

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

ROBERT PAUL HEATH,)	
)	
Complainant,)	
)	8 U.S.C. § 1324b Proceeding
v.)	
)	OCAHO Case No. 2021B00015
AMERITECH GLOBAL,)	
)	
Respondent.)	
)	

Appearances: Robert Paul Heath, pro se Complainant
Rishi Agrawal, Esq., for Respondent

FINAL ORDER OF DISMISSAL

I. PROCEDURAL HISTORY

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324b. On February 8, 2021, Complainant, Robert Paul Heath, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Ameritech Global. Complainant alleges that Respondent discriminated against him based on citizenship status and national origin.

This case has a lengthy procedural history which the Court detailed in its August 17, 2024, Order Taking Official Notice of Complainant's Death, Identifying Representative, Addressing Claim Survivability, and Setting Deadline for Substitution. *See Heath v. Ameritech Glob.*, 16 OCAHO no. 1435c, 1–4 (2024).¹ A summary is provided below.

¹ Citations to OCAHO precedents in bound Volumes 1 through 8 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 relevant volume. Pinpoint citations to OCAHO precedents after Volume 8, where the decision has not yet been reprinted in a bound volume, are

On June 1, 2022, the Court issued an Order on Complainant’s Communications to the Court regarding Complainant’s health emergency. *Heath v. Ameritech Glob.*, 16 OCAHO no. 1435 (2022). The Court ordered the parties to file a status report. *Id.* at 4.

On September 15, 2022, the Court issued a Notice of Suggestion of Death and Notice and Order to Show Cause for Status Report. *Heath v. Ameritech Glob.*, 16 OCAHO no. 1435a (2022). Through that Order, the Court notified the parties that it intended to take notice of the fact of Complainant’s death and offered the parties an opportunity to show the contrary. *Id.* at 2–3, 5. The Court explained that, were the fact of Complainant’s death to be true, the parties could submit briefing on Federal Rule of Civil Procedure 25(a)(1)’s application to OCAHO proceedings or they could formally move for substitution pursuant to 28 C.F.R. § 68.41.² *Id.* at 3 & n.3, 5. The Court also noted that any successor or appointed representative of Complainant would have ninety days to file a motion to substitute or the action would be dismissed. *Id.* at 3–4.

The Court then addressed the parties’ failure to comply with the Court’s Order on Complainant’s Communications to the Court, through which the Court ordered them to file a joint status report. *Heath*, 16 OCAHO no. 1435a, at 5. The Court explained the consequences for failing to respond to the Court’s orders or failing to demonstrate good cause for the failure, including dismissal of the complaint based on either abandonment or failure to prosecute were Complainant not to respond, and an entry of default judgment against Respondent were it not to respond. *Id.* at 5–6. Neither party responded to the September 15, 2022, Order.

On April 4, 2024, the Court reissued its September 15, 2022, Notice of Suggestion of Death and Notice and Order to Show Cause for Status Report, resetting the deadlines for the parties’ responses to the Order to Show Cause and joint status report. *Heath v. Ameritech Glob.*, 16 OCAHO no. 1435b (2024). The Court once again ordered the parties to submit a status report outlining their positions regarding the Court’s intent to take official notice of the fact of Complainant’s death and of Tonya

to pages within the original issuances; the beginning page number of an unbound case will always be 1 and is accordingly omitted from the citations. Published decisions may be accessed in the Westlaw database “FIM-OCAHO,” the LexisNexis database “OCAHO,” and on OCAHO’s homepage on the United States Department of Justice’s website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

² OCAHO’s Rules of Practice and Procedure for Administrative Hearings, 28 C.F.R. pt. 68 (2024), generally govern these proceedings, *available at* <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

Heath as his appointed representative. *Id.* at 4–5. The Court then gave specific suggestions as to the contents of the status report and reiterated the potential consequences for either party should they fail to respond. *Id.* at 5. Tracking information provided by the United States Postal Service (USPS) confirmed that the Order was received by both Respondent and Tonya Heath, yet neither party filed a status report with the Court. *Heath*, 16 OCAHO no. 1435c, at 4.

On August 27, 2024, after the parties failed to provide any submission to the Court, the Court issued an Order Taking Official Notice of Complainant’s Death, Identifying Representative, Addressing Claim Survivability, and Setting Deadline for Substitution. *See Heath*, 16 OCAHO no. 1435c. Through that Order, the Court did the following: (1) took official notice of the fact of Complainant’s death; (2) took official notice of Tonya Heath as Complainant’s daughter, executor, and personal representative, and found that she is Complainant’s representative for purposes of these proceedings; (3) found that Federal Rule of Civil Procedure 25(a)(1) applied to this matter, allowing for substitution of parties on death where the claim is not extinguished; (4) found that Complainant’s claims survived his death; (5) put Tonya Heath on notice that she must file a motion for substitution within ninety days of service of the Order or the Court would dismiss the action without prejudice pursuant to Rule 25; and (6) invited the parties to submit filings regarding the appropriateness of dismissal without prejudice. *Id.* at 5–11.

OCAHO mailed Tonya Heath the Court’s Order dated August 27, 2024, by USPS certified mail and requested proof of service in the form of a certified mail domestic return receipt (PS Form 3811). OCAHO received a signed domestic return receipt bearing Tonya Heath’s printed name and signature and reflecting a service date of September 6, 2024. Thus, the ninety-day period for filing a motion for substitution ended on December 5, 2024. As of the date of this Order, Ms. Heath has not filed a motion for substitution or any other filing with the Court. Respondent also has not submitted any responsive filing. No person or entity has contacted the Court in connection with this case.

II. DISCUSSION AND ANALYSIS

Federal Rule of Civil Procedure 25(a)(1) explains that, in the event of a party’s death where the party’s claim is not extinguished by the death, the decedent’s successor or representative may file a motion for substitution.³ However, “[i]f the

³ 28 C.F.R. § 68.1 provides that “[t]he Federal Rules of Civil Procedure may be used as a general guideline in any situation not provided for or controlled by these rules, by the Administrative Procedure Act, or by any other applicable statute, executive order, or regulation.” As noted by the Court in its August 27, 2024, Order, neither OCAHO’s regulations nor the Administrative Procedure Act “provide for substitution

motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.” *Id.*

Here, through its August 27, 2024, Order, the Court took official notice of the fact of Complainant’s death, found that Complainant’s claims survived his death, and identified Tonya Heath as Complainant’s representative for purposes of these proceedings. *See Heath*, 16 OCAHO no. 1435c, at 8–10. The Court also notified Ms. Heath of its findings and, in accordance with Federal Rule of Civil Procedure 25(a)(1), put her on notice that she must file a motion for substitution within ninety days of service of the Order or the Court would dismiss the action without prejudice. *Id.* at 10–11.

OCAHO served the Court’s Order on Tonya Heath on September 6, 2024, as confirmed by the USPS certified mail domestic return receipt bearing Ms. Heath’s printed name and signature. Once the Court accomplished “service of a statement noting the death” of Complainant, Ms. Heath had ninety days, or through December 5, 2024, to file a motion for substitution. Fed. R. Civ. P. 25(a)(1). The ninety-day period has now ended, and Ms. Heath has not filed a motion for substitution.⁴ She also has not filed a motion seeking additional time from the Court. *See* Fed. R. Civ. P. 6(b)(1)(B) (giving a court discretion to extend a deadline “on motion made after the time has expired if the party failed to act because of excusable neglect.”); *see also Lizarazo v. Miami-Dade Corr. and Rehab. Dep’t*, 878 F.3d 1008, 1011–12 (11th Cir. 2017) (recognizing that Rule 25’s ninety-day deadline may be extended under Rule 6(b) and citing cases from the Second, Seventh, Ninth, and D.C. Circuits finding the same).⁵

Through its Order, the Court put Ms. Heath on notice that, should she choose not to file a motion for substitution within the prescribed time frame, the Court would

of parties upon the death of a party.” *Heath*, 16 OCAHO no. 1435c, at 8. The Court therefore relies on Federal Rule of Civil Procedure 25 when resolving the claim of a deceased complainant.

⁴ During the ninety-day period, the Court considered whether good cause existed to extend the period without a motion from Ms. Heath or Respondent. *See* Fed. R. Civ. P. 6(b)(1)(A). The Court determined that the record before it did not support a finding of good cause and a discretionary extension of time. The Court’s orders have been met with silence, and no person or entity has contacted OCAHO regarding this matter.

⁵ 28 C.F.R. § 68.57 provides that the appropriate federal circuit for review is “the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business.” Because this case arises out of Florida, the Court looks to precedent from the Eleventh Circuit Court of Appeals.

dismiss her father's action against Respondent. *Heath*, 16 OCAHO no. 1435c, at 10–11. The conditions for dismissal pursuant to Rule 25(a)(1) having been satisfied, the Court now proceeds with dismissal of this matter.

While Federal Rule of Civil Procedure Rule 25(a)(1) provides that an action be dismissed where a party fails to file a timely motion for substitution, it is silent regarding whether such a dismissal should be with or without prejudice. That decision is left to the discretion of the Court. Here, the Court put the parties on notice that it intended to dismiss this case without prejudice and invited them to “set forth their positions as to the appropriateness of dismissal without prejudice in any filing they make with the Court during the ninety-day period.” *Heath*, 16 OCAHO no. 1435c, at 10. Neither party submitted a responsive filing.⁶

The Court finds that it is a proper exercise of discretion to dismiss this matter without prejudice as there has been no adjudication on the merits. A dismissal without prejudice also comports with OCAHO precedent involving Rule 25(a)(1) dismissals in similarly situated cases with this Complainant. *See Heath v. Smart Works, LLC*, 16 OCAHO no. 1434c (2023) (dismissal without prejudice pursuant to FRCP 25(a)(1)); *Heath v. Amazee Glob. Ventures, Inc.*, 16 OCAHO no. 1433d (2023) (accord); *Heath v. Infosoft Solutions*, 16 OCAHO no. 1447c (2023) (accord); *Heath v. Gov't Sys. Technologies, Inc.*, 16 OCAHO no. 1437d (2023) (accord); *Heath v. ConsultAdd and an Anonymous Employer*, 15 OCAHO no. 1395f (2023) (accord); *Heath v. Tech Glob. Sys., Inc.*, 16 OCAHO no. 1419d (2023) (accord); *Heath v. Euclid Innovations*, 16 OCAHO no. 1418e (2023) (accord); *Heath v. I-Services, Inc.*, 15 OCAHO no. 1413f (2023) (accord); *Heath v. Ancile, Inc.*, 15 OCAHO no. 1411d (2023) (accord); *Heath v. Tringapps, Inc.*, 15 OCAHO no. 1410f (2023) (accord); *Heath v. Niha Technologies, Inc.*, 16 OCAHO no. 1427d (2023) (accord). Accordingly, the Court now dismisses this case without prejudice. Given this dismissal, all pending motions in this matter are denied as moot.

III. ORDERS

IT IS SO ORDERED that, pursuant to Federal Rule of Civil Procedure 25(a)(1), this case, which arose from the complaint filed by Complainant, Robert Paul Heath, against Respondent, Ameritech Global, is DISMISSED without prejudice.

IT IS FURTHER ORDERED that all pending motions are DENIED as moot.

⁶ As it did with the Court's Orders dated April 4, 2024, and August 27, 2024, OCAHO shall serve this Order by (a) electronic mail on Complainant and Respondent's counsel, (b) USPS mail on Complainant and Mr. Agrawal's law firm, The Agrawal Firm, LLC, and (c) certified mail on Tonya Heath and Ameritech Global.

SO ORDERED.

Dated and entered on December 10, 2024.

Honorable Carol A. Bell
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.