

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

July 22, 2022

ZAJI OBATALA ZAJRADHARA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2021B00061
)	
ALJERIC GENERAL SERVICES, LLC, a.k.a.)	
ALJRIC GENERAL SERVICES, LLC)	
Respondent.)	
_____)	

Appearances: Zaji Obatala Zajradhara, *pro se* Complainant
Colin Thompson, Esq., for Respondent

ORDER DISCHARGING ORDER TO SHOW CAUSE
AND ON COMPLAINANT'S MOTIONS

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act, 8 U.S.C. § 1324b. On September 29, 2021, Complainant, Zaji Obatala Zajradhara, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). Complainant alleges that Respondent, Algeric General Services, LLC, failed to hire him on account of his citizenship and national origin status. On December 1, 2021, Respondent filed an answer. This Order addresses the prehearing statements and Complainant's motion to compel.

I. ORDER TO SHOW CAUSE FOR PREHEARING STATEMENT

On January 14, 2022, the Court issued an Order for Prehearing Statements, directing both parties to each file a prehearing statement with the Court by February 14, 2022. On February 24, 2022, the Court received an Unopposed Request to Extend Time to File Prehearing Statements and Exchange Disclosures from Respondent. The Court granted the request to extend the deadline to February 28, 2022.

On February 28, 2022, this office received correspondence via email from Respondent titled Prehearing Statement. By letter on March 1, 2022, this office rejected the correspondence

because, at that time, this case was not enrolled in the electronic filing program, and all filings had to be submitted by mail. Respondent did not resubmit the prehearing statement. On March 24, 2022, Complainant filed his prehearing statement, along with a motion for discovery and Notice of Fraud.¹ Complainant did not explain why the prehearing statement was filed late

On May 19, 2022, this Court issued an Order to Show Cause requiring Complainant to show cause as to why his prehearing statement was late, and ordering Respondent to submit a prehearing statement and show cause as to why the statement was not timely submitted.

On May 20, 2022, Complainant submitted a response to the show cause order, explaining that his personal circumstances make it difficult for him to timely respond. On June 2, 2022, Respondent submitted a response, explaining that it had submitted the Electronic Filing Program Form, but due to the delay in mail from Saipan, the form had not yet reached the Court.

OCAHO ALJ's have discretion to accept late filings. *United States v. Sal's Lounge*, 15 OCAHO no. 1394c, 4 (2022), *citing to Villegas-Valenzuela v. INS*, 103 F.3d 805, 811 n.5 (9th Cir. 1996); *United States v. Ricky Catalano*, 7 OCAHO no. 974, 860, 863-64 (1997) (explaining that "it was within the discretion of the Administrative Law Judge (ALJ) to consider a late response.").

OCAHO courts have applied a good cause standard where a party has failed to respond to orders, including an order for the filing of a prehearing statement. *See, e.g., United States v. Ferrantino Fuel Corp.*, 13 OCAHO 1335, 2 (2019); *KR v. Western Digital*, 10 OCAHO no. 1159, 2 (2012). OCAHO's Rules of Practice and Procedure for Administrative Hearings do not specifically address the standard to be applied in assessing whether to enter a default judgment or to discharge a show cause order based on the adequacy of a party's explanation for its failure to respond to an order. The Rules provide, however, that the Court may turn to the Federal Rules of Civil Procedure for guidance. 28 C.F.R. § 68.1; *United States v. AMA Repiping, LLC*, 15 OCAHO no. 1391, 3 (2021), *citing to United States v. Quickstuff, LLC*, 11 OCAHO no. 1265, 5 (2015).

Under Federal Rule of Civil Procedure 55(c), courts may set aside an entry of default for good cause. Since the allegations at issue in this case occurred in Saipan, the Court also looks to the case law of the relevant United States Court of Appeals, here the Ninth Circuit. *See* 28 C.F.R. § 68.57 (designating for appeal purposes "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."). As such, in its good cause analysis, this Court will consider the following five factors in determining whether good cause has been shown: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of

¹ As noted in the Notice of Case Assignment, a party may seek discovery after an answer is filed, and does not need to seek leave of the Court.

prejudice to the [opposing party]; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives.” *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (quoting *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9th Cir. 1986) and citing *Henderson v. Duncan*, 779 F.2d 1421, 1423-24 (9th Cir. 1986)).

Turning to Complainant’s filing first, the filing was twenty-four days late. Complainant explains that his personal situation is extremely difficult, and he is struggling with access to a working computer, a copier and the internet. The Court will exercise its discretion to accept the filing as Complainant has vigorously participated in pursuing his claim, the filing was not overly delayed, and Respondent was not prejudiced by the delay.

Given the difficulties of mail with Saipan, the Court also finds that Respondent has established good cause. Respondent had prepared and attempted to file a prehearing statement, and promptly responded to the Order to Show Cause showing an intent to participate in the forum, Complainant was timely served with the prehearing statement, and suffered no prejudice. Given the public policy in favor of resolving cases on the merits, the Order to Show Cause in the Court’s May 19, 2022, Order as to both parties is DISCHARGED, and both prehearing statements are ACCEPTED.

II. MOTION TO COMPEL

On May 2, 2022, the Complainant filed “Layman’s Motion to Compel Discovery Response.” Complainant states that he has “repeatedly and in good faith called and or sent emails asking for the Discovery as requested” and or asked if the attorney needed additional time. To date, Complainant states that he has not received a response. On July 6, 2022, Complainant filed a “Layman’s Motion for Entry of Default Judgment and sanctions” which, in substance, is a motion to compel.

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). 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). 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.

Complainant met all the requirements for a motion to compel except for the first, which is that he did not describe the nature of the questions or request. Without this information, the Court does not know what it is compelling.

On July 7, 2022, this Court issued an Order Setting Case Schedule and General Litigation Order, which set forth dates and parameters for discovery, including limiting the amount of discovery. The Court cannot discern whether Complainant's discovery requests fell within the parameters of the Order. To the extent that the Complainant's discovery requests do not meet those parameters, Complainant should resubmit the requests to Respondent. The Court reminds the parties that discovery requests must be submitted to the other party no later than August 8, 2022, with discovery responses filed by September 7, 2022. Any discovery motions must be filed by September 15, 2022.

As Complainant asserted that Respondent has thus far not responded to his discovery requests, the Court reminds Respondent that it must either respond to Complainant's discovery requests, or file a protective order. 28 C.F.R. §§ 68.18(c), 23(a). If Respondent continues not to respond, Complainant may resubmit the motion to compel, accompanied by a copy of the discovery requests, the response, if any, by Respondent, and a certification that Complainant attempted to confer with Respondent to resolve the matter. The Court finds that Complainant's motion to compel discovery is NOT RIPE for adjudication..

SO ORDERED.

Dated and entered on July 22, 2022.

Honorable Jean A. King
Chief Administrative Law Judge