

8 U.S.C. § 1324b Proceeding  
OCAHO Case No. 2024B00053

On April 2, 2025, the Court issued an order setting a case schedule in this matter, which provided the parties until August 1, 2025, to conduct discovery. The parties appeared telephonically. Relevant to these proceedings, during the time of Complainant's employment with Respondent, he held a H-1B visa which permitted him to work in the United States. Complaint 5. Respondent's headquarters is in Michigan; however Complainant worked in one of Respondent's

offices in Brookline, Massachusetts. Complaint 4. At the conclusion of their working relationship, Complainant's H-1B visa expired. Complaint 5. Respondent presently resides in Ankara, Turkey. Complaint 1.

Following the status conference, the Court issued a General Litigation Order that permitted the parties to engage in discovery. Gen. Lit. Order.

On May 16, 2025, Respondent issued requests for production of documents and interrogatories to Complainant. Complainant submitted his response on June 15, 2025. Resp. Mot. Ex. C. Respondent wrote Complainant, asserting that his responses were incomplete. Id. at Ex. D. Complainant responded that he would not meet and confer regarding these alleged deficiencies. Id. at Ex. E.

On July 2, 2025, Respondent noted Complainant for a deposition pursuant to 28 C.F.R. § 68.22, which directs that a party "shall give notice in writing to the witness and other parties of the time and place of the deposition, and the name and address of each witness." The notice, which Respondent included in its motion, directs that the deposition shall occur on July 29, 2025, beginning at 9:00 am CDT, in Respondent's counsel's office in Omaha, Nebraska. Resp. Mot. Ex. A. The notice further directed that the deposition shall occur orally, and be recorded stenographically. Id.

Respondent also attached a copy of the deposition transcript, and the email correspondence with Complainant. The transcript indicates that Complainant did not appear for the deposition. Id. Complainant did not file a motion for a protective order, or otherwise move to limit or alter the nature of the discovery in this matter.

On July 31, 2025, Respondent filed a Motion to Dismiss for Failure to Prosecute, to Compel Discovery, to Extend Discovery Deadline, and for Sanctions, along with a supporting brief and exhibits. The motion argues that the Court should dismiss the complaint due to Complainant's failure to make himself available for a deposition or to otherwise comply with his discovery obligations. Resp. Mot. 5–7. Alternately, Respondent requests that the Court order Complainant to sit for his deposition and to comply with Respondent's discovery requests. Res. Mot. 7–13. Complainant did not file an opposition to the motion.

## II. DISCUSSION

Respondent seeks dismissal for failure to prosecute, or for abandonment of claims. 28 C.F.R. § 68.37(b) provides that a complaint may be dismissed "upon its abandonment by the party or parties who filed it. A party shall be deemed to have abandoned a complaint or a request for hearing if: 1) A party or his or her representative fails to respond to orders issued by the Administrative Law Judge[.]" Relatedly, Rule 41 of the Federal Rules of Civil Procedure provides that a case may be dismissed because "a plaintiff fails to prosecute or to comply with these rules or a court order[.]" Fed. R. Civ. P. 41(b); *see also Gallego v. Magna-View, Inc.*, 4 OCAHO No. 628, 3 (1994) (collecting cases on dismissal pursuant to 28 C.F.R. 68.37(b) due to abandonment); *Rodriguez v. Tyson Foods, Inc.*, 9 OCAHO No. 1109, 3 (2004) (Dismissing case because, *inter*

*alia*, “Since filing his complaint in January of 2004, [Complainant] has done nothing to advance this litigation.”); De Leon v. Longoria Farms, 13 OCAHO No. 1320a, 4 (Dismissing case due to abandonment because, *inter alia*, complaints failed to appear for their scheduled depositions without offering an excuse for their nonattendance); Heath v. Ameritech Global, 16 OCAHO No. 1435a, 2 (2022) (Discussing potential abandonment of claims, the court stated “failure to comply with the Court’s orders frustrates effective case management.”).

Complainant’s apparent failure to appear at his deposition, and failure to meet and confer with the Respondent concerning the discovery disputes between the parties, potentially indicates that Complainant has abandoned his claims in this matter. Moreover, Complainant’s failure to respond to Respondent’s motion to dismiss or motion for sanctions also indicates a potential lack of willingness to pursue this action. As previously noted, this Court’s General Litigation order expressly permitted the parties to engage in discovery; it also required the parties to meet and confer in good faith when discovery disputes arise. Gen. Lit. Order 2.

Complainant might have argued in either his motion for a protective order or opposition to the motion for sanctions that setting a deposition in Omaha, Nebraska when the locus of the action was in Brookline, Massachusetts, was an unreasonable request. He might alternatively have argued for a different date for the deposition, notwithstanding Section III of the Court’s General Litigation Order, which directs that 14 days is presumptively reasonable notice<sup>1</sup> for noticing a deposition occurring inside the continental United States. Gen. Lit. Order 3. He might also have argued for a deposition by a different means, including by video conference or by written question. Complainant raised none of these arguments, consequently they are foreclosed by Complainant’s failure to file a response.

The extracts of the email correspondence between the parties suggests that Complainant believes he is not obliged to participate in the deposition as he is a party, rather than a witness. See Resp. Mot. Ex. E. To the extent this is Complainant’s position, it is not supported by the law. As both a witness and a party, Complainant is obliged to participate in a deposition upon request. Indeed, the Federal Rules of Civil Procedure, which are a guide for proceedings in this forum in places where OCAHO’s regulations offer no direction, provide that a party’s failure to participate in their own deposition may be grounds for sanctions. 28 C.F.R. § 68.1; Fed. R. Civ. P. 37(d)(1)(a). Moreover, a party may not be excused for their failure to attend a deposition based on an objection unless their objection is codified in a previously filed motion for a protective order. Fed. R. Civ. P. 37(d)(2). As noted previously, Complainant filed no protective order in this matter.

Given the lack of a response from Complainant, the Court is inclined to issue an order directing Complainant to show cause as to why this Court should not dismiss his complaint for abandonment of claims due to his failure to attend his deposition or to meet and confer in good faith. Complainant’s failure to respond to the order may result in dismissal of this action. 28 C.F.R. § 68.37(b)(1).

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<sup>1</sup> To be clear, Respondent’s Notice of Deposition provided Complainant with 26 calendar days from the notice to the date of the deposition. See Resp. Mot. Ex. A.

The Court will defer its ruling on the remainder of Respondent's motion, related to sanctions for Complainant's failure to respond to discovery and appear for the deposition, until it receives some definitive guidance as to whether Complainant intends to continue with his litigation.

### III. ORDERS

Complainant is ORDERED to, within 14 days of the issuance of this Order, file a submission showing cause as to why this case should not be dismissed as abandoned for his failure to participate in the litigation. Should Complainant fail to respond, this case may be dismissed pursuant to 28 C.F.R. § 68.37(b)(1).

The Court HOLDS IN ABEYANCE a ruling on the remainder of Respondent's motion, related to potential sanctions for Complainant's failure to attend his deposition and failure to produce discovery answers. The Court similarly holds in abeyance a ruling on the section of Respondent's motion related to an enlargement of the discovery period in the event that the motion to dismiss is denied.

All other proceedings in this matter are STAYED pending the resolution of this motion.

SO ORDERED.

Dated and entered on January 27, 2026.

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Honorable John A. Henderson  
Administrative Law Judge