



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,

Petitioner,

vs.

**NORTHERN MARIANA ISLANDS
RETIREMENT FUND; and the NMIRF
BOARD OF TRUSTEES,**

Respondents.

Civil Action No. 09-0276

**ORDER REMANDING THE CASE
WITH INSTRUCTION**

I. INTRODUCTION

THIS MATTER came before the Court for a hearing on September 23, 2010 at 1:30 p.m. in Courtroom 223A. Jeanne H. Rayphand, Esq. represented Jesus A. Arriola (“Petitioner”) and James E. Hollman, Esq. represented Respondent Northern Mariana Islands Retirement Fund. (“Respondent”). At the hearing, the parties presented oral arguments regarding the Petition for Review of the Order after Appeal entered June 19, 2009 by the Northern Mariana Island Retirement Fund (“Fund”) Board of Trustees (“Board”). After considering the written arguments of the parties the Court **REMANDS** this case to the Administrative Hearing Officer with instruction.

1 **II. FACTUAL AND PROCEDURAL BACKGROUND**¹

2 Petitioner became a Class I Fund member on October 12, 1993 as an employee of the
3 Commonwealth Ports Authority.² At the time, Public Law (“PL”) 6-17 was codified as 1 § CMC
4 8347(a) providing for disability pension requirements. On December 5, 2003, the CNMI legislature
5 enacted PL 13-60, which changed the requirements for disability retirement.

6 Petitioner applied for disability retirement which was denied by the Fund on July 30, 2007 on
7 the basis that one of two physicians who examined Petitioner did not find him to be totally and
8 permanently disabled as required by 1 § CMC 8347(a) as it read prior to its amendment by PL 13-60.
9 Petitioner appealed the Funds denial and provided additional doctors’ certifications. Petitioner was
10 once again denied, however the decision letter this time cited 1 § CMC 8347(a) including the PL 13-60
11 amendments.

12 Petitioner, meanwhile, filed a writ of mandamus before the Superior Court, asking the Fund be
13 required to pay Petitioner disability payments. The Court found Petitioner not eligible because he did
14 not meet the requirements of 1 § CMC 8347(a) as amended by PL 13-60. *Arriola v. Aguon*, Civ. No.
15 08-0302 (NMI Super Ct., September 8, 2008 at 5).

16 Effective June 20, 2008, Petitioner exhausted his annual and sick leave and was terminated for
17 his inability to work due to his disability. Petitioner filed a Motion for Judgment Granting Disability
18 Retirement which was heard before an Administrative Hearing Officer (“AHO”). On November 1,
19 2008, the AHO issued an Order Granting Interim Disability Payments. The AHO found Petitioner was
20 vested in the fund and the amendments of PL 13-60 acted to take away a benefit to him.

21 On November 7, 2008, PL 16-9 was enacted further amending 1 § CMC 8347(a) to require yet
22 a new set of requirements in order to show eligibility for disability retirement.

23 On January 26, 2009, another writ of mandamus was filed before the Superior Court by
24

25 ¹ As the Board notes in its Order after Appeal, the AHO did not conduct a full factual determination during the
26 Administrative Hearing. As there is yet to be a finding of facts, these facts are disputed and merely instructive for
purposes of this Order.

27 ² Petitioner worked for Public School System (“PSS”) from May 12, 1987 until he resigned in March 2, 1992 at which
28 time he obtained a refund of his employee contributions. On October 8, 2004, Petitioner entered into an agreement to
receive prior service (or “buy back”) credit for his time of service when he was employed by PSS.

1 Petitioner whereby the Court ordered the Fund to comply with the AHO's November 1, 2008 Order
2 Granting Interim Disability Payments.

3 The Fund appealed the AHO's Order Granting Interim Disability Payments to the Board who
4 held a hearing on January 13, 2009. On June 18, 2009, the Board entered its Order after Appeal
5 reversing the decision of the AHO and ordering the Fund to discontinue interim disability payments to
6 Petitioner. The Board also remanded the case back to the AHO to make an initial eligibility
7 determination and proceed with the fact-finding and fully address all issues.

8 On July 21, 2009, Petitioner timely filed a Petition for Judicial Review of agency action before
9 this Court.

10 **III. ISSUE FOR REVIEW**

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12 1. WHETHER PL 13-60 OR PL 16-19, WHICH AMENDED THE REQUIREMENTS FOR A
13 CLAIMANT'S ELIGIBILITY TO DISABILITY PENSION AND LOWERED THE
14 PERCENTAGE OF ANNUITY ARE APPLICABLE RETROACTIVELY TO PETITIONER.

15 **IV. STANDARD OF REVIEW**

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17 The standard of review the Superior Court must apply when reviewing agency actions within
18 the Administrative Procedure Act ("APA") is set forth in 1 CMC § 9112(f).³ *Camacho v. Northern*
19 *Marianas Retirement Fund*, 1 NMI 362 (1990). Section 9112(f) requires a reviewing court to decide
20 all relevant questions of law, interpret constitutional and statutory provisions, and determine the
21 meaning or applicability of an agency action. *Tenorio v. Superior Ct.*, 1 NMI 1 (1989). Specifically,
22 § 9112(f)(2) mandates that a court set aside agency action if it finds the action is found to be:

23 (i) Arbitrary, capricious, an abuse of discretion, or otherwise not in
24 accordance with law; (ii) Contrary to constitutional right, power, privilege,
25 or immunity; (iii) In excess of statutory jurisdiction, authority, or limitations,
26 or short of statutory rights; (iv) Without observance of procedure required by
27 law; (v) Unsupported by substantial evidence in a case subject to 1 CMC §§
28 9108 and 9109 or otherwise reviewed on the record of an agency hearing
provided by statute or (vi) unwarranted by facts to the extent that the facts are

³ The APA is found in 1 CMC §§ 9110 *et seq.*

1 subject to trial de novo by the reviewing court.

2 The standard of review for an appeal alleging an arbitrary and capricious action is similar to the
3 abuse of discretion standard. *In re Blankenship*, 3 NMI 209 ¶ 16 (1992). “A court will review an
4 action or decision alleged to be arbitrary and capricious to determine whether the action was reasonable
5 and based on information sufficient to support the decision at the time it was made.” *Id.*

6 Factual determinations from administrative hearings are reviewed under the substantial evidence
7 standard of review. 1 CMC § 9112(f)(2)(v); *see Limon v. Camacho*, 1996 MP 18 ¶ 22; *Barte v. Saipan*
8 *Ice, Inc.*, 1997 MP 17. In applying the substantial evidence standard, a court must determine whether
9 agency action was reasonable based on the information before the agency, however, the reviewing court
10 is to uphold the agency determination even if supported by something less than the weight of evidence
11 if the agency’s conclusions are reasonable. *In re Hafadai Beach Hotel Extension*, 4 NMI 37, 44 (1993).

12 Issues of law arising from administrative hearings are reviewed *de novo*. *Tenorio v. Superior*
13 *Court*, 1 NMI 4, 9 (1989).

14 In judicial review of agency action, a petitioner seeking an order setting aside an agency
15 decision bears the burden of proof. *In re Hafadai Beach Hotel Extension*, 4 NMI at 45.

17 **V. DISCUSSION**

18 Recently, the Commonwealth Supreme Court decided the case of *Cody v. Northern Mariana*
19 *Islands Retirement Fund*, 2011 MP 16. The *Cody* case addresses the issue before this court on review
20 of whether PL 13-60 or PL 16-19, which amended the requirements for a claimant’s eligibility to
21 disability pension and lowered the percentage of annuity are applicable retroactively to petitioner. *Cody*
22 instructs that, “[i]n the Commonwealth, persons acquire an accrued or vested right to disability
23 retirement benefits by virtue of their membership in the Fund.” *Cody*, 2011 MP 16 at ¶ 33 (*citing*
24 *Mallette v. Arlington County Empl’s, Supp. Ret. Sys. II*, 91 F.3d 630, 636 (4th Cir. 1996).) Therefore,
25 the law applying to Petitioner shall be the law in effect when he became a member in the Fund.

26 Further, as the Board noted in its Order after Appeal factual findings have not been
27 conducted at the administrative level. The Board refused to make factual findings and remanded the
28 case to the AHO. As *Cody* pointed out, final agency action is required prior to a review by this

1 Court. *Cody*, 2011 MP 16 at ¶¶ 18-22.

2 The Court, therefore, remands this case to the AHO for a factual determination and decision
3 in accordance with the law set forth in *Cody*.

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5 **VI. CONCLUSION**

6 For the foregoing reasons, the Court hereby **REMANDS** the case with instruction.

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8 **SO ORDERED** this 30th day of December, 2011.

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David A. Wiseman, Associate Judge

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