

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

UNITED STATES OF AMERICA,)	
)	
Complainant,)	
)	8 U.S.C. § 1324a Proceeding
v.)	
)	OCAHO Case No. 2023A00059
DUBOSE DRILLING, INC.,)	
)	
Respondent.)	
<hr style="width: 40%; margin-left: 0;"/>)	

Appearances: Hazel L. Gauthier, Esq., for Complainant
Kelli Gavin, Esq., for Respondent

ORDER TO SHOW CAUSE

I. PROCEDURAL HISTORY

On May 4, 2023, Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). The complaint alleges that Respondent, Dubose Drilling, Inc., failed to ensure that employees properly completed Section 1 and/or failed to complete properly Section 2 or 3 of the Employment Eligibility Verification Form (Form I-9) for 101 individuals (Count One), failed to prepare and/or present Forms I-9 for four individuals (Count Two), failed to ensure that employees properly completed Section 1 and/or failed to complete properly Section 2 or 3 of the Forms I-9 for three individuals (Count Three), and knowingly hired two individuals not authorized for employment in the United States (Count Four), all in violation of 8 U.S.C. § 1324a(a)(1). Complainant attached to the complaint its Notice of Intent to Fine (NIF) Respondent dated November 4, 2019. Compl., Ex. A. Respondent, through its counsel Kelli Gavin, contested the NIF and timely requested a hearing before this Court.¹ *Id.*, Ex. B.

¹ The Court considers this signed request for a hearing to be a notice of appearance by counsel on behalf of Respondent. *See* 28 C.F.R. § 68.33(f).

On May 15, 2023, OCAHO's Chief Administrative Hearing Officer (CAHO) individually mailed Respondent and its counsel via United States certified mail the following documents: (a) the complaint, (b) a Notice of Case Assignment Regarding Unlawful Employment (NOCA), (c) the NIF, and (d) Respondent's request for a hearing (collectively the Complaint package). The CAHO informed Respondent and its counsel that these proceedings would be governed by OCAHO's Rules of Practice and Procedure for Administrative Hearings located at 28 C.F.R. part 68 (2023)² and applicable case law. NOCA ¶ 1. Links to OCAHO's rules and its Practice Manual³ were provided to Respondent and counsel, along with contact information for OCAHO. *Id.*, ¶ 2. The CAHO directed Respondent to answer the complaint within thirty days in accordance with 28 C.F.R. § 68.9(a). *Id.*, ¶ 4. The CAHO cautioned Respondent that its failure to file an answer could lead the Court to enter a judgment by default and any and all appropriate relief pursuant to 28 C.F.R. § 68.9(b). *Id.*

The United States Postal Service's certified mail tracking service confirmed delivery of the Complaint package to Respondent on May 19, 2023,⁴ and to Respondent's counsel on May 22, 2023.⁵ OCAHO likewise received from the U.S. Postal Service signed and dated domestic return receipts for both deliveries.⁶ As

² OCAHO's Rules of Practice and Procedure for Administrative Hearings are available on OCAHO's homepage on the United States Department of Justice's website. See <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

³ The OCAHO Practice Manual, which is part of the Executive Office for Immigration Review's Policy Manual, provides an outline of the procedures and rules applicable to cases before OCAHO. It is likewise available on the U.S. Department of Justice's website. See <https://www.justice.gov/eoir/eoir-policy-manual/part-iv-ocaho-practice-manual>.

⁴ A U.S. Postal Service notation reflected that the Complaint package addressed to Respondent was delivered to "an individual at the address."

⁵ A U.S. Postal Service notation reflected that the Complaint package addressed to Respondent's counsel was delivered to "the front desk, reception area, or mail room."

⁶ Although the U.S. Postal Service's certified mail tracking service gave the date of delivery to Respondent's counsel as May 22, 2023, the handwritten notation on the domestic return mail receipt appears to read May 20, 2023. The Court considers the

such, Respondent's answer was due by June 21, 2023. *See* 28 C.F.R. §§ 68.3(b), 68.9(a). To date, Respondent has not filed an answer.

II. LEGAL STANDARDS AND DISCUSSION

OCAHO's Rules of Practice and Procedure for Administrative Hearings permit a respondent thirty days to file an answer after being served with a complaint. *See* 28 C.F.R. § 68.9(a). Service of a complaint may be effectuated by "mailing [the complaint] to the last known address of such individual, partner, officer, or attorney or representative of record." *Id.* § 68.3(a)(3). Here, the Court began the thirty-day clock on May 22, 2023, being the date when OCAHO perfected service of the complaint on Respondent's counsel. *See id.* § 68.3(b) ("Service of complaint . . . is complete upon receipt by addressee."). As such, Respondent's answer was due no later than June 21, 2023. *See id.* § 68.9(a).

Despite the CAHO informing both Respondent and its counsel of the thirty-day deadline to file an answer to the complaint, no answer has been filed. *See* NOCA, ¶ 4. The CAHO likewise warned Respondent that if it failed to file a timely answer, the Court might deem it to have waived its right to appear and contest the allegations of the complaint, and that a judgment by default and other appropriate relief might follow. *Id.* (citing 28 C.F.R. § 68.9(b)); *see also Nickman v. Mesa Air Grp.*, 9 OCAHO no. 1106, 1 (2004) (explaining that "[i]f a default judgment is entered, the request for hearing is dismissed, AND judgment is entered for the complainant without a hearing.").⁷

Complaint package to have been served on Respondent's counsel on May 22, 2023, the date documented by the U.S. Postal Service. For purposes of calculating the date by which Respondent's answer was due, the Court uses the later service date of May 22, 2023, rather than the earlier service date on Respondent (the business) of May 19, 2023.

⁷ Citations to OCAHO precedents in bound volumes one through eight include the volume and case number of the particular decision followed by the specific page in the bound volume where the decision begins; the pinpoint citations which follow are to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents after volume eight, 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 through the Westlaw database "FIM-OCAHO," the

It has long been OCAHO's practice to issue an order to show cause before entering a default. *See United States v. Shine Auto Service*, 1 OCAHO no. 70, 444 (Vacation by the Chief Admin. Hr'g Officer of the A.L.J.'s Order Den. Default J.) (7/14/89). In *Shine Auto Service*, the Acting CAHO explained:

Respondent must justify [in its response to the order to show cause] its failure to respond in a timely manner. Based on the Respondent's reply, the Administrative Law Judge shall determine whether the respondent has met the threshold for good cause. If the Administrative Law Judge determines that the Respondent possessed the requisite good cause for failing to file a timely answer, then the Administrative Law Judge may allow the Respondent to file a late answer.

Id. at 445-46. This Court follows that practice in this case.

Respondent shall file a response to this Order in which it must provide facts sufficient to show good cause for its failure to file a timely answer to the complaint. The Court further orders Respondent to file an answer to the complaint simultaneously with the filing of its response showing good cause. Respondent's answer must comport with 28 C.F.R. § 68.9. Failure to file an answer may constitute a waiver of Respondent's right to appear and contest the allegations of the complaint. *Id.*, § 68.9(b). Default may follow. *Id.*

Upon receipt of Respondent's filings, the Court will determine if Respondent has demonstrated the requisite good cause for failing to file a timely answer to the complaint and will decide whether to allow its untimely answer.

The Court puts Respondent on notice that, if it fails to respond to the Court's orders, the Court may find that it has abandoned its request for a hearing and dismiss it. 28 C.F.R. § 68.37(b)(1). *See, e.g., United States v. Steidle Lawn & Landscape, LLC*, 17 OCAHO no. 1457c, 2 (2023) (finding that the respondent abandoned its request for a hearing when it failed to respond to the court's orders). "A final order of dismissal based on abandonment is analogous to entry of a default judgment under the Federal Rules of Civil Procedure." *United States v. Vilarado Vineyards*, 11 OCAHO no. 1248, 4 (Vacation by the Chief Admin. Hr'g Officer of the A.L.J.'s Final Dec. and Order of

LexisNexis database "OCAHO," and on the United States Department of Justice's website: <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

Dismissal and Remanding for Further Proceedings) (4/15/15) (citing *United States v. Greif*, 10 OCAHO no. 1183, 6 (2013)).

III. ORDERS

IT IS SO ORDERED that, within twenty days of the date of this Order, Respondent, Dubose Drilling, Inc., shall file a response with the Court in which it must provide facts sufficient to show good cause for its failure to timely answer the complaint in this case.

IT IS FURTHER ORDERED that, within twenty days of the date of this Order, Respondent shall file with the Court an answer to the complaint that comports with 28 C.F.R. § 68.9.

If Respondent fails to respond as ordered or cannot show good cause for its failure to file a timely answer to the complaint, the Court may enter a default against it pursuant to 28 C.F.R. § 68.9(b). Failure to respond to the Court's orders may lead the Court to conclude that Respondent has abandoned its request for a hearing and result in the dismissal of its request for a hearing. *Id.* § 68.37(b).

SO ORDERED.

Dated and entered on July 19, 2023.

Honorable Carol A. Bell
Administrative Law Judge