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

March 25, 2025

SOPHIE ACKERMANN, Complainant, v. MINDLANCE, INC., Respondent.	))))))))	8 U.S.C. § 1324b Proceeding OCAHO Case No. 2023B00004

Appearances: Sophie Ackermann, pro se Complainant
Kathryne Hemmings Pope, Esq., and Christopher J. Gilligan, Esq., for Respondent

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DECISION

I. BACKGROUND

This matter arises under the antidiscrimination provisions of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324b. On October 28, 2022, Complainant Sophie Ackermann filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) asserting claims of discrimination, retaliation, and unfair documentary practices arising under 8 U.S.C. § 1324b against Respondent Mindlance, Inc.

On June 27, 2023, this Court denied Respondent's motion to dismiss as to Complainant's claim of retaliation and stayed Complainant's claims of discrimination based on national origin, citizenship, and unfair documentary practices. *See Ackermann v. Mindlance, Inc.*, 17 OCAHO no. 1462b (2023).[1] On July 25, 2023, the Court held a telephonic prehearing conference, and set

[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

a case schedule. Thereafter, the case was referred to the Settlement Officer Program, but the parties were not able to reach a settlement, and on September 19, 2023, the Court reset the case schedule, with discovery to close on January 5, 2024, and dispositive motions to be filed by March 4, 2024.

Complainant filed a motion for sanctions on November 30, 2023. On December 22, 2023, Respondent filed an opposition to the motion for sanctions and filed a motion to compel discovery responses. On January 11, 2024, this Court denied Complainant's Motion for Sanctions, and granted Respondent's Motion to Compel. *Ackermann v. Mindlance, Inc.*, 17 OCAHO no. 1462d (2024).

On February 29, 2024, this Court granted Respondent's Motion to Dismiss as to Complainant's claims based on national origin, citizenship status and unfair documentary practices. *Ackermann v. Mindlance, Inc.*, 17 OCAHO no. 1462e (2024). The Court also denied Respondent's Motion to Dismiss the case as abandoned, but because Complainant had not complied with any of Respondent's discovery requests, the Court deemed the request for admissions admitted as a discovery sanction. *Id.* at 5-6. Following the February 29, 2024 Order on Respondent's Motion to Dismiss, only Complainant's retaliation claim remained. *Id*. at 3.

On March 4, 2024, Respondent filed a Motion for Summary Decision. Complainant has not responded to the motion.

II. PARTIES' POSITIONS

Respondent brings this motion to address the remaining claim relating to retaliation. Respondent argues that the Court deemed its request for admissions admitted, and therefore there is no genuine issue of material fact and Complainant cannot state a prima facie claim of retaliation. Mot. Summ. Decision Mem. 4. In particular, Respondent argues that Complainant cannot show that the rescission of her job offer was causally connected to the protected activity. *Id.* at 6, 8. Further, Respondent argues that Complainant's reason for rescinding the offer was a legitimate, non-discriminatory reason and Complainant cannot show that this reason was pretextual. *Id.* at 8-9.

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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 "FIMOCAHO," or in the LexisNexis database "OCAHO," or on the website at http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders.

Complainant has not responded to the motion. In the Complaint, she alleges both that Respondent's rescission of her job offer was retaliatory, and that Respondent "blacklisted" her with other recruiters, leading her to lose other opportunities. Compl. 7, 9.

III. LEGAL STANDARDS

A. Summary Decision

Per OCAHO rules, the Administrative Law Judge (ALJ) "shall enter a summary decision for either party if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision." 28 C.F.R. § 68.38(c). "An issue of material fact is genuine only if it has a real basis in the record" and "[a] genuine issue of material fact is material if, under the governing law, it might affect the outcome of the suit." *Sepahpour v. Unisys, Inc.*, 3 OCAHO no. 500, 1012, 1014 (1993) (first citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986), and then citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 284 (1986)). "Subjective and conclusory allegations unsupported by specific, concrete evidence, provide no basis for relief. Neither do such allegations create a genuine factual issue where one does not otherwise exist." *Hajiani v. ESHA USA, Inc.*, 10 OCAHO no. 1212, 6 (2014) (citation omitted).

"Once the moving party satisfies its initial burden of demonstrating both the absence of a material factual issue and that the party is entitled to judgment as a matter of law, the nonmoving party must come forward with contravening evidence to avoid summary resolution." *United States v. Four Seasons Earthworks, Inc.*, 10 OCAHO no. 1150, 3 (2012) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). "[T]he party opposing the motion for summary decision 'may not rest upon the mere allegations or denials' of its pleadings, but must 'set forth specific facts showing that there is a genuine issue of fact for the hearing." *United States v. 3689 Com. Place, Inc.*, 12 OCAHO no. 1296, 4 (2017) (quoting 28 C.F.R. § 68.38(b)). The Court views all facts and inferences "in the light most favorable to the non-moving party." *United States v. Primera Enters., Inc.*, 4 OCAHO no. 615, 259, 261 (1994) (citations omitted).

B. Retaliation

Pertinent to the remaining issue in the case, 8 U.S.C. § 1324b(a)(5) provides that it is an unfair immigration-related employment practice

> to intimidate, threaten, coerce, or retaliate against any individual for the purpose of interfering with any right or privilege secured under [§ 1324b] or because the individual intends to file or has filed a charge or a complaint, testified, assisted, or participated in

> any manner in an investigation, proceeding, or hearing under this section.

"There are two ways to prove retaliation — through direct evidence or by circumstantial evidence through the *McDonnell Douglas* burden shifting test." *Ndzerre v. Washington Metro. Area Transit Auth.*, 13 OCAHO no. 1306a, 8-9 (2018) (citing *Breda v. Kindred Braintree Hosp., LLC*, 10 OCAHO no. 1202, 7 (2013)); *see also McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-05 (1973). Direct evidence is rarely present, however, as employers "are unlikely to 'leave a 'smoking gun,' such as a notation in an employee's personnel file, attesting to a discriminatory intent.'" *Breda*, 10 OCAHO no. 1202, at 17 (quoting *Rosen v. Thornburgh*, 928 F.2d 528, 533 (2d Cir. 1991)).

Where there is no direct evidence and the complainant relies on circumstantial evidence, OCAHO applies the familiar burden shifting framework established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-05 (1973), and its progeny. *Sharma v. Lattice Semiconductor,* 14 OCAHO no. 1362d, 9 (2023) (citing *Reed v. Dupont Pioneer Hi-Bred Int'l, Inc.*, 13 OCAHO no. 1321a, 3 (2019)). "First, Complainant must establish a prima facie case of discrimination; second, Respondent must articulate some legitimate, non-discriminatory reason for the challenged employment action; and third, if Respondent does so, the inference of discrimination raised by the prima facie case disappears, and Complainant must then prove by a preponderance of the evidence that Respondent's articulated reason is false and that the respondent intentionally discriminated against the complainant." *Id*. (citing *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 142-43 (2000); *Saint Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 510-11 (1993); *Tex. Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 252-53 (1981)).

To make a prima facie case for retaliation, a complainant must show: "1) the employee engaged in some conduct or activity which comes within the protection of the statute; 2) the employee suffered an adverse employment decision: and, 3) there is a causal link between the protected activity and the adverse employment decision." *Ndzerre,* 13 OCAHO no. 1306a at 9 (citations omitted). "If a complainant makes a prima facie case, the burden then shifts to the Respondent (the employer) to articulate a "legitimate, nondiscriminatory reason" for the action." *Id.*

Of particular note, for causation, "[t]he causal link between the protected activity and the respondent's employment decision . . . must rise to the level of 'but for' causation." *Sperandio v. United Parcel Servs., Inc.,* 15 OCAHO no. 1400e, 9 (2024) (quoting *Zajradhara v. Gig Partners*, 14 OCAHO no. 1363c, 8 (2021)). Although "[t]he paradigmatic circumstantial evidence giving rise to an inference of retaliation is temporal proximity" between the protected activity and adverse action, *id*., (quoting *Martinez v. Superior Linen*, 10 OCAHO no. 1180, 7 (2023), "there must be some reason to believe that but for the protected activity, the adverse employment action would not have taken place," *id*. (quoting *Ipina v. Mich. Jobs Comm'n*, 8 OCAHO no. 1036, 559, 569 (1999)).

IV. DISCUSSION

A. Facts

Complainant is a United States Citizen. Compl. 2, 19, 29.[2] Respondent is a recruiting staffing agency. *Id.* at 25.

A recruiter for Respondent contacted Complainant via phone about an opportunity with Bristol-Myers Squibb (BMS) on March 23, 2022, and about several other opportunities with BMS through April 13, 2022. Compl. 25. Complainant applied for a position as a Learning Management System Administrator at BMS through Respondent on April 8, 2022. *Id.* at 6. Complainant received two interviews with BMS. *Id.* at 25. During her telephonic interview on April 20, 2022, Sharon Brower, a BMS hiring manager, told Complainant that she was "#1" and "hinted she was hiring" Complainant. *Id.* at 7, 25. On April 22, 2022, Complainant was offered the position of Regulatory & Medical Affairs – Learning Technology Administrator at $83,200 annually, with a start date of May 5, 2022, which was later pushed to May 23, 2022.[3] *Id.* at 7, 25; *see also* C's Opp'n Mot. Dismiss 20 (Complainant's April 27, 2022 offer of employment letter from Mindlance with a start date of May 23, 2022).

On April 28, 2022, Mindlance Human Resources representative Hera Iqbal emailed Complainant requesting that Complainant have an "authorized representative" for Mindlance, such as a family member, friend, or neighbor sign Section 2 of her Form I-9. Compl. 25; *see also* C's Opp'n Mot. Dismiss 3–4. Complainant was "taken [a]back," and called Hera Iqbal, who confirmed that this was their "procedure moving forward." Compl. 25. Complainant "expressed [her] displeasure." *Id.* Complainant then sent a color copy of her passport to Ms. Iqbal, and went to the bank, post office, and her neighbors, all of whom refused to sign the Form I-9. *Id.* at 25–26.

Complainant then called the IER hotline and received a call back from Trial Attorney Angela Miller. Compl. 26. Ms. Miller contacted Ms. Iqbal, who agreed to a video conference with Complainant. *Id.*

On May 3, 2022, at 5:43pm—five hours after Attorney Miller contacted Mindlance—Mindlance employee Emily Guidera emailed Complainant that they were "removing [her] from candidacy effective immediately" for job posting #47088-1. Compl. 8–9. Ms. Guidera wrote that during Complainant's April 28, 2022 phone call with Ms. Iqbal, Complainant stated that her "identity does not require a lawyer or an Indian Sheep." *Id.* Ms. Guidera wrote that they considered "Indian Sheep" to be a racial slur, which was strictly against corporate policy. *Id.* In addition,

[2] Citations for the Complaint reflect the PDF pagination rather than internal pagination.

[3] Complainant alleges May 9, 2022, elsewhere, *see* Compl. 25.

Complainant made other comments that had "racist undertones." *Id.* Ms. Guidera wrote that they had a recording of the phone call. *Id.* Complainant alleges that the accusation that she used a racial slur was "found not to be true by DOJ's investigation." *Id.* at 9.

Following her rejection from employment with BMS through Mindlance, Complainant has been "told by numerous recruiting firms" that Mindlance "blacklisted" her from applying since June 17, 2022. Compl. 29 (indicating that Respondent wrote "Do Not Represent" or "Do No Re-Submit"), 7 (alleging that she "became blacklisted on June 21, 2022 from many/all recruiter[s]"). Complainant alleges that Respondent affected her ability to get a job at the four BMS locations in New Jersey, for which she applied for around 25 positions, and slandered her name to BMS and "throughout the entire recruiting industry." *Id.* at 29–30, 7.

B. Admissions

On January 11, 2024, this Court granted Respondent's Motion to Compel Discovery responses, noting that as Complainant had not responded to Respondent's requests for admission, they are admitted and are "conclusively established." *See Ackermann v. Mindlance, Inc.*, 17 OCAHO no. 1462d, 6 (2024) (citing 28 C.F.R. §§ 68.21(b) and (d)). The Court also indicated that it could consider any properly filed motion for withdrawal or amendment of the admissions from Complainant. *Id.* Respondent subsequently filed a motion to dismiss, asserting that Complainant had not responded to the Motion to Compel, had abandoned the Complaint, and that dismissal was warranted as a sanction. Second Mot. Dismiss; *Ackermann v. Mindlance, Inc.*, 17 OCAHO no. 1462e (2024). The Court declined to dismiss the Complaint, finding that Complainant had not, at that point abandoned the Complaint *Id.* at 5-6. The Court, however, held that because Complainant had failed to respond to the Motion to Compel, including seeking to withdraw the admissions, the requests for admissions were deemed admitted. *Id.* at 6.

Complainant's admissions consist of 35 statements ranging from factual statements to conclusions of law. Mot. Summ. Decision, Ex. B. The most pertinent factual admissions include the following:

> Admit that you were asked to fill out numerous I9 documents and have them verified by a third party in order to complete the onboarding process with Mindlance, Inc.
>
> Admit that you failed to comply with the I9 obligations as specified by Respondent, Mindlance, Inc.
>
> Admit that on April 28, 2022, you made a call to Mindlance, Inc. to discuss the I9 onboarding process.…
>
> Admit that while speaking with Hera Iqbal, you stated "my identity does not require a lawyer, an Indian Sheep, my next door neighbor,

> my mother or my dog… [unfortunately my mother is dead] to verify this."
>
> Admit that while speaking with Hera Iqbal, you stated "my identity does not require a lawyer, an Indian Chief, my next door neighbor, my mother or my dog… [unfortunately my mother is dead] to verify this."…
>
> Admit that while speaking with Hera Iqbal, you stated "I'm born and raised [in America] I'm not comin' from India. Sorry."
>
> Admit that while speaking with Hera Iqbal you asked, "Are we still in America or in the Social Republic of Russia?"
>
> Admit that while speaking with Hera Iqbal she stated to you, "I am not questioning your citizenship. I am not questioning your integrity…"
>
> Admit that while speaking with Hera Iqbal you stated "Then get your job done. 'cause if not tell uh 'Khushuba,' or whoever the hell she is, in India, that I reject this job. This is illegal."

Id.

OCAHO ALJs have cited to Federal Rule of Civil Procedure 56(c) in permitting parties to rely on admissions as part of the basis for summary judgment. *See United States v. Dominguez*, 7 OCAHO no. 972, 782, 795 (1997) (citing *United States v. Tri Component Prod. Corp.*, 5 OCAHO no. 821, 765, 768 (1997)) ("[S]ummary decision issued pursuant to 28 C.F.R. § 68.38 may be based on matters deemed admitted.").

Admissions before OCAHO, however, differ from the Federal Rules of Civil Procedure in that 28 C.F.R. § 68.21(a) provides, in relevant part, that a party "may serve upon any other party a written request for the admission…of the truth of any specified relevant matter of fact." Absent are admissions permitted by Federal Rule 36(a)(1)(A), which include both facts, and the application of law to fact, or opinions about either. Here, the admissions also included some admissions of the application of law to facts, including "[a]dmit that your job offer was rescinded for a legitimate, non-discriminatory reason," and "[admit] that Respondent did not rescind your job offer as an act of retaliation." Mot. Summ. Decision, Ex. B. The Court will therefore not consider these admissions in resolving the summary decision motion.

C. *McDonnell Douglas* Factors

Complainant did not present any direct evidence to support her claim, and therefore the case will be analyzed using the *McDonnell Douglas* factors. As in the Motion to Dismiss, Respondent does not contest that Complainant can demonstrate the first two elements of a prima facie case, i.e., that she engaged in protected conduct of which Respondent was aware, and suffered an adverse employment action. *See* Mot. Summ. Decision, 6. Respondent contests the third element: whether Complainant has established a causal connection between any protected activity and the recission of her job offer. *Id.*

As noted by Respondent, there are two primary ways to substantiate a causal connection between the protected activity and an adverse employment action: (1) showing that the temporal proximity between the two is unusually suggestive or (2) point to an ongoing antagonism between the Complainant and defendant. *Gladysiewski v. Allegheny Energy*, 398 F. App'x 721, 723 (3d Cir. 2010) (citing *Farrell v. Planters Lifesavers Co.*, 206 F.3d 271, 280-81 (3d Cir. 2000)).

1. Rescission of Job Offer

In the June 27, 2023 Order on Respondent's Motion to Dismiss, this Court found that the temporal proximity between when Complainant reached out to IER regarding the Respondent's I-9 practices regarding attestation of her documents, IER's contact with Respondent to attempt to resolve this issue, and the rescission of Respondent's job offer, was only five hours. *Mindlance*, 17 OCAHO no. 1462b at 12. "Given the very close temporal proximity between the contact with Respondent by IER and Respondent's email to Complainant rescinding the job offer, the Court finds that Complainant pled sufficient facts to support an inference of retaliation." *Id.* (citing *Rosencrans v. Quixote Enters., Inc.*, 755 F. App'x 139, 143 (3d Cir. 2018)) (finding gap of a single day between female employee's marriage and termination supported inference of discrimination under Title VII and state law as there was "very close temporal proximity" between the two events)*; see e.g.*, *Eskridge v. Phila. Hous. Auth.*, 722 F. App'x 296, 300 (3d Cir. 2018). "For 'temporal proximity' between protected activity and an adverse action to establish causation on its own, the gap must be 'very close.'" *Id.* (citing *Clark Cty. Sch. Dist. v. Breeden*, 532 U.S. 268, 273 (2001) (per curiam)); *see also Martinez v. Superior Linen*, 10 OCAHO no. 1180, 7 (2013). The Court also found that Complainant had appeared to dispute making the statements, potentially raising an issue of fact. *Mindlance*, 17 OCAHO no. 1462b at 4, 13.

Although the Respondent cannot point to anything that has changed in relation to this timeline, Respondent convincingly argues that causation cannot be established because Complainant has, by operation of the admissions, admitted to making racists comments during the telephone call. Mot. Summ. Decision 8, *id*., Ex. B; *see also id.,* Ex. D at 4 (transcript of phone call); *id*., Ex. G (affidavit from Mindlance Senior Manager of Human Resources indicating the decision not to hire Complainant was entirely due to the comments made by Complainant during the April 28 phone call.). Because of the admission, there is no longer a genuine issue of fact about whether the statements were made. Further, the Complaint contains a reproduced text of an email in

which the company indicates that the reason for not moving forward with the hiring process was due to the racial slur. Compl. 8. The Complaint also includes an email from the IER attorney who indicates that her intervention was unsuccessful because the company had elected not to move forward with Complainant's onboarding for this same reason. *Id*. at 13.

Given this admission and evidence, the Court agrees that while the temporal proximity is striking, the evidence shows that the reason for the rescission occurred during the telephone call with the Mindlance representative. In other words, Respondent has established that the cause of the rescission was due to the telephone call and the statements made by Complainant, not by the fact that IER had reached out and arranged the call. Without any evidence from Complainant contesting the admission, the Court finds Respondent established there is no genuine issue of material fact regarding what caused Respondent to make its decision to rescind Complainant's job offer. Complainant has, therefore, not shown the necessary "but-for" causation required for the prima facie case.

In any event, for the same reasons, the Court finds that Respondent has established a legitimate, non-discriminatory reason for the rescission. Respondent established that Complainant violated its policies by using a racial slur and made other comments with a racist undertone. The Respondent established this both through the admissions, and Respondent submitted a transcript of the call. Mot. Summ. Decision, Ex. D. *See, e.g., McCann v. Astrue*, 293 Fed. Appx. 848, 851 (3d Cir. 2008) (accepting as employer's legitimate non-discriminatory reason for not hiring complainant where complainant lacked necessary skills and "performed very poorly" in an interview); *Thompson v. Bridgeton Bd. Of Educ.*, 9 F.Supp.3d 446, 455 (D.N.J. 2014) ("Poor performance in an interview is recognized as a legitimate nondiscriminatory reason for failure to hire or promote."); *see also Cross v. New Jersey*, 613 Fed. Appx. 182, 185 (3d Cir. 2015) (finding "poor performance during [a] panel interview" a "legitimate, nondiscriminatory reason" for failure to promote); *Alcantara v. Aerotek, Inc.,* 756 Fed. Appx. 692, 697 (3d Cir. 2019) (employer "[had] supplied a legitimate non-discriminatory reason for its decision not to promote [complainant]: she performed poorly during both the interview and the month-long work interview."). As Complainant has not responded to the motion, the Court does not find that this reason is pretextual. Therefore, even if Complainant did successfully demonstrate a prima facie case of retaliation, the Respondent still prevails on summary judgment on this claim.

2. Blacklisting and Reputational Issues

Finally, Complainant had indicated that she was further retaliated against when Mindlance blacklisted her from applying through other recruiters and directly with BMS. While Respondent did not address this claim in this motion, it argued in the December 30, 2022 Motion to Dismiss that it could not be held responsible for actions taken by other recruiters or BMS. First Mot. Dismiss 20-21.

While Courts have found that a claim for retaliation under Title VII can include blacklisting from further jobs at the company, or for sullying a person's reputation, the Complainant must show that the retaliation in this forum must be "for the purpose of interfering with any right or privilege secured under [§ 1324b] or because the individual intends to file or has filed a charge or a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section." 8 U.S.C. § 1424b(a)(5); *see, e.g., Wanamaker v. Columbian Rope Co.*, 108 F.3d 462, 466 (2d Cir. 1997) ("[P]laintiffs may be able to state a claim for retaliation, even though they are no longer employed by the defendant company, if, for example, the company 'blacklists' the former employee, wrongfully refuses to write a recommendation to prospective employers, or sullies the plaintiff's reputation.") (internal citations omitted).

As noted above, a party opposing the motion for summary decision may not rest upon the allegations in its pleadings, but must "set forth specific facts showing that there is a genuine issue of fact for the hearing." *United States v. 3689 Com. Place, Inc.*, 12 OCAHO no. 1296, 4 (2017) (quoting 28 C.F.R. § 68.38(b)). Complainant provides insufficient facts, even taking the facts in the light most favorable to her, that her inability to find employment subsequent to these events was due her protected activity, or even was caused by Respondent. Complainant's allegations are general. They do not include specific timeframes or positions she applied for, or the names of the recruiters who allegedly heard from Respondent. As Complainant has not come forward with any evidence or arguments, the record does not contain allegations sufficient to create an inference of retaliation based upon activity protected under § 1324b. *See e.g., Halsey v. Pfeiffer*, 750 F.3d 273, 287 (3d Cir. 2014) ("[A]n inference based upon a speculation or conjecture does not create a material factual dispute sufficient to defeat summary judgment…Inferences must flow directly from admissible evidence."). Respondent has demonstrated that there is no genuine issue of material fact as to this claim and prevails on summary decision.

3. Conclusions

For the reasons discussed above, the Court finds no genuine issue of material fact as to either of Complainant's retaliation claims, and GRANTS Respondent's motion for summary judgment.

V. FINDINGS OF FACT

1. Complainant is a United States Citizen. Compl. 2, 19, 29.

2. Respondent is a recruiting staffing agency. Compl. at 25.

3. A recruiter for Respondent contacted Complainant via phone about an opportunity with Bristol-Myers Squibb (BMS) on March 23, 2022, and about several other opportunities with BMS through April 13, 2022. Compl. 25.

4. Complainant applied for a position as a Learning Management System Administrator at Bristol-Myers Squibb through Respondent on April 8, 2022. Compl. at 6.

5. Complainant was interviewed by BMS. Compl. at 25.

6. On April 22, 2022, Complainant was offered the position of Regulatory & Medical Affairs – Learning Technology Administrator with a start date of May 5, 2022, which was later pushed to May 23, 2022. Compl. 7, 25; *see also* C's Opp'n Mot. Dismiss 20 (Complainant's April 27, 2022 offer of employment letter from Mindlance with a start date of May 23, 2022).

7. On April 28, 2022, Mindlance Human Resources representative Hera Iqbal emailed Complainant requesting that Complainant have an "authorized representative" for Mindlance, such as a family member, friend, or neighbor sign Section 2 of her Form I-9. Compl. 25; *see also* C's Opp'n Mot. Dismiss 3–4.

8. Complainant called Ms. Iqbal on April 28, 2022, to discuss this requirement, and during the phone call Complainant stated that her "identity does not require a lawyer or an Indian Sheep," along with several other comments that had racist undertones. Mot. Summ. Decision 8, *id.*, Ex. B; *see also id.,* Ex. D at 4; *id.*, Ex. G.

9. Complainant sent a color copy of her passport to Ms. Iqbal, and went to the bank, post office, and her neighbors, all of whom refused to sign the Form I-9. Compl. 25–26.

10. On May 3, 2022, Complainant called the Immigrant and Employee Rights Section of the Department of Justice and spoke to Trial Attorney Angela Miller about this requirement. Compl. 9, 26.

11. On May 3, 2022, Ms. Miller contacted Respondent and spoke with representatives from Mindlance's human resources Department. Compl. 9, 26.

12. On May 3, 2022, at 5:43pm—five hours after Attorney Miller contacted Ms. Iqbal—Mindlance employee Emily Guidera emailed Complainant that they were "removing [her] from candidacy effective immediately" for job posting #47088-1. Compl. 8–9.

13. The cause of the rescission was due to the statements made by Respondent during the April 28 telephone call.

VI. CONCLUSIONS OF LAW

1. Complainant, Sophie Ackerman, is a United States citizen, and therefore a protected individual within the meaning of 8 U.S.C. § 1324b(a)(3).

2. Respondent, Mindlance, Inc., is an entity within the meaning of 8 U.S.C. § 1324b(a)(1).

3. Respondent's requests for admission were admitted and are "conclusively established." *See Ackermann v. Mindlance, Inc.*, 17 OCAHO no. 1462d, 6 (2024) (quoting 28 C.F.R. § 68.20(b), (d)).

4. Parties in OCAHO proceedings may rely on admissions as part of the basis for summary judgment. *See United States v. Dominguez*, 7 OCAHO no. 972, 782, 795 (1997) (citing *United States v. Tri Component Prod. Corp.*, 5 OCAHO no. 821, 765, 768 ("[S]ummary decision issued pursuant to 28 C.F.R. § 68.38 may be based on matters deemed admitted.").

5. 28 C.F.R. §§ 68.21(a) provides, in relevant part, that a party "may serve upon any other party a written request for the admission…of the truth of any specified relevant matter of fact." The regulations do not include the application of or any opinions about the application of law to fact.

6. Complainant did not meet her burden of showing a prima facie case of retaliation for either of her retaliation claims, related to the rescinded job offer and to the alleged blacklisting. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-05 (1973); *Dominguez-Curry v. Nevada Transp. Dep't*, 424 F.3d 1027, 1037 (9th Cir. 2005).

7. Even if Complainant did establish a prima facie case of retaliation regarding the rescinded job offer, Respondent established a legitimate, non-discriminatory reason for rescinding Complainant's offer—namely, Complainant's statements made during the phone call regarding how to sign the Form I-9. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-05 (1973); *Dominguez-Curry v. Nevada Transp. Dep't*, 424 F.3d 1027, 1037 (9th Cir. 2005).

8. Complainant did not offer sufficient evidence to create a question of material fact that Respondent's legitimate, non-discriminatory reason for rescinding the job offer was actually motivated by discrimination against United States citizens. *See Opara v. Yellen*, 57 F.4th 709, 726 (9th Cir. 2023).

9. Complainant did not offer sufficient evidence to create an inference of retaliatory blacklisting based on activity protected by 8 U.S.C § 1324b.

10. To the extent any statement of fact is deemed to be a conclusion of law or any conclusion of law is deemed to be a statement of fact the same is so denominated as if set forth herein as such.

SO ORDERED.

Dated and entered on March 25, 2025.

_____
Honorable Jean C. King
Chief Administrative Law Judge