

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

September 29, 2022

ROBERT PAUL HEATH,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2022B00012
)	
EUCLID INNOVATIONS,)	
Respondent.)	
_____)	

Appearances: Robert Paul Heath, pro se Complainant
Sharadha Sankararaman Kodem, Esq., for Respondent
Sam Shirazi, Esq., for the U.S. Department of Justice¹

ORDER

I. BACKGROUND

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. Complainant, Robert Paul Heath, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on December 28, 2021. Complainant alleges that Respondent, Euclid Innovations, discriminated against him based on his national origin and citizenship status, and engaged in unfair documentary practices, in violation of 8 U.S.C. § 1324b.

On March 30, 2022, the Court issued an Order of Inquiry, describing multiple attempts by OCAHO to perfect service of the complaint. *See Heath v. Euclid Innovations*, 16 OCAHO no. 1418, 1–2

¹ Although the U.S. Department of Justice is not a party to this case, Shirazi filed a Notice of Appearance, seeking to offer relevant information. While the Court appreciates the assistance, and exercised its discretion to accept the April 21, 2022, filings and consider the contents, OCAHO regulations do not have a provision for limited appearances. The Court encourages IER to seek leave and file notices as an amicus curiae or intervener. *See* 28 C.F.R. § 68.15 (intervenors); § 68.17 (amicus curiae); *see also Zakarneh v. Intel Corp.*, 16 OCAHO no. 1414a, 2 (2022) (discussing IER and amicus curiae) (citations omitted).

(2022).² Through the March 30, 2022, Order, the Court asked Respondent to advise the Court as to whether he had or could find a functional U.S.-based mailing address for Respondent. *Id.* at 1 (citing 28 C.F.R. § 68.3(c)).³

On April 14, 2022, the Court issued an Order Issuing Stay of Proceedings. *See Heath v. Euclid Innovations*, 16 OCAHO no. 1418a, 1–3 (2022). Through the April 14, 2022, Order, the Court notified the parties that Complainant called OCAHO on April 8, 2022, and informed an OCAHO staff member that he had experienced an emergency. *Id.* at 1. The Court invited Respondent to file a response “it deem[ed] appropriate” about the communication. *Id.* at 1–2 (citing *Tingling v. City of Richmond*, 13 OCAHO no. 1324b, 3 (2021)). The Court then exercised its judgment to issue a sixty day stay of proceedings, in light of the circumstances. *See id.* at 2 (citations omitted). Finally, the Court ordered Complainant to file a written status report for this case, within sixty days from the date of the April 14, 2022, Order; that is, by June 13, 2022. *Id.* at 3.

On April 21, 2022, an attorney from the Immigrant and Employee Rights Section, Civil Rights Division, Department of Justice (IER) filed a Notice of Appearance, and a Notice Regarding Complainant. Through the Notice Regarding Complainant, IER informed the Court that on April 4, 2022, and April 18, 2022, IER had had communications with Complainant about Complainant’s emergency. *See* Notice Regarding Complainant ¶ 2. IER “inform[ed] the Court that the last known counsel representing Euclid Innovations in its investigation before IER” was Sharadha Sankararaman Kodem, and provided her contact information. *Id.* IER averred that it “[did] not know if Euclid Innovations intends to retain this counsel for the current proceeding.” *Id.*

On July 7, 2022, OCAHO sent Kodem a Notice of Case Assignment for Complaint Alleging Unlawful Employment Discrimination (NOCA) and a copy of the complaint. The NOCA directed that an answer was to be filed within thirty days of receipt of the complaint, that failure to answer could lead to default, and that proceedings would be governed by Department of Justice regulations. NOCA ¶ 3 (citing 28 C.F.R. §§ 68.3(b), 68.8(b), 68.9). The U.S. Postal Service indicated delivery of the NOCA on July 11, 2022, making the answer due by August 10, 2022.

² 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>.

³ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

On August 31, 2022, Kodem entered her Notice of Appearance on behalf of Respondent and filed an answer.⁴ The filing provides no reason as to why the answer is late. Moreover, Respondent's address, provided by Respondent's attorney, is the same as the address to which the complaint was previously mailed. Answer ¶ 3. Respondent asserts in its answer only that the deadline for its answer should be equitably tolled as it was not properly served due to the lack of "service list." *Id.* ¶ 2.

To date, Complainant has not filed the ordered status report.

II. LEGAL STANDARDS & DISCUSSION

This case raises concerns about Respondent's answer, a recent disclosure of apparent death, and jurisdiction over Complainant's § 1324b claims.

A. Respondent's Answer

"A party that fails to answer a complaint within the time specified is already in default[.]" *United States v. Quickstuff, LLC*, 11 OCAHO no. 1265, 4 (2015) (citation omitted). The default must be excused before the party is permitted to answer. *Id.* A showing of good cause is a condition precedent to permitting a late answer, and where that showing is not made, a late answer may not be accepted. *United States v. Medina*, 3 OCAHO no. 485, 882, 889 (1993); *see United States v. Shine Auto Serv.*, 1 OCAHO no. 70, 444, 445–46 (1989) (Vacation by the CAHO of the ALJ's Order Denying Default Judgment) (finding it was error for the ALJ to deny the complainant's default judgment motion and permit a late file answered, when the respondent did not timely respond to that motion and proffered no good cause for its failure to timely file an answer); *see also United States v. Kirk*, 1 OCAHO no. 72, 455, 456–57 (1989) (granting default judgment when response to show cause order did not establish good cause for failure to answer).

Failure to timely file an answer "may be deemed to constitute a waiver of his or her right to appear and contest the allegations of the complaint," and the ALJ "may enter a judgment by default." 28 C.F.R. § 68.9(b). The Court ORDERS Respondent, by October 28, 2022, to show cause as to why the answer was filed late. Upon receipt of the response, the Court will determine whether to accept the answer.

⁴ On August 16, 2022, the Court rejected a filing from Kodem, as she did not certify service on IER or file a Notice of Appearance. *See* §§ 68.6(a), 68.33(f).

B. Disclosure of Apparent Death

On June 27, 2022, this tribunal received a copy of a “Certification of Death,” which names the decedent as Robert Heath. *See Heath v. Ancile, Inc.*, 15 OCAHO no. 1411a, 1 (2022). The certificate lists the date of death as May 18, 2022, and the date of registration of death as June 1, 2022. *Id.* The Bureau of Vital Statistics for the State of Florida issued this certification on June 24, 2022. *Id.*

OCAHO’s Rules allow ALJs in the forum to take “official notice” of “any material fact, not appearing in the evidence in the record, which is among the traditional matters of judicial notice.” 28 C.F.R. § 68.41. When providing such notice, the ALJ shall give both parties adequate time to respond and “opportunity to show the contrary.” *Id.*

This Order provides the parties with notice of the “Certification of Death” for the decedent named Robert Heath. The Court affords the parties the opportunity to dispute the death announced in this certification. The parties shall be heard on this matter through their responses to this Order, *supra* Part III. The parties may address the propriety of judicial notice, applicable law on the substitution of parties, or any other matter related to the apparent death the parties deem appropriate.

C. Jurisdiction Over Complainant’s § 1324b Claims

As a forum of limited jurisdiction, OCAHO only hears cases within the jurisdiction prescribed by Congress. *See United States v. Facebook, Inc.*, 14 OCAHO no. 1386b, 5–8 (2021) (citations omitted) (“The exceptions at § 1324b(a)(2) are jurisdictional as they limit the scope of cases properly before an OCAHO ALJ.”). OCAHO has subject matter jurisdiction over § 1324b citizenship status claims if the employer employs more than three employees. *Zajradhara v. HDH Co., LTD*, 16 OCAHO no. 1417, 2 (2022) (citations omitted). OCAHO’s subject matter jurisdiction for hearing § 1324b national origin allegations is narrower, limited to cases in which an employer employs between four and fourteen employees. *Id.* (citations omitted). Complainant has the burden to demonstrate that OCAHO has jurisdiction over allegations plead in the complaint. *See id.* (citations omitted).

Upon review of the complaint, it is unclear to the Court whether it has subject matter jurisdiction over Complainant’s claims. “[T]he issue of subject-matter jurisdiction may be raised ‘even by the court, *sua sponte*.’” *Windsor v. Landeen*, 12 OCAHO no. 1294, 4 (2016) (citing *Horne v. Town of Hampstead*, 6 OCAHO no. 906, 941, 945 (1997)) (internal citation omitted); *see Sinha v. Infosys*, 14 OCAHO no. 1373, 2–3 (2020) (citations omitted) (noting that the Court has an independent obligation to determine subject matter jurisdiction). Neither the Complaint nor IER charge form identify how many employees Respondent employs. *See* Compl. ¶¶ 4, 14. Without this information, the Court cannot determine whether it can hear Complainant’s § 1324b citizenship status or national origin claims.

Complainant is now ordered to show cause and establish the Court's jurisdiction over his § 1324b claims by October 28, 2022, *supra* Part III. The Court permits Respondent to reply within fourteen days of service of Complainant's filing.

Failure to indicate Respondent's number of employees could lead to the dismissal of the complaint. *See Zajradhara v. Misamis Constr. (Saipan) LTD.*, 15 OCAHO no. 1396a, 4 (2022).

The Court also puts Complainant on notice that failure to submit the previously ordered status report or respond to this order may be construed as abandonment of the complaint, *see* § 68.37(b)(1).

III. CONCLUSION

The Court **ORDERS** Respondent to show cause as to why it filed the answer late, by October 28, 2022.

The Court **ORDERS** Complainant, his executor, or a substitute party, to:

File a submission that advises the Court whether he intends to move forward with this litigation, by October 28, 2022, and if so, provide good cause for the failure to file a status report. The Court permits Respondent to reply within fourteen days after service of Complainant's filing.

File a submission that shows cause and establish the Court's jurisdiction over his § 1324b claims by October 28, 2022, to which Respondent may reply within fourteen days after service of Complainant's filing.

The Court **INVITES** the parties to file briefs on the disclosure of apparent death, the propriety of judicial notice, applicable law on the substitution of parties, or any other matter related to the apparent death the parties deem appropriate by October 28, 2022.

If Complainant fails to respond to this Order, the Court may dismiss the complaint.

SO ORDERED.

Dated and entered on September 29, 2022.

Honorable Jean C. King
Chief Administrative Law Judge