



Respondent's request for dismissal, it filed an Opposition to Respondent's Request for Dismissal, which included a request to reissue an Order for Prehearing Statements. Complainant attached a United Postal Service Shipping Document and Proof of Delivery showing that a package addressed to OCAHO was delivered to 5107 Leesburg, Falls Church, Virginia on October 21, 2019. OCAHO never received the package.<sup>1</sup>

While Respondent cites to § 68.23(c)(5) in support of dismissal, that regulation relates to discovery orders. In this case, the remedy for failure to file a prehearing statement would be a judgment of abandonment. § 68.37(b)(1).

Respondent has provided sufficient proof to demonstrate that it timely filed a response to Respondent's motion to dismiss, including filing a prehearing statement. Respondent's explanation that it did not receive the Order for Prehearing Statements because of office error is not a detailed explanation. However a final decision of abandonment equates to a judgment by default. 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); *United States v. Jabil Circuit*, 10 OCAHO no. 1146 (2012). The Court will find that Complainant has demonstrated good cause for its failure to file a timely prehearing statement. As the Complainant is intending to pursue the case and did not willfully avoid complying with the Order, and Respondent is not prejudiced by the delay, Respondent's request for dismissal is DENIED.

As such, the Order to Show Cause is discharged. Respondent's prehearing statement deadline is reset to January 3, 2020.

SO ORDERED.

Dated and entered on December 3, 2019.

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Jean C. King  
Chief Administrative Law Judge

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<sup>1</sup> The Shipping Document is a preprinted form addressed to the Board of Immigration Appeals (BIA). OCAHO's information is handwritten on the document, but "Board of Immigration Appeals" is typed in bold font. In other OCAHO cases, ICE has sent packages with similarly addressed Shipping Documents and the filings are delivered to the BIA, rather than OCAHO. In the future, Complainant should ensure that its mailing are clearly addressed to OCAHO, instead of the BIA.