

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

CASSANDRA MONTY,	)	
Complainant,	)	
	)	8 U.S.C. § 1324b Proceeding
v.	)	
	)	OCAHO Case No. 2021B00036
USA2GO QUICK STORES,	)	
Respondent.	)	
	)	

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Appearances: Cassandra Monty, pro se Complainant  
Jenna H. Sheena, Esq., and Tad T. Roumayah, Esq., for Respondent  
Sam Shirazi, Esq., for the United States

ORDER SUMMARIZING PREHEARING CONFERENCE AND ORDER ON MOTION FOR  
VOLUNTARY DISMISSAL

I. BACKGROUND

This action arises under the unfair immigration-related employment practices provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324b. On June 2, 2021, Complainant Cassandra Monty filed a complaint alleging that Respondent USA2GO Quick Stores violated § 1324b. Respondent filed its answer to the complaint on September 7, 2021.

On April 23, 2024, the Court held a telephonic status conference in this matter. In that conference, the Court set a date of May 22, 2024 for the submission of final prehearing submissions, and May 29, 2024 for the final prehearing conference. Respondent filed its final prehearing statement by the deadline; Complainant did not file a submission.

II. MAY 29, 2024 PREHEARING CONFERENCE

On May 29, 2024, the Court conducted a final telephonic prehearing conference. Complainant appeared pro se, and Attorney Jenna Sheena appeared on behalf of Respondent.

The Court first inquired as to Complainant’s intention to pursue this matter after reviewing the Court’s Order on Respondent’s Motion for Summary Decision, given that she

expressed an interest in ending her litigation during the prior status conference. Complainant asserted that she would like to proceed to a hearing and would not seek voluntary dismissal of her Complaint.

The Court next inquired as to Complainant's missing final prehearing statement. Respondent made an oral motion for dismissal based on abandonment due to Complainant's failure to comply with Court's orders. *See* 28 C.F.R. §§ 68.37(b) (providing for dismissal based on abandonment), 68.11(a) ("After the complaint is referred to an Administrative Law Judge, any application for an order or any other request shall be made by motion which shall be made in writing unless the Administrative Law Judge in the course of an oral hearing consents to accept such motion orally."). Complainant responded that she filed a Prehearing Statement on June 26, 2022, and therefore did not believe that she needed to submit a new filing.

After hearing from both parties, the Court denied Respondent's oral motion to dismiss the Complaint as abandoned due to Complainant's failure to file an updated final prehearing statement. The Court explained that dismissal is a severe sanction, and based on Complainant's proffer that she misunderstood the Court's prior order, the sanction was not warranted in this instance. *See, e.g., United States v. AMA Repiping, LLC*, 15 OCAHO no. 1391, 4–5 (2021) (declining to dismiss complaint based on abandonment, considering that the delay caused by failure to respond to an order for prehearing statements was not great, that there was little risk of prejudice aside from delay, "[d]ismissals based on abandonment . . . are a disfavored means of resolving lawsuits," and less drastic alternative sanctions were available) (citations omitted); *Ravines de Schur v. Easter Seals-Goodwill N. Rocky Mountain, Inc.*, 15 OCAHO no. 1388f, 4 (2022) (declining to dismiss complaint as abandoned where a pro se litigant failed to respond to two orders but had submitted numerous filings since the commencement of her case). Complainant's continued presence at prehearing conferences, and past participation in the case, demonstrated her continued commitment to pursue this litigation.

However, while declining to impose the harsh sanction of dismissal based on abandonment, the Court admonished Complainant for her non-compliance with the Court's order to file a final prehearing statement by May 22, 2024. The Court added that when choosing among sanctions, the Court should impose the least severe sanction necessary to vindicate the interest at issue, which in this instance counseled towards a judicial admonition. *See, e.g., Soo San Choi v. D'Appolonia*, 252 F.R.D. 266, 267 (W.D. Penn. 2008) ("Sanctions such as publication or judicial reprimand have long been recognized as available alternative measures."); *Doering v. Union Cnty. Bd. of Chosen Freeholders*, 857 F.2d 191, 194 (3d Cir. 1988) ("[A] district court's choice of deterrent is appropriate when it is the minimum that will serve to adequately deter the undesirable behavior."). The Court reminded Complainant that if she does not understand an order from the Court she must request clarification.

The Court directed Complainant to file a supplemental final prehearing statement by June 3, 2024. The Court directed Complainant to update her June 26, 2022 Final Prehearing

Statement with anything that has changed since that filing, in particular, providing an updated witness list. The Court further directed the parties to meet and confer by June 7, 2024, with Complainant being directed to initiate the meet and confer process.

Finally, the Court scheduled an additional telephonic prehearing conference for June 13, 2024 at 10:00am Eastern Time.

### III. MOTION FOR VOLUNTARY DISMISSAL

On May 31, 2024, Complainant filed Complainant’s Motion for Voluntary Dismissal. Complainant writes that she is “refusing all further contact from the Respondent’s Attorneys and the courts, if possible.” Mot. Voluntary Dismissal 1. She explains that she seeks voluntary dismissal due to personal concerns. *Id.* at 1–2. Respondent has not submitted a position on this request.

“Although OCAHO’s rules ‘do not specifically cover a voluntary dismissal by the complainant, . . . the Federal Rules of Civil Procedure (FRCP) may be used as a general guideline for any situation not covered by the OCAHO rules, the Administrative Procedure Act, any other applicable statute, executive order, or regulation.’” Zajradhara v. CL Corp., 16 OCAHO no. 1429a, 2 (2022) (quoting Zajradhara v. Changxing Corp., 14 OCAHO no. 1356, 2 (2020)); *see also* 28 C.F.R. § 68.1.

“Federal Rule of Civil Procedure 41(a)(2) provides that the Court may dismiss an action through an order, on terms that the court considers proper . . . Rule 41(a)(1) provides that a plaintiff may dismiss an action without a court order by filing a notice of dismissal before the opposing party serves an answer or a motion for summary judgment; or by filing a stipulation of dismissal.” United States v. La Parisienne Bakery, LLC, 15 OCAHO no. 1390a, 2 (2021). Given that this case is in its late stages, Rule 41(a)(2) is the appropriate provision here.

In the Sixth Circuit, where the events in this case arose, a “court’s decisions with respect to a motion for voluntary dismissal under Rule 41(a)(2) are reviewed for abuse of discretion.” Bridgeport Music, Inc. v. Universal-MCA Music Pub., Inc., 583 F.3d 948, 953 (6th Cir. 2009) (citations omitted). “These motions should generally be granted unless ‘defendant would suffer ‘plain legal prejudice’ as a result of a dismissal without prejudice, as opposed to facing the mere prospect of a second lawsuit.’” Dunlap v. Sevier Cnty., Tenn., No. 20-6216, 2021 WL 3123914, at \*6 (6th Cir. July 23, 2021) (citation omitted); *see also* A.S. v. Amazon Web Servs., 14 OCAHO no. 1381p, 2 (2024) (“It has been consistently recognized that the Court should grant a motion for voluntary dismissal under Rule 41(a)(2) unless the opposing party will suffer some plain legal prejudice as a result.”) (citation and internal quotations omitted); Mangir v. TRW, Inc., 4 OCAHO no. 672, 722, 725 (1994) (noting that “[i]f [a complainant] moves for dismissal under Rule 41(a)(2) and . . . does not specify that it be with or without prejudice, the matter is

left to the sound discretion of the court” which “may grant dismissal without prejudice or may allow the dismissal only on the condition that it be with prejudice to a further action on the same claim”) (citations omitted).

“This Court’s case law also ‘recognize[s] a court’s broad discretionary power over whether to grant a Rule 41(a)(2) dismissal with or without prejudice.’” Sinha v. Infosys Ltd., 14 OCAHO no. 1373f, 3 (2024) (quoting United States v. Diega Quisquina-Yaxon, 17 OCAHO no. 1474a, 4 (2023); and then citing United States v. Chinese Back Rub, 17 OCAHO no. 1452, 2 (2022) (collecting cases)). “A dismissal with prejudice bars the complainant from bringing the same cause of action in a future suit.” Id. (citing Zajradhara v. Changxing Corp., 14 OCAHO no. 1356, 2 (2020)). In determining whether to grant voluntary dismissal with or without prejudice, “[t]he factors we consider in this context . . . are: ‘defendant’s effort and expense of preparation for trial, excessive delay and lack of diligence on the part of the plaintiff in prosecuting the action, insufficient explanation for the need to take a dismissal, and whether a motion for summary judgment has been filed by the defendant.’” Dunlap, 2021 WL 3123914, at \*6.

Here, Complainant moves for voluntary dismissal at a very late stage in the proceedings—after the conclusion of discovery, a ruling on Respondent’s Motion for Summary Decision, after the filing of Respondent’s final prehearing statement, and less than a month before the scheduled hearing. Respondent has spent at least some effort and expense preparing for a hearing by attending two final prehearing conferences and preparing a final prehearing statement, and Complainant has delayed in bring the present motion; after she expressed an interest in ending this litigation on April 23, 2024, and the Court informed her that she could seek voluntary dismissal and encouraged her to do so expeditiously, yet she did not file the present motion until over a month later. The Court recognizes Complainant’s pro se status and explanation regarding concerns in her personal life, as well as the fact that neither party has provided a position on this question. However, the Court finds that, on balance, the factors identified by the Sixth Circuit weigh in favor of dismissal with prejudice. *See, e.g.*, Huesca v. Rojas Bakery, 4 OCAHO no. 654, 550, 557 (1994) (granting voluntary dismissal with prejudice where the case had been pending for 15 months, discovery was complete, and dispositive motions were pending); *cf.* Sinha, 14 OCAHO no. 1373f, at 4 (granting voluntary dismissal without prejudice where the case had been pending for a lengthy period but had not progressed beyond a motion to dismiss, and the parties had only engaged in limited discovery and had not begun trial preparation).

Complainant’s Motion for Voluntary Dismissal is GRANTED, and this action is dismissed WITH PREJUDICE. This is a Final Order.

SO ORDERED.

Dated and entered on June 12, 2024.

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John A. Henderson  
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.