

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

August 11, 2022

TAREQ ZIAD FOUAD ZAKARNEH,)	
Complainant,)	
)	8 U.S.C. § 1324b Proceeding
v.)	OCAHO Case No. 2022B00013
)	
INTEL CORPORATION,)	
Respondent.)	
)	

Appearances: Tareq Ziad Fouad Zakarneh, pro se, for Complainant
Patrick Shen, Esq., for Respondent

ORDER DENYING COMPLAINANT'S MOTION FOR PRELIMINARY
INJUNCTION AND ISSUING STAY OF PROCEEDINGS

I. PROCEDURAL HISTORY

This case arises out of the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. On December 28, 2021, Complainant, Tareq Ziad Fouad Zakarneh, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Intel Corporation, alleging citizenship status discrimination, retaliation, and unfair documentary practice related to the employment eligibility verification process in violation of § 1324b. On February 28, 2022, Respondent filed its Answer to Complaint. *See Zakarneh v. Intel Corp.*, 16 OCAHO no. 1414, 1, 3 (2022).¹

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>.

On March 29, 2022, Respondent filed Respondent’s Motion to Dismiss. Respondent presents several arguments in support of dismissal, including: Complainant’s failure to timely file his complaint with OCAHO; Complainant’s failure to timely file a charge with the Immigrant and Employee Rights Section (IER) of the U.S. Department of Justice’s Civil Rights Division; Complainant’s lack of status as a protected individual; and Complainant’s failure to state a claim as denial of access to Respondent’s premises is not a hiring violation. Mot. Dismiss 2.

On April 13, 2022, Complainant filed Complainant’s Response to Motion to Dismiss (Opposition to MTD). In response, Complainant asserts that “OCAHO has jurisdiction on the case[.]” Opp’n Mot. Dismiss 2.

On July 20, 2022, Complainant filed “Motion to Grant My Work Access Badge to Work on Intel Facility World Wide and Satisfactory (sic) Compensation” (Motion for Preliminary Injunction).

On July 19, 2022, Intel Corporation filed Respondent’s Opposition to Complainant’s “Motion to Grant My Work Access Badge to Work on Intel Facility World Wide and Satisfactory [sic] Compensation” (Opposition).²

II. PARTIES’ POSITIONS

A. Complainant’s Motion for Preliminary Injunction

Complainant requests the Court issue an order requiring Respondent rehire Complainant until the case is resolved. Mot. Prelim. Inj. 1–2. He describes “catastrophic results,” linked to his termination, specifically the loss of income and employment benefits which prevented his now-deceased family member from receiving medical treatment. *Id.* at 4. As “fair compensation for the time and suffering that has been caused by the respondent[‘s] catastrophic determinations that reflect on his life and his family[,]” Complainant seeks “work eligibility access[.]” *Id.*

B. Respondent’s Opposition

Respondent notes that “[w]hile Complainant did not state a legal basis for his request, he is seemingly seeking a preliminary injunction . . . [b]ecause this request comes before a final hearing on this matter has been held[.]” Opp’n 2–3. Without “conced[ing that] OCAHO has the power to issue preliminary injunctions,” Respondent argues that “Complainant has not met and cannot meet the high burden for injunctive relief.” *Id.*

² Although Complainant mailed his motion on July 7, 2022, the Court did not receive it until July 20, 2022. Thus, Complainant’s motion was not deemed filed until July 20, 2022. See § 68.8(b). The delay in the Court’s receipt of Complainant’s motion explains the anomaly in the filing of Respondent’s Opposition prior to the filing of Complainant’s underlying motion.

In reaching this conclusion, Respondent asserts “Complainant cannot succeed on the merits of his claim [because] his claims are time-barred.” *Id.* at 4. Respondent argues Complainant cannot demonstrate irreparable harm as Respondent is not “responsible for Complainant’s subsequent inability to retain employment” in the three years since his termination. *Id.* at 8. Finally, Respondent asserts that Complainant “failed to address the potential harms to Respondent if an injunction were to be issued” as well as the public interest the injunction would serve. *Id.* at 9.

III. LEGAL STANDARDS

A. Preliminary Injunction

“A preliminary injunction is a ‘device for preserving the status quo and preventing the irreparable loss of rights before judgment’ and is intended to ‘last until a final judgment is reached.’” *United States v. Guess*, 390 F. Supp. 2d 979, 984 (S.D. Cal. 2005) (first quoting *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984); and then citing *Nintendo of Am., Inc. v. Lewis Galoob Toys, Inc.*, 16 F.3d 1032, 1036, (9th Cir. 1994)).

In *Banuelos v. Transportation Leasing Co.*, the administrative law judge (ALJ) analyzed a complainants’ motion seeking reinstatement as a request for a preliminary injunction. *See* 1 OCAHO no. 148, 1043, 1045–46 (1990). First, the ALJ addressed whether OCAHO ALJs have the power to issue preliminary injunctions. *See id.* at 1045–48. “[S]ince the role of an ALJ, in [§ 1324b] proceedings, is functionally comparable to a district court judge, he or she, consistent with the general powers outlined in the statute, governing regulations, and the [Administrative Procedures Act], has the requisite legal and equitable authority to consider and rule on requests for preliminary relief.” *Id.* at 1048. Accordingly, ALJs “can and should consider motions for preliminary injunction in section 1324b cases” while using Federal Rule of Civil Procedure 65 as guidance. *Id.* at 1049 (citing 28 C.F.R. § 68.1).³

To obtain a preliminary injunction, the movant must demonstrate the following *Winter* factors: “(1) it is ‘likely to succeed on the merits,’ (2) it is ‘likely to suffer irreparable harm in the absence of preliminary relief,’ (3) ‘the balance of equities tips in [its] favor,’ and (4) ‘an injunction is in the public interest.’” *Disney Enters. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (quoting *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008)); *see Banuelos*, 1 OCAHO no. 148, at 1049 (citations omitted). Because likelihood of success on the merits “is the most

³ The court in *Banuelos* ultimately denied the complainants’ motion for a preliminary injunction seeking reinstatement because the complainants neither established irreparable injury nor success on the merits. 1 OCAHO no. 148, 1049–50.

important” factor, the court does not need to consider the other factors if the “movant fails to meet this ‘threshold inquiry[.]’” *Disney Enters.*, 869 F.3d at 856 (citations omitted).⁴

“A preliminary injunction is ‘an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion.’” *Apartment Ass’n of L.A. Cty. v. City of L.A.*, 10 F.4th 905, 911 (9th Cir. 2021) (quoting *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012)) (emphasis in original).

B. Timely Filing Standards for OCAHO Complaints

An OCAHO complainant must file its § 1324b complaint within ninety days of receiving a letter from IER wherein IER states that the complainant may file a complaint directly with OCAHO. 8 U.S.C. § 1324b(d)(2); *see* 28 C.F.R. § 68.4(c);⁵ *see also* 28 C.F.R. § 44.303(c). That letter “is also referred to as a ‘90 day letter’ and is the functional equivalent of a ‘right-to-sue’ letter, similar to what is issued in cases before the EEOC.” *Jablonski v. Kelly Legal Servs.*, 12 OCAHO no. 1282, 7 (2016).

Prior § 1324b OCAHO cases have been dismissed for failure to timely file the complaint with OCAHO. *See, e.g., Lopez v. James Jung, Hallmark Cleaners*, 10 OCAHO no. 1171, 1–3 (2013); *Hajiani v. Ali Props., LLC, Airport Shell*, 10 OCAHO no. 1188, 7 (2013). A respondent, upon filing an appropriate motion, is entitled to judgment as a matter of law when a complaint is untimely filed and no exceptions, such as equitable tolling, apply. *See Goel v. Indotronix Int’l Corp.*, 9 OCAHO no. 1102, 11–16 (2003).

IV. DISCUSSION

Although Complainant does not explicitly state such, the language of his motion suggests he is seeking a preliminary injunction. His request for relief is appropriately denied because, consistent with the first *Winter* factor, he cannot show it is likely he will succeed on the merits.

Respondent has timely raised a claims processing deficiency related to the date this Complaint was filed. Respondent first raised this issue in its Motion to Dismiss, stating:

⁴ Further, Federal Rule of Civil Procedure 65(c) provides that a preliminary injunction may only be issued “if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.”

⁵ “The charging individual may file a complaint directly with the Chief Administrative Hearing Officer within ninety (90) days after the date of receipt of notice that the Special Counsel will not be filing a complaint.” 28 C.F.R. § 68.4(c).

OCAHO should dismiss all three claims for failure to state a claim upon which relief can be granted because Complainant failed to timely file his Complaint with OCAHO . . . Here, Complainant acknowledges he received the letter from IER required by § 44.303(b) on September 14, 2021. To be filed within the required 90-day window, Complainant should have filed his Complaint by December 13, 2021. However, OCAHO states the Complaint was filed on December 28, 2021. (Notice at ¶ 1.) Consequently, Complainant was 15 days late.

Complainant may argue that he dated the Complaint on December 6, 2021. (Complaint at § 12). However, the date a Complaint is executed or even mailed is not its filing date. "Pleadings are not deemed filed until received by [OCAHO]." 28 C.F.R. § 68.8(b). Thus, it is of no consequence when Complainant signed or mailed his Complaint to OCAHO. Complaint failed to timely exercise his right to sue after IER notified him that he could file a private right of action. Consequently, the Complaint must be dismissed. Mot. Dismiss 6–7.

The records reflects that IER emailed Complainant the 90 day letter on September 14, 2021. Compl. 13.⁶ This letter informed Complainant of his right to file his own complaint with OCAHO and if he "choose[s] to do so, [he] must file [his] complaint within 90 days of receiving this letter." *Id.* The deadline to timely file this complaint was December 13, 2021. Complainant did not file his complaint until December 28, 2021. Notice of Case Assignment 1.

In his Opposition to the Motion to Dismiss and in the instant motion, Complainant provides no compelling facts or argument⁷ supporting the propriety of waiver, estoppel, or equitable tolling of the regulatory deadline.

There is virtually no likelihood of success on the merits for a complaint not timely filed. Because likelihood of success on the merits "is the most important" factor, the court does not need to consider the other factors if the "movant fails to meet this 'threshold inquiry[.]'" *Disney*

⁶ For convenience, pinpoint citations to the Complaint are to the internal page numbers of the PDF, as opposed to the varied numbering on the actual pages of the Complaint.

⁷ Germane to the timeliness arguments made by Respondent, Complainant argues only "[e]nlarging the time for the complainants claim needs to be considered due to the pandemic (COVID-19) procedure which it delayed every procedure and process in the country." Opp'n at 3. The conclusory nature of simply referencing the pandemic generally is insufficient to toll the deadline (a burden which rests with Complainant here). *Cf. Woods v. Philips N. Am., LLC*, 14 OCAHO no. 1371, 2–3 (2020) (finding the respondent demonstrated good cause related to the pandemic based on specific representations on operational disruptions as supported by a declaration).

Enters., 869 F.3d at 856 (citations omitted). Consistent with the *Winter* factors outlined in *Disney Enters.*, the analysis concludes here.

V. CONCLUSION

Because Complainant has not met his heightened burden for a mandatory preliminary injunction, the Court DENIES Complainant's Motion for Reinstatement.

As indicated above, Respondent timely provides persuasive argument pertaining to the viability of this Complaint; however, “the Court is not in a position to issue a final order at this time[.]” *Ravines de Schur v. Easter Seals-Goodwill N. Rocky Mountain, Inc.*, 15 OCAHO no. 1388g, 3 (2022) (citing *A.S. v. Amazon Web Servs. Inc.*, 14 OCAHO no. 1381h, 2 n.4 (2021) (CAHO Order)).

Pending the adjudication of Respondent's Motion to Dismiss (noting the argument contained therein remains preserved), the Court exercises its “inherent power to stay its proceedings” and issues a STAY of proceedings in the instant matter. *A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381o, 2–3 n.5 (2022).

SO ORDERED.

Dated and entered on August 11, 2022.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge