COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS SAIPAN, TINIAN, ROTA and NORTHERN ISLANDS



COMMONWEALTH REGISTER

VOLUME 44 NUMBER 06 JUNE 28, 2022

COMMONWEALTH REGISTER

VOLUME 44 NUMBER 06 JUNE 28, 2022

ADOPTION

| Public Notice of Certification and Adoption of the Amendments to the Board of Directors' By-Laws Commonwealth Economic Development Authority | | |
|--|--|--------|
| Public Notice of Ce Division of Revenu | rtification and Adoption of Regulations le and Taxation | |
| Department of Fin | ance | 048588 |
| DOL/PUA/CAC O | RDERS | |
| PUA Case No. | 22-186 | |
| Subject: | Administrative Order | |
| | Archie Z. Echalico v. CNMI Department of Labor, Division of Employment Services-PUA. | |
| Department of Lab | bor | 048590 |
| PUA Case No. | 22-0190 | |
| Subject: | Administrative Order | |
| In the Matter of: | Jocelyn Anastacio v. CNMI Department of Labor, Division of Employment Services-PUA. | |
| Department of Lal | bor | 048598 |
| PUA Case No. | 22-0193 | |
| Subject: | Administrative Order Granting | |
| | Parties' Request for Dismissal | |
| In the Matter of: | Ruby Socorro Besid v. CNMI Department | |
| | Of Labor, Division of Employment Services-PUA | |
| Department of Lal | bor | 048606 |

PUA Case No. 22-0194 Subject: Administrative Order Granting Parties' Request for Dismissal Donato E. Besid v. CNMI Department of Labor, In the Matter of: Division of Employment Services-PUA Department of Labor 048607 Labor Case No. 19-038 Subject: Order Dismissing Complainant's Common Law Claims for Lack of Subject Matter Jurisdiction In the Matter of: Shi Yunxiao v. Donghui Jewelry Group Corp. Department of Labor 048608 Labor Case No. 22-004 Sua Sponte Order Dismissing Complaint **Subject:** Pursuant to 3 CMC §4947(a) In the Matter of: Noe C. Calleio Jr. v. Fe Cabrera dba Yutu Commercial Services 048612 Department of Labor Labor Case No. 22-005 Sua Sponte Order Dismissing Complaint Subject: Pursuant to 3 CMC §4947(a) Honeylet Tampoc v. Fe Cabrera dba In the Matter of: Yutu Commercial Services 048614 Department of Labor Labor Case No. 22-006 Sua Sponte Order Dismissing Complaint Subject: Pursuant to 3 CMC §4947(a) Jeannette De Leon v. Fe Cabrera dba In the Matter of: Yutu Commercial Services Department of Labor 048616 22-007 Labor Case No. **Subject:** Order of Dismissal John D. Imperial v. HA & JO In the Matter of: Investment Group, LLC 048618 Department of Labor







P.O. Box 502149 Saipan, MP 96950 | Tel.: (670) 234-6245 / 6293 / 7145 / 7146 | Fax No. 235-7147 | www.developcnmi.com

PUBLIC NOTICE

OF CERTIFICATION AND ADOPTION OF THE AMENDMENTS TO THE BOARD OF DIRECTORS' BY-LAWS OF THE COMMONWEALTH ECONOMIC DEVELOPMENT AUTHORITY (CEDA)

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER AS PROPOSED AMENDMENTS TO REGULATIONS

VOLUME 44, NUMBER 04, PP 048406-048413 OF APRIL 28, 2022

ACTION TO ADOPT THE AMENDMENTS TO THE CEDA BOARD OF DIRECTORS' BY-

LAWS: In accordance with the Administrative Procedures Act ("APA), the Commonwealth of the Northern Mariana Islands Commonwealth Economic Development Authority HEREBY ADOPTS the amendments to the CEDA Board of Directors' By-Laws.

The Chairwoman of the CEDA Board of Directors certifies that by signing below, that the amendments to the CEDA Board of Directors' By-Laws being adopted were approved by the CEDA Board of Directors at its meeting on June 8, 2022.

AUTHORITY: The Board of Directors of CEDA thru its Chairwoman are authorized to promulgate and amend, if necessary, the CEDA Board of Directors' By-Laws pursuant to §6 of the P.L. 4-49, as amended, 4 CMC §10203(a)(7).

EFFECTIVE DATE: Pursuant to APA, 1 CMC sec. 9105(b), this adopted CEDA Board of Directors' By-Laws is effective ten (10) days after compliance with APA, 1 CMC §§9102 and 9104(a) or (b), which, in this instance, is ten (10) days after publication in the Commonwealth Register.

ATTORNEY GENERAL APPROVAL: The adopted CEDA Board of Directors' By-Laws were approved for promulgation by the Attorney General. (1 CMC §2153(e), duty to review and approve, as to form and legal sufficiency, all rules and regulations to be promulgated by any department, agency, or instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law).

I DECLARE under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on the 8th day of June 2022, at Saipan, Commonwealth of the Northern Mariana Islands.

AUBRY M. HOCOG Chairwoman, CEDA Board of Directors Pursuant to 1 CMC §2153(e) (AG's approval of regulations to be promulgated as to form) and 1 CMC §9104(3) (obtain AG's approval), the certified final regulations, modified as indicated above from the cited proposed regulations, have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General, and shall be published (1 CMC §2153(f) (publication of rules and regulations). Dated this _____ day of June 2022 EDWARD MANIBUSAN Attorney General Filed and recorded by: 6.27.2022 ESTHER R.M. SAN NICOLAS Commonwealth Registrar

Certified and ordered by:

Amendments to the CEDA Board of Directors' By-Laws

§ 25-10-2225 MEETINGS OF THE BOARD

- (a) All meetings of the Board shall be held in the Commonwealth and pursuant to Public Law 8-41; "the Open Government Act of 1992", as amended. Members of the Board of Directors who are in the Commonwealth but unable to attend a meeting in person may appear by means of internet or online video conferencing, teleconferencing, or other electronic means of communication, pursuant to Public Law 22-05
- 1) Members attending a meeting via internet or online video conferencing, teleconferencing, or other electronic means of communication must make sure that they are in a secure location when participating in an executive session portion of a meeting, pursuant to the Open Government Act.
- 2) Members who appear by means of internet or online video conferencing, teleconferencing, or other electronic means of communication shall be considered present for the purposes of a quorum.
- (b) <u>Notice of Intent to Attend Remotely</u>. Members who plan to attend a meeting of the Board of Directors by means of internet or online video conferencing, teleconferencing, or other electronic means of communication shall inform the Chairman of the Board and the Executive Assistant at least three (3) days prior to the meeting.

§ 25-10-2235 OFFICERS OF THE AUTHORITY

- (d) The Board may appoint an attorney who will serve at its pleasure and whose duties and compensation may be fixed by the Board. The Attorney shall advise the Board, the Executive Director, and staff in all legal matters to which the Authority is a party or in which the Authority is legally interested, and may represent the Authority before the Legislature, Boards, and other agencies of the Commonwealth or of the United States.
- (e)(d) The Executive Director and Comptroller shall be paid at salaries established pursuant to Public Law 19-71.
- (f)(e) The Executive Director, Comptroller and other officers of the Authority may be dismissed for cause by the affirmative vote of five Board members

Office of the Secretary Department of Finance



P. O. Box 5234 CHRB SAIPAN, MP 96950

TEL.: (670) 664-1100 FAX: (670) 664-1115



PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF REGULATIONS OF The Department of Finance, Division of Revenue and Taxation

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED REGULATIONS
Volume 44, Number 05, pp 048546-048562, of May 28, 2022

Regulations of the Department of Finance: Chapter 70-40.1 Business Licensing

ACTION TO ADOPT PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands, Department of Finance ("DOF"), HEREBY ADOPTS AS PERMANENT the Proposed Regulations which were published in the Commonwealth Register at the above-referenced pages, pursuant to the procedures of the Administrative Procedure Act,1 CMC § 9104(a). The DOF announced that it intended to adopt them as permanent, and now does so. (Id.) I also certify by signature below that, as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed Regulations, and that they are being adopted without modification or amendment.

PRIOR PUBLICATION: The prior publication was as stated above. These regulations were adopted on May 24, 2022.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY: None

AUTHORITY: These regulations are promulgated under the authority set forth in the Commonwealth Code including, but not limited to, 1 CMC §§ 2553 and 2557; 4 CMC §§ 5611-5614.

EFFECTIVE DATE: Pursuant to the APA, 1 CMC sec. 9105(b), these adopted regulations are effective 10 days after compliance with the APA, 1 CMC §§ 9102 and 9104(a) or (b), which, in this instance, is 10 days after this publication in the Commonwealth Register.

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC sec. 9104(a)(2), the agency has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. Please see the following pages for this agency's concise statement, if there

are any, in response to filed comments.

ATTORNEY GENERAL APPROVAL for non-modified regulations or regulations with non-material modification: The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC sec. 2153(e) (To review and approve, as to form and legal sufficiency, all rules and regulations to be promulgated by any department, agency or instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law).

I DECLARE under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on the 27th day of June, 2022, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:

David DLG. Atalig Secretary of Finance Date

Filed and Recorded by:

Esther San Nicolas

Commonwealth Registrar

Date



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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS DEPARTMENT OF LABOR ADMINISTRATIVE HEARING OFFICE

| In Re Matter of: |) PUA Case No. 22-0186 |
|--------------------------------------|------------------------|
| Archie Z. Echalico, |) |
| Appellant, |) |
| v. |) ADMINISTRATIVE ORDER |
| CNMI Department of Labor. | |
| Division of Employment Services-PUA, |) |
| Appellee. | |
| | |

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on February 24, 2022 at approximately 9:00 a.m. at the Administrative Hearing Office. Appellant Archie Z. Echalico ("Appellant") was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program ("Appellee" or "Department") was present and represented by PUA Coordinator Francene Kileleman and Labor Certification Worker Dennis Cabrera. There were no other witnesses that provided testimony at the hearing.

Exhibits:

- 1. Exhibit 1: Copy of the Appellant's Application Snapshot, filed September 25, 2020;
- Exhibit 2: Copy of Appellant's Weekly Certifications from August 1, 2021 to September 4, 2021;
- 3. Exhibit 3: Copy of Department's Disqualifying Determination, dated January 5, 2022;
- 4. Exhibit 4: Copy of Appellant's Request to File an Appeal and supporting documents, filed January 13, 2022;
- 5. Exhibit 5: Copy of the Notice of Hearing, issued January 13, 2022;
- 6. Exhibit 6: Copy of Amended Notice of Hearing, issued on January 26, 2022;
- 7. Exhibit 7: Copy of Appellant's U.S. Passport and Driver's License;
- 8. Exhibit 8: Copy of Employer Imperial Pacific International (CNMI), LLC's furlough letter, dated June 21, 2021;
- 9. Exhibit 9: Copy of Appellant's handwritten statement, dated August 19, 2021;

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10. Exhibit 10: Copy of PUA Benefits Rights Information Handbook;

- 11. Exhibit 11: Copy of Department's Press Release regarding the PUA Work Search Requirement;
- 12. Exhibit 12: Copy of NMI Portal Message to Appellant regarding the PUA Work Search Requirement, dated July 23, 2021;
- 13. Exhibit 13: Copies of News Articles posted in the Saipan Tribune and Marinas Variety on July 22, 2021;
- 14. Exhibit 14: Copies of Doctors' Certifications;
- 15. Exhibit 15: Copy of Department's Benefit Payment Control Unit Email Communication, dated February 17, 2022; and
- 16. Exhibit 16: Copy of NMI Portal showing No Work Search History, from August 7, 2021 to September 4, 2021.

For the reasons stated below, the Department's Determination, dated January 5, 2022 is **AFFIRMED**. Claimant is not eligible for benefits for the period of effective August 1, 2021 to September 4, 2021.

II. JURISDICTION

On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of 2020 was signed into law creating new temporary federal programs for unemployment benefits called Pandemic Unemployment Assistance ("PUA")¹ and Federal Pandemic Unemployment Compensation ("FPUC").² On December 27, 2020, the Continued Assistance for Unemployed Workers Act of 2020 ("Continued Assistance Act") amended and created new provisions of said federal unemployment insurance programs, which, among other things, extended the PUA and FPUC programs to March 13, 2021.³ On March 11, 2021, the American Rescue Plan Act of 2021 ("ARPA") extended the programs to September 6, 2021. The CNMI Department of Labor is charged with the responsibility in administering the above-mentioned programs in the CNMI in accordance to applicable law.⁴ The CNMI Department of Labor Administrative Hearing Office has been designated

¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

³ See Consolidated Appropriations Act, 2021, Division N, Title II, Subtitled A ("Continued Assistance for Unemployed Workers Act of 2020" or "Continued Assistance Act").

⁴ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI

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to preside over appeals of agency decisions. Upon review of the records, the appeal is timely filed. Accordingly, jurisdiction is established.

III. PROCEDURAL BACKGROUND & ISSUES

Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon review of Appellant's application and supporting documents, the Department issued a Disqualifying Determination on January 5, 2022. On January 13, 2022, Appellant filed the present appeal, and the matter was scheduled for a hearing. The issues on appeal are: (1) whether Appellant is eligible for PUA; and (2) whether an overpayment occurred and funds should be returned.

IV. FINDINGS OF FACT

In consideration of the evidence provided and credibility of witnesses' testimony, the undersigned issues the following findings of fact:

- 1. Prior to the COVID-19 pandemic, Appellant was employed as a driver at Imperial Pacific International (CNMI), LLC ("Employer"), located in Garapan Village, Saipan Island. As a driver, Appellant was paid \$7.25 per hour.
- 2. Due to the economic impact of the pandemic, Employer implemented cost-cutting measures that affected Appellant's employment. Specifically, Appellant was furloughed by Employer since March 21, 2020.
- 3. On or around September 25, 2020, Appellant submitted an online application⁵ for unemployment assistance under the PUA and FPUC programs administered by the Department. In the application snapshot,⁶ Appellant self-certified under penalty of perjury that:
 - a. Appellant is a U.S. Permanent Resident;
 - Appellant's employment was directly affected by COVID-19 when his place of employment was closed as a direct result of the COVID-19 public health emergency;
 and
 - c. Appellant's employment was affected since March 21, 2020.⁷

Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance. ⁵ Exhibit 1.

⁶ *Id*.

⁷ Id.

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- 4. Subsequently, Appellant submitted weekly certifications to claim continued benefits from August 1, 2021 to September 4, 2021.8 In the weekly certification for August 1, 2021 to August 7, 2021, Appellant reported that his employment was still affected by COVID-19 because his place of employment is closed as a direct result of COVID-19 public health emergency; and he is able and available for work during the claimed week. However, in subsequent weekly certifications, from August 8, 2021 to September 4, 2021, Appellant reported that he is unable and unavailable to work during these weeks because of a family member's illness. 10
- 5. The answers provided in Appellant's initial application and weekly certifications were submitted under penalty of perjury. To that effect, it is Appellant's responsibility to provide true, accurate, and complete answers. Moreover, it is Appellant's responsibility to: (1) be informed about the program by reading the PUA Benefit Rights Information Handbook and other official written material regarding PUA; (2) comply with a PUA Coordinator's requests for information in the adjudication phase; and (3) keep accurate records of the weekly claims, payments received, money earned, and work search contacts made.¹¹
- 6. The Department testified and provided substantiating evidence to show that Appellant was provided with information and instructions on the requirement for work search contacts, including keeping accurate records of the work search contacts for the weeks claimed.¹²
- 7. Based on Appellant's answers on his initial application and weekly certifications, Appellant's claim was processed, and on January 5, 2022, the Department issued a Disqualifying Determination, effective for the period of August 1, 2021 to September 4, 2021, finding that Appellant is ineligible to receive PUA and FPUC benefits for this period. 13 The Department's stated reason for ineligibility was because Appellant "failed to meet the minimum job search requirement. From (08/01/2021-09/04/2021) you did not make three job search contacts per week as required."14

⁸ Exhibit 2.

⁹ See Exhibit 2.

¹⁰ See Exhibit 2.

¹¹ See Exhibits 1-2;

¹² See Exhibits 10-13.

¹³ Exhibit 3.

¹⁴ *Id*.

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- 8. On January 13, 2022, Appellant filed the present appeal, and the matter was scheduled for an Administrative Hearing.¹⁵
- 9. As testified to by the witnesses, Appellant has no documents or evidence to demonstrate that he conducted the required three work search contacts from August 1, 2021 to September 4, 2021. How work search contacts including by registering on CNMI Department of Labor website, uploading his resume, and checking job listings regularly on CNMI Department of Labor. Appellant also did not apply for work in-person, call, email or otherwise contact any prospective employers regarding any job vacancy announcements or use any other method that a person would normally use to find employment.
- 10. Appellant is appealing the Department's Determination arguing that he did not conduct any of the required work search contacts because he is the primary caregiver for his wife, who requires constant care because of her serious, underlying medical condition, which predates COVID-19 pandemic. Papellant's wife's illness was diagnosed in 2019 and is unrelated to COVID-19. Prior to the pandemic, Appellant's children, relatives and extended family assisted in the care of Appellant's wife while Appellant continued to work. At times, Appellant also paid for others to assist in his wife's caregiving. After the pandemic, Appellant's son, daughter-in-law and extended family remain on island, and would be available to assist in her care if Appellant returned to work.
- 11. Based on testimony of the Appellant, Appellant had substantial help from family members and/or hired caregivers to assist with his wife's care when he worked for his Employer in 2019 to early 2020. However, as testified to and supported by medical records, Appellant is now the primary caregiver for his wife, who requires constant attention and care.¹⁸
- 12. While the appeal was pending, the Department Benefit Payment Control Unit confirmed there was no overpayment issue in this appeal because Appellant did not receive any unemployment benefits for the relevant claim period, from August 1, 2021 to September 4, 2021.¹⁹

¹⁵ See Exhibits 4-6.

¹⁶ See also Exhibit 16.

¹⁷ Exhibit 9;

¹⁸ Exhibit 14.s

¹⁹ Exhibit 15.

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V. CONCLUSIONS OF LAW

In consideration of the above-stated findings and applicable law, the undersigned issues the following conclusions of law:

1. Appellant is not able and available to work in the CNMI.

In accordance with the CARES Act, an individual must be able and available to work in the during week that benefits are claimed. "An CNMI the individual shall deemed able and available for work . . . if the individual is able and available for suitable work during the customary work week of the individual's customary occupation which falls within the week for which a claim is filed."²⁰ "An individual shall be deemed able to work if the individual has the physical and mental ability to perform the usual duties of the individual's customary occupation or other work for which is the individual is reasonably fitted by training and experience."21 "An individual shall be deemed available for work only if the individual is ready and willing to accept employment for which the individual is reasonably fitted by training and experience. The individual must intend and wish to work, and there must be no undue restrictions either self-imposed or created by force of circumstances which prevent the individual from accepting employment."22

Effective June 13, 2021, Hawaii reinstated the work search requirement for all PUA claimants. Because the CNMI follows Hawaii state law with respect to unemployment benefits, CNMI claimants must "make a minimum of three work search contacts each week, unless²³ otherwise provided" to demonstrate availability.²⁴ With respect to work search contacts, "the [claimant] shall maintain a record of all work search contacts and may be required to submit such records upon request by the Department."²⁵ Activities that are considered "work search contacts" include: (1) registering for work at the Department, other employment agency, or work placement program; (2) apply for work, submitting resumes, or interviewing with potential employers; (3) attending job search seminars or relevant employment seminars; or (4) other similar work search activities which are generally made by individuals in a similar occupation who are genuinely interested in obtaining work. Ultimately, a claimant who fails to make a minimum of three work search contacts each week is not available for work and may be held ineligible for benefits.²⁶

²⁰ HAR § 12-5-35(a)

²¹ HAR § 12-5-35(a)(1) (emphasis added).

²² HAR § 12-5-35(a)(2) and (b) (emphasis added).

²³ See HAR §12-5-35(c)(4).

²⁴ HAR §12-5-35(c)(1).

²⁵ HAR §12-5-35(c)(2).

²⁶ HAR §12-5-35(c)(5).

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three work search contacts for each week.

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Here, as testified to by the witnesses during the hearing, Appellant did not conduct the required

three work search contacts for the claim period of August 1, 2021 to September 4, 2021. Appellant

also testified that he did not conduct any work search contacts and therefore he has no documents or

other evidence to demonstrate that he conducted the required three work search contacts. When

questioned about specific examples of work search contacts, Appellant testified that he did not register on CNMI Department of Labor website, upload his resume, check any job listings regularly

on CNMI Department of Labor website, apply for work in-person, call, email or otherwise contact

any prospective employers regarding job vacancy announcements, or use any other method that a

person would normally use to find employment. Therefore, the undersigned finds that Appellant made no effort toward being able and available to work because he failed to conduct the required

Appellant is appealing the Department's Determination because he argues he could not conduct

the work search requirements because he is the primary caregiver for his wife, who requires constant care because of preexisting serious, underlying health conditions.²⁷ The undersigned recognizes the

difficult circumstances that Appellant is faced in deciding whether to conduct the three work search

contacts and find employment or to remain by his wife's side as her primary caregiver. However,

under applicable law, Appellant is not exempted from making the required job search contacts due to the preexisting, underlying health conditions of his spouse.²⁸ Appellant testified that his wife has

had serious, underlying health conditions since she was diagnosed in 2019. Appellant confirmed that

his wife's illness predates COVID-19 pandemic and is unrelated to COVID-19. Appellant also

testified that he continued to work after his wife was diagnosed; his children and members of his

wife's extended family assisted him in caring for her. When some of these family members departed

CNMI, at times, Appellant paid for a caregiver to assist with his wife's care so that he could continue

to work. Appellant also testified that, after the pandemic, his son, daughter-in-law, and other

extended family members remain on Saipan Island, and the undersigned finds that based on Appellant's testimony these family members are able and available to assist Appellant in caring for

his wife if he were employed. Because alternative caregiving options are there, the undersigned finds

that the undue restrictions created by his wife's underlying health conditions is self-imposed by

Appellant. Under the applicable law, claimant must intend and wish to work, and there must be no

²⁷ Exhibit 14 (doctors' notes).

²⁸ See HAR § 12-5-35(c).

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undue restrictions, either self-imposed or created by force of circumstances, which prevent the individual from accepting employment.²⁹

Based on the applicable and evidence provided, including Appellant's testimony, the undersigned finds that Appellant is not able and available to work for reasons unrelated to COVID-19 public health emergency. Accordingly, Appellant is not eligible for PUA and FPUC benefits.

VI. DECISION

For the reasons stated above, it is ORDERED that:

- 1. The CNMI Department of Labor's Disqualifying Determination, dated January 5, 2022, is **AFFIRMED**; and
- 2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of August 1, 2021 to September 4, 2021.

If a party is aggrieved by this Order and would like to contest the decision, he or she must submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The written request should be supported by legal, factual, or evidentiary reasons to reopen the decision. The written request must be submitted to the Administrative Hearing Office, either in person at 1357 Mednilla Avenue, Capitol Hill Saipan MP 96950 or via email at hearing@dol.gov.mp.

In the event a request to reopen the decision is granted, the matter shall be scheduled for a subsequent hearing. In the event a request to reopen the decision is denied, or if the Appellant still disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI Superior Court under the local Administrative Procedures Act. See 1 CMC § 9112. All forms, filings fees, and filing deadlines for judicial review will be as established by the applicable law and court rule.

So ordered this 7th day of June, 2022.

/s/

CATHERINE J. CACHERO Administrative Hearing Officer, *Pro Tem*

²⁹ HAR § 12-5-35(a)(2) and (b) (emphasis added).



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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS DEPARTMENT OF LABOR ADMINISTRATIVE HEARING OFFICE

|) PUA Case No. 22-0190 |
|------------------------|
| |
|) ADMINISTRATIVE ORDER |
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I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on May 24, 2022 at approximately 9:00 a.m. at the Administrative Hearing Office, Saipan. Appellant Jocelyn Anastacio ("Appellant") was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services — Pandemic Unemployment Assistance program ("Department") was present and represented by PUA Coordinator Tiyani Camacho. There were no other witnesses that provided testimony at the hearing. The following documents were admitted into evidence:

Exhibits:

- 1. Exhibit 1: Copy of the Appellant's Application Snapshot (new), filed August 26, 2020;
- 2. Exhibit 2: Copy of the Appellant's Application Snapshot (reopen), filed November 2, 2020;
- 3. Exhibit 3: Copy of Department's Disqualifying Determination, dated January 6, 2022;
- 4. Exhibit 4: Copy of Appellant's Request to file an Appeal, filed February 2, 2022;
- 5. Exhibit 5: Copy of the Notice of Hearing, issued February 2, 2022;
- 6. Exhibit 6: Copy of Employer's Notice to Employees, dated March 13, 2020;
- 7. Exhibit 7: Copies of Appellant's Timesheets for May 16, 2021 through August 14, 2021;
- 8. Exhibit 8: Copy of Employer's Certification of Employment, dated August 17, 2021;
- 9. Exhibit 9: Copies of the following immigration status related documents:
 - a. Appellant's Philippine Passport, valid from March 5, 2020 to March 6, 2030;
 - b. USCIS Notice of Parole Pursuant to P.L. 116-24, dated September 23, 2019;

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- USCIS Form I-797, Approval Notice for Employment Authorization ("EAD"),
 C11 category, valid from April 6, 2017 to June 29, 2019;
- d. Form 1-94, valid from October 29, 2019 to June 29, 2020; and
- e. EAD C37 category, valid from May 28, 2021 to May 27, 2026.
- 10. Exhibit 10: Copy of SAVE Verification Results, initiated December 20, 2021;
- 11. Exhibit 11: Copies of Case Notes, dated December 21, 2021 and January 6, 2022;
- 12. Exhibit 12: Copy of Email Communication from Department's Benefit Payment Control Unit, dated May 19, 2022;
- 13. Exhibit 13: Copy of PUA Benefit Rights Information Handbook; and
- 14. Exhibit 14: Copies of Newspaper Articles Regarding Reconsideration and Appeals Process.

For the reasons stated below, the Department's Determination, dated January 6, 2022, is **AFFIRMED**. Claimant is not eligible for benefits from May 30, 2021 to September 4, 2021.

II. JURISDICTION

On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of 2020 was signed into law creating new temporary federal programs for unemployment benefits called Pandemic Unemployment Assistance ("PUA")¹ and Federal Pandemic Unemployment Compensation ("FPUC").² On December 27, 2020, the Continued Assistance for Unemployed Workers Act of 2020 ("Continued Assistance Act") amended and created new provisions of said federal unemployment insurance programs, which, among other things, extended the PUA and FPUC programs to March 13, 2021.³ On March 11, 2021, the American Rescue Plan Act of 2021 ("ARPA") extended the programs to September 6, 2021. The CNMI Department of Labor is charged with the responsibility in administering the above-mentioned programs in the CNMI in accordance to applicable law.⁴ The CNMI Department of Labor Administrative Hearing Office has been designated to preside over appeals of agency decisions.

See Section 2102 of the CARES Act of 2020, Public Law 116-136.

² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

³ See Consolidated Appropriations Act,

Unemployed Workers Act of 2020" or "Continued Assistance Act").

⁴ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

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Upon review of the records, the Appellant's appeal is not timely filed. Accordingly, jurisdiction is not established.

III. PROCEDURAL BACKGROUND & ISSUES

Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon review of Appellant's application and supporting documents, the Department issued a Disqualifying Determination on January 6, 2022. On February 2, 2022, Appellant filed the present appeal and the matter was scheduled for an Administrative Hearing for May 24, 2022 at 9:00 a.m. As stated in the Notice of Hearing, the issues on appeal are: (1) whether the appeal is timely filed; (2) whether Appellant is eligible for PUA; and (3) whether an overpayment occurred and funds should be returned.

IV. FINDINGS OF FACT

In consideration of the evidence provided and credibility of witness testimony, the undersigned issues the following findings of fact:

- 1. Prior to the COVID-19 pandemic, Appellant was employed as a cook for LSG Lufthansa Services Saipan, Inc. ("Employer"), located in Saipan, CNMI.⁵ As a cook, Appellant was paid \$7.39 per hour.⁶
- 2. Employer's airline customers discontinued flights due to the COVID-19 pandemic.⁷ Consequently, Employer implemented cost-cutting measures that affected Appellant's employment. Specifically, effective March 13, 2020, Appellant's work hours were reduced due to the drop in meal productions.⁸
- 3. On August 26, 2020, Appellant submitted an initial application⁹ for unemployment assistance under the PUA and FPUC programs administered by the Department.¹⁰ In the initial application,¹¹ Appellant self-certified under penalty of perjury that:
 - a. Appellant is an Alien/Refugee Lawfully Admitted to U.S.;
 - Appellant's employment was directly affected by COVID-19 when she was laid off from March 15, 2020 to March 23, 2020 and from March 31, 2020 to April 15, 2020;
 and

⁵ Exhibit 8.

6 *Id*.

⁷ Exhibit 6.

8 Id.

9 Exhibit 1.

10 See id.

11 *Id*.

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- c. Appellant's employment was affected since March 13, 2020.¹²
- 4. Subsequently, on November 2, 2020, Appellant submitted an application to reopen her claim for unemployment assistance.¹³ In her application to reopen, Appellant self-certified under penalty of perjury that:
 - a. Appellant is an Alien/Refugee Lawfully Admitted to U.S.;
 - Appellant's employment was directly affected by COVID-19 when Employer reduced her work hours; and
 - c. Appellant's employment was affected since March 15, 2020.14
- 5. In both her initial application and application to reopen, Appellant selected "Text Message Notification (If Available)" as the method in which she preferred to receive notifications from the Department.¹⁵
- 6. With respect to Appellant's immigration status and employment authorization, Appellant provided testimony and substantiating evidence to demonstrate the following:
 - a. From April 6, 2017 to June 29, 2020, Appellant had a parole in place and EAD under C11 category;¹⁶
 - b. Appellant applied for the CNMI long-term resident status and was approved the status and given an EAD under category C37; and
 - c. It is unclear when USCIS received and approved Appellant's application for CNMI long-term resident status, but Appellant's CNMI long-term resident status and EAD under category C37 is valid from May 28, 2021 to May 27, 2026.¹⁷
- 7. On December 20, 2021, a PUA Coordinator/Adjudicator reviewed Appellant's claim and supporting documents and she entered Appellant's information into the Systematic Alien Verification for Entitlements (SAVE) database maintained by USCIS, Verification Division.¹⁸ This database is used to determine the immigration status of PUA applicants so only those entitled to benefits receive them. The SAVE results indicate that Appellant's parolee status and EAD under C11 category were valid from December 29, 2019 to June 29, 2020.¹⁹ The

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¹⁵ See Exhibits 1-2.

¹⁶ See Exhibits 9-10.

¹⁷ See Exhibit 9.

¹⁸ Exhibits 10-11.

¹⁹ Exhibit 10.

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- SAVE results also showed that Appellant's CNMI long-term resident status and EAD under C37 was valid from May 28, 2021 to May 27, 2026.20
- 8. On January 6, 2022, the Department issued a determination disqualifying Appellant from PUA and FPUC benefits from May 30, 2021 to September 4, 2021.21 Based on uncontested testimony and substantiating evidence provided by the Department at the Administrative Hearing, 22 the Department notified Appellant via text message on January 6, 2022, and then emailed the Determination to the Appellant.
- 9. The Department disqualified Appellant because it determined that Appellant is not a U.S. citizen, non-citizen national, or qualified alien because Appellant was a CNMI long-term resident with an EAD under C37 category, valid from May 28, 2021 to May 27, 2026.²³
- 10. The Determination provided Appellant 10 days to file a request for reconsideration or appeal and instructions on how to do so. Specifically, the Determination stated that the appeal "must be received or postmarked by 01/16/2022."²⁴
- 11. On February 2, 2022, Appellant filed the present appeal and the matter was scheduled for an Administrative Hearing.²⁵
- 12. As stated in her Appeal Form²⁶ and testimony, Appellant did not regularly review her email because she lacked access to the internet and a computer and she relied on friends to assist her in accessing her email. Appellant could not provide any other reason as to why she filed her Appeal after the 10-day deadline.
- 13. Department testified and provided substantiating evidence to show that Appellant was provided with instructions on how to file her appeal. Appeal instructions could be found in the PUA Benefits Rights Information Handbook, the Disqualifying Determination, the Appeal Form and through newspaper publications.²⁷
- 14. While the appeal was pending, and through testimony during the Administrative Hearing, the Department confirmed there was no overpayment issue in this case.²⁸

²⁰ Exhibit 10.

²¹ See Exhibit 3;

²² See Exhibit 11.

²³ Exhibit 3.

²⁴ Id.

²⁵ Exhibits 4-5.

²⁶ Exhibit 4.

²⁷ See Exhibits 3, 4,

²⁸ Exhibit 12.

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V. CONCLUSIONS OF LAW

In consideration of the above-stated findings and applicable law, the undersigned issues the following conclusions of law:

1. Appellant's appeal is not timely filed.

Generally, an appeal should be filed within ten days after the Notice of Determination was issued or served to the claimant. However, the Department may extend the period to thirty days by a showing of good cause.²⁹ Good cause means: (1) illness or disability; (2) keeping an appointment for a job interview; (3) attending a funeral of a family member; and (4) any other reason which would prevent a reasonable person from complying as directed.³⁰

Here, on January 6, 2022, the Department issued and transmitted to the Appellant the Disqualifying Determination via email. The Determination clearly stated that Appellant had 10 calendar days to file an appeal and that the appeal "must be received or postmarked by 01/12/2022." (Emphasis in original.)³¹ In her initial application and application to reopen, Appellant selected "Text Message Notification (If Available") as the method for receiving notifications.³² The Department notified Appellant by text message and then sent via email a copy of the Disqualifying Determination. Appellant did not dispute that she was notified of the Determination via text message.³³ However, as testified to by the Appellant and noted in her Appeal Form, Appellant did not timely file her appeal because she was unable to access and review her emails due to unreliable access to the internet and laptop, and reliance for assistance from her friends to access her email. Generally, the failure to read and follow instructions and the failure to timely review emails are not good cause for an extension.³⁴ As acknowledged in her initial application and application to reopen, it is claimant's responsibility to read the Benefit Rights Information Handbook and all published materials.³⁵ Appellant failed to do so. The Determination provided Appellant with instructions on how to file her appeal through multiple avenues, including by hand-delivery and mail. Also, Appeal instructions and information could be found in the Benefits Rights Information Handbook, the Appeal Form, and through newspaper articles.³⁶ Notably, Appellant did not take any other steps to get a copy of the Disqualifying

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<sup>29</sup> HI. Rev. Statute § 383-38(a).
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³⁰ HAR § 12-5-81(i).

³¹ Exhibit 3.

³² See Exhibits 1 and 2.

³³ See Exhibit 11.

³⁴ See Exhibit 4.

³⁵ See Exhibits 1 and 2.

³⁶ See Exhibits 3, 4, 13 and 14.

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Determination from the Department or appeal the Determination prior to the deadline. Therefore, the undersigned finds that Appellant failed to act within the 10-day deadline.

Moreover, in light of the information provided, the undersigned finds that Appellant failed to justify good cause for an extension of the 10-day deadline. Accordingly, the undersigned finds that Appellant's appeal is untimely filed. Considering that Appellant's Appeal is untimely, the Department's Determination is final and the latter issues are moot. Even if a 30-day extension was granted for good cause, Appellant is still not eligible to receive PUA benefits for the period of May 30, 2021 to September 4, 2021 because she was a CNMI long-term resident with an EAD under C37 category and this status and employment authorization is not eligible, as explained below.

2. Appellant is not a qualified alien.

PUA and FPUC are federal public benefits as defined by 8 USC §1611(c). As a condition of eligibility for any federal public benefit, the claimant must be a "qualified alien" at the time relevant to the claim. 8 USC §1611(a). Pursuant to 8 USC §1641, the term "qualified alien" is:

- 1. An alien admitted for permanent residence under the Immigration and Nationality Act (INA);
- 2. An alien granted asylum under § 208 of the INA;
- 3. A refugee admitted to the US under § 207 of the INA;
- 4. An alien paroled into the US under § 212(d)(5) of the INA for at least one year;
- 5. An alien whose deportation is being withheld under § 243(h) of the INA ... or whose removal is being withheld under § 241 (b)(3) of the INA;
- 6. An alien granted conditional entry pursuant to § 203 (a)(7) of the INA;
- 7. An alien who is a Cuban or Haitian entrant as defined in § 501(e) of the Refugee Education Assistance Act of 1980; or
- 8. An alien who (or whose child or parent) has been battered or subject to extreme cruelty in the U.S. and otherwise satisfies the requirements of § 431(c) of the Act.

Further, Section 265 of the Continued Assistance Act provides that a Commonwealth Only Transitional Worker (CW-1) shall be considered a qualified alien for purposes of eligibility under the PUA and FPUC programs. As provided in UIPL 16-20, change 4, page I-16, "CW-1 workers may receive PUA and FPUC if they meet all PUA eligibility requirements beginning with claims filed after December 27, 2020 (*i.e.*, claim effective dates beginning on or after January 3, 2021)."

Here, the Department's Determination disqualified Appellant from PUA and FPUC from May 30, 2021 to September 4, 2021 because the Department determined that, during that period, Appellant was a CNMI long-term resident with an EAD under C37 category, and CNMI long-term resident status with EAD under C37 category is not a U.S. citizen, non-citizen national, or qualified alien.

Based on the evidence and testimony provided, the undersigned finds that the Department's Determination is correct. Appellant is currently a CNMI long-term resident with an EAD under category C37, which is valid from May 28, 2021 to May 27, 2026.³⁷ As a CNMI long-term resident with an EAD under category C37, Appellant does not qualify for unemployment benefits because her status does not correspond with any qualified alien provision listed above.

VI. DECISION

For the reasons stated above, it is ORDERED that:

- The CNMI Department of Labor's Disqualifying Determination, dated January 6, 2022, is <u>AFFIRMED</u>; and
- 2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of May 30, 2021 to September 4, 2021.

If a party is aggrieved by this Order and would like to contest the decision, he or she must submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The written request should be supported by legal, factual, or evidentiary reasons to reopen the decision. The written request must be submitted to the Administrative Hearing Office, either in person at 1357 Mednilla Avenue, Capitol Hill Saipan MP 96950 or via email at hearing@dol.gov.mp.

In the event a request to reopen the decision is granted, the matter shall be scheduled for a subsequent hearing. In the event a request to reopen the decision is denied, or if the Appellant still disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI Superior Court under the local Administrative Procedures Act. See 1 CMC § 9112. All forms, filings fees, and filing deadlines for judicial review will be as established by the applicable law and court rule.

So ordered this 9th day of June, 2022.

/s/
CATHERINE J. CACHERO
Pro Tem Administrative Hearing Officer

See Exhibits 9-10

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³⁷ See Exhibits 9-10.



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS DEPARTMENT OF LABOR ADMINISTRATIVE HEARING OFFICE

| In Re Matter of: |) PUA Case No. 22-0193 |
|---|---|
| Ruby Socorro Besid, | |
| Appel | lant,) ADMINISTRATIVE ORDER GRANTING) PARTIES' REQUEST FOR DISMISSAL |
| V. | |
| CNMI Department of Labor, Division of Employment Service | es-PUA, |
| Appel | lee. |
| | |

Pursuant to Appellant's Request to Appeal, this matter was scheduled for an Administrative Flearing for June 2, 2022 at 9:00 a.m. On May 27, 2022, Appellant filed a written request to withdraw the Appeal, stating that she would like to request for a reconsideration instead of appeal. Subsequently, on May 31, 2022, the Department filed a Motion to Dismiss stating that the parties have resolved the issues on Appeal, including the overpayment issue. On June 1, 2022, Appellant confirmed and agreed with the Department's Motion to Dismiss.

In consideration of above, the undersigned finds that there are no issues on appeal and dismissal is appropriate. Accordingly, this appeal is hereby **DISMISSED** and the Administrative Hearing scheduled for June 2, 2022 at 9:00 a.m. is **VACATED**. In the event that the Appellant disagrees with a subsequent determination or notice, Appellant may file a new appeal.

So ordered this 1st day of June, 2022.

Catherine J. Cachero

Pro Tem Administrative Hearing Officer



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS DEPARTMENT OF LABOR ADMINISTRATIVE HEARING OFFICE

| In Re Matter of: |) PUA Case No. 22-0194 |
|--|--|
| Donato E. Besid, |) |
| Appellant, |) ADMINISTRATIVE ORDER GRANTING PARTIES' REQUEST FOR DISMISSAL |
| v. | |
| CNMI Department of Labor, Division of Employment Services-PUA, | |
| Appellee. |) |

Pursuant to Appellant's Request to Appeal, this matter was scheduled for an Administrative Hearing for June 7, 2022 at 9:00 a.m. On June 2, 2022, Appellant filed a written request to withdraw his Appeal, stating that he would like to pursue a Request for Reconsideration instead of Appeal. Subsequently, on June 3, 2022, the Department filed a Motion to Dismiss stating that the parties have resolved the issues on Appeal, including that no overpayment has occurred during the weeks being appealed. On June 3, 2022, Appellant confirmed and agreed with the Department's Motion to Dismiss.

In consideration of above, the undersigned finds that this matter is not ripe for an appeal and dismissal is appropriate. Accordingly, this appeal is hereby **DISMISSED** and the Administrative Hearing scheduled for June 7, 2022 at 9:00 a.m. is **VACATED**. In the event that the Appellant disagrees with a subsequent determination or notice, Appellant may file a new appeal.

So ordered this 3rd day of June, 2022.

/s/

Catherine J. Cachero

Pro Tem Administrative Hearing Officer





COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS DEPARTMENT OF LABOR ADMINISTRATIVE HEARING OFFICE

| In Re the Matter of: |) Labor Case No. 19-038 |
|------------------------------|--|
| Shi Yunxiao, |)) ODDED DISMISSING COMPLAINANT'S |
| Complainant, | ORDER DISMISSING COMPLAINANT'S COMMON LAW CLAIMS FOR LACK OF SUBJECT MATTER JURISDICTION |
| V. |) |
| Donghui Jewelry Group Corp., |) |
| Respondent. | |
| | |

I. INTRODUCTION

On April 22, 2022, Complainant filed a Second Amended Complaint for unpaid wages, breach of contract, and constructive discharge. On May 6, 2022, the undersigned issued an Order to Show Cause why the claims should not be dismissed for failure to state a claim and lack of subject matter jurisdiction. On May 24, 2022, Complainant filed an Opposition to Order to Show Cause. Therein, Complainant argued: (1) The Complaint does not need to list how many hours of work were unpaid and when that work was performed; and (2) DOL has jurisdiction over all matters related to a labor dispute. Respondent did not file a response. Upon further review, the undersigned finds that there are sufficient allegations in accordance with NMIAC § 80-20.2-145 but Complainant will need to prove those allegations at trial. However, the undersigned is not persuaded by Complainant's second argument.

For the reasons stated below, Complainant's claim for breach of contract and constructive discharge are hereby **DISMISSED** for lack of subject matter jurisdiction.

II. DISCUSSION

"Whenever it appears by suggestion of the parties or otherwise that the agency lacks jurisdiction of the subject matter, the agency shall dismiss the action." NMIAC § 80-20.2-145(c). "The Administrative Hearing Office shall have original jurisdiction to resolve all actions involving alleged violations of the labor and wage laws of the Commonwealth, including but not

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limited to any violation of this chapter and regulations promulgated thereunder." 3 CMC § 4942. The Employment Rules and Regulations further provide:

The Administrative Hearing Office shall have jurisdiction over complaints filed with the Administrative Hearing Office by U.S. Citizens, CNMI permanent residents or U.S. permanent residents, and agency complaints filed by the Department, with respect to violations of the requirements of job preference and workforce participation pursuant to the Commonwealth Employment Act of 2007, as amended, and other violations of labor laws application in the Commonwealth....

The Administrative Hearing Office shall have jurisdiction over complaints filed with the Administrative Hearing Office by **foreign national workers**, and agency complaints filed by the Department, with respect to violations of Commonwealth law and regulations regarding employment and other labor laws applicable in the Commonwealth....

The Administrative Hearing Office shall have jurisdiction over complaints filed with the Administrative Hearing Office by other **nonimmigrant aliens**² with respect to violations of Commonwealth law and regulations regarding employment.

NMIAC § 80-20.1-450(b)(1)-(3) (emphasis added).

As stated above, the Administrative Hearing Office has jurisdiction over "labor and wage laws of the Commonwealth." 3 CMC § 4942. Considering the distinction between labor law and employment law, the undersigned disagrees with the argument that jurisdiction extends to all claims arising out of the employment relationship. In previous cases, the Administrative Hearing Office applied common law principles³ and declared that the Commonwealth Legislature's grant of jurisdiction was broad enough to encompass common law claims arising out of, and related to, the employment relationship.⁴ However, upon further review, the undersigned finds that said precedent is a flawed misapplication of law that improperly enlarged jurisdiction in violation of

^{1 &}quot;"Foreign national worker' means a person who is not a United States citizen, a United States permanent resident, a CNMI permanent resident, or an immediate relative of the United States citizen or a United States permanent resident, or an immediate relative of a CNMI permanent resident, and who entered the CNMI as a nonimmigrant prior to November 28, 2010 for the declared purpose of being employed in the Commonwealth." NMIAC § 80-20.1-080(k).

2 "Nonimmigrant alien' means a person described in Section 101(a)(15) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)." NMIAC § 80-20.1-080(p).

³ See Togawa v. Imperial Pacific International (CNMI) LLC, Labor Case 16-026, published at 41 Com. Reg. 043190 (May 28, 2019).

See Sevugan v. ABO International Corporation, LC-16-017, published at 41 Com. Reg. 041897 (May 28, 2019).

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the separation of powers, canons of statutory construction, and general principles of administrative law.

Principles of agency and administrative law dictate that jurisdiction is established by a specific grant of authority. The Commonwealth Constitution provides for a tripartite system of government, which gives rise to the separation of powers doctrine. The separation of powers operates in a broad manner to confine legislative powers to the legislature, executive powers to the executive, and those powers that are judicial in character to the judiciary. Commonwealth v. Lot No. 218-5 R/W, 2016 MP 17 ¶ 8. The legislature cannot exceed its constitutional authority, it cannot pass a law that conflicts with the Commonwealth Constitution, and it cannot delegate the functions of a constitutional entity to another governmental body. Dep't of Publ. Lands v. Commonwealth, 2010 MP 14 ¶ 24. Agency power is conferred by legislation or executive or judicial order and is properly viewed as a means of facilitating the exercise of the governmental power vested in that body which created the agency. Northern Marianas College v. Civil Serv. Comm'n, 2006 MP 4 ¶ 10.5 However, an agency cannot enlarge its jurisdiction or authority. Moreover, the agency's interpretation of its governing statute may not conflict with the language chosen in the grant of authority. Bauer v. McCoy, 1 CR 248. Generally, administrative law deals with non-autonomous agencies that exercise limited discretion through a predefined process. Such agencies have no inherent rights, and may only exercise the authority vested in them by constitution or statute. Northern Marianas College v. Civil Service Commission, 2006 MP 4 ¶ 8 (emphasis added). Agencies are given the authority to make discretionary decisions over a limited range of matters. Northern Marianas College v. Civil Service Commission, 2006 MP 4 ¶ 10 (emphasis added).

Presently, there is no CNMI statute or regulation with respect to breach of constructive discharge claims before the Administrative Hearing Office. Further, any mention of breach of an employment contract refers to employment contracts approved by the Secretary, prior to the federalization of immigration – which is not the case here. Considering the above-stated

⁵ Generally, "an administrative agency is a creature of statute, having only those powers expressly granted to it by Congress or included by necessary implication from the Congressional grant." Soriano v. United States, 494 F. 2d 681, 683 (9th Cir. 1974) (citations omitted). If an administrative agency acts in excess of its statutory jurisdiction, power or authority, or limitations, court shall review the agency agency and set aside any action in excess of its authority. Seman v. Aldan, 2 CR 916, aff'd, 3 CR 152 (DNMI App. Div. 1987).

⁶ An administrative agency may not enlarge its powers by waiving a time limit which is jurisdictional or a prerequisite to the action taken. Seman v. Aldan, 2 CR 916, aff'd, 3 CR 152 (DNMI App. Div. 1987).

limitations with administrative law, the undersigned cannot broadly interpret or enlarge jurisdiction granted to include the common law claims of constructive discharge and breach of contract. Accordingly, Complainant has failed to establish subject matter jurisdiction.

III. CONCLUSION

Accordingly, dismissal pursuant to NMIAC § 80-20.2-130(c)(1)(i)(A) and NMIAC § 80-20.2-145(c) is appropriate. Based on above, Complainant's claim for breach of employment contract and constructive discharge are hereby **DISMISSED**.

So ordered this 15th day of June, 2022.

JACQUELINE A. NICOLAS
Administrative Hearing Officer



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS DEPARTMENT OF LABOR ADMINISTRATIVE HEARING OFFICE

| In Re Matter of: |) Labor Case No. 22-004 |
|--|---|
| Noe C. Callejo .Ir., |) |
| Complainant, v. |)) SUA SPONTE ORDER DISMISSING) COMPLAINT PURSUANT TO 3 CMC §) 4947(a) |
| Fe Cabrera dba Yutu Commercial Services, |) |
| Respondent. |) |

This matter came for an online Order to Show Cause Hearing on June 8, 2022 at 9:00 a.m. in Saipan. Due to the ongoing COVID-19 public health emergency, the hearing was held online. Complainant Noe C. Callejo Jr. ("Complainant") was present and self-represented. Respondent Fe Cabrera dba Yutu Commerical Services ("Respondent") was present and represented by Owner and President Fe Cabrera. Respondent also had other witnesses present.

Pursuant to 3 CMC § 4947(a), "the hearing officer may, after notice and an opportunity to be heard is provided to the parties, dismiss *sua sponte* a complaint that the hearing officer finds to be without merit." Pursuant to NMIAC § 80-20.2-130(c), dismissal is warranted on the following grounds: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) insufficiency of process; (4) insufficiency of service of process; and (5) failure to state a claim upon which relief can be granted. *See* also NMIAC § 80-20.10485(b).

On May 5, 2022, Complainant initiated a labor case against Respondent for a violation of the employment preference law and seemingly, a violation of employer obligations for Commonwealth Only Transitional Workers ("CW-1"). Upon review of the complaint, there appeared to be several issues or deficiencies and an Order to Show Cause hearing was scheduled. Based on the applicable law and available evidence or testimony provided during the Order to Show Cause Hearing, the undersigned finds dismissal is warranted.

¹ Pursuant to 3 CMC § 4947(a), "the hearing office may, after notice and an opportunity to be heard is provided to the parties, dismiss *sua spente* a complaint that the hearing officer finds to be without merit."

First, the employment preference law requires CNMI employers to give preferential employment opportunities to U.S. citizens, U.S. permanent residents, and CNMI permanent residents. 3 CMC §§ 4521 et. seq.; ² see also NMIAC § 80-20.1-220.³ The employment preference law does not provide any protections or preference to CW-1. See 3 CMC §§ 4521 et. seq; see also NMIAC § 80-20.1-240(f).⁴ During the Order to Show Cause Hearing, Complainant confirmed he is a CW-1. For this reason, Complainant lacks standing to allege this claim.

Second, Complainant appears to allege violations of employer obligations, specifically, 20 CFR 655.423, which is promulgated and enforced by US Department of Labor. See 42 Com. Reg 044063 (Aug. 28, 2020). The Administrative Hearing Office lacks jurisdiction to review said claims and Complainant could not point to any other CNMI labor law violation. For this reason, the Administrative Hearing Office lacks subject matter jurisdiction over this claim.

Third, Complainant seeks assistance with processing immigration and CW-1 petition in order to legally work in the CNMI. Since the undersigned does not have authority or power to mandate processing of immigration papers and immigration is wholly outside the Department's power, Complainant seeks a remedy upon which relief cannot be granted. For this reason, Complainant fails to state a claim upon which relief can be granted.

For the reasons stated above, dismissal pursuant to 3 CMC § 4947(a) is appropriate. Accordingly, the above-captioned complaint is hereby **DISMISSED**. Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of this Order.⁵

So ordered this 8th day of June, 2022.

JACQUELINE A. NICOLAS
Administrative Hearing Officer

² "A citizen or CNMI permanent resident or U.S. permanent resident who is qualified for a job may make a claim for damages if an employer has not met the requirements of 3 CMC § 4525, the employer rejects an application for the job without just cause, and the employer employs a person who is not a citizen or CNMI permanent resident or U.S. permanent resident for the job." 3 CMC § 4528(a) (emphasis added).

³ "Employers shall give qualified citizens, CNMI permanent residents, and U.S. permanent residents preference over foreign national worker, transitional worker, or other nonimmigration aliens."

⁴ "The employer shall layoff foreign national workers, transitional worker, and other nonimmigrant aliens before laying off citizens, CNMI permanent residents, and U.S. permanent residents"

⁵ The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative Hearing Office, with the applicable filing fee.



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS DEPARTMENT OF LABOR ADMINISTRATIVE HEARING OFFICE

| In Re Matter of: |) Labor Case No. 22-005 |
|--|---|
| Honeylet Tampoc, |) |
| Complainant, v. |) SUA SPONTE ORDER DISMISSING) COMPLAINT PURSUANT TO 3 CMC § 4947(a) |
| Fe Cabrera dba Yutu Commercial Services, | |
| Respondent. |)) |

This matter came for an online Order to Show Cause Hearing on June 8, 2022 at 9:30 a.m. in Saipan. Due to the ongoing COVID-19 public health emergency, the hearing was held online. Complainant Honeylet Tampoc ("Complainant") was present and self-represented. Respondent Fe Cabrera clba Yutu Commerical Services ("Respondent") was present and represented by Owner and President Fe Cabrera. Respondent also had other witnesses present.

Pursuant to 3 CMC § 4947(a), "the hearing officer may, after notice and an opportunity to be heard is provided to the parties, dismiss *sua sponte* a complaint that the hearing officer finds to be without merit." Pursuant to NMIAC § 80-20.2-130(c), dismissal is warranted on the following grounds: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) insufficiency of process; (4) insufficiency of service of process; and (5) failure to state a claim upon which relief can be granted. *See* also NMIAC § 80-20.10485(b).

On May 5, 2022, Complainant initiated a labor case against Respondent for a violation of the employment preference law and seemingly, a violation of employer obligations for Commonwealth Only Transitional Workers ("CW-1"). Upon review of the complaint, there appeared to be several issues or deficiencies and an Order to Show Cause hearing was scheduled. Based on the applicable law and available evidence or testimony provided during the Order to Show Cause Hearing, the undersigned finds dismissal is warranted.

¹ Pursuant to 3 CMC § 4947(a), "the hearing office may, after notice and an opportunity to be heard is provided to the parties, dismiss *sua sponte* a complaint that the hearing officer finds to be without merit."

First, the employment preference law requires CNMI employers to give preferential employment opportunities to U.S. citizens, U.S. permanent residents, and CNMI permanent residents. 3 CMC §§ 4521 et. seq.; ² see also NMIAC § 80-20.1-220.³ The employment preference law does not provide any protections or preference to CW-1. See 3 CMC §§ 4521 et. seq; see also NMIAC § 80-20.1-240(f).⁴ During the Order to Show Cause Hearing, Complainant confirmed she is a CW-1. For this reason, Complainant lacks standing to allege this claim.

Second, Complainant appears to allege violations of employer obligations, specifically, 20 CFR 655.423, which is promulgated and enforced by US Department of Labor. See 42 Com. Reg 044063 (Aug. 28, 2020). The Administrative Hearing Office lacks jurisdiction to review said claims and Complainant could not point to any other CNMI labor law violation. For this reason, the Administrative Hearing Office lacks subject matter jurisdiction over this claim.

Third, Complainant seeks assistance with processing immigration and CW-1 petition in order to legally work in the CNMI. Since the undersigned does not have authority or power to mandate processing of immigration papers and immigration is wholly outside the Department's power, Complainant seeks a remedy upon which relief cannot be granted. For this reason, Complainant fails to state a claim upon which relief can be granted.

For the reasons stated above, dismissal pursuant to 3 CMC § 4947(a) is appropriate. Accordingly, the above-captioned complaint is hereby **DISMISSED**. Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of this Order.⁵

So ordered this 8th day of June, 2022.

/s/

JACQUELINE A. NICOLAS Administrative Hearing Officer

² "A citizen or CNMI permanent resident or U.S. permanent resident who is qualified for a job may make a claim for damages if an employer has not met the requirements of 3 CMC § 4525, the employer rejects an application for the job without just cause, and the employer employs a person who is not a citizen or CNMI permanent resident or U.S. permanent resident for the job." 3 CMC § 4528(a) (emphasis added).

³ "Employers shall give qualified citizens, CNMI permanent residents, and U.S. permanent residents preference over foreign national worker, transitional worker, or other nonimmigration aliens."

⁴ "The employer shall layoff foreign national workers, transitional worker, and other nonimmigrant aliens before laying off citizens, CNMI permanent residents, and U.S. permanent residents...."

⁵ The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the

⁵ The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative Hearing Office, with the applicable filing fee.



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS DEPARTMENT OF LABOR ADMINISTRATIVE HEARING OFFICE

| In Re Matter of: | Labor Case No. 22-006 |
|--|---|
| Jeannette De Leon, | |
| Complainant, v. | SUA SPONTE ORDER DISMISSING COMPLAINT PURSUANT TO 3 CMC § 4947(a) |
| Fe Cabrera dba Yutu Commercial Services, | |
| Respondent. | |
| | |

This matter came for an online Order to Show Cause Hearing on June 8, 2022 at 10:00 a.m. in Saipan. Due to the ongoing COVID-19 public health emergency, the hearing was held online. Complainant Jeannette De Leon ("Complainant") was present and self-represented. Respondent Fe Cabrera dba Yutu Commerical Services ("Respondent") was present and represented by Owner and President Fe Cabrera. Respondent also had other witnesses present.

Pursuant to 3 CMC § 4947(a), "the hearing officer may, after notice and an opportunity to be heard is provided to the parties, dismiss *sua sponte* a complaint that the hearing officer finds to be without merit." Pursuant to NMIAC § 80-20.2-130(c), dismissal is warranted on the following grounds: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) insufficiency of process; (4) insufficiency of service of process; and (5) failure to state a claim upon which relief can be granted. *See* also NMIAC § 80-20.10485(b).

On May 5, 2022, Complainant initiated a labor case against Respondent for a violation of the employment preference law and seemingly, a violation of employer obligations for Commonwealth Only Transitional Workers ("CW-1"). Upon review of the complaint, there appeared to be several issues or deficiencies and an Order to Show Cause hearing was scheduled.¹ Based on the applicable law and available evidence or testimony provided during the Order to Show Cause Hearing, the undersigned finds dismissal is warranted.

COMMONWEALTH REGISTER

VOLUME 44 NUMBER 06 JUNE 28, 2022

¹ Pursuant to 3 CMC § 4947(a), "the hearing office may, after notice and an opportunity to be heard is provided to the parties, dismiss *sua sponte* a complaint that the hearing officer finds to be without merit."

First, the employment preference law requires CNMI employers to give preferential employment opportunities to U.S. citizens, U.S. permanent residents, and CNMI permanent residents. 3 CMC §§ 4521 et. seq.; 2 see also NMIAC § 80-20.1-220.3 The employment preference law does not provide any protections or preference to CW-1. See 3 CMC §§ 4521 et. seq; see also NMIAC § 80-20.1-240(f).4 During the Order to Show Cause Hearing, Complainant confirmed she is a CW-1. For this reason, Complainant lacks standing to allege this claim.

Second, Complainant appears to allege violations of employer obligations, specifically, 20 CFR 655.423, which is promulgated and enforced by US Department of Labor. See 42 Com. Reg 044063 (Aug. 28, 2020). The Administrative Hearing Office lacks jurisdiction to review said claims and Complainant could not point to any other CNMI labor law violation. For this reason, the Administrative Hearing Office lacks subject matter jurisdiction over this claim.

Third, Complainant seeks assistance with processing immigration and CW-1 petition in order to legally work in the CNMI. Since the undersigned does not have authority or power to mandate processing of immigration papers and immigration is wholly outside the Department's power, Complainant seeks a remedy upon which relief cannot be granted. For this reason, Complainant fails to state a claim upon which relief can be granted.

For the reasons stated above, dismissal pursuant to 3 CMC § 4947(a) is appropriate. Accordingly, the above-captioned complaint is hereby **DISMISSED**. Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of this Order.⁵

JACOUELINE A. NICOLAS Administrative Hearing Officer

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² "A citizen or CNMI permanent resident or U.S. permanent resident who is qualified for a job may make a claim for damages if an employer has not met the requirements of 3 CMC § 4525, the employer rejects an application for the job without just cause, and the employer employs a person who is not a citizen or CNMI permanent resident or U.S. permanent resident for the job." 3 CMC § 4528(a) (emphasis added).

³ "Employers shall give qualified citizens, CNMI permanent residents, and U.S. permanent residents preference over foreign national worker, transitional worker, or other nonimmigration aliens."

⁴ "The employer shall layoff foreign national workers, transitional worker, and other nonimmigrant aliens before laying off citizens, CNMI permanent residents, and U.S. permanent residents " ⁵ The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS DEPARTMENT OF LABOR ADMINISTRATIVE HEARING OFFICE

| In Re the Matter of: | |) Labor Case No. 22-007 |
|----------------------|-----------------|-------------------------|
| John D. Imperial, | |) |
| | Complainant, |) ORDER OF DISMISSAL |
| | v. |) |
| I-IA & JO Investm | ent Group, LLC, |) |
| | Respondent. |) |
| IIA & JO Investm | ent Group, LLC, |))))) |

On May 11, 2022, Complainant filed a complaint against Respondent for unpaid wages. On May 31, 2022, Complainant filed a written request to withdraw his appeal as payments were made with the agreed-upon deductions. There are no other pending issues in this case.

Accordingly, pursuant to NMIAC § 80-20.1-485(b), this matter is hereby **DISMISSED**. Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of this Order.²

So ordered this 10th day of June, 2022.

JACQUELINE A. NICOLAS
Administrative Hearing Of ficer

 $^{^1}$ Pursuant to NMIAC § 80-20.1-485 (b), "[a] complaint may be dismissed upon its abandonment or settlement by the parties."

² The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative Hearing Office, with the applicable filing fee.