

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

January 11, 2023

ZAJI OBATALA ZAJRADHARA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2021B00061
)	
ALJERIC GENERAL SERVICES, LLC, a.k.a.)	
ALJRIC GENERAL SERVICES, LLC,)	
Respondent.)	
_____)	

ORDER ON COMPLAINANT’S MOTION TO COMPEL AND ON SUBJECT MATTER
JURISDICTION

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324b. On September 29, 2021, Complainant, Zaji Obatala Zajradhara, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). Complainant alleges that Respondent, Algeric General Services, LLC, failed to hire him on account of his citizenship status and national origin. This Order addresses Complainant’s September 28, 2022 “Laymans Motion to Compel Discovery Response” and the Court’s September 27, 2022 Order to Show Cause regarding subject matter jurisdiction over Complainant’s national origin discrimination claim.

I. BACKGROUND AND PROCEDURAL HISTORY

On March 24, 2022, Complainant filed “Complainant’s Addendum Exhibits and Notice of Fraud on the Court Falsifying Material Evidence in Violation of 18 USC 1001” (Notice of Fraud).

On July 7, 2022, the Court set a case schedule. *See* Gen. Lit. Order. The Court ordered that: (1) discovery requests must be served by August 8, 2022; (2) responses must be served thirty days after service of the request, and no later than September 7, 2022; and (3) all discovery motions must be received by September 15, 2022. *Id.* at 4.

On July 20, 2022, Complainant filed a “Laymans Motion for Entry of Default Judgment and sanctions” (Laymans Motion).

On September 27, 2022, the Court issued an Order to Show Cause addressing Complainant's Notice of Fraud and Laymans Motion. The Court first construed the Laymans Motion as a motion to compel, and denied it because Complainant had not provided the discovery requests he sent to Respondent. *See* OTSC 2 (setting forth the requirements for a motion to compel in 28 C.F.R. § 68.23(a)). The Court also observed that Complainant attached to his Notice of Fraud correspondence from the Equal Employment Opportunity Commission (EEOC) inviting him to submit additional information regarding a charge, and Respondent's Position Statement submitted to the EEOC responding to an apparent Notice of Charge. *See id.* at 3 (citing NOF Ex. 1). The Court noted that these filings raised a question as to whether this forum continues to have subject matter jurisdiction over Complainant's national origin discrimination claim and ordered Complainant to provide the Court with information about the charge he filed with the EEOC, as well as the number of employees employed by Respondent, within twenty-one days of the order. *Id.* at 3–4. The Court ordered Complainant to file a status report addressing the jurisdictional issues no later than October 18, 2022. *Id.* at 4–5.

On September 28, 2022, Complainant filed a "Laymans Motion to Compel Discovery Response" (Motion to Compel). On October 11, 2022, Respondent filed Respondent's Opposition to Layman's Motion to Compel Response.

On October 22, 2022, Complainant filed a "Laymans' Motion for Extension of Time." Complainant requested an extension of time "due to the Respondent after many months of request[s] has just recently provided the Complai[n]ant with 'some' of the items requested in discovery." C's Ext. Mt. 1 (cleaned up). Complainant attached Respondent's email e-filing its opposition to his Motion to Compel, as well as an October 14 email from Respondent regarding a Response to Discovery Requests, and an October 20, 2022 email from Respondent regarding Supplemental Disclosures. *Id.* at 2–4.

The Court construed this submission as a request to supplement Complainant's Motion to Compel, and in light of Complainant's pro se status and the recent correspondence between the parties regarding discovery, the Court granted Complainant leave to reply to Respondent's opposition to his Motion to Compel, as well as an extension of time to do so, and to respond to the Order to Show cause regarding subject matter jurisdiction, until November 12, 2022. *See generally* Order on Req. for an Ext. On November 21, 2022, the Court granted Complainant a final extension of time to file a reply to Respondent's opposition to his Motion to Compel, as well as to respond to the Court's Order to Show Cause regarding subject matter jurisdiction, until December 12, 2022. *See generally* Order on Second Req. for an Ext.

On December 14, 2022, Complainant filed a “Laymans Response to Order to Show Cause” (C’s Reply).¹ Complainant reiterated that he has not received responses to discovery responses sent “verbally and via emails” to Respondent, and requested that the Court “take actions and ‘demand’ that the Respondent surrender discovery in this matter.” C’s Reply 1–2.

II. COMPLAINANT’S MOTION TO COMPEL

A. Summary of the Parties’ Submissions

In his Laymans Motion to Compel Discovery Response, Complainant asserts that he has “repeatedly in good faith called and or sent emails asking for the Discovery as requested in March, June, August and September 2022,” but has “received no response to date.” C’s MTC 1. Complainant asks the Court to “declare the respondent in default,” and award damages. *Id.*

In its opposition, Respondent provides a history of Complainant’s discovery requests, and attaches a Declaration of Counsel in Support of Respondent’s Opposition to Layman’s Motion to Compel Response (Decl.), as well as a Transmittal Receipt. According to Respondent, although Complainant requested the production of documents in a March 20, 2022 Layman’s Motion for Discovery, Complainant had not served Respondent with requests for production of documents prior to this motion, which instead served as a motion to compel. R’s Opp’n 2. On March 30, 2022, Complainant “requested for Respondent’s phone records.” *Id.*; Decl. ¶ 8. Complainant also “verbally requested for documents but only specified documents relating to the Job Vacancy Announcements posted by Respondent into the CNMI Department of Labor’s website.” R’s Opp’n 2. On August 29, 2022, Respondent “provided documents relating to the Complainant’s request for phone records within the responses to discovery requests deadline.” *Id.*; Decl. ¶¶ 9, 10; R’s Opp’n Ex. A (Transmittal Receipt listing Respondent’s Response to Discovery Requests and Bates Stamp 000001–000004 as “Documents Received,” and signed by Complainant).

Respondent notes that Complainant’s Motion to Compel was received on September 28, 2022—several weeks after the September 15, 2022 discovery motions deadline set by the Court. R’s Opp’n 3. But “[d]espite the untimeliness of the Layman’s Motion, Respondent continues to diligently collect documents to disclose to Complainant and will provide these documents on or before October 14, 2022.” *Id.* Therefore, Respondent requests that the Court deny Complainant’s Motion to Compel as untimely. *Id.*

In his October 22, 2022 Laymans’ Motion for Extension of Time, Complainant attaches email correspondence reflecting that Respondent sent Complainant a “Response to Discovery Requests

¹ Complainant initially did not include opposing counsel Colin Thompson in this e-filing, but after the Court rejected the filing, Complainant forwarded the e-filing to Attorney Thompson. The Court exercises its discretion to accept this filing.

and Bate Stamp 00005 to 00027” on October 14, 2022 and “Supplemental Disclosures and Bate Stamp 000001 to 000168” on October 20, 2022. C’s Ext. Mt. 3–4.

In his reply to Respondent’s opposition, Complainant writes that he has “repeatedly asked of the Respondent both verbally and via emails to please submit unto me the most basic[] of discovery” and has been “told likewise repeatedly that the discovery would be forthcoming; never to arrive.” Reply 1. He then writes: “I am requesting the following: initial round of document for review via the order of the Court,” setting out four categories of documents. *Id.* at 2–3. Complainant attaches email correspondence with Respondent including, as relevant, emails he sent to Respondent on June 12 and June 14, asking whether opposing counsel was going to respond to his “motion for discovery.” *Id.* at 4–5.

B. Analysis

Considering each of the parties’ submissions related to Complainant’s Laymans Motion to Compel Discovery Response, the Court does not find that this motion does not cure the problems noted in his prior motions to compel. A motion to compel must include:

- (1) The nature of the questions or request;
- (2) The response or objections of the party upon whom the request was served;
- (3) Arguments in support of the motion; and
- (4) A certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure information or material without action by the Administrative Law Judge.

28 C.F.R. § 68.23(a); *see* OTSC 2. Here, Complainant indicates that he has asked for discovery, *see* C’s MTC 1; Reply 1, and lists four categories of information he is requesting, *id.* at 2–3, but he does not actually provide the requests that he sent to Respondent, nor Respondent’s responses to these requests. This is important, as it appears that Respondent has in fact responded to several of Complainant’s discovery requests. *See* R’s Opp’n 2; Decl. ¶ 9, 10; R’s Opp’n Ex. A; C’s Ext. Mt. 3–4. Indeed Complainant conceded that he received some discovery in the extension request. C’s Ext. Mt. 1. Without Complainant’s requests or Respondent’s responses, the Court is unable to determine whether these responses sufficiently addressed Complainant’s discovery requests.

Moreover, as Respondent notes, the deadline for discovery motions was September 15, 2022. Gen. Lit. Order 4. Complainant did not request an extension of time to file this discovery motion, nor did he provide an explanation showing good cause for his failure to timely file the

motion. *See Zajradhara v. Ranni's Corp.*, 16 OCAHO no. 1426a, 6–7 (2022)² (denying discovery motion filed after the deadline to do so as untimely, noting that “Complainant did not file a written motion for an extension with good cause for the request articulated”).

Therefore, the Court DENIES Complainant’s September 28, 2022 Laymans Motion to Compel Discovery Response for failure to comply with the requirements of 28 C.F.R. § 68.23(a) and as untimely. The Court reminds the parties that the discovery period has now closed, and dispositive motions are due on January 19, 2023.

III. SUBJECT MATTER JURISDICTION

In its Order to Show Cause, the Court addressed documents relating to an EEOC charge attached to Complainant’s Notice of Fraud. The Court ordered Complainant to submit a status report addressing the Court’s subject matter jurisdiction over his claims in this forum, specifically:

- (a) advise the Court as to whether he will maintain his Complaint based on nationality in this forum, and if so,
- (b) inform the Court as to when he filed his EEOC Complain[t],
- (c) inform the Court as to whether his EEOC complaint is based on the same set of facts underlying his claim in this forum,
- (d) inform the Court as to the current status of his EEOC charge (e.g., whether the EEOC charge is dismissed, presently under investigation, probable cause finding issued, in conciliation, etc.), and
- (e) inform the Court as to approximately how many employees Respondent employs.

OTSC 4. After two extensions of time to do so, Complainant has not addressed this order.

² 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 accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database “FIMOCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

As the Court noted in its Order to Show Cause, the Court has both the authority, and the duty, to determine *sua sponte* if it has subject matter jurisdiction. *Heath v. Ancile, Inc.*, 15 OCAHO no. 1411, 2 (2022) (citing *Windsor v. Landeen*, 12 OCAHO no. 1294, 4–5 (2016)).

OCAHO is precluded from exercising jurisdiction when the EEOC exercises jurisdiction, without regard to whether the EEOC is correct that it is authorized to reach a merits determination. *Adame v. Dunkin Donuts*, 4 OCAHO no. 691, 904, 906–08 (1994). 8 U.S.C. § 1324b(b)(2) (“No charge may be filed respecting an unfair immigration-related employment practice [related to a complainant’s national origin] if a charge with respect to that practice based on the same set of facts has been filed with the [EEOC] under title VII of the Civil Rights Act of 1964, unless the charge is dismissed as being outside the scope of such title.”) In other words, when a complainant files a national origin discrimination claim under both Title VII and the INA, only one agency has subject matter jurisdiction over the claim. *Heath*, 15 OCAHO no. 1411, at 2. Further, OCAHO does not have jurisdiction over national origin claims when the employer has less than 4 or more than 14 employees. *See* 8 U.S.C. §§ 1324b(a)(2)(A), 1324b(a)(2)(B).

Exhibit 1 attached to Complainant’s Notice of Fraud is a letter dated March 24, 2022 from the EEOC to Complainant, which suggests that Complainant has filed a charge of discrimination with the EEOC, which the EEOC was investigating. *See* NOF Ex. 1 (noting “[b]e sure to include your charge number on your correspondence” and “[a]ny information you provide will be taken into consideration during the investigation of your charge”). Attached to this EEOC letter is Respondent’s Position Statement relating to EEOC Charge No. 486-2021-00433. *Id.* at 2–3. In this Position Statement, Respondent wrote that it was responding to allegations that it failed to hire Complainant for a position as an Operation Manager after he applied on June 16, 2021, due to, *inter alia*, his national origin of “American Citizen.” *Id.* at 2.

This submission indicates that Complainant filed a charge with the EEOC against Respondent raising the same allegations he asserts in his Complaint in this matter, and that the EEOC has accepted this charge for investigation. *See id.* at 2–3; Compl. 5, 10 (alleging that Respondent failed to hire him on account of his national origin and citizenship status as a United States Citizen or National, and seeking back pay from June 16, 2021).

Moreover, in his Complaint, Complainant checked the boxes for “15 or more employees” and “I do not know how many employees the Business/Employer has” for the question “How many employees does the Business/Employer have?” Compl. 6. Complainant did not provide further information related to Respondent’s number of employees in response to the Order to Show Cause.

Given this information, the Court does not find that Complainant has met his burden to assure the Court of its subject matter jurisdiction over his national origin discrimination claim. *See Jayaben Patel v. USCIS Boston*, 14 OCAHO no. 1353, 4 (2020) (“Complainant must establish

that OCAHO has subject matter jurisdiction over her discrimination and retaliation claims.”) (citing *Wilson v. Harrisburg Sch. Dist.*, 6 OCAHO no. 919, 1167, 1172 (1997) (“The party asserting subject matter jurisdiction bears the burden of proving it.”)). The appropriate disposition of a jurisdictionally deficient complaint is dismissal of the case. See *Zajradhara v. Misamis Constr. (Saipan) Ltd.*, 15 OCAHO no. 1396b, 3 (2022) (citing *Boyd v. Sherling*, 6 OCAHO no. 916, 1113, 1120 (1997)).

Because the Court finds itself in a position wherein it is unable to execute this case disposition, it now issues a stay of proceedings as to Complainant’s national origin discrimination claim. See *A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381h, 2 n.4 (2021); *A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381o, 2–3 (2022); *Ravines de Schur v. Easter Seals Goodwill N. Rocky Mountain, Inc.*, 15 OCAHO no. 1388g, 2 (2022); *Rodriguez Garcia v. Farm Stores*, 17 OCAHO no. 1449, 2–3 (2022).³

During the stay of proceedings, the Court will not consider or adjudicate submissions filed by the parties relating to Complainant’s national origin discrimination claim. The parties are not precluded from contacting the Court and requesting a status update; however, parties should bear in mind that the Court will timely inform the parties in writing when the stay is lifted.

Jurisdiction over Complainant’s citizenship claim is not impacted by this stay of proceedings.

SO ORDERED.

Dated and entered on January 11, 2023.

Honorable Jean A. King
Chief Administrative Law Judge

³ A stay of proceedings is generally defined as “a ruling by a court to stop or suspend a proceeding . . . temporarily or indefinitely. A Court may later lift the stay and continue the proceeding.” *Heath v. I-Servs., Inc.*, 15 OCAHO no. 1413a, 2 n.4 (2022) (citations omitted).