

ZAJI ZAJRADHARA,
 Complainant,
 v.
 MANBIN CORPORATION,
 Respondent.

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8 U.S.C. § 1324b Proceeding
 OCAHO Case No. 2024B00012

ORDER DENYING COMPLAINANT’S MOTION FOR RECONSIDERATION &
GRANTING IN PART AND DENYING IN PART HIS MOTION TO AMEND COMPLAINT

On April 25, 2024, the Court issued (to Complainant) an Order to Show Cause – Jurisdiction and Deficient Complaint. *Zajradhara v. Manbin Corp.*, 19 OCAHO no. 1553 (2024).¹ The Court ordered Complainant to show cause as to why his national origin and retaliation allegations should not be dismissed for lack of subject matter jurisdiction and failure to state a claim, respectively. *Id.* at 2.

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 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 on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

On June 12, 2024, Complainant submitted his Response to the Order to Show Cause, and on June 17, 2024, he filed a “Layman’s Motion for Addendum Workforce Listing.” In response to these filings, the Court discharged, in part, its order to show cause. *Zajradhara v. Manbin Corp.*, 19 OCAHO no. 1553a (2024). The Court permitted Complainant an opportunity to amend the Complaint to cure this jurisdictional deficiency based on the submission. *Id.* at 3–4. In contrast, Complainant did not satisfy the Order to Show Cause with respect to his retaliation claim, and so the Court dismissed the claim without prejudice. *Id.* at 4–5.

On September 24, 2024, the Court issued an Order Dismissing Discrimination Claim – National Origin & General Litigation Order. *Zajradhara v. Manbin Corp.*, 19 OCAHO no. 1553b (2024). The Court dismissed without prejudice Complainant’s national origin discrimination claim as Complainant failed to amend his complaint to cure the issues identified by the Court. *Id.* at 3.

On October 22, 2024, after Complainant refiled his “Layman’s Motion for Addendum Workforce Listing, the Court issued an Order and Notice – Amended Complaint.” *Zajradhara v. Manbin Corp.*, 19 OCAHO no. 1553c (2024). Through the Order, the Court gave Complainant an additional opportunity to pursue a national origin claim by filing a motion seeking leave to amend his complaint, along with a proposed amended complaint.

On December 22, 2024, Complainant filed an “Amended Response to Court Order, and Amended Claim for Employment Discrimination Under 8 U.S.C. § 1324b, Title VII, 20 CFR 655 et al., and the Northern Mariana Workforce Act” (Amended Complaint). On January 2, 2025, the Court issued an order in which it construed the filing as both a motion for leave to amend the Complaint and a proposed amended complaint, which the Court denied as the filing “did not cure the issues previously outlined by the Court.” *Zajradhara v. Manbin Corp.*, 19 OCAHO no. 1553e, 2 (2025).

On January 3, 2025, Complainant then filed a “Layman’s Motion for Reconsideration, Amended Response to Court Order, and Amended Claim for Employment Discrimination.” It is this filing that the instant Order addresses. To date, Respondent has provided no response to this latest filing.

II. DISCUSSION

Complainant’s motion is titled in an omnibus fashion as “Layman’s Motion Reconsideration, Amended Response to Court Order, and Amended Claim for Employment Discrimination.” Bearing in mind this Complainant is pro se, the Court will liberally construe its contents as a motion for reconsideration, a motion for leave to amend the complaint, and a proposed amended complaint. *See Sharma v. Lattice Semiconductor*, 14 OCAHO no. 1362, 3 (2020) (“[C]ourts generally liberally construe a pro se party’s pleadings[.]”). Each will be discussed in turn.

A. Motion for Reconsideration

Complainant’s motion appears to request the Court reconsider its decision to deny Complainant’s motion for leave to amend the complaint. *See Zajradhara*, 19 OCAHO no. 1553d.

“Reconsideration is an extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources.” *Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450g, 3 (2023) (internal quotations omitted).

Because “OCAHO’s Rules of Practice and Procedure do not contemplate motions for reconsideration of interlocutory orders[.]” the Court turns to the Federal Rules of Civil Procedure as permissive guidance. *A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381b, 2 (2021) (citations omitted); see 28 C.F.R. § 68.1. The “power to modify an interlocutory order is authorized by . . . Federal Rule 54(b).” *United States v. Rose Acre Farms, Inc.*, 12 OCAHO no. 1285a, 1 n.1 (2018) (citations omitted); e.g., *Griffin v. All Desert Appliances*, 14 OCAHO no. 1370b, 10–12 (2021).

The decision to grant or deny a motion for reconsideration pursuant to Federal Rule 54(b) is a discretionary one. See *Motorola, Inc. v. J.B. Rodgers Mech. Contractors*, 215 F.R.D. 581, 585–86 (D. Ariz. 2003) (citations omitted) (surveying district court approaches for reconsideration of interlocutory orders); e.g., *Allergan, Inc. v. Athena Cosmetics, Inc.*, No. SACV 07–1316 JVS (RNBx), 2012 WL 12903072, *1 (C.D. Cal. Oct. 11, 2012).

“Motions for reconsideration are disfavored [and] are not the place for parties make new arguments not raised in their original briefs.” *Motorola, Inc.*, 215 F.R.D. at 582 (citation omitted). Further, a successful motion for reconsideration does not repeat argument contained in the original motion or opposition. *Id.* at 586.

Sharma, 17 OCAHO no. 1450g, at 3.

Moreover, reconsideration is warranted where:

- (1) material differences in fact or law from that presented to the Court and, at the time of the Court’s decision, the party moving for reconsideration could not have known of the factual or legal differences through reasonable diligence;
- (2) new material facts that happened after the Court’s decision;
- (3) a change in the law that was decided or enacted after the Court’s decision; or
- (4) the movant makes a convincing showing that the Court failed to consider material facts that were presented to the Court before the Court’s decision.

Id. at 4 (citing *Motorola, Inc.*, 215 F.R.D. at 586).

Here, none of the traditional grounds for reconsideration exist. Sections I–V, VII–XI, and XIII of the motion for reconsideration are identical to prior filings, only VI and XII are new.

Section VI contains new factual allegations related to a new retaliation claim. *See Zajradhara*, 19 OCAHO no. 1553a, at 4–5. To the extent Complainant seeks reconsideration of the Court’s decision dismissing a prior retaliation allegation, such reconsideration will not be granted because there is nothing to indicate Complainant only recently became aware of these facts, or there was a recent change in law. As a result, the Court will not “reconsider” its decision; although for different reasons, under a different analysis provided below, Complainant will be able to amend his Complaint to include this retaliation allegation.

Section XII requests “that this matter should be referred to the Department of Homeland Security, Homeland Security Investigations (DHS HSI).” This is both a new request and a request for action not within the purview of this forum.

As such, Complainant’s motion for reconsideration is DENIED.

B. Second Motion for Leave to Amend the Complaint

OCAHO’s regulations allow for the amendment of complaints. 28 C.F.R. § 68.9(e). Amendment is appropriate where “a determination of a controversy on the merits will be facilitated thereby” and “upon such conditions as are necessary to avoid prejudicing the public interests and the rights of the parties[.]” *Id.* “28 C.F.R. § 68.9(e) is ‘analogous to and is modeled upon Rule 15 of the Federal Rules of Civil Procedure,’ which is permissive guidance in OCAHO proceedings.” *Sharma v. Lattice Semiconductor*, 14 OCAHO no. 1362d, 7 (2023) (internal citations omitted). Federal Rule 15(a)(2) provides that courts “should freely give leave when justice so requires.”

“In the Ninth Circuit, courts look to several factors when considering a motion to amend pursuant to Rule 15(a)(2): (1) undue delay; (2) bad faith; (3) futility of amendment; and (4) prejudice to the opposing party.” *Sharma*, 14 OCAHO no. 1362d, at 8 (citing *AmerisourceBergen Corp. v. Dialysis W., Inc.*, 465 F.3d 946, 951 (9th Cir. 2006)).

With respect to Complainant’s proposed national origin claim, amendment would be futile as it is identical to the jurisdictionally deficient claim previously dismissed. *See Zajradhara*, 19 OCAHO no. 1553e, at 2. Complainant has, once more, failed to include a statement in the amended Complaint regarding the number of people respondent employs. Complainant is not precluded from filing a new motion seeking leave to amend (with amended Complaint) curing this defect. Complainant may use the OCAHO Complaint Form when filing any proposed amendment (with this case number and indicating he intends it to be an amendment).

Concerning Complainant’s retaliation claim, granting leave to amend the complaint (and accepting the proposed amendment) is proper, as the proposed amended complaint cures the prior unsuccessful claim’s deficiencies. *Zajradhara*, 19 OCAHO no. 1553a, at 4–5. Through the proposed amended complaint, Complainant alleges: (1) he engaged in protected activity (i.e., opposing Respondent’s discriminatory practices); (2) Respondent was aware of his protected activity; (3) he suffered an adverse employment action (non-selection for an available position);

and (4) the adverse action was causally linked to his engaging in protected activity. Mot. Amend. 5. This is a viable allegation. Additionally, Respondent did not oppose the motion to amend (nor any of the motions to amend, for that matter), the case is still in an early procedural stage, and the Court sees no prejudice (and apparently neither does Respondent) otherwise resulting from allowing the amendment.

Accordingly, Complainant's motion for leave to amend the complaint with respect to his retaliation claim is GRANTED and the Court ACCEPTS his amended complaint.

Complainant's retaliation claim is summarized as follows:

Complainant engaged in protected activity when he opposed Respondent's "unlawful practices which deny equal opportunity for U.S. citizen workers." Mot. Amend. 5. Respondent was aware of this opposition activity "due to the fact that it shared the same agent as" one of the individuals whose practices Complainant opposed. *Id.* And as a result of this protected activity, Respondent "refus[ed] to consider Mr. Zajradhara for positions that he was qualified for," so as to protect its agent. *Id.*

Complainant's citizenship discrimination also remains. At present, these two allegations form the Complaint.

Respondent may now file an amended answer addressing the new retaliation allegation, which must be received by the Court by April 28, 2025, to be considered timely. All deadlines provided in the prior case schedule are suspended, and will be revised following the April 28, 2025, amended answer deadline.

SO ORDERED.

Dated and entered on February 5, 2025.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge