

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

ROBERT PAUL HEATH,	)	
Complainant,	)	
	)	8 U.S.C. § 1324b Proceeding
v.	)	
	)	OCAHO Case No. 2021B00060
I-SERVICES, INC.,	)	
Respondent.	)	
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Appearances: Robert Heath, *pro se*, for Complainant  
Murali Ghanta, *pro se*, for Respondent

ORDER

I. BACKGROUND

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act, 8 U.S.C. § 1324b, as amended by the Immigration Reform and Control Act (IRCA) of 1986. On September 22, 2021, Complainant, Robert Heath, filed a *pro se* complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). On September 27, 2021, OCAHO sent Respondent a Notice of Case Assignment Alleging Unlawful Employment (NOCA) and a copy of the complaint via U.S. certified mail.<sup>1</sup>

On December 3, 2021, the Court issued an Order to Show Cause. The Court denied Respondent's "Motion for an Extension of Time to Respond to the Complaint,"<sup>2</sup> and ordered Respondent to file an answer and to demonstrate good cause for its failure to timely file an answer. On December 17, 2021, Respondent filed a "Response to Show Cause Notice"<sup>3</sup> that did not include an answer.

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<sup>1</sup> Pursuant to OCAHO's Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2020), the NOCA informed Respondent of its obligation to file an answer and the possible consequences if it did not.

<sup>2</sup> Respondent submitted the extension request via facsimile on November 5, 2021. Respondent's November 5, 2021, submission did not include an answer.

<sup>3</sup> In its most recent submission, Respondent describes its December 17, 2021 filing as "rejected, as the case was assigned to a new judge[.]" The Court did not reject Respondent's "Response to Show Cause Notice." Rather, Respondent's failure to include an answer with the December 17, 2021, filing gave rise to the Court's Order to Comply with Show Cause Order.

On January 14, 2022, the Court issued an Order to Comply with Show Cause Order. The January 14, 2022, Order directed Respondent to comply with the Court's December 3, 2021, Order, file an answer, and show cause why it did not previously file an answer.

On February 1, 2022, Respondent filed an "Answer to the Complaint and Response to Show Cause Notice." Through its filing, Respondent denies Complainant's allegations, raises defenses, and offers cause for its noncompliance. *See* Answer ¶ 1–3 (describing alleged "discrepancies" in Complainant's claims, and requesting that the Court dismiss the Complaint).

On February 7, 2022, Complainant filed a "Motion for Default Judgment Against Respondent."<sup>4</sup> Complainant moves the Court to enter a default judgment because of delays he attributes to Respondent, along with evidentiary and witness concerns. *See* Mot. Default J. ¶ 2. Complainant also requests the Court "order Respondent to put an end to their conduct of [citizenship] discrimination . . . [and] compensate Complainant for lost wages." *Id.*

## II. DISCUSSION

Complainant filed a complaint against Respondent more than five months ago. The issue for the Court is whether, given the substantial delays in obtaining an answer, the Court may set aside the entry of default and permit the case to proceed.

First, the Court finds that Respondent's pro se "Answer to the Complaint and Response to Show Cause Notice" constitutes a sufficient answer to the complaint. Respondent denies Complainant's claims and includes defenses pertaining to both the job advertisement and recruitment process at issue. Answer ¶ 1–3. While not formatted so as to specifically admit or deny each factual allegation in the complaint, the Court will not require such precision in this case. *See United States v. Advanced Dig. Sols. Int'l, Inc.*, 14 OCAHO no. 1383, 3 (2020) ("If a party is not represented by counsel, the Court will attempt to construe the party's response to a complaint as an answer even if the response does not fully comport with the traditional requirements of an answer.") (citations omitted);<sup>5</sup> 28 C.F.R. § 68.9(c).

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<sup>4</sup> Complainant's motion does not utilize page numbers. The Court will thus assign page numbers to the filing according to the order the pages appear digitally through Adobe PDF. The Court encourages Complainant to include page numbers in all filings. *Cf.* 28 C.F.R. § 68.43(a) (noting requirement for page numbers for exhibits submitted to OCAHO).

<sup>5</sup> 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

Next, the Court considers whether to accept Respondent's untimely answer and set aside the entry of default or, alternatively, to grant Complainant's Motion for Default Judgment. In its most recent filing, Respondent recognizes "procedural error" in the December 17, 2021, response to the Order to Show Cause, and includes its answer.<sup>6</sup>

In his Motion for Default Judgment, Complainant asserts, rightly, that Respondent failed to file an answer in the time periods specified by OCAHO. Mot. Default J. ¶ 1. After noting the COVID-19 pandemic's impact on the mail system, Complainant contends "Respondent was aware of this matter months ago." *Id.* ¶ 2. Complainant then argues:

"Default Judgement should be rendered for various reasons: 1) Discrimination against citizens of the United States by Respondent continues. 2) Evidence does not age well. Evidence may disappear. Witnesses may forget. 3) Tactics involving the multiple delays in justice will ultimately result in justice never taking place." *Id.*

This Court has especially broad discretion when seeking to set aside an entry of an order of default. *See Heath v. Tringapps, Inc.*, 15 OCAHO no. 1410a, 2 (2022) (quoting *Nickman v. Mesa Air Grp.*, 9 OCAHO no. 1106, 2 (2004)). "Default judgments generally should be used only when the inaction of a party is inexcusable and the inaction has prejudiced the opposing party." Jan. 14, 2022, Order 3 (citing *D'Amico, Jr. v. Erie Cmty. Coll.*, 7 OCAHO no. 927, 61, 63 (1998)) (citations omitted). Complainant broadly implicates evidentiary and witness concerns, but he does not tie the arguments to any facts or details in his case. He has provided no specific factual allegation regarding continued discrimination. Complainant's assertions are not specific enough to demonstrate prejudice. *See also Sinha v. Infosys*, 14 OCAHO no. 1373a, 5 (2021) (discussing examples of demonstrated prejudice for which the complainant has the burden of proof) (citations omitted).

The Court takes into account Respondent's pro se status and attempts to timely meet Court deadlines. While the Court was clear in its instructions to file the answer, Respondent has

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accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database "FIM-OCAHO," or in the LexisNexis database "OCAHO," or on the OCAHO website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

<sup>6</sup> Respondent's February 1, 2022 submission concludes with a one sentence request that the Court dismiss the Complaint. *See Answer* ¶ 3 (describing the complaint as "baseless and frivolous," and raising ad hominem objections). "OCAHO's rules permit dismissal of a complaint for failure to state a claim upon which relief may be granted[.]" *Brown et al. v. Pilgrim's Pride Corp.*, 14 OCAHO no. 1379, 1–2 (2020) (citations omitted). However, the Court finds that Respondent's very brief request does not transform its submission into a motion to dismiss. The Court will thus not opine on the merits of a dismissal request in this Order. This Order does not preclude Respondent from filing a motion to dismiss pursuant to 28 C.F.R. § 68.10.

nevertheless demonstrated an intent to defend itself in this forum. *See, e.g.*, Resp. Show Cause Notice Dec. 17, 2021 (presenting arguments on failure to file answer even though no answer included). Setting aside the entry of default here supports the general OCAHO principle of discouraging default judgment solely on failure to meet procedural time requirements. Jan. 14, 2022 Order 3 (citing *United States v. Sanchez*, 13 OCAHO no. 1331, 2 (2019)).

Accordingly, the Order to Show Cause in the Court's December 3, 2021, order, including the entry of default, is DISCHARGED, and Respondent's answer to the complaint is ACCEPTED. The Complainant's Motion for Default Judgment is DENIED.<sup>7</sup>

SO ORDERED.

Date: February 22, 2022

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Jean C. King  
Chief Administrative Law Judge

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<sup>7</sup> Complainant's February 7, 2022, filing requests that the Court order Respondent to cease and desist the alleged citizenship discrimination conduct and to pay Complainant back wages. As the Court has denied the Complainant's motion, these matters on remedy are not ripe for resolution.