

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

July 27, 2022

ZAJI OBATALA ZAJRADHARA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2022B00036
)	
E-SUPPLY ENTERPRISES,)	
Respondent.)	
_____)	

Appearances: Zaji Obatala Zajradhara, pro se Complainant
Elizabeth Torres, pro se, for Respondent

ORDER DENYING COMPLAINANT'S MOTION FOR
DISCOVERY AND SANCTIONS

I. BACKGROUND

This case arises out of the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1234b. On March 25, 2022, Complainant, Zaji Obatala Zajradhara, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). Complainant alleges that Respondent, E-Supply Enterprises, discriminated against him on account of his citizenship status and national origin.

On May 16, 2022, Complainant filed a Motion for Summary Judgement/Default and Enforcement. On June 2, 2022, the Court denied Complainant's May 16, 2022, motion and issued an order to show cause for Respondent's answer. On June 23, 2022, the Court issued an order that accepted Respondent's answer and discharged the order to show cause. The Court's June 23, 2022, Order also directed the parties' attention to select provisions of the OCAHO Rules and Practice Manual¹ and set a case schedule.

¹ 28 C.F.R. pt. 68 (2022); <https://www.justice.gov/eoir/eoir-policy-manual/part-iv-ocaho-practice-manual>.

On July 5, 2022, Complainant filed a “Motion for Discovery And Request For Sanctions Upon The Respondent For Knowingly And With Aforethought Providing Falsified Documents To This Court In Violation Of 18 US 1001” (hereinafter Motion for Discovery and Sanctions).² Complainant describes possible discovery, including subpoenas, that he may seek in this case. C’s Mot. at 2. Complainant’s motion also includes a list of discovery requests. *Id.* at 7–10. Complainant moves the Court to sanction Respondent for “knowingly providing the court with false documentation in Violation of 18 USC 1001 [sic],” *id.* at 1, and to strike Respondent’s answer, *id.* at 2. On July 12, 2022, Respondent filed a timely Opposition to Complainant’s Motion for Sanctions and Discovery. *See* § 68.11(b). Through its opposition, Respondent generally denies Complainant’s allegations, reasserts its affirmative defenses, and challenges Complainant’s “requests for information” as “overbroad and irrelevant.” *See* Opp’n 1–2.

Complainant’s motion is now ripe for adjudication.

II. DISCUSSION

A. Motion for Discovery

Parties are not required to obtain the Administrative Law Judge’s (ALJ’s) approval to directly serve depositions, interrogatories, requests for production, or requests for admission during the discovery window. *See* 8 C.F.R. §§ 68.18–68.25; *Zajradhara v. CL Corp.*, 16 OCAHO no. 1429, 2 (2022).³ In fact, the OCAHO Rules mandate that discovery shall not be filed with the Court except for in a motion to compel or pursuant to an ALJ order. *See* §§ 68.6(b), 68.23(b).

Here, the Notice of Case Assignment Alleging Unlawful Employment (NOCA), issued on April 4, 2022, instructed that “[e]ither party may initiate discovery at any time after the answer has been

² This Order will cite Complainant’s July 5, 2022 motion as “C’s Mot. at #,” and Respondent’s July 12, 2022 opposition as “R’s Opp’n at #.” As the filings did not contain page numbers, the Court will assign consecutive pagination as the documents appear on Adobe PDF. The Court strongly encourages parties to use page numbers in all filings.

³ 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>.

filed.” NOCA ¶ 3 (citing §§ 68.6(b), 68.18–68.23)). The Court’s June 23, 2022, Order advised that Respondent’s answer was accepted and that the parties were now free to engage in discovery. Complainant did not need to, and should not seek, the Court’s permission to serve the specific discovery requests listed on pages 7–10 of his motion.

Complainant’s motion also does not meet the elements required for a motion to compel per OCAHO Rule 68.23. A party seeking a motion to compel must identify both the nature of the discovery requests and a served party’s responses or objections. §§ 68.23(a), (b)(1)–(2). Complainant does not identify what, if any, discovery he already served on Respondent, or provide Respondent’s responses or objections to any discovery. Complainant’s arguments as to a potential motion to compel thus cannot be resolved.⁴

The Court notes, however, that Respondent appeared resistant to the Complainant’s discovery requests in the motion. The Court reminds Respondent that it must either timely respond to discovery requests properly served on it, or file a protective order. §§ 68.18(c), 68.23(a).

Having no discovery matters before it to compel or otherwise adjudicate, the Court hereby treats the Motion for Discovery as NOT RIPE.

B. Motion for Sanctions (Motion to Strike Respondent’s Answer)

An ALJ can impose sanctions in a number of circumstances, such as in discovery, or for violating standards of conduct. *See* 28 C.F.R. §§ 68.23 (discovery), 68.28 (disobeying or resisting a lawful order), 68.35 (standards of conduct); *Ogunrinu v. Law Res.*, 13 OCAHO no. 1332c, 2 (2020).

1. Discovery Sanctions

In the case of discovery, sanctions are normally only imposed after the ALJ has issued an order compelling discovery. § 68.23(c); *see R&O v. Crossmark, Inc.*, 11 OCAHO no. 1236, 17 (2014) (citations omitted). Section 68.23 discovery sanctions are unsuitable in this case because the Court has not issued an order compelling discovery.

2. Standards of Conduct Sanctions

⁴ Complainant referenced potential subpoena requests. *See* C’s Mot. at 2. Unlike other discovery tools, subpoenas require a party to seek leave of the Court. *See* § 68.25(a). The OCAHO subpoena form is the sole mechanism for a party to request that an ALJ to issue a subpoena. *See Zajradhara v. GIG Partners*, 14 OCAHO no. 1363, 4 (2020). The completed subpoena form must adhere to procedural requirements and state with particularity the persons or things to be subpoenaed. *See id.*; *Zajradhara v. HDH Co.*, 16 OCAHO no. 1417b, 2–4 (2022).

Sanctions for violating standards of conduct are reserved for particularly egregious litigation misconduct. An ALJ has discretion to exclude individuals from OCAHO proceedings who continually use dilatory tactics, contravene reasonable standards of conduct, fail to act in good faith, or engage in prohibited ex parte communications. § 68.35; *see, e.g., Lee v. AT&T*, 7 OCAHO no. 924, 1, 12 (1997) (excluding a lay representative for “serving repetitive, frivolous, and unauthorized pleadings in violation of [the ALJ’s] prior orders. . . and [for] use of contemptuous and disrespectful language [.]”). Further, an ALJ may petition a district court to authorize “appropriate remedies” for those who obstruct OCAHO proceedings. § 68.28. A party seeking sanctions for standards of conduct violations must identify, with specificity, the alleged misconduct. *See, e.g., Izquierdo v. Victoria Nursing & Rehab. Center*, 10 OCAHO no. 1131, 2–4 (2009) (citations omitted) (holding that the respondent’s motion did not show noncompliance with § 68.35, as it was not based on allegations of past misconduct and failed to provide legal support).

Complainant seeks multiple sanctions through his motion. According to Complainant, Respondent edited or misrepresented “the [Job Vacancy Announcement (JVA)] in question, in order to illegally suit its position to this court.” C’s Mot. at 2. Complainant presents this assertion alongside allegations of Respondent engaging in visa fraud and U.S. citizen worker discrimination. *See id.* “[W]ith these actions and proofs in mind . . . the Plaintiff moves that the court should STRIKE the Respondents answer.” *Id.* Complainant also moves the Court to sanction Respondent for “knowingly providing the Court with false documentation in violation of 18 USC 1001.” *Id.* at 1.

The Court takes seriously any credible allegation of professional misconduct, including the knowing misrepresentation of matters to this forum. *See Lardy v. United Airlines, Inc.*, 3 OCAHO no. 493, 945, 954 (1992). However, these allegations “should not be made unless there is strong evidence in support thereof, as such allegations are not viewed lightly.” *Kamal-Griffin v. Cahill Gordon & Reindel*, 3 OCAHO no. 460, 647, 648 n.4 (1992) (citations omitted).

As a preliminary matter, the Court observes that it cannot take action pursuant to 18 U.S.C. § 1001 because it lacks jurisdiction.⁵ *CL Corp.*, 16 OCAHO no. 1429, at 3 (citation omitted). Complainant should be mindful of the Court’s prior warning on the applicability of 18 U.S.C. § 1001, and shall refrain from requesting that the Court provide relief per 18 U.S.C. § 1001.

The Court finds that the record does not compel imposing sanctions on Respondent for misrepresentation. The JVA allegations are serious and, if proven, could warrant sanctions per the OCAHO Rules. However, Complainant’s motion only hints at evidence necessary to substantiate these claims. For example, Complainant does not provide the metadata or screenshots that he claims show editing of the JVA. *See C’s Mot.* at 2. It is unclear how Complainant’s “extreme

⁵ Complainant’s motion cites to: 18 U.S.C. §§ 1001, 1028, 1541–44, 1546; “INA 212(a),(6),(c).(I)”; 20 C.F.R. pt. 655; 8 U.S.C. § 1324a; INA § 274C; 8 U.S.C. § 1324b (INA § 274B). As only 8 U.S.C. § 1324b confers the right of a person to file a discrimination complaint before OCAHO, the Court does not have jurisdiction over the other cited law.

notice” statement or inclusion of the JVA as an exhibit support that Respondent filed a “perjurious document” with this Court “in bad faith.” *See id.* at 2–7.

The Court will also not impose sanctions based on Complainant’s allegations of visa fraud. *See id.* at 2. “While OCAHO has subject-matter jurisdiction to hear a claim of visa fraud, such a claim must be brought by the Government.” *Montalvo v. Kering Americas, Inc.*, 14 OCAHO no. 1350, 3 (2020). Likewise, OCAHO precedent holds that document fraud cases under 8 U.S.C. § 1324c are to be brought by the Government. *Id.* at 4.

Complainant also has not shown the Court that Respondent’s answer should be struck for any of the reasons that would warrant such an order, such as that it is redundant, immaterial, impertinent, or scandalous material, or that the answer raises insufficient affirmative defenses. *See Toussaint v. Tekwood Assocs., Inc.*, 6 OCAHO no. 892, 784, 787–88 (1996).

Without any support, the Court cannot find that Respondent obstructed this OCAHO proceeding, contravened reasonable standards of conduct, or failed to act in good faith. §§ 68.28, 68.35. Accordingly, Complainant’s Motion for Sanctions is therefore DENIED.

III. CONCLUSION

For the foregoing reasons, Complainant’s Motion for Discovery and Sanctions is DENIED. The Court reminds the parties that, pursuant to the case schedule, discovery 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, August 22, 2022.

SO ORDERED.

Dated and entered on July 27, 2022.

Honorable Jean C. King
Chief Administrative Law Judge