

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

January 18, 2023

ANDREW EWOMA EHERE,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2022B00057
)	
HAWAIIUSA FEDERAL CREDIT UNION,)	
Respondent.)	
_____)	

Appearances: Andrew Ewoma Ehere, pro se Complainant
Kendra Kawai, Esq. and D. Elliot Gonzalez, Esq., for Respondent

ORDER ON RESPONDENT’S MOTION TO DISMISS, FOR AN ORDER TO SHOW
CAUSE, AND FOR AN EXTENSION

I. BACKGROUND

This case arises under the employment discrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. Complainant, Andrew Ewoma Ehere, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on September 20, 2022. Complainant alleges that Respondent, HawaiiUSA Federal Credit Union, engaged in discriminatory hiring and firing practices based on national origin and citizenship status, in violation of 8 U.S.C. § 1324b(a)(1), and engaged in unfair immigration-related documentary practices, in violation of 8 U.S.C. § 1324b(a)(6). On October 27, 2022, Respondent filed an answer.

On November 2, 2022, the Court issued an Order for Prehearing Statements, directing that Complainant file his prehearing statement by December 2, 2022, and Respondent by January 1, 2023. Complainant did not file his prehearing statement by December 2, 2022.

On December 16, 2022, Respondent filed “Respondent HawaiiUSA Federal Credit Union’s Motion to Dismiss Complaint for Abandonment, or Alternatively, to Issue Order to Show Cause Re: Abandonment of Complaint” (Motion to Dismiss). Respondent argues that Complainant’s failure to comply with the Court’s November 2, 2022 Order for Prehearing Statements

constituted abandonment of his Complaint under 28 C.F.R. § 68.37(b)(1), and requests that the Court dismiss the Complaint. C’s Mem. MTD 2–5. Alternatively, Respondent requests that the Court issue an Order to Show Cause regarding “why: (1) Complainant failed to comply with the ALJ’s Order and did not timely file his prehearing statement; and (2) the Complaint should not be dismissed to due to abandonment.” *Id.* at 5. Finally, Respondent asks that the Court grant an extension of Respondent’s deadline to file a prehearing statement until thirty days after Complainant files his prehearing statement. *Id.* at 5–6.

On December 30, 2022, Complainant filed his Prehearing Statement and “Response to Respondent HawaiiUSA Federal Credit Union’s Motion to Dismiss Complaint for Abandonment” (Response). Complainant writes that on December 20, 2022, he picked up Respondent’s Motion to Dismiss for abandonment from the post office. C’s Resp. 2. He asserts that his failure to meet the prehearing statement deadline was “unintentional” because he “assumed that [he] would receive an email” pursuant to the Court’s Electronic Filing Pilot Program.¹ *Id.* He apologizes for this assumption, and “humbly plead[s] with the ALJ not to dismiss my Complaint against Respondent” and to give him an “opportunity to be heard in this case.” *Id.* at 2–3.

II. COMPLAINANT’S PREHEARING STATEMENT

The Court must first determine whether to accept Complainant’s untimely filed prehearing statement.

“[When considering] untimely filed submissions, the Court employs a standard of good cause in deciding whether to credit a party’s explanations and exercise discretion in accepting a late filing.” *United States v. De Jesus Corrales-Hernandez*, 17 OCAHO no. 1454, 3 (2022) (citing *MRD Landscaping & Maint., Corp.*, 15 OCAHO no. 1407c, 5 (2022)).² OCAHO’s Rules of

¹ Although the Court sent the parties participant registration and certification forms for the e-filing program with its Order for Prehearing Statements, both parties must complete and return those forms for this case to proceed by e-filing. While the Court received registration forms from Respondent’s counsel on November 15, 2022, it has not yet received completed forms from Complainant. The Court attaches courtesy copies of these registration and certification forms to Complainant’s copy of this Order.

² 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

Practice and Procedure for Administrative Hearings³ do not specifically address what constitutes good cause to accept a late filing. The Rules provide, however, that the Court may turn to the Federal Rules of Civil Procedure for guidance. 28 C.F.R. § 68.1.

“[Federal Rule of Civil Procedure] 6(b) permits a court, at its discretion, to accept a late filing when the movant’s failure to meet the deadline was the result of excusable neglect.” *Alexander v. Principi*, 16 F. App’x 755, 759 (9th Cir. 2001).⁴ Courts in the Ninth Circuit apply the following four-factor test to determine whether a party’s failure to meet a deadline constituted “excusable neglect”: “(1) the danger of prejudice to the opposing party; (2) the length of the delay and its potential impact on the proceedings; (3) the reason for the delay; and (4) whether the movant acted in good faith.” *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1261 (9th Cir. 2010) (citations omitted); *see also Warkentin v. Federated Life Ins. Co.*, 594 F. App’x 900, 901 (9th Cir. 2014) (same).

The Court finds that Complainant has demonstrated that he did not timely file his prehearing statement because of excusable neglect. First, while Complainant’s prehearing statement was filed four weeks after the deadline, any prejudice to Respondent by the delay is remedied by the extension of time to file its prehearing statement, *see infra* Section III. Second, this case is in its early stages, and the Court does not find that the length of the delay will have a substantial potential impact on the proceedings. Third, Complainant—a pro se litigant—asserts in his Response that he did not timely file his prehearing statement because of confusion about OCAHO filing procedures, and expresses his intent to continue pursuing this litigation. *See* C’s Resp. 2–3. Finally, there is nothing in the record to suggest that Complainant did not act in good faith; after he picked up Respondent’s Motion to Dismiss from the post office on December 20, 2022, he promptly filed his prehearing statement, which was received by the Court on December 30, 2022. *See id.*

Therefore, considering the preference for resolving cases on their merits, *see MRD Landscaping & Maint., Corp.*, 15 OCAHO 1407c, at 3, the Court exercises its discretion to accept Complainant’s late-file prehearing statement.

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>.

³ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

⁴ Since the allegations at issue in this case occurred in Hawaii, the Court may look to the case law of the relevant United States Court of Appeals, here the Ninth Circuit. *See* 28 C.F.R. § 68.57.

In light of this Court's determination to find good cause shown and accept Complainant's prehearing statement, Respondent's motion for an order to show cause is moot. Further, the Court declines to deem Complainant's complaint as abandoned. *See generally* 28 C.F.R. § 68.37(b).

As such, Respondent's Motion to Dismiss, and request for an order to show cause, is DENIED. Nonetheless, Complainant is cautioned that further failure to respond to court orders, or to otherwise defend this case, may result in a finding of abandonment. *See* 28 C.F.R. § 68.37(b)(1); Fed. R. Civ. P. 55.2.

III. REQUEST FOR AN EXTENSION

As to Respondent's request for an extension to file its prehearing statement, "OCAHO rules do not provide specific standards for granting extensions, but the standard routinely applied is good cause." *Tingling v. City of Richmond*, 13 OCAHO no. 1324c, 2 (2021) (citations omitted). Good cause requires "a demonstration of good faith on the part of the party seeking an enlargement of time and some reasonable basis for noncompliance with the time specified in the rule." *Id.* (citations omitted).

The Court finds that Respondent has demonstrated good faith and a reasonable basis for noncompliance warranting an extension of time to file an answer, given that Respondent filed its request for an extension prior to the deadline, and that Complainant's prehearing statement was not timely filed. Accordingly, the Court will GRANT Respondent an extension of time to file its prehearing statement. Respondent may file its prehearing statement no later than thirty (30) days from the issuance of this order.

SO ORDERED.

Dated and entered on January 18, 2023.

Honorable Jean C. King
Chief Administrative Law Judge