

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

June 25, 2024

US TECH WORKERS ET AL.,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2024B00072
)	
MESIROW,)	
Respondent.)	
_____)	

Appearances: John M. Miano, Esq., for Complainant
Stephen H. Smalley, Esq., and Vanessa N. Garrido, Esq., for Respondent

ORDER DISCHARGING ORDER TO SHOW CAUSE

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324b. Complainant, US Tech Workers, et al., filed a Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on March 19, 2024, against Respondent, Mesirow.¹ Complainant alleges that Respondent engaged in discrimination based on citizenship status in hiring, in violation of 8 U.S.C. § 1324b(a)(1). On May 29, 2024, this Court issued an Order to Show Cause requiring Respondent to show cause for its untimely filed Answer, which was filed on May 23, 2024, ten days past the filing deadline with no explanation for the late filing. *US Tech Workers v. Mesirow*, 19 OCAHO no. 1575 (2024).²

¹ In its Answer, Respondent indicates that the name of the company is Mesirow Financial Administrative Corp.

² 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 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>.

On June 13, 2024, Respondent filed its Response to the Order to Show Cause. Respondent states that it served its Answer on May 15, 2024, and thus “any short delay was not intentional as Respondent was diligently working to obtain the necessary information needed to serve its Answer and Affirmative Defenses.” Resp. at 2-3. It would appear that Respondent’s tardy filing was due to a misunderstanding of OCAHO’s filing rules, that answers are deemed filed when received by OCAHO, not when they are placed in the mail. 28 C.F.R. § 68.8(b).³

OCAHO's Rules of Practice and Procedure for Administrative Hearings provide that a respondent's failure to file an answer “may be deemed to constitute a waiver of his or her right to appear and contest the allegations of the complaint. The Administrative Law Judge may enter a judgment by default.” 28 C.F.R. § 68.9. Such judgments are generally disfavored, and doubts regarding entry of default should be resolved in favor of a decision on the merits of the case. See *United States v. Vilaro Vineyards*, 11 OCAHO no. 1248, 5 (2015)(CAHO Order); *United States v. Jabil Circuit, Inc.*, 10 OCAHO no. 1146, 3 (2012)(CAHO Order). In determining whether good cause to set aside an entry of default exists, OCAHO Administrative Law Judges (ALJs) have considered: (1) whether there was culpable or willful conduct; (2) whether setting the default aside would prejudice the adversary; and (3) whether the defaulting party presents a meritorious defense to the action. *Nickman v. Mesa Air Grp.*, 9 OCAHO no. 1106, 2-3 (2004) (citing *Kanti v. Patel*, 8 OCAHO no. 1007, 166, 168 (1998)).

The Court finds that Respondent has demonstrated good cause for its failure to file a timely answer. Respondent demonstrated that it is intending to pursue the case and did not willfully avoid complying with the Order. Respondent’s mistake was inadvertent, the case is in an early stage, no prejudice has been shown, and Complainant has not sought a default judgment. Lastly, Respondent’s Answer includes a number of affirmative defenses.

As such, the Order to Show Cause is discharged and the answer is accepted.

SO ORDERED.

Dated and entered on June 25, 2024.

Honorable Jean C. King
Chief Administrative Law Judge

³ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2023).