

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

December 7, 2022

ROBERT PAUL HEATH,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	OCAHO Case No. 2022B00018
	)	
TECH GLOBAL SYSTEMS, INC.,	)	
Respondent.	)	
_____	)	

ORDER

I. BACKGROUND

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. On January 10, 2022, Complainant, Robert Paul Heath, filed a Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). Complainant alleges that Respondent, Tech Global Systems, Inc., discriminated against him on account of citizenship status and national origin, and engaged in unfair immigration-related documentary practices, in violation of § 1324b.

On March 30, 2022, the Court issued an Order to Show Cause given Respondent's failure to file a timely answer. *See Heath v. Tech Global Sys., Inc.*, 16 OCAHO no. 1419, 1 (2022).¹ On May 4, 2022, the Court notified the parties of communications between Complainant and an OCAHO staff

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>.

member on April 8 and April 18, 2022. *See* May 4, 2022 Notice ¶ 1. The Court invited Respondent to file “any response it deem[ed] appropriate.” *Id.* at 2 (citation omitted). Neither party responded. On August 10, 2022, the Court issued an Order addressing a recent disclosure of apparent death and jurisdiction over Complainant’s § 1324b claims. *See Heath v. Tech Global Sys., Inc.*, 16 OCAHO no. 1419a, 1 (2022). The Court stated that on June 27, 2022, this tribunal received a copy of a “Certification of Death” in another case, which names the decedent as Mr. Robert Heath. *See id.* at 2 (citing *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.* This Court’s August 10, 2022, Order provided notice of the undersigned’s intent to take official notice of the “Certification of Death” for Complainant Mr. Heath, subject to the parties’ opportunity to comment per OCAHO Rule 68.41.² *Id.* The Court also invited the parties to comment upon applicable law on the substitution of parties, or any other matter related to the apparent death the parties deem appropriate. *Id.* Lastly, the Court issued show cause orders regarding jurisdiction in the event Complainant or his successor intended to pursue the claim. *See id.* at 2–4. The Court did not receive any filings from either party.

II. LEGAL STANDARDS & DISCUSSION

A. Official Notice of Complainant’s Death

28 C.F.R. § 68.41, states in part that “official notice may be taken of any material fact, not appearing in evidence in the record, which is among the traditional matters of judicial notice.” Federal Rule of Evidence 201 describes a matter for which one might traditionally take judicial notice as:

- “[A] fact that is not subject to reasonable dispute because it:
- 1) Is generally known within the trial court’s territorial jurisdiction; or
 - 2) Can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.”

Fed. R. Evid. 201(b).

Recently, the OCAHO administrative law judge (ALJ) in *Heath v. Ancile, Inc.* took official notice of the death certificate for Mr. Heath after providing notice to the parties. *See* 15 OCAHO no. 1411b, 2–3 (2022) (reasoning that “[w]hether under the broader concept of official notice or under the circumscribed evidentiary rule 201 judicial notice, [Mr. Heath’s] death certificate meets that standard[.]”). The *Ancile* ALJ then found that Mr. Heath died on May 18, 2022. *Id.* at 3.

² OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

Public records support taking official notice of this fact. Mr. Heath is identified as deceased by the Circuit Court in Palm Beach County, Florida, in a petition for administration of his estate, with a Ms. Tonya Heath appointed as his personal representative. *eCaseView*, Clerk of the Circuit Court & Comptroller Palm Beach Cty., <https://appsgp.mypalmbeachclerk.com/eCaseView/search.aspx> (last visited Nov. 22, 2022). The Clerk of the Court's online database is an official publication created by the State of Florida, falling within Rule 201(b)(2)'s stricture of a document coming from a source "whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2). Further, as a public record the contents of the website can be "readily and accurately determined." *See id.* In addition, information on Complainant's death is readily verifiable in two online, publicly available obituaries for Robert Heath. *Robert "Bobby" Paul Heath Jr.*, Tribute Archive, <https://www.tributearchive.com/obituaries/24883485/robert-bobby-paul-heath-jr> (last visited Nov. 22, 2022); *Obituary: Robert Heath*, Palm Beach Post, <https://www.palmbeachpost.com/obituaries/pwpb0216852> (last visited Nov. 22, 2022). The obituaries have indicia of reliability as to material facts; for instance, the biographical data from the Tribute Archive and Palm Beach Post obituaries corroborates information listed in Robert Heath's death certificate. *See Ancile, Inc.*, 15 OCAHO no. 1411a, at 1 (referencing the legal name, date of birth, date of death, and place of residence shown on the death certificate). Moreover, some federal courts recognize obituaries as a proper foundation upon which to take judicial notice of a death. *See Crews v. Pfizer, Inc.*, No. 2:21-CV-00868-RDP, 2021 WL 5040493, at *1 (N.D. Ala. Oct. 29, 2021) (citations omitted) ("Courts may take judicial notice of obituaries."); *e.g.*, *United States v. Thomas*, No. CR 01-058 (KSH), 2022 WL 538540, at *3 (D.N.J. Feb. 23, 2022) (taking judicial notice of an obituary notice published online by a funeral home); *Sanders v. Justice*, No. 15-CV-00142-SMY, 2015 WL 1228830, at *4 (S.D. Ill. Mar. 16, 2015) (taking judicial notice of an online newspaper obituary).

The Court finds that based upon the *Ancile* case, the probate records, and public obituaries, the Court has a proper foundation from which to take official notice of Complainant's death. *See* 28 C.F.R. § 68.41. No one has objected to the suggestion of death, nor that it is an improper subject of official notice. Accordingly, the Court takes official notice of the fact that Complainant Robert Heath died on May 18, 2022.

B. Substitution of Parties

Following official notice of Mr. Heath's death, the *Ancile* ALJ determined that application of Federal Rule of Civil Procedure 25 (Rule 25), regarding substitution of parties, is appropriate in this forum. *Ancile, Inc.*, 15 OCAHO no. 1411b, at 4 (citing *Lee v. AT&T*, 8 OCAHO no. 924, 9 n.5 (1997)) ("Although the OCAHO rules do not directly address the issue of substitution of parties, the Federal Rules of Civil Procedure may be utilized as a general guideline in any situation not covered by the OCAHO Rules. *See* 28 C.F.R. § 68.1[.]"). Per Rule 25, should a party fail to file a motion "within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." Fed. R. Civ. P. 25(a)(1). The undersigned similarly finds that Rule 25 may be used as a guideline, is applicable to the facts presented in this circumstance, and will apply the rule in this circumstance.

The Court's determination that Complainant is deceased would normally trigger the ninety-day window for filing motions for substitution per Rule 25. Still, the Court must ensure that appropriate notice about substitution is given. Indeed, "[c]ourts have noted upon determination that a party is deceased, notice must be provided to that party's successor in interest or executor, regardless of whether the nonparty has entered an appearance or otherwise advised the court of their interest in the litigation." *Ancile, Inc.*, 15 OCAHO no. 1411b, at 4 (citations omitted).

The Court hereby provides notice to Complainant's apparent successor in interest, Ms. Tonya Heath. *See id.* at 5 (noting her identification on the death certificate and on the Palm Beach County Clerk of Court's public records); *see also eCaseView* (probate record for Complainant, naming his executor). The Court intends to take official notice of Ms. Heath as Complainant's executor, subject to the parties' opportunity to be heard. Respondent and Ms. Heath may advise or object, no later than fourteen days from the date of this Order, concerning the Court's intent to take official notice of Ms. Heath as Complainant's executor pursuant to 28 C.F.R. § 68.41.

If the Court takes official notice of Tonya Heath as Complainant's executor, the Court will issue an Order stating as such. Following official notice of Tonya Heath as Complainant's executor, the Court would start the ninety-day window for filing motions for substitution. If a substitution motion is not made in that time, the case would then be dismissed.

The Court further provides that Ms. Heath be included in the certificate of service (i.e., filings and orders shall also be served on Tonya Heath).

III. CONCLUSION

The Court takes official notice that Complainant Mr. Robert Heath died on May 18, 2022.

The Court provides the parties notice that it intends to take official notice of Ms. Tonya Heath as Complainant's executor. The parties may advise or object, no later than fourteen days from the date of this Order.

The Court orders that Tonya Heath shall be included in the certificate of service.

SO ORDERED.

Dated and entered December 7, 2022.

Honorable Jean C. King
Chief Administrative Law Judge