. Henderson
Administrative Law Judge