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

April 30, 1991

JORGE M. IPINA, Complainant,	)	
v.	)	8 U.S.C. 1324b Proceeding OCAHO Case No. 90200349
MICHIGAN DEPARTMENT OF LABOR, Respondent	)	

ORDER DENYING MOTION TO ENTER JUDGMENT BY DEFAULT

On November 23, 1990, Mr. Jorge Ipina (Complainant) filed a complaint against the Michigan Department of Labor (Respondent), alleging therein violations of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99-603, 100 Stat. 3359. Specifically, Complainant alleges that Respondent engaged in an unfair immigration related employment practice by discriminating against him based upon his citizenship status, a practice proscribed by the provisions of 8 U.S.C. § 1324b(a)(1)(B).

On January 24, 1991, this office served a copy of that complaint upon Respondent in Lansing, Michigan. Under the pertinent procedural rules, Respondent had thirty (30) days following service of the complaint, or until February 25, 1991, to have filed its answer with the undersigned. 28 C.F.R. § 68.8(a). Those rules also provide that should Respondent fail to file an answer within the time provided, the administrative law judge may enter a judgment by default. 28 C.F.R. § 68.8(b).

On February 4, 1991, Complainant filed a Motion to Amend, in which he requested that his complaint be amended by adding an additional alleged unfair immigration related employment practice, that of

national origin discrimination, to the previously pleaded ground of citizenship status discrimination.

On February 19, 1991, Complainant's Motion to Amend was granted.

On February 28, 1991, because Respondent had not filed its answer to the November 23, 1990 complaint, Complainant filed a Motion to Enter Judgment by Default.

On March 6, 1991, Respondent faxed to the undersigned a copy of its Answer in Opposition to Motion for Entry of Judgment by Default, with accompanying correspondence in which it denied Complainant's allegations and stated that a misdelivery of the mail had resulted in its answer having been untimely filed. In addition, Respondent argued that the issuance of the order amending the complaint of February 19, 1991 gave Respondent an additional 30 days, or until March 21, 1991, to file its answer to Complainant's amended complaint.

On March 12, 1991, Respondent's answer to Complainant's initiating complaint was filed.

On March 29, 1991, Complainant filed a pleading entitled Motion to Disregard Respondent's "Answer in Opposition to Motion for Entry of Judgment by Default" and "Answer to the Complaint as Amended". In that motion, Complainant urges that Respondent's pleadings of March 6, 1991, be ignored because Respondent: (1) did not comply with the pertinent regulations regarding forms of pleadings, those codified at 28 C.F.R. § 68.6; (2) did not send copies of its answer to all parties concerned in the course of filing that responsive pleading; and (3) did not submit its answer within the required time period. Complainant claims that none of Respondent's explanations for its delayed pleading are valid.

The initial inquiry to be addressed is that of determining whether the issuance of the February 19, 1991 order extended the time within which Respondent had to file its original answer. Respondent appears to believe that the entry of the order amending the complaint started anew the 30-day time period within which to file its answer. It does not, since the fact that the complaint was amended does not affect Respondent's initial obligation of filing a timely response to the original complaint which was served upon Respondent on January 24, 1991. See e.g. U.S. v. Rodriguez, OCAHO Case No. 88100021 (June 27, 1988) (distinguishing answers to original and amended complaints).

In situations not provided for or controlled by the pertinent procedural rules, those set forth at 28 C.F.R. § 68 et seq., the Federal Rules of Civil Procedure provide guidance and support the proposition that the filing of an amended complaint does not extend the time period within which to file an answer to the original complaint. 28 C.F.R. 68.1; Fed. R. Civ. P. 15(a). Rule 15 states that "a party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer . . . ." This comports with the rules of this office regarding responses to motions, whereby parties are given 10 days to respond, plus an additional five days if such service is by mail. 28 C.F.R. §§ 68.7(c)(2), 68.9(b).

Accordingly, Respondent had until February 25, 1991, to respond to the amended complaint, that is, the time remaining to respond to the original pleading, or until March 6, 1991, that is, 10 days after service of the order amending the complaint, plus five days for service by mail. Under these facts, Respondent had until March 6, 1991, the latter of the two dates, in which to file an answer to the amended pleading.

The issuance of the February 19, 1991, order granting Complainant's motion to amend, however, did not alter the date upon which Respondent had to respond to the original Complaint. Therefore, Respondent untimely filed its answer to the original complaint, and a judgment by default may be entered. 28 C.F.R. § 68.8.

The federal courts have consistently held that default judgments are generally not favored, and any doubts are to be resolved in favor of a trial on the merits. Berthelsen v. Kane, 907 F.2d 617, 620 (6th Cir. 1990); United Coin Meter Co. v. Seaboard Coastline Railroad, 705 F.2d 839, 845 (6th Cir. 1983). OCAHO decisions on this subject have affirmed this principle. U.S. v. DuBois Farms, OCAHO Case No. 90100179 (Aug. 29, 1990); U.S. v. Shine Auto Service, OCAHO Case No. 89100180 (10/11/89); aff'd by CAHO (11/8/89); U.S. v. Tiki Pools, OCAHO Case No. 89100250 (8/1/89) (quoting Davis v. Parkhill-Goodloe Co., 302 F.2d 489 (5th Cir. 1962)).

It has also been held that where the delay is minimal, and in the absence of a showing of a pattern of disregard for court orders or rules, there is a strong policy in favor of deciding cases on the merits rather than resorting to the extreme remedy of entering default judgments, especially in those instances, as here, in which the inconvenience experienced by the court or the plaintiff is slight. Shepard Claims Service v. William Darrah & Associates, 796 F.2d 190, 194 (6th Cir.

1986); INVST Financial Group v. Chem-Nuclear Systems, 815 F.2d 391, 398 (6th Cir), cert. denied, 484 U.S. 927 (1987); cf. 705 F.2d at 845 (enumerating the three factors to weigh in setting aside default as "(1) [w]hether the plaintiff will be prejudiced; (2) [w]hether the defendant has a meritorious defense; and (3) [w]hether culpable conduct of the defendant led to the default," (quoting Feliciano v. Reliant Tooling Co., 691 F.2d 653, 656 (3d Cir. 1982))); U.S. v. DuBois Farms (applying three factor test).

The pertinent Departmental rulings hold that only upon good cause shown will the entry of default judgment be prevented where the respondent has failed to file a timely answer. U.S. v. Shine Auto Service, OCAHO Case No. 89100180 (June 16, 1989) (Order Denying Default); vacated by CAHO (July 14, 1989) at 3. See also U.S. v. DuBois Farms at 2 (applying good cause standard).

The issue here, therefore, is whether Respondent has shown the requisite good cause for filing a late answer, and whether the delay has been shown to have been willful or prejudicial to Complainant.

In its cover letter, Respondent advised that it did not receive the complaint until February 26, 1991, one day after its answer was due, and that such delay was occasioned by the misdelivery of mail. It is noted that the address to which the complaint was mailed and signed for, although directed to the Michigan Department of Labor, was incorrect. This office mailed the complaint to an office in Lansing, Michigan, whereas the office from which Respondent mailed its answer is located in Detroit namely, the Michigan Employment Security Commission (MESC) of the Michigan Department of Labor. Upon closer examination of the complaint, that address does appear on page 2 where Complainant cites the location of the position for which he applied. The caption, however, cites the Michigan Department of Labor in Lansing and is understandably misleading.

Complainant argues, however, that misdirection of the mail is no excuse for delay. According to Complainant, the State of Michigan Executive Order 1986-7, transferred all MESC administrative functions to the Director of the Michigan Department of Labor. Despite this transfer of functions, the fact remains that the MESC office in Detroit is responsible for this matter and, as such, the complaint should have been so addressed. Based upon all attendant circumstances, I find that Respondent has demonstrated the requisite good cause for its delay.

Respondent has submitted its answer to the complaint, albeit untimely, and has provided an explanation that appears credible when viewed in its entirety. Complainant has provided no evidence that Respondent has acted in bad faith, nor has he shown that he has been prejudiced by the late filing of Respondent's responsive pleading.

In view of the foregoing, Complainant's Motion to Enter Judgment by Default is hereby ordered to be and is denied.

JOSEPH E. MCGUIRE
Administrative Law Judge