

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

October 22, 2024

US TECH WORKERS ET AL.,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	OCAHO Case No. 2024B00100
	)	
MORNINGSTAR, INC.,	)	
Respondent.	)	
_____	)	

Appearances: John M. Miano, Esq., for Complainant  
Tejas Shah, Esq., for Respondent

AMENDED ORDER DISCHARGING ORDER TO SHOW CAUSE  
AND STAYING PROCEEDINGS

The Court issued an Order in the above-captioned case on October 17, 2022. This Amended Order amends that Order solely to correct a clerical error.

I. PROCEDURAL HISTORY

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 with the Office of the Chief Administrative Hearing Officer (OCAHO) on April 23, 2024, against Respondent, Morningstar, Inc., alleging citizenship discrimination in hiring.

On May 6, 2024, the Chief Administrative Hearing Officer sent a Notice of Case Assignment for Complaint Alleging Unfair Immigration-Related Employment Practices and a copy of the Complaint (the “Complaint package”) by United States Postal Service (USPS) certified mail to an address provided by the Complainant in the Complaint. The Court resent the complaint package to a second address provided by Complainant on July 3, 2024.

On August 8, 2024, Respondent filed a Motion for Extension of Time to file the Answer. Respondent asserted that it was served with the Complaint by certified mail on July 8, 2024, and that therefore the deadline to file an answer is August 7, 2024, and Respondent sought a 30-day

extension of time to file the Answer. *See US Tech Workers et al. v. Morningstar, Inc.*, 20 OCAHO no. 1603, 1 (2023).<sup>1</sup> The Court granted the motion on August 15, 2024, and ordered Respondent to file its Answer by September 6, 2024. *Id.* at 2.<sup>2</sup> Respondent did not file its Answer.

On September 17, 2024, this Court issued an Order to Show Cause, ordering Respondent to file an answer and to demonstrate good cause for failing to file a timely answer. *See US Tech Workers et al. v. Morningstar, Inc.*, 20 OCAHO no. 1603a, 1 (2023). Respondent responded by filing an Answer To Complaint and Order to Show Cause. In the filing, Respondent acknowledges that it did not timely file an answer, but Respondent’s counsel states that he incorrectly assumed that the Opposition to the Respondent’s Motion to Consolidate, Stay Discovery, and for Leave to File an Amended Complaint was a responsive pleading that would constitute an answer. Answer, 4.

## II. DISCHARGING ORDER TO SHOW CAUSE

“A party that fails to answer a complaint within the time specified is already in default, whether or not that fact is officially noted.” *United States v. Quickstuff, LLC*, 11 OCAHO no. 1265, 4 (2015) (citation omitted). The default must be excused before the party is permitted to answer. *Id.* (citing 10A Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice and Procedure* § 2692, at 85 (3d ed. 1998) (hereinafter Wright & Miller)). A Respondent must show good cause to permit acceptance of a late answer. *Id.* (citation omitted).

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 defaulting party presents a meritorious defense to the action. *Nickman v. Mesa Air Grp.*, 9 OCAHO no. 1106, 2-3 (2004) (citing *Kanti v. Patel*, 8 OCAHO no. 1007, 166, 168 (1998)).

The Court finds that Respondent has demonstrated good cause for its failure to file a timely answer. Respondent demonstrated that it is intending to pursue the case and did not willfully avoid complying with the Order. The case is in an early stage and no prejudice has been shown, Respondent’s mistake was inadvertent, and Complainant has not sought a default judgment. Lastly, Respondent’s Answer includes a number of affirmative defenses. Accordingly, the Order to Show Cause is DISCHARGED and the Answer is accepted.

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<sup>1</sup> Citations to OCAHO precedents after volume eight, where the decision has not yet been reprinted in a bound volume, include the volume and case number of the decision. Pinpoint citations 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>.

<sup>2</sup> Complainant filed a Motion to Consolidate, Stay Discovery, and for Leave to File a Consolidated Amended Complaint on July 30, 2024. Respondent filed a Response on September 10, 2024.

### III. STAY OF PROCEEDINGS

In Complainant's July 30, 2024, Motion to Consolidate, Stay Discovery, and for Leave to File a Consolidated Amended Complaint, Complainant seeks to stay discovery because "the fundamental nature of this litigation depends upon whether these cases are consolidated." Mot. to Consolidate, 5. Respondent did not address the motion to stay in its response.

Per OCAHO rules, an ALJ is permitted to exercise "all appropriate powers necessary to conduct fair and impartial hearings . . . ." 28 C.F.R. § 68.28(a). This includes the authority to "regulate" and, thus, stay proceedings. *United States v. Black Belt Sec. & Investigations*, 17 OCAHO no. 1456b, 2 (2023) (citing *Hsieh v. PMC-Sierra, Inc.*, 9 OCAHO no. 1091, 5 (2003)); *see also Heath v. ConsultAdd*, 15 OCAHO no. 1395b, 2 (2022) (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)).

In considering whether to grant a stay of proceedings, the Court must "weigh competing interests and maintain an even balance." *Heath*, 15 OCAHO no. 1395b, at 2 (quoting *Landis*, 299 U.S. at 254). A stay is warranted if there is a "clear bar to moving ahead." *United States v. Fresco Produce*, 19 OCAHO 1530, 4 (2024) (quoting, in part, *Monda v. Staryhab, Inc.*, 8 OCAHO no. 1002, 86, 91 (1998)). In the past, the Court has found judicial economy, fairness, and lack of prejudice may justify a stay of proceedings. *See United States v. Ron's Temp. Help Servs., Inc.*, 18 OCAHO no. 1496, 2 (2023) (judicial economy and fairness); *US Tech Workers v. Fifth Third Bank*, 19 OCAHO no. 1550, 3 (2024) (lack of prejudice).

The Court has not issued a litigation order and has not authorized discovery to begin. However, the Court finds that delaying discovery would serve judicial economy and efficiency and would be unlikely to prejudice either party. The pending Motion to Consolidate may change the nature of the case and of discovery. *See, e.g., US Tech Workers v. Relativity*, 20 OCAHO no. 1579, 4 (2024) (finding good cause to stay proceedings pending resolution of motions in the interest of preserving time and resources); *US Tech Workers v. Ulta*, 20 OCAHO no. 1595a (2024). The Court, then, grants the motion to stay and issues a limited stay of proceedings. 28 C.F.R. § 68.5(a). The stay is a limited one, as the Court will permit the filing of dispositive motions and responses thereto provided the motions do not require discovery. The Court will notify the parties of a date and time for an initial telephonic prehearing conference to discuss setting a case schedule in this matter once the stay is lifted.

Proceedings are accordingly STAYED until the Court issues a decision on Complainant's Motion to Consolidate.

SO ORDERED.

Dated and entered on October 22, 2024.

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Honorable Jean C. King  
Chief Administrative Law Judge