

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

UNITED STATES OF AMERICA,)	
)	
Complainant,)	
)	8 U.S.C. § 1324a Proceeding
v.)	
)	OCAHO Case No. 2023A00059
DUBOSE DRILLING, INC.,)	
)	
Respondent.)	
_____)	

Appearances: Hazel L. Gauthier, Esq., for Complainant
Kelli Gavin, Esq., for Respondent

NOTICE AND SECOND ORDER TO SHOW CAUSE

I. PROCEDURAL HISTORY

On May 4, 2023, the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). The complaint alleges that Respondent, Dubose Drilling, Inc., violated 8 U.S.C. § 1324a(a)(1)(B) by failing to ensure that employees properly completed Section 1 and/or by failing to complete properly Section 2 or 3 of the Employment Eligibility Verification Form (Form I-9) for 101 individuals (Count One), failing to prepare and/or present Forms I-9 for four individuals (Count Two), and failing to ensure that employees properly completed Section 1 and/or failing to complete properly Section 2 or 3 of the Forms I-9 for three individuals (Count Three). Compl. at 2-6. The complaint further alleges that Respondent violated 8 U.S.C. § 1324a(a)(1)(A) by knowingly hiring two individuals who were not authorized for employment in the United States (Count Four). *Id.* at 6. Complainant attached to the complaint its Notice of Intent to Fine (NIF) dated November 4, 2019. *Id.*, Ex. A. Respondent, through its counsel, contested the NIF and timely requested a hearing before this Court. *Id.*, Ex. B.

On May 15, 2023, OCAHO used United States certified mail to send Respondent and its counsel the following documents: (a) the complaint, (b) a Notice of Case Assignment Regarding Unlawful Employment (NOCA), (c) the NIF, and (d) Respondent's request for a hearing. Through the NOCA, OCAHO's Chief Administrative Hearing Officer (CAHO) advised Respondent that it had the right to file an answer to the complaint and that its answer must be filed within thirty days after it was served with the complaint. NOCA ¶ 4. The CAHO warned Respondent that if it failed to file a timely answer, it may be deemed to have waived its right to appear and contest the allegations of the complaint and that "the Administrative Law Judge may enter a judgment by default along with any and all appropriate relief." *Id.* (citing 28 C.F.R. § 68.9(b)¹). Respondent did not file an answer.

On July 19, 2023, the Court issued an Order to Show Cause. *United States v. Dubose Drilling, Inc.*, 18 OCAHO no. 1487, 1-5 (2023).² After determining that OCAHO perfected service of the complaint on May 22, 2023, the Court explained that Respondent's answer was due no later than June 21, 2023. *Id.* at 3 (citing 28 C.F.R. §§ 68.3(b), 68.9(a)). In lieu of entering a default, the Court ordered Respondent to file an answer to the complaint and a response to the Order to Show Cause within twenty days of the date of the order. *Id.* at 4-5.

Through the Order to Show Cause, the Court put Respondent on notice of the potential consequences should it fail to respond to the Court's orders. The Court twice warned Respondent that the Court might conclude that Respondent had abandoned

¹ OCAHO's Rules of Practice and Procedure for Administrative Hearings are the provisions contained at 28 C.F.R. part 68 (2023). These rules are available online, including through OCAHO's homepage on the United States Department of Justice's website. See <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

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 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: <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

its request for a hearing and enter an order of dismissal. *See Dubose Drilling, Inc.*, 18 OCAHO no. 1487, at 4-5 (citing 28 C.F.R. § 68.37(b)(1)). The Court explained that “[a] final order of dismissal based on abandonment is analogous to entry of a default judgment under the Federal Rules of Civil Procedure.” *Id.* at 4 (quoting *United States v. Vilarado Vineyards*, 11 OCAHO no. 1248, 4 (Vacation by the Chief Admin. Hr’g Officer of the A.L.J.’s Final Dec. and Order of Dismissal and Remanding for Further Proceedings) (4/15/15) (citing *United States v. Greif*, 10 OCAHO no. 1183, 6 (2013))). The Court repeated the CAHO’s warning in the NOCA that the Court may enter a default against it pursuant to 28 C.F.R. § 68.9(b) should it fail to file an answer. *Id.* at 5.

Despite these warnings, Respondent did not file an answer or a response showing good cause for its failure to file a timely answer. Both filings were due on August 8, 2023. Neither Respondent nor its counsel has communicated with the Court during the pendency of this case.

II. LEGAL STANDARDS AND DISCUSSION

Respondent failed to file a timely answer to the complaint in this matter and has now failed to respond to this Court’s Order to Show Cause dated July 19, 2023. Although this Court could enter a default against Respondent, it will provide Respondent with a final opportunity to participate in this case given the forum’s preference for evaluating and resolving cases on the merits. *See United States v. MRD Landscaping & Maint. Corp.*, 15 OCAHO no. 1407c, 4 (2022); *see also United States v. R & M Fashion Inc.*, 6 OCAHO no. 826, 46, 48 (1995) (“The preferred disposition of any case is upon its merits and not by default judgment.”) (citation omitted). The Court therefore orders Respondent to show good cause for its failure to respond to the Court’s Order dated July 19, 2023, and to advise the Court whether it intends to pursue its request for a hearing. Respondent likewise shall file an answer to the complaint and a response showing good cause for its failure to file a timely answer.

The Court puts Respondent on notice of the consequences should it fail to respond to this Second Order to Show Cause by filing a response showing good cause for failing to respond to the Court’s Order of July 19, 2023, along with an answer and a response showing good cause for its failure to file a timely answer. First, noncompliance will result in dismissal as the Court will deem Respondent to have abandoned its request for a hearing. *See* 28 C.F.R. § 68.37(b)(1); *e.g.*, *United States v. Hosung Cleaning Corp.*, 4 OCAHO no. 681, 776, 777-78 (1994); *United States v.*

Quickstuff, LLC, 11 OCAHO no. 1265, 2 (2015); *United States v. Diamond Construction, Inc.*, 3 OCAHO no. 451, 577, 580 (1992). This will render DHS's NIF a final order. *See, e.g., United States v. Milwhite, Inc.*, 17 OCAHO no. 1469a, 2 (2023). Second, OCAHO's Rules of Practice and Procedure for Administrative Hearings give this Court discretion to enter a default judgment as to both liability and penalties against Respondent because it will have waived its right to appear and contest the allegations of the complaint by failing to timely answer the complaint. 8 C.F.R. § 68.9(b); *see, e.g., United States v. Hui*, 3 OCAHO no. 479, 826, 829 (1992) (explaining that "a default for failure to plead or otherwise participate in the proceeding as directed, invites a full and final unitary disposition.").

III. ORDERS

IT IS SO ORDERED that, within fifteen days of the date of this Order, Respondent, Dubose Drilling, Inc., shall file a response with the Court in which it must provide facts sufficient to show good cause for its failure to respond to the Court's Order to Show Cause dated July 17, 2023, and advise the Court whether it intends to pursue its request for a hearing.

IT IS FURTHER ORDERED that, within fifteen days of the date of this Order, Respondent shall file with the Court an answer to the complaint that comports with 28 C.F.R. § 68.9 and a response in which it must provide facts sufficient to show good cause for its failure to timely answer the complaint in this case.

If Respondent fails to respond as ordered or cannot show good cause for its failure to file a timely answer to the complaint and response to the Order to Show Cause dated July 17, 2023, the Court shall conclude that Respondent has abandoned its request for a hearing and dismiss the complaint. 28 C.F.R. § 68.37(b). 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" and the Court may enter a default judgment against Respondent as to both liability and penalties. *Id.* § 68.9(b).

SO ORDERED.

Dated and entered on September 13, 2023.

Honorable Carol A. Bell
Administrative Law Judge