



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

CECILIA JOSUE,)	Civil Action No. 09-0421
)	
Plaintiff/Petitioner,)	
)	
vs.)	ORDER DENYING RESPONDENT’S
)	MOTION TO DISMISS
DEPARTMENT OF LABOR,)	
)	
Defendant/Respondent.)	
)	
)	
)	

I. INTRODUCTION

THIS MATTER came before the Court on April 29, 2010 at 1:30 p.m. on Respondent’s Motion to Dismiss. Counsel Eli D. Golob appeared on behalf of the Secretary of Labor (hereinafter “Respondent” or “SOL”). Petitioner Cecilia Josue (hereinafter “Petitioner”) appeared with Attorney Stephen C. Woodruff. Having considered the oral and written submissions of the parties and the applicable law, this Court is prepared to issue its ruling below.

For the reasons stated below, Respondent’s Motion to Dismiss is hereby **DENIED.**

II. SYNOPSIS

The basis for the hearing was a Motion to Dismiss filed by Respondent. In the Motion, Respondent claims that the SOL’s Motion to Dismiss should be granted because Petitioner has failed to

1 timely file her Petition for Judicial Review. In addition, Respondent claims that no statute or regulation
2 requires the SOL to entertain a Motion for Reconsideration of the SOL's Order on Appeal.

3 Alternatively, Petitioner argues that 30 Comm. Reg. 28118-28120 (herinafter "NMIAC § 80-
4 20.1- 438") gives the SOL the power to hear Motions for Reconsideration and more importantly, tolls
5 the time for taking the next step in the appellate process. Petitioner further argues that the Secretary's
6 Order on Appeal was never properly served on Petitioner. Therefore, Petitioner claims that the time for
7 filing her Petition for Judicial Review has not yet begun to run.

8 9 **III. DISCUSSION**

10 Respondent's Motion to Dismiss is grounded in Com R. Civ. 12(b)(1), which allows for the
11 dismissal of claims for lack of subject matter jurisdiction. Courts lack jurisdiction over judicial review
12 matters that are untimely filed. *Rivera v. Guerrero*, 4 N.M.I. 79, 82 (1993). In addition, "the doctrine of
13 administrative res judicata bars an action that has already been the subject of a final administrative
14 decision. *In re Estate of Ogumoro*, 4 N.M.I. 124, 127 (1994).

15 3 CMC § 4949(a) provides:

16 "Judicial review of a final agency action of the Secretary is authorized after exhaustion of
17 all administrative remedies and shall be initiated within thirty (30) days of final action."

18 Here, the SOL issued an Order on Appeal in Petitioner's case on May 4, 2009. However, an
19 issue arose regarding the date Petitioner was served with a copy of the SOL's decision. Petitioner claims
20 that she was not properly served. The SOL counters by arguing that Petitioner must have received the
21 SOL's Order on Appeal, no later than August 3, 2009, since that was the date Petitioner filed her Motion
22 for Reconsideration. Therefore, the SOL contends that Petitioner had thirty (30) days from September 2,
23 2009, the date the SOL's decision became final, from which to file an appeal to the Commonwealth
24 Superior Court.

1 However, NMIAC § 80-20.1-438(k) states in part:

2 “A party may file a motion for reconsideration within fifteen days after service of an
3 order. A properly filed and served motion for reconsideration tolls the time for
4 filing a notice of appeal but is not itself appealable. The time for appeal begins to
5 run again on the date the decision on a motion for reconsideration is signed.”
6 (Emphasis Added).

7 First, the Court will address whether or not the SOL had a duty to serve Petitioner with a copy of
8 the Order on Appeal. Petitioner believes that the SOL should have served Petitioner a copy of the Order.
9 Alternatively, Respondent does not believe any law requires the SOL to serve Orders on parties.

10 NMIAC § 80-20.1-438(b) covers issuance of orders and states:

11 “The hearing officer shall, upon concluding a hearing, issue any necessary findings,
12 decisions, and orders as soon as practicable. Issuance of findings, decisions, and orders
13 shall be pursuant to 1 CMC § 9110, but shall not be judicially reviewable until final.”

14 Therefore, the Court must turn to 1 CMC § 9110 to see if this section sheds some light on the
15 notice requirement. 1 CMC § 9110 discusses issuance of orders and decisions upon hearing. This
16 section states in pertinent part, “[o]n appeal from or review of the initial order or decision, the agency
17 has all the powers which it would have in making the initial order or decision, except as it may limit the
18 issuance on notice or by rule.” In addition, sub-section (b) states “[b]efore a recommended initial order
19 or decision, or an order or decision on agency review of an order or decision, the parties are entitled to a
20 reasonable opportunity to submit for the consideration of the persons participating in the decision...”
21 Based on a plain reading of the statute, it does not appear that the SOL has an express duty to serve the
22 parties with a copy of its decisions.

23 Notwithstanding Respondent’s argument, NMIAC § 80-20.1-438(k) does make clear that the
24 SOL has an implied duty to serve a party with an order since the statute expressly states, “[a] party may
25 file a motion for reconsideration within fifteen days after service of an order.” Because the statute

1 expressly states that a party has fifteen (15) days from the day after service of the order and not fifteen
2 (15) days from the day after the date of the order, Petitioner is correct in arguing that service is a pre-
3 requisite for filing of a motion for reconsideration.

4 In conclusion, although there is no legal provision in the statutory or regulatory CNMI labor law
5 requiring service of the SOL's Administrative Appeal Orders on parties, pursuant to the NMIAC § 80-
6 20.1-438(k), Petitioner would have fifteen (15) days after service of the SOL's Order from which to file
7 a motion for reconsideration. As such, assuming Petitioner was not served until August 3, 2009,
8 Petitioner timely filed her motion for reconsideration, thereby tolling the time for filing a notice of
9 appeal.¹

10 **III. CONCLUSION**

11 Based on the foregoing, Respondent's Motion to Dismiss is hereby **DENIED** and
12 this matter is hereby **REMANDED** back to the SOL for further determination.

13 **IT IS HEREBY ORDERED:**

14 This matter be REMANDED to the DOL to act on Petitioner's Motion for Reconsideration
15 within ten (10) days from the date of this Order;

16 The AHO's Order is STAYED pending the final determination of this case;

17 **IT IS FURTHER ORDERED:**

18 An issuance of a Temporary Work Authorization shall issue while this case is pending final
19 determination.

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¹The undated letter signed by Acting Secretary of Labor, Barry Hirsbein, was not a proper denial of Petitioner's
25 motion for reconsideration. As such, Petitioner's motion for reconsideration is still before the SOL.

1 **SO ORDERED this 10th day of August, 2010.**

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/s/
David A. Wiseman, Associate Judge

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