

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

December 21, 2022

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2023A00003
)	
MILWHITE, INC.,)	
Respondent.)	
_____)	

Appearances: Michael J. Lambros, Esq., for Complainant
Armando DeLeon III, *pro se*, for Respondent

ORDER TO SHOW CAUSE

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. Complainant, the U.S. Department of Homeland Security, Immigration and Customs Enforcement, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on October 27, 2022, alleging that Respondent, Milwhite, Inc., violated § 1324a(a)(1)(B).

On October 31, 2022, this office sent Respondent a Notice of Case Assignment for Complaint Alleging Unlawful Employment (NOCA), a copy of the complaint, the Notice of Intent to Fine (NIF), and Respondent's requested for a hearing, via U.S. Postal Service certified mail. The NOCA directed that an answer was to be filed within thirty (30) days of receipt of the complaint, that failure to answer could lead to default, and that proceedings would be governed by U.S. Department of Justice regulations.¹

The U.S. Postal Service indicates service on Respondent on November 7, 2022, making an answer due no later than December 7, 2022. *See* §§ 68.3(a), 68.9(a). Respondent has not filed an answer.

Under the OCAHO rules, to contest a material fact alleged in the complaint or a penalty assessment, a respondent must file an answer. 28 C.F.R. § 68.9(c). If a party does not file an

¹ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

answer within thirty days of receipt of the complaint, the Administrative Law Judge (ALJ) may decide that the Respondent has waived his or her right to appear and contest the allegations of the complaint. The ALJ may enter a judgment by default. § 68.9(b); *see also Nickman v. Mesa Air Grp.*, 9 OCAHO no. 1106, 1 (2004) (holding that if default judgment is entered, judgment may be entered for the complainant without a hearing).² Alternatively, the ALJ may dismiss a request for a hearing as abandoned by the party who filed it. § 68.37(b)(1); *see United States v. Louie's Wine Dive LLC*, 15 OCAHO no. 1404, 2 (2021).

At this point, Respondent is already in default. *United States v. Quickstuff, LLC*, 11 OCAHO no. 1265, 4 (2015). In order to avoid a default judgment or a finding of abandonment, the Respondent must file an answer and explain why the answer was not filed on time. *Id.* This explanation, which is known as a showing of “good cause,” is a condition precedent to permitting a late answer; where that showing is not made, a late answer may not be accepted. *United States v. Medina*, 3 OCAHO no. 485, 882, 889 (1993). The ALJ will consider factors such as “(1) whether the failure to act was willful; (2) whether setting the [order to show cause] aside would prejudice the adversary; and (3) whether a meritorious claim has been presented.” *United States v. Pop's Bar and Restaurant*, 15 OCAHO no. 1398, 3 (2021) (citing *Effjohn Int'l Cruise Holdings, Inc. v. A&L Sales, Inc.*, 346 F.3d 552, 563 (5th Cir. 2003) (citation omitted); *see also Kanti v. Patel*, 8 OCAHO no. 1007, 166, 168 (1998) (applying factors).

Accordingly, the Court ORDERS Respondent, Milwhite, Inc., to file a response with the Court within twenty-one (21) days of the date of this Order, in which it must provide facts sufficient to show good cause for why it has not filed an answer to the complaint in this case.

The Court FURTHER ORDERS Respondent, Milwhite, Inc., to file an answer to the complaint that comports with 28 C.F.R. § 68.9, within twenty-one (21) days of the date of this Order.³

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 Pursuant to 28 C.F.R. § 68.9, an answer includes “[a] statement that the respondent admits, denies, or does not have and is unable to obtain sufficient information to admit or deny each allegation” and “[a] statement of fact supporting each affirmative defense.” § 68.9(c)(1)–(2).

Upon receipt of Respondent's filings, the Court will determine if Respondent has demonstrated the requisite good cause for not filing its answer to the complaint and will decide whether to allow its untimely response.

If Respondent does not respond as ordered or cannot show good cause for its untimely answer to the complaint, the Court may enter a default judgment against it pursuant to 28 C.F.R. § 68.9(b), or the Court may conclude that Respondent has abandoned its request for a hearing and dismiss the complaint. 28 C.F.R. § 68.37(b).

SO ORDERED.

Dated and entered on December 21, 2022.

Honorable Jean C. King
Chief Administrative Law Judge