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

February 11, 2021

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

ORDER DENYING COMPLAINANT'S MOTION TO RECONSIDER

I. INTRODUCTION & PROCEDURAL HISTORY

This action arises under the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324b. Complainant, A.S., alleges that Respondent, Amazon Web Services Inc. (Amazon), failed to comply with the provisions of § 1324b, which preclude certain employers from engaging in discrimination based on citizenship or immigration status. It also prohibits employer retaliatory actions following a protected activity.

On June 12, 2020, Complainant filed his Complaint. On August 27, 2020, Respondent filed its Answer in which it denied the allegations contained in the Complaint.

On December 14, 2020, Complainant filed a Motion to Compel Response to Discovery (Motion to Compel). The Court issued an order denying Complainant's Motion to Compel (Order Denying Motion to Compel) on December 23, 2020.

In response, Complainant filed the pending Motion to Reconsider Regarding Motion to Compel Response to Discovery (Motion to Reconsider) on December 24, 2020. On December 31, 2020, Respondent filed its Opposition to Motion to Reconsider Regarding Motion to Compel Response to Discovery (Opposition). On January 6, 2021, Complainant filed an additional, related, document entitled, Appending to Previous Motion to Reconsider Regarding Motion to Compel Response to Discovery.

II. LEGAL STANDARDS

As a procedural note addressing what appears to be Complainant's attempt at filing a reply to a response, 28 CFR § 68.11(b) makes clear that "[u]nless the Administrative Law Judge provides otherwise, no reply to a response, counter-response to a reply, or any further responsive document shall be filed."

OCAHO's Rules of Practice and Procedure do not contemplate motions for reconsideration of interlocutory orders. *Ogunrinu v. Law Resources*, 13 OCAHO no. 1332b, 4 (2019).[1] When OCAHO procedural regulations don't explicitly govern, "[t]he Federal Rules of Civil Procedure may be used as a general guideline[.]" 28 C.F.R. § 68.1. Although the Federal Rules of Civil Procedure do not specifically address motions for reconsideration, "courts address such motions under Rule 54(b) for interlocutory orders[.]" *Lexington Ins. Co. v. Ace Am. Ins. Co.*, 192 F. Supp. 3d 712, 714 (S.D. Tex. 2016) (citations omitted).

Specifically, Rule 54(b) permits parties to file motions for reconsideration of interlocutory orders and authorizes the trial court to revise at any time an order that does not end the action. *Austin v. Kroger Tex., L.P.*, 864 F.3d 326, 336 (5th Cir. 2017). "The standard of review for reconsideration of interlocutory orders is 'as justice requires.'" *Lexington Ins. Co.*, 192 F. Supp. 3d at 714 (citations omitted). Trial courts "have broad discretion under Rule 54(b) to revisit earlier interlocutory orders [but] that discretion is subject to the caveat that 'where litigants have once battled for the court's decision, they should neither be required, nor without good reason permitted, to battle for it again.'" *eTool Dev., Inc. v. Nat'l Semiconductor Corp.*, 881 F. Supp. 2d 745, 749 (E.D. Tex. 2012) (quoting *Official Comm. of the Unsecured Creditors of Color Tile, Inc. v. Coopers & Lybrand, LLP*, 322 F.3d 147, 167 (2d Cir.2003)). *Cf. Austin*, 864 F.3d at 336 (citations omitted) ("Under Rule 54(b), 'the trial court is free to reconsider and reverse its decision for any reason it deems sufficient, even in the absence of new evidence or an intervening change in or clarification of the substantive law.'"). "[C]ourts should exercise their power "sparingly in order to forestall the perpetual reexamination of orders and the resulting burdens and delays," which disserve the interests of justice." *Theriot v. Bldg. Trades United Pension Tr. Fund*, 408 F. Supp. 3d 761, 765 (E.D. La. 2019) (citations omitted).

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[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.

III. DISCUSSION AND ANALYSIS

Complainant's January 6, 2021 filing "Appending to Previous Motion to Reconsider Regarding 'Motion to Compel Response to Discovery" appears to be an attempt at a response to a reply. At no point did Complainant request from the Court permission to file a response, and similarly, at no point did the Court sua sponte grant leave to the parties to file additional matters on this issue. Because this filing is in contravention of § 68.11(b), it will not be considered. The Court will consider only Complainant's Motion to Reconsider filed December 24, 2020 and Respondent's Opposition filing on December 31, 2020.

In his Motion to Reconsider, Complainant asks for the Court to compel Respondent to provide discovery responses. The Motion to Reconsider provides no evidence or argument asserting that the Court incorrectly applied the regulation to the facts. The Court has discretion in reversing a decision even without additional evidence or argument; however, the Motion to Reconsider makes no argument asserting justice requires a different result. This request is, rather, more akin to one in which a litigant has already "battled for the court's decision," and that litigant has not provided "good reason" to be permitted to "to battle for it again." *See eTool Dev., Inc.* , 881 F. Supp. 2d at 749 (citations omitted).

Ultimately, "courts should exercise their power 'sparingly in order to forestall the perpetual reexamination of orders and the resulting burdens and delays,' which disserve the interests of justice." *Theriot*, 408 F. Supp. 3d at 765 (citations omitted). The Motion to Reconsider is accordingly DENIED.

Without affecting the Court's denial of the instant motion, the Court provides the following information and analysis based on the contents of the filings in light of Complainant's pro se status.

In Complainant's Motion to Reconsider, he provides additional argument related to the propriety of granting his request to compel discovery. As the Court already determined, Complainant is able to meet the third prong of the requirements outlined in 28 C.F.R. § 68.23(a).

Much like his initial Motion to Compel, the December 24, 2020 filing also lacks specificity with respect to the questions or request. Characterizing the requests as "data requests" is insufficient. The December 24, 2020 filing also lacks specificity as to the objections made by Respondent. Stated another way, a motion to compel should include the specific discovery query and the opposing party's response to that individual query.

Finally, the December 24, 2020 filing provides insufficient evidence as to whether Complainant met and conferred with Respondent about the specific discovery queries, in their entirety. Respondent's Opposition submission asserts no such meeting (to confer about specific issues in

discovery) has transpired. Opp'n 2. Also of note, Respondent indicates it is "prepared to meet and confer with Complainant concerning his discovery demand." Opp'n 3.

> The Court encourages Complainant to engage Respondent in a meeting to confer about the specific items or queries at issue, and the Court encourages the parties to work together to resolve discovery disputes whenever possible. Finally, the Court would note as a courtesy to the parties that "[d]iscovery requests must be served at least 30 days before, responses to discovery must be served by, and any motions to compel or other discovery motions must be filed by: March 16, 2021," as was outlined in the Court's Order Memorializing Prehearing Conference." Order Summarizing Prehearing Conference, p. 1

Again, for the above cited rationale, the Court DENIES Complainant's Motion to Reconsider.

SO ORDERED.

Dated and entered on February 11, 2021.

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Honorable Andrea R. Carroll-Tipton
Administrative Law Judge