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

ESTHER DIN BROOKS, Complainant,	)	
v.	)	8 U.S.C. §1324b Proceeding OCAHO Case No. 92B00193
WATTS WINDOW WORLD, Respondent.	)	

FINAL DECISION AND ORDER
(November 1, 1993)

MARVIN H. MORSE, Administrative Law Judge

Appearances: Esther Din Brooks, Complainant pro se.
Kenneth Haines, Esq., for Respondent.

I. *Procedural Background*

I have previously dismissed Complainant's claim that she was wrongfully discharged by Respondent in violation of her rights under 8 U.S.C. §1324b for having asserted her rights under §1324b. 3 OCAHO 558 (8/31/93). That Order held, however, that her claim of national origin discrimination is within the jurisdictional limits of 8 U.S.C. §1324b.

The August 31, 1993 Order contemplated that "[U]nless I am sooner advised that this case is settled, or unless there is intervening motion practice, my office will telephone the parties on or about the week beginning October 11, 1993, to arrange a telephonic prehearing conference." It was explained that the purpose of the conference would be to "focus on the scheduling of an evidentiary hearing." Id. at 3.

Intervening motion practice has overtaken the need to schedule a confrontational evidentiary hearing, instead requiring disposition of this case on the pleadings. On October 4, 1993, Respondent filed a motion for summary decision dated and served October 1, 1993.

Respondent contends there are no genuine issues of material fact concerning events which led to Complainant's discharge from employment by Respondent. The motion is supported by affidavits of nine witnesses, including those of Respondent's principal, Robert M. Watts, Sr., and his co-worker wife Eloise Watts. Respondent's submission is to the effect that Complainant was discharged for failure to adequately perform her duties at Watts Window World, and at other employments both prior and subsequent to her stint at Watts Window World.

On October 5, 1993, Complainant filed a letter-pleading dated October 4. Complainant's nine-page handwritten pleading fails to refer to her claim against Watts until the third page. Inferentially, I understand her letter-pleading to be a response to the motion for summary decision. As such, her filing challenges the truthfulness of the claims her performance was found wanting at Watts Window World and other employments.

II. *Discussion*

A. Respondent's Motion For Summary Decision Granted

It is undisputed that Complainant has a history of sporadic employments, typically concluding with disagreement about the quality of her performance. Moreover, Complainant's response to the motion fails to set forth facts showing that there is a genuine issue of material fact. She has failed to satisfy the requirement that

> When a motion for summary decision is made and supported as provided in this section, [68.38] a party opposing the motion may not rest upon the mere allegations or denials of such pleading. Such response must set forth specific facts showing that there is a genuine issue of fact for hearing.

28 C.F.R. §68.38(b).

Complainant has failed to persuade me that there is any genuine issue of material fact. For example, her own statement in response to the affidavit of Charles W. Womack, President of Neci Manufacturing Company, does not take issue with his having discharged her for failure to "adequately perform the job required of her." Womack affidavit, Atch. A to Motion dated 10/1/93. Instead, arguing that she had only been a temporary hire, she claims she would not have accepted the job had she anticipated the number of pieces she was expected to produce each hour. Compare Yefremov v. NYC Dep't. of Transportation, 3 OCAHO 562 (9/21/93) at 27-28 ("an employer has broad discretion in defining expectations of employees' performance").

The remainder of her rejoinders to the affidavits questions the motives of the affiants but sheds no light on the claim of national origin discrimination. I am satisfied both from the tenor and content of her filing, that were this case to go to a confrontational evidentiary hearing the record would be no better informed than it is now. By her own statement, there were no witnesses to Robert M. Watts, Sr.'s allegedly discriminatory remark addressed to her Philippine national origin. That putative remark contrasts with the consistent thread of the affidavits, i.e., that for whatever reason her employments were terminated, national origin was not the cause.

B. Complainant Deemed to Have Abandoned Her Complaint

Assuming Complainant had demonstrated a genuine issue of fact for hearing, I would be unable to rule in her favor. She has so failed in her obligation to adhere to the rules of the forum as to abdicate any claim for relief. Her letter-pleading dated October 4, 1993 fails to contain a certificate of service or otherwise to reflect service upon Respondent. That failure violates the command of 28 C.F.R. §68.6(a). Significantly, it violates also my twice repeated written admonition to the parties. My order of November 9, 1992 advised that:

> any filings submitted to this Office should be accompanied by a certificate of service indicating that a copy of such filing has been served on the other party. 28 C.F.R. §68.6(a).

When a subsequent filing by Complainant took no heed of the plain requirement of §68.6(a) and of my previous order, my Order of March 11, 1993 contained this warning:

> The parties are cautioned that I may disregard and return documents filed after today's date which fail to reflect service by the originator on the other party.

Compassion for Complainant's pro se status in the circumstances described must give way to the need for orderly and informed participation by the parties to an administrative adjudication. Failure to certify service on the opponent is at odds with that participation. Failure to adhere to explicit orders by the judge invites dismissal of the complaint, as having been abandoned. 28 C.F.R. §68.37(b)(1). Castillo v. Hotel Casa Marina (Marriott), 3 OCAHO 508 (4/12/93); Speakman v. The Rehabilitation Hospital of South Texas, 3 OCAHO 476 (12/1/93); 9Palancz v. Cedars Medical Center, 3 OCAHO 443 (8/3/92).

III. *Attorneys' Fee Shifting Denied*

Respondent's motion asserts a demand for award of attorneys's fees pursuant to 8 U.S.C. §1324b(h). Respondent is obviously the prevailing party in this litigation, and Complainant's case lacks foundation in law and fact. However, considering Complainant's apparent circumstances and the absence of any suggestion that she malevolently pursued her claim, I exercise my discretion to withhold a fee shifting award.

IV. *Ultimate Findings, Conclusions, and Order*

I have considered the pleadings, memoranda, arguments and suppor-ting documents filed by the parties. All motions and other requests not previously disposed of are denied. Accordingly, and in addition to the findings and conclusions already stated, I find and conclude that:

1. Respondent is entitled to summary decision because there is no genuine issue of material fact as to Complainant's claim of national origin discrimination. 28 C.F.R. §68.38(c).

2. Even if there were a genuine issue of material fact, Complainant has effectively abandoned her complaint by failing to adhere to the judge's repeated admonition to accompany each pleading with a certificate of service. 28 C.F.R. §68.37(b)(1).

3. I find and conclude that Respondent has not engaged and is not engaging with respect to Complainant in the unfair immigration related employment practices alleged and within the jurisdiction of this Office, i.e., national discrimination. Accordingly, the complaint is dismissed. 8 U.S.C. §1324b(g)(3).

Pursuant to 8 U.S.C. §1324b(g)(1), this Final Decision and Order is the final administrative order in this proceeding and "shall be final unless appealed" within 60 days to a United States court of appeals in accordance with 8 U.S.C. § 1324b(i).

SO ORDERED.

Dated and entered this 1st day of November, 1993.

MARVIN H. MORSE
Administrative Law Judge