

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

LEONARDA RAMIREZ,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2024B00023
)	
SAM’S CLUB,)	
Respondent.)	
)	

Appearances: Faith E. Alvarez, Esq., for Complainant
K. Edward Raleigh, Esq., and Patrick Shen, Esq., for Respondent
Aviva Nusbaum, Esq. and Coreen Kopper, Esq., for the United States

ORDER ON RESPONDENT’S MOTION FOR LEAVE TO REPLY
AND NOTICE OF INTENTION TO CONVERT TO SUMMARY DECISION

I. BACKGROUND

This case arises out of the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. On November 15, 2023, Complainant, Leonarda Ramirez, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). Complainant alleges that Respondent, Sam’s Club, discriminated against her on the basis of her citizenship status and national origin, retaliated against her, and asked her for more or different documents than required for the employment eligibility verification process, in violation of §§ 1324b(a)(1), (a)(5), (a)(6).

Following difficulties effecting service of the Complaint, on January 31, 2024, the Court issued an Order Directing Complainant to Provide Respondent’s Mailing Address. Ramirez v. Sam’s Club, 18 OCAHO no. 1525 (2024).¹ In response, on February 21, 2024, Complainant

¹ Citations to OCAHO precedents in bound volumes one through eight include the volume and case number of the particular decision followed by the specific page in the bound volume where the decision begins; the pinpoint citations which follow are to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents after volume eight, 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 through the Westlaw database “FIM OCAHO,” the

filed a Notice of Respondent's Mailing Address, notifying the Court of the mailing address for Respondent's registered agent provided by the Illinois Secretary of State. On February 28, 2024, the Court sent a copy of the Complaint and Notice of Case Assignment for Complaint Alleging Unfair Immigration-Related Employment Practices (NOCA) to the address for Respondent's registered agent. This package was delivered on March 11, 2024, making Respondent's answer due on April 10, 2024.

Respondent timely filed an Answer to Complaint and a Motion to Dismiss on April 10, 2024. In its Motion to Dismiss, Respondent argues that the Court does not have subject matter jurisdiction over Complainant's national origin discrimination claim as Sam's Club employs more than 15 people, and that Complainant filed her OCAHO Complaint more than 90 days after she received her notice of right to sue letter from the Immigrant and Employee Rights Section (IER). *See generally* Mot. Dismiss.

On April 17, 2024, the Court issued an Order Setting Prehearing Conference and General Litigation Order, scheduling an initial telephonic prehearing conference to set case deadlines and discovery limitations for June 12, 2024. On April 25, 2024, Complainant filed a response to the Motion to Dismiss. On May 9, 2024, Respondent filed a Motion for Leave to Reply.

On May 29, 2024, the Department of Justice's Civil Rights Division, Immigrant and Employee Rights Section (IER) filed a Notice of Filing of Statement of Interest or, in the Alternative, Motion for Leave to File pursuant to 28 U.S.C. § 517, addressing Respondent's arguments in its Motion to Dismiss regarding the timeliness of the Complaint.

II. LEAVE TO REPLY

Respondent seeks leave to reply to Complainant's Response to its Motion to Dismiss, attaching Respondent's Reply in Support of Respondent's Motion for Summary Decision² to the motion. Respondent argues that it should be permitted to reply in order to provide relevant case law as to the commencement of the 90-day deadline for filing complaints with OCAHO. Mot. Leave Reply Compl.'s Resp. 1. Respondent argues that ALJ's may, in an exercise of discretion, permit replies where the requesting party has shown good cause. *Id.* (citing Brown v. Pilgrim's Pride Corp., 14 OCAHO no. 1379b (2022)).

LexisNexis database "OCAHO," and on the United States Department of Justice's website: <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

² The Court assumes that the title of this attachment is a scrivener's error, given that the pending motion is styled as a motion to dismiss, rather than one for summary decision.

OCAHO’s Rules of Practice and Procedure for Administrative Hearings provide that “[u]nless the Administrative Law Judge provides otherwise, no reply to a response, counterresponse to a reply, or any further responsive document shall be filed.” 28 C.F.R. §

68.11(b).³ However, in its April 17, 2024 Order Setting Prehearing Conference and General Litigation Order, the undersigned provided that the parties may file replies seven days after a memoranda in opposition to a motion, and that reply briefs were limited to 15 pages. Order Setting Prehr’g Conf. & Gen. Lit. Order 5. Accordingly, the Court has already provided leave for reply briefs in this matter. Respondent’s reply brief has been accepted, and will be given due consideration in resolving the pending Motion to Dismiss.

III. MOTION TO DISMISS – NOTICE OF INTENT TO CONVERT TO SUMMARY DECISION

In its Motion to Dismiss, Respondent argues Complainant received IER’s notice of right to sue letter on August 15, 2023, and therefore, pursuant to 28 C.F.R. § 44.303(c), the deadline to file a complaint with OCAHO was November 13, 2023. Mot. Dismiss 5. Given that Complainant filed her OCAHO complaint on November 15, 2023, Respondent asserts that her OCAHO complaint was untimely. Id.

In its Statement of Interest, IER argues that OCAHO should calculate the date of receipt as the date that Complainant received the mailed version of IER’s determination letter, not the date of the email. Complainant and IER appends several attachments to their filings, including declaration from Respondent’s attorney, a copy of the mailed IER notice of right to sue letter and its stamped envelope, and USPS tracking information for this mailing, and email correspondence. Resp. Exs. 2, 3; IER Statement Interest Attachs. 1–3.

“When matters outside the pleadings are considered, a motion to dismiss may be converted to one for summary decision.” Barone v. Superior Wash & Gasket Corp., 10 OCAHO no. 1176, 2 (2013). If the Court converts a motion to dismiss to a motion for summary decision, “the parties must be given appropriate notice so that they have a reasonable opportunity to present relevant materials.” Id.

The Court now notifies the parties of its intent to convert Respondent’s Motion to Dismiss to one for summary decision solely with regard to Respondent’s arguments concerning

³ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

timeliness. Either party, as well as IER, may submit any further relevant materials as to timeliness. Parties must supplement their prior submissions by June 21, 2024.

In light of the pendency of the parties' submissions, the Court will VACATE its prior order setting a status conference in this matter for June 12, 2024. The Court will determine, upon a review of the fully briefed motions in this matter, whether to reschedule the initial status conference for a different date.

SO ORDERED.

Dated and entered on June 4, 2024.

John A. Henderson
Administrative Law Judge