



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

JESUS A. ARRIOLA)	CIVIL ACTION NO. 08-0458
)	
Petitioner,)	
)	
v.)	RULING AND ORDER GRANTING WRIT
)	OF MANDAMUS
)	
MARK A. AGUON, in his official capacity as)	
Administrator and Chief Executive Officer of)	
the Board of Trustees for the Northern)	
Mariana Islands Retirement Fund,)	
)	
Respondent.)	
)	

I. INTRODUCTION

THIS MATTER came for hearing on January 22, 2009 at 1:30 pm in Courtroom 223A. Counsel Jeanne H. Rayphand appeared on behalf of Petitioner, Jesus A. Arriola. Counsel James E. Hollman appeared on behalf of Respondent, Mark Aguon. The hearing was held pursuant to Petitioner's second request for a writ of mandamus order instructing Mr. Aguon in his official capacity to immediately pay or cause to be paid to Mr. Arriola the sum of 66 2/3% of the salary Mr. Arriola was receiving at the time

1 of his disability and separation of service of the government, for the period commencing June 21, 2007,
2 to present and continuing on the fifteenth and last day of each month pending final resolution of Mr.
3 Arriola's claim for disability.

4 For the reasons below, Petitioner's request for a mandamus is hereby GRANTED to the extent
5 that the Hearing Officer determined that Petitioner was entitled to interim payments.

6 7 **II. SYNOPSIS**

8 In September, 2008, this Court issued an Order denying Petitioner's request for a writ of
9 mandamus because Petitioner was unable to comply with the requirement embodied in 1 CMC §
10 8347(a) that certification from of a vocational rehabilitation counselor be obtained. *Arriola v. Aguon*,
11 Civ. No. 08-0302 (N.M.I. Super Ct. Dec. 15, 2008) (Ruling and Order Denying Petitioner's Writ of
12 Mandamus at 6). On November 7, 2008, Public Law 16-19 amended 1 CMC § 8347 and eliminated the
13 requirement of certification by a vocational rehabilitation counselor. On November 1, 2008, the Hearing
14 Officer in NMIRF Case No. 07-005 issued an Order granting Petitioner interim payments. *Order*
15 *Granting Interim Disability Payments Pursuant to 1 CMC Section 8384(b)*. Respondent appealed the
16 Hearing Officer's decision and the appeal was heard on January 13, 2009. According to Counsel for
17 Respondent, the Board has indicated that on January 26, 2009, they will begin deliberations of the
18 appeal. However, the appeal's expected date of resolution is unknown and this Court has no estimation
19 of when a decision will ultimately be reached.

20 Respondent has not complied with the Order of the Hearing Officer and has yet to make any
21 interim payments to Petitioner as dictated by that Order. On December 15, 2008, Respondent filed the
22 present mandamus requesting that 1) Respondent pay Petitioner his disability retirement annuity as
23 required by 1 CMC § 8384(b) and 2) Respondent pay Petitioner as ordered by the Hearing Officer on
24 November 1, 2008. At the time Respondent filed the present writ of mandamus, two pay periods had
25 elapsed since the Hearing Officer's decision without Respondent making payments to Petitioner as

1 ordered.

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3 **II. DISCUSSION**

4 **A. Mandamus Is Appropriate to Enforce the Order of the Hearing Officer**

5 “It is generally accepted that an action in mandamus is proper to compel administrative agencies
6 to exercise the powers entrusted to them, to perform ministerial acts and to enforce their rules and
7 regulations.” *Govendo v. Micronesian Garment Mfg., Inc.*, 2 N.M.I. 270, 286-287 (1991). Given the
8 extraordinary nature of mandamus relief, it is rarely granted, and only granted if the petitioner
9 establishes the following elements:

10 1) a clear legal right to the relief sought;
11 2) a legal duty on the part of the respondent to do the thing which the
12 petitioner seeks to compel ; and
13 3) the absence of another adequate remedy
14 *Elm’s , Inc. v. Nielsen*, Civil Action No. 01-0054B, slip op. at 5, ¶ 10 (Super.Ct. Nov. 29, 2001)(Order
15 on Motion for Summary Judgment). Accordingly, whether mandamus is appropriate depends heavily on
16 the existence of a clear legal right to the relief sought, or an examination of the legal merits for the
17 action sought.

18 Here, Petitioner seeks an order from this Court instructing Respondent to pay interim
19 semimonthly disability payments to Mr. Arriola until the Board of Trustees has determined whether Mr.
20 Arriola is entitled to disability pension. Further, Petitioner request a mandamus to direct the Respondent
21 to comply with the Hearing Officer’s decision.

22 Though Respondent raises numerous defenses to Mr. Arriola’s petition, Respondent has not
23 presented anything that would justify ignoring the Hearing Officer’s decision while an appeal is
24 pending. Respondent has not requested a stay of the Hearing Officer’s decision while the appeal is
25 pending nor has Respondent adequately shown that an appeal is indeed pending and that a decision of
the appeal board can be expected forthwith.

1 The Order of the Hearing Officer was unequivocal that Petitioner is entitled to *immediate* interim
2 disability benefits. It stated, in part that Petitioner “is entitled to estimated disability payments
3 commencing on the date of submission to the Fund of written certification that the member has bene
4 separated from the service of the employer because of total disability. . . .” *Order Granting Interim*
5 *Disability Payments Pursuant to 1 CMC Section 8384(b)* at 10 (internal quotations removed). If an
6 unsatisfied party is permitted to disregard the decision of the Hearing Officer merely because they
7 intend to appeal, the orders of the Hearing Officer will be nullified. This Court cannot allow a party to
8 treat the order of the Hearing Officer as mere suggestions pending a second opinion rather than an order
9 that must be complied with. Permitting Respondent to ignore the decision of the Hearing Officer
10 without requesting a stay of the order permits an indefinite stalling of every decision of the Hearing
11 Officer. Moreover, on multiple occasions the Hearing Officer stressed that *immediate* payments were
12 owed to Petitioner. The matter of passing time is something this Court acknowledged in its prior order
13 which denied Petitioner’s Writ stating that Mr. Arriola situation was “dire” and urging the Retirement
14 Fund “to act with all due urgency to approve or disapprove his disability application without further
15 delay”. *Arriola v. Aguon*, Civ. No. 08-0302 (N.M.I. Super Ct. Dec. 15, 2008) (Ruling and Order
16 Denying Petitioner’s Writ of Mandamus at 6). The Board has yet to approve or disapprove Petitioner’s
17 application. Petitioner has lived without income since June of 2007, continuing to delay compliance of
18 the Hearing Officer’s order to make interim payments merely because an appeal was filed is
19 unacceptable.

20 Therefore, pending the resolution of the appeal of the Hearing Officer’s decision, Respondent is
21 hereby ordered to promptly comply with the Hearing Officer’s decision of November 1, 2008. This
22 Court’s decision to grant Petitioner’s writ of mandamus is limited to the directives of the Hearing
23 Officer’s November 1, 2008 Order. This Court shall maintain jurisdiction over all matters in this action
24 and pending the outcome of the appeal, the Court will revisit Petitioner’s writ of mandamus and issue an
25 Order accordingly.

1 **III. CONCLUSION**

2 For the foregoing reasons, Petitioners’ request for a writ of mandamus is GRANTED to the
3 extent necessary for immediate compliance with the Hearing Officer’s November 1, 2008, Order
4 Granting Interim Disability Payments Pursuant to 1 CMC Section 8384(b) .

5 **IT IS SO ORDERED** that Respondent Aguon shall immediately pay or cause to be paid interim
6 disability payments to Petitioner Arriola as ordered by the Hearing Officer on November 1, 2008.

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8 **SO ORDERED** this 26th day of January, 2009.

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11 /s/ David A. Wiseman, Associate Judge
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