

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

DAVE O'BRIAN TINGLING,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 19B00009
)	
CITY OF RICHMOND, VA,)	
Respondent.)	
)	

ORDER OF DISMISSAL

On June 11, 2021, in response to an order from the Court directing the parties to supplement their prehearing submissions in advance of the hearing scheduled for June 23-25, 2021, Complainant David Tingling filed a submission asserting, in part, as follows:

In the same way that I removed myself from the City of Richmond, I respectfully take my leave of this Honorable Court and these proceedings. Very respectfully, the Honorable Court can order me to present myself before this Court, but I don't have to like it. I am sorry to have troubled the Court with my complaints. Please remove m[e] from the 'docket' and any further scheduling, however the Honorable Court may deem fit.

Complainant's Resp. to Invitation for Final Prehearing Statement 10.

On June 14, 2021, the Court held a telephonic final prehearing conference in the above-captioned matter pursuant to 28 C.F.R. § 68.13. Richard E. Hill and Laura Drewry appeared on behalf of Respondent, the City of Richmond, Virginia. Complainant Tingling failed to attend the conference. The Court vacated the prior order setting the hearing date based on Complainant's nonattendance and his expressed desire to no longer participate in his case. Counsel for the Respondent asserted that they had prepared their case for a hearing and that they would be prejudiced were the hearing reset for a later date.

OCAHO rules do not specifically address a motion for a voluntary dismissal by the complainant. De Leon v. Longoria Farms, 13 OCAHO no. 1320a, 2 (2019).¹ In instances where

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

there is a gap in the OCAHO rules, the Administrative Procedures Act, and other applicable statutes, regulations, or executive orders, the Federal Rules of Civil Procedure may serve as a general guide. 28 C.F.R. § 68.1. Pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, “an action may be dismissed at the plaintiff’s request only by a court order, on terms that the court considers proper.” Fed. R. Civ. P. 41(a)(2). Rule 41(a)(2) also permits a trial court to dismiss a case with prejudice. Andes v. Versant Corp., 788 F.2d 1033, 1037 (4th Cir. 1986) (“However, the district court’s order could also have been based on Rule 41(a)(2), which, at least implicitly, grants a district court the power to dismiss with prejudice.”).

Upon a review of the pleadings in this matter, inclusive of Complainant’s most recent filing asserting that he wishes to withdraw his case, as well as his previous filings expressing misgivings with continuing to participate in this litigation,² the Court determines that Complainant Tingling’s filing constitutes a motion to voluntarily withdraw his case. Complainant is silent as to whether he seeks dismissal without prejudice or dismissal with prejudice. In these instances, the determination is left to the sound discretion of the Court. Brooks v. Anthem, Inc., 14 OCAHO no. 1351, 2 (2020) (internal citations omitted). Given the closeness in time between Complainant’s request and the hearing scheduled in this matter, Complainant’s unequivocal demand to have no further participation in this litigation, his failure to attend the scheduled prehearing conference, and Respondent’s claims of prejudice if this matter is further delayed, the Court determines that a dismissal with prejudice is the appropriate result. *See generally* Davis v. USX Corp., 810 F.2d 1270, 1273 (4th Cir. 1987) (citations omitted) (“The decision to grant a voluntary dismissal under Rule 41(a)(2) is a matter for the discretion of the district court . . .”).

The Court therefore finds that Complainant’s motion to dismiss is GRANTED. The Complaint is DISMISSED WITH PREJUDICE.

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>.

² On June 3, 2021, Complainant, who is pro se, submitted a filing stating that “[he] do[es] not wish to continue to trial without an experienced representative,” and “[he] respectfully pray[s] that the Court consider any way to dispose of this case from its docket without potentially damaging others (indirectly) by calling them as witnesses against Respondent.” Complainant’s Prehearing Statement 8. In an additional filing dated October 8, 2020, Complainant stated that he is “not able to continue [his] lawful complaint (s), petitions, and pleadings without professional legal assistance: a service which appears beyond [his] assistance to retain for the for[e]seeable future. Once again, [he] thank[s] this Court for hearing [his] expressions, and [he] thank[s] the Court’s kind support staff for making [his] pleadings possible.” Second Decl. of Dave Tingling 6.

SO ORDERED.

John A. Henderson
Administrative Law Judge

DATE: June 25, 2021

Appeal Information

In accordance with the provisions of 8 U.S.C. § 1324b(g)(1), this Order shall become final upon issuance and service upon the parties, unless, as provided for under the provisions of 8 U.S.C. § 1324b(i), any person aggrieved by such Order files a timely petition for review of that Order in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business, and does so no later than 60 days after the entry of such Order. Such a petition must conform to the requirements of Rule 15 of the Federal Rules of Appellate Procedure.