

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

July 9, 2024

US TECH WORKERS ET. AL.,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	OCAHO Case No. 2024B00073
	)	
MYCOCYCLE,	)	
Respondent.	)	
_____	)	

Appearances: John M. Miano, Esq., for Complainant

FINAL ORDER - ORDER ON VOLUNTARY DISMISSAL

Complainant filed a Joint Stipulation of Dismissal, in which it stated that the parties agreed that the case is voluntarily dismissed. The Court finds that Complainant fulfilled the requirements for voluntary dismissal under Federal Rule of Civil Procedure 41(a)(1)(A)(i) and thus the case is DISMISSED.

I. PROCEDURAL HISTORY

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, MycoCycle. Complainant alleges that Respondent engaged in discrimination based on citizenship status in hiring, in violation of 8 U.S.C. § 1324b(a)(1).

Because Respondent did not file an answer within 30 days of service of the Complaint upon Respondent, the Court issued an Order to Show Cause on May 29, 2024. *U.S. Tech Workers v. Mycocycle*, 19 OCAHO no. 1576 (2024).

On June 13, 2024, Complainant filed a Joint Stipulation of Dismissal, which states that the parties agreed to voluntary dismissal of the case “pursuant to [Federal Rule of Civil Procedure] 41.” Joint Stipulation Dismissal 1.

## II. LAW AND ANALYSIS

“OCAHO regulations do not squarely contemplate voluntary dismissal upon motion of a Complainant.” *A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381p, 2 (2024).<sup>1</sup> The Court therefore turns to Federal Rules of Civil Procedure for guidance. *See* 28 C.F.R. § 68.1.<sup>2</sup>

Federal Rule 41(a)(1)(A)(i)-(ii) states that the plaintiff in a case may “dismiss an action without a court order by filing (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or (ii) a stipulation of dismissal signed by all parties who have appeared.” Federal Rule 41(a)(2) explains that outside of the provisions of 41(a)(1), “an action may be dismissed at the plaintiff’s request only by court order, on terms the court consider proper.”

“A voluntary dismissal filed before any responsive pleading is filed is self-executing and automatically effects dismissal of the case.” *Edwards-Brown v. Crete-Monee 201-U School Dist.*, 491 Fed. Appx. 744, 746 (7th Cir. 2012) (affirming lower court’s construal of a plaintiff’s motion for voluntary dismissal prior to any responsive pleadings as a notice of voluntary dismissal under Federal Rule 41(a)(1)); *see also United States v. UCB, Inc.*, 970 F.3d 835, 849 (7th Cir. 2020) (“[T]he notice [of voluntary dismissal] is self-executing and case-terminating.”).<sup>3</sup>

Here, the Complainant has filed a “Joint Stipulation of Dismissal,” signed by Complainant’s counsel. Beneath Complainant’s counsel’s signature is the name and contact information for an attorney that Complainant identifies as Respondent’s counsel. The listed attorney, John D. Cohen, did not enter a notice of appearance in this case, and, indeed, Respondent has never filed anything in this case. The Joint Stipulation does not request that the court order dismissal of the case.

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<sup>1</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 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 <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

<sup>2</sup> “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 Procedure Act, or by any other applicable statute, executive order, or regulation.” *See also Hussain v. Amazon Web Servs. Inc.*, 17 OCAHO no. 1453, 1 (2022) (compiling cases utilizing the Federal Rules of Civil Procedure to address voluntary dismissal).

<sup>3</sup> Because Respondent appears to be located in Illinois, and the violations are alleged to have occurred in Illinois, the Court turns to the case law of the United States Court of Appeals for the Seventh Circuit. *See* 28 C.F.R. § 68.57.

However, Complainant filed the Joint Stipulation of Dismissal before Respondent filed any responsive pleading, fulfilling the requirements of Rule 41(a)(1)(A)(i). Further, the joint stipulation was served on Respondent as well as an attorney. As such, the filing should be considered a notice of dismissal, and is “self-executing and automatically effect[ed] dismissal of the case.” *Edwards-Brown*, 491 Fed. Appx. at 746.

Accordingly the case has been DISMISSED without prejudice. Rule 41(a)(1)(B). The Order to Show Cause is now MOOT.

SO ORDERED.

Dated and entered on July 9, 2024.

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Honorable Jean C. King  
Chief Administrative Law Judge

### Appeal Information

This order shall become the final agency order unless modified, vacated, or remanded by the Attorney General. Provisions governing the Attorney General's review of this order are set forth at 28 C.F.R. pt. 68. Within sixty days of the entry of an Administrative Law Judge's final order, the Attorney General may direct the CAHO to refer any final order to the Attorney General for review, pursuant to 28 C.F.R. § 68.55.

Any person aggrieved by the final order has sixty days from the date of entry of the final order to petition for review in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business. *See* 8 U.S.C. § 1324b(i)(1); 28 C.F.R. § 68.57. A petition for review must conform to the requirements of Rule 15 of the Federal Rules of Appellate Procedure.