



By the order of the court, Judge David A Wiseman

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FOR PUBLICATION



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

IN THE MATTER OF FLOR )  
ESTABILLO, )  
 )  
Employee-Respondent, )  
 )  
and )  
 )  
THE DEPARTMENT OF PUBLIC )  
SAFETY, )  
 )  
Employer-Petitioner, )  
 )  
CIVIL SERVICE COMMISSION, )  
 )  
Agency Case No. CSC 02-06-014 )  
\_\_\_\_\_ )

CIVIL CASE NO. 14-0177  
  
ORDER GRANTING EMPLOYEE-  
RESPONDENT’S MOTION TO DISMISS

I. INTRODUCTION

THIS MATTER came before the Court on November 6, 2014, at 1:30 p.m. in Courtroom 223A. Attorney Brien Sers Nicholas appeared for the Employee-Respondent, Flor Estabillo (“Estabillo”). Assistant Attorney General James Zarones appeared for the Employer-Petitioner, the Department of Public Safety (“DPS”).

Based on review of the filings, oral arguments, and applicable law, the Court hereby **GRANTS** Estabillo’s motion to dismiss.

II. BACKGROUND

DPS is the Commonwealth’s police force. DPS alleges that Estabillo is a former police officer who was terminated on or about June 4, 2014 for unlawful possession of controlled substances and for other reasons.

1 DPS alleges that Estabillo filed a timely termination appeal with the Civil Service Commission (“the  
2 Commission”) under the Northern Mariana Islands Administrative Code (“NMIAC”) section 10-20.2-275.  
3 In response, DPS alleges that it filed a motion to dismiss said appeal for lack of jurisdiction. On July 3,  
4 2014, DPS alleges that Estabillo filed a motion to compel production of DPS’s entire internal affairs file on  
5 Estabillo – and that DPS opposed Estabillo’s motion.

6 On August 6, 2014, the parties presented arguments before the Commission. DPS alleges that, on  
7 August 11, 2014, the Commission issued an order denying DPS’s motion to dismiss. On the same day, the  
8 Commission issued an order for DPS’s attorney to meet with the Commission’s attorney and produce DPS’s  
9 Internal Affairs file for Estabillo.

10 On September 7, 2014, DPS filed a petition for judicial review of an administrative action under the  
11 Commonwealth Administrative Procedure Act (“CAPA”). It requested that the Court reverse the  
12 Commission’s finding that said agency had jurisdiction over Estabillo’s appeal.

13 Now, Estabillo files the present motion to dismiss. He argues that the Court does not have  
14 jurisdiction to rule on the merits of DPS’s petition because the Commission’s August 11, 2014 order  
15 asserting jurisdiction was not final agency action. He also argues that DPS failed to exhaust its  
16 administrative remedies.

### 17 III. LEGAL STANDARD

18 Rule 2(g)(1) of the Rules of Procedure for Administrative Appeals (“Rule 2(g)(1)”) governs a motion  
19 to dismiss for jurisdictional defects in the petition for judicial review of an agency action. Because Rule  
20 2(g)(1) also provides that the Rules of Civil Procedure (“NMI R. Civ. P.”) shall govern in a Rule 2(g)(1)  
21 motion, the Court applies the legal standards set forth in Rule 12(b)(6) of NMI R. Civ. P (“Rule 12(b)(6)”).

22 In order to prevail on a Rule 12(b)(6) motion, the movant has the burden to show that a pleading is  
23 not sufficient under Rule 8(a) of the Commonwealth Rules of Civil Procedure. A pleading may sufficiently  
24 comply with Rule 8(a) in two ways. *Atalig v. Mobil Oil Mariana Islands, Inc.*, 2013 MP 11 ¶ 23. A pleading  
25 may contain direct allegations of fact as to every material point. *Id.* Or a pleading may contain allegations

1 from which a fact-finder could reasonably infer that the necessary evidence will be introduced at trial. *Id.*  
2 A pleading may not contain allegations of fact that are purely speculative. *Id.* But in construing the  
3 allegations contained in the pleading, the Court assumes them to be true. *Id.* (citing *Syed v. Mobil Oil*  
4 *Mariana Islands, Inc.*, 2012 MP 20 ¶ 22). However, the Court will not strain to find an inference favorable  
5 to the non-moving party. *Id.*

6 Commonwealth administrative agency decisions are not reviewable by the judiciary as a matter of  
7 right. *N. Marianas College v. Civil Serv. Comm'n*, 2006 MP 4 ¶ 12. Thus, in a petition for judicial review  
8 of an agency action, CAPA must authorize a court to review the matter. Under CAPA, a court may review  
9 an agency action under limited circumstances: (1) where there is a relevant statutory authority; (2) a final  
10 agency action; and (3) where there is no other adequate remedy in a court. 1 CMC § 9112(d). 1 CMC §  
11 9112(d) also provides that “[a] preliminary, procedural, or intermediate agency action or ruling not directly  
12 reviewable is subject to review on the review of the final agency action.”

#### 13 IV. DISCUSSION

14 Estabillo argues that the instant petition does not arise from a final agency action and that DPS did  
15 not exhaust its administrative remedies. DPS argues to the contrary, but the Court finds that DPS’s petition  
16 for judicial review does not plead sufficient facts to show that the underlying agency action was a final  
17 agency action as contemplated under CAPA.<sup>1</sup>

18 In its petition, DPS alleged that the current matter arises from the Commission’s August 11, 2014  
19 order denying DPS’s motion to dismiss based on lack of jurisdiction. Denial of a motion to dismiss is  
20 generally an interlocutory order and is non-appealable subject to application of the collateral order doctrine.  
21 *Guo Qiong He v. N. Mariana Islands*, 2003 MP 3 ¶ 17 (holding that a denial of a motion to dismiss based  
22 on qualified immunity was not a “final determination of the immunity question.”); cf. *Brandon v. Bonnell*,

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24 <sup>1</sup> While Estabillo appears to argue that DPS failed to exhaust its administrative remedies before the Commission, his  
25 argument does not extend beyond a bare-bones statement of a legal conclusion. Therefore, the Court finds that Estabillo’s  
only argument appears to be one for lack of a final agency action.

1 368 Ill. App. 3d 492, 502 (2006) (“Both the denial of a motion to dismiss and the denial of a motion for  
2 summary judgment are interlocutory orders that may be revised prior to final judgment.”). A final order  
3 “must adjudicate all the rights and liabilities of each party.” *Bank of Guam v. Mendiola*, 2007 MP 1 ¶ 15.

4 DPS argues that, under CAPA, the subject order denying a motion to dismiss for lack of jurisdiction  
5 is a final agency action under the two-part test established under *Cody v. N. Mariana Islands Retirement*  
6 *Fund*, 2011 MP 16 ¶ 18. Under *Cody*, a party must first demonstrate that the challenged action represents  
7 the “consummation” of the agency’s decision-making process – and may not be tentative or interlocutory  
8 in nature. *Id.* (citing *Bennet v. Spear*, 520 U.S. 154, 177-78 (1997)); *Chicago v. Waterman S. S. Corp.*, 333  
9 U.S. 103, 112-13 (1948) (“It can give nothing and can take nothing away from the applicant or competitor  
10 . . . orders are not reviewable unless and until they impose an obligation, deny a right or fix some legal  
11 relationship as a consummation of the administrative process.”); *Bd. of Trs. of the N. Mariana Islands*  
12 *Retirement Fund v. Ada*, 2010 MP 10 ¶ 13. Second, the action must determine the rights or legal liabilities  
13 of the party. *Cody*, 2011 MP 16 ¶ 18.

14 According to DPS, both *Cody* prongs are met here because the Commission’s August 11, 2014 ruling  
15 asserting the Commission’s jurisdiction over Estabillo’s appeal is tantamount to a definitive statement on  
16 the agency’s position on the legal rights of the parties. DPS argues that said definitive statement gives  
17 Estabillo the “right to access confidential Internal Affairs files maintained by [DPS] and grants him the right  
18 to challenge the actions of [DPS].”<sup>2</sup> Pet’r’s Opp’n at 7-8. DPS’s essential argument is that the Commission’s  
19 August 11, 2014 order asserting jurisdiction created a legal duty in DPS to comply with the relevant  
20 provisions of NMIAC whereby no such duty existed prior to the issuance of said order.

21 But no language in the relevant sections of NMIAC would inform the Court that, if DPS’s allegations  
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23 <sup>2</sup> The Court notes that much of DPS’s concerns regarding the release of confidential information appears to be  
24 curtailed by the Commission’s August 11, 2014 order granting Estabillo’s motion to compel. The Commission’s order is  
25 subject to a condition, that DPS may redact any information that is “legally privileged for nondisclosure.” *In re Estabillo*,  
Case No. CSC 02-06-014 (NMI Civil Service Comm’n Aug. 8, 2014) (Order Granting Flor Estabillo’s Mot. for Production  
Subject to Condition at 3).

1 of fact were true, it would lead to the legal conclusion that the Commission’s August 11, 2014 ruling on  
2 jurisdiction was a statement of the agency’s final position on the legal rights of the parties. NMIAC provides  
3 that “[t]he Commission shall render its findings of fact and final decision in writing with service on all  
4 parties.” NMIAC § 10-20.2-276(a)(1) Accordingly, until the Commission issues the referenced final  
5 decision, the Commission’s ruling is tentative or interlocutory. In fact, the Commission’s August 11, 2014  
6 ruling on jurisdiction appears to be made without prejudice, giving more weight to the tentative or  
7 interlocutory nature of the order. *In re Estabillo*, Case No. CSC 02-06-014 (NMI Civil Service Comm’n  
8 Aug. 8, 2014) (Order Denying The Dep’t of Public Safety’s Mot. to Dismiss at 3) (“Accordingly, the  
9 Department of Public Safety’s motion to dismiss for lack of jurisdiction is denied upon majority vote of the  
10 Civil Service Commission.”).

11 The Court also notes that DPS’s duty to forward the relevant personnel documents automatically  
12 arose at the time Estabillo filed an appeal with the Commission. Under NMIAC,

13 When an employee files an appeal from adverse action with the Commission, the Office of  
14 Personnel Management must establish and maintain an appeal file containing copies of all  
15 available pertinent documents; in addition, that office must immediately forward originals  
16 of all pertinent documents to the Commission. The employee appeal file is independent,  
17 separate, and distinct from the official personnel folder (OPF).

18 NMIAC § 10-20.2-279; NMIAC § 10-20.2-278 (c) (“The Director of Personnel Management shall direct the  
19 appointing authority to make available to the Office of Personnel Management and to the employee the  
20 appointing authority’s entire adverse action file for review and reproduction.”).<sup>3</sup> Therefore, the Court is not  
21 persuaded by DPS’s argument that the Commission’s August 11, 2014 ruling on jurisdiction created a legal

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22 <sup>3</sup> Accordingly, DPS’s citation to *Cal. Dep’t of Water v. F.E.R.C.*, 341 F.3d 906, 909 (9th Cir. 2003) is misplaced. In  
23 *Cal. Dep’t of Water*, the Federal Energy Regulatory Commission (“FERC”) argued that the subject agency order was still  
24 pending a rehearing process at the agency level. Therefore, according to FERC, said agency order was not a final agency  
25 action for purposes of judicial review. *Id.* The Ninth Circuit rejected this argument, finding that the issues presented for  
judicial review were sufficiently ripe because the subject agency order mandated that the California Department of Water  
Resources comply with applicable limitations on certain agency operations as set out in said order. *Id.* This matter is  
distinguishable from *Cal. Dep’t of Water* because, as the Court explains above, the instant agency order did not create a legal  
right in DPS to comply with discovery.

1 right in DPS to perform under NMIAC. Accordingly, the Court does not find that said order was a final  
2 agency action under CAPA as a matter of law.

3 **CONCLUSION**

4 Based on the foregoing, the Court **GRANTS** Estabillo’s motion to dismiss.

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6 **SO ORDERED** this 13<sup>th</sup> day of April, 2015.

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9 David A. Wiseman, Associate Judge  
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