



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**

**NUR HOSSAIN, KUMAR PRADIP,
AMZAD HOSSAIN, SHAFIQL ISLAM,
and MELQUIDES BALASOTO,**

Petitioners,

vs.

MISAMIS CORPORATION,

Respondent.

Civil Action No. 08-0263

**FINAL ORDER REVERSING THE
SECRETARY OF LABOR’S
DECISION DENYING PETITIONERS’
AWARD FOR LIQUIDATED
DAMAGES**

I. INTRODUCTION

THIS MATTER came for a hearing on November 19, 2009 at 1:30 p.m. in Courtroom 223A. Attorney Joseph E. Horey represented Petitioners Nur Hossain, Kumar Pradip, Amzad Hossain, Shafiqul Islam, and Melquides Balasoto (hereinafter “Petitioners”). Steven Pixley represented Respondent Misamis Corporation (hereinafter “Misamis”). At the hearing the parties made oral arguments regarding Petitioners’ Motion seeking an award for liquidated damages. After considering the oral and written arguments of the parties, legal authorities, and the material facts, the Court renders its ruling below.

For the reasons discussed below, the Court Reverses the Secretary of Labor’s decision denying Petitioners’ claim for liquidated damages.

1 **II. SYNOPSIS**

2 Petitioners, former employees of Misamis Corporation, filed complaints with the Department of
3 Labor against Misamis seeking unpaid wages in 1999 and 2000. These complaints remained inactive
4 until October 31, 2007, when administrative hearings were conducted at the Department of Labor
5 (hereinafter “DOL”). After the hearings, on November 6, 2007, all five Petitioners were awarded back
6 wages and four of the five Petitioners were awarded liquidated damages.

7 Subsequently, Misamis appealed the Hearing Officer’s Decision to the Secretary of Labor
8 (hereinafter “SOL”). The SOL affirmed the award for back wages, but reversed the liquidated damage
9 award stating that Petitioners were not entitled to liquidated damages because the DOL had consolidated
10 Petitioners’ claims into one case, and liquidated damages are usually awarded in individual cases
11 brought by individual employees, rather than in consolidated cases brought by the Department.
12 Petitioners disagreed and argued that the SOL’s Order was factually incorrect.

13 Petitioners claim that they affirmatively, and on their own initiative, instituted their own
14 respective complaints against Misamis. Petitioners support their argument claiming that both the SOL
15 and Misamis admit that “each petitioner filed a labor complaint against respondent.” In addition,
16 Petitioners claim that the SOL erred to the extent that she found that “the time and expense of instituting
17 and prosecuting the case” was born entirely by Labor since the only person appearing from the DOL
18 was the Hearing Officer, herself. Finally, Petitioners argue that the SOL’s order is legally incorrect
19 since the Secretary should have applied the applicable law pursuant to the Nonresident Worker’s Act,
20 which governed nonresident workers’ labor complaints from 1983 through 2007.

21 Alternatively, Respondent counters by claiming that Petitioners are not entitled to an award for
22 liquidated damages since the DOL did not seek liquidated damages when they brought this case in the
23 first place. Respondent further argues that Petitioners failed to present sufficient evidence to support an
24 award of damages and as a result of their failure to succeed in their claim for wages, the SOL was
25 correct in reversing the Hearing Officer’s award for liquidated damages.

1 In addition, Misamis filed its own Judicial Review in companion case, No. 08-0258, claiming
2 that Petitioners award of damages should be set aside because: 1.) the DOL failed to conduct an
3 investigation of Misamis’ allegations of unlawful employment; 2.) the DOL failed to conduct a timely
4 hearing as mandated by applicable law; and 3.) the evidence adduced during the Administrative Hearing
5 did not support Petitioners’ award of damages. Each of these arguments will be addressed in turn.
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7 **III. ISSUES FOR REVIEW**

- 8 1. Whether the DOL erred in denying Petitioners liquidated damages.
- 9 2. Whether the Hearing Officer’s underlying award was supported by substantial evidence.
- 10 3. Whether the DOL failed to conduct an investigation of Misamis’ allegations of unlawful
11 employment.
- 12 4. Whether the DOL failed to conduct a timely hearing as mandated by applicable law.
13

14 **IV. STANDARD OF REVIEW**

15 1 CMC § 9112(f) prescribes the standard of review the Superior Court must apply when
16 reviewing agency actions within the Administrative Procedure Act. *Camacho v. Northern Marianas*
17 *Retirement Fund*, 1 N.M.I. 362 (1990). Section 9112(f) requires a reviewing court to decide all relevant
18 questions of law, interpret constitutional and statutory provisions, and determine the meaning or
19 applicability of an agency action. *Tenorio v. Superior Ct.*, 1 N.M.I. 1 (1989).
20 Specifically, § 9112(f)(2), mandates that a court set aside agency action if it finds the action is found to
21 be “(i) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, (ii)
22 Contrary to constitutional right, power, privilege, or immunity..., (iv) Without observance of procedure
23 required by law, (v) Unsupported by substantial evidence in a case subject to 1 CMC § 9108 and 9109
24 or otherwise reviewed on the record of an agency hearing provided by statute or (vi) unwarranted by the
25 facts to the extent that the facts are subject to trial de novo by the reviewing court.” 1 CMC § 9112(f)(2)

1 Generally, the review of a formal hearing is for substantial evidence and the review of an
2 informal hearing is for arbitrariness. *In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37 (1993). The
3 arbitrary and capricious standard is inappropriate when the agency has held a formal hearing where the
4 parties were represented by counsel, and where evidence and witnesses were allowed, and cross-
5 examination was permitted. *Dept. of Pub. Safety v. Office of the Civil Service Commission (Chong)*, No.
6 01-521E (N.M.I. Super. Ct. Sept. 12, 2002) (Order Setting Aside Oct. 4, 2001 Civil Service Comm.
7 Decision and Order), *aff'd*, 2005 MP 6. DOL hearings are formal and the reviewing court should apply
8 the substantial evidence standard. *E.g., Ramos v. Magusa, Inc.*, 2002 MP 25.

9 Here, a formal hearing was held in this matter where evidence and witnesses were allowed to
10 testify. Therefore, this Court will review the Administrative decisions under the “substantial evidence”
11 standard.

12 Before reaching the merits of Petitioner’s appeal, further explanation of the “substantial
13 evidence” standard is required to determine the degree of deference accorded to the agency body whose
14 actions are subject to review.

15 In judicial review of review of agency action, the substantial evidence standard for a finding
16 of fact means that the decision must be reasonable after consideration of the facts in the
17 record opposing the agency position as well as supporting it and the reviewing court is to
uphold the agency finding even if supported by something less than the weight of
evidence....

18 In judicial review of agency action, questions of law under the substantial evidence or
19 “reasonableness” standard are examined to determine if the agency’s conclusions are
reasonable based on the information package used by the agency in making the decision.

20 *In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37 (1993)

21 Stated simply, this Court must examine the record to determine whether the result reached by the
22 Secretary is reasonable in light of the available facts and applicable law. Thus, the proper standard of
23 review asks whether or not there was substantial evidence to support the agency findings.

24 After reviewing the file, the Court finds that there was substantial evidence to support the SOL’s
25 finding awarding Petitioners’ damages. However, the Court **REVERSES** the SOL’s decision denying

1 Petitioners liquidated damages pursuant to 1 CMC § 9112(f), since the SOL’s decision was not in
2 accordance with 3 CMC § 4447(d).

3
4 **V. DISCUSSION**

5 **A. The DOL Erred In Denying Petitioners Liquidated Damages Pursuant To 3 CMC §**
6 **4447(d).**

7 The Court finds that Petitioners should have been awarded liquidated damages pursuant to 3 CMC
8 § 4447(d).

9 3 CMC § 4447(d) states in part:

10 (d) In any action taken directly by or on behalf of a nonresident worker, notwithstanding
11 any other remedies that may apply, *the worker that prevails in such action shall recover*
12 *unpaid wages and overtime compensation, an additional equal amount as liquidated*
13 *damages, and court costs.* (emphasis added).

14 Liquidated damages are intended to compensate an unpaid worker for the actual, but difficult-to-
15 quantify, consequential damages resulting from nonpayment. Here, the applicable statute makes an
16 award of liquidated damages mandatory regardless of whether or not the DOL seeks such award. *See*
17 *generally Calvo v. NMI Scholarship Advisory Board*, 2009 MP 2 ¶ 25, *Commonwealth v. Camacho*,
18 2009 MP 1 ¶ 40 (holding that the term “shall” is mandatory). Even if, as Respondent claims, the DOL
19 brought the case on behalf of Petitioners, this would still fit squarely within the limits of 3 CMC §
20 4447(d) since this would be an action brought by the DOL on behalf of the nonresident works.

21 Notwithstanding, Respondent argues that since the DOL consolidated Petitioners’ claims into
22 one case, and brought this action on behalf of the DOL, liquidated damages should not be awarded.
23 However, Respondent, by its own admission states that “[s]ix separate complaints were filed by each of
24 these workers.” Therefore, each Petitioner filed his/her own labor claim against Respondent seeking
25 liquidated damages before being consolidated into one case by the DOL. Since these claims were filed

1 by each individual Petitioner and each individual Petitioner appeared at the hearing to testify, this shows
2 that Petitioners sustained the time and expense of prosecuting the case and leans in favor of awarding
3 Petitioners liquidated damages.

4 More importantly, the burden is on the Hearing Officer to award such damages to the prevailing
5 worker if an award of unpaid wages is made to him. In this case, all Petitioners were awarded unpaid
6 wages. Therefore, the denial of liquidated damages to Petitioners, each of whom was awarded unpaid
7 wages, was erroneous.

8 **B. The Hearing Officer’s Underlying Award Was Supported By Substantial Evidence.**

9 Respondent argues that the evidence adduced during the Administrative Hearing did not support
10 Petitioners’ award of damages. The Court disagrees. As stated above, in judicial review of an agency
11 action, the standard of review is “reasonableness.” Therefore, the Court must determine if the agency’s
12 conclusions were reasonable based on the information provided to the Hearing Officer at the time he
13 made his decision.

14 Here, the Hearing Officer found each of Petitioners’ wage claims to be supported by evidence.
15 In addition, the Hearing Officer stated that Petitioners’ testimony was credible and that their claims were
16 supported by documentation offered by the parties and the records of the DOL. Thus, the agency’s
17 findings are presumed to be correct if they are reasonable after consideration of the facts in record.
18 Here, the Hearing Officer’s findings are presumed to be correct since he based his findings on
19 Petitioners’ testimony which was supplemented with documentary evidence of hours and payments.¹

20 **C. The DOL’s Failure To Conduct An Investigation Of Misamis’ Allegations Of Unlawful**
21 **Employment Does Not Effect Petitioners’ Claim.**

22 NMI Department of Labor Regulations § 80-20.2-110 requires the “Chief of Labor or his
23 designee” upon receipt of a written complaint to immediately conduct an investigation concerning the
24

25 ¹The Court would like to note that Respondent did not object to any of this documentary evidence at the hearing.

1 alleged violation of any rules or regulations and to issue a warning or notice of violation. Respondent
2 argues that the DOL's unexplained failure to comply with legislative mandate denied Respondent the
3 opportunity to develop evidence and to have a fair hearing relating to the alleged illegal employment.

4 Petitioners counter by claiming that Respondent raised this allegation against only one of the five
5 Petitioners, Amzad Hossain, and as to him, the allegation was irrelevant since Mr. Hossain was
6 allegedly working illegally only after he left Misamis.

7 The Court finds that although the DOL failed to investigate this single claim, their failure does
8 not diminish Respondent's liability to Petitioners. It is a sad reality that the DOL does not function
9 more efficiently in the processing of labor claims. However, Petitioners are in no way to blame for the
10 DOL's shortcomings in this regard.

11 **D. Although The DOL Failed To Conduct A Timely Hearing As Mandated By Applicable**
12 **Law, The Delay Is Not a Defense to Petitioners' Claim against Respondent.**

13 Respondent argues that the seven and one half year delay in getting this matter to a hearing
14 prejudiced Respondent since it was unable to locate certain records. However, the Court finds that
15 Respondent did provide its records to the DOL back in 2000 when these cases were first filed.
16 Therefore, Respondent cannot claim that it was prejudiced by the delay since Respondent had already
17 provided those records to the DOL. While the Court does agree with Respondent that the seven and one
18 half year delay was excessive, the Court does not find that Respondent was prejudiced by the delay
19 since it turned over the records back in 2000.

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21 **V. CONCLUSION**

22 For the foregoing reasons, this Court hereby **REVERSES** the SOL's decision denying
23 Petitioners' liquidated damage award.
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1 **So ORDERED this 19th day of May, 2010.**

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David A. Wiseman, Associate Judge

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