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2 **FOR PUBLICATION**

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4
5 **IN THE SUPERIOR COURT**
6 **OF THE**
7 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

8 **ANTONIO A. SANTOS, on behalf of**) **CIVIL ACTION NO. 03-0629E**
9 **Susana A. Santos (deceased),**)
10 **Claimant-Appellant,**)
11 **vs.**) **ORDER AND DECISION**
12 **PUBLIC SCHOOL SYSTEM,**)
13 **Employer,**)
14 **and**)
15 **WORKER’S COMPENSATION**)
16 **COMMISSION,**)
17 **Carrier-Appellee.**)
18 _____)

19 **I. INTRODUCTION**

20 THIS MATTER concerns a worker’s compensation benefits claim precipitated by the death
21 of Susanna Santos in 1992 while on assignment for her employer. The basic facts are these. Susanna
22 Santos, a resident of Saipan, died on February 9, 1992 while on assignment for the Public School
23 System (“PSS”). Susanna Santos had traveled to Tinian to assist and participate in a series of PSS
24 workshops. In December 1992, Susanna Santos’ husband, Antonio A. Santos’ (“Santos” or
25 “Appellant”) filed a worker’s compensation benefits claim on her behalf. Santos was given an
26 informal hearing by Edward H. Manglona (“Manglona”). The hearing was held August 23, 1993,
27 resulting in Manglona recommending compensation be awarded pursuant to guidelines that provided
28 24-hour coverage to an employee on official assignment. The Workers’ Compensation Commission
29 (“WCC”), headed by Tomas Aldan (“Aldan”), appealed the hearing, citing the need for a formal

1 hearing. The original hearing officer, Manglona, supervised by Aldan, presided over the formal
2 hearing.

3 The second hearing resulted in Manglona reversing his previous ruling, this time denying
4 Santos' claim. Santos then appealed to the WCC, which affirmed the decision to deny the claim.
5 The matter was then heard by the Superior Court, which affirmed the WCC ruling. Finally, on July
6 9, 2002, the Supreme Court reversed the WCC and Superior Court decisions, finding that
7 compensation was due, and remanded the case to the WCC for payment.

8 On remand, the Administrator determined that payments were only obligatory from the date
9 of the Supreme Court remand, and offered to pay the amount due in one lump sum less a 4%
10 deduction. The WCC also determined that Santos was not entitled to pre or post judgment interest
11 on the total amount of benefits due Santos, nor attorney fees; thereby mooting Santos' claim that
12 he is entitled to exceed the 15% limit on attorney fees. Santos again appealed to the WCC, headed
13 by Aldan, which entered a decision agreeing with Aldan's 4% deduction and attorney fees decisions.
14 In response to Santos' appeal to this Court, the WCC filed a counter claim, charging Santos with
15 improperly raising new issues on appeal because Santos cited cases and statutes not previously used
16 to support its earlier arguments.

17 **II. STANDARD OF REVIEW**

18 This Court reviews the decision of an agency *de novo*. *In re San Nicolas*, 1 N.M.I. 329
19 (1990). The Ninth Circuit, interpreting review provisions of the Federal Administrative Procedure
20 Act, 5 U.S.C. §§ 551, *et seq.*, which is nearly identical to the Commonwealth Administrative
21 Procedure Act, 1 CMC §§ 9101, *et seq.*, stated that the reviewing court should overturn an agency
22 decision when it is found to be arbitrary, capricious, an abuse of discretion, or otherwise not in
23 accordance with the law, or is unsupported by substantial evidence. *CHW W. Bay v. Thompson*, 246
24 F.3d 1218, 1223 (9th Cir. 2001).

25 **III. DISCUSSION**

26 At the outset, the Court dismisses WCC's contention that Santos is not allowed to cite
27 statutes and case law not previously used to support arguments made at the administrative level.
28 While an appellant may not raise a new issue on appeal, there is nothing that prohibits citing

1 additional legal authority. In fact, it is prudent for an attorney to continue to research statutes and
2 case law to support its arguments. As such, Santos' citation of statutes and case law not previously
3 cited is permissible.

4 **The 4% Fee**

5 Turning first to the 4% fee WCC contends it may deduct from Santos' \$40,000 award. In
6 determining that a 4% deduction was appropriate, WCC relies on 4 CMC § 9323(j) which states:
7 "the liability of the employer . . . may be discharged by the payment of a lump sum equal to the
8 present value of the future compensation payments commuted, computed at four percent [4%] true
9 discount compounded annually." WCC's decision, however, is not in accordance with statute and
10 ignores the fact that Section 9323 applies to future payments that a claimant may wish to take early.
11 Furthermore, 4 CMC § 9306 states: "a disability benefit payment shall be made for one week in
12 advance on the fourth day after the date of disability . . . [and] shall not exceed \$140 per week." As
13 such, when a payment is challenged and the challenge is resolved in the claimants' favor, the date
14 of commencement of payments reverts back to the date prescribed by Section 9306. Section 9323
15 relied on by WCC in its attempt to withhold 4% includes a subsection (i), which states that where
16 the claim is contested, the Administrator is authorized to require a deposit from the employer to
17 "secure the prompt and convenient payment of such compensation." Clearly, the Legislature
18 intended that the party challenging the payout of the compensation must pay as of the date payments
19 are due. In fact, it may be required that the money in question be put in reserve so that the claimant
20 is paid the full amount immediately upon a ruling in the claimant's favor.

21 Here, Susanna Santos died February 9, 1992, while on assignment. As such, the \$40,000
22 compensation payment should have begun being paid on a biweekly basis beginning February 19,
23 1992. Paying on a biweekly basis, as provided by statute, the entire \$40,000 award would have been
24 paid out by August 16, 1997, more than five years ago. Instead, Santos had to wait until 2002 for
25 the challenge to be resolved in his favor, long after payment should have been made. Then, with
26 payment long overdue, WCC determined the \$40,000 amount that WCC was required to deposit in
27 a holding account was subject to a 4% withholding. The Court disagrees.

28 A survey of case law supports the requirements of 4 CMC § 9306, that "in computing

1 compensation, the time of disability from an injury must relate back to the occasion when that
2 happened - - the date of the injury.” *Barlock v. Orient Coal & Coke Co.*, 178 A. 840, 841 (Pa.
3 1935). *See also, In re Barry’s Case*, 126 N.E. 894 (Mass. 1920) (compensation computed from the
4 eleventh day after the injury): *Aetna Life Ins. Co. v. State Indus. Comm’n*, 234 P. 765, 766 (Okla.
5 1925) (“compensation should be computed from the date of the injury”). As such, pursuant to
6 statute, and supported by well-settled case law, Santos is entitled to lump sum payment for the full
7 amount of \$40,000. Furthermore, because Santos was entitled to payments as of February 19, 1992,
8 Santos is also entitled to interest in accordance with 7 CMC § 4101.

9 Attorney Fees

10 Turning next to attorney fees. Santos asserts that he is entitled to attorney fees in excess of
11 15%. Section 9337 of Title 4 of the Commonwealth Code states: “[n]o claim for legal services or
12 for any other services rendered in respect of a claim or award for compensation . . . shall be valid
13 for more than 15 percent of the total award of disability benefits and unless approved by the
14 administrator, or if proceedings for review of the order of the administrator in respect of such claim
15 or award are had before any court, unless approved by such court.” 4 CMC § 9337. Section 9337
16 allows for attorney fees in excess of 15 percent in certain instances. The Court believes this is one
17 of those instances.

18 Santos was awarded his compensation claim in 1993. However, after more than ten years,
19 Santos is still attempting to collect the money due. Throughout the appeals process, the
20 Administrator and the WCC failed to procure an independent hearing officer to review the claim,
21 despite conflicts of interest. Aldan, the Administrator examining the case, was also the hearing
22 officer’s supervisor and headed the WCC. As such, the same person, not just the same agency, was
23 responsible for all decisions. After the Supreme Court overturned the WCC decisions, the same
24 agency official was designated the Administrator and continued to attempt to avoid paying Santos
25 what he should have been paid years ago. As such, Santos was forced to engage in yet another
26 round of appeals and incur more attorney fees. WCC, responded by filing a counter-claim against
27 Santos for attorney fees citing “unreasonable grounds” for the present appeal, despite WCC’s
28 attempt to withhold interest and attorney fees on a \$40,000 payment that should have begun paying

1 out on a biweekly basis in 1992.

2 As of April 2004, Santos has spent more than 10 years and nearly \$29,000 in legal fees to
3 exhaust administrative remedies, despite the appeals continually returning to the same decision
4 maker. Administrative law allows an agency to hear and resolve appeals within the agency,
5 however, there should be some degree of disassociation between the decision makers within the
6 agency. When there is a degree of independence, the appeal of an arbitrary decision unsupported
7 by statute does not become a futile process, languishing through an administrative agency. Here,
8 the Court finds that attorney fees in excess of 15% are reasonable, in light of the circumstances and
9 injustice that would result if Santos were expected to surrender the majority of his award to legal
10 fees after fighting an adverse party that caused several hearings and appeals, all of which were
11 decided by the same agency, and for the most part, by the same person.

12 Finally, the Court would like to express its concern with the vast quantity of taxpayer dollars
13 spent on this matter. At one time, citizens only worried about the police and the tax collector
14 abusing their powers. Today, citizens face the power and authority of wage and environmental
15 regulators, licensing authorities, import controllers, and a multitude of other administrative
16 authorities. We have a vast administrative state with minimal control over the administrators, and
17 an overwhelming presumption in the legality of administrative actions. Therefore, administrators
18 can have arbitrary power over citizens, such as the same person overseeing the decision and all
19 subsequent appeals.

20 The deference toward government agencies creates a difficult and expensive challenge for
21 citizens seeking relief from any governmental action. Administrative agencies were given authority
22 to resolve issues from within for several reasons, including the agencies' specialized knowledge of
23 the regulations. As part of that authority, most governmental agencies prohibit a citizen from taking
24 a dispute directly to an independent judge until all administrative remedies have been exhausted.
25 This exhaustion of administrative remedies requirement was intended to save taxpayer dollars and
26 promote consistent, coherent, logical and efficient application of agency laws. However, in too
27 many instances, the citizen and his claim are in limbo for years, resulting in the expenditure of

1 thousands of dollars.

2 **IV. CONCLUSION**

3 In view of the foregoing, and in accordance with 4 CMC § 9306, the WCC decision is
4 reversed and WCC shall pay the \$40,000 claim *without* any amount withheld. Furthermore,
5 Appellant shall be paid interest on the \$40,000 claim pursuant to 7 CMC § 4101. WCC shall remit
6 payment of the \$40,000 plus interest within twenty (20) days of the date of this Order.

7 Additionally, in light of the continued appeals to essentially the same person, Tomas Aldan,
8 Appellant is entitled to attorney fees in excess of 15% percent. With respect to the attorney fees,
9 the Court will authorize payment of Santos' attorney fees for all proceedings within the WCC
10 following the formal hearing wherein Edward H. Manglona reversed himself. Santos' attorney fees
11 will also be awarded for this appeal to the Superior Court. Santos will bear the cost of attorney fees
12 for the initial hearing and the first appeal to the Superior and Supreme Courts.

13 To assist the Court in making a determination of the exact amount of attorney fees payable,
14 Appellant shall submit a worksheet to the Court within ten days of this Order detailing the attorney
15 fees attributable to each appeal. The WCC will then have ten days to offer any objections.

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17 SO ORDERED this 23rd day of September 2004.

18 /s/ _____
19 DAVID A. WISEMAN
20 Associate Judge
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