

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

September 27, 2022

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

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

ORDER TO SHOW CAUSE

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, Aljeric General Services, LLC, failed to hire him on account of his citizenship and national origin status. On December 1, 2021, Respondent filed an answer. Both parties filed prehearing statements. This Court set a case schedule on July 7, 2022.

On March 24, 2022, Complainant filed “Complainant’s Addendum Exhibits and Notice of Fraud on the Court Falsifying Material Evidence in Violation of 18 USC 1001” (hereafter, “Notice of Fraud”). Complainant also filed “Motion to Compel Discovery Responses,” and two motions entitled “Laymans Motion for Entry of Default Judgment and sanctions”, one on July 7, 2022, and a second on July 20, 2022. Respondent filed an opposition to Respondent’s Motion for Entry of Default Judgment and sanctions, presumably in response to the July 20, 2022 motion. This Court issued an order addressing the first two discovery motions on July 22, 2022, but did not address the July 20, 2022, motion.

I. Motion for Entry of Default Judgment and Sanctions

Complainant’s July 20, 2022, motion again states that Respondent’s attorney has not responded to his discovery allegations. Complainant then states that this Court has not taken any action

against Respondent's attorney despite his recalcitrance. Respondent states that it has not been served with any discovery requests that conform to the OCAHO Rules of Practice and Procedures.

The Court again construes the motion as a motion to compel. In the prior order denying Complainant's motion to compel, this Court found that Complainant's motion was deficient, and laid out clearly what Complainant must show for this Court to issue an order compelling Respondent to produce discovery. This motion does not rectify the problem with the prior motion. The Court repeats once again the requirements for a motion to compel:

- (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. 28 C.F.R. § 68.23(a).

Complainant must provide the discovery requests he sent to Respondent, particularly as Respondent denies that Complainant served him with discovery requests. The Court also again reminds Respondent that it must comply with any discovery requests served by Complainant; it is not for the Respondent to determine if the filing comports with OCAHO's rules, that is for this Court to resolve in any protective order. Finally, the Court reminds Complainant that he bears the burden of proof in this filing, as in the case in general, and therefore must support his claims with reliable evidence.¹

II. NOTICE OF FRAUD

The purpose of the Notice of Fraud appeared to be to notify the court of lies or fraud on the part of Respondent. The filing indicates that the Complainant disagrees with the Respondent's Statement of Position before the EEOC, and, apparently, disagrees with Respondent's prehearing statement. Complainant does not, however, indicate what the alleged lies are, other than to state that the plaintiff "was never 'rude' to anyone." *See* Notice of Fraud 1. The Complainant then accuses the Respondent's attorney of lying, includes several accusations, inflammatory language, and insults, including "what a piece of human feces and "what a bunch of BS." *See id.* 1-2. The court also notes Complainant's language in the Motion for Entry of Default Judgment and

¹ Complainant makes a number of accusations regarding bias on the part of this Court. Complainant's unsupported accusations are unfounded: this Court expects Complainant to follow the requirements in its rules as it would any other litigant, and explained those requirements in its prior order. Complainant has not followed the regulations. The undersigned finds no basis upon which to recuse herself from this case. *See* 28 C.F.R. § 68.30.

Sanctions (Respondent's attorney is lying, is an "arsehole" and his lack of response is a "f*-you" to this court.). Motion at 1.

This Court takes seriously any credible allegation of professional misconduct. *See Lee v. AT&T*, 7 OCAHO no. 924 (1997) (excluding representative for lack of candor). All persons appearing in proceedings before an Administrative Law Judge are expected to act with integrity and in an ethical manner. 28 C.F.R. 68.35(a). The ALJ may exclude from proceedings parties who, among other conduct, refuse to "adhere to reasonable standards of orderly and ethical conduct." *Id.*

In order to take action upon any such allegation, however, the Court needs something to review. In this case, there is no clear statement of what the "lies" are. Further, to the extent the "lies" occurred before the EEOC, this Court has no jurisdiction over events that occurred in that forum.

The Court is cognizant that the Complainant is pro se and has strong emotions and opinions about the case. Regardless of his views, however, unsubstantiated accusations and inflammatory language have *no place* in this forum. *See M.S. v. Dave S.V. Hoon-John Wayne Cancer Institute*, 12 OCAHO no. 1305, 7-8 (2017) (personal vilification and ad hominem attacks and "any other behavior that falls below OCAHO's expected standards of conduct by either party or any individual appearing in these proceedings will not be tolerated."). Matters of perspective and opinion, such as whether a person was rude, are matters about which reasonable people can disagree, and, if relevant, will be resolved in the course of the litigation. The Court cautions the Complainant to comport himself with dignity, and refrain from using inflammatory language and making personal attacks against Respondent. Accordingly, the Court finds no basis upon which to take any action in response to Complainant's Addendum.

III. JURISDICTION

The filing asks the court to "review the lies upon the plaintiff to the [Equal Employment Opportunity] investigator." Notice of Fraud 1. Attached to the filing is correspondence from the Equal Employment Opportunity Commission (EEOC) to Complainant inviting him to submit additional information relevant to a charge, and the Respondent's Position Statement submitted to the EEOC responding to an apparent Notice of Charge. *See* Notice of Fraud Exh 1.

These filings raise a question as to whether this forum continues to have subject matter jurisdiction over the national origin claim. The Court has both the authority, and the duty, to determine *sua sponte* if it has subject matter jurisdiction. *Heath v. Ancile, Inc.*, 15 OCAHO no. 1411, 2 (2022), *citing to Windsor v. Landeen*, 12 OCAHO no. 1294, 4-5 (2016).

Complainant asserts that he was discriminated against based upon his citizenship and national origin. 8 U.S.C. § 1324b(b)(2) provides that "[n]o charge may be filed respecting an unfair

immigration-related employment practice [related to a complainant's national origin] if a charge with respect to that practice based on the same set of facts has been filed with the [EEOC] under title VII of the Civil Rights Act of 1964, unless the charge is dismissed as being outside the scope of such title.” In other words, when a complainant files a national origin discrimination claim under both Title VII and the INA, only one agency has subject matter jurisdiction over the claim. *Heath*, 15 OCAHO no. 1411, at 2. At the heart of the statute is the prohibition on OCAHO from exercising jurisdiction over national origin claims when the employer has less than 4 or more than 14 employees. *See* 8 U.S.C. §§ 1324b(a)(2)(A), 1324b(a)(2)(B).² The statute precludes OCAHO jurisdiction when EEOC exercises jurisdiction, without regard to whether EEOC is correct that it is authorized to reach a merits determination. *Adame v. Dunkin Donuts*, 4 OCAHO no. 691, 904, 906-908 (1994).³ Jurisdiction over the citizenship claim is not impacted by a dismissal on this ground.

The Exhibit attached to the Notice of Fraud makes it apparent that Complainant has filed a complaint with the EEOC. *See* Notice of Fraud Exh. 1. Further, the Statement of Position filed by Respondent to the EEOC, and included in Complainant’s Notice, appears to indicate that the EEOC charge is based upon the same set of facts as the Complaint in this matter and, further, that the EEOC has accepted this charge for investigation. *See id.* at 2-3.

In order to determine whether OCAHO has subject matter jurisdiction over Complainant's national origin claim, Complainant shall provide the Court with information about the charge he filed with the EEOC, and he shall provide the Court with information about the number of employees.

The Court therefore ORDERS Complainant to submit a status report, no later than twenty-one days from the issuance of this Order, addressing the Court's subject matter jurisdiction over his claims in this forum. Specifically, but not exclusively, Complainant shall:

² In his Complaint, Complainant marked boxes indicating that Respondent employed “over 15 employees” and the box indicating “I don’t know”.

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>.

- (a) advise the Court as to whether he will maintain his Complaint based on nationality in this forum, and if so,
- (b) inform the Court as to when he filed his EEOC Complainant,
- (c) inform the Court as to whether his EEOC complaint is based on the same set of facts underlying his claim in this forum,
- (d) inform the Court as to the current status of his EEOC charge (e.g., whether the EEOC charge is dismissed, presently under investigation, probable cause finding issued, in conciliation, etc.), and
- (e) inform the Court as to approximately how many employees Respondent employs.

Respondent may file a reply fourteen days after Complainant's filing.

The Court reminds the Complainant that failure to respond to this Order may result in dismissal of the Complaint. *See* 28 C.F.R. § 68.37(b). *See, e.g., United States v. Hosung Cleaning Corp.*, 4 OCAHO no. 681, 776, 777-78 (1994). Further, Federal Rule of Civil Procedure 55, a permissible guidance in OCAHO proceedings, *see* 28 C.F.R. § 68.1, instructs that a Court shall issue a default if a party against whom a judgment for relief is sought has failed to “otherwise defend.” Fed. R. Civ. P. 55(a); *cf.* § 68.9(c) (stating that a default decision may be entered against any party who fails to appear at a hearing without good cause).

SO ORDERED.

Dated and entered on September 27, 2022.

Honorable Jean A. King
Chief Administrative Law Judge