

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. 2021B00015
AMERITECH GLOBAL,)	
)	
Respondent.)	
_____)	

Appearances: Robert Heath, pro se, Complainant
Rishi Agrawal, Esq., for Respondent

NOTICE OF SUGGESTION OF DEATH AND NOTICE AND
ORDER TO SHOW CAUSE FOR STATUS REPORT

I. PROCEDURAL HISTORY

This case arises under the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324b. Robert Heath filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on January 28, 2021, alleging that Respondent, Ameritech Global, discriminated against him based on his citizenship status and national origin.

Counsel for Respondent entered an appearance in this matter on March 24, 2021. On April 18, 2021, Respondent filed a Motion to Dismiss for Failure to Comply with 28 C.F.R. § 68.4(c).¹ On April 26, 2021, the Court issued an Order on Electronic Filing, allowing the parties to participate in the Court’s electronic filing pilot program. The Court then set a briefing schedule on Respondent’s motion to dismiss,

¹ OCAHO’s Rules of Practice and Procedure for Administrative Hearings are available on OCAHO’s homepage on the United States Department of Justice’s website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

including dates for the filing of Complainant's response and Respondent's reply. On April 26, 2021, Complainant filed a Motion to Oppose Respondent's Motion to Dismiss for Failure to Comply with 28 C.F.R. § 68.4(c). On June 10, 2021, Complainant filed Complainant's Supplement to Motion to Oppose Respondent's Motion to Dismiss for Failure to Comply with 28 C.F.R. § 68.4(c). Complainant filed a Motion for Status Request on September 5, 2021. Both parties' motions remain pending before the Court.

In April 2022, Complainant called OCAHO twice and informed staff that he was hospitalized due to a health emergency and expected to remain hospitalized for some period of time. On June 1, 2022, the Court issued an Order on Complainant's Communications to the Court. *Heath v. Ameritech Global*, 16 OCAHO no. 1435 (2022).² The Court construed Complainant's telephone calls to be for the purpose of general scheduling pursuant to 28 C.F.R. § 68.36(a). *Id.* at 3. The Court however permitted Respondent—who was not included in the calls—to file any response it deemed necessary and appropriate regarding Complainant's communications. *Id.* at 3-4. Given Complainant's health emergency and hospitalization, the Court ordered the parties file a status report within thirty days of the date of the order. *Id.* at 4. To date, the Court has not received the parties' status report or any communications from them.

II. NOTICE OF SUGGESTION OF DEATH

The Court now puts the parties on notice of the suggestion of death of Complainant, Robert Heath, and its intention to take notice of this material fact after giving the parties an opportunity to show the contrary. See 28 C.F.R. § 68.41 (explaining that “[o]fficial notice may be taken of any material fact, not appearing in evidence in the record, which is among the traditional matters of judicial notice. Provided, however, that the parties shall be given adequate notice . . . [and]

² Citations to OCAHO precedents reflect the volume number and the case number of the particular decision. 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 “FIM-OCAHO,” the LexisNexis database “OCAHO,” or on OCAHO's homepage on the United States Department of Justice's website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

opportunity to show the contrary.”); *see also Heath v. Consultadd*, 15 OCAHO no. 1395c, 1 (2022) (notifying the parties of the complainant’s apparent death and inviting submissions regarding judicial notice).

On June 27, 2022, an OCAHO Administrative Law Judge (ALJ) issued an order in a separate case in which Robert Heath is a party. *See Heath v. Ancile, Inc.*, 15 OCAHO no. 1411a (2022). In that order, the ALJ explained that the respondent had filed a notification of the complainant’s passing and attached to its filing a death certificate from the State of Florida for the complainant, Robert Heath. *Id.* at 1. According to the order, the death certificate listed the date of death as May 18, 2022, the date of registration of death as June 1, 2022, and the date of issuance as June 24, 2022. *Id.*

Given the potential death of Complainant, who has appeared pro se in these proceedings, the Order on Electronic Filing dated April 26, 2021, is amended to provide that the parties shall electronically file all filings in this case and serve a copy of all filings on Complainant at his last known mailing address to facilitate their receipt by any successor or representative. Service must be accomplished in a manner that complies with 28 C.F.R. § 68.6.

Either party may file in these proceedings a statement of the fact of death of Complainant and supporting documentation, such as a death certificate, in this case. The filing party also may identify the legal representative or successor of the deceased and formally move for substitution pursuant to 28 C.F.R. § 68.33(g). Either party may submit a filing disputing the suggestion of death and showing the contrary in accord with 28 C.F.R. § 68.41.

The Court invites the parties to file briefs regarding the suggestion of death and the applicability of Federal Rule of Civil Procedure 25(a)(1) to these proceedings.³ Rule 25(a)(1) is instructive here as it governs substitution of parties on death where the claim is not extinguished. The Court has made no determination as to whether the claims on which this lawsuit is based survive the death of a party in this matter. Should Complainant’s death be established and his claims survive his death, any

³ OCAHO’s Rules of Practice and Procedure for Administrative Hearings provide that the Federal Rules of Civil Procedure “may be used as a general guideline in any situation not provided for or controlled by these rules, by the Administrative Procedures Act, or by any other applicable statute, executive order, or regulation.” 28 C.F.R. § 68.1.

party or the decedent's successor or representative will have ninety days to file a motion for substitution or the action will be dismissed. *See id.*

III. NOTICE AND ORDER TO SHOW CAUSE

A. Legal Standards and Discussion

The parties in this matter failed to file a status report by July 1, 2022, as ordered by the Court. When a party fails to respond to an order, OCAHO precedent provides that the Court may order a party to show good cause for its failure to respond. *United States v. MRD Landscaping & Maint., Inc.*, 15 OCAHO no. 1407a, 2 (2022) (citing *United States v. Sal's Lounge*, 15 OCAHO no. 1394b, 1 (2022) and *United States v. Ferrantino Fuel Corp.*, 13 OCAHO no. 1335, 1 (2019)). OCAHO precedent specifically recognizes that the Court may order a party to show cause for its failure to file a status report. *See, e.g., Heath v. Springshine Consulting*, 16 OCAHO no. 1421a, 2 (2022); *Heath v. Tringapps, Inc.*, 15 OCAHO no. 1410c, 2 (2022). The Court will follow that precedent here.

The Court now orders the parties to file both (a) a response showing good cause for their failure to file a status report and (b) a status report. In the status report, the parties shall address the suggestion of Complainant's death, discuss how that potential death may affect the posture of this case, and state their positions on the advancement of this litigation. Complainant or his representative must state whether he intends to pursue the claims against Respondent in this litigation. The parties shall identify in the status report any motions they anticipate filing in this matter, including motions to substitute or dismiss. The parties also may use the status report to discuss the propriety of official notice of Complainant's apparent death pursuant to 28 C.F.R. § 68.41.

If the parties are unable to file jointly their response to the Order to Show Cause and their status report, each party shall file its own response and status report and describe therein what efforts it undertook to confer with the opposing party in advance of filing. *See United States v. Greif*, 10 OCAHO no. 1183, 5 (2013) (Order of the Chief Administrative Hearing Officer Declining to Modify or Vacate Final Decision and Order of Dismissal) (stating that "each party remains solely responsible for submitting its own motions and filings directly with the ALJ," subject to limited exceptions such as consent findings or joint motions).

B. Notice of Potential Consequences for Parties' Failure to Respond

Failure to comply with the Court's orders frustrates effective case management. The Court puts the parties on notice of the potential consequences should they fail to respond to this Order. OCAHO's rules state that the Court may dismiss a complaint for abandonment if "[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)-(b)(1); *see also Gallegos v. Magna-View, Inc.*, 4 OCAHO no. 628, 2 (1994) (citations omitted) (collecting OCAHO cases where, inter alia, the ALJ dismissed a complaint for abandonment after the complainant failed to respond to court orders). The Court cautions Complainant that if he fails to prosecute his claims or comply with the Court's orders, he may face dismissal of this action. *See Fed. R. Civ. P. 41(b)* (stating that, "[i]f the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it."). Likewise, upon a showing by affidavit or otherwise, the Court may enter a default against a respondent who fails to defend itself in proceedings. *Fed. R. Civ. P. 55(a)*.

IV. ORDERS

IT IS SO ORDERED that, within twenty-one days of the date of this Order, the parties shall file a response in which they must provide facts sufficient to show good cause for their failure to file a status report as ordered by the Court.

IT IS FURTHER ORDERED that, within twenty-one days of the date of this Order, the parties shall file a status report addressing the suggestion of Complainant's death, stating their positions on the advancement of this litigation, and identifying any anticipated motions. The parties also may use the status report to discuss the propriety of official notice of Complainant's apparent death pursuant to 28 C.F.R. § 68.41.

IT IS FURTHER ORDERED that, within twenty-one days of the date of this Order, either party may file a statement of the fact of death of Complainant or a filing disputing the suggestion of death. Either party also may identify Complainant's legal representative or successor and move for substitution.

IT IS FURTHER ORDERED that, within twenty-one days of the date of this Order, the parties may file briefs regarding the notice of suggestion of death and the applicability of Federal Rule of Civil Procedure 25(a)(1) to these proceedings.

IT IS FURTHER ORDERED that the Order on Electronic Filing dated April 26, 2021, is amended to provide that the parties shall electronically file all filings in this case and serve a copy of all filings on Complainant at his last known mailing address in a manner that complies with 28 C.F.R. § 68.6.

Complainant's failure to respond to the Court's orders may lead the Court to conclude that Complainant has abandoned his complaint and result in its dismissal. 28 C.F.R. § 68.37(b)-(b)(1). Complainant also may face dismissal pursuant to Fed. R. Civ. P. 41(b).

Respondent's failure to respond to the Court's orders and defend itself in these proceedings may lead the Court to enter a default against it. Fed. R. Civ. P. 55(a).

SO ORDERED.

Dated and entered on September 15, 2022.

Honorable Carol A. Bell
Administrative Law Judge