

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

ALI TALEBINEJAD,)	
Complainant,)	
)	8 U.S.C. § 1324b Proceeding
v.)	OCAHO Case No. 2023B00002
)	
MASSACHUSETTS INSTITUTE OF)	
TECHNOLOGY,)	
Respondent.)	
)	

Appearances: John McGivney, Esq. and David B. Stanhill, Esq., for Complainant
Antonio Moriello, Esq., Leon Rodriguez, Esq., and Edward North, Esq., for
Respondent

ORDER ON MOTION FOR LEAVE TO AMEND COMPLAINT, MOTION TO FILE
AMENDED ANSWER, AND JOINT MOTION TO AMEND SCHEDULING ORDER

I. PROCEDURAL HISTORY

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. On October 13, 2022, Complainant Ali Talebinejad filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) asserting claims of discrimination and retaliation arising under 8 U.S.C. § 1324b against Respondent Massachusetts Institute of Technology (MIT). After an extension of time to do so, Respondent filed an answer on December 28, 2022.

On January 26, 2023, the Court held a telephonic prehearing conference in this matter pursuant to 28 C.F.R. § 68.13 and set a case schedule whereby, inter alia, discovery would close on June 26, 2023. *See* Order Memorializing Prehr’g Conf. 2.

On February 8, 2023, Respondent filed a Motion to Dismiss; Complainant filed its opposition on March 9, 2023.

On March 17, 2023, Complainant filed an Assented-To Motion for Leave to Amend Complaint (Motion to Amend). Complainant “seeks to make a minor emendation” to Attachment A of the Complaint to remove an allegation that Complainant was given a “100% effort” course load as a course 2.086 lecturer in Fall of 2020. Complainant attached a copy of the amended Attachment

“A” to his motion. Complainant asserts that Respondent has assented to the allowance of Complainant’s Motion to Amend, which Respondent signed.

On May 24, 2023, the parties filed a Joint Motion to Amend Scheduling Order.

On June 1, 2023, Respondent moved to amend its Answer, filing its Motion to File First Amended Answer to Complaint. Respondent seeks to amend the Answer to clarify that no external candidate was hired to serve as a 100% effort/full-time lecturer on course 2.086 in the Spring/Fall 2021 and Spring/Fall 2022 semesters. Respondent asserts that although Dr. Keshavarz held a 100% lecturer appointment during those semesters, he was not assigned to course 2.086 in the Fall semesters. Instead, he was assigned partially during the Spring semesters. Mot. Amend Answer 2.

II. MOTIONS TO AMEND COMPLAINT AND ANSWER

A. Legal Standard

OCAHO Rule 68.9(e)¹ permits a complainant to amend a complaint “[if] a determination of a controversy on the merits will be facilitated thereby” and “upon such conditions as are necessary to avoid prejudicing the public interests and the rights of the parties[.]” The Court is therefore charged with balancing those interests in determining whether to allow the proposed amendment. United States v. Sal’s Lounge, 15 OCAHO no. 1394, 1–2 (2020) (citing United States v. Mr. Z Enters., 1 OCAHO no. 162, 1128, 1128 (1990) (internal citations omitted)).² OCAHO precedent requires that the complainant seek leave of court to amend the complaint if the respondent has already filed an answer. United States v. FRC Balance, LLC, 14 OCAHO no. 1366, 2 (2020).

OCAHO Rule 68.9(e) is “analogous to and is modeled upon Rule 15 of the Federal Rules of Civil Procedure,” a permissible guidance in OCAHO proceedings, *see* 28 C.F.R. § 68.1. United States v. Valenzuela, 8 OCAHO no. 1004, 3 (1998). Federal Rule of Civil Procedure Rule 15(a)(1) states that:

A party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21

¹ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

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 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>.

days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

Federal Rule of Civil Procedure 15(a)(2) provides that: “[i]n all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.”

As this case arises in Massachusetts, the Court may also look to case law from the First Circuit Court of Appeals. The First Circuit has applied a “liberal stance toward the amendment of pleadings.” See Amyndas Pharms., S.A. v. Zealand Pharma A/S, 48 F.4th 18, 36 (1st Cir. 2022) (noting the “federal courts’ longstanding policy toward favoring the resolution of disputes on the merits”) (citing Foman v. Davis, 371 U.S. 178, 182 (1962)). The First Circuit instructs courts to consider factors enumerated in Foman, including undue delay, bad faith or dilatory motive, futility, and undue prejudice to the opposing party. See Klunder v. Brown Univ., 778 F.3d 24, 34 (1st Cir. 2015).

Pursuant to Rule 15(a)(3), any required response to an amended pleading “must be made within the time remaining to respond to the original pleading” or “within 14 days after service of the amended pleading,” whichever is later.

B. Discussion

As Respondent filed an answer, and Respondent’s Motion to Dismiss was filed more than 21 days before Complainant’s Motion to Amend, the Complaint may only be amended by leave of the Court. FRC Balance, LLC, 14 OCAHO no. 1366, at 2; cf. Fed. R. Civ. P. 15(a)(2). Complainant sought the Court’s leave in its motion.

The Court must therefore balance the relevant factors in deciding whether to allow the First Amended Complaint. Complainant maintains that an amended complaint “facilitates determination of the instant controversy on the merits and avoids prejudice to [Complainant]” by correcting a “mistaken allegation,” which Respondent has denied in its Answer. Mot. Amend. Compl. 1–3. The Court agrees. The proposed amendment corrects an error in the Complaint, thereby resolving a disputed issue between the parties. The record does not present evidence of bad faith, dilatory motive, or futility. Respondent has joined the motion, and the Court does not find undue prejudice to Respondent at this juncture. Accordingly, the Court will GRANT Complainant’s motion. The First Amended Complaint attached to Complainant’s motion is now the operative complaint in this matter.

Moreover, given that Respondent filed its First Amended Answer responding to the First Amended Complaint prior to the issuance of this order granting Complainant’s motion to amend, the Court will GRANT Respondent’s Motion for Leave to File Amended Answer pursuant to Fed. R.

Civ. P. 15(a)(3). The First Amended Answer Respondent attached to its motion is now the operative answer in this matter.

III. MOTION TO AMEND SCHEDULING ORDER

The parties jointly move the Court to amend the scheduling order previously set at the January 26, 2023 prehearing conference. Mot. Amend Scheduling Order. The parties advise that they have been actively engaging in discovery and have determined that witnesses sought by each party for deposition are faculty members at the Massachusetts Institute of Technology and “hold teaching and related obligations that significantly complicate their ability to sit for depositions until July 2023,” and that summer vacations “present further obstacles.” *Id.* at 1–2. The parties note that the pendency of Respondent’s motion to dismiss and related briefing could affect the scope of discovery. *Id.* at 2.

Having demonstrated good cause, the parties’ Joint Motion is GRANTED, and the case schedule is amended as follows:

- September 5, 2023: Close of Discovery
- October 9, 2023: Dispositive Motions
- November 6, 2023: Deadlines for any oppositions to dispositive motions
- December 6, 2023: Deadlines for any replies in support of dispositive motions
- January 29–31, 2024: Hearing

SO ORDERED.

Dated and entered on June 13, 2023.

Honorable John A. Henderson
Administrative Law Judge