

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

April 7, 1994

BENJAMIN A. K. YOHAN,)
Complainant,)
)
v.) 8 U.S.C. 1324b Proceeding
) OCAHO Case No. 93B00048
CENTRAL STATE HOSPITAL,)
Respondent.)
_____)

ORDER DISMISSING COMPLAINT

On August 8, 1993, respondent filed a Notice of Deposition, advising therein that complainant's deposition was to be taken on September 10, 1993 in Milledgeville, Georgia.

On August 31, 1993, respondent's counsel filed another Notice of Deposition rescheduling that deposition for September 9, 1993.

On September 13, 1993, respondent filed a Motion to Compel Deposition of Complainant, asserting therein that complainant had indicated to respondent that he could not attend the scheduled deposition, and further asserting that complainant sought to postpone the September 9, 1993 deposition until he was able to secure legal representation. Respondent requested in its motion that the undersigned order complainant to attend a deposition to have been rescheduled after October 10, 1993.

On September 16, 1993, complainant advised our office by letter that, because of his inability to retain counsel and because of previously scheduled interviews, he would not be able to attend the September 9, 1993 deposition.

On September 27, 1993, the undersigned held a telephonic prehearing conference with the parties. In the course of that conference, complainant agreed to appear for a deposition to be taken at 1:00 p.m. on Monday, October 25, 1993, in Milledgeville, Georgia.

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On October 13, 1993, complainant filed a letter with the undersigned, requesting that his deposition be postponed for a month or until the earliest mutually convenient date.

On October 25, 1993, respondent agreed by letter to postpone complainant's deposition, as requested.

On January 25, 1994, respondent noticed complainant that his deposition was to be taken on February 4, 1994 at Central State Hospital, Legal Services Office, in Milledgeville, Georgia.

On February 2, 1994, the undersigned held another telephonic prehearing conference in this matter with the parties, in the course of which complainant stated that he felt uncomfortable at respondent institution and requested that his deposition be rescheduled to be taken in Macon, Georgia, instead.

Complainant's request that his deposition be taken in Macon, Georgia was granted. The parties agreed to schedule that deposition on a date and time most convenient to, and selected by, complainant.

Complainant was further advised that in the event he failed to appear for that deposition in Macon, Georgia, his Complaint would be ordered to be dismissed for abandonment. These terms were memorialized in a Prehearing Conference Report and Order issued by the undersigned on February 2, 1994.

On February 14, 1994, respondent filed with this Office a copy of a letter dated February 4, 1994 that respondent had served on complainant, indicating that complainant's deposition was scheduled to commence at 2:00 p.m. on February 24, 1994, and was to be conducted at the law firm of Chambliss, Higdon & Carson, located at 577 Walnut Street, Suite 200, Macon, Georgia. That letter indicated that complainant had agreed to the aforementioned time, date, and location for the taking of his deposition.

On April 4, 1994, respondent's counsel filed a letter with this Office, indicating therein that complainant failed to appear at his deposition, and failed to contact respondent's counsel or her office to notify respondent's counsel of his inability to attend as scheduled.

Attached to this letter was a copy of the transcript from complainant's attempted deposition, which discloses that respondent's counsel went on record as stating that, although the deposition commenced as

scheduled, and although respondent's counsel, its representative, and a court reporter waited for complainant for an hour, complainant failed to appear, or to contact the law offices where the deposition was scheduled or respondent's counsel's office to explain his absence.

The regulation governing the failure of a party to participate in proceedings before this Office provides, in pertinent part:

A complaint... may be dismissed upon its abandonment by the party or parties who filed it. A party shall be deemed to have abandoned a complaint... if:

- (1) A party or his or her representative fails to respond to orders issued by the Administrative Law Judge.

28 C.F.R. §68.37(b).

Complainant's failure to appear for his deposition as ordered in the February 2, 1994 Prehearing Conference Report and Order supports a finding that complainant has abandoned his Complaint. See Speakman v. The Rehabilitation Hospital of South Texas, 3 OCAHO 476, at 4 (12/1/92).

Accordingly, complainant's March 5, 1993 Complaint is hereby ordered to be and is dismissed, with prejudice to refiling.

JOSEPH E. MCGUIRE
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 seeks a timely review of this 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 this Order.