



By the order of the court, Judge David A Wiseman



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FOR PUBLICATION

IN THE SUPERIOR COURT  
OF THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

MANUEL D. DACUMA, )  
 )  
Plaintiff/Appellant, )  
 )  
DEPARTMENT OF LABOR, )  
Commonwealth of the Northern Mariana )  
Islands, acting through JOAQUIN A. )  
TENORIO, Secretary of Labor, )  
 )  
Defendant/Appellee, )  
 )  
vs. )  
 )  
YUN'S CORPORATION, and YOON, HO )  
JIN, Corporate President and General )  
Manager, )  
 )  
Real Parties in Interest. )  
 )  
\_\_\_\_\_ )

Civil Action No. 05-0486

ORDER:  
GRANTING DEFENDANT and REAL  
PARTIES' IN INTEREST MOTION TO  
DISMISS FOR LACK OF  
JURISDICTION

I. INTRODUCTION

THIS MATTER came for hearing on April 19, 2007 at 1:30 p.m. in Courtroom 223A. Counsel Richard W. Pierce appeared on behalf of the Real Parties in Interest, Yun's Corporation (hereinafter YunCo). Counsel Steven Woodruff appeared on behalf of the Plaintiff/Appellant, Manuel Dacuma (hereinafter Dacuma). Assistant Attorney General Dorothy Hill appeared on behalf of the Department of Labor (hereinafter Labor).

1 The hearing was based on a motion to dismiss for lack of jurisdiction filed by YunCo and a  
2 separate motion to dismiss for lack of jurisdiction and for failure to state a claim filed by Labor. In  
3 essence, YunCo claims that because Dacuma failed to timely file his complaint for judicial review  
4 pursuant to 3 CMC, section 4446, this Court is without jurisdiction to hear the matter. After reviewing  
5 the parties' written submissions and hearing oral argument thereon, the Court issues its ruling and order.  
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7

## 8 **II. FACTUAL AND PROCEDURAL HISTORY**

9 Dacuma filed a claim with the Secretary of Labor under the Non-Resident Workers Act, 3 CMC  
10 sections, 3401 *et seq.*, in the year 2000. The matter came for hearing before a hearing officer on  
11 October 15, 2004. The Hearing Officer issued an Administrative Order on October 22, 2004, which  
12 granted Dacuma \$807.00 in back pay and expenses, and granted Dacuma transfer relief.

13 On November 2, 2004, Dacuma timely appealed the October 22, 2004 Decision of the Hearing  
14 Officer in a letter which simply stated that Dacuma was unsatisfied with the Hearing Officer's decision  
15 and noted that he was filing pro se because his attorney was off-island. The Secretary of Labor affirmed  
16 the Hearing Officer's Decision in an opinion released on December 1, 2004. The Secretary of Labor in  
17 his opinion affirming the Hearing Officer's decision allowed the parties 15 days to appeal the  
18 Secretary's decision to the Superior Court. However, instead of timely appealing the Secretary's  
19 decision with the Superior Court, Dacuma waited until April 28, 2005, approximately 5 months after the  
20 Secretary's decision was published, to file a motion for reconsideration with the Secretary of Labor.

21 In Dacuma's motion for reconsideration, Dacuma stated that he would amend the motion in one  
22 week to address the "plain error" apparent from the Hearing Officer's decision. However, six months  
23 elapsed wherein Dacuma failed to file any amendment or other substantive document. On October 19,  
24 2005, nearly one year after the Secretary originally affirmed the Hearing Officer's decision, the  
25 Secretary issued a decision which denied Dacuma's motion for reconsideration. At the end of the

1 Secretary's decision, the Secretary again informed the parties that they would have 15 days in which to  
2 appeal the matter to the Superior Court. Dacuma filed an appeal of the Secretary's decision on  
3 November 3, 2005—fifteen days after the Secretary's rejection of Dacuma's motion for reconsideration,  
4 and one month shy of a year after the Secretary's original affirmation of the Hearing Officer's decision.  
5

### 6 **III. DISCUSSION**

7 In its motion, YunCo asserts that there are two main issues that the Court must determine here:  
8 "1. Whether the Secretary [of Labor] had the authority to consider a Motion for Reconsideration, filed  
9 almost six months after the Secretary's initial decision and after the date for the appeal of the December  
10 1, 2004 decision? 2. Whether this Court [the Superior Court] has jurisdiction to review the denial of the  
11 motion for reconsideration?" In response to these questions YunCo offers that the Secretary did not  
12 have the authority to hear a motion to reconsider under the circumstances and that this Court has no  
13 jurisdiction to review either the affirmation of the Hearing Officer's decision or the Secretary's rejection  
14 of Dacuma's reconsideration request.

15 Dacuma's opposition, however, frames the matter in a different light. Essentially, Dacuma  
16 alleges that the Secretary of Labor violated Dacuma's due process rights by reviewing and rejecting Mr.  
17 Dacuma's appeal of the Hearing Officer's decision when he was aware the Dacuma's attorney was not  
18 on island, and not available to assist Dacuma in preparing any appeal. Further, Dacuma asserts that  
19 YunCo's argument that the Secretary had no authority to reconsider his earlier affirmation of the  
20 Hearing Officer's decision is flawed. Lastly, Dacuma argues that the Hearing Officer's decision was  
21 deficient on its face, and thus cannot be dismissed for failure to state a claim.

22 The Court generally agrees with YunCo's presentation of the issues. Generally speaking, the  
23 main issue is whether or not this Court has jurisdiction to review either of the Secretary of Labor's  
24 decisions? However, for clarification, the issues should be presented more specifically in terms of 1)  
25 Whether the Secretary of Labor had the authority to consider a motion for reconsideration when neither

1 the statutory scheme for labor proceedings nor the Labor regulations provide for reconsideration by the  
2 Secretary of his own decisions; 2) Whether the Secretary’s decision to entertain Dacuma’s motion for  
3 reconsideration tolled the 15 day period in which to appeal the matter to the Superior Court; 3) Whether  
4 the Secretary’s actions deprived Dacuma of his due process rights when he considered Dacuma’s pro se  
5 appeal while Dacuma’s attorney was not present on Saipan? The Court must answer each question in  
6 the negative and for that reason will dismiss Dacuma’s complaint for judicial review for lack of  
7 jurisdiction.

8 **A. The Secretary of Labor had no Authority to Reconsider His Affirmation of the Hearing**  
9 **Officer’s Decision, Because Dacuma Failed to Timely File.**

10 The statutory scheme governing Labor cases declares that the Secretary’s confirmation of  
11 agency findings, orders, and decisions “shall constitute final action for the purposes of judicial review.”  
12 3 CMC § 4445(c). The only authority which provides any specific guidance on the procedure for the  
13 Labor Secretary to reconsider his own appellate decision is found in the Alien Labor Rules &  
14 Regulations: “A notice of motion for reconsideration or reargument shall be served within ten (10) days  
15 after the docketing of the Secretary’s decision.” Alien Labor Rules & Regulations (ALR&R), section  
16 XII(S).

17 Although neither of the authorities cited above explicitly provide a jurisdictional bar against  
18 hearing a motion for reconsideration if the motion for reconsideration is filed beyond the 10-day period  
19 provided in the ALR&R, the Court agrees with YunCo’s proposition that such authority to reconsider  
20 should not extend beyond the time period in which the party seeking reconsideration has to appeal for  
21 judicial review. *See B.T. Energy Corp. v. Marcus*, 222 Neb. 207, 211, 382 N.W.2d 616, 619 (Neb.  
22 1986) (“We hold that the power of an administrative agency to reconsider its decision exists only until  
23 the aggrieved party institutes judicial review or the statutory time for such review has passed, and any  
24 such agency reconsideration does not operate to extend the statutory time for judicial review.”); *see also*  
25 *Bethesda Foundation of Nebraska v. Colorado Dept. of Social Services*, 877 P.2d 860, 862-863 (Colo.

1 1994).

2 Here, once the Secretary released his affirmation of the Hearing Officer's decision, Dacuma had  
3 10 days in which to request a rehearing or reconsideration and 15 days in which to appeal the  
4 Secretary's decision to the Superior Court. Dacuma failed to file anything until nearly five months had  
5 elapsed. Consequently, Dacuma was not only patently late in complying with the ALR&R procedures  
6 for filing a request for rehearing or reconsideration, but he also failed to file for reconsideration before  
7 the 15-day time limit for appeal to the Superior Court elapsed. Consequently, Dacuma lost any right to  
8 rehearing by the Secretary.

9 Although Dacuma argues in his opposition that there is no time limit in which an agency can re-  
10 examine its own decisions, his reliance on certain case law, specifically the *Albertson* case is ultimately  
11 unpersuasive. Essentially, the *Albertson* court came to the same conclusions as the court in *B.T. Energy*  
12 *Corp.* in holding that "in the absence of any specific limitation, such a motion may be filed *within the*  
13 *period for taking an appeal.*" *Albertson v. F.C.C.*, 182 F.2d 397, 399, 87 U.S.App.D.C. 39, 41 (D.C.  
14 Cir. 1950). Moreover, the Court agrees with the general premise that rules are provided for a reason,  
15 and are expected to be adhered to absent a compelling excuse. Here, Dacuma simply failed to follow  
16 the rules for filing a motion for reconsideration under the ALR&R. His excuse for noncompliance, as  
17 explained *supra*, provides no such compelling grounds. Additionally, to allow parties to flout these  
18 rules on account of an agency's admittedly ill-advised and ultimately superfluous decision to ignore  
19 them would erode their force rather than encourage adherence.

20 The Court agrees with YunCo's prediction that if parties are allowed to create extra time in  
21 which to file appeals simply by rolling the dice and filing a motion for reconsideration, such cases,  
22 already woefully overextended, shall occupy the dockets of agencies and courts alike for too long.  
23 Thus, in light of these considerations, the Court finds that the Secretary had no authority to rehear  
24 Dacuma's appeal because it was filed beyond the time allotted for rehearing and appeal to the Superior  
25 Court.

1           **B. Notwithstanding the Secretary’s Lack of Authority to Hear Dacuma’s Request for**  
2 **Reconsideration, the Secretary’s Consideration of Dacuma’s Request and Subsequent Rejection**  
3 **Failed to Toll the Time Period Limiting the Time to Appeal to the Superior Court.**

4           A party seeking judicial review of final agency action must initiate the appeal within 15 days of  
5 the final action. *See* 3 CMC § 4446. Failure to appeal final agency action within the time period  
6 allotted acts as a jurisdictional bar against review by the Superior Court. *See Rivera v. Guerrero*, 4  
7 N.M.I. 79 (1993) (A court lacks jurisdiction to review administrative decisions not timely appealed  
8 during the administrative process). Here, the Secretary of Labor issued his decision affirming the  
9 Hearing Officer’s decision on December 1, 2004. Dacuma failed to appeal the decision until November  
10 3, 2005—nearly 11 months after the jurisdictional time limit had expired. Thus, unless statute or case  
11 law provides for any tolling of the time in which to appeal a final agency action, this Court has no  
12 authority to hear Dacuma’s appeal because he failed to timely file it.

13           Neither the ALR&R nor the Commonwealth’s Administrative Procedure Act (APA) provide for  
14 any such tolling applicable to Dacuma’s circumstances. Specifically, the ALR&R, though it contains a  
15 tolling provision for appeals of a hearing officer’s decision while a motion for reconsideration is under  
16 advisement, provides no such tolling for requests for reconsideration to the Secretary. *See* ALR&R,  
17 sections X(CC)(1) and (2), section XII(S). And although the APA appears to provide for tolling on the  
18 basis of an inoperative time period, it does not provide any tolling for reconsideration; rather, it defers to  
19 the regulations of each agency to set out their own rules for such tolling. *See* 1 CMC § 9112 (“Except as  
20 otherwise expressly required by statute, agency action otherwise final is final for the purposes of this  
21 section whether or not there has been presented or determined an application for a declaratory order, for  
22 any form of reconsideration, or , unless the agency otherwise requires by rule and provides that the  
23 action meanwhile is inoperative, for an appeal to superior agency authority”).

24           Thus, because no explicit authority exists to warrant tolling of the time limit for judicial review  
25 provided under section 4446 of the Labor Code, Dacuma could not, regardless of his filing of a motion

1 for reconsideration, use such filing to toll the time limit for filing his case with the Superior Court.<sup>1</sup>

2 **C. The Secretary’s Consideration and Rejection of Dacuma’s Administrative Appeal While**  
3 **Dacuma’s Attorney was Absent From Saipan Did Not Deprive Dacuma of His Due Process.**

4 Dacuma next alleges, without citing any authority specific to his claim, that the Secretary’s  
5 consideration of his appeal and issuance of a decision while Dacuma’s attorney was “off island”  
6 deprived Dacuma of his right to assistance of counsel and consequently of his due process rights to a fair  
7 hearing.

8 There is simply no authority which places a burden on any administrative agency or judicial  
9 tribunal to shape its activities around the schedule of one party’s attorney. Although courts and other  
10 quasi-judicial bodies often try to accommodate the schedules of all parties and their attorneys, such  
11 accommodations are usually only made pursuant to an official request from the parties. Here, although  
12 the Court will assume for the sake of argument that Dacuma’s attorney gave notice that he would be off-  
13 island, such notice does not bar a hearing officer from releasing a decision in a matter, or bar a  
14 reviewing authority from commencing a review of such decision in the absence of a party’s attorney. If  
15 anything, Dacuma’s attorney should be held at fault for depriving Dacuma of his services at such a  
16 critical point in time without providing Dacuma comprehensive advice on how to proceed in order to  
17 preserve his ability to appeal to the Superior Court. Nevertheless, even if Dacuma’s attorney was to  
18 admit error, such error is normally imputed to the client absent some peculiarly compelling  
19 circumstances or excusable neglect. The mere absence of Dacuma’s attorney from Saipan fails to  
20 provide such peculiarly compelling circumstances or excusable neglect, which would entitle Dacuma to  
21 a second chance.

22 Moreover, Dacuma failed to request an extension of time in which to file a motion for  
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24 <sup>1</sup>The Court will also note, while expressing no opinion on the matter, that there appears to be no  
25 restriction against a party filing a timely motion to reconsider while simultaneously filing its appeal for  
judicial review in order to preserve the right to appeal.

1 reconsideration or a complaint for judicial review. The Court will not impose such responsibilities upon  
2 an administrative agency, as it is their duty to fairly decide disputes—not to provide legal advice to pro  
3 se or represented parties.

4  
5 **IV. CONCLUSION**

6 For the foregoing reasons, this Court GRANTS YunCo and Labor’s motion to dismiss.  
7 Dacuma’s complaint for judicial review is dismissed *with prejudice* for lack of jurisdiction. .

8  
9 **So ORDERED this 17<sup>th</sup> day of October 2007.**

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11 \_\_\_\_\_  
12 /s/  
13 David A. Wiseman, Associate Judge