

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

February 4, 2025

VINAY SAINI,)	
Complainant,)	
)	
)	8 U.S.C. § 1324b Proceeding
v.)	OCAHO Case No. 2025B00001
)	
)	
SHERIDAN COMMUNITY HOSPITAL, ET AL.,)	
Respondent.)	
)	

Appearances: Vinay Saini, pro se Complainant
Sarah J. Millsap, Esq., David A. Calles Smith, Esq., and Kimberly B. McNulty,
Esq., for Respondent

ORDER SUMMARIZING PREHEARING CONFERENCE & GRANTING
COMPLAINANT’S MOTION FOR EXTENSION OF TIME

I. PROCEDURAL HISTORY

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324b. On October 1, 2024, Complainant Vinay Saini filed a complaint with the Office of the Chief Administrative Hearing Officer against Respondent Sheridan Community Hospital. Complainant alleges Respondent discriminated on the basis of national origin and citizenship status, retaliated against him, and asked him for more or different documents than required for the employment eligibility verification process, in violation of 8 U.S.C. §§ 1324b(a)(1), (a)(5), and (a)(6).

On November 27, 2024, Respondent, through counsel, filed its Answer and Affirmative Defenses via facsimile. On December 3, 2024, the Court received a copy of the same filing via ordinary mail.

II. PREHEARING CONFERENCE

On January 28, 2025, the Court held an initial telephonic prehearing conference with the parties to discuss preliminary matters. Complainant attended. Attorneys Sarah Millsap, David Calles Smith, and Kimberly McNulty attended on behalf of Respondent.

The Administrative Law Judge (ALJ) and the parties discussed the following matters:

1. **Settlement:** Although Complainant indicated interest in OCAHO's Settlement Officer Program, Respondent's attorneys confirmed that Respondent does not wish to participate in the Program at this time. The Court will therefore not refer the matter to a settlement officer, as the consent of both parties is required.¹ The Court reminded the parties that if at any time they wish to participate in the program, they may file a joint motion requesting a referral.
2. **Motion to Dismiss:** Respondent filed a Motion to Dismiss via facsimile on January 27, 2025, and via ordinary mail on January 29, 2025. Per OCAHO's regulations, the response deadline ordinarily begins when OCAHO receives the copy sent by ordinary mail. *See* 28 C.F.R. §§ 68.6(c), 68.8(b). The Court informed Complainant that he was entitled to a ten-day response period from the date of filing, which could be extended upon his motion. Complainant then orally moved the Court to extend his response deadline by thirty days so that he may have sufficient time to adequately respond to Respondent's motion. Respondent did not oppose an extension but stated that thirty days would be unnecessary. Consequently, the Court hereby GRANTS Complainant's oral motion for extension of time to respond to Respondent's Motion to Dismiss. Complainant's response will be due twenty-one days from the date the Court issues this order.
3. **Answer Deadline:** Complainant indicated that he believed the Answer was filed late. The court stated that it would review the matter. Upon review, the Court finds the Answer was timely filed. While OCAHO's regulations provide that pleadings filed by ordinary mail "are not deemed filed until received by the Office of the Chief Administrative Hearing Officer," 28 C.F.R. § 68.8(b), they also provide that "[p]leadings . . . may be filed by facsimile . . . only to toll the running of a time limit." 28 C.F.R. § 68.6(c). Here, Respondent's Answer was due on November 27, 2024. Respondent filed its Answer via facsimile on November 27, 2024, thereby tolling the deadline. Moreover, because the filing's certificate of service indicates service was made on Complainant via "UPS Overnight delivery," Respondent complied with 28 C.F.R. § 68.6(c) and timely filed its Answer. The Court, however, uses the date the ordinary mail is received for the receipt date.

¹ EOIR Policy Memorandum 20-16, I.C.1, (Aug. 3, 2020) ("A case shall not be referred to a settlement officer if any party objects to referral of the matter to a settlement officer."), <https://www.justice.gov/eoir/page/file/1300746/download>.

4. **Discovery:** Respondent asked the Court to stay discovery pending resolution of its Motion to Dismiss. The Court agreed with Respondent that a stay of discovery would be appropriate; however, the Court also agreed with Complainant that he should be allowed to conduct limited discovery related to the number of individuals employed by Respondent to respond to its argument that the Court lacks subject matter jurisdiction over his discrimination claims. Accordingly, discovery is STAYED pending resolution of Respondent's Motion to Dismiss, except for discovery related to Respondent's number of employees. Should Complainant need more time to complete this limited discovery prior to his response deadline, he may file a motion with the Court seeking an extension.
5. **Respondents:** Finally, Complainant reminded the Court that in his Complaint he identified other agents/entities of Respondent-business against whom he seeks to bring these claims. *See* Compl. 13 (identifying the following "additional Respondent employers and/or their agents": (1) Board of Directors of Sheridan Community Hospital, (2) Members of Credentialing Committee of Sheridan Community Hospital, (3) Directors of Sheridan Care Clinic, and (4) Lili Petricevic, CEO of Sheridan Community Hospital). Because these additional agents of Respondent were named in the original complaint, the Court will amend the case caption to indicate the multiple respondents.

SO ORDERED.

Dated and entered on February 4, 2025.

Honorable Jean C. King
Chief Administrative Law Judge