

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

ROBERT HEATH,)	
Complainant,)	
)	8 U.S.C. § 1324b Proceeding
v.)	
)	OCAHO Case No. 2020B00089
CONSULTADD AND AN ANONYMOUS)	
EMPLOYER,)	
Respondent.)	
)	

ORDER OF DISMISSAL

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. On August 31, 2020, Complainant, Robert Heath, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, ConsultAdd and an Anonymous Employer, alleging violations of § 1324b. On February 11, 2021, Respondent filed an answer denying all liability.

On May 19, 2022, the Court disclosed communications by Complainant concerning a health emergency. *See Heath v. ConsultAdd*, 15 OCAHO no. 1395b, 1 (2022).¹ On August 11, 2022, the Court issued a Notice and Order which provided notice to the parties of Complainant's apparent death. *See Heath v. ConsultAdd*, 15 OCAHO no. 1395c, 1 (2022).

On March 8, 2023, the Court issued a Notice and Order which took official notice of Complainant's death and found Federal Rule of Civil Procedure 25 (Rule 25) applicable to these proceedings. *See Heath v. ConsultAdd*, 15 OCAHO no. 1395d, 1 (2023). The March 8, 2023 Notice and Order also provided notice to Complainant's apparent successor in interest. *Id.* at 3.

On May 10, 2023, the Court issued an Order addressing official notice of Complainant's executor and Rule 25. *See Heath v. ConsultAdd*, 15 OCAHO no. 1395e, 1 (2023). Having found

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>.

that Complainant's executor had notice of these proceedings, and that neither party had moved for dismissal based on claim extinguishment, the Court started the 90-day period proscribed by Rule 25(a)(1). Id. at 2. The Court observed:

A motion for substitution may be made by any party or by the decedent's successor or representative. Fed. R. Civ. P. 25(a)(1). If a motion for substitution is not made within 90 days from the date of [the May 10, 2023] Order, this action by Robert Heath (OCAHO Case No. 2020B00089) may be subject to dismissal without prejudice. *See id.*

Id. (internal quotation marks omitted).

The 90-day window proscribed by Rule 25(a)(1) began on May 10, 2023, and closed on August 8, 2023. To date, no person or entity has sought to substitute themselves for the Complainant in this case.

"If the motion [for substitution] is not made 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). As the conditions for dismissal under Rule 25(a)(1) are present in this case, Robert Heath's Complaint against ConsultAdd and an Anonymous Employer (OCAHO Case No. 2020B00089) is DISMISSED without prejudice. Any pending motions are denied as MOOT.

SO ORDERED.

Dated and entered on August 16, 2023.

Honorable John A. Henderson
Administrative Law Judge

Appeal Information

In accordance with the provisions of 8 U.S.C. § 1324b(g)(1), this Order shall become final upon issuance and service upon the parties, unless, as provided for under the provisions of 8 U.S.C. § 1324b(i), any person aggrieved by such Order files a timely petition for review of that Order in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business, and does so no later than 60 days after the entry of such Order. Such a petition must conform to the requirements of Rule 15 of the Federal Rules of Appellate Procedure.