

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

AMADEO GONZALEZ,)	
Complainant,)	
)	
v.)	8 U.S.C. 1324b Proceeding
)	CASE NO. 91200154
PHOENIX MOTOR COMPANY,)	
Respondent.)	
_____)	

ORDER TO SHOW CAUSE WHY ORDER TO
DISMISS OR ORDER OF SUMMARY DECISION
SHOULD NOT ISSUE

On March 5, 1991, the Office of Special Counsel received and accepted Complainant's charge against Respondent, Phoenix Motor Company, alleging that he was discriminated against by the Respondent based on his national origin. In a letter dated July 15, 1991, OSC informed Respondent that they had found no reasonable cause to believe that Complainant's charge was true and therefore, it was not going to file a complaint. Complainant, pursuant to his statutory rights, filed a complaint in his own behalf on September 9, 1991. 8 U.S.C. 1324b(d)(2).

As is the regular procedure, on September 11, 1991, a Notice Of Hearing On Complaint Regarding Unlawful Immigration-Related Employment Practices was issued by the Office of the Chief Administrative Hearing Officer which notified Respondent that a Complaint has been filed, that I had been assigned to the case and that Respondent was required to answer the Complaint within thirty (30) days of its receipt to avoid a default judgment being entered. Respondent, after being granted an extension of time for good cause shown, filed a timely Answer on November 18, 1991.

A pre-hearing telephonic conference was held on December 12, 1991 to discuss the case in general and to determine whether the parties would be represented by counsel. Respondent indicated that it would be pro se; Complainant indicated that he would try to engage counsel.

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Based on Complainant's assertion, I directed that his new counsel should file a Notice of Appearance by December 26, 1991.

I also indicated that, as Complainant had filed his Complaint based only on a charge of national origin discrimination, and that since it was ascertained, and undisputed, that at the time of the alleged discrimination, Respondent employed eighty-seven (87) employees, I did not have jurisdiction over the national origin discrimination claim. 8 U.S.C. 1324b(a)(2). Thus, I was required to dismiss the claim; the proper jurisdiction was with the Equal Employment Opportunity Commission (EEOC). See Suchta v. U.S. Postal Service, 2 OCAHO 327 (5/16/91).

However, I took into account the fact that Complainant was unrepresented and that the law is new, and followed the reasoning in Ryba v. Tempel Steel Company, 2 OCAHO 289 (1/23/91) and allowed Complainant the "widest ambit of administrative review" and considered his Complaint to be based on citizenship discrimination over which I do have jurisdiction. Id. at 10. But even with this additional ground, I informed the parties that Complainant had not set out any facts in his Complaint which showed citizenship discrimination. I told the parties that if Mr. Gonzalez did not establish a citizenship discrimination claim, the Respondent might wish to file a Motion to Dismiss or a Motion For Summary Decision.

On January 13, 1991, Respondent indicated to my office that he would be filing either a Motion To Dismiss or a Motion For Summary Decision. On February 10, 1992, Respondent again indicated that an appropriate motion would be forthcoming and would be filed no later than February 21, 1992.

However, Respondent did not file either a Motion to Dismiss or a Motion For Summary Judgment as it had represented nor had it requested an extension of time. In addition, Complainant did not engage counsel and did not submit any further documentation on his citizenship discrimination claim. Since both parties in this case were pro se, on February 25, 1992, I issued an Order in which I advised both parties that, in the interest of justice, I would be setting a hearing date for this case. On February 26, 1992, Respondent filed a Motion To Dismiss For Failure To State A Claim Or Alternatively For Summary Judgment. The Certificate of Service indicated that Complainant has been served with a copy.

Under our Rules of Practice and Procedure, the opposing party may respond to a motion within ten (10) days of its filing. 28 C.F.R.

68.11(b). At this time, pro se Complainant has not responded to Respondent's motion. Under the regulations, I have the authority to rule on and grant the Respondent's motion, which would terminate this case, if I find, either, that Complainant has failed to state a claim of citizenship discrimination upon which I can grant some relief or if I find that there is no genuine issue as to any material fact and that the Respondent is entitled to a summary decision as a matter of law. See 28 C.F.R. 68.10, 68.38(c).

This Court is sensitive to the fact that the Complainant is representing himself, and as such, I am issuing this Order. Thus, I am directing Complainant to review 28 C.F.R. 68. 10, 28 C.F.R. 68.11, and 28 C.F.R. 68.38, entitled Motion to dismiss for failure to state a claim upon which relief can be granted, Motions and requests, and Motion for summary decision, respectively (copies are attached to this Order), which set out the requirements for the Complainant's response to the Respondent's motion. Thus, Complainant is to submit to this Court, any sworn declarations, affidavits, letters, written statements or other evidence which will establish that there is, either, a citizenship discrimination claim or that there is a genuine issue of fact which is material to his discrimination claims, along with his response. Complainant is cautioned to follow the requirements for proper motion format and the requirement to serve all parties in this case with copies of his response.

In the event that I do not receive these documents from the Complainant on or before the close of business on April 3, 1992, I will consider granting the Respondent's Motion To Dismiss For Failure To State A Claim Or Alternatively For Summary Judgment. 28 C.F.R. 68.10, 68.38.

IT IS SO ORDERED this 11 day of March, 1992, at San Diego, California.

E. MILTON FROSBURG
Administrative Law Judge

Enc. 28 C.F.R. 68.10
28 C.F.R. 68.11
28 C.F.R. 68.38