

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

February 24, 2023

ZAJI OBATALA ZAJRADHARA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2021B00061
)	
ALJERIC GENERAL SERVICES, LLC a.k.a.)	
ALJRIC GENERAL SERVICES, LLC,)	
Respondent.)	
_____)	

Appearances: Zaji Obatala Zajradhara, pro se Complainant
Colin Thompson, Esq., for Respondent

ORDER ON MOTIONS

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324b. On September 29, 2021, Complainant, Zaji Obatala Zajradhara, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). Complainant alleges that Respondent, Aljeric General Services, LLC, failed to hire him on account of his citizenship status and national origin.

I. BACKGROUND

On September 27, 2022, the Court issued an Order to Show Cause. *Zajradhara v. Aljeric Gen. Servs. LLC (Zajradhara I)*, 16 OCAHO no. 1432b (2022).¹ In this Order to Show Cause, the

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 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

Court noted that filings in the record regarding an Equal Employment Opportunity Commission (EEOC) charge raised a question as to whether this forum continued to have subject matter jurisdiction over Complainant’s national origin discrimination claim, and directed Complainant to provide the Court with information about the charge he filed with the EEOC as well as the number of employees employed by Respondent. *Id.* at 3–5. The Court ordered Complainant to file a status report addressing these jurisdictional issues no later than October 18, 2022. *Id.* at 4.

On September 28, 2022, Complainant filed “Laymans Motion to Compel Discovery Response” (Motion to Compel), to which Respondent filed an opposition on October 11, 2022, and Complainant filed a reply on December 13, 2022.

After multiple extensions of time, on December 14, 2022, Complainant filed a “Laymans Response to Order to Show Cause.”

On January 11, 2023, the Court issued an Order on Complainant’s Motion to Compel and on Subject Matter Jurisdiction (Stay Order). *Zajradhara v. Algeric Gen. Servs., LLC (Zajradhara II)*, 16 OCAHO no. 1432c (2023). The Court denied Complainant’s Motion to Compel, finding that Complainant had not met the requirements of 28 C.F.R. § 68.23(a) because he did not provide the requests he sent to Respondent or Respondent’s responses/objections, and his motion was filed after the deadline for discovery motions. *Id.* at 4. Moreover, the Court found that Complainant had not met his burden to assure the Court of its subject matter jurisdiction over his national origin discrimination claim, and that the appropriate disposition of a jurisdictionally deficient complaint is dismissal of the case. *Id.* at 6. However, because the Court found itself in a position wherein it was unable to execute this case disposition, it issued a stay of proceedings as to Complainant’s national origin discrimination claim. *Id.*

On January 16, 2023, Complainant filed “Laymans Motion for Removal of Stay, Response to Courts Order to Show Cause” (Stay Motion), attaching two exhibits: (1) a copy of the Commonwealth Employment Act of 2007, 2007 N. Mar. I. Pub. L. No. 15-108, and (2) a copy of the Implementation of the Northern Mariana Islands U.S. Workforce Act of 2018, 85 Fed. Reg. 94, 19264–29317 (2020).²

database “FIMOCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

² Complainant originally filed the motion on January 15, 2023; however, on January 16, 2023, Complainant filed a “corrected” submission. Although Complainant did not attach a certificate of service to his January 16, 2023 corrected submission, because he submitted this filing by “replying all” to the email e-filing his January 15, 2023 Stay Motion—which did contain a certificate of service and was sent to all parties in the case—the Court exercises its discretion to accept this filing, and treats it as the operative motion.

On January 30, 2023, Complainant filed “Laymans’ Notice to the Court: to all Judges in the Below Stated Matters of Non-Cooperation Regarding the Following Court Matters: Aljeric# 2021B00061” (Non-Cooperation Motion).

II. COMPLAINANT’S MOTIONS

A. Stay Motion

1. Summary of Complainant’s Submission

In his Stay Motion, Complainant takes issue with the Court’s decision in its Stay Order to (1) issue a stay of proceedings as to his national origin discrimination claim, and (2) deny his motion to compel.

As to the stay of proceedings, Complainant asserts that the Court “has jurisdiction pursuant to the provisions of 28 U.S.C. 68, et al.” Stay Mt. 1. Regarding his EEOC charge, Complainant writes that he filed his EEOC complaint in “Feb/March 2022,” and he “dismissed the EEOC case back in March 2022 – After our initial hearing with the mediator; when the [Complainant] was informed that he could not have both EEOC/DOJ-IER complaints.” *Id.* at 3 (cleaned up).

Regarding Respondent’s number of employees, Complainant asserts that Respondent employs more than fifteen employees, *see id.* at 11 (writing “+15#” in response to the Court’s direction in the Order to Show Cause that Complainant “inform the Court as to approximately how many employees Respondent employs”), although he notes that he does not have sufficient information regarding this number, *see id.* at 11 (“I can[’]t truly respond with having all of the necessary information that this company[] has yet denied to send me.”).

Complainant attaches a Job Vacancy Announcement (JVA) from Respondent, which indicates that Respondent had fifteen openings for an Operations Manager position. *Id.* at 14–18. Complainant asserts that Respondent filled these fifteen openings with CW-1 visa holders. *See id.* at 2. Therefore, Complainant asserts, Respondent has greater than fifteen employees, and the Court has jurisdiction. *See id.* at 11.

As to the denial of his Motion to Compel, Complainant asserts that he has been “asking the respondent for discovery,” but:

[T]he Court makes it appear[] as though, I didn’t ask for said discovery before the DISCOVERY DEADLINE; why? . . . it seems as though the court is saying that a/the PRO SE filer didn’t

ask ‘PROPERLY’? And yet the court is closing the ability for me to request said discovery, as the court would like?

Id. at 2. Complainant writes that he has requested discovery related to the “importation of #15 foreign workers as enumerated in the jva” on “many and repeated occasions,” but that “unfortunately, many of those request[s] were done in phone call conversations” and that “many of the email requests were unresponded too as well [sic].” *Id.* at 4.

Complainant attaches email correspondence with Respondent between September 26, 2022 and October 31, 2022 regarding discovery. *Id.* at 6–10.³

Complainant requests that: (1) “Respondent provide discovery”; and (2) that his Stay Motion be “accepted and granted.” *Id.* at 22.

2. Legal Standard and Analysis

It appears that Complainant is seeking relief from this Court’s January 11, 2023, Stay Order; thus, the Court will construe the filing as a motion for reconsideration of an interlocutory order.

Because OCAHO’s Rules of Practice and Procedure do not have a provision for reconsideration of non-final (interlocutory) orders, the Court turns to the Federal Rules of Civil Procedure as permissive guidance. *A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381b, 2 (2021) (citations omitted); *see also* 28 C.F.R. § 68.1.⁴

“The ‘power to modify an interlocutory order is authorized by . . . Federal Rule 54(b).’” *Zajradhara v. LBC Mabuhay (Saipan) Inc.*, 16 OCAHO no. 1423d, 4 (2023) (quoting *United States v. Rose Acre Farms, Inc.*, 12 OCAHO no. 1285a, 1 n.1 (2018)); *see also Petrocelli v. Baker*, No. 94-cv-0459, 2011 WL 4737061, at *2, 2011 U.S. Dist. LEXIS 115258, at *8 (D. Nev.

³ These emails include: (1) an email from October 31, 2022 indicating that Complainant would be sending a list of all discovery he should have received; (2) an email from October 4, 2022 indicating that Complainant had called the day before asking about discovery; (3) an email from September 30, 2022 asking for Respondent’s attorney to be reminded that Complainant applied for a “number of JVAs”; (4) an email from September 28, 2022 indicating that Complainant had “repeatedly” requested discovery, and that Respondent had not fulfilled his requests; and (5) an email from September 26, 2022 indicating that “neither of the envelopes that I picked up, has the full discovery requested.” *Id.* at 6–10.

⁴ Pursuant to 28 C.F.R. § 68.1, “[t]he Federal Rules of Civil Procedure may be used as a general guideline in any situation not provided for or controlled by [the OCAHO] rules, by the Administrative Procedure Act, or by any applicable statute, executive order, or regulation.”

Oct. 5, 2011) (noting that a district court possesses “the inherent procedural power to reconsider, rescind, or modify an interlocutory order for cause seen by it to be sufficient”) (quoting *City of L.A., Harbor Div. v. Santa Monica Baykeeper*, 254 F.3d 882, 888 (9th Cir. 2001)).

Grounds for reconsideration may include:

- (1) material differences in fact or law from that presented to the Court and, at the time of the Court’s decision, the party moving for reconsideration could not have known of the factual or legal differences through reasonable diligence;
- (2) new material facts that happened after the Court’s decision;
- (3) a change in the law that was decided or enacted after the Court’s decision; or
- (4) the movant makes a convincing showing that the Court failed to consider material facts that were presented to the Court before the Court’s decision.

LBC Mabuhay (Saipan) Inc., 16 OCAHO no. 1423d, at 5 (citing *Motorola, Inc. v. J.B. Rodgers Mech. Contractors*, 215 F.R.D. 581, 582, 585–86 (D. Ariz. 2003) (surveying district court approaches for reconsideration of interlocutory orders)).⁵ “Motions for reconsideration are disfavored [and] are not the place for parties to make new arguments not raised in their original briefs.” *Id.* (citing *Motorola, Inc.*, 215 F.R.D. at 582).

i. Stay of Proceedings

As to the stay of proceedings, first, Complainant does not point to any law or fact relating to subject matter jurisdiction that he could not have known at the time of the Court’s Stay Order through reasonable diligence, or that happened after the Court’s decision; Complainant asserts that he “dismissed the EEOC case back in March 2022,” before the Court’s January 11, 2023 Stay Order. *See* Stay Mt. 1. Nor does Complainant provide support for his statement that he dismissed the EEOC case. Moreover, the JVA does not present any new facts to the Court, given that Respondent submitted the JVA to the Court with his Prehearing Statement. *See* C’s PHS 844–48. Nor does Complainant point to a change in law that was decided or enacted after the Court’s decision.

Moreover, the Court does not find that the JVA contains material facts. While the JVA reflects that Respondent posted for a job with fifteen openings, the number of job openings Respondent posted for does not necessarily reflect how many people it employs. Even if the JVA posting did reflect that Respondent had more than fifteen employees, as the Court noted in its Stay Order, “OCAHO does not have jurisdiction over national origin claims where the employer has less than 4 or more than 14 employees.” *Zajradhara II*, 16 OCAHO no. 1432c, at 6 (2023) (citing 8 U.S.C. §§ 1324b(a)(2)(A), 1324b(a)(2)(B)) (emphasis added). While Complainant argues that he

⁵ As this case arises in the CNMI, the ALJ may consult caselaw from the United States Court of Appeals for the Ninth Circuit. *See* 28 C.F.R. § 68.57.

could not obtain discovery in the matter, he alleges that Respondent has more than 15 employees. Based on his allegations, OCAHO does not have jurisdiction over his national origin claim.

ii. Motion to Compel

As to the motion to compel, although Complainant attaches emails between himself and Respondent regarding discovery, Complainant would have known about these emails prior to the Stay Order, nor did they occur after the Court's decision.

Furthermore, the Court does not find that these emails contain material facts. In its Stay Order, the Court denied Complainant's motion in part because Complainant did not provide the requests he sent to Respondent or Respondent's responses to these requests. *Zajradhara II*, 16 OCAHO no. 1432c, at 4. Complainant's Stay Motion does not remedy this deficiency, beyond stating that Complainant requested discovery regarding the "importation of #15 foreign workers as enumerated in the jva." Stay Mt. 4.

In addition, the Court also denied Complainant's motion to compel because it was filed after the deadline for discovery motions, and Complainant did not request an extension of time nor provide an explanation showing good cause for his failure to timely file. *See Zajradhara II*, 16 OCAHO no. 1432c, at 4–5. Complainant has not provided new facts regarding this ground for dismissal.

Therefore, Complainant's motion is DENIED. The stay remains in place.⁶

B. January 30, 2023 Non-Cooperation Motion

In his Non-Cooperation Motion, Complainant asserts that he has "repeatedly reached out to the legal counsel," but that counsel has "refused to respond and or cooperate by any [stretch] of the imagination." Non-Cooperation Mt. 1. He is "at a loss at how to proceed," and requests the

⁶ In his Corrected Stay Motion, Complainant reserves much of his motion for accusations against Respondent's Attorney Colin Thompson, using words such as "shiftless," a "fraud," and a "liar." *See, e.g.*, Stay Mt. 5–6. Complainant has been warned that "unsubstantiated accusations and inflammatory language have *no place* in this forum." *See Zajradhara I*, 16 OCAHO no. 1432b, at 3 (citations omitted). These repeated attacks are, once again, unsubstantiated, exceedingly unhelpful, and distract from the issues at hand. Complainant is again cautioned to comport himself with dignity in these proceedings and to refrain from using inflammatory language and making personal attacks against Respondent. Deviations from this standard of conduct may result in sanctions. *See Griffin*, 14 OCAHO no. 1370b, at 9 (first citing *Leon v. IDX Sys. Corp.*, 464 F.3d 951, 958 (9th Cir. 2006), and then citing Fed. R. Civ. P. 11).

Court’s “intervention” and for the Court to “take some action.” *Id.* at 2 (cleaned up). Complainant attaches an email he sent to opposing counsel on January 19, 2023, indicating that he had offered a settlement, and requesting “[a]ll JVAs applied for any CW-1 workers retained, date of CW-1 visa applications, date of e-verify signatures, ect [sic].” *Id.* at 2–3.

Although this motion does not contain a clear request for the Court, given the attached email requesting discovery from Respondent, the Court construes it as a motion to compel. This motion is DENIED. The deadlines for discovery and discovery motions have long-since passed. Complainant has filed at least four other motions to compel,⁷ and each time, despite clear directions from the Court, he has not provided the discovery requests, nor has he indicated what discovery was provided to him and why it was deficient. Although the Court is well aware that Complainant is pro se and has accorded him considerable leeway, Complainant has simply not provided this Court with a sufficient basis upon which to compel discovery.

SO ORDERED.

Dated and entered on February 24, 2023.

Honorable Jean A. King
Chief Administrative Law Judge

⁷ See *Zajradhara v. Algeric Gen. Servs., LLC*, 16 OCAHO no. 1432a (2022) (finding Complainant’s May 2, 2022 and July 6, 2022 motions to compel not ripe for adjudication); *Zajradhara I*, 16 OCAHO no. 1432b, at 2 (denying Complainant’s July 20, 2022 motion to compel); *Zajradhara II*, 16 OCAHO no. 1432c, at 4–5 (denying Complainant’s September 28, 2022 motion to compel).