

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

JULIAN SAHAGUN,)
Complainant,)
)
v.) 8 U.S.C. § 1324b Proceeding
) OCAHO Case No. 95B00079
BEND-PACK, INC.,)
Respondent.)
_____)

FINAL DECISION AND ORDER
(October 23, 1995)

MARVIN H. MORSE, Administrative Law Judge

Appearances: Julian Sahagun, pro se
Sandy K. Rathbun, Esq.,
for Respondent

I. Procedural History

On May 2, 1995, Julian Sahagun (Sahagun or Complainant) filed a Complaint against Bend-Pack, Inc. (Bend-Pack or Respondent), alleging citizenship status discrimination in violation of section 102 of the Immigration Reform and Control Act (IRCA), as amended, 8 U.S.C. § 1324b. Sahagun filed his Complaint in the Office of the Chief Administrative Hearing Officer (OCAHO).

Specifically, Complainant, a Mexican national who claims to be a permanent legal resident, alleges that he was fired on June 6, 1994 after being told by the manager that his "papers were no good." Complaint at 4.

On May 12, 1995, OCAHO issued a Notice of Hearing which transmitted a copy of the Complaint to Respondent and warned both parties that "[a]ny such proceedings or appearances will be conducted in

accordance with Department of Justice regulations, appearing at 28 C.F.R. Part 68 . . . , a copy of which is attached for your convenience."

On June 29, 1995, Bend-Pack filed its Answer to the Complaint which "admits that it terminated Complainant's employment . . . because Complainant had walked off the job." Answer at 3. Bend-Pack "admits that, based on information from the Immigration and Naturalization Service, some Bend-Pak [sic] employees were advised that they must provide appropriate work authorization documentation before they could continue working, but denies that Complainant . . . [was] terminated because of any reason related to . . . [his] work authorization documentation." Id.

On August 9, 1995, I issued an Order of Inquiry, requesting both parties to respond to the following questions:

- (1) whether Complainant complied with § 1324b's requirement that a party be a "protected individual" by timely filing for naturalization following obtainment of permanent resident alien status;
- (2) and whether Complainant filed his charge with the Office of Special Counsel (OSC) within 180 days of the alleged unfair immigration-related employment practice as required by 8 U.S.C. § 1324b(d)(3).

In addition, the Order of Inquiry cautioned the parties that failure to file a response to these questions may result in a ruling adverse to that party.

On August 28, 1995, Bend-Pack filed its Response to the Order of Inquiry. Complainant, however, failed to file a response. Consequently, on September 26, 1995, I issued an Order providing Complainant another opportunity to respond to the questions as set out in the Order of Inquiry. The Order specifically cautioned Complainant that failure to file a response to the questions will result in dismissal of the Complaint.

Complainant's Response to the September 26 Order, filed October 10, 1995, consists of one handwritten sheet of paper with a photo copy of Sahagun's permanent resident alien card on the top of the page. He writes: "I applied for my legal temporary resident status on April 4, 1988 . . . and I became a permanent resident until Dec 01, 1990 in L.A. Therefore I need to wait until Dec, 1995 to become eligible for the

citizenship."¹ No information was provided by Complainant with regard to the question pertaining to whether the charge with OSC was timely filed.

II. *Discussion*

The result of Sahagun's failure to respond to the question whether the charge, and consequently the Complaint, was timely filed is that I am uninformed whether he complied with the jurisdictional statute of limitations requirement set forth in § 1324b. See 8 U.S.C. § 1324b(d)(3). OCAHO rules of practice and procedure provide that, where a party fails to respond to the order of the administrative law judge, the judge may take one or another of certain specified actions "for the purposes of permitting resolution of the relevant issues and disposition of the proceeding and to avoid unnecessary delay. . . ." 28 C.F.R. § 68.23(c). In accordance with § 68.23(c), failure by Sahagun to comply with my Orders, not once but twice, invites me to conclude that his response would have been adverse to him. See 28 C.F.R. § 68.23(c)(1). According to his Complaint, Sahagun was fired on June 6, 1994 but did not file his OSC charge until February 7, 1995, more than 180 days past the date on which the alleged unfair immigration-related employment practice supposedly occurred, i.e., the day on which he was fired. Therefore, I find that Sahagun failed timely to file his charge with OSC. Accordingly, I lack jurisdiction over this Complaint and it is hereby dismissed.

SO ORDERED.

Dated and entered this 23rd day of October, 1995.

MARVIN H. MORSE
Administrative Law Judge

¹ As there is no evidence that this document was served on opposing counsel, a copy is attached to this Order for Respondent. See 28 C.F.R. § 68.6.