

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

November 12, 2020

ALVIN J. GRIFFIN, III,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	OCAHO Case No. 2020B00068
	)	
ALL DESERT APPLIANCES DBA,	)	
ADA REPAIR, INC.,	)	
Respondent.	)	
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AMENDED ORDER ON MOTION FOR RECONSIDERATION

An Order on Motion For Reconsideration was initially issued in the above-captioned case on October 28, 2020. Pursuant to 28 C.F.R. § 68.52(f), this Amended Order on Motion for Reconsideration amends the order issued on October 28, 2020, and corrects solely for clerical errors.

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. Complainant, Alvin J. Griffin, III, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on April 21, 2020, alleging that Respondent discriminated against him based on his citizenship status, engaged in document abuse, and retaliated against him. On August 21, 2020, in relevant part, this Court dismissed Complainant’s discrimination and document abuse claims because his charge filed with the Immigrant and Employee Rights Section of the Civil Rights Division of the Department of Justice (IER) was not timely. This Court also dismissed Complainant’s IER charge regarding retaliatory actions in 2016 and 2018 because they were also not timely filed. This Court found that Complainant’s charge regarding Respondent’s alleged retaliatory actions in June 2020 was timely filed. Respondent filed an answer to Complainant’s amended complaint, Complainant filed a prehearing statement, and Respondent’s prehearing statement is due November 5, 2020.

On September 29, 2020, Complainant filed a self-styled appeal of this Court’s August 21, 2020, Order dismissing the complaint in part. Complainant argues that his charge should have been

considered timely as the period should have been subject to equitable tolling. Respondent has not responded.<sup>1</sup>

As Complainant directed the appeal to this Court, this Court will construe the filing as a motion to reconsider. OCAHO caselaw has permitted reconsideration requests in 274b cases, including in the case of an intermediate order. *U.S. v. Four Star Knitting*, 5 OCAHO no. 815, 711, 716 (1995).<sup>2</sup>

As noted in this Court's order, on August 22, 2016, Complainant filed a charge with the Equal Employment Opportunity Commission (EEOC) alleging that Respondent discriminated against him based on his disability when he was fired on August 10, 2016. The EEOC issued a Notice of Suit Rights on January 19, 2017. On July 29, 2017, Complainant filed a discrimination charge against Respondent with the Nevada Equal Rights Commission. In August 2017, the Nevada Equal Rights Commission transferred the charge to the EEOC and the EEOC issued a Notice of Suit Rights in November 2017. Am. Compl. at 4–5. Complainant filed a charge with IER on March 25, 2020. Compl. at 3. This Court determined that the filing was outside the 180-day window required by section 1324b(d)(3), and that even applying equitable tolling, the filing was outside the 180-day period. *See also* 28 C.F.R. § 44.300(b); 28 C.F.R. § 68.4.

Although Complainant indicates he disagrees with this Court's decision, he has not demonstrated that the decision was in error. He argues that equitable tolling should be extended to him because of his ignorance of his rights under section 1324b, and he cites to a number of cases, such as *Kale v. Combined Ins. Co. of Am.*, 861 F.2d 746, 753–54 (1st Cir. 1988). This Court noted a number of cases in which OCAHO ALJs have found that ignorance of filing requirements and pro se status do not entitle a complainant to an extension of the time. *Halim v. Accu-Labs Research, Inc.*, 3 OCAHO no. 474, 765, 780; *Williams v. Deloitte & Touche*, 1 OCAHO no. 258 (1990); *Grodzki v. OOCL*, 1 OCAHO no. 295 (1991) (ALJ did not extend the complainant's filing period for one day in the absence of a recognized equitable consideration).

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<sup>1</sup> On October 5, 2020, this Court received, via facsimile, a notice of substitution of counsel. While a substitution of counsel may only be granted upon motion, the Court will construe the notice as a motion and will grant substitution of counsel. 28 C.F.R. § 68.33(g).

<sup>2</sup> 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 been 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 OCAHO website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm# PubDecOrders>.

In the Ninth Circuit, the circuit in which this case arises, the relevant considerations in a case such as this are whether there was “(1) timely notice to defendants in filing the first claim; (2) lack of prejudice to defendants in gathering evidence to defend against the second claim; and (3) good faith and reasonable conduct by plaintiffs in filing the second claim.” *U.S. Equal Employment Opportunity Comm'n v. PC Iron, Inc.*, 316 F. Supp. 3d 1221, 1230 (S.D. Cal. 2018). “The equitable tolling doctrine is applied ‘sparingly’ and in ‘extreme cases [t]hus, [c]ourts have been generally unforgiving when a late filing is due to claimant's failure to exercise due diligence in preserving his legal rights.’” *Id.* (citations omitted). In this case, the third element is missing—the Complainant waited more than three years after the first right to sue letter was issued, and two and a half years after the second to file the claim in this forum. Complainant had knowledge of the possible claim as he filed with the EEOC, which distinguishes this case from the cases relating to lack of knowledge of the facts. *Santa Maria v. Pacific Bell*, 202 F.3d 1170 (9<sup>th</sup> Cir. 2000). While it appears Complainant has been pursuing an unemployment insurance claim, there is no such evidence relating to the discrimination claim. The Complainant’s motion to reconsider is denied.

SO ORDERED.

Dated and entered on November 12, 2020.

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Jean C. King  
Chief Administrative Law Judge