

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

Y.Y.,)	
)	
Complainant,)	
)	8 U.S.C. § 1324b Proceeding
v.)	
)	OCAHO Case No. 2021B00013
ZUORA, INC.,)	
)	
Respondent.)	
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Appearances: Y.Y., pro se, for Complainant
Sean M. McCrory, Esq., and Shelby K. Taylor, Esq., for Respondent

ORDER SCHEDULING PREHEARING CONFERENCE

I. PROCEDURAL HISTORY

On January 4, 2021, Complainant, Y.Y., filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) alleging that Respondent, Zuora, Inc., fired him due to his citizenship status and national origin and retaliated against him, all in violation of the anti-discrimination provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324a(a)(1)(B).

On March 25, 2021, the Court issued an Order to Show Cause directing Respondent to file a response demonstrating good cause for its failure to file its answer to the complaint on time. Respondent responded to the Order to Show Cause and, on December 10, 2021, the Court accepted Respondent's answer and discharged the Order to Show Cause after finding that Respondent had demonstrated good cause for its failure to timely file an answer. *See Y.Y. v. Zuora, Inc.*, 15 OCAHO no. 1402, 8 (2021). ¹

¹ 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

On January 11, 2022, the Court issued an Order for Prehearing Statements and Scheduling Initial Prehearing Conference. The Court held the initial telephonic prehearing conference on February 10, 2022. During the conference, the Court reviewed the complaint in this matter and noted that Complainant represented in his complaint that he did not know how many employees Respondent employs. The Court explained that its jurisdiction to hear national origin discrimination claims was limited to those involving employers employing four to fourteen employees. The Court told the parties that cases involving fifteen or more employees were within the jurisdiction of the Equal Employment Opportunity Commission (“EEOC”). Complainant then estimated that Respondent may employ between 1,000 and 1,500 employees. The Court told Complainant that he must show cause and tell the Court, in writing, how many employees Respondent employs.

During the conference, the Court also ordered Complainant to file a prehearing statement with the Court by February 28, 2022. The Court then set a schedule for the case, including deadlines for the completion of discovery and the filing of motions. Lastly, the Court set this matter for an in-person hearing. Complainant failed to file a prehearing statement with the Court as ordered.

On February 18, 2022, the Court issued an Order to Show Cause, ordering Complainant to show cause as to why his allegation of national origin discrimination against Respondent should not be dismissed. The Court explained that OCAHO may lack jurisdiction over the claim and ordered Complainant to provide the Court in writing with information regarding the number of employees employed by Respondent. The Court further ordered Complainant to provide the Court with information and documentation pertaining to his charges against Respondent before the EEOC. To date, Complainant has not responded to the Order to Show Cause.

On April 13, 2022, Complainant filed a document he entitled “Complaint Withdrawal Form.” In this filing, Complainant stated, in part, the following:

accordingly omitted from the citation. 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. Published decisions may be accessed in the Westlaw database “FIM-OCAHO,” or in the LexisNexis database “OCAHO,” or at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

I . . . hereby WITHDRAW the Discrimination that I signed on January 4, 2021. I have not received promises, rewards or concessions that might have influenced me to withdraw my complaint.

I voluntarily withdraw the request for an investigation and any consent that I may have granted for release of information. I . . . do not wish to proceed with the Discrimination Complaint that I filed against Zuora Inc. . . . because:

I have already filed the same lawsuit at Texas Eastern District Court The latest status of the case is ORDER granting[] Motion to Transfer to Arbitration.

Compl. Withdrawal Form 1.

On June 8, 2022, the Court issued an Order for Prehearing Conference, directing the parties to confer and provide the Court in writing with at least five agreed dates and times they proposed for a telephonic prehearing conference in this matter. The Court advised the parties that they should be prepared to discuss Complainant's most recent filing, which the Court construed to be a motion to withdraw the complaint, and the status of this case.

II. DISCUSSION

More than a month has passed since the Court directed the parties to provide the Court with proposed dates and times for a telephonic prehearing conference in this case. They have not done so. The Court will hold an initial telephonic prehearing conference on August 3, 2022, at 11 a.m. Eastern Standard Time.

At the conference, the parties should be fully prepared and have authority to discuss any questions regarding the case, including those pertaining to jurisdiction and Complainant's motion. OCAHO's Rules of Practice and Procedure for Administrative Hearings, being the provisions contained in 28 C.F.R. part 68 (2022),² do not contain a specific provision regarding a motion to withdraw a

² OCAHO's rules are available on OCAHO's homepage on the United States Department of Justice's website. See <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

complaint.³ OCAHO's rules do provide, however, that the Federal Rules of Civil Procedure "may be used as a general guideline in any situation not provided for or controlled by these rules, by the Administrative Procedure Act, or by any other applicable, statute, executive order, or regulation." 28 C.F.R. § 68.1. As such, before the conference, the parties shall familiarize themselves with Rule 41(a) of the Federal Rules of Civil Procedure, discussing dismissals of actions.

III. ORDER

IT IS SO ORDERED that the Court will hold a telephonic prehearing conference in this matter on August 3, 2022, at 11 a.m. Eastern Standard Time. Both parties shall attend the prehearing conference by calling telephone number ##### and entering conference room number #####.

SO ORDERED.

Dated and entered on July 14, 2022.

Honorable Carol A. Bell
Administrative Law Judge

³ OCAHO's rules provide for dismissal of complaints under three circumstances: (1) "[w]here the parties or their authorized representatives or their counsel have entered into a proposed settlement agreement," under 28 C.F.R. § 68.14(a); (2) when a complaint or a request for hearing is abandoned by the party or parties who filed it, under 28 C.F.R. § 68.37(b); and (3) by default, under 28 C.F.R. § 68.37(c).