

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

November 17, 2016

RICARDO FARHARD GAMEZ CALTZONCIN,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 16B00018
)	
GSM INSURORS-GLASS, SORENSON &)	
McDAVID)	
Respondent.)	
_____)	

FINAL ORDER OF DISMISSAL

I. PROCEDURAL HISTORY

This matter arises under the antidiscrimination provisions of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324b (2012). On February 1, 2016, Complainant, Ricardo Farhard Gamez Caltzoncin, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO), alleging that Respondent, GSM Insurors-Glass, Sorenson & McDavid (GSM Insurors), terminated him on account of his citizenship status and national origin, thereby violating 8 U.S.C. § 1324b(a)(1).¹ Mr. Caltzoncin also alleges that GSM Insurors committed document abuse, in violation of 8 U.S.C. § 1324b(a)(6). Mr. Caltzoncin is unrepresented in these proceedings.

GSM Insurors filed an answer to the complaint on March 15, 2016. Respondent also filed a Motion to Dismiss Certain of Complainant’s Claims for Lack of Subject Matter Jurisdiction and Alternatively, for Failure to State a Claim Upon Which Relief May Be Granted. On June 28, 2016, Administrative Law Judge Robert Lesnick, who previously presided over this case, granted in part Respondent’s Motion to Dismiss the portions of Mr. Caltzoncin’s complaint alleging “breach of contract,” “work hostility,” “severance agreements,” “manipulation” and “Fair Labor Standards Act and overtime,” *see* Complaint at 5, for lack of subject matter

¹ According to Respondent’s answer, its correct legal name is Glass, Sorenson & McDavid, Inc. d/b/a GSM Insurors; however, no motion was filed to amend the case caption.

jurisdiction. *See Molina v. Securitas Sec. Servs. USA, Inc.*, 11 OCAHO no. 1261, 3 (2015) (referencing 8 U.S.C. § 1324b).² Mr. Caltzoncin was also ordered to show cause: (1) why his citizenship status discrimination claim should not be dismissed because the complaint did not indicate that he is a statutorily required “protected individual,” and (2) why his national origin discrimination claim should not be dismissed because he stated in his complaint that GSM Insurors employed fifteen or more employees, which would render the claim subject to the jurisdiction of the Equal Employment Opportunity Commission. Mr. Caltzoncin failed to respond to this Notice and Order to Show Cause.

Accordingly, on September 9, 2016, Judge Lesnick dismissed Mr. Caltzoncin’s citizenship status and national origin discrimination claims on the grounds of abandonment and failure to state a claim upon which relief may be granted. *See Caltzoncin v. GSM Insurors-Glass, Sorenson & McDavid*, 12 OCAHO no. 1287 (2016). Mr. Caltzoncin’s remaining claim of document abuse was not dismissed.

On August 23, 2016, Judge Lesnick issued an Order for Prehearing Statements, directing Mr. Caltzoncin to file his prehearing statement no later than September 16, 2016, and GSM Insurors to file its prehearing statement no later than October 6, 2016. Complainant did not file his prehearing statement. On September 26, 2016, GSM Insurors filed a Motion to Dismiss Complainant’s Remaining Cause of Action for Abandonment, or Alternative Motion to Extend Respondent’s Deadline to File Prehearing Statements and Initial Disclosures. Respondent also filed a Motion to Compel Complainant to Respond to GSM Insuror’s Discovery Request and to Sign and Return Authorization for Release of Underlying Department of Justice Charge File. According to GSM Insurors, Mr. Caltzoncin has not responded to its phone calls, letters, or requests for discovery. *See Respondent’s Motion to Dismiss Complainant’s Remaining Cause of Action for Abandonment at 2-3.*

On October 14, 2016, Judge Lesnick issued a Notice and Order directing Mr. Caltzoncin to show cause why his claim of document abuse should not be deemed abandoned, and to file a prehearing statement that comports with 28 C.F.R. § 68.12, no later than October 31, 2016.

² 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 been 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>.

GSM was also granted an extension of time until November 15, 2016, to file its prehearing statement. The Notice and Order to Show Cause advised Mr. Caltzoncin that a failure to respond could result in dismissal. Mr. Caltzoncin has not filed any response.

II. DISCUSSION

OCAHO rules provide that a complaint may be dismissed upon its abandonment by the party who filed it, and that a party shall be deemed to have abandoned the complaint where the party or his representative fails to respond to orders issued by the Administrative Law Judge. 28 C.F.R. § 68.37(b)(1); *see, e.g., Rodriguez v. Tyson Foods, Inc.*, 9 OCAHO no. 1109, 3-4 (2004). Mr. Caltzoncin has failed to comply with the two Notices and Orders to Show Cause issued by this tribunal, including the most recent Order on October 14, 2016. In addition, since filing the complaint in February 2016, Mr. Caltzoncin has done nothing in furtherance of pursuing his complaint, including failing to respond to any of GSM Insurors' inquiries. He has not submitted any kind of written communication with this office to indicate that he intends to comply with the prior Orders or that he intends to continue with his complaint. In short, Mr. Caltzoncin's non-responsiveness indicates a clear abandonment of his complaint that warrants dismissal.

In its answer to Mr. Caltzoncin's complaint, Respondent requested attorneys' fees. Answer at 4-5. The statute governing this case provides that an award of reasonable attorney's fees may be made "if the losing party's argument is without reasonable foundation in law and fact." 8 U.S.C. § 1324b(h) (2012). OCAHO practice follows the standard set out in *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412 (1978) for attorney's fees in cases arising under Title VII, *see, e.g., Trivedi v. Northrup Corp.*, 4 OCAHO no. 600, 103, 124-25 (1994), and awards fees to prevailing respondents only when the complainant's argument is actually found to be without reasonable foundation in law or fact. *Christiansburg*, 434 U.S. at 420-21; *see also Breda v. Kindred Braintree Hosp., LLC*, 11 OCAHO no. 1225, 2 (2014). Prior OCAHO precedent has found attorneys' fees unwarranted in a case also involving the dismissal of a *pro se* complaint due to abandonment when the initial "complaint may be understood to state a § 1324b cause of action" and "[i]t may be speculated that [the *pro se* complainant] possessed standing to allege a prima facie case lost by failure to comply with orders of the bench." *Gallegos v. Magna-View, Inc.*, 4 OCAHO no. 628, 362-63 (1994). The instant case is not materially dissimilar from the posture of the case under consideration in *Gallegos*—at least regarding the claimant's document abuse claim—and the record reflects no basis for a deviation in the current case from the conclusion in that case. Thus, an award of attorneys' fees is unwarranted for the same reasons given in *Gallegos*.

Viewing the case in its totality, Mr. Caltzoncin has simply abandoned his complaint, and dismissal is warranted pursuant to 28 C.F.R. § 68.37(b)(1). Accordingly, Mr. Caltzoncin's complaint is dismissed. Respondent's request for attorneys' fees is denied. All pending motions are denied as moot.

SO ORDERED.

Dated and entered on November 17, 2016.

James R. McHenry III
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.