

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

August 26, 2021

ANA MARIA RAVINES DE SCHUR,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324b Proceeding
EASTER SEALS-GOODWILL NORTHERN	)	OCAHO Case No. 2020B00093
ROCKY MOUNTAIN, INC.,	)	
	)	
Respondent.	)	
_____	)	

ORDER DENYING RESPONDENT’S MOTION TO COMPEL

I. BACKGROUND

This case arises out of the antidiscrimination provisions of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324b(a)(1)(B). On September 18, 2020, Complainant Ana Maria Ravines De Schur filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Easter Seals-Goodwill Northern Rocky Mountain, Inc. Complainant alleges that Respondent discriminated against her based on her citizenship status and national origin and intimidated, threatened, coerced, or retaliated against her for asserting her legal rights against unfair immigration-related employment practices in violation of 8 U.S.C. § 1324b. Compl. 6, 9.<sup>1</sup> On October 28, 2020, Respondent’s counsel filed an answer to the complaint. The Court held a prehearing conference on March 2, 2021, in which it set deadlines for the case.

On May 27, 2021, the Court issued an Order Amending Deadlines updating the deadlines:

Discovery closes: June 30, 2021.  
Motions related to discovery due: July 12, 2021  
Motion for Summary Decision Deadline: August 6, 2021.  
Response to Motion for Summary Decision deadline: August 31, 2021.  
Hearing: Mid-October, 2021.  
Complainant’s responses to the pending discovery are due by June 30, 2021.

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<sup>1</sup> Pinpoint citations to the Complaint are to the internal page numbers of the PDF, as opposed to the varied numbering on the actual pages of the Complaint.

Pending before the Court is Respondent's Motion to Compel, filed on July 13, 2021. Complainant's response to the Motion was due on July 28, 2021. *See* 28 C.F.R. §§ 68.11(b), 68.8(c)(2). As Complainant did not file a response, the motion is deemed unopposed.

## II. PROCEDURAL HISTORY OF RESPONDENT'S MOTION TO COMPEL

Respondent served written discovery on Complainant on April 30, 2021. Mot. to Compel 2. Complainant's responses to the discovery were due June 30, 2021. Order Amend. Deadlines 2.

On June 3, 2021, Complainant sent a Google Drive link to Respondent via electronic mail, purporting to respond to Respondent's twenty-two distinct discovery requests. Mot. to Compel 3. However, after reviewing the documents in the link, Respondent determined "that Complainant's answers were non-responsive and incomplete." *Id.* at 3. On June 10, 2021, Respondent advised Complainant that it viewed several of Complainant's responses as deficient and "non-responsive," noting that she "failed to provide . . . the information or documents requested." *Id.* Respondent asked for Complainant's "cooperation so that [Respondent could] avoid a motion to compel in front of the Court." *Id.*

On June 30, 2021, the adjusted date for closure of discovery, Respondent contacted Complainant to "ask for [her] cooperation in providing supplemental responses to discovery so as to avoid a motion to compel." Mot. to Compel 6 (citing Ex. H). Complainant did not respond.

## III. STANDARDS FOR MOTION TO COMPEL

A party may move the Administrative Law Judge (ALJ) for an order compelling a response if the party upon whom a discovery request is made fails to respond adequately, including evasive or incomplete responses, or otherwise objects to any part of the request. 28 C.F.R. § 68.23(a), (d). Per 28 C.F.R. § 68.23(b), a party's motion to compel must include:

- (1) the nature of the questions or request;
- (2) the response or objections of the party upon whom the request was served;
- (3) arguments in support of the motion; and
- (4) a certification that the movant has conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure information or material without action by the [ALJ].

"All relevant material and reliable evidence is admissible but may be excluded if its probative value is substantially outweighed by unfair prejudice or confusion of the issues, or by considerations of undue delay, of time, immateriality, or needless presentation of cumulative

evidence.” 28 C.F.R. § 68.40(b). Accordingly, a motion to compel must generally present arguments explaining why the requested material is reliable and relevant to deciding the legal issues presented in the case. *Cf. United States v. Rose Acre Farms, Inc.*, 12 OCAHO no. 1285, 2 (2016) (denying the motion to compel production of documents deemed “not relevant to the proceedings at this time”).<sup>2</sup> An objecting party may ultimately defeat the motion by demonstrating that the requested material is irrelevant, or, alternatively, that “its probative value is substantially outweighed by unfair prejudice or confusion of the issues, or by considerations of undue delay, of time, immateriality, or needless presentation of cumulative evidence.” 28 C.F.R. § 68.40(b).

The ALJ may order the withholding party to serve an answer unless the withholding party sustains its “burden of showing that the objection is justified.” 28 C.F.R. § 68.23(a). *Cf. Sharma v. Lattice Semiconductor*, 14 OCAHO no. 1362, 1 (2020) (noting that the “ALJ has the authority to ‘compel the production of documents’ and to compel responses to discovery requests, pursuant to 28 C.F.R. § 68.23 and § 68.28.”) (internal quotation marks and citation omitted).

#### IV. DISCUSSION

Respondent’s motion substantially complies with OCAHO rules, but is deficient with regard to the arguments it sets forth showing cause for why the Court should compel the production of discovery. For this reason alone, the Court DENIES Respondent’s Motion to Compel.

Respondent’s motion includes “the nature of the questions or request” and “the response or objections of the party upon whom the request was served.” The motion is accompanied by a copy of the discovery request and Complainant’s exact answers. 28 C.F.R. § 68.23(b)(1)–(2); *see also, generally* Mot. to Compel, Ex. E. The motion is also unopposed, thus the Court presumes the accounting contained therein to be accurate with respect to the description of the documents produced or not.

In accordance with OCAHO rules, Respondent “certifie[d] that it attempted to confer in good

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

faith with Complainant and Complainant has refused to supplement her discovery responses.” Mot. to Compel 1; *cf.* 28 C.F.R. § 68.23(b)(4). On June 10, 2021, Respondent informed Complainant via email that her answers were “non-responsive and [that she has] failed to provide . . . the information or documents requested” and asked for her “cooperation so that [they] can avoid a motion to compel in front of the Court.” Mot. to Compel 3. On June 29, 2021, Respondent asked Complainant “for [her] cooperation in providing supplemental responses to discovery so as to avoid a motion to compel. Today is the deadline for your responses. Please focus your time and energy on the discovery so that we do not need to engage in unnecessary filings with OCAHO.” Mot. to Compel Ex. H. Respondent satisfied 28 C.F.R. § 68.23(b)(4).

At issue is the third prong of § 68.23. In its brief, Respondent asserts that “Complainant’s answers [to Respondent’s request for discovery] were non-responsive and incomplete,” taking issue with Complainant’s responses to Request numbers 1, 6, 8, 9, 13, 14, 18, 20, 21, and 22, *id.* at 3–5. However, Respondent does not provide argument explaining the relevance of the requested information and documents to the case. While the Court could infer relevance based on the filing, an inference from the Court is not the legal standard memorialized in either case law or, more critically, the procedural regulations. *See* 28 C.F.R. § 68.23(b)(3).

Because the Motion lacks sufficient argument, it is DENIED.

## V. CONCLUSION

Respondent’s Motion to Compel is DENIED. Respondent is not precluded from filing a motion to compel in advance of the stated deadlines below that does comport with the regulatory requirements of the forum.

Additionally, the Court also provides to the parties notice that the Court will not consider information or documents contained in hyperlinks. All supplementary matters provided by the parties must be provided to the Court by way of physical filing.

Finally, Respondent requested “fees and costs incurred in this Motion and in addressing Complainant’s refusal to participate in discovery.” Mot. to Compel 1. 8 U.S.C. § 1324b(h) permits an award of attorney’s fees only to the prevailing party and “if the losing party’s argument is without reasonable foundation in law and fact.” At this juncture, neither party is a “prevailing party” so an award of such is premature. *See Griffin v. All Desert Appliances*, 14 OCAHO no. 1370b, 10 (2021). Therefore, Respondent’s request for attorney’s fees is DENIED.

Due a confluence of issues related to change in filing status of the parties and other unrelated filings, the Court finds it prudent and in the interests of fairness to reset the deadlines as follows:

Motions related to discovery (i.e. motions to compel): September 15, 2021  
 Motion for Summary Decision: October 28, 2021.

Response to Motion for Summary Decision are due thirty days after filing of the motion.  
Hearing: Mid-January 2022.

SO ORDERED.

Dated and entered on August 26, 2021.

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Honorable Andrea R. Carroll-Tipton  
Administrative Law Judge