

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

ALI TALEBINEJAD,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2023B00002
)	
MASSACHUSETTS INSTITUTE OF)	
TECHNOLOGY,)	
Respondent.)	
)	

Appearances: John McGivney, Esq. and David B. Stanhill, Esq., for Complainant
Antonio Moriello, Esq., Leon Rodriguez, Esq., and Edward North, Esq., for Respondent

ORDER ISSUING STAY OF PROCEEDINGS

I. BACKGROUND

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. On October 13, 2022, Complainant Ali Talebinejad filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) asserting claims of discrimination and retaliation arising under 8 U.S.C. § 1324b against Respondent Massachusetts Institute of Technology (MIT). Respondent filed its answer on December 28, 2022.

On January 23, 2023, Respondent filed a Motion to Stay Discovery Pending Resolution of Motion to Dismiss (Stay Motion I). Respondent moved for a stay of discovery pending resolution of its Motion to Dismiss, asserting that its motion identifies “several likely dispositive deficiencies in the Complaint.” *See* Stay Mot. ¶¶ 5, 7. Complainant opposed this motion.

On February 8, 2023, Respondent filed a Motion to Dismiss. Complainant filed an opposition on March 9, 2023, Respondent filed a reply on March 23, 2023, and Complainant filed a Motion for Leave to File Sur-Reply on May 1, 2023.

On October 2, 2023 Respondent filed a Motion for Stay of Proceedings (Stay Motion II) in light of the Supreme Court’s decision in United States v. Arthrex, Inc., 141 S. Ct. 1970, 1986 (2021). Complainant filed an opposition to this motion on October 3, 2023, and Respondent filed a Motion for Leave to File a Reply Memorandum on October 10, 2023.

October 24, 2023, the parties filed a Joint Motion for Referral to a Settlement Officer for Mediation and to Extend All Case Deadlines by 90 Days.

II. DISCUSSION

A. Motion for Leave to File Reply

As a threshold matter, the Court must determine whether to grant Respondent's request for leave to file a reply in support of Stay Motion II. "OCAHO's Rules of Practice and Procedure for Administrative Hearings do not allow parties to file replies or sur-replies unless the Court provides otherwise." United States v. Space Exploration Techs. Corp., 18 OCAHO no. 1499a, 3 (2023) (citing 28 C.F.R. § 68.11(b)).¹ "A party must seek leave of Court before filing a reply . . . and the decision whether to allow a reply or sur-reply 'is solely within the judge's discretion.'" Id. (citing Hsieh v. PMC-Sierra, Inc., 9 OCAHO no. 1093, 7 (2003), and then citing Diaz v. Pac. Mar. Assoc., 9 OCAHO no. 1108, 3 (2004)).

The Court will exercise its discretion under 28 C.F.R. § 68.11(g)² and grant Respondent's October 10, 2023 Motion for Leave to File a Reply Memorandum. Complainant has not opposed Respondent's request for file a reply, and the attached Reply addresses arguments raised by Complainant in his opposition briefing. As such, the Reply will assist to develop the record before the Court. *See, e.g.*, Sharma v. NVIDIA Corp., 17 OCAHO no. 1450j, 4 (2023) (granting leave to file sur-reply "[i]n the interest of developing the record"); Heath v. ASTA CRS, Inc., 14 OCAHO no. 1385b, 2 (2021) (granting leave to file reply where "the information in the Reply is essential to determining the exact nature of the dispute between the parties").

Respondent's October 10, 2023 Motion for Leave to File a Reply Memorandum is GRANTED.

B. Stay of Proceedings

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 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 "FIMOCAHO," or in the LexisNexis database "OCAHO," or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

² OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

In Stay Motion II, Respondent requests that the Court stay proceedings in this matter “until such time as this Court gains the constitutional authority to issue final orders on dispositive motions.” Stay Mot. II 1. Respondent argues that the Supreme Court’s decision in Arthrex, Inc. “operated to prohibit OCAHO, under its current structure, from issuing dispositive motions,” as OCAHO ALJ’s are “inferior officers” and whose decisions are “not reviewable by a principal officer appointed by the president under the Appointments Clause of the Constitution.” Mem. of Points & Auths. in Support of Stay Mot. II 4–5.

On October 12, 2023, the Department of Justice published an interim final rule providing for review of OCAHO Administrative Law Judge (ALJ) final orders in cases arising under 28 U.S.C. § 1324b by the Attorney General. *See* Office of the Chief Administrative Hearing Officer, Review Procedures, 88 Fed. Reg. 70586 (Oct. 12, 2023) (to be codified at 28 C.F.R. pt. 68). The regulation resolves any potential tension between the status of ALJs as “inferior officers” and the availability of further administrative review of ALJ decisions in cases arising under 8 U.S.C. § 1324b in light of Arthrex, Inc. *See* A.S. v. Amazon Web Servs., 14 OCAHO no. 1381h, 2 n.4 (2021). Accordingly, Stay Motion II is DENIED as moot.

However, in Stay Motion I, Respondent moves for a stay of discovery on different grounds; it argues that its Motion to Dismiss identifies “several likely dispositive deficiencies in the Complaint” and it therefore seeks to halt proceedings until entry of an order on the motion. *See* Stay Mot. I ¶¶ 5, 7. Complainant responds that Respondent has not met its burden of showing that “good cause” exists for a stay of discovery. C’s Opp’n ¶ 2.

OCAHO’s Rules of Practice and Procedure do not provide for stays of discovery upon the filing of a motion to dismiss. Under First Circuit case law,³ a stay of discovery is treated as “akin to a protective order under Fed. R. Civ. P. 26(c)(1).” Dicenzo v. Mass. Dep’t of Corr., 15-cv-30152, 2016 WL 158505, at *1, 2016 U.S. Dist. LEXIS 4166, at *4 (D. Mass. Jan. 13, 2016). Under OCAHO regulations, the Administrative Law Judge (ALJ) has discretion to issue a protective order “to protect a party or person from annoyance, harassment, embarrassment, oppression, or undue burden or expense” if the moving party demonstrates “good cause.” 28 C.F.R. § 68.18(c); *see also* United States v. Emp. Sols. Staffing Grp. II, LLC, 11 OCAHO no. 1234, 4 (2014) (“[T]he party seeking the protective order has the burden of showing that good cause actually exists.”).

At this juncture, the Court finds that the pendency of the Motion to Dismiss constitutes good cause to stay proceedings, including discovery, until the Court issues a ruling on the pending Motion to Dismiss. The Court is currently reviewing the parties’ briefing on the pending Motion to Dismiss, with a decision forthcoming shortly. As such, a stay of proceedings pending resolution

³ Since the allegations at issue in this case occurred in Massachusetts, the Court may look to the case law of the relevant United States Court of Appeals, here the First Circuit. *See* 28 C.F.R. § 68.57.

of the Motion to Dismiss would alleviate the parties' concerns regarding extending the case schedule, as well as Respondent's concerns regarding the burden of continuing discovery while the Motion to Dismiss is under review. *See, e.g., Zajradhara v. E-Supply Enters.*, 16 OCAHO no. 1438b, 5 (2022) (staying discovery beyond permitted jurisdictional discovery in light of a pending motion to dismiss challenging the Court's subject matter jurisdiction and two pending discovery motions); *Lardy v. United Airlines, Inc.*, 3 OCAHO no. 450, 555, 558–73 (1992) (lifting a stay of discovery as to "relevant information outside the pleadings [necessary for] Complainants to adequately respond to any or all of the Respondent's reasons for seeking a dismissal of the Complaint").

Respondent's January 23, 2023, Motion to Stay Discovery Pending Resolution of Motion to Dismiss is GRANTED. Proceedings, including case deadlines and discovery, are STAYED in this matter until the Court issues a decision on Respondent's February 8, 2023 Motion to Dismiss.

Given the Court's decision to stay proceedings until it issues an order on Respondent's Motion to Dismiss, the Court will hold the parties' joint requests for referral to OCAHO's Settlement Officer Program and for an extension of the case schedule in abeyance, and will rule on these requests in due course following a ruling on the Motion to Dismiss.

SO ORDERED.

Dated and entered on November 17, 2023.

Honorable John A. Henderson
Administrative Law Judge