

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

MARIA GUZMAN,)
Complainant,)
)
v.) 8 U.S.C. §1324b Proceeding
) CASE NO. 93B00030
GUARDIAN ELECTRIC MFG.,)
CO.,)
Respondent.)
_____)

FINAL ORDER DISMISSING
COMPLAINT FOR ABANDONMENT
(August 3, 1993)

Appearances:

For the Complainant
MARIA GUZMAN, Pro Se

For the Respondent
JOHN A. TATOOLES, Esquire

Before:

E. MILTON FROSBURG
Administrative Law Judge

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I. Introduction

In the Immigration Reform and Control Act of 1986 (IRCA), Pub.L. No. 99-603, 100 Stat. 3359 (November 6, 1986), Congress established a system to prevent the hiring of unauthorized aliens by significantly revising the policy on illegal immigration. As a complement to the employer sanctions provisions contained in section 101, section 102 of IRCA, Section 274B of the Act, prohibited discrimination by employers on the basis of national origin or citizenship status. Found at 8 U.S.C. §1324b, these antidiscrimination provisions were passed to provide relief for those employees, or potential employees, who are authorized to work in the United States, but who are discriminatorily treated because they are foreign citizens or of foreign descent. These protected individuals include United States citizens and nationals, permanent resident aliens, temporary resident aliens, refugees, and persons granted asylum who intend to become citizens.

Section 102 of IRCA authorizes a protected individual to file charges of national origin or citizenship discrimination with the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC). OSC can then file complaints with the Office of the Chief Administrative Hearing Officer (OCAHO) should it find reasonable cause to believe that such discrimination occurred. If, however, the OSC does not file such a charge within 120 days of receipt of the claim, the protected individual is authorized to file a claim directly with an Administrative Law Judge (ALJ), through OCAHO. 8 U.S.C. §§ 1324b(b)(1), 1324b(d)(2).

Accordingly, IRCA was enacted to provide for causes of action arising out of unfair immigration-related employment practices resulting in citizenship and/or national origin discrimination, while providing jurisdictional requirements based on the size of the employer's business in order to avoid overlap with Title VII claims. Specifically, Section 102 provides for claims of discrimination based upon national origin with respect to employers of more than three, but fewer than

fifteen employees, and also allows for causes of action based upon citizenship discrimination against all employers of more than three employees.

II. *Procedural History*

On December 9, 1992, Complainant, Maria Guzman, a Mexican national and an alleged alien authorized for employment in the United States since on or about January 1, 1984, filed a charge with the OSC in which she alleged that Respondent, Guardian Electric Mfg., Co., had discriminated against her based on, both, her national origin status and her citizenship status. In a letter dated February 1, 1993, OSC informed Complainant that, based on its investigation, it had determined that she was not a protected individual as defined in 8 U.S.C. 1324b and would not be filing a Complaint. Exercising her statutory right, on February 11, 1993, Complainant filed the instant Complaint alleging, again, that Respondent had discriminated against her based, both, on her national origin and her citizenship status. To the charges, she added the bold allegation that Respondent had intimidated her based on the fact that she had filed or had planned to file a complaint with this agency, in violation of 8 U.S.C. 1324b(a)(5).

In a Notice Of Hearing On Complaint Regarding Unlawful Immigration-Related Employment Practices, dated March 17, 1993, Respondent was notified of the filing of the Complaint, the opportunity to answer the Complaint within thirty (30) days after receipt of the Complaint, the possibility of a default judgment should it not answer the Complaint, my assignment to the case, and the location of the hearing as in or around Chicago, Illinois. Proper service of the Complaint on Respondent on March 22, 1993 is evidenced by a file copy of a properly signed and dated return receipt for certified mail. On March 29, 1993, I issued a Notice of Acknowledgment advising Respondent of my receipt of this case and cautioned Respondent that an Answer, pursuant to 28 C.F.R. part 68.9¹, must be filed within thirty (30) days of its receipt of the Complaint.

On April 19, 1993, Respondent filed its Answer to the Complaint. On May 7, 1993, I issued an Order Directing Procedures For Pre-Hearing and on June 4, 1993 issued an Order Directing Procedures for Pre-

¹ Citations are to the OCAHO Rules of Practice and Procedure for Administrative Hearings, 57 Fed. Reg. 57669 (1992) (to be codified at 28 C.F.R. part 68) (hereinafter cited as 28 C.F.R. section 68) 8 U.S.C. §1324a

Hearing Telephonic Conference pertaining to a prehearing telephonic conference scheduled for June 10, 1993.

On June 8, 1993, pro se Complainant's husband, Mr. Guzman, telephonically contacted this Court and represented to my staff that Complainant did not speak English, did not have access to an interpreter, believed that this Court would not treat her fairly as to dismiss the suit. Mr. Guzman was informed that this Court she was not wealthy, and that she was discouraged and wanted to dismiss the suit. Mr. Guzman was informed that this court would both, treat, and hear, Complainant's case fairly; however, under our regulations, we were not authorized to provide Complainant with an interpreter. 28 C.F.R. 68.34.

As I had already scheduled a prehearing telephonic conference that the Complainant had agreed to appear at, Mr. Guzman stated that she would still appear and would discuss her decision regarding dismissal with me. He further stated that Complainant would be filing a document with the Court addressing these issues shortly. However, Complainant did not appear for the prehearing telephonic conference on June 10, 1993, did not notify the Court prior to her nonappearance and has not filed the indicated document.

As Complainant was pro se, and unfamiliar with the Court system, and so that she would have every fair opportunity to present her case, I issued an Order on June 29, 1993, in which I directed Complainant to file a statement, on or before July 7, 1993, indicating whether she intended to proceed with this case or not and setting forth the time and telephone number at which she was available to speak with the Court. Complainant was warned that a nonresponse to the Order would be taken as her intention to abandon her case and that I would consider dismissing this case.

III. Discussion

Although Complainant is pro se, I find that her status is not the cause of her nonresponse to my Order of June 29, 1993. I base this belief on a review of the case file and her husband's contact with the Court staff. Under 28 C.F.R. 68.37(b)(1), I may find that a party has abandoned its complaint or request for hearing if such party has failed to respond to the Court's orders. Speakman v. The Rehabilitation Hospital of South Texas, 3 OCAHO 476 (12/1/92); United States of America v. McDonnell Douglas Corporation, OCAHO Case No. 90200363 (8/28/92); see also Arrieta v. Michigan Employment Security

Commission, OCAHO Case No. 92B00149 (11/10/92); Egal v. Sears Roebuck and Company, 3 OCAHO 442 (7/25/92) at 12 note 9.

In addition to the fact that Complainant was telephonically advised of the necessity of attending the prehearing telephonic conference, she received written warning of the possibility of dismissal should she not file the statement I requested regarding her intention to continue this case. I note that a review of the Court file reveals that no document served on Complainant by mail has been returned by the U.S. Postal Service since this case began and Complainant has not notified this Court of a change of address. Thus, I am satisfied that proper service of my Order of June 29, 1993 has been effected and that Complainant is aware of the consequences of a nonresponse.

As Complainant has not complied with my Order of June 29, 1993 and had sufficient access to this Court should there have been some problem with filing her response, I find that Complainant has abandoned her Complaint. 28 C.F.R. 68.37(b)(1). On this basis alone, I may, and do, dismiss this case.

For Complainant's benefit, I note that her national origin discrimination claim may have been susceptible to dismissal based on the fact that Respondent employed more than 15 individuals and that her citizenship discrimination claim may have been susceptible to dismissal based on the fact that she does not meet the definition of a protected individual as set forth in 8 U.S.C. 1324b. However, as I have found that Complainant has abandoned her claim, I need not look into those matters. Further, I need not address the claim of retaliation on the same basis.

This Decision and Order is the final decision and order of the Attorney General. Pursuant to 8 U.S.C. 1324b(i) and 28 C.F.R. 68.53(b), any person aggrieved by this final Order may, within sixty (60) days after entry of the Order, seek its review in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred, or in which the Respondent transacts business.

IT IS SO ORDERED this 3rd day of August, 1993, at San Diego, California.

E. MILTON FROSBURG
Administrative Law Judge