

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



COMMONWEALTH REGISTER

**VOLUME 45
NUMBER 03
MARCH 28, 2023**

COMMONWEALTH REGISTER

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ADOPTION

Public Notice of Certification and Adoption of Regulations
Commonwealth Ports Authority **049604**

Public Notice of Certification and Adoption of Regulations
Department of Lands and Natural Resources **049607**

PROPOSED

Notice of Amendment to the Sick Leave Bank
(NMIAC §10-10-50-410 through §10-10-515)
Civil Service Commission
Office of Personnel Management **049609**

ORDERS

PUA Case o. 21-0126
Subject: Order Denying Appellants Request to Recuse;
Order Denying Request to Reopen;
Final Agency Order
In the Matter of: Jennifer Angello v. CNMI Department of Labor
Division of Employment Services – PUA.
Department of Labor **049617**

PUA Case No. 22-0221
Subject: Administrative Order
In the Matter of: Karmen Ohri v. CNMI Dept. of Labor,
Division of Employment Services,
Department of Labor **049621**

PUA Case No. 22-0222
Subject: Administrative Order
In the Matter of: Sabinoy Chakraborty v. CNMI Dept. of Labor,
Division of Employment Services -- PUA
Department of Labor **049627**

Labor Case No. 22-014
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Subject: Final Agency Decision
In the Matter of: Feng Yu v. Island star International, Inc.
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Labor Case No. 22-018
Subject: Dismissal of Labor Case;
Referral to Enforcement
In the Matter of: Wenhua Wu v. Fengze Corporation
Department of Labor **049637**

Labor Case No. 22-020
Subject: Dismissal of Labor Case;
Referral to Enforcement
In the Matter of: Ji Fei Zheng v. Eagle LLC dba SM
Department of Labor **049639**



Commonwealth Ports Authority

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PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF REGULATIONS FOR THE COMMONWEALTH PORTS AUTHORITY (CPA)

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER AS PROPOSED AMENDMENTS TO THE PROCUREMENT RULES AND REGULATIONS OF THE COMMONWEALTH PORTS AUTHORITY

Volume 45, Number 01, pp. 049396-402, of January 28, 2023

Amendments to the Commonwealth Ports Authority Procurement Rules and Regulations

ACTION TO ADOPT THESE PROPOSED RULES AND REGULATIONS: Pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a), the Commonwealth Ports Authority HEREBY ADOPTS AS PERMANENT the Proposed Amendments to the Procurement Rules and Regulations of the Commonwealth Ports Authority published in Number 01 of Volume 45 of the Commonwealth Register. I certify by signature below that as published, such adopted regulations are a true, complete, and correct copy of the referenced Proposed Regulations.

PRIOR PUBLICATION: The substance of these regulations was published in Volume 45, Number 01, pp. 049396-402 of the Commonwealth Register.

AUTHORITY: The authority for promulgation of regulations for CPA is set forth in 2 CMC § 2122.

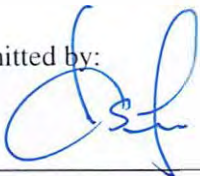
EFFECTIVE DATE: These amendments to the Commonwealth Ports Authority's Procurement Rules and Regulations will become effective ten days after publication of this Notice of Adoption in the Commonwealth Register. 1 CMC § 9105(b).

COMMENTS, MODIFICATIONS, AND AGENCY CONCISE STATEMENT: During the 30-day comment period, the Authority received no comments regarding the Proposed Regulations. No individual requested the Authority issue a concise statement of the principal reasons for or against the adoption of the Proposed Regulations.

At a Financial Affairs Committee meeting held on March 16, 2023, the Committee agreed to recommend to the CPA Board of Directors that the Proposed Regulations be adopted. The CPA Board of Directors adopted the Proposed Regulations as final at the March 16, 2023, Board of Directors meeting.

TERMS, SUBSTANCE, AND DESCRIPTION OF THE SUBJECTS AND ISSUES INVOLVED:
The adopted regulations amend the Procurement Rules and Regulations to revise the amount that triggers the requirement to submit a request for a written quotation or written price from at least three potential on or off-island vendors. The proposed regulations also authorize the processing of open purchase orders for a procurement valued from \$10,000.00 and below.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 16th day of March, 2023, at Saipan, Commonwealth of the Northern Mariana Islands.


Submitted by: 

Date: March 16, 2023

CHRISTOPHER S. TENORIO
Executive Director


Pursuant to 1 CMC § 2153(e) and 1 CMC § 9104(a)(3) the certified final 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).

Dated this 21st day of March, 2023.


EDWARD MANIBUSAN
Attorney General

Filed and Recorded by: _____

Date: 3.28.2023


ESTHER R.M. SAN NICOLAS
Commonwealth Registrar

§ 40-50-210 Small Purchases

(a) Any procurement not exceeding \$25,000.00 may be made in accordance with these small purchase procedures. However, procurement requirements shall not be artificially divided so as to constitute a small purchase.

(b) The Executive Director or Procurement Officer or authorized designee shall obtain written price quotations and detailed proposals of the product description or services to be rendered. Any Authority section Manager or Supervisor may initiate a Small Purchase procurement by coordinating such a request through the Procurement Officer, who shall aid in preparing the request for quotations and a description of the goods or services required.

(c) Purchase Orders or Purchase Requisition requests may be utilized for small purchases below \$25,000.00 and may be administered by the Comptroller's Office through the Procurement Officer. For any procurement valued from ~~\$1,000.00~~ \$10,000.01 to \$25,000.00, the Executive Director or Procurement Officer shall submit a request for a written quotation or written price from at least three potential on or off-island vendors. A request for a written quotation must be in writing.

(d) The Executive Director or Procurement Officer or authorized designee is authorized to process open purchase orders for a procurement valued from ~~\$1,000.00~~ \$10,000.00 and below with authorized signers listed on the purchase order.

History: Amdts Adopted 42 Com. Reg. 44069 (Sept. 28, 2020); Amdts Proposed 42 Com. Reg. 43544 (May 28, 2020); Adopted 33 Com. Reg. 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Amdts Adopted 29 Com. Reg. 26690 (Aug. 17, 2007); Amdts Proposed 29 Com. Reg. 26453 (Mar. 15, 2007); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).



Commonwealth of the Northern Mariana Islands

Department of Lands and Natural Resources

Lower Base, Caller Box 10007

Saipan, MP 96950

Tel: 670-322-9830/34 Fax: 670-322-2633



Commonwealth of the Northern Mariana Islands Department Lands and Natural Resources

Lower Base, Caller Box 10007

Saipan MP 96950

Tel: (670) 322-9834 Fax: (670) 322-2633

PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF REGULATIONS OF The Department of Land and Natural Resources

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED REGULATIONS

Volume 44, Number 4, pp 048358-048389, of April 28, 2022

Regulations of the Department of Lands and Natural Resources: Chapter 85-120 Submerged Land Rules and Regulations.

ACTION TO ADOPT PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands, Department of Lands and Natural Land and Natural Resources ("DLNR"), HEREBY ADOPTS AS PERMANENT regulations 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). DLNR announced that it intended to adopt them as permanent, and now does so.

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 except as expressly noted below.

PRIOR PUBLICATION: The prior publication was as stated above.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY: The prior publication referenced above indicated that the rules and regulations would be adopted as Chapter 85-30.4 of the NMI Administrative Code. However, this numbering is not accurate as regulations concerning the Mariana Crow Conservation Area already appear as Chapter 85-30.4, and the Proposed Regulations do not intend to repeal or replace the Mariana Crow Conservation Area Regulations. For this reason, the number in the final rules as adopted herein is corrected to Chapter 85-120.

AUTHORITY: The Secretary of DLNR may promulgate necessary regulations to carry out its duties, including its regulation of the Submerged Lands. 1 CMC § 2653(r); 1 CMC § 2653(k). PL 1-23, as amended by PL 6-13, the "Submerged Lands Act" (2 CMC §§ 1201-1231, eff. November 3, 1988).

EFFECTIVE DATE: Pursuant to the APA, 1 CMC § 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: DLNR received no 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.

I DECLARE under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 9th day of January 2023, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:



Augustin M. Kaipat
Acting Secretary
Department of Land and Natural Resources

January 12, 2023

Date

Pursuant to 1 CMC § 2153(e) and 1 CMC § 9104(a)(3), the certified final regulations, modified as indicated above from cited proposed regulations, have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General, and shall be published.

Dated the 28th day of March, 202~~1~~³



EDWARD MANIBUSAN
Attorney General

Filed and
Recorded by:



ESTHER R.M. SAN NICOLAS
Commonwealth Registrar

03.28.2023

Date



JAKEMARATITA
Chairperson, CSC

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
CIVIL SERVICE COMMISSION
OFFICE OF PERSONNEL MANAGEMENT

P.O. BOX 5153 CHRB, SAIPAN, MP 96950-5153
CSC TEL NO: (670) 233-1606 | FAX NO: (670) 233-4096
OPM TEL. NO: (670) 234-6925 / 6958 / 8036 | FAX NO. (670) 234-1013
CSC website: <http://www.cnmisc.net> | OPM website: <http://www.cnmiopm.net>



FRANCES TORRES-SALAS
Director of Personnel

**NOTICE OF AMENDMENT TO
THE SICK LEAVE BANK REGULATIONS
(NMIAC § 10-10-50-410 through §10-10-515)**

NOTICE OF INTENDED ACTION: The Commonwealth of the Northern Mariana Islands, Civil Service Commission (“Commission”) intends to amend the Sick Leave Bank Regulations, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104 (a). The amendment will become effective 10 days after compliance with 1 CMC § § 9102 and 9104 (a) as stipulated by 1 CMC § 9105 (b).

AUTHORITY: The Commission has statutory authority to promulgate and effect personnel regulations pursuant to 1 CMC § 8117, as amended by Public Law No. 17-80, and specifically the Sick Leave Bank Regulations, as authorized by Public Law No. 8-25.

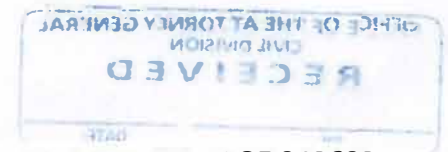
TERMS AND SUBSTANCE: The Commission proposes to adopt changes to the Sick Leave Bank Regulations codified as NMIAC § 10-10-50-410 through §10-10-515.

SUBJECTS AND ISSUES INVOLVED: The Commission has noticed that some amendments to the Sick Leave Bank Regulations, codified as NMIAC § 10-10-50-410 through §10-10-515, were inadvertently omitted from the previous notice of amendment that was published in the Commonwealth Register, Volume 44, Number 09, on September 28, 2022, on pages 049004 to 049018.

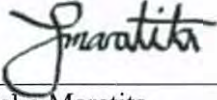
DIRECTIONS FOR FILING AND PUBLICATION: The Civil Service Commission is soliciting comments regarding this proposed regulation, which must be received by the Commission within thirty (30) days of first publication of this notice in the Commonwealth Register, 1 CMC § 9104(a)(2). Interested parties may submit comments on the proposed amendments to Teresa Borja, Executive Assistant, Civil Service Commission, to the following address, or email address, with the subject line “Amendments to the Sick Leave Bank.”

CIVIL SERVICE COMMISSION
P.O. BOX 5153 CHRB
SAIPAN, MP 96950
Email address: staff@cnmicsc.net

Notice of Amendment - Sick Leave Bank



Submitted by:



Jake Maratita
Chairperson, Civil Service Commission

2.27.2023

Date

Received by:




~~Frank Rakoulina~~ *OSCAR M. PASANTA*
Special Assistant for Administration

2/28/23

Date

Filed and recorded by:



Esther R.M. San Nicolas
Commonwealth Registrar

March 28, 2023

Date

I certify, pursuant to 1 CMC § 2153 (e) and 1 CMC § 9104 (a)(3), that I have reviewed and approved these regulations as to form and legal sufficiency.



Edward Manibusan
Attorney General

March 6, 2023

Date



JAKEMARATITA
Chairperson, CSC

COMMONWEALTH TÉÈL FALÚW KKA EFÁNG LLÓL
MARIANAS
CIVIL SERVICE COMMISSION
OFFICE OF PERSONNEL MANAGEMENT

P.O. BOX 5153 CHRB, SAIPAN, MP 96950-5153
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OPM TEL. NO: (670) 234-6925 / 6958 / 8036 | FAX NO. (670) 234-1013
CSC website: <http://www.cnmicsc.net> | OPM website: <http://www.cnmiopm.net>



FRANCES TORRES-SALAS
Director of Personnel

**ARONGORONG REEL LIIWEL NGALI
MWÓGHUTUGHUTUL SICK LEAVE BANK
(NMIAC § 10-10-50-410 ngali § 10-10-515)**

ARONGORONGOL MÁNGEMÁNGIL MWÓGHUT: Commonwealth Téèl Falúw kka Efáng llól Marianas, Civil Service Commission (“Commission”) re mángemángil rebwe liiweli Mwóghutughutúl Sick Leave Bank, sáangi Mwóghutughutul Administrative Procedure Act, 1 CMC § 9104 (a). Ebwe bwunguló angúungú fengál me 1 CMC § § 9102 me 9104 (a) iye aa ffat sáangi 1 CMC § 9105 (b).

BWÁNGIL: Eyoor bwángil Civil Service Commission reel rebwe aronga me ayoora mwóghutughutul sáangi 1 CMC § 8117, igha aa liiwel sáangi Alléghúl Toulap No. 17-80, me e ffat Mwóghutughutul Sick Leave Bank, iye eyoor bwángil sáangi Alléghúl Toulap No. 8-25.

KKAPASAL ME WEEWEL: Civil Service Commission re ppwomw rebwe adóptáali liiwel ngáli Mwóghutughutúl Sick Leave Bank iye e lo bwe NMIAC § 10-10-515.

KKAPASAL ME AUTOL: Commission re weri bwe eyoor liiwel ngáli Mwóghutughutul Sick Leave Bank, iye e ghikill bwe NMIAC § 10-10-50-410 ngáli §10-10-515, rese tiip igha rese aschuulong llól arongorongol liiwel iwe e ghommw iwe re arongawow me llól Commonwealth Register, Volume 09, wóol Maan 28, 2022, wóol peigh 049004 ngáli 049018.

AFAL REEL AMMWELIL ME AKKATÉÉWOWUL: Civil Service Commission re tingór kkapas ngali ppwommwol mwóghutughut ikka rebwe bwughi sáangi Commission llól eliigh (30) ráal mwiril aal ghommwal akkatééwow arongorong yeel me llól Commonwealth Register, 1 CMC § 9104(a)(2). Schóo kka re tipáli rebwe isiisilong kkapas wóol ppwomol liiwel kkal rebwe isiis ngáli Teresa Borja, Executive Assistant, Civil Service Commission, ngáli félfél, ngáre email address, ebwe lo wóol subject line bwe “Amendments to the Sick Leave Bank.”

CIVIL SERVICE COMMISSION
P.O. BOX 5153 CHRB
SAIPAN, MP 96950
Email address: staff@cnmicsc.net

Arongorongol Liiwel – “Sick Leave Bank”
Peigh 2

Isáliyalong:




Jake Maratita
Chairperson, Civil Service Commission

2.27.2023

Ráal

Bwughiyal:




Frank Robo Liman
Special Assistant ngáli Administration

2/28/2023

Ráal

Ammwelil:




Esther R.M. San Nicolas
Commowalth Registrar

March 28, 2023

Ráal

I alúghúlúgh, sáangi 1 CMC § 2153 (e) me 1 CMC § 9104 (a)(3), bwe I ya takkal amwuri fischiiy me átirowa mwóghutughut kkal bwe aa lléghló reel fféerúl me legal sufficiency.



Edward Manibusan
Soulemeleml Allégh Lapalap

March 6, 2023

Ráal



JAKE MARATITA
Kabesiyu, CSC

COMMONWEALTH GI SANKATTAN NA ISLAS MARIÑANAS
KUMISIÓN CIVIL SERVICE
UFISINAN ATMINISTRASIÓN IMPLI'ÃO

P.O. BOX 5153 CHRB, SAIPAN, MP 96950-5153
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OPM TEL. NO: (670) 234-6925 / 6958 / 8036 | FAX NO. (670) 234-1013
CSC website: <http://www.cnmicsc.net> | OPM website: <http://www.cnmiopm.net>



FRANCES TORRES-SALAS
Direktot Personnel

**NUTISIAN NU I MA'AMENDA SIHA GI
REGULASIÓN "SICK LEAVE BANK"
(NMIAC § 10-10-50-410 asta §10-10-515)**

NUTISIAN I MA'INTENSIONA NA AKSION: I Commonwealth gi Sankattan na Islas Mariñanas, i KumisiÓN Civil Service ("i KumisiÓN") ha intensiona para u amenda i regulasiÓN "Sick Leave Bank", sigun gi maneran nu i Ákton Administrative Procedure, I CMC § 9104 (a). I amenda siempre umifektibu gi dies (10) dihas dispues di i tinátti yi yan i I CMC § § 9102 yan 9104 (a) komu mamensiona ni I CMC § 9105 (b).

ÁTURIDÁT: I KumisiÓN gai áturidát estatua para u cho'gui yan u implimenta i regulasiÓN personnel sigun para I CMC § 8117, komu ma'amenda ni Lain Puplicu No. 17-80, yan ispesifikáo i RegulasiÓN "Sick Leave Bank", komu ma'aturisa ni Lain Puplicu No. 8-25.

I TEMA YAN I SUSTANSIAN I PALÁBRA SIHA: I KumisiÓN mamproponi para u adápta i tinilaika siha gi RegulasiÓN "Sick Leave Bank" otganisa komu NMIAC § 10-10-50-410 asta §10-10-515.

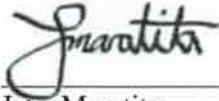
I SUHETU YAN I ASUNTU SIHA NI TINETEKKA': I KumisiÓN maripára na palu na amenda siha gi RegulasiÓN "Sick Leave Bank", otganisa komu NMIAC § 10-10-50-410 asta § 10-10-515, sin intension ti mana'há lum ginen i ma'pus na amenda ni mapublica gi halum Rehistran Commonwealth, Baluma 44, Numiru 09, gi Septembri 28, 2022, gi páhina 049004 para 049018 siha.

DIREKSION PARA U MAPO'LU YAN MAPUBLIKA: I KumisiÓN Civil Service manmamamaisin upiñon siha put esti i manmaproponi na regulasiÓN, ni debi di u marisibi ginen i KumisiÓN gi halum trenta (30) dihas ginen i fine'na na publikasiÓN esti na nutisia gi halum Rehistran Commonwealth, I CMC § 9104(a)(2). I manintires na pattidá siña muna'halum upiñon siha gi maproponi na amenda siha para as Teresa Borja, Eksakatibun Ayudánti, KumisiÓN Civil Service, gi tinátti yi na address, osino email address, yan i suhetu na rãya "Amenda gi Sick Leave Bank."

CIVIL SERVICE COMMISSION
P.O. BOX 5153 CHRB
SAIPAN, MP 96950
Email address: staff@cnmicsc.net

Nutisian Ma'amenda - Sick Leave Bank

Nina'hålum as:



Jake Maratita
Kabesiyu, Kumisión Civil Service

2.27.2023

Fetcha

Rinisibi as:



Frank Rabachinan
Ispisiât na Ayudânti para i Atministrasiôn

2/28/2023

Fetcha

Pine'lu yan Ninota as:



Esther M. San Nicolas
Rehistran Commonwealth

March 28, 2023

Fetcha

Hu testiguyi, sigun gi I CMC § 2153 (e) yan gi I CMC § 9104 (a)(3), na hu ribisa yan apreba esti siha na regulasion komu fotma yan ligât sufisienti.



Edward Manibusan
Abugâdu Hinirât

March 6, 2023

Fetcha

TITLE 10: CIVIL SERVICE COMMISSION

§ 10-50-410 Disability

If the Director of Personnel ~~Management~~ determines that the expected disability precludes the employee from performing the essential job functions of any equivalent government position, the Director of Personnel ~~Management~~ shall deny additional sick leave hours to the employee. The Director of Personnel ~~Management~~ shall then recommend the employee apply for disability retirement benefits.

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

Part 500 - Miscellaneous

§ 10-50-501 Appeal

Any employee denied hours from the sick leave bank has the following recourse:

(a) The employee shall, within ~~two~~five (5) business days of the denial, request the Director of Personnel ~~Management~~ reconsider his or her decision to deny the request. The employee may supplement the original withdrawal request with additional information. The Director of Personnel ~~Management~~ must issue a written final decision within five (5) business days of the request for reconsideration. If the Director affirms the original denial, the decision shall include the specific reason(s) for the denial and a summary of the evidence relied upon.

(b) If the employee chooses to appeal the Director of Personnel's ~~Management's~~ final decision, the appeal must be filed at the Civil Service Commission ("Commission") ~~office~~Commission office within five (5) business days after the employee receives the final decision. The appeal shall be processed by the Commission in the same manner as it processes a grievance under Personnel Service System Rules and Regulations, NMIAC § 10-20.2-294(c) through § 10-20.2-294(1).

Modified, 1 CMC § 3806(c), (e), (f).

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

§ 10-50-505 Records

The Director of Personnel ~~Management~~ or his designee shall maintain records of all hours contributed to, withdrawn from, and returned to the sick leave bank.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

§ 10-50-510 Effect on Family Medical Leave Act

All hours withdrawn from the sick leave bank shall be counted towards the leave time provided by the federal Family Medical Leave Act of 1993 and implemented in the Commonwealth by the Personnel Service System Rules and Regulations, NMIAC § 10-20.2-625 and the Excepted

TITLE 10: CIVIL SERVICE COMMISSION

Service Personnel Regulations, NMIAC § 10-10-135.

§10-50-515 Maintenance of the General Account

The general account of the sick leave bank shall be maintained and managed by the Office of Personnel Management. The Office of Personnel Management shall periodically advise government employees of these regulations, the purpose of the sick leave bank and the possibility of donating hours to the bank. It shall also provide an option on all exit interviews for employees leaving the government to donate their unused sick leave hours to the sick leave bank.¶

Modified, 1 CMC § 3806(c).

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).



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

1	In Re Matter of:)	PUA Case No. 21-0126
2)	
3	Jennifer Angello,)	
4)	
5	Appellant,)	ORDER DENYING APPELLANT'S
6)	REQUEST TO RECUSE;
7	v.)	ORDER DENYING REQUEST TO
8)	REOPEN;
9	CNMI Department of Labor,)	
10	Division of Employment Services-PUA,)	FINAL AGENCY ACTION
11	Appellee.)	

I. INTRODUCTION

On February 3, 2023, Appellant filed a written request to reopen this case and recuse the undersigned hearing officer. On February 16, 2023, Appellant filed clarifications to further explain the request to reopen. As discussed below, Appellant's requests are **DENIED**.

II. DISCUSSION

Appellant has the burden to prove that the above-captioned case warrants reopening and the undersigned hearing officer should recuse from the case. Each issue is discussed below.

1. Request to Recuse

A hearing officer shall be disqualified when there is "any direct or indirect interest in the claim or the issues involved in the claim, or in which the [hearing officer's] relative by affinity or consanguinity within the third degree is interested" or "whenever any party files with the direct an affidavit that the referee has a personal bias or prejudice against such party or in favor of any opposing party." HAR §12-5-93(m). The affidavit must be supported by facts demonstrating bias or prejudice. *Id.* A hearing officer may be disqualified when allegations for impartiality are valid and the party's opportunity for a fair hearing is not possible. *Id.* Further, the hearing officer may recuse when unable for any reason to preside with absolute impartiality of a pending matter. *Id.*

Appellant requests Acting Secretary Staffler to recuse the undersigned hearing officer. Appellant alleges the undersigned lacks knowledge of the Hawaiian unemployment insurance

1 laws and rules and lacks willingness to apply the mandates of UIPL advisories. Further, Appellant
2 alleges bias and an apparent ex parte communication with the Department.

3 As a preliminary matter, the undersigned hearing officer does not have any direct or
4 indirect interest in the case. After considering all of the circumstances, the undersigned finds no
5 personal, financial, or familial connection to motivate a certain outcome.

6 Further, Appellant fails to demonstrate a need for recusal for prejudice or bias.
7 Appellant's allegations are unsupported by facts. First, with respect to the allegations regarding
8 Hawaiian unemployment insurance laws, the reasoned interpretation and application of law is not
9 prejudice or bias. The undersigned recognizes that a case can be reopened with a written request
10 – however, that section of the law does include state when a request to be reopened should be
11 granted. Considering that an appellant has the burden to prove a legal or factual error occurred
12 and its occurrence warrants reversal and to avoid requests for reopening to simply relitigate issues,
13 the Administrative Hearing Office requires that requests be accompanied by some basis to support
14 reopening. Second, with respect to alleged unwillingness to apply the mandates of UIPL
15 advisories, the undersigned did not ignore the applicable law. Rather, the issue of overpayment
16 was moot and not further discussed in the Administrative Order because: (1) payment was
17 intercepted before finalized at the bank; (2) the Department never issued an overpayment
18 determination for the undersigned to review; and (3) UIPL guidance regarding waivers do not
19 apply if an overpayment was not established by the Department. Third, with respect to allegations
20 of bias and ex parte communications, Appellant's request fails to include a sworn affidavit
21 supported by facts. For that reason, it is unclear what actions or communications demonstrate
22 bias and ex parte communication. To be clear, the undersigned hearing officer does not
23 communicate with the parties outside of a noticed hearing. Further, hearing staff intercept all
24 communications and filings to avoid direct contact between the hearing officer and parties. The
25 undersigned finds that a reasoned application of the law is insufficient to demonstrate bias or
26 prejudice warranting recusal. Accordingly, based on above, Appellant's request to recuse the
27 undersigned hearing officer is **DENIED**.

28 **2. Request to Reopen**

Pursuant to HAR §12-5-93, “[a]ny application for reopening shall be in writing.” HAR §12-
5-93(h). “The [hearing officer] may grant or deny the application without a hearing or may notify
the parties to appear at a designated place and time for argument on the application.” *Id.* “A

1 [hearing officer] may reconsider the decision upon the evidence already in the record or take such
2 additional evidence as the [hearing officer] deems necessary in order to decide the case and give
3 the parties a fair hearing.” HAR §12-5-93(i). A decision may only be reopened once. “A denial
4 of an application to reopen the decision shall not be subject to further reopening.” HAR §12-5-
5 93(j). In the event that an application to reopen is denied or parties have further objections to a
6 subsequent decision, the parties may obtain judicial review. *Id.*

7 Appellant requests the undersigned to reopen this case. In support of reopening, Appellant
8 argues that there are new legal issues relating to the U.S. Department of Labor’s UIPL advisories
9 that were ignored. First, Appellant argues that the contents of email communications with the
10 department were contradictory and warrant a new appeal. Upon review of the attached
11 communication, the undersigned noticed that the email was not a new determination warranting
12 a new appeal but an opinion and attempt to clarify or explain the UIPL. This email
13 communication, in and of itself, does not create new legal issues warranting reopening. Second,
14 as discussed below, the UIPL guidance¹ was not ignored. Based on the evidence presented at the
15 hearing, the undersigned found that: (1) Appellant was not eligible for PUA; (2) there was no
16 overpayment established and no determination for the undersigned to review; and (3) the
17 discussion on waivers for repayment or recovery of an overpayment was moot because there were
18 no benefits to recoup from Appellant. Here, the Department intercepted the funds before payment
19 was finalized and never issued an overpayment determination with an amount to repay. Because
20 payment was not made, the issue of waivers for repayment was moot and irrelevant to deciding
21 the issues on appeal.

22 Ultimately, Appellant’s request to reopen does not demonstrate a basis to reconsider the
23 undersigned’s decision. Specifically, Appellant’s request to reopen does not demonstrate: (1)
24 misapplication of the law that would change the outcome of the case; (2) factual error that would
25 change the outcome of the case; (3) the overpayment occurred; (4) the waiver applies; or (5)
26 Appellant satisfies the two-prong test for a waiver. In conclusion, Appellant does not provide any

27 ¹ Generally, when individual receive PUA or FPUC benefits to which they are not entitled, states must require
28 repayment of these amounts. Section 4.d of UIPL20-21 describes that the Department may waive recovery of the
overpayment (i.e., not require claimants to pay back improper payments) when: (1) the improper payment occurred
without the claimant’s fault; and (2) equity and good conscience requires it. This provision allows the Department to
forgive improper payments, it does not allow the Department to make improper payments, especially after a finding
that a claimant is not eligible.

1 new information or arguments to justify reopening this case or reversing the decision. Based on
2 above, Appellant's request to reopen this case is **DENIED**.

3 **III. CONCLUSION**

4 As discussed above, Appellant's request to recuse and reopen the above-captioned case is
5 hereby **DENIED**. The CNMI Department of Labor's Disqualifying Determination, dated June
6 11, 2021 is affirmed. Appellant is not eligible to receive PUA benefits. The Administrative Order,
7 issued October 25, 2021, and this present Order shall constitute a **FINAL AGENCY**
8 **DECISION**.

9 In the event a party aggrieved by this Order would like to dispute or contest this decision, said
10 party may seek judicial review with the CNMI Superior Court under the local Administrative
11 Procedures Act within 30 days of this Order. *See* 1 CMC § 9112.

12 So ordered this **9th** day of March, 2023.

13 /s/

14 **Jacqueline A. Nicolas**
15 Chief Administrative Hearing Officer

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



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In Re Matter of:)	PUA Case No. 22-0221
)	
Karmen Ohri,)	
)	
Appellant,)	ADMINISTRATIVE ORDER
)	
v.)	
)	
CNMI Department of Labor,)	
Division of Employment Services-PUA,)	
)	
Appellee.)	

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on February 14, 2023 at 9:00 a.m. at the Administrative Hearing Office, Saipan, CNMI. Appellant Karmen Ohri, formerly known as Karmen Ohri Villagomez (“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 Naomi Camacho. There were no other witnesses that provided testimony at the hearing. A list of the admitted evidence were added to the end of this Administrative Order.

For the reasons stated below, the Department’s Determination dated June 23, 2021 is **AFFIRMED**. Appellant is not eligible for benefits for the period of December 27, 2020 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

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.

1 federal unemployment insurance programs, which, among other things, extended the PUA and
2 FPUC programs to March 13, 2021.³ On March 11, 2021, the American Rescue Plan Act of 2021
3 (“ARPA”) extended the programs to September 6, 2021. The CNMI Department of Labor is
4 charged with the responsibility in administering the above-mentioned programs in the CNMI in
5 accordance to applicable law.⁴ The CNMI Department of Labor Administrative Hearing Office
6 has been designated to preside over appeals of agency decisions.

7 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon
8 review of Appellant’s application and supporting documents, the Department issued a
9 Disqualifying Determination on June 23, 2021. On November 21, 2022, Appellant filed the
10 present appeal and the matter was scheduled for a hearing. As stated in the Notice of Hearing, the
11 issues on appeal are: (1) whether the appeal is timely filed; (2) whether Appellant is eligible for
12 PUA; and (3) whether an overpayment occurred and funds should be returned.

13 Upon review of the records, the appeal is not timely filed. Accordingly, jurisdiction is not
14 established.

15 III. FINDINGS OF FACT

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

- 18 1. On or around June 15, 2021, Appellant submitted an application⁵ for unemployment
19 assistance under the PUA and FPUC programs administered by the Department. In the
20 application,⁶ Appellant self-certified under penalty of perjury that:
 - 21 a. She is the owner or sole proprietor of a business named “E&S Catering”;
 - 22 b. Her self-employment was directly affected by COVID-19 for none of the reasons
23 listed on the application;
 - 24 c. Her employment was affected since March 20, 2020; and
 - 25 d. For all quarters of year 2020, her net earnings were zero (\$0.00).

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

30 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
31 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.*

- 1 2. There is no showing that Appellant’s self-employment was directly affected by COVID-
2 19 pandemic. Specifically,
- 3 a. E&S Catering closed due to Typhoon Yutu in October 2018.
 - 4 b. When E&S Catering was open, it was not making any profits or earnings.⁷
 - 5 c. Appellant had a valid business license for E&S Catering only until
6 November 18, 2018. After said business license expired, Appellant was unable to
7 renew or obtain a new license.
 - 8 d. Immediately prior to COVID-19 pandemic, Appellant was no longer an owner or
9 sole proprietor of a business. Moreover, Appellant was not employed and she did
10 not have any attachment to the CNMI workforce.
 - 11 e. After the PUA and FPUC benefit period ended on September 4, 2021, Appellant
12 obtained a business license under a new business name, “Kaselehlie”, which is
13 located in Chalan Kanoa Village, Saipan. The Kaselehlie business license was
14 valid from November 2, 2021 to November 2, 2022.⁸
 - 15 f. Appellant had no other documents to show that she owned a business or had any
16 attachment to the CNMI workforce that was directly affected by COVID-19 from
17 December 27, 2020 to September 4, 2021.
- 18 3. On June 23, 2021, the Department issued a Determination⁹ disqualifying Appellant from
19 benefits from December 27, 2020 to September 4, 2021 because the Department found
20 that Appellant’s business license was expired since November 18, 2018 and it was not
21 renewed, and based on the Appellant’s 2019 and 2020 BGRs, Appellant was unable to
22 substantiate that her employment was directly affected by the COVID-19 pandemic.
- 23 4. On November 21, 2022, more than one year after the Determination was issued, Appellant
24 filed the present appeal¹⁰ and the matter was scheduled for an Administrative Hearing.¹¹
- 25 5. Appellant was unable to provide credible testimony or substantiating documents on why
26 she filed late.
- 27 6. The Department provided credible testimony and supporting documents the Department
28 informed Appellant of the disqualification, the basis for the disqualification, and gave
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30 ⁷ See Exhibit 6.
31 ⁸ See Exhibit 5.
⁹ See Exhibit 2.
¹⁰ See Exhibit 3.
¹¹ See Exhibit 4.

1 Appellant instructions on the appeals process including the 10-day deadline on instances
2 when Appellant followed up on her PUA and FPUC application.

3 7. The Department also provided Appellant with instructions on how to file her appeal
4 through the Benefit Rights Information Handbook,¹² newspaper articles,¹³ and the
5 Determination.¹⁴

6 8. Appellant did not receive any PUA or FPUC benefits, and the Department's Benefit
7 Payment Control Unit confirmed there is no overpayment to Appellant.¹⁵

8 IV. CONCLUSIONS OF LAW

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

11 1. Appellant's appeal is not timely filed.

12 Generally, an appeal should be filed within ten days after the Determination was issued or
13 served to the claimant. However, the Department may extend the period to thirty days by a
14 showing of good cause.¹⁶ Good cause means: (1) illness or disability; (2) keeping an appointment
15 for a job interview; (3) attending a funeral of a family member; and (4) any other reason which
16 would prevent a reasonable person from complying as directed.¹⁷

17 Here, Appellant failed to file her appeal within the 10-day deadline and Appellant did not
18 have good cause to file late. Specifically, the Determination was issued on June 23, 2021 and
19 Appellant did not file her request to appeal until November 21, 2022, which is more than one year
20 after the Determination was issued. Additionally, based on testimony and substantiating
21 documents, the undersigned finds that Appellant did not have good cause to file late. When asked
22 at the hearing for an explanation for the late filing, Appellant's only explanation was that she
23 followed up with the Department and submitted the required business licenses. However,
24 Appellant admitted that she did not file a request to reconsider or request to appeal. The
25 Department provided credible testimony and supporting documents¹⁸ that on instances when
26 Appellant followed up on her claims, the Department informed Appellant of the disqualification,
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29 ¹² Exhibit 9.

30 ¹³ *Id.*

31 ¹⁴ *See* Exhibit 2.

¹⁵ Exhibit 8.

¹⁶ HI. Rev. Statute § 383-38(a).

¹⁷ HAR § 12-5-81(j).

¹⁸ *See* Exhibit 7.

1 the reason for the disqualification, and the appeals process. The Department also provided
2 Appellant with instructions on how to file her appeal through multiple avenues with the deadline
3 clearly stated. This includes appeals instructions and information in the Benefit Rights
4 Information Handbook, the Determination, and through newspaper articles. Generally, the failure
5 to follow instructions and correctly file an appeal are not good cause for an extension.

6 Considering that Appellant's appeal is untimely, the Department's Determination is final and
7 the latter issues are moot. Note that even if a 30-day extension was granted for good cause,
8 Appellant filed her appeal more than one year after the Determination was issued. Accordingly,
9 because the appeal is untimely, the Administrative Hearing Office does not have jurisdiction to
10 review the Department's Determination and the Determination shall be deemed final.

11 **V. DECISION**

12 For the reasons stated above, it is ORDERED that:

- 13 1. The Department's Determination, dated June 23, 2021, is **AFFIRMED**; and
14 2. Appellant is **NOT ELIGIBLE** to receive PUA and FPUC benefits for the period of
15 December 27, 2020 to September 4, 2021.

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

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

28 So ordered this 27th day of February, 2023.

29 /s/
30 **CATHERINE J. CACHERO**
31 Administrative Hearing Officer

LIST OF ADMITTED EVIDENCE

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1. Exhibit 1: Copy of Appellant’s Application Snapshot, filed June 15, 2021;
2. Exhibit 2: Copy of the Department’s Disqualifying Determination, dated June 23, 2021;
3. Exhibit 3: Copy of Appellant’s Request to File an Appeal and supporting documents, filed November 21, 2022;
4. Exhibit 4: Copy of the Notice of Hearing, issued November 21, 2022;
5. Exhibit 5: Copies of Appellant’s Business Licenses, issued on November 28, 2017 and November 18, 2021;
6. Exhibit 6: Copies of Appellant’s BGRTs for months of November 2018, December 2018, 2019, and 2020, all showing zero income;
7. Exhibit 7: Copies of the Department’s Case Notes, dated June 23, 2021 and August 17, 2022;
8. Exhibit 8: Copies of the Department’s Benefit Payment Control Unit’s Email Communication, dated January 26, 2023; and
9. Exhibit 9: Copies of the PUA & FPUC Benefit Rights Information Handbook and Newspaper Articles regarding the Appeals Process, posted in the *Saipan Tribune* and *Marianas Variety*, on October 15, 2020 and October 16, 2020.

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



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In Re Matter of:)	PUA Case No. 22-0222
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Sabinoy Chakraborty,)	
)	
Appellant,)	ADMINISTRATIVE ORDER
)	
v.)	
)	
CNMI Department of Labor,)	
Division of Employment Services-PUA,)	
)	
Appellee.)	
)	

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on February 23, 2023 at 9:00 a.m. at the Administrative Hearing Office, Saipan, CNMI. Appellant Sabinoy Chakraborty (“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 Supervisor Zachary Taitano. There were no other witnesses that provided testimony at the hearing. A list of the admitted evidence were added to the end of this Administrative Order.

For the reasons stated below, the Department’s Determination dated December 31, 2020 is **AFFIRMED**. Appellant is not eligible for benefits for the period of February 2, 2020 to December 26, 2020.

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

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.

1 federal unemployment insurance programs, which, among other things, extended the PUA and
2 FPUC programs to March 13, 2021.³ On March 11, 2021, the American Rescue Plan Act of 2021
3 (“ARPA”) extended the programs to September 6, 2021. The CNMI Department of Labor is
4 charged with the responsibility in administering the above-mentioned programs in the CNMI in
5 accordance to applicable law.⁴ The CNMI Department of Labor Administrative Hearing Office
6 has been designated to preside over appeals of agency decisions.

7 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon
8 review of Appellant’s application and supporting documents, the Department issued a
9 Disqualifying Determination on December 31, 2020. On November 22, 2022, Appellant filed the
10 present appeal and the matter was scheduled for a hearing. As stated in the Notice of Hearing, the
11 issues on appeal are: (1) whether the appeal is timely filed; (2) whether Appellant is eligible for
12 PUA; and (3) whether an overpayment occurred and funds should be returned.

13 Upon review of the records, the appeal is not timely filed. Accordingly, jurisdiction is not
14 established.

15 **III. FINDINGS OF FACT**

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

- 18 1. On or around June 21, 2020, Appellant submitted an application⁵ for unemployment
19 assistance under the PUA and FPUC programs administered by the Department. In the
20 application,⁶ Appellant self-certified under penalty of perjury that:
- 21 a. He is an Alien/Refugee Lawfully Admitted to the U.S.;
 - 22 b. He is the owner or sole proprietor of a business named “SAIPAN TAXI
23 SERVICE”;
 - 24 c. His self-employment was directly affected by COVID-19 when he was scheduled
25 to commence employment and do not have a job or he is unable to reach the job
26 as a direct result of the COVID-19 public health emergency;

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

30 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
31 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.*

- 1 d. His employment was affected since February 2, 2020; and
- 2 e. For all quarters of year 2020, his net earnings were zero (\$0.00).
- 3 2. There is no showing that Appellant is a qualified alien at the time relevant to his claim,
- 4 which is February 2, 2020 to December 26, 2020. Specifically,
- 5 a. Appellant provided a copy of his most recent employment authorization card under
- 6 Category C11, but this authorization had expired on June 29, 2019.⁷
- 7 b. Appellant applied to U.S. Citizenship and Immigration Services (“USCIS”) for re-
- 8 parole, but USCIS denied his request on or around April 2, 2020.⁸
- 9 c. Appellant then applied for employment authorization, but USCIS denied his
- 10 application for employment authorization on or around April 7, 2022.⁹
- 11 d. When questioned with regards to each provision of the qualified alien statute,¹⁰
- 12 Appellant answered in the negative.
- 13 e. Moreover, Appellant had no other documents to establish that he had any other
- 14 status during the relevant claimed period.
- 15 3. On or around December 29, 2020, the Department entered Appellant’s information into
- 16 the Systematic Alien Verification for Entitlements (“SAVE”) database maintained by
- 17 USCIS, Verification Division.¹¹ This database is used to determine the status of claimants
- 18 so that only those entitled to benefits receive them. The SAVE results¹² indicated that
- 19 Appellant was a non-national of the U.S. and that his most recent employment
- 20 authorization was under Category C11 but it had expired on June 29, 2019.¹³
- 21 4. On December 31, 2020, the Department issued a Determination¹⁴ disqualifying Appellant
- 22 from benefits from February 2, 2020 to December 26, 2020 because the Department found
- 23 that based on the evidence provided, Appellant is not a U.S. citizen, Non-Citizen National,
- 24 or Qualified Alien.
- 25 5. Appellant filed a “Redetermination Letter” on or around June 7, 2022.¹⁵

28 ⁷ See Exhibit 9.

29 ⁸ See Exhibit 10.

30 ⁹ See Exhibit 11.

31 ¹⁰ See 8 USC § 1641.

¹¹ See Exhibit 8.

¹² Exhibit 8.

¹³ See *id.*; see also Exhibit 9.

¹⁴ See Exhibit 2.

¹⁵ See Exhibit 5.

- 1 6. On November 22, 2022, almost two years after the Determination was issued, Appellant
2 filed the present appeal¹⁶ and the matter was scheduled for an Administrative Hearing.¹⁷
3 7. Appellant was unable to provide credible testimony or substantiating documents on why
4 he filed his appeal late.
5 8. The Department provided credible testimony and supporting documents that the
6 Department informed Appellant of the disqualification and the basis for the
7 disqualification,¹⁸ and on instances when Appellant followed up on his PUA and FPUC
8 application, the Department gave Appellant instructions on the appeals process including
9 the 10-day deadline.
10 9. The Department also provided Appellant with instructions on how to file his appeal within
11 the 10-day deadline through the Benefit Rights Information Handbook,¹⁹ newspaper
12 articles,²⁰ and the Determination.²¹
13 10. Appellant did not receive any PUA or FPUC benefits, and the Department's Benefit
14 Payment Control Unit confirmed there is no overpayment to Appellant.²²

15 IV. CONCLUSIONS OF LAW

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

18 1. Appellant's appeal is not timely filed.

19 Generally, an appeal should be filed within ten days after the Determination was issued or
20 served to the claimant. However, the Department may extend the period to thirty days by a
21 showing of good cause.²³ Good cause means: (1) illness or disability; (2) keeping an appointment
22 for a job interview; (3) attending a funeral of a family member; and (4) any other reason which
23 would prevent a reasonable person from complying as directed.²⁴

24 Here, Appellant failed to file his appeal within the 10-day deadline and Appellant did not have
25 good cause to file late. Specifically, the Determination was issued on December 31, 2020 and
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28 ¹⁶ See Exhibit 3.

29 ¹⁷ See Exhibit 4.

30 ¹⁸ See Exhibit 6.

31 ¹⁹ Exhibit 13.

²⁰ Exhibit 12.

²¹ See Exhibit 2.

²² Exhibit 14.

²³ HI. Rev. Statute § 383-38(a).

²⁴ HAR § 12-5-81(j).

1 Appellant did not file his request to appeal until November 22, 2022, which is almost two years
2 after the Determination was issued. Based on testimony and substantiating documents, the
3 undersigned finds that Appellant did not have good cause to file late. When asked at the hearing
4 for an explanation for the late filing, Appellant's only explanation was that he followed up with
5 the Department. However, based on Appellant's testimony and substantiating documents, on
6 instances when Appellant followed up on his claims, the Department informed Appellant of the
7 disqualification, the reason for Appellant's disqualification, and the appeals process. The
8 Department also provided credible testimony and supporting documents²⁵ to show that the
9 Department provided Appellant with instructions on how to file his appeal through multiple
10 avenues with the 10-day deadline clearly stated. This includes appeals instructions and
11 information in the Benefit Rights Information Handbook, the Determination, and through
12 newspaper articles. Instead of following the instructions and meeting the deadline, Appellant filed
13 a request to reconsider via a "Redetermination Letter" on or around June 7, 2022, which is one
14 and a half years after the Determination was issued. Five months later, on November 22, 2022,
15 Appellant finally filed his request to appeal with the Administrative Hearing Office. Generally,
16 the failure to follow instructions and correctly file an appeal are not good cause for an extension.

17 Considering that Appellant's appeal is untimely, the Department's Determination is final and
18 the latter issues are moot. Note that even if a 30-day extension was granted for good cause,
19 Appellant filed his appeal more than one year after the Determination was issued. Accordingly,
20 because the appeal is untimely, the Administrative Hearing Office does not have jurisdiction to
21 review the Department's Determination and the Determination shall be deemed final.

22 V. DECISION

23 For the reasons stated above, it is ORDERED that:

- 24 1. The Department's Determination, dated December 31, 2020, is **AFFIRMED**; and
- 25 2. Appellant is **NOT ELIGIBLE** to receive PUA and FPUC benefits for the period of
26 February 2, 2020 to December 26, 2020.

27 If a party is aggrieved by this Order and would like to contest the decision, he or she must
28 submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The
29 written request should be supported by legal, factual, or evidentiary reasons to reopen the
30 decision. The written request must be submitted to the Administrative Hearing Office, either in
31

²⁵ See Exhibit 7.

1 person at Building #1357, Mednilla Avenue, Capitol Hill, Saipan, CNMI or via email at
2 hearing@dol.gov.mp.

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

9 So ordered this **28th** day of February, 2023.

10 /s/

11 **CATHERINE J. CACHERO**
12 Administrative Hearing Officer

13 **LIST OF ADMITTED EVIDENCE**

- 14
- 15 1. Exhibit 1: Copy of Appellant's Application Snapshot, filed June 21, 2021;
 - 16 2. Exhibit 2: Copy of the Department's Disqualifying Determination, dated December 31, 2020;
 - 17 3. Exhibit 3: Copy of Appellant's Request to File an Appeal and Disqualifying Determination,
18 filed November 22, 2022;
 - 19 4. Exhibit 4: Copy of the Notice of Hearing, issued November 22, 2022;
 - 20 5. Exhibit 5: Copy of Appellant's "Redetermination Letter," dated June 1, 2022;
 - 21 6. Exhibit 6: Copies of the Department's Case Notes, dated December 30, 2020, June 22, 2021,
22 April 27, 2022, June 21, 2022, June 22, 2022, and September 29, 2022;
 - 23 7. Exhibit 7: Copy of Department's Northern Mariana Islands Portal – Preview Message, dated
24 December 3, 2020;
 - 25 8. Exhibit 8: Copy of Departments SAVE Response, dated December 29, 2020;
 - 26 9. Exhibit 9: Copy of Appellant's Employment Authorization Card (valid until June 29, 2019)
27 and Bangladesh Passport (valid until February 18, 2023);
 - 28 10. Exhibit 10: Copy of U.S. Citizenship and Immigration Services' Notice of Decision on
29 Appellant's Parole Request, dated April 2, 2020;
 - 30 11. Exhibit 11: Copy of U.S. Citizenship and Immigration Services' Form I-797C, Notice of
31 Action on Appellant's Form I-765, dated April 7, 2022;

- 1 12. Exhibit 12: Copies of Newspaper Articles regarding the Appeals Process, posted in the *Saipan*
- 2 *Tribune* and *Marianas Variety*, on October 15, 2020 and October 16, 2020.
- 3 13. Exhibit 13: Copy of the PUA & FPUC Benefit Rights Information Handbook; and
- 4 14. Exhibit 14: Copy of the Department's Benefit Payment Control Unit's Email Communication,
- 5 dated February 15, 2023.

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

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In Re Matter of:)	Labor Case No. 22-014
)	Secretary Appeal No. 23-001
Feng Yu,)	
)	
Appellant,)	
v.)	FINAL AGENCY DECISION
)	
Island Star International, Inc.,)	
)	
Appellee.)	
)	
)	

I. INTRODUCTION

On September 1, 2022, Feng Yu (“Appellant”) filed an Intake and Complaint form (“Complaint”) to the Administrative Hearing Office (“AHO”). The Complaint was for labor claims of unpaid wages against Island Star International, Inc. The Complaint was processed and served through personal service to Appellee on the same day.

On September 12, 2022, an Order to Show Cause was issued to both parties scheduling a hearing for October 13, 2022. On October 12, 2022, an entry of appearance was filed with AHO for the Appellee’s legal counsel. On October 13, 2022, the scheduled hearing was vacated due to the Hearing Officer’s unforeseen illness. An Order Continuing Hearing was issued the following day to both parties scheduling the hearing for October 18, 2022.

On October 18, 2022, an Order after the hearing was issued ordering both parties to submit their arguments and evidence in writing. The Administrative Hearing Officer set deadlines for both parties as expressed in the Order. On November 2, 2022, the Appellee filed their Motion of Summary Disposition, Memorandum in Support of Motion for Summary Disposition, and Declaration of Xing Bo Yu in Support of Plaintiff’s Motion for Summary Disposition.

On January 9, 2023, the Administrative Hearing Officer issued an Order of Dismissal of the case. The Appellant claimed unpaid wages from November 18, 2022 to June 30, 2022. Based on the applicable law, the Appellant can only recover wages accruing six months before the filing of the Complaint. The Appellant failed to show cause why the claims from November 18, 2020

1 through February 28, 2022 should not be dismissed. Appellant is limited to wages accrued from
2 March 1, 2022 to September 1, 2022, and the claims arising out of the six-month statute of
3 limitations were dismissed. Appellant also failed to establish a claim for unpaid wages under the
4 CNMI Minimum Wage Act, leading to the dismissal of his remaining claims. On November 14,
5 2022, the Appellant filed his response to the Appellee's Motion. On November 23, 2022, the
6 Appellee filed their reply to the Appellant's response.

7 II. LEGAL STANDARD

8 "An appeal is commenced by filing a notice of appeal on the standard form provided by the
9 Department and payment of the fee..." NMIAC 80-20.1-490(a). "The record before the Secretary
10 consists of the complaint, pleadings filed, exhibits, and order of the hearing officer." NMIAC §
11 80-20.1-490(c). "When the Secretary is exercising jurisdiction over appeals from final orders of
12 the Administrative Hearing office, the Secretary shall have all the powers and responsibilities of
13 a hearing officer. No hearing or oral argument on an appeal is required." NMIAC 80-20.1-490(d).
14 "In a review on appeal, the Secretary may restrict review to the existing record, supplement the
15 record with new evidence, hear oral argument, or hear the matter de novo pursuant to 1 CMC
16 §9109 and §9110. Upon completion of review, the Secretary shall affirm, reverse or modify the
17 findings, decision, or order of the hearing office." NMIAC § 80-20.1-490(e).

18 III. DISCUSSION

19 Here, Appellant argues that the Administrative Hearing Officer's order was based on a factual
20 error that altered the decision. Appellant sought relief that Administrative Hearing Officer
21 considers hours that he worked for the apartment. For the reasons stated below, the undersigned
22 finds the Administrative Hearing Officer's decision was proper.

23 1. Appellant fails to meet his burden of proof on appeal.

24 "It is a general rule of practice that legal arguments should be supported by law and analysis...
25 An issue is insufficiency developed if it is raised in a conclusory manner, or when the overall
26 analysis of the issue is so lack as to shift the burden of research and argument to the reviewing
27 court." 42 Com. Reg. 044123 (September 28, 2020) (internal citations omitted). It is beyond the
28 reviewing court's duties to have to guess or construct parties' arguments. *See* 41 Com. Reg.
041761 (may 28, 2019). For that reason, arguments that are not fully developed shall be deemed
waived.

1 Here, Appellant failed to provide evidence that there was a factual error made by the
2 Administrative Hearing Officer. In his appeal, Appellant reiterated the same arguments from his
3 Complaint. Appellant provided no additional documentation or evidence to show proof of
4 employment in the form of a contract, check stubs or any other records. Appellant does not meet
5 his burden on appeal by simply disagreeing with the Administrative Hearing Officer's decision
6 and relitigating issues already discussed on the record.

7 IV. CONCLUSION

8 Accordingly, pursuant to NMIAC § 80-20.1-490(e), the Administrative Hearing Officer's
9 decision is **AFFIRMED**.

10 This Order constitutes a **FINAL AGENCY DECISION**. In the event a party is aggrieved by
11 this Order and would like to dispute or contest this decision, said party may seek judicial review
12 with the CNMI Superior Court under the local Administrative Procedures Act. *See* 1 CMC §9112.
13 All forms, filing fees, and filing deadlines for judicial review will be as established by the
14 applicable law and court rule.

15 So ordered this **28th** day of February, 2023.

16 
17 **Leila F. Staffler**
18 Secretary of Labor

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



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In Re Matter of:)	Labor Case No. 22-018
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Wenhua Wu,)	
)	
Complainant,)	DISMISSAL OF LABOR CASE; REFERRAL TO ENFORCEMENT
)	
v.)	
)	
Fengze Corporation,)	
)	
Respondent.)	
)	

I. INTRODUCTION

This matter came for an Order to Show Cause Hearing on March 9, 2023 at 9:00 a.m. at the Administrative Hearing Office. Complainant Wenhua Wu (“Complainant”) was present and self-represented. Respondent Fengze Corporation (“Respondent”) was present and represented by Chairman Li Zhao Kuan. The Department’s Enforcement, Compliance and Monitoring Section (“Department”) was also present and represented by Labor Law Enforcement Specialist III Norman Rasiang. Interpreter Brandon Doggett was present to facilitate communications.

I. APPLICABLE LAW & DISCUSSION

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).

The Administrative Hearing Office does not have jurisdiction with respect to the claims of tourists. Those claims are pursued in the Commonwealth Superior Court.” NMIAC § 80-20.1-450(e). “It is the intent of the legislature that the [Commonwealth Employment Act of 2007] shall not apply to persons admitted to the Commonwealth as tourists, or to persons employed illegally... it is the intent of the Legislature that . . . illegally employed be prohibited from using the terms of this Act to receive or avail themselves of a legal right or benefit.” PL 15-108.

1 On December 1, 2022, Complainant filed a complaint for unpaid wages and unlawful
2 deductions. Upon review of the pleadings, the case was scheduled for an Order to Show Cause
3 Hearing as to why this case should not be dismissed for lack of jurisdiction. After giving the
4 parties notice and an opportunity to respond at the hearing, the undersigned finds that dismissal
5 of the labor case is appropriate. Complainant is a foreign national who entered the CNMI as a
6 tourist in 2019. Complainant never obtained a visa or other legal authorization to continue to stay
7 and work in the CNMI. Accordingly, Complainant was not lawfully employed by Respondent
8 and this office does not have jurisdiction with to these claims.

9 II. DISMISSAL OF LABOR CASE & APPEAL RIGHTS

10 Accordingly, pursuant to NMIAC § 80-20.2-130(c), this matter is hereby **DISMISSED**.
11 Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form and
12 filing fee with the Administrative Hearing Office within fifteen (15) days from the date of this
13 Order.¹

14 III. REFERRAL TO ENFORCEMENT

15 In light of the allegations and other labor compliance issues, the clerk is **ORDERED** to
16 copy and transmit the file to Enforcement for further investigation.² In the event that Enforcement
17 finds a labor law violation or compliance issue, Enforcement may initiate a Compliance Agency
18 Case.

19 So ordered this 9th day of March, 2023.

20
21 /s/
JACQUELINE A. NICOLAS
Chief Administrative Hearing Officer

22 ¹ The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the
23 Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative
24 Hearing Office, with the applicable filing fee.

25 ² Pursuant to 3 CMC § 4940, the Department's Enforcement, Compliance, and Monitoring Section has the authority
26 to conduct investigations as the Department may deem appropriate and necessary to ensure compliance with
27 applicable labor laws. Further, pursuant to NMIAC § 80-20.1-470(a), Enforcement may initiate such investigation
28 as warranted by the allegations, other information provided or available to the Department, and past complaints or
violations. Further, investigators may conduct interviews of the parties and others, request documents from the
parties, inspect worksites, and undertake such other investigative actions as are warranted. NMIAC § 80-20.1-470(a).
Enforcement "may conduct investigations as necessary and appropriate to enforce the provisions of the
Commonwealth Employment Act of 2007, as amended, and this subchapter to ensure lawful employment
arrangements, payment of wages and overtime, working condition, employer-supplied benefits, and health and safety
for employees." NMIAC § 80-20.1-445. In conducting these investigations, Enforcement "shall have all of the
powers delegated [under the Employment Rules and Regulations] and the powers to inspect any records that an
employer is required to keep, to make copies of records, and to interview employees." *Id.* Depending on the
investigation, Enforcement may initiate a consolidated agency action. NMIAC § 80-20.2-455(i).

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



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In Re Matter of:)	Labor Case No. 22-020
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Ji Fei Zheng,)	
)	
Complainant,)	DISMISSAL OF LABOR CASE;
)	REFERRAL TO ENFORCEMENT
)	
v.)	
)	
Eagle LLC dba SM,)	
)	
Respondent.)	
)	

I. INTRODUCTION

This matter came for an Order to Show Cause Hearing on March 9, 2023 at approximately 10:00 a.m. at the Administrative Hearing Office. Complainant Ji Feng Zheng (“Complainant”) was present and self-represented.¹ Respondent Eagle LLC dba SM (“Respondent”) was present and represented by Manager Maria Javier. The Department’s Enforcement, Compliance and Monitoring Section (“Department”) was also present and represented by Labor Law Enforcement Specialist III Norman Rasiang. Interpreter Brandon Doggett was present to facilitate communications.

II. APPLICABLE LAW & DISCUSSION

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).

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¹ Complainant was accompanied by a friend, Rodrigo Gatela. Mr. Gatela was only present to observe the proceedings. Mr. Gatela was not a representative and did not provide witness testimony.

1 On December 27, 2022, Complainant filed a complaint for unpaid wages and unsafe
2 working conditions. On December 30, 2022, Respondent filed an answer refuting the allegations
3 and working relationship. Upon review of the pleadings, the case was scheduled for an Order to
4 Show Cause Hearing as to why this case should not be dismissed for failure to state a claim and
5 lack of jurisdiction.

6 After giving the parties notice and an opportunity to respond at the hearing, the
7 undersigned finds that dismissal of the labor case is appropriate. First, any unpaid wages accrued
8 before July 27, 2022 is outside the six-month statute of limitations² and time-barred. Second,
9 Complainant fails to establish jurisdiction with respect to the claims within the six-month statute
10 of limitation because Complainant does not have lawful authorization to work in the CNMI.³
11 Complainant is a foreign national who entered the CNMI with a six-month visa in 2009.
12 Complainant never obtained a visa or other legal authorization to continue to stay and work in the
13 CNMI. Accordingly, Complainant was not lawfully employed by Respondent and this office does
14 not have jurisdiction with to these claims.

14 III. DISMISSAL OF LABOR CASE & APPEAL RIGHTS

15 Accordingly, pursuant to 3 CMC § 4947(a), this matter is hereby **DISMISSED**. Any
16 person or party aggrieved by this Order may appeal by filing the Notice of Appeal form and filing
17 fee with the Administrative Hearing Office within fifteen (15) days from the date of this Order.⁴

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23 ² Pursuant to 3 CMC § 4962, “[n]o labor complaint may be filed more than six months after the date of the last-
24 occurring event that is the subject of the complaint, except in cases where the actionable conduct was not discoverable
upon the last-occurring event.” *See also* 4 CMC § 9246. “If a complaint is not timely filed, the hearing office *shall*
25 dismiss the complaint with prejudice.” NMIAC § 80-20.1-465(e). Emphasis added.

26 ³ The Administrative Hearing Office does not have jurisdiction with respect to the claims of tourists. Those claims
are pursued in the Commonwealth Superior Court.” NMIAC § 80-20.1-450(e). “It is the intent of the legislature that
27 the [Commonwealth Employment Act of 2007] shall not apply to persons admitted to the Commonwealth as tourists,
or to persons employed illegally... it is the intent of the Legislature that . . . illegally employed be prohibited from
using the terms of this Act to receive or avail themselves of a legal right or benefit.” PL 15-108.

28 ⁴ 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.

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IV. REFERRAL TO ENFORCEMENT

In light of the allegations of unauthorized employment or other labor compliance issues the clerk is **ORDERED** to copy and transmit the file to Enforcement for further investigation.⁵ In the event that Enforcement finds a labor law violation or compliance issue, Enforcement may initiate a Compliance Agency Case.

So ordered this 9th day of March, 2023.

/s/
JACQUELINE A. NICOLAS
Chief Administrative Hearing Officer

⁵ Pursuant to 3 CMC § 4940, the Department’s Enforcement, Compliance, and Monitoring Section has the authority to conduct investigations as the Department may deem appropriate and necessary to ensure compliance with applicable labor laws. Further, pursuant to NMIAC § 80-20.1-470(a), Enforcement may initiate such investigation as warranted by the allegations, other information provided or available to the Department, and past complaints or violations. Further, investigators may conduct interviews of the parties and others, request documents from the parties, inspect worksites, and undertake such other investigative actions as are warranted. NMIAC § 80-20.1-470(a). Enforcement “may conduct investigations as necessary and appropriate to enforce the provisions of the Commonwealth Employment Act of 2007, as amended, and this subchapter to ensure lawful employment arrangements, payment of wages and overtime, working condition, employer-supplied benefits, and health and safety for employees.” NMIAC § 80-20.1-445. In conducting these investigations, Enforcement “shall have all of the powers delegated [under the Employment Rules and Regulations] and the powers to inspect any records that an employer is required to keep, to make copies of records, and to interview employees.” *Id.* Depending on the investigation, Enforcement may initiate a consolidated agency action. NMIAC § 80-20.2-455(i).