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

October 28, 2024

ZAJI OBATALA ZAJRADHARA, Complainant,	)	
v.	)	8 U.S.C. § 1324b Proceeding OCAHO Case No. 2024B00062
HANTANG ENTERTAINMENT CORP., Respondent.	)	

Appearances: Zaji Obatala Zajradhara, pro se Complainant
Steven P. Pixley, Esq., for Respondent

ORDER DISMISSING COMPLAINT

I. INTRODUCTION

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324b. On March 7, 2024, Complainant, Zaji Zajradhara, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). Complainant alleges that Respondent, Hantang Entertainment Corp., discriminated against him in violation of 8 U.S.C. § 1324b(a)(1) when he was not hired for a sales supervisor position. Respondent, through counsel, filed an Answer and Motion to Dismiss on April 16, 2024. Complainant did not file an opposition to the Motion to Dismiss.

In the motion to dismiss, Respondent argues that the complaint should be dismissed because Complainant did not file the complaint with OCAHO within ninety days of the Immigrant and Employee Rights Section (IER)'s letter of determination, as required. Ans. & Mot. Dismiss 2.

On May 1, 2024, the Court issued an Order to Show Cause and Stay of Proceedings. *Zaji Obatala Zajradhara v. Hantang Entertainment Corp.*, 19 OCAHO no. 1557 (2024).[1] In the order, the

[1] 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

Court permitted Complainant to explain the circumstances surrounding his late filing, noting that "[a] failure to respond and demonstrate that equitable tolling [of the filing deadline] should apply may result in dismissal of the Complaint as untimely filed." *Id.* at 2.

On May 3, 2024, the Court received Complainant's "Laymans' Response to Courts Order to Show Cause, Request for (ESI) Discovery Rule 34 and Rule 26(f)." In the response, Complainant's explanation for the late filing was limited to the following: "We can't explain fully why our postings were late: Either it's because of the USPS, or something along those lines. We have NEVER purposely submitted an outdated complaint to this court." C's Resp. to OTSC 1.

II. LEGAL STANDARDS

A. Timely Filing of a Private Action under Section 1324b

8 U.S.C. § 1324b(d)(2) is the statutory provision governing when a private party with a charge before IER may file a complaint with OCAHO. The provision states, in part:

> "[I]f the [IER], after receiving such a charge respecting an unfair immigration-related employment practice . . . has not filed a complaint before an [ALJ] with respect to such charge within such 120-day period, the [IER] shall notify the person making the charge of the determination . . . and the person making the charge may . . . file a complaint directly before such a judge within 90 days of the receipt of the notice." *Id.*

"The mandatory notification to the charging party at the end of the 120 day period is ordinarily accomplished by a certified mail letter sent to the charging party advising that the complaint must be filed within 90 days after the charging party's receipt of the letter." *Lima v. N.Y.C. Dep't of Ed.*, 10 OCAHO no. 1128, 9 (2009) (citations omitted); *see also* 8 U.S.C. § 1324b(d)(2); 28 C.F.R. § 68.4(c)[2]; 28 C.F.R. § 44.301(b). Neither the statute nor the regulations permit "the nullification of the notification letter once it has been issued." *Lima,* 10 OCAHO no. 1128, at 9. That letter "is also referred to as a '90 day letter' and is the functional equivalent of a 'right-to-sue' letter, similar to what is issued in cases before the EEOC." *Jablonski v. Kelly Legal Servs.*, 12 OCAHO no. 1282, 7 (2016).

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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 at https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions.

[2] OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2024).

Delivery of the IER determination letter at the address the complainant designated to IER starts the clock for filing the OCAHO complaint. *See Hajiani v. Ali Properties, LLC*, 10 OCAHO no. 1188, 5 (2013); 28 C.F.R. § 68.4(c); 28 C.F.R. § 44.30(b). "If a complaint is challenged as untimely filed, the complainant has the burden of proof to show otherwise." *Degaonkar v. Infosys Ltd.*, 15 OCAHO no. 1393b, 4 (2024) (citing *Hajiani*, 10 OCAHO no. 1188, at 5). And while caselaw from both OCAHO and the Ninth Circuit, the circuit in which this case arises, holds that filing deadlines are subject to equitable doctrines such as tolling, such remedies are sparingly applied, as the burden of proof on the plaintiff/complainant is high. *Goel v. Indotronix Int'l Corp.*, 9 OCAHO no. 1102, 11 (2003). Equitable tolling is available when the statute of limitations was not complied with because of defective pleadings, when a claimant was tricked by an adversary, or when the notice of the statutory period was inadequate. *Irwin v. Dep't of Veterans Affairs,* 498 U.S. 89, 96 (1990). Courts have been generally unforgiving, however, when a late filing is due to claimant's failure "to exercise due diligence in preserving his legal rights." *Irwin,* 498 U.S. at 96. *See also Trivedi v. U.S. Dep't of Def.*, 69 F.3d 545, *1, *1–2 (9th Cir. 1995) (unpublished table decision) (holding that equitable tolling is available to extend filing periods such as the 180 day filing period in [§ 1324b] case[s], but agreeing with OCAHO ALJ that Complainant's claim was "a garden variety case of neglect of his rights); *M.S. v. Hoon*, 772 Fed. App'x. 529, 529–30 (9th Cir. 2019) (unpublished opinion) (rejecting petitioner's equitable tolling argument for failing to "bear[] the heavy burden of showing . . . some extraordinary circumstance" (quoting *Chaffer v. Prosper*, 592 F.3d 1046, 1048 (9th Cir. 2010))).

III. DISCUSSION AND CONCLUSION

In this case, Complainant received his right-to-sue letter from IER on November 9, 2023. Compl. 12. Ninety days after November 9, 2023, is February 7, 2024. Therefore, because Complainant did not file his Complaint with this office until March 7, 2024, his Complaint was untimely.

Complainant did not provide an explanation for the late filing. Instead, he stated that he could not explain the late filing, surmising only that it could have been a problem with the postal service. C's Resp. to OTSC, 1. No evidentiary proof was attached to the response, and no other explanation for the late-filed complaint was given. Vague speculation regarding what could have been the cause is not an explanation. Consequently, the Court finds that Complainant has not met his burden of proof to demonstrate that equitable tolling should be applied in this case, and therefore, his Complaint was not timely filed pursuant to 8 U.S.C. § 1324b(d)(2). Accordingly, dismissal is appropriate.

Respondent did not indicate whether it sought dismissal with or without prejudice. Generally, orders granting motions to dismiss are without prejudice unless "allegations of other facts consistent with the challenged pleading could not possibly cure the defect." *Smeltzer v. Slater*, 93 F. Supp. 2d 1095, 1099 (C.D. Cal. 2000), citing *Schreiber Dist. v. Serv–Well Furniture,* 806 F.2d 1393, 1401 (9th Cir. 1986). *See also Nunes v. Ashcroft,* 375 F.3d 805, 808 (9th Cir. 2004) (a court should consider amendment of pleadings even if no request was made, considering: "(1) bad faith; (2) undue delay; (3) prejudice to the opposing party; (4) futility of amendment; and (5) whether the plaintiff has previously amended his complaint.") (citations omitted).

An amendment to the pleading in this case would not cure the defect, thus leave to amend the pleading is not appropriate. Further, Complainant was put on notice of the defect both by Respondent's motion, and by the Order to Show Cause, and he made no serious attempt to explain the late filing. Further, while there is no bad faith apparent in the untimely filing, Respondent was not put on notice that Complainant was pursuing the claim in a timely manner and was thus subject to some prejudice. Accordingly, the Court will dismiss the case with prejudice.

Respondent's Motion to Dismiss is GRANTED with prejudice. The Complaint is DISMISSED.

SO ORDERED.

Dated and entered on October 28, 2024.

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Honorable Jean C. King
Chief Administrative Law Judge

Appeal Information

This order shall become the final agency order unless modified, vacated, or remanded by the Attorney General. Provisions governing the Attorney General's review of this order are set forth at 28 C.F.R. pt. 68. Within sixty days of the entry of an Administrative Law Judge's final order, the Attorney General may direct the CAHO to refer any final order to the Attorney General for review, pursuant to 28 C.F.R. § 68.55.

Any person aggrieved by the final order has sixty days from the date of entry of the final order to petition for review in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business. See 8 U.S.C. § 1324b(i)(1); 28 C.F.R. § 68.57. A petition for review must conform to the requirements of Rule 15 of the Federal Rules of Appellate Procedure.