

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

John C. Grodzki, Complainant v. OOCL (USA), Inc., Respondent; 8  
U.S.C. § 1324b Proceeding; Case No. 90200095.

ORDER

(October 1, 1990)

In a Notice To The Parties dated July 27, 1990 I granted Complainant until Wednesday, September 12, 1990 to respond to Respondent's motion for summary judgment. Complainant has filed no response as of this date.

In its motion for summary judgment, Respondent argues that Complainant is precluded by the terms of his termination agreement with Respondent from maintaining this action. The copy that Respondent submitted is signed only by Respondent, not by Complainant. In order to properly consider this argument, it is requested that no later than October 16, 1990 Respondent provide me with a copy of the termination agreement signed by both Complainant and Respondent.

Respondent also argues that Complainant is time-barred from bringing this action because he was one day late in submitting his complaint. Complainant had until March 7, 1990 to file his complaint before an administrative law judge. See 28 C.F.R. § 44.303(c)(2). The Complaint was filed in this office on March 8, 1990. Such time period, however, may be equitably tolled where a party is unrepresented by legal counsel. See Lundy v. OOCL (USA) Inc., OCAHO Case No. 89200457 (Aug. 8, 1990).

Complainant is advised that I will accept a response to Respondent's motion until October 16, 1990, provided that Complainant shows good cause by way of explanation for his failure to have timely responded to my instructions of July 27. Complainant is cautioned that failure to respond to Respondent's motion and to my orders may result in a decision rendered against him. The rules of practice and procedure of this Office contemplate that a default decision may be entered against any party failing, without good cause, to appear at a hearing. 54 Fed. Reg. 48,593, 48,604 (1989) (to be codified at 28 C.F.R. § 68.35(c)).

This order affords Complainant additional time to respond to Respondent's motion. Failure to respond and to reasonably explain

delay to date may result in my treating Complainant as having failed, without good cause, to appear at a hearing. Title 28 C.F.R. § 68.35(c) provides authority to enter a default decision for failure to respond to a pretrial order. See U.S. v. Nu Line Fashions, Inc., OCAHO Case No. 89100566 (March 30, 1990).

If Complainant does not desire to pursue his claim, it is appropriate for him by agreement with Respondent to file a joint motion to dismiss or, alternatively, to file his own individual motion to dismiss.

**SO ORDERED.**

Dated this 1st day of October, 1990.

MARVIN H. MORSE  
Administrative Law Judge