

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

IN RE CHARGE OF)	
KATALIN BALAZS-KILGORE)	
)	
UNITED STATES OF)	
AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. §1324b Proceeding
)	Case No. 93B00109
AUBURN UNIVERSITY,)	
Respondent.)	
_____)	

THIRD PREHEARING CONFERENCE REPORT AND ORDER

(January 26, 1994)

The third prehearing conference was held on Tuesday, January 25, 1994 as previously scheduled.

The conference focused principally on the subsisting question whether Katalin Balazs-Kilgore (Balazs) satisfied the statutory condition precedent to this suit by timely filing of her charge with the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC). Timeliness of the charge has been in dispute from the outset, subsidiary to the question when the cause of action for failure to hire accrued. The date of filing the charge, recited in the complaint as October 26, 1992, instead is said to have been October 21, 1992 according to OSC's memorandum in opposition to Respondent's motion to dismiss. The exchange of memoranda on the issue of timeliness left the date of filing both in dispute and obscure. At the conference, OSC advises for the first time that the dispute as to the date of filing can be resolved by the postmarked envelope which it undertakes was the wrapper in which Balazs effected her filing by mailing same to OSC on

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October 21, 1992. The pertinent OSC regulation, the effect of which is presumptively binding on this case, provides that

For purposes of determining when a charge is timely filed under this paragraph, a charge mailed to the Special Counsel shall be deemed filed on the date it is postmarked.

28 C.F.R. §44.300(b).

The date of filing the charge may be critical to resolution of the pending motion. Accordingly, OSC may file its documentary materials and argument in support, together with an appropriate motion to amend the complaint, not later than Friday, January 28, 1994. A response will be timely if filed by Respondent not later than Friday, February 11, 1994.

Respondent addressed outstanding discovery requests. It is agreed that OSC will undertake to obtain from Balazs all documents relating to the relevant applications by Balazs for employment by Respondent, and responses to such applications, including any correspondence, notes, memoranda, logs, etc. Any materials so adduced will be provided to Respondent through OSC, and not directly by Balazs to Respondent. OSC will be expected to memorialize and document the results of that effort. During discussion, it was clarified that footnote references in OSC's response to the motion to dismiss, and in its memorandum on timeliness, should be understood to involve OSC's investigation and not discovery in its usual sense.

As agreed, the next prehearing conference is scheduled for Tuesday, March 8, 1994, at 10:00 a.m. EST, unless my office advises otherwise within a few days, substituting Tuesday, March 15, 1994, at 10:00 a.m., EST.

SO ORDERED. Dated and entered this 26th day of January, 1994.

MARVIN H. MORSE
Administrative Law Judge