

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

December 23, 2020

A.S.,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2020B00073
)	
AMAZON WEBSERVICES INC.,)	
Respondent.)	
_____)	

ORDER DENYING COMPLAINANT’S MOTION TO COMPEL AND
DENYING RESPONDENT’S MOTION FOR EXTENSION OF TIME

I. BACKGROUND

This case arises under the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324b. Complainant, A.S., filed a Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on June 12, 2020, alleging that Respondent, Amazon WebServices Inc., discriminated against him based on his citizenship status and retaliated against him in violation of § 1324b. Respondent timely filed an Answer on August 27, 2020. Both parties submitted Prehearing Statements to the Court. Respondent has requested and has been granted extensions in advance of each filing referenced above.

On December 14, 2020, Complainant filed a Motion to Compel Response to Discovery. On December 21, 2020, Respondent filed a Motion for Extension of Time to Respond to Complainant’s Motion to Compel. That same day, Complainant filed Complainant’s Response to Respondent’s Motion for Extension of Time (“Opposition”).

On December 16, 2020, the Court held a Prehearing Conference in which the Court acknowledged the Motion to Compel as outstanding and reminded parties of applicable timelines.

II. STANDARDS

An OCAHO Administrative Law Judge “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.” *United States v. Rose Acre Farms, Inc.*, 12 OCAHO no. 1285, 2 (2016).¹ The OCAHO rules permit parties to file motions to compel responses to discovery if the responding party fails to adequately respond or objects to the request. 28 C.F.R. § 68.23(a). However, pursuant to OCAHO Rule § 68.23(b), a motion to compel must set forth and 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 in good faith 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 Administrative Law Judge.

III. DISCUSSION

In his Motion to Compel, Complainant requested the Court require Respondent answer his “data discovery requests,” specifically, he requests the Court “help the Complainant get the response from the Respondent... for the same.” Mot. to Compel 2. In his filing, Complainant states that Respondent has not responded to his twenty-nine “separate discovery data requests” consisting of over “eighty questions.” Mot. to Compel 2. According to Complainant, Respondent indicated “it [would] take many months to provide that data.” Mot. to Compel 2.

The procedural requirements of Rule § 68.23(b) “provide the basis upon which to rule, and they encourage parties to work together to solve discovery disputes.” *Mbitaze v. Greenbelt Police Dep’t*, 14 OCAHO no. 1360a, 2 (2020). A motion to compel in OCAHO proceedings must comport with the regulations as outlined above.

Complainant’s Motion to Compel fails to state the nature of his questions or requests made in discovery with sufficient specificity. Complainant’s general assessment of a discovery dispute is

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

insufficient for this Court to glean the nature of the specific question asked of or request made to Respondent. Although Respondent does provide the text of discovery requests in its Motion for Extension of Time at Exhibit A, this filing does not satisfy the requirements placed upon the moving party under the regulation. Ultimately, it is Complainant's burden to identify, with specificity, its own discovery questions or requests. For this reason, Complainant has failed to satisfy the requirement outlined in 28 C.F.R. § 68.23(b)(1).

Additionally, Complainant's Motion to Compel fails to provide, with sufficient specificity, the response or objection made by Respondent to Complainant's "discovery data requests." Simply stating that Respondent indicated it would take "many months" for the provision of some information, is insufficient to show the opposing party's position on a question or request at issue. For this reason, Complainant has failed to satisfy the requirement outlined in 28 C.F.R. § 68.23(b)(2).

This Court does find that Complainant cleared the procedural requirement of presenting an argument in support of his motion. 28 C.F.R. § 68.23(b)(3). Complainant does state that the "questions" at issue (whatever they may be), "must be answered to get the facts right about this matter." Mot. to Compel 2. Complainant appears to be making a relevance argument, which is a permissible argument to make in the context of a motion to compel. However without Complainant satisfying the other procedural requirements of a motion to compel, the Court lacks sufficient information to rule on such a motion.

Finally, Complainant has not demonstrated satisfaction of the final requirement – a certification indicating movant's good faith attempt to confer. 28 C.F.R. § 68.23(b)(4); *see also United States v. Allen Holdings, Inc.*, 9 OCAHO no. 1059, 5 (2000). Here, Complainant's motion does not include a certification noting that prior to filing his Motion to Compel, he attempted in good faith to confer with Respondent in an effort to obtain the requested information without judicial intervention. Of note, Complainant does reference a meeting in his Opposition filing on the extension of time issue where the parties spoke about discovery on October 16, 2020. This information is not included in the initial motion; it is not memorialized in a certification; and more substantively, it is not clear whether this "meeting" was related to the discovery dispute now before the Court. For this reason, Complainant has failed to satisfy the requirement outlined in 28 C.F.R. § 68.23(b)(4).

Ultimately, the above referenced omissions are grounds for denial of Complainant's Motion to Compel. *See Mbitaze*, 14 OCAHO no. 1360a at 2.

In rendering this decision, the Court is cognizant of Complainant's pro se status; however a proper application of procedural rules in all instances ensures a fair and efficient hearing process for both parties involved.

For the above stated reasons, Complainant's Motion to Compel is DENIED. Because Complainant's motion is denied, the Court finds Respondent's Motion for Extension of Time is moot and doesn't merit discussion. Respondent's Motion for Extension of Time is DENIED as MOOT.

SO ORDERED.

Dated and entered on December 23, 2020.

Honorable Andrea Carroll-Tipton
Administrative Law Judge