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

April 15, 2021

ZAJI OBATALA ZAJRADHARA, Complainant,	)	
v.	)	8 U.S.C. § 1324b Proceeding OCAHO Case No. 2020B00010
GIG PARTNERS, Respondent.	)	

ORDER DENYING COMPLAINANT'S MOTION TO VACATE FINAL ORDER

I. PROCEDURAL HISTORY

On March 5, 2021, the Court entered a final order entitled, Order on Summary Decision, in which it dismissed the Complaint in its entirety. The Court held that:

> Complainant failed to establish a prima facie case for national origin discrimination and he failed to establish a prima facie case for citizenship discrimination as he was unqualified for both positions that he applied for. Additionally, Complainant failed to establish a prima facie case for retaliation because he cannot demonstrate a causal link between his protected activity and Respondent's actions in question. Pursuant to 28 C.F.R. § 68.52(d)(5), the Court finds by preponderant evidence that Respondent did not engage in unfair immigration-related employment practices.

Order Summ. Decision 14.

On March 12, 2021, Complainant filed a "Laymans' Motion for Reconsideration Due to New Evidence, and Motion to Set Aside and/or Amend the Findings." Complainant refers the Court to new exhibits in support of his contention of "new evidence." The exhibits include a 2017 Notice that a local investigator determined Respondent violated local labor laws; a 2019 U.S. Equal Employment Opportunity Commission charge that Complainant filed against a different entity; a February 2021 draft complaint (that does not appear to be filed) for the U.S. District Court for the Northern Marian Islands in which Complainant lists discrimination-oriented grievances against Respondent pursued in multiple fora; a draft document which purports to be

an email from Complainant to Respondent's counsel in 2017 wherein he requests the "non-admittance ban" be lifted; and a draft of a Complainant's resume updated through October 2020.

Respondent did not provide a response.

II. LEGAL STANDARDS AND ANALYSIS

The Court carefully considered Complainant's filing and the information presented, the majority of which predates the litigation which gave rise to instant case.

A. Clerical Mistakes

Per 28 C.F.R. § 68.52(g), "[i]n a case arising under section 274B of the INA, the Administrative Law Judge's order becomes the final agency order on the date the order is issued." Additionally, "[i]n cases arising under section 274B of the INA, an Administrative Law Judge may correct any substantive, clerical, or typographical errors or mistakes in a final order at any time within sixty (60) days after the entry of the final order. 28 C.F.R. § 68.52(f). Here, although the undersigned is within the permitted time to correct the order, Complainant does not raise anything that demonstrates a "substantive error or mistake in the final order."

B. Motion for Reconsideration

Additionally, insofar as Complainant, a pro se litigant, intended to file a motion for reconsideration, he has not satisfied the standards for such. "While the OCAHO rules do not specifically address a motion for reconsideration, OCAHO caselaw has permitted reconsideration requests in 274b cases." *Heath v. Optnation*, 14 OCAHO no. 1374a, 3 (2020) (first citing *United States v. Four Star Knitting*, 5 OCAHO no. 815, 711, 716 (1995); and then citing *M.S. v. Dave S.B. Hoon – John Wayne Cancer Inst.*, 12 OCAHO no. 1305b, 3–4 (2018)).[1] 28 C.F.R. § 68.1 permits using the Federal Rules of Civil procedure as a general guideline for OCAHO cases. Motions for reconsideration may be brought under Rule 59(e) or Rule 60(b). *McCarty v. Astrue*, 505 F. Supp. 2d 624, 628 (N.D. Cal. 2007); *accord Heath*, 14 OCAHO no.

[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 been 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 OCAHO website at http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm# PubDecOrders.

1374a at 3. A Rule 59 motion for reconsideration "must be filed no later than 28 days after the entry of judgment[,]" Fed. R. Civ. P. 59(b), while a Rule 60 motion for reconsideration generally needs to be made "within a reasonable time[.]" Fed. R. Civ. P. 60(c)(1). For a motion for reconsideration brought under Rule 59(e), the moving party must present newly discovered evidence that was previously unavailable, clear error that was manifestly unjust, or an intervening change in controlling law. *Zimmerman v. City of Oakland*, 255 F.3d 734, 740 (9th Cir. 2001). Similarly, Rule 60(b)(2) provides that a party may be relieved from a final judgment if there is "newly discovered evidence that, with reasonable diligence, could not have been discovered in time[.]" However, relief under Rule 60(b) should be utilized '"sparingly' and only where necessary 'to prevent manifest injustice.'" *United States v. Wilson*, 27 F. App'x 852, 853 (9th Cir. 2001) (quoting *Greenawalt v. Stewart*, 105 F.3d 1268, 1273 (9th Cir.1997)). Here, although Complainant timely brought his motion, the "new evidence" that he presents does not appear to be newly acquired information that was unavailable prior to the issuance of the final order. In fact, everything submitted by Complainant appears to have been known to or in possession of Complainant prior to the date of issuance of the final order.

The Court sees no good cause to disturb its prior findings and conclusions. The Court DENIES Complainant's Motion for Reconsideration Due to New Evidence, and Motion to Set Aside and/or Amend the Findings, and affirms the findings of fact and conclusions of law presented in the Order on Summary Decision, dated March 5, 2021. Nothing in this order impacts the rights to review the final agency order in the appropriate United States Court of Appeals pursuant to 28 C.F.R. § 68.57.

SO ORDERED.

Dated and entered on April 15, 2021.

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Honorable Andrea R. Carroll-Tipton
Administrative Law Judge

Appeal Information

In accordance with the provisions of 8 U.S.C. § 1324b(g)(1), this Order shall become final upon issuance and service upon the parties, unless, as provided for under the provisions of 8 U.S.C. § 1324b(i), any person aggrieved by such Order files a timely petition for review of that Order in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business, and does so no later than 60 days after the entry of such Order. Such a petition must conform to the requirements of Rule 15 of the Federal Rules of Appellate Procedure.