

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,)
Respondent.)
)

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

ORDER ON MOTION TO CONSOLIDATE

I. BACKGROUND

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. Complainant, US Tech Workers, filed a Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on February 9, 2024, against Respondent, Caterpillar Inc. Complainant alleges that Respondent engaged in discrimination on the basis of citizenship status in hiring, in violation of 8 U.S.C. § 1324b(a)(1).

On May 13, 2024, Complainant filed a Motion to Consolidate and for Leave to File Consolidated Amended Complaint (Consolidation Motion), seeking leave to consolidate this matter with roughly 40 other cases pending before this Court. Respondent filed an Opposition to the Consolidation Motion on June 4, 2024.

On June 25, 2024, the Court issued an Order Issuing Stay, US Tech Workers et al. v. Caterpillar, 19 OCAHO no. 1559a (2024), in which it found it “would serve judicial economy and efficiency to issue a stay of proceeding pending adjudication of the Consolidation Motion.” Id. at 2.

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.

On August 29, 2024, the Court issued an Order on Motion for Leave to Reply and for Stay of Proceedings. US Tech Workers et al. v. Caterpillar, 19 OCAHO no. 1559b (2024). The Court granted Respondent's motion for leave to file a reply and accepted the reply; it also accepted Complainant's sur-reply filing. Id. at 2.

II. LAW & ANALYSIS – CONSOLIDATION

The undersigned recently issued an order in US Tech Workers et al. v. Fifth Third Bank, 19 OCAHO no. 1550a (2024), in which the Court denied Complainant's Motion to Consolidate on the grounds that the complaints did not raise a common question of law or fact, and that even if they did, the traditional factors supporting consolidation of cases were not present in this case. The Court hereby adopts the same reasoning to DENY Complainant's Motion to Consolidate in this case.

III. INVITATION TO PROVIDE ADDITIONAL BRIEFING ON MOTION TO DISMISS

In the undersigned's recent order denying the motion to consolidate in US Tech Workers et al. v. Fifth Third Bank, the Court noted that it reserved for another day the question of whether a claim of advertising discrimination was cognizable under § 1324b, and whether the Complainant sufficiently pled such a claim to survive a motion to dismiss under 28 C.F.R. § 68.10. The undersigned noted that it did not have the benefit of briefing from the parties on this issue. The Court now invites the parties to provide additional briefing on these questions. Any submission must be provided to the Court by no later than three weeks from the date of the issuance of this Order. The Court further notes that, excepting the invitation for additional briefing, the stay of proceedings previously entered in this matter remains in effect.

SO ORDERED.

Dated and entered on January 30, 2025.

Honorable John A. Henderson
Administrative Law Judge