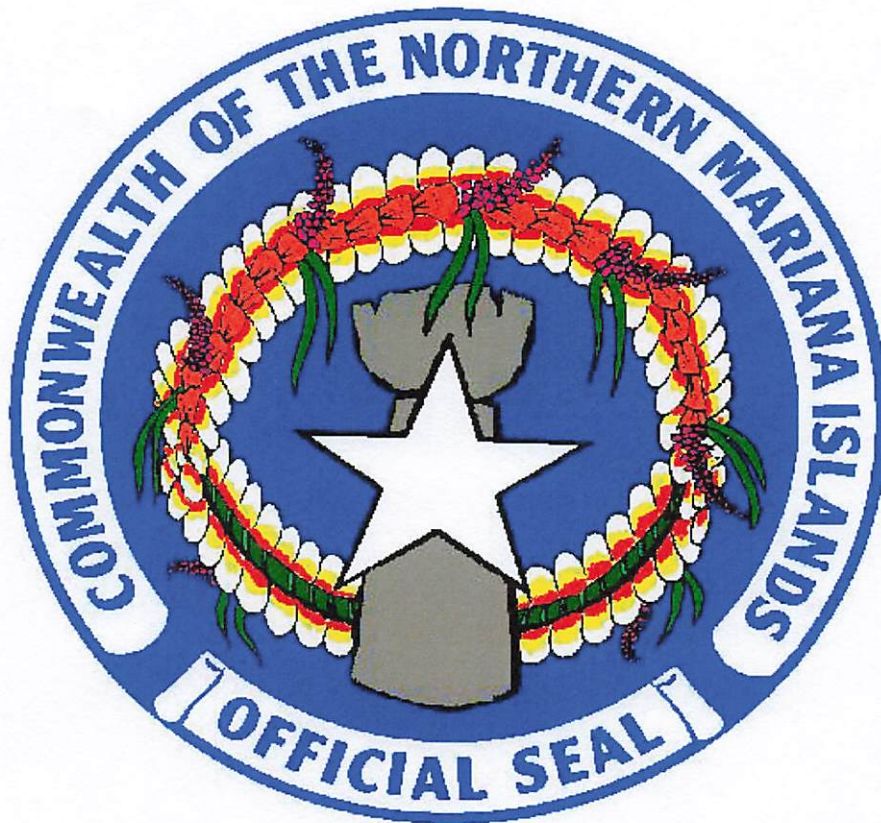


**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
SAIPAN, TINIAN, ROTA and NORTHERN ISLANDS**



COMMONWEALTH REGISTER

**VOLUME 44
NUMBER 10
OCTOBER 28, 2022**

COMMONWEALTH REGISTER

VOLUME 44 NUMBER 10 OCTOBER 28, 2022

EMERGENCY

Public Notice of Adoption of Emergency Regulations and Proposed Amendments
To the Procurement Regulations, NMIAC 70 Subchapter 70-30.3
Department of Finance 049081

ADOPTED

Public Notice of Certification and Adoption of Regulations
Board of Parole 049086

Public Notice of Adoption of Amendments
to the Procurement Regulations
Marianas Visitors Authority 049088

PROPOSED

Public Notice of Proposed Regulations (Equipment Rental Rates)
Division of Agriculture
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Public Notice of Proposed Amendments to NMIAC Chapter 15-10
To Revise DCRM's Permitting Fees
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Subject:	Administrative Order	
In the Matter of:	Teresita P. Pangelinan v. CNMI Department of Labor, Division of Employment Services-DUA	
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Subject:	Administrative Order	
In the Matter of:	Amalia A. Guanlao v. CNMI Department of Labor, Division of Employment Services-DUA	
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DUA Case No.	22-010	
Subject:	Administrative Order	
In the Matter of:	Shirley G. Danganan v. CNMI Department of Labor, Division of Employment Services-DUA	
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Subject:	Administrative Order	
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**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

**ADOPTION OF EMERGENCY REGULATIONS, AND
PROPOSED AMENDMENTS, DEPARTMENT OF FINANCE, PROCUREMENT
REGULATIONS, NMIAC TITLE 70, SUBCHAPTER 70-30.3**

NOTICE OF EMERGENCY ADOPTION: The Commonwealth of the Northern Mariana Islands, Department of Finance (“DOF”), Division of Procurement Services (“the Secretary”) will adopt the attached rules and regulations on an emergency basis for the reasons stated below. (1 CMC § 9105(b)(2)).

NOTICE OF PROPOSED AMENDMENTS: The Commonwealth of the Northern Mariana Islands, Department of Finance (“DOF”), Division of Procurement Services (“the Secretary”) finds that the same rules and regulations that are attached and which have been adopted on an emergency basis shall be adopted, after a proper notice and comment period, as permanent regulations pursuant to procedures ordinarily used for the adoption of regulations. 1 CMC § 9104(a).

AUTHORITY: The Secretary of Finance is responsible for procurement in the Commonwealth (1 CMC § 2553(j)) and is empowered by the Legislature to adopt rules and regulations not inconsistent with law regarding those matters within its jurisdiction (1 CMC § 2557).

An agency may adopt an emergency regulation upon fewer than 30 days’ notice if it states its reasons in writing:

(b) If an agency finds that the public interest so requires, or that an imminent peril to the public health, safety, or welfare requires adoption of a regulation upon fewer than 30 days’ notice, and states in writing its reasons for that finding, it may, with the concurrence of the Governor, proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency regulation. The regulation may be effective for a period of not longer than 120 days, but the adoption of an identical regulation under subsections (a)(1) and (a)(2) of this section is not precluded.

(c) No regulation adopted is valid unless adopted in substantial compliance with this section... 1 CMC § 9104(b), (c).

THE TERMS AND SUBSTANCE: The emergency and proposed rules and regulations provide for all authorized agency personnel to make small purchases using a credit card, and specify evaluation criteria when making small purchases that require the use of quotations.

THE SUBJECTS AND ISSUES INVOLVED: These rules and regulations:

1. Authorize agency personnel (card holders) to use commercial credit cards to make purchases and payments for goods, services, or construction.
2. Allows for purchasing limits to card holders (\$10,000 per transaction and limit of \$25,000 of monthly transactions.
3. Provides for the selection of quotes based on either price and quality or alternative selection criteria provided in a request for quote. This subject is applicable to NMIAC §§ 70-30.3-220(a)(3) and 70-30.3-220(b)(2).

ADOPTION OF EMERGENCY REGULATIONS FOR 120 DAYS: The Secretary has followed the procedures of 1 CMC § 9104(b) to adopt the Regulations on an emergency basis for 120 days.

REASONS FOR EMERGENCY ADOPTION: The Secretary finds that the public interest requires adoption of these regulations on an emergency basis, for the following reasons:

1. The authorized card holders shall utilize these Government Purchase Cards to comply with terms or conditions the Secretary of Finance or Director of Procurement Services may impose on card holders to minimize risk of fraud or loss.

DIRECTIONS FOR FILING AND PUBLICATION: These Proposed Rules and Regulations shall be published in the Commonwealth Register in the section/s on emergency and proposed regulations (*see* 1 CMC § 9102(a)(1)) and posted in convenient places in the civic center and in local government offices in each senatorial district. (1 CMC § 9104(a)(1))

The Secretary shall take appropriate measures to make these Rules and Regulations known to the persons who may be affected by them (1 CMC § 9105(b)(2)).

IMMEDIATE EFFECT: These emergency regulations will become effective immediately upon filing with the Registrar of Corporations and the mailing under registered cover of copies thereof to the Governor (1 CMC § 9105(b)(2)). The Secretary has found that immediate adoption is required by the public interest or is necessary because of imminent peril to the public health, safety, or welfare. *Id.*

TO PROVIDE COMMENTS: Interested persons may submit written comments on the proposed regulations via the following methods:

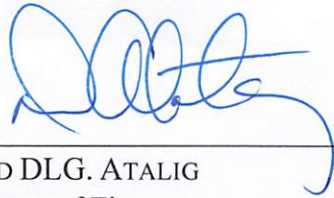
Email: david.atalig@dof.gov.mp, Subject: Procurement Regulations Comments;

USPS mail: Procurement Regulations, C/O David Atalig, Secretary of Finance, PO Box 5234 CHRB, Saipan MP 96950.

Hand Delivery: Procurement Regulations, C/O David Atalig, Secretary of Finance, Building 1302 Ascencion Drive, Capitol Hill, Saipan.

Comments are due within 30 days from the date of this publication notice. Please submit your data, views, or arguments within the specified time (1 CMC §9104(a)(2)).

Submitted by:


DAVID DLG. ATALIG
Secretary of Finance

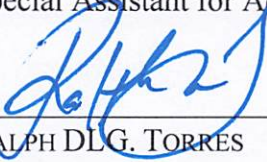
8/12/22
Date

Received by:


MATHILDE ROSARIO
Special Assistant for Administration

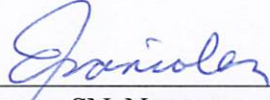
10/25/22
Date

Concurred by:


RALPH DLG. TORRES
Governor

Date

Filed and
Recorded by:


ESTHER SN. NESBITT
Commonwealth Registrar

10.27.22
Date

Pursuant to 1 CMC § 2153(e), (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the proposed regulations attached hereto 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 the 26th day of October, 2022.


EDWARD MANIBUSAN
Attorney General

§ 70-30.3-220 Small Purchases; Government Purchase Card

(a) Purchases that use Government-sourced funds (local funds), or any combination of both local and federal funds, may be made according to the small purchase procedures of this subsection:

(1) For purchases that do not exceed \$10,000, at least one price quote shall be obtained. However, the Director may require the expenditure authority to obtain more than one price quote.

(2) A blanket purchase order may be used to make purchases without securing a price quote when the purchases do not exceed \$5000. The goods or services that may be purchased under a blanket purchase order must be defined (i.e. office supplies) and shall not be used for equipment. The expenditure authority shall promptly submit to the Director copies of receipts for all purchases made under a blanket-purchase order. The Director may instruct the expenditure authority to explain the need for the goods or services and how the prices paid were reasonable.

(3) For purchases that exceed \$10,000, but which are less than or equal to \$50,000, at least three vendors shall be solicited by the expenditure authority to submit written or electronic quotations. Selection shall be based on price and quality, unless alternative criteria were provided in the request for quote; in which case, such criteria shall be used as a basis for selection. If less than three quotes are obtained, the expenditure authority shall certify, in writing, to the Director that quotes were solicited from at least three vendors and shall attach documentation of the solicitation. The Director may approve the selected quote or instruct the expenditure authority to obtain at least three quotes before selection.

(b) Purchases that use only federal funds may be made according to the small purchase procedures of this subsection:

(1) For purchases that do not exceed \$10,000, at least one price quote shall be obtained. However, the Director may require the expenditure authority to obtain more than one price quote.

(2) For purchases that exceed \$10,000, but which are less than or equal to \$250,000, at least three vendors shall be solicited by the expenditure authority to submit written or electronic quotations. Selection shall be based on price and quality, unless alternative criteria are provided in the request for quote; in which case, such criteria shall be used as a basis for selection. If less than three quotes are obtained, the expenditure authority shall certify, in writing, to the Director that quotes were solicited from at least three vendors and shall attach documentation of the solicitation. The Director may approve the selected quote or instruct the expenditure authority to obtain at least three quotes before selection.

(c) Purchases from the United States General Services Administration (GSA) may be made according to the small purchase procedures of this subsection:

(1) At least one quote shall be obtained when making purchases, including purchases that exceed \$250,000.

(d) A purchase order shall be used as authorization to make any of the above small purchases (§§ 70-30.3-220(a)-(c)).

(e) Government Purchase Card. The Secretary of Finance may issue Government charge cards to authorized agency personnel (card holders). The charge cards may be similar to

commercial credit cards and may be used for the purchase and payment of goods, services, or construction.

(1) **Purchase Limit.** Card holders shall limit each transaction to \$10,000 and shall limit monthly transactions to \$25,000.

(2) **Quotations.** Purchases and payments may be made without a quotation if the card holder considers the price to be reasonable based on past purchases made by the agency, personal knowledge of the items purchased, or any other reasonable basis.

(3) **Responsibilities.** Card holders shall:

(i) **Safeguard the charge card and account number to prevent theft or unauthorized use;**

(ii) **Provide documentation of purchases (i.e. invoices or receipts) when requested by the Department of Finance, Division of Procurement Services, Agency Head, or Public Auditor;**

(iii) **Initiate action to obtain credit for any disputed item (i.e. duplicate, erroneous or over charges);**

(iv) **Promptly report a lost or stolen charge card; and**

(v.) **Comply with terms or conditions the Secretary of Finance or Director of Procurement Services may impose on card holders to minimize the risk of fraud or loss (i.e. transaction review and certification procedures, manual or electronic reconciliation procedures, inventory receipt and control, etc...).**

(f) **Procurement requirements shall not be artificially divided so as to constitute a small purchase.**



Commonwealth of the Northern Mariana Islands

Board of Parole

P.O. Box 502641
SAIPAN, MP 96950-2641
TEL.NOS.: (670) 664-3300 • FAX: (670) 664-3310
Email: nickreyes.bop@gmail.com



PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF REGULATIONS OF the Board of Parole

**PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED REGULATIONS**

Volume 44, Number 8, pp 048851-048875, of August 28, 2022

Regulations of the Board of Parole: Chapter 115-10 Board of Parole Rules and Regulations

ACTION TO ADOPT PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands, Department of Parole ("BOP"), 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). The BOP 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, except as stated as follows:

1. § 115-10-530, fix misspelling of "the"

PRIOR PUBLICATION: The prior publication was as stated above. The Board adopted the regulations as final at its meeting of October 7, 2022.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY: [Either insert "None" here or, as an example: § 115-10-530 Revocation Hearing Schedule replace "the" for "thr". I further request and direct that this Notice be published in the Commonwealth Register.

AUTHORITY: The BOP is required by the Legislature to adopt rules and regulations regarding those matters over which the BOP has jurisdiction, with respect to eligibility for parole, the conduct of parole hearings and meetings, conditions to be imposed upon parolees, revocation of parole and re-parole after revocation and enforce the provisions of this chapter. 6 CMC § 4206.

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.

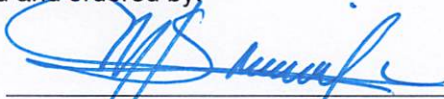
COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC sec. 9104(a)(2), the agency has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption 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 14th day of October, 2022, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:



Michael H. San Nicolas,
Chairman, Board of Parole

10/14/2022

Date

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG 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 the 17th day of October, 2022.



EDWARD MANIBUSAN
Attorney General

Filed and
Recorded by:



ESTHER R.M. SAN NICOLAS
Commonwealth Registrar

10.27.2022

Date



P.O. BOX 500861 CK
SAIPAN, MP 96950

E-mail: info@mymarianas.com



Public Notice of Adoption of Amendments to the Procurement Regulations for the Marianas Visitors Authority



Notice of Adoption: The Marianas Visitors Authority (MVA) approved the adoption of the following amendments to its Procurement Regulations at its meeting of September 30, 2022.

Prior Publication: These regulations were proposed on May 03, 2022, and appeared in the August 28, 2022 Commonwealth Register [44 Com. Reg. 048834].

Modifications from Proposed Regulations, If Any: The Amendment to the Procurement Rules and Regulations adds a new section to read as follows:

A new § 90-20-1060 entitled Ratification of Unauthorized Commitments is added to MVA's Procurement Rules and Regulations as follows:

"§ 90-20-1060 Ratification of Unauthorized Commitments.

(a) Definitions.

(1) Ratification, as used in this section, means the act of approving an unauthorized commitment by the expenditure authority who has the authority to do so.

(2) Unauthorized commitment, as used in this section, means an agreement that is not binding solely because the MVA representative who made it lacked the authority to enter into that agreement on behalf of the MVA.

(b) Policy. MVA shall take positive action to preclude, to the maximum extent possible, the need for ratification actions. Although procedures are provided in this section for use in those cases where the ratification of an unauthorized commitment is necessary, these procedures shall not be used in a manner that encourages such unauthorized commitments to be made.

(1) Subject to the limitations in paragraph (c) of this section, the Expenditure Authority may request the Board of Directors to ratify an unauthorized commitment.

(2) Limitations. The authority in paragraph (b) of this section may be exercised only when:

(i) Supplies or services have been provided to and accepted by the MVA, or the MVA otherwise has obtained or will obtain a benefit resulting from performance of the unauthorized commitment;

(ii) The Expenditure Authority had the authority to enter a contractual commitment;

(iii) The resulting contract would otherwise have been proper if made in a manner approved by these regulations;

(iv) The Board of Directors determines the price to be fair and reasonable;

(v) The Board of Directors recommends payment, and the Attorney General concurs in the recommendation;

(vi) Funds are available; and

(vii) The ratification is in accordance with other limitations prescribed under these procedures.

(c) Ratification Requests. The Expenditure Authority shall submit a ratification request to both the Board of Directors and the Attorney General.

(d) Criminal investigation. Generally, the MVA is not bound by commitments made by persons with no contracting authority. Unauthorized commitments may violate laws or regulations. They constitute serious misconduct and may warrant disciplinary action or other sanctions. If unauthorized commitments involve any type of misconduct that might be punishable as a criminal offense, either the procurement officer, the managing director or a member of the board of directors shall report the matter immediately to the Office of the Attorney General.

(e) Documentation Required for Ratification. When submitting a ratification request, the Expenditure Authority shall give the Board of Directors all records and documents concerning the commitment, including a complete written statement of facts that explains:

- (1) Why normal acquisition procedures were not followed;
- (2) Why the contractor was selected;
- (3) Identifies other sources/vendors considered;
- (4) Description of work or products;
- (5) Estimated or agreed-upon contract price; and
- (6) Status of contract performance.

(f) Processing a Ratification. After receiving a request for ratification, the Board of Directors shall prepare a summary statement of the facts, and a recommendation to the Attorney General whether the procurement should be ratified. The Expenditure Authority shall include a recommendation for other disposition if advising against ratification and provide recommendation for corrective action to prevent recurrence.

(1) If other than the full amount requested by the Expenditure Authority is approved, the Board of Directors may request payment based on a showing of either of the following:

- (i) The reasonable value of work or labor provided to the MVA; or
 - (ii) The reasonable value of goods sold and delivered to the MVA.
- (2) The Board of directors shall either:
- (i) Approve the ratification request in writing and send the approval to the Attorney General. If the Attorney General concurs, the Board of Directors shall send a written request to the Expenditure Authority for issuance of the necessary contractual documents;

or

(ii) Return an unjustified request or recommendation to the Expenditure Authority with a written explanation on why the request or recommendation was denied.

(3) Files. The MVA will maintain a separate file containing a copy of each request to ratify an unauthorized contractual commitment and the response."

Authority: These amendments are promulgated under the authority of 4 CMC 2124(d), which authorizes MVA to adopt procurement and supply regulations consistent with those of the Commonwealth government, and 4 CMC, 2128, which grants MVA the authority to adopt rules and regulations.

Effective Date: These amendments will become effective ten days after publication of this Notice of Adoption in the Commonwealth Register. 1 CMC § 9105(b).

Comments and Agency Concise Statement: These proposed amendments would allow the MVA to include a new section to the Procurement Rules and Regulations consistent with those of the Commonwealth government. MVA received no written or oral comments from the public regarding these amendments.

Submitted by:

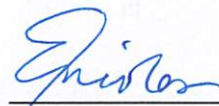


Ellsbeth Viola Alepuyo,
Chairperson
MVA Board of Directors

Date:

10/4/22

Filed and Recorded by:

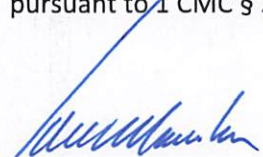


Esther R.M San Nicolas
Commonwealth Register

Date:

10.27.22

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. I approve their publication pursuant to 1 CMC § 2153(f).



Edward E. Manibusan
Attorney General

Date:

10/6/2022



Commonwealth of the Northern Mariana Islands
Department of Lands and Natural Resources
Lower Base, P.O. Box 10007
Saipan, MP 96950
Tel: (670) 322-9834 Fax: (670) 322-2633



PUBLIC NOTICE OF PROPOSED REGULATIONS

INTENDED ACTION TO ADOPT THESE PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands, Department of Lands & Natural Resources ("DLNR"), Division of Agriculture intends to adopt as permanent regulations, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104 (a). The Regulations would become effective 10 days after adoption and publication in the Commonwealth Register (1CMC § 9105(b)).

AUTHORITY: The Department of Lands and Natural Resources is authorized to adopt rules and regulations in furtherance of its duties and responsibilities (1 CMC § 2654).

THE TERMS AND SUBSTANCE: The proposed regulation established the Equipment Rental Rates at the Division of Agriculture in Kagman in the Commonwealth of the Northern Mariana Islands.

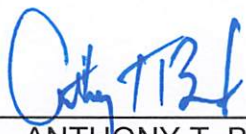
THE SUBJECTS AND ISSUES INVOLVED: The proposed regulation established the Equipment Rental Rates at the Division of Agriculture in Kagman in the Commonwealth of the Northern Mariana Islands.

DIRECTION FOR FILING AND PUBLICATION: The Notice of Proposed regulation shall be published in the Commonwealth Register in the section on proposed and newly adopted regulation (1 CMC § 9104 (a)(1) and posted in convenient places in the civic center and in local government offices in each senatorial district, both in English and the principal vernacular (1 CMC § 9104 (a)(1)).

TO PROVIDE COMMENTS: Send or deliver your comments to Anthony T. Benavente, DLNR Secretary, Re: Equipment Rental Rates, at the above address or fax number. Comments are due within 30 days from the date of publication of this notice. Please submit your data, views or arguments (1 CMC § 9104 (a)(2)).

These proposed regulations were approved by the DLNR Secretary on July 6, 2022.

Submitted by: _____



ANTHONY T. BENAVENTE

Secretary, Department of Lands and Natural Resources


Date

Received by: Matilde
~~MATILDE A. ROSARIO~~
Special Assistant for Administration

10/06/22
Date

File and
Recorded by: Esther
ESTHER R.M. SAN NICOLAS
Commonwealth Registrar

10.27.22
Date

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the proposed regulations attached hereto 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 the 6 day of October, 2022.

Edward Manibusan
EDWARD MANIBUSAN
Attorney General

TITLE 85: DEPARTMENT OF LANDS AND NATURAL RESOURCES

The purpose of the regulations in this subchapter is to establish rates and standards for use of farm equipment operates and maintained by the Division of ~~Plant Industry~~ Agriculture, through its Farm Equipment Services. This equipment is rented to CNMI farmers to promote and develop local agriculture.

Part 100 – Equipment Rental and Rates

85-60.1-101 Equipment Rental Rates

The Department of Natural Resources, Division of ~~Plant Industry~~ Agriculture, may provide a farm equipment service to CNMI farmers for agricultural purposes. The equipment rates shall be as follows:

Item	Old Rates	Proposed Rates
(a) Caterpillar D-6 bulldozer or equivalent	\$15.00/hr.	
(b) John Deere 4250 tractor or equivalent	\$12.00/hr.	
(c) Ford 6610 tractor or equivalent	\$8.00/hr.	
(d) Ford 4610 tractor or equivalent	\$8.00/hr.	
(a) Wood Chipper		\$40.00/hr.
(b) Wood Splitter		\$25.00/hr.
(c) John Deere 6045 tractor or equivalent		\$25.00/hr.
(d) John Deere 4525 tractor or equivalent		\$20.00/hr.
(e) Trailer for Bull		\$15.00/day
(f) Trailer for Swine		\$15.00/day
(g) Hand Held Tiller		\$5.00/hr.

85-60.105 Hours of Service

Each individual farmer shall receive no more than ~~30~~ 24 hours of ~~bulldozer~~ hand held tiller service per application.

Equipment services will be performed only on the island of Saipan.



Commonwealth Téel Falúw kka Efáng
Bwulasiyol Falúw me Schowaral Falúw
Lower Base, Caller Box 10007
Saipan, MP 96950
Tel: 670-322-9830/34 Fax: 670-322-2633



ARONGORONG TOULAP REL PPWOMWOL MWÓGHUTGHUT

MÁNGEMÁNGIL MWÓGHUT REEL REBWE ADÓÓPTÁÁLI PPWOMWOL MWÓGHUTGHUT Commonwealth téel falúw kka efang, Bwulasiyol Falúw me Schowaral Falúw (“DLNR”) me Bwulasiyol Leemaat re mángemángil rebwe adóóptááli bwe ebwe iyel mwóghutghut, sangi mwóghutul Administrative Procedure Act, 1CMC § 9104 (a). Mwóghutghut iyel nge ebwe bwunguló seigh ráál mwiril aal adóptááli me akkatééwowul me llól Commonwealth Register. 1 CMC § 9105(b).

BWÁNGIL. Bwulasiyol Falúw me Schowaral Falúw re lemeli rebwe adóóptááli mwóghutghut me allégh iye mesammwal aar angang me lemelem. (1 CMC § 2653).

KKAPASAL ME WEEWEL: Aa pwol ppwomwol mwóghutghutul salapiil atkilaal kosas iye eyoor me Bwulasiyol Leemaat me Kagman llól Commonwealth téel falúw kka efáng.

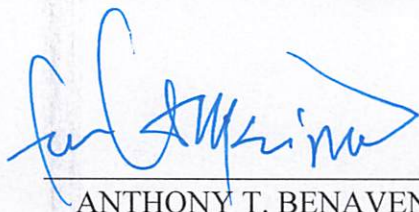
KKAPASAL ME AUTOL: Aa pwol ppwomwol mwóghutghutul selaapiil atkilaal kosas iye eyoor me Bwulasiyol Leemaat me Kagman llól Commonwealth téel falúw kka efáng.

AFAL REEL AMMWELIL ME AKKATÉÉWOWUL: Arongorongol ppwomwol mwóghutghut ebwe akkatééwow llól Commonwealth Register llól telil ppwomol me ffél adóptaal mwóghutghut (1 CMC § 9104(a)(1) me ebwe appaschetá arongorongol toulap llól bwulei ikka eghatch ngáli toulap ngáre civic center me llól bwulasiyol maghalaayil llól senatorial district llól kkasal Inglis me mwáliyaasch (1 CMC § 9104(a)(1)

REEL ISIISILONGOL KKPAS: Afanga ngáre bwughiló yóómw ischil kkapas ngáli Anthony T. Benavente DLNR Secretary, Re: Selaapiil atkilaal kosas, sangi féléfél me telefonil fax iye e lo weiláng. Ebwe toolong kkapas llól eliigh ráál mwiril aal akkatééwow arongorong yeel. Isiisilong yóómw “data”, “views” ngáre angiingi. (1 CMC § 9104(a)(2)

Ikkaal ppwomwol mwóghutghut bwe átirow sáangi DLNR Sekkretóóriyo wóól July 6, 2022.

Isáliyalong:



ANTHONY T. BENAVENTE

Sekkretóoriyo, Bwulasiyol Falúw me Schowaral Falúw

10/06/22.
Ráál

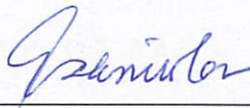
Bwughiyal:



MATHILDA A. ROSARIO
Special Assistant ngáli Administration

10/06/22
Ráál

Ammwelil:



ESTHER R.M. SAN NICOLAS
Commonwealth Registrar

10.27.22
Ráál

Sáangi 1 CMC § 2153(e) (sáangi átirowal AG reel mwóghutughut kkal bwe aa ffil reel fféérúl) me 1 CMC § 9104(a)(3) (sáangi átirowal AG) reel ppwomwol mwóghutughut kka e appasch bwe ra takkal amwuri fischiiy me aa lléghló reel fféérúl me “legal sufficiency” sáangi Soulemelemil Allégh Lapalapal CNMI me ebwe akkatééwow, 1 CMC § 2153(f) (akkatééwowul allégh me mwóghutughut).

Llól Maram iye 6 rááilí Oct, 2022



EDWARD MANIBUSAN
Soulemelemil Allégh Lapalap



Commonwealth Gi Sangkattan Na Islas Mariãnas

Dipåttamentun Tanu' yan Fengkas Naturåt

Lower Base, Caller Box 10007

Saipan, MP 96950

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



NUTISIAN PUPBLIKU PUT I MANMAPROPONI NA REGULASIÓ

I AKSION NI MA'INTENSIONA PARA U ADÁPTA ESTI I MANMAPROPONI NA REGULASION SIHA: I Commonwealth gi Sangkattan na Islas Mariãnas, i Dipåttamentun Tanu' yan Fengkas Naturåt ("i DLNR"), i Dibisió Agrikuttura ha intensiona para u adápta komu petmanienti na regulation siha, sigun gi manera nu i Ákton Administrative Procedure, 1 CMC § 9104 (a). I Regulasió siha siempre umifektibu gi dies dihas dispues di adáptasion yan publikasió gi halum Rehistran Commonwealth (1 CMC § 9105(b)).

ÁTURIDÁT: I Dipåttamentun Tanu' yan Fengkas Naturåt ma'aturisa para u adápta i areklamentu yan regulation siha para u inatbansa nu ubligasion yan responsabilidát-ñiha siha (1 CMCC § 2654).

I TEMA YAN SUSTANSIAN I PALÁBRA SIHA: I mapropoponi na regulasió inestablesi i Equipment Rental Rates gi Dibisió Agrikuttura hálum i Kagman iya Commonwealth gi Sangkattan na Islas Mariãnas.

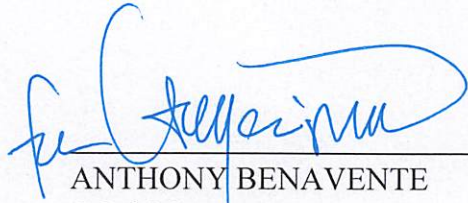
I SUHETU YAN ASUNTU SIHA NI TINEKKA: I mapropoponi na regulasió inestablesi i Equipment Rental Rates gi Dibisió Agrikuttura hálum i Kagman iya Commonwealth gi Sangkattan na Islas Mariãnas.

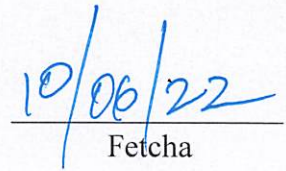
DIREKSION PARA PINE'LU YAN PUPBLIKASION: I nutisian i Manmapropoponi na regulasió debi na u mapupblika gi halum Rehistran Commonwealth gi halum seksiona ni manmapropoponi yan nuebu na ma'adápta na regulation (1 CMC § 9102(a)(1)) yan u mapega gi halum kumbinienti na lugåt gi halum i civic center yan i ufisinan gubietnamentu siha gi kada distritun senadot, parehu Inglis yan i prinsipåt na lingguåhi (1 CMC § 9104(a)(1)).

PARA U MAPRIBENIYI UPIÑON SIHA: Na'hanão pat intrega hálum i upiñom-mu para guatu as Anthony Benavente, i Sekretáriun DLNR, Re: Equipment Rental Rates, gi sanhilu' na address pat numirun fax. I upiñon siha debi na u fanhálum gi halum 30 dihas ginen i fetchan publikasió esti na nutisia. Put fabot na'halum infotmasió siha yan kuintestasió-mu (1 CMC § 9104 (a)(2)).

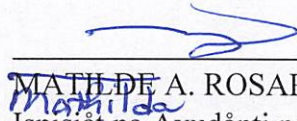
Esti i mapropoponi na regulasió siha ginen maninaprueba ni i Sekretáriun DLNR gi Hului 6, 2022.

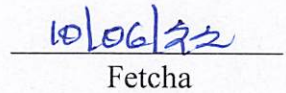
Nina'hålum as:


ANTHONY BENAVENTE
Sekritáriu, DLNR

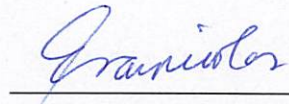

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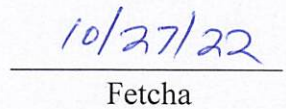
Rinisibi as:


MATHILDE A. ROSARIO
Ispisiát na Ayudánti para i Atministrasion

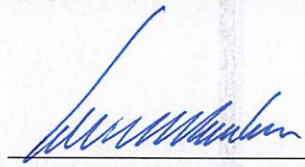

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Pine'lu yan Ninota as:


ESTHER R.M. SAN NICOLAS
Rehistran Commonwealth


Fetcha

Sigun para 1 CMC § 2153(e) (I Abugâdu Hinirât inapueba i regulasion siha na para u macho'gui komu fotma) yan i 1 CMC § 9104(a)(3) (hentan inapueban Abugâdu Hinirât) i manmaproponi na regulasion siha ni mañechettun guini ni manmaribisa yan manma'apueba komu fotma yan sufisienti ligât ginin i CNMI Abugâdu Hinirât yan debi na u mapupblika, 1 CMC § 2153(f) (pupublikasion areklamentu yan regulasion siha).


EDWARD MANIBUSAN
Abugâdu Hinirât


Fetcha



Eli D. Cabrera
Administrator

Commonwealth of the Northern Mariana Islands
OFFICE OF THE GOVERNOR
Bureau of Environmental and Coastal Quality
Division of Coastal Resources Management
P.O. Box 501304, Saipan, MP 96950
Tel: (670) 664-8300; Fax: (670) 664-8315
www.dcrm.gov.mp



Richard V. Salas
Director, DCRM

**PUBLIC NOTICE OF PROPOSED AMENDMENTS TO NMIAC CHAPTER 15-10
TO REVISE DCRM'S PERMITTING FEES**

NOTICE OF INTENDED ACTION: The Commonwealth of the Northern Mariana Islands, Office of the Governor, Coastal Resources Management (CRM) Regulatory Agencies intend to amend NMIAC Chapter 15-10 to revise the permitting fees charged by the Division of Coastal Resources Management (DCRM).

AUTHORITY: These amendments are promulgated under the authority of the CRM Regulatory Agencies to adopt new regulations under 1 CMC § 1531(d). These proposed regulations were approved by the CRM Regulatory Agencies in a public meeting on January 27, 2022.

TERMS AND SUBSTANCE: These proposed amendments seek to:

1. Delete the fee waiver for government agencies engaging in government projects;
2. Retain a flat fee for minor development APC permits but set the fee for standard APC activity permits based upon appraisal of construction costs;
3. Add a fee for each resubmission of a standard APC or minor development APC application, and for each resubmission of a major siting application;
4. Add an administrative fee for extension requests, name changes, and other permit changes not requiring a formal permit amendment; and
5. Increase the fees for standard APC and major siting permits based on appraisal of construction costs.
6. Add a fee for untimely requests to extend the time for construction specified in the permit.

CITATION OF RELATED AND/OR AFFECTED STATUTES, RULES, AND REGULATIONS: The proposed amendments affect NMIAC Chapter 15-10 by amending the following provisions:

- §15-10-205 Permit Application Procedures, (h) Fees
- §15-10-610 Mandatory Conditions, (b) Timing and Duration

DIRECTIONS FOR FILING AND PUBLICATION: The proposed amendments shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations (1 CMC § 9201(a)(1)) and posted in convenient places in the civic center and in local governmental offices in each senatorial district, both in English and in the principal vernacular (1 CMC § 9104(a)(1)).

COMMENTS: Interested parties may submit written comments on the proposed amendments to Sam Sablan, DCRM Permit Branch Manager, to the following address, fax, or email address, with the subject line "Proposed Revisions to DCRM Permitting Fee Regulations":

BUREAU OF ENVIRONMENTAL AND COASTAL QUALITY
DIVISION OF COASTAL RESOURCES MANAGEMENT

PO Box 501304
Saipan, MP 96950
Fax: (670) 664-8540
Email: ssablan@dcrm.gov.mp

Comments are due within thirty (30) calendar days from the date of publication of this notice. 1 CMC § 9104(a)(2).

Submitted by:

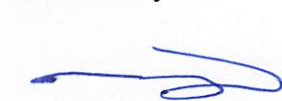


Richard V. Salas
Director, Division of Coastal Resources Management

10/3/22

Date

Received by:



Ms. Mathilda A. Rosario
Special Assistant for Administration

10/14/22

Date

Filed and Recorded by:

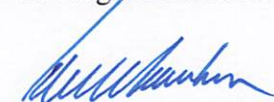


Ms. Esther R.M. San Nicolas
Commonwealth Registrar

10.27.22

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.



Mr. Edward Manibusan
Attorney General

10/17/2022

Date

§15-10-205 Permit Application Procedures

CRM permit application forms, including APC permits and temporary permits for emergency repairs, shall be maintained at the DCRM office on Saipan. For activities proposed on Rota or Tinian, copies of the application form shall also be maintained at DCRM Branch Offices on Rota and Tinian. These permit applications shall also be available and can be tracked through the DCRM Online Permitting System. CRM permit applicants shall complete and file an application for each proposed APC permit, temporary permit for emergency repair, or major siting permit. The following conditions shall apply to all CRM permit applications:

- (h) Fees. CRM permit applications shall be accompanied by a non-refundable CRM permit application and administrative fee in accordance with the following fee schedule, by check made payable to CNMI Treasurer.

~~(1) No fee for government agencies engaging in government projects.~~

~~(2)~~(1) \$25.00 fee for temporary permits unless waived by the Director.

~~(3)~~(2) \$200.00 fee for ~~APC~~minor development permits. As provided below, a “De Minimis APC Waiver” may be requested and a minor APC permit fee reduction may be granted at the discretion of the Director.

- (i) “De Minimis Fee Waiver” Requests. When an applicant for a Minor APC permit has substantial evidence that the proposed activity or action will have no direct or cumulative impact on coastal resources, a “De Minimis APC Fee Waiver” may be requested in writing through the permitting office. This request must clearly state the reason(s) why the proposed activity will be “*de minimis*” in nature, and include a request for a reduction of up to 50% of APC permitting fees for commercial actions and 100% of APC permitting fees for mitigation, restoration, or non-commercial actions.

- (ii) Review of “De Minimis Fee Waiver” Requests. Such requests must be submitted to the Director with the Permit Manager copied. Permitting staff will review such requests to ensure accurate environmental information has been provided, and the Permit Manager will submit a recommendation to the Director to approve or deny the waiver request within ten working days of receipt of the request at the Saipan DCRM Office. The Director may deny or grant the waiver request, or grant the request with restrictions, conditions, or modifications at their discretion. If a waiver is granted, the Director shall issue a letter to the applicant detailing what, if any, restrictions the waiver is conditioned upon, and a copy of this letter will be retained in the permit file. Any deviation of scope or activities of the subject project will be treated as unpermitted for the purposes of enforcement action, if necessary, as detailed in § 15-10-900. Submission of a “De Minimis APC Fee Waiver” request shall stop the clock on review of the submitted APC permit. If the waiver request is denied, the review period will be restarted upon the date of the issuance of the denial letter.

~~(4)~~(3) \$1,000.00 initial fee and \$750.00 renewal fee for jet ski and motorized commercial water sports and \$200 for non-motorized commercial marine sports operating permits. One application or renewal fee will cover multiple proposed uses and concurrent operations for up to two licensed and listed boats or six jet skis so long as activities are compliant with any and all permit restrictions. Marine Sports Operators (“MSO”) shall be permitted on a set bi-annual schedule, starting May 30, 2018. Permittees holding permits that expire after May 30, 2018 will pay a prorated fee to extend their permit to

May 30, 2019. Permit renewals shall be due on May 30 every year, or, if this date falls on a weekend, the following business day.

- (i) Discounted MSO fees for qualifying “green” and “sustainable eco-tour” certifications are available as follows:

MSO Tier 1 Reduction	Membership of the Marine Sports Association in good standing	10% fee reduction
MSO Tier 2	Members of the Marine Sports Association in good standing with no reported violations for at least one year	15% fee
MSO Tier 3	Members of the Marine Sports Association in good standing with no reported violations for at least one year and completion of qualifying “ecotour” training and / or	25% fee

- (ii) Qualifying for Discounted MSO permit fee. To qualify for the tiered permit fee reductions listed above, MSO permit applicants must request discount in writing at the time of permit renewal or new permit application. Required documentation includes proof of membership in an active Marine Sports Association and certification of completion of a DCRM-approved “ecotour training” and/or certification program.

- (5)(4) Fees for standard APC and Major Siting projects shall be based upon appraisal of construction costs.

FEE AMOUNT COST OF PROJECT OR PERMIT AMENDMENT

\$50 each resubmission of standard APC or minor development APC application

\$100 each resubmission of a major siting application

\$200 administrative fee for extension requests, name changes, and other permit changes not requiring a formal amendment

~~\$200~~\$250 less than or equal to \$ 50,000

~~\$400~~\$500 value between \$ 50,001 and \$ 100,000

~~\$1,000~~\$1,500 value between \$ 100,001 and \$500,000

~~\$2,000~~\$2,500 value between \$ 500,001 and \$ 1,000,000

~~\$2,000~~\$3,000 For every \$1,000,000.00 cost increment exceeding one million dollars.

- (i) Discounted fees for qualifying “green” and/or “low impact development” projects. Discounts may be applied for application and administrative fees at the recommendation of the Permit Manager and approval of the Director. Discretionary guidance for tier permit reductions are as provided in (h)(5)(i)(A) and (B).

(A) Tiered permit discounts for qualifying or “LEED certifiable” projects are available as follows:

Tier	Qualifications	Incentive
Tier 1 Reduction	Building design and construction are “LEED Certifiable”, scoring between 40-49 points on the LEED v4 or subsequent Building Design and Construction Checklist	10% fee reduction
Tier 2 Reduction	Building design and construction are “LEED Silver Certifiable”, scoring between 50-59 points on the LEED v4 or subsequent Building Design and Construction Checklist	15% fee reduction
Tier 3 Reduction	Building design and construction are “LEED Gold Certifiable”, scoring between 60-79 points on the LEED v4 or subsequent Building Design and Construction Checklist	20% fee reduction
Tier 4 Reduction	Building design and construction are “LEED Platinum Certifiable”, scoring between 80-110 points on the LEED v4 or subsequent Building Design and Construction Checklist	25% fee reduction

(B) Tiered permitting fee reductions for building redevelopment and/or stormwater management are available as follows:

Tier	Building Redevelopment	Stormwater Management	Incentive
Tier 1 BMP Reduction	- Permittee or its operators implements and maintains on-site recycling and composting programs to reduce 50% or more of the waste stream; AND/OR - Project installs, utilizes, and maintains “Energy Star” rated high efficiency / LED lighting and appliances or a renewable energy source supplying 20% or more of a project’s electricity	- Project implements and maintains on-site stormwater management practices that collect from an off-site source and treat or contain and additional 10%-24% of the project’s total stormwater runoff volume, based on the 25 year 24 hour duration storm event; AND/OR - Project implements and maintains 30%-49% of pervious surface area or green infrastructure elements	5% fee reduction

Tier 2 BMP Reduction	Applicant redevelops or rehabilitates 15% - 25% of the existing building	- Project implements and maintains on-site stormwater management practices that collect from an off-site source and treat or contain and additional 25%-49% of the project's total stormwater runoff volume, based on the 25 year 24 hour duration storm event; AND/OR - Project implements and maintains 50% or more of pervious surface area or green infrastructure elements	10% reduction
Tier 3 BMP Reduction	Applicant redevelops or rehabilitates 26% - 50% of the existing building	- Project implements and maintains on-site stormwater management practices that collect from an off-site source and treat or contain and additional 50%-74% of the project's total stormwater runoff volume, based on the 25 year 24 hour duration storm event	20% reduction
Tier 4 BMP Reduction	Applicant redevelops or rehabilitates 51% - 74% of the existing building	- Project implements and maintains on-site stormwater management practices that collect from an off-site source and treat or contain and additional 74% or more of the project's total stormwater runoff volume, based on the 25 year 24 hour duration storm event	30% reduction
Tier 5 BMP Reduction	Applicant redevelops or rehabilitates over 75% of the existing building	-Not applicable	50% reduction

(ii) Qualifying for Discounted Major Siting permit fee. To qualify for the tiered permit fee reductions listed above, major siting applicants must request discount in writing at least thirty days prior to submitting a major siting application. Applicants are encouraged to

discuss proposed fee reduction in advance with Director and Permitting staff to identify any required documentation to support discounted permit fee request. The DCRM Director shall respond to permit fee reduction requests in writing and state whether the request is granted in full, granted in part, or denied and the reasons therefore within thirty days of receiving the request and all required supporting documentation. If no response is received within thirty days of the submission of the request, the request will be considered denied by the DCRM Director. If reduction is approved, agreed upon project implementation will be included as conditions of the major siting permit.

- (iii) Forfeiture of applied permit discount. At the DCRM Director's discretion, a violation of major siting permit conditions or engaging in unpermitted activity with a nexus to the permit discount received by the permit applicant or failure to implement improvements for which the discount was granted may result in forfeiture of applied permit discount, and any outstanding balance may become due at the time of the issuance of a Notice of Violation.
- (iv) All permit fee reduction requests for stormwater management practices must meet the standards set forth in 2.1 and 2.2 of the 2006 CNMI and Guam Stormwater Management Manual, specifically E&SC Standards 1-11 and Postconstruction Standards 1-13. DEQ stormwater management standards require the on-site detention of 100% of stormwater runoff volume, based on the 25 year 24 hour duration storm event; therefore, applicants requesting a fee reduction for stormwater management must account for the additional percentage by collecting additional stormwater from off-site, and treating or containing it.

§15-10-610 Mandatory Conditions

All CRM permits shall contain at least the following conditions:

(b) Timing and Duration.

- (1) Permitted physical development of the project site subject to a CRM permit shall begin within the time frame specified for project commencement on the permit. The maximum time allowed for project commencement shall be one year. The construction of the project shall be completed within the time frame specified on the permit for project completion. The maximum time allowed for construction shall be three years unless it can be demonstrated that the construction requires additional time. Upon project completion, the permittee shall deliver a completion certificate to the DCRM Office that issued the permit. If the construction is not completed within the time frame specified in the permit, Permittee shall submit a written request at least five business days prior to expiration of the time to construct. If the time for construction under the permit expires without a timely extension request by the Permittee and Permittee subsequently requests an extension, Permittee shall pay 50% of the original fees paid. The~~the~~ permit condition specifying expiration will be reviewed by the DCRM Director who may extend or amend the permit condition for good cause.
- (2) All conditions attached to the permit shall be of perpetual validity unless action is taken to amend, suspend, revoke, or otherwise modify the CRM permit.



Commonwealth of the Northern Mariana Islands

OFFICE OF THE GOVERNOR Bureau of Environmental and Coastal Quality

P.O. Box 501304, Saipan, MP 96950-1304
DEQ Tel: (670) 664-8500/01; Fax: (670) 664-8540
DCRM Tel: (670) 664-8300; Fax: (670) 664-8315
www.becq.gov.mp



Ralph DLG. Torres
Governor

Arnold I. Palacios
Lt. Governor

Eli D. Cabrera
Administrator

Zabrina S. Cruz
Director, DEQ

Richard V. Salas
Director, DCRM

NUTISIAN I MANMAPROPONI NA AMENDASION I NMIAC CHAPTER 15-10, POT PARA UMA TULAICA I PITMISION I ÂPAS I LISENSIA SIHA GINEN I REGULASION I DIBUSION I MINANEHAN FENKAS KÂNTON TÂSI (DCRM)

NUTISIAN INTENSION NA AKSION SIHA: I Gobietnamenton i Sankattan na Islan Marianas, i Ofisinan i Maga'lahi, i CRM Regulatory Agencies, siempre uma amenda i NMIAC Chapter 15-10 pot para uma tulaika i pitmision apas i lisensia siha ginen i Dibusion i Minanehan Fenkas Kânton Tâsi (DCRM).

ATTURIDAT: Esti siha na'amendasion, manmadeklara sigun i atturidat niha i Ofisialis i Kuetpon CRM na para uma adopta i neubo na regulasion siha sigun i CMC § 1531(d). Esti siha ni mapropo ni na regulasion, manma apreba esta ginen i CRM Regulatory Agencies gi halom i mitting i publiko gi Ineru Benti-Seiti, Dos Mit Benti Dos.

ALIMENTO YAN I SUSTANSIAN I AREKGLAMENTO: Esti siha na mapropo ni na amendasion, para uma:

1. Na'suha' i renunsian âpas para todos i kuetpon gobietnamentu nai man sasaonao gi proyek gobietnamentu.
2. Susteni i menos na eskaleran âpas para i minot siha na kinahat APC proyek pitmision lao na'sagaha' i âpas para i otdinario na aktibidât lisensia sigun gi kuantu bâliña i proyek konstruksion.
3. Umentâyi i âpas para kada mâ agun na'hâlum i aplikasion APC para i otdinario osino i minot na kinahât projek yan para i mayot na pattikulât aplikasion.
4. Umentâyi i âpas i atministrasion para todus finaisin para ma extendi tinilaikan na'an yan tinalaikan pitmision na tinisario ma ribisan fotmat.
5. Hatsa i apas para i otdinario APC yan i mayot pattikulat pitmision sigun gi balina i proyek konstruksion.
6. Umentay i âpas para i mismo tiempo na finaisin an para ma extendi i konstruksion sigun i matuge'ña gi lisensia.

SITTASION I ASOSIÂT YAN/PAT I MAN NINAFEKTA SIHA NA LAI,

AREKGLAMENTO YAN I REGULASION: I amendasion siha ni mapropo ni, siempre inafekta i NMIAC Chapter 15-10 ni inamemmenda i mantinattiyi siha na probision:

- § 15-10-205 Eskaleran âpas aplikasion lisensia, (h) Fees
- § 15-10-610 Opbligao na kondision siha, (b) i tiempo yan inanako'ña

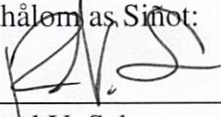
DIREKSION NI PARA MUNA'HA'LOM YAN PUBLIKASION: Esti siha na amendasion ni manmaproposi debidi uma publika gi "Commonwealth Register" gi seksionña pot manmaproposi yan nuebu namanma adopta siha na regulasion (1 CMC § 9201(a)(1)) yan hufanma pega gi katkuet siha na lugât gi halom i civic center yan i ofisinan i kuetpon gobietnamentu siha gi kada distriton senadot, parehu Englis yan prinsipat na linguâhin natibu (1 CMC § 9104(a)(1)).

I FINIHU SIHA: I hayi malagu muna'ha'lom katta pot esti i manmaproposi siha natinalaika, debidi una hâlom i katta guato gi as Señora Sam Sablan, DCRM Permit Manager, gi esti na Address, pat i fax, hossono i email, yan uma tugi gi hilo'ña - "MANMAPROPONI SIHA NATINILAICA GI REGULASION DCRM POT I ÂPAS I LISENSIA SIHA":

BUREAU OF ENVIRONMENTAL AND COASTAL QUALITY
DIVISION OF COASTAL RESOURCES MANAGEMNET
P.O. BOX 501304, Saipan, MP 96950
Fax: (670) 664-8540, Email: ssablan@dcrm.gov.mp

Todu finihu siha, debidi humanafanhâlom gi hâlom trenta (30) dias gi calendario ginen i fecha ni mapublika esti na nutisia (1 CMC § 9104(a)(2)).

Ninahâlom as Siñot:


Richard V. Salas
Direktot i Dibusion i Minanehan Fenkas Konton Tasi

10/3/22

Fetcha

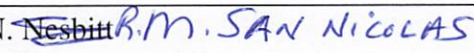
Rinisibe as Señora:


~~Keiko~~ A. Rosario
Espisiât na Ayudânti para i Administradot

10/18/22

Fetcha

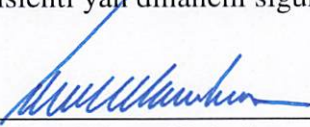
Pine'lu yan Ninota as Señora:


Esther SN. Nesbitt
Rehistran Commonwealth

10/27/22

Fetcha

Guaho, i Abugâdo Henerât, hu'fotma na hu'taitai yan hu'aprueba esti siha na regulasion na sufisienti yan dinanchi sigun i 1 CMC § 2153(e) and 1 CMC § 9104(a)(3).


As Siñot Edward Manibusan
Abugâdo Henerât para i Sankattan na Islan Marianas

10/17/2022

Fetcha



Ralph DLG. Torres
Governor

Arnold I. Palacios
Lt. Governor

Commonwealth of the Northern Mariana Islands

OFFICE OF THE GOVERNOR Bureau of Environmental and Coastal Quality

P.O. Box 501304 Saipan, MP 96950
DEQ: Tel.: (670) 664-8500/01; Fax: (670) 664-8540
DCRM: Tel.: (670) 664-8300; Fax: (670) 664-8315
www.deq.gov.mp and www.dcrm.gov.mp



Eli D. Cabrera
Administrator

Zabrina Shai
Director, DEQ

Richard V. Salas
Director, DCRM

ARONGORONGOL TOULAP REEL SIWEL YE RE MENGI REBWE SIWILILÓ LLÓL NMIAC PEIGHIL 15-10 BWE EBWE REEL LISENSIYAL (PERMIT) DCRM

ALLÉGHÚL FFÉÉRIL AWEEWEL: Nge Commonwealth of the Northern Mariana Islands, Office of the Governor, Coastal Resources Management (CRM) Regulatory Agencies re mengi bwe rebwe siweli NMIAC Peigghil 15-10 bwe ebwe yoor siwel reel abwóssul lisensiyal/permit reel (DCRM).

BWINGIL NGERE MAMAWAL BWULASIYO: Siwel kkaal nge e mweitingeliir Regulatory Agencies faal 1 CMC §1531(d). Reghal aweewei meeta awaeewe kka rebwe ayoora ngere siweliló nge toulap raa toolong rebwe asseling bwe re bwal ghulei meeta mengemengiir.

OWTOL ME AWEWE KKA E LO LÓLL: Mengemengiil siwel yeel nge e amwuri ebwe ghutta millikka faal:

1. Ayúwwela fee waiver reel Bwulasiyol gobietno reel rebwe féeri yaal angaang;
2. Rebwe amwushúschí schagh flat fee reel mille ese bwal ghi tomwogh llól APC (Area of Particular Concern) lisensiyal/permit nge raa ayoora schagh standard abwóós aplikasion ikka e tumwógh méél akkayúl iimw.
3. Aubwe bwal ghal ayooratá abwóssul schóól bwulasiyo reel aplikasion ikka raa bwal atolongei sefáli bwe ese takk lisensiya/permit.
4. Ebwe bwal yoor abwóssul aplikasion ikka re tungóór bwal maas ráál bwe e maas meeta rebwe ghutta reel rebwe atakkaló yaar tiliighi.
5. Ateutá abwóssul lisensiya/permit reel Standard APC me lisensiyal major siting reel lappal gastol akkayúl iimw.
6. Sabweítá maas abwóós tiliighi ngere aplikasion kka eghi weires rebwe atolongei llól atol nge ebwe bwal maas téetá

TIPETCHOWUL MWÓGHUTUGHUT: Eyoora tipetchowul ppwomwol mwoghutughut reel NMIAC Chapter 15-10 reel igha re liiweli mwóghutughut ikka e lo iye e amwirimwiritiw:

- § 15-10-205 Aweewl lisensiya ngere permit, (h) Abwóós
- § 15-10-610 Rebwe atabwei kkondisionul, Atol me lááláyil

AFAL REEL AMMWELIL ME AKKATÉEWOWUL: Pommwol liiwel kkal nge ebwe akkatééwow loll Commonwealth Register 1161 tánil pommwol me ffél mwóghutughút kka ra

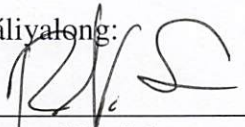
adóptáali (1 CMC § 9102(a)(1)) me ebwe apaschetá loll civic center me loll gobetnamento loll senatorial district, fengál reel kkasal English me mwáliyaasch (1 CMC § 9104(a)(1)).

FÓÓS: Schóó kka re mewuschel isiisilong iischil mánagemáng wóól pommwol mwóghutughut kka rebwe isch ngáli Sam Sablan, DCRM Permitting & Compliance Chief, loll address, fax, or email address yeel, ebwe lo wóól subject line bwe “Ppwomwol Liiwel ngali Abwossul Permit reel DCRM”:

BUREAU OF ENVIRONMENTAL AND COASTAL QUALITY
DIVISION OF COASTAL RESOURCES MANAGEMNET

P.O. BOX 501304
Saipan, MP 96950
Fax: (670) 664-8540
Email: ssablan@dcrm.gov.mp

Isiisilongol mánagemáng ebwe toolong lóll eliggh (30) ráál mwiril aal akkatééwow arongorong yees 1 CMC § 9104(a)(2).

Isáliyalong:


Richard V. Salas
Director, Division of Coastal Resources Management

10/3/22

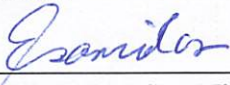
Ráál

Bwughiyal:


Ms. Mathilda A. Rosario
Special Assistant ngáli Administration

10/14/22

Ráál

Ammwelil:


Ms. Esther R.M. San Nicolas
Commonwealth Registrar

10.27.22

Ráál

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



Mr. Edward Manibusan
Soulemelemil Allégh Lapalap

10/17/2022

Ráál



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

In Re Matter of:) PUA Case No. 21-0155
)
)
Aurelio D. Lacbayo,)
)
) 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 March 4, 2022 and March 16, 2022, both at approximately 9:00 a.m. at the Administrative Hearing Office, Saipan. Appellant Aurelio D. Lacbayo (also known as Ronnie Lacbayo; hereinafter “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 Coordinators Caitlin King and Ellen Tebuteb. There were no other witnesses who provided testimony at the Administrative Hearing. A list of the admitted evidence are added to the end of this Order.

For the reasons stated below, the Department’s Determinations dated August 10, 2021 and February 28, 2022 are **AFFIRMED**. Appellant was **NOT ELIGIBLE** to receive PUA benefits from February 28, 2021 to September 4, 2021. The Department’s Determination dated February 25, 2022 is also **AFFIRMED**. Appellant was **NOT ELIGIBLE** to receive PUA benefits from February 2, 2020 to March 14, 2020. Further, the Notice of Overpayment dated February 23, 2022 is **AFFIRMED**. Appellant was overpaid in the total amount of **\$1,290.00**. However, repayment of the entire overpayment amount is hereby **WAIVED**.

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

1 Pandemic Unemployment Assistance (“PUA”)¹ and Federal Pandemic Unemployment Compensation
2 (“FPUC”).² On December 27, 2020, the Continued Assistance for Unemployed Workers Act of 2020
3 (“Continued Assistance Act”) amended and created new provisions of said federal unemployment
4 insurance programs, which, among other things, extended the PUA and FPUC programs to March 13,
5 2021.³ On March 11, 2021, the American Rescue Plan Act of 2021 (“ARPA”) extended the programs
6 to September 6, 2021. The CNMI Department of Labor is charged with the responsibility in
7 administering the above-mentioned programs in the CNMI in accordance to applicable law.⁴ The
8 CNMI Department of Labor Administrative Hearing Office has been designated to preside over
9 appeals of agency decisions.

10 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon
11 review of Appellant’s application and supporting documents, the Department issued a Disqualifying
12 Determination on August 10, 2021. On September 14, 2021, Appellant filed the present appeal and
13 the matter was scheduled for a hearing. As stated in the Notice of Hearing, the issues on appeal are:
14 (1) whether the appeal is timely filed; (2) whether Appellant is eligible for PUA; and (3) whether an
15 overpayment occurred and funds should be returned.

16 Upon review of the records, the Appellant’s appeal of the Department’s August 10, 2021
17 Disqualifying Determination is not timely filed. However, Appellant’s Appeal of the Department’s
18 Notice of Overpayment dated February 23, 2022 is timely, as discussed below. Accordingly,
19 jurisdiction is established.

20 III. FINDINGS OF FACT

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

- 23 1. Prior to the COVID-19 pandemic, Appellant was a bus driver at Kan Pacific Saipan, Ltd.
24 (“Employer”), located on Saipan. As a bus driver, Appellant was paid \$7.25 hourly.⁵
- 25 2. Due to the economic impact of the pandemic, Employer implemented cost-cutting measures

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

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

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

31 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.

⁵ See Exhibits 29-30.

1 that affected Appellant's employment. Specifically, Employer laid off Appellant, effective
2 March 23, 2020.⁶

3 3. On or around June 18, 2020, Appellant submitted an initial application⁷ for unemployment
4 assistance under the PUA and FPUC programs administered by the Department. In the initial
5 application,⁸ Appellant self-certified under penalty of perjury that:

- 6 a. Appellant was an Alien/Refugee Lawfully Admitted to U.S.;
- 7 b. Appellant recently received a notice of termination or military separation;
- 8 c. Appellant received the notice of termination or military separation on March 23, 2020;
- 9 d. Appellant's employment was directly affected by COVID-19 when his place of
10 employment closed as a direct result of the COVID-19 public health pandemic; and
- 11 e. Appellant's employment was affected since November 18, 2019.

12 4. Subsequently, Appellant submitted weekly certifications⁹ to claim continued benefits
13 including for the following time period of February 2, 2020 to March 14, 2020,
14 February 28, 2021 to March 6, 2021, and May 2, 2021 to May 8, 2021. In each weekly
15 certification,¹⁰ Appellant reported that:

- 16 a. His employment was still affected by COVID-19 because his place of employment
17 was closed as a direct result of the COVID-19 public health emergency;
- 18 b. He was able and available for work during the claimed week; and
- 19 c. He earned zero gross income during the claimed week.

20 5. Based on the answers on Appellant's initial application and weekly certifications, Appellant's
21 claim was processed for payment. As demonstrated by an internal audit¹¹ and confirmation
22 with the Department of Finance,¹² the following payments were made to Appellant:

- 23 a. On or about August 11, 2020, Appellant received \$18,746.00 in federal
24 unemployment benefits by paper check (Check No. 1520) for weeks ending
25 February 8, 2020 to August 1, 2020;
- 26 b. On or about August 26, 2020, Appellant received \$1,035.00 in federal unemployment

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29 ⁶ See Exhibit 29. Certificate of Employment dated March 20, 2020.

30 ⁷ Exhibit 1.

31 ⁸ *Id.*

⁹ See Exhibit 3.

¹⁰ *Id.*

¹¹ Exhibit 53.

¹² Exhibit 54.

- benefits by paper check (Check No. 1566) for weeks ending August 8, 2020 to August 22, 2020;
- c. On or about September 8, 2020, Appellant received \$345.00 in federal unemployment benefits by paper check (Check No. 2898) for week ending August 29, 2020;
- d. On or about September 16, 2020, Appellant received \$690.00 in federal unemployment benefits by paper check (Check No. 3770) for weeks ending September 5, 2020 to September 12, 2020;
- e. On or about September 22, 2020, Appellant received \$345.00 in federal unemployment benefits by paper check (Check No. 5373) for week ending September 19, 2020;
- f. On or about October 1, 2020, Appellant received \$345.00 in federal unemployment benefits by paper check (Check No. 8244) for week ending September 26, 2020;
- g. On or about October 7, 2020, Appellant received \$345.00 in federal unemployment benefits by paper check (Check No. 9941) for week ending October 3, 2020;
- h. On or about April 27, 2021, Appellant received \$1,380.00 in federal unemployment benefits by paper check (Check No. 25292) for weeks ending October 10, 2020 to October 31, 2020;
- i. On or about May 14, 2021, Appellant received \$5,805.00 in federal unemployment benefits by paper check (Check No. 26915) for weeks ending January 2, 2021 to February 27, 2021;
- j. On or about June 9, 2021, Appellant received \$900.00 in federal unemployment benefits by paper check (Check No. 27296) for week ending March 6, 2021;
- k. On or about July 13, 2021, Appellant received \$645.00 in federal unemployment benefits by paper check (Check No. 27740) for week ending March 5, 2021; and
- l. On or about August 10, 2021, Appellant received \$645.00 in federal unemployment benefits by paper check (Check No. 28206) for week ending May 8, 2021.¹³
6. Appellant received a total of \$31,226.00 in federal unemployment benefits.
7. With respect to Appellant's immigration status and employment authorization, Appellant provided testimony and substantiating evidence to demonstrate the following:
- a. Prior to COVID-19 pandemic, Appellant had limited parole status and corresponding

¹³ See Exhibit 55.

1 EAD under C11 category.¹⁴ Specifically, just prior to the pandemic, Appellant's
2 limited parole and EAD were valid from January 1, 2019 to June 29, 2019.¹⁵

3 b. On October 18, 2019, USCIS again granted Appellant's limited parole.¹⁶ However
4 this time, the limited parole status was valid from October 29, 2019 to June 29, 2020
5 only, and USCIS' grant of parole did not extend Appellant's employment
6 authorization.¹⁷ Subsequently, Appellant had an EAD under C11 category approved
7 and valid from March 17, 2020 to June 29, 2020.¹⁸

8 c. On or about May 8, 2020, Appellant applied for CNMI long-term residency (USCIS
9 Form I-955) and corresponding employment authorization under C37 category
10 (USCIS Form I-765).¹⁹

11 d. Appellant's applications for CNMI long-term residency and EAD under C37 category
12 were approved, valid from March 2, 2021 to March 2, 2026.²⁰

13 8. Appellant has no other documents or evidence to demonstrate any other immigration status or
14 employment authorization during the time in question.

15 9. The Systematic Alien Verification for Entitlements (SAVE) database maintained by USCIS,
16 Verification Division is a database used to determine the immigration status of PUA & FPUC
17 applicants so only those entitled to benefits receive them. On October 7, 2020, the Department
18 entered Appellant's information into the SAVE database and the results indicated that
19 Appellant did not have employment authorization.²¹

20 10. On December 17, 2020, the Department again entered Appellant's information into the SAVE
21 database and the results indicated that Appellant's employment authorization was approved
22 under C11 category, valid from March 17, 2020 to June 29, 2020.²² The results also confirmed
23 that prior to that, Appellant's employment authorization was approved under C11 category,
24 valid from August 21, 2018 to June 29, 2019.²³

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27 ¹⁴ See Exhibits 16-18.

28 ¹⁵ Exhibit 19.

29 ¹⁶ Exhibits 22-23.

30 ¹⁷ Exhibits 22-23.

31 ¹⁸ Exhibit 24.

¹⁹ Exhibit 25.

²⁰ Exhibits 20-21.

²¹ Exhibit 28.

²² *Id.*

²³ *Id.*

11. On January 5, 2021, the Department issued an Initial Notice of Overpayment for weeks ending February 8, 2020 through June 27, 2020 for the total overpayment amount of \$14,621.00 because it was determined that Appellant “did not meet a year of parole under the C11 status until June 29, 2020.”²⁴
12. On January 14, 2021, the Department issued an Amended Notice of Overpayment for weeks ending February 8, 2020 through March 14, 2020 for the total amount of \$2,070.00 because it was determined that he was “not able and available to work due to [his] EAD pending renewal.”²⁵ On January 19, 2021, Appellant received this Amended Notice of Overpayment.²⁶ Appellant did not appeal this January 14, 2021 Amended Notice of Overpayment. As of February 25, 2021, Appellant cleared this overpayment with no other outstanding balances.²⁷
13. On August 10, 2021, the Department issued a determination disqualifying Appellant from PUA and FPUC benefits from March 13, 2021 to September 4, 2021 because the Department found that Appellant was not a U.S. citizen, non-citizen national, or qualified alien because he had an EAD C37 category.²⁸ Appellant’s deadline to appeal this Determination was ten days from the mail date, which means that his appeal “**must be received or postmarked by 08/20/2021.**”²⁹ (Emphasis in original.)
14. Appellant first took steps to appeal the Determination by emailing the Administrative Hearing Office (hearing@dol.gov.mp) on August 19, 2021 at 4:41 p.m.³⁰ As attachments to Appellant’s email, he attached only the copy of the Determination, with his signature and marked “I appeal”.³¹ Because Appellant emailed after business hours, the email was not received until the next day, August 20, 2021.³² On August 20, 2021, at 7:33 a.m., Appellant was provided written instructions to complete the Request for Reconsideration or Appeal form.³³ Despite being provided with the instructions and form, Appellant did not correctly file his Request to Appeal form until September 14, 2021, via in-person.³⁴

²⁴ Exhibit 34.

²⁵ Exhibit 35.

²⁶ Exhibit 35. *See also* Exhibit 36.

²⁷ *See* Exhibits 38-39, and 52.

²⁸ Exhibit 11. *See also* Exhibit 41.

²⁹ *See id.*

³⁰ *See* Exhibit 27.

³¹ Exhibit 27.

³² *Id.*

³³ *Id.*

³⁴ *See* Exhibit 12.

- 1 15. Appellant's only explanation for why his Request to Appeal was filed late—more than 30
2 days after the Determination—was that he received the Determination in unreasonable time,
3 but this is not true because on August 19, 2021, Appellant first took steps to appeal by emailing
4 a copy of his signed Determination to the Administrative Hearing Office.³⁵
- 5 16. On February 23, 2022, the Department's Benefit Payment Control Unit ("BPC") issued an
6 Amended Notice of Overpayment for weeks ending March 6, 2021 and May 8, 2021³⁶ because
7 it was determined that Appellant was ineligible for PUA and FPUC benefits for the claimed
8 weeks because of his C37 status, which does not fall under any of the qualifying alien status.
9 The total overpayment amount was \$1,290.00, which amounted to \$690.00 in PUA benefits
10 and \$600.00 in FPUC benefits.³⁷
- 11 17. On February 24, 2022, the Department again entered Appellant's information into the SAVE
12 database and the results indicated that Appellant's employment authorization was approved
13 under C37 category, valid from March 2, 2021 to March 2, 2026.³⁸
- 14 18. On February 25, 2022, the Department issued another Determination, effective
15 February 2, 2020 to March 14, 2020 because it was determined that Appellant did not have
16 work authorization during this time and that benefits could only be provide to U.S. citizens,
17 non-citizen nationals, and qualified aliens.³⁹
- 18 19. On February 28, 2022, the Department issued a third Determination,⁴⁰ effective
19 February 28, 2021 to March 6, 2021, because it was determined that benefits could only be
20 provided to U.S. citizens, non-citizen nationals, and qualified aliens, and during this time
21 Appellant had an EAD under C37 category, valid from March 2, 2021 to March 2, 2026.
- 22 20. On February 28, 2022, Appellant received the February 25, 2022 Amended Notice of
23 Overpayment,⁴¹ and he marked on the Amended Notice of Overpayment that he wanted to
24 request an appeal and/or a waiver of repayment.⁴²
- 25 21. As discussed in his Request to Appeal form⁴³ and during the Administrative Hearing,
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27 ³⁵ See Exhibit 12.

28 ³⁶ See Exhibit 44.

29 ³⁷ *Id.*

30 ³⁸ Exhibit 28.

31 ³⁹ Exhibit 49.

⁴⁰ Exhibit 50.

⁴¹ Exhibits 47-48.

⁴² *Id.*

⁴³ Exhibit 12.

Appellant is appealing the Department's three Determinations (dated August 10, 2021, February 25, 2022, and February 28, 2022) and the Amended Notice of Overpayment (dated February 23, 2022) because he argued that EAD under C37 should be "more qualified" than EAD under C11, which is qualified to receive benefits.

22. Appellant is requesting a waiver from repaying the overpayment amount claiming that the overpayment occurred without his fault. Moreover, Appellant has not returned to work, his necessary expenses currently exceed his household income, and he is receiving rent assistance. Since Appellant has spent all of the benefits, Appellant is unable to repay the overpayment without incurring a financial hardship.

IV. CONCLUSIONS OF LAW

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

1. Appellant's appeal of the August 10, 2021 Determination was 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.⁴⁴ 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.⁴⁵

Here, on August 10, 2021, the Department issued the Determination, effective March 13, 2021 to September 4, 2021.⁴⁶ Appellant first took steps to appeal the Determination by emailing the Administrative Hearing Office (hearing@dol.gov.mp) on August 19, 2021 at 4:41 p.m.⁴⁷ As attachments to Appellant's email, he only attached the copy of the Determination, with his signature and marked "I appeal".⁴⁸ Since Appellant emailed after business hours, the email was not received by the Administrative Hearing Office until the next day, August 20, 2021.⁴⁹ Upon receiving the Appeal, at 7:33 a.m., Appellant was provided written instructions to complete the Request for Reconsideration or Appeal form.⁵⁰ Despite being provided with written instructions and the form, Appellant did not

⁴⁴ HI. Rev. Statute § 383-38(a).

⁴⁵ HAR § 12-5-81(j).

⁴⁶ See Exhibit 11.

⁴⁷ See Exhibit 27.

⁴⁸ Exhibit 27.

⁴⁹ *Id.*

⁵⁰ *Id.*

1 file his Request to Appeal form and supporting documents until September 14, 2021, which is more
2 than 30 days after the Determination was issued.⁵¹ Appellant's only explanation for why his Request
3 to Appeal form was filed more than 30 days after the Determination was because he received the
4 Determination in unreasonable time, but this is not true because on August 19, 2021, Appellant
5 emailed the Administrative Hearing Office his signed Determination.⁵² As such, there is no good cause
6 for an extension of the filing deadline. Accordingly, Appellant's appeal of the August 10, 2021
7 Determination was untimely, the Administrative Hearing Office does not have jurisdiction to review
8 this Determination, and this Determination shall be deemed final.

9 **2. Appellant's appeal of the February 23, 2022 Notice of Overpayment and Determinations**
10 **dated February 25, 2022 and February 28, 2022 were timely.**

11 An appeal of a Notice of Overpayment should also be filed within ten days after the Notice was
12 issued or served to the claimant. The period may also be extended to thirty days by a showing of good
13 cause, as defined above.⁵³

14 Here, on February 23, 2022, while the Appellant's Appeal of the August 10, 2021 Disqualifying
15 Determination was pending, BPC issued an Amended Notice of Overpayment for weeks ending
16 March 6, 2021 and May 8, 2021.⁵⁴ On February 25, 2022, while this Appeal was still pending and just
17 days before the Administrative Hearing, the Department issued another Disqualifying
18 Determination,⁵⁵ effective February 2, 2020 to March 14, 2020. On February 28, 2022, the Department
19 issued a third Determination,⁵⁶ effective February 28, 2021 to March 6, 2021. Appellant received this
20 Amended Notice of Overpayment on February 28, 2022, and he marked and submitted to the
21 Department that he wants to request an appeal and/or a waiver of repayment.⁵⁷ Since the
22 Determinations and Amended Notice of Overpayment were issued while this appeal was pending and
23 just days before the Administrative Hearing, and because Appellant marked and submitted to the
24 Department on February 28, 2022 that he is requesting an appeal of the Notice of Overpayment, the
25 undersigned finds that his Appeal of the Amended Notice of Overpayment (dated February 23, 2022)
26 and the Determinations (dated February 25, 2022 and February 28, 2022) were timely.

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29 ⁵¹ See Exhibit 12.

30 ⁵² See Exhibit 12.

31 ⁵³ HI. Rev. Statute § 383-38(a).

⁵⁴ See Exhibit 44.

⁵⁵ Exhibit 49.

⁵⁶ Exhibit 50.

⁵⁷ Exhibit 45.

1 **3. From February 2, 2020 to March 14, 2020, Appellant was not eligible for unemployment**
2 **benefits because Appellant was not able and available to work in the CNMI.**

3 In accordance with the CARES Act, an individual must also be able and available to work in
4 the CNMI during the week that benefits are claimed. “An individual shall be
5 deemed able and available for work . . . if the individual is able and available for suitable work during
6 the customary work week of the individual’s customary occupation which falls within the week for
7 which a claim is filed.”⁵⁸ “An individual shall be deemed *able* to work if the individual has the
8 physical and mental ability to perform the usual duties of the individual’s customary occupation or
9 other work for which is the individual is reasonably fitted by training and experience.”⁵⁹ “An
10 individual shall be deemed *available* for work only if the individual is ready and willing to accept
11 employment for which the individual is reasonably fitted by training and experience. The individual
12 must intend and wish to work, and there must be no undue restrictions either self-imposed or created
13 by force of circumstances which prevent the individual from accepting employment.”⁶⁰ For qualified
14 aliens, the inquiry of whether an individual is “able and available” also hinges on whether they are
15 authorized to work during the weeks claimed. *See* 43 Com. Reg. 044736 (Jan. 28, 2021); *see also* 43
16 Com. Reg. 045439 (Feb. 28, 2021); *see also* 43 Com. Reg. 046852 (June 28, 2021).

17 Here, the February 25, 2022 Determination disqualified Appellant from February 2, 2020 to
18 March 14, 2020 because the Department determined that during this time Appellant was not
19 authorized to work. Prior to COVID-19 pandemic, Appellant had limited parole status and
20 corresponding EAD under C11 category.⁶¹ Specifically, Appellant’s limited parole and employment
21 authorization were valid from January 1, 2019 to June 29, 2019.⁶² On October 18, 2019, USCIS again
22 granted Appellant’s limited parole.⁶³ However, this time the limited parole status was valid only from
23 October 29, 2019 to June 29, 2020⁶⁴ and USCIS’s grant of parole did *not* extend his employment
24 authorization.⁶⁵ Subsequently, Appellant was granted employment authorization under C11 category,
25 valid from March 17, 2020 to June 29, 2020.⁶⁶ Therefore, from February 2, 2020 to March 14, 2020,
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27

⁵⁸ HAR § 12-5-35(a)

28 ⁵⁹ HAR § 12-5-35(a)(1) (emphasis added).

29 ⁶⁰ HAR § 12-5-35(a)(2) and (b) (emphasis added).

30 ⁶¹ *See* Exhibits 16-18.

31 ⁶² *See* Exhibit 19.

⁶³ Exhibits 22-23.

⁶⁴ Exhibits 22 23.

⁶⁵ Exhibit 22.

⁶⁶ *See* Exhibit 24.

Appellant did not have employment authorization despite having limited parole status. Accordingly, Appellant was not able and available to work in the CNMI and was not eligible to receive federal unemployment benefits because he did not have any employment authorization from February 2, 2020 to March 14, 2020.⁶⁷

4. From February 28, 2021 to September 4, 2021, Appellant was not eligible for unemployment benefits because as a CNMI long-term resident with EAD under category C37 Appellant was 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.

⁶⁷ The undersigned recognizes that, on or around June 28, 2019, DHS/USCIS announced the automatic extension of limited parole status and employment authorization for certain individuals under the C11 category. This automatic extension was extended several times by DHS/USCIS such that the limited parole and employment authorization was extended through and until June 30, 2021. *See* Exhibits 20-21. This extension applied to parolees who timely filed a Form I-955, Application for CNMI Long-Term Resident Status, and Form I-765, Application for Employment Authorization, and whose applications remaining pending on December 31, 2020. Here, Appellant’s Form I-955 and Form I-765 were timely filed and were received by USCIS on May 8, 2020. *See* Exhibit 25. Appellant’s applications were approved and valid from March 2, 2021 to March 2, 2026. *See* Exhibit 26. While Appellant’s Form I-955 and Form I-765 were pending from May 8, 2020 until March 2, 2021, Appellant’s parole status and employment authorization were automatically extended by DHS/USCIS, through the above discussed notices and actions. Therefore, from June 30, 2020 to March 1, 2021, Appellant had limited parole status and EAD under C11 category. However, the DHS/USCIS notices and actions did not give Appellant any employment authorization from February 2, 2020 to March 14, 2020 because USCIS did not grant him EAD under C11 during that time period and it was prior to his timely filing of his Form I-955 and Form I-765.

See U.S. Department of Homeland Security, U.S. Citizenship Immigration Services, Press Release titled, “Northern Mariana Islands Long-Term Legal Residents Relief Act” Guidance for Certain Individuals Present in the Commonwealth of the Northern Mariana Islands (CNMI)” (published on June 28, 2019), available online at <https://www.uscis.gov/archive/northern-mariana-islands-long-term-legal-residents-relief-act-guidance-for-certain-individuals#:~:text=Extending%20Parole&text=L..submit%20a%20re%2Dparole%20request>.

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

6 The Department's other two Determinations, dated August 10, 2021 and February 28, 2022,
7 disqualified Appellant for the period from February 28, 2021 to September 4, 2021 because the
8 Department determined that Appellant's EAD was under category C37.⁶⁸ Based on the testimony and
9 substantiating documents provided, the undersigned finds that the Department's Determination is
10 correct. Appellant is currently a CNMI long-term resident with an EAD under category C37, valid
11 from March 2, 2021 to March 2, 2026.⁶⁹ As a CNMI long-term resident with an EAD under category
12 C37, Appellant does not qualify for unemployment benefits because his immigration status EAD
13 under C37 category does not correspond with any of the "qualified alien" provisions listed above.
14 Accordingly, the Department's Determinations, dated August 10, 2021 and February 28, 2022,
15 correctly disqualified Appellant from February 28, 2021 to September 4, 2021.

16 **5. Appellant was overpaid for weeks ending March 6, 2021 and May 8, 2021; however,**
17 **Appellant is entitled to a waiver of repayment.**

18 "Benefits shall be paid promptly in accordance with a determination, redetermination, or decision
19 or appeal."⁷⁰ However, "[a]ny individual who has received any amount as benefits . . . to which the
20 individual was not entitled shall be liable for the amount unless the overpayment was received without
21 fault on the part of the recipient and its recovery would be against equity and good conscience."⁷¹
22 Fault⁷² is defined as:

23 (A) A material statement made by the individual which the individual
24 knew or should have known to be incorrect; or
25

26 ⁶⁸ See Exhibits 11, 12, and 50.

27 ⁶⁹ See Exhibit 24.

28 ⁷⁰ HRS § 383-43.

29 ⁷¹ HRS § 383-44. Section 2104(f)(2) of the CARES Act requires individuals who have received FPUC overpayments
30 to repay these amounts to the state agency. Thereunder, the state has authority to waive repayments of FPUC if the
31 payment was without fault on the part of the individual and such repayment would be contrary to equity and good
conscience. Section 201(d) of the Continued Assistance Act amends Section 2102(d) of the CARES Act and
authorizes states to waive the repayment if the state determines that the payment of PUA was without fault on the
part of any such individual and such repayment would be contrary to equity and good conscience. This waiver
authority applies to overpayments that meet this criterion at any time since the PUA program began.

⁷² HRS 12-5-83.

1 (B) Failure to furnish information which the individual knew or should
2 have known to be material; or

3 (C) Acceptance of a payment which the individual either knew or
4 reasonably could have been expected to know was incorrect.

5 Based on federal guidance, “contrary to equity and good conscience” is tantamount to placing an
6 individual below the poverty line and taking away basic necessities to live. In evaluating equity and
7 good conscience,⁷³ the factors to consider include, but are not limited to:

8 (A) Whether notice of a redetermination was given to the claimant, as
9 required ...

10 (B) Hardship to the claimant that the repayment may impose; and

11 (C) The effect, if any, that the repayment will have upon the
12 fulfillment of the objectives of the program.⁷⁴

13 Considering that Appellant was not a qualified alien as a CNMI long-term resident with EAD
14 under C37 for weeks ending March 6, 2021 and May 8, 2021, Appellant should not have been paid
15 benefits during these claimed weeks. Moreover, considering that Appellant does not contest the
16 amount listed in the Amended Notice of Overpayment, dated February 23, 2022, and he confirmed
17 receiving the total sum of \$1,290.00 in PUA and FPUC benefits for these weeks, it is clear that an
18 overpayment occurred.

19 However, in this case, the undersigned finds that this overpayment occurred due primarily to the
20 fault of the Department. First, the Department is required to institute benefit payment controls and run
21 a SAVE inquiry to confirm identification or eligibility for all aliens before issuing benefits. The
22 Department ran SAVE inquiry in 2020, but failed to initiate SAVE inquiry in 2021, prior to the
23 benefits being paid out to Appellant. The earlier SAVE inquiry results showed that Appellant had an
24 EAD under C11 category expiring on June 29, 2020. Despite the expiration date, the Department did
25 not run another SAVE inquiry until February 24, 2022, while the Appeal was pending and just days
26 before the Administrative Hearing, and long after Appellant was already paid out. Second, the
27 question on the application and the answer that Appellant provided regarding his citizenship and
28 immigration status (i.e., Appellant answered that he was an “Alien/Refugee Lawfully Admitted to
29 U.S.”) are overly technical language and very confusing for the lay person. These issues were

30 ⁷³ *Id.*

31 ⁷⁴ PUA benefits were designed to be a critical lifeline for qualifying individuals facing a financial crisis amidst a
pandemic. Issues of fraud and overpayments are of great consequence that jeopardizes the integrity of the program
and availability of funds for eligible or qualified individuals.

1 compounded by language barriers when the application and the PUA Benefit Rights Information
2 Handbook were not translated for persons with limited English proficiency.

3 Moreover, the undersigned finds that repayment would be contrary to equity and good conscience.
4 Here, when Appellant was given the overpayments for the claimed weeks, he had no notice that these
5 payments were made in error and used the money. Appellant testified that his place of employment
6 remains closed, he has not returned to lawful employment, and he has only worked for manpower
7 agencies or subcontracted companies, but not as an employee. Further, Appellant testified that his
8 household income falls below his necessary expenses and he has had to rely on rental assistance.
9 Considering Appellant's circumstances, the undersigned finds that repayment of benefits poses an
10 incredible hardship for Appellant.

11 Accordingly, in consideration of the fact that payment was made through no fault of the Appellant
12 and repayment would be contrary to equity and good conscience, a waiver of the entire overpayment
13 of \$1,290.00 is appropriate and warranted.

14 **V. DECISION**

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

- 16 1. The Disqualifying Determinations, dated August 10, 2021 and February 28, 2022, are both
17 **AFFIRMED**;
- 18 2. Appellant was **NOT ELIGIBLE** to receive PUA benefits from February 28, 2021 to
19 September 4, 2021;
- 20 3. The Disqualifying Determination, dated February 25, 2022, is also **AFFIRMED**;
- 21 4. Appellant was **NOT ELIGIBLE** to receive PUA benefits from February 2, 2020 to
22 March 14, 2020;
- 23 5. Further, the Notice of Overpayment, dated February 23, 2022, is **AFFIRMED**; and
- 24 6. Appellant was overpaid in the total amount of **\$1,290.00**; however, repayment of the entire
25 overpayment amount is hereby **WAIVED**.

26 If a party is aggrieved by this Order and would like to contest the decision, he or she must submit
27 a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The written
28 request should be supported by legal, factual, or evidentiary reasons to reopen the decision. The
29 written request must be submitted to the Administrative Hearing Office, either in person at Building
30 #1357, Mednilla Avenue, Capitol Hill, Saipan, CNMI or via email at hearing@dol.gov.mp.

31 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, and if the Appellant still

1 disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI Superior
2 Court under the local Administrative Procedures Act. *See* 1 CMC § 9112. All forms, filings fees, and
3 filing deadlines for judicial review will be as established by the applicable law and court rule.

4 So ordered this 20th day of October, 2022.

5 /s/

6 **CATHERINE J. CACHERO**
7 Administrative Hearing Officer
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LIST OF ADMITTED EVIDENCE

1. Exhibit 1: Copy of Appellant's Application Snapshot, filed June 18, 2020;
2. Exhibit 2: Copy of Appellant's Northern Mariana Islands Portal – UI Application, Claimant Summary, eligibility review date June 13, 2021;
3. Exhibit 3: Copy of Appellant's Weekly Certification for February 2-8, 2020;
4. Exhibit 4: Copy of Appellant's Weekly Certification for February 9-15, 2020;
5. Exhibit 5: Copy of Appellant's Weekly Certification for February 16-22, 2020;
6. Exhibit 6: Copy of Appellant's Weekly Certification for February 23-29, 2020;
7. Exhibit 7: Copy of Appellant's Weekly Certification for March 1-7, 2020;
8. Exhibit 8: Copy of Appellant's Weekly Certification for March 8-14, 2020;
9. Exhibit 9: Copy of Appellant's Weekly Certification for February 28, 2021 to March 6, 2021;
10. Exhibit 10: Copy of Appellant's Weekly Certification for May 2-8, 2021;
11. Exhibit 11: Copy of Department's Disqualifying Determination, dated August 10, 2021;
12. Exhibit 12: Copy of Appellant's Request to file an Appeal, filed September 14, 2021;
13. Exhibit 13: Copy of the Notice of Hearing, issued on September 14, 2021;
14. Exhibit 14: Copy of the Order Continuing Hearing, issued on January 3, 2022;
15. Exhibit 15: Copy of the Order Continuing Hearing, issued on March 4, 2022;
16. Exhibit 16: Copy of Appellant's U.S. Customs and Border Protection ("CBP") Departure Record (CBP Form I-94), valid from December 13, 2018 to January 7, 2017;
17. Exhibit 17: Copy of U.S. Citizenship and Immigration Services' ("USCIS's") Form I-797, Approval Notice for Employment Authorization ("EAD") C11 category, dated January 9, 2019;
18. Exhibit 18: Copy of Appellant's EAD card, C11 category, valid from August 21, 2018 to June 29, 2019;
19. Exhibit 19: Copy of USCIS Correspondence, dated January 10, 2019;
20. Exhibit 20: Copy of USCIS Notice titled "Northern Mariana Islands Long-Term Legal Residents Relief Act" Guidance for Certain Individuals Present in the Commonwealth of the Northern Mariana Islands (CNMI), printed July 29, 2019;
21. Exhibit 21: Copies of USCIS News Alerts regarding Extension of Transitional Parole for CNMI Long-Term Resident Status Applicants, last reviewed/updated August 11, 2020 and December 30, 2020.

- 1 22. Exhibit 22: Copy of Appellant's USCIS Notice of Parole Pursuant to P.L. 116-24, dated
- 2 October 18, 2019;
- 3 23. Exhibit 23: Copy of Appellant's CBP Form I-94, valid from October 29, 2019 to June 29,
- 4 2020;
- 5 24. Exhibit 24: Copies of Appellant's two EAD cards, valid as follows:
- 6 a. Under C11 category, valid from March 17, 2020 to June 29, 2020; and
- 7 b. Under C37 category, valid from March 2, 2021 to March 2, 2026.
- 8 25. Exhibit 25: Copy of USCIS Form I-797C, Notice of Action, under C37 classification, notice
- 9 date May 15, 2020 (received date May 8, 2020);
- 10 26. Exhibit 26: Copy of Appellant's EAD card under C37 category, valid from March 2, 2021 to
- 11 March 2, 2026;
- 12 27. Exhibit 27: Copy of Emails from Appellant to CNMI Department of Labor Administrative
- 13 Hearing Office, including attachments, dated August 19-20, 2021 and March 16, 2021;
- 14 28. Exhibit 28: Copy of Department's SAVE verification results, initiated on October 7, 2020,
- 15 December 17, 2020, and February 24, 2022;
- 16 29. Exhibit 29: Copies of Appellant's Notice of Temporary Layoff and Certifications of
- 17 Employment from Kan Pacific Saipan, Ltd. ("Employer"), dated March 20, 2020,
- 18 April 8, 2020, May 3, 2020, June 16, 2020, August 7, 2020, and March 5, 2021;
- 19 30. Exhibit 30: Copies of Appellant's Paystubs from Employer for pay period ending May 2,
- 20 2020, May 30, 2020, June 13, 2020, June 27, 2020, July 11, 2020, July 25, 2020, and
- 21 August 8, 2020;
- 22 31. Exhibit 31: Copy of Department's Case Notes, dated October 14, 2020;
- 23 32. Exhibit 32: Copy of Department's Case Notes, dated November 25, 2020;
- 24 33. Exhibit 33: Copy of Department's Case Notes, dated January 5, 2021;
- 25 34. Exhibit 34: Copy of Department's Notice of Determination of Pandemic Unemployment
- 26 Assistance (PUA) Overpayment, dated January 5, 2021;
- 27 35. Exhibit 35: Copy of Department's Notice of Determination of Pandemic Unemployment
- 28 Assistance (PUA) Overpayment, dated January 14, 2021;
- 29 36. Exhibit 36: Copy of Department's Handwritten Notes, dated January 19, 2020;
- 30 37. Exhibit 37: Copy of Department's Case Notes, dated February 24, 2021;
- 31 38. Exhibit 38: Copy of Department's Case Notes, dated February 25, 2021;
39. Exhibit 39: Copies of Department's Case Notes, dated April 26, 2021;

- 1 40. Exhibit 40: Copies of Department's Case Notes, dated May 3, 2021;
- 2 41. Exhibit 41: Copies of Department's Case Notes, dated August 10, 2021;
- 3 42. Exhibit 42: Copies of Department's Case Notes, dated February 9, 2022;
- 4 43. Exhibit 43: Copy of Department's Case Notes, dated February 23, 2022;
- 5 44. Exhibit 44: Copy of Department's Notice of Overpayment, dated February 23, 2022;
- 6 45. Exhibit 45: Copy Payment Plan Agreement (attached to Notice of Overpayment; unsigned),
7 issued on February 23, 2022;
- 8 46. Exhibit 46: Copy of Department's Case Notes, dated February 24, 2022;
- 9 47. Exhibit 47: Copy of Department's Case Notes, dated February 28, 2022;
- 10 48. Exhibit 48: Copy of Department's Notice of Overpayment, dated February 23, 2022;
- 11 49. Exhibit 49: Copy of Department's Disqualifying Determination, dated February 25, 2022;
- 12 50. Exhibit 50: Copy of Department's Disqualifying Determination, dated February 28, 2022;
- 13 51. Exhibit 51: Copy of Acknowledgement of Receipt, including copies of checks, signed by the
14 Appellant on February 25, 2021;
- 15 52. Exhibit 52: Copy of CNMI Tax System, Official Cash Receipt and Department's Payment
16 Certification, received date February 25, 2021;
- 17 53. Exhibit 53: Copy of Department's Audit Summary;
- 18 54. Exhibit 54: Copy of Emails from the Department's Benefit Payment Control Unit, dated
19 December 27, 2021, January 7, 2022, January 10, 2022, January 24, 2022, February 1, 2022,
20 and February 4, 2022;
- 21 55. Exhibit 55: Copies of Checks, dated October 1, 2020, April 27, 2021, May 14, 2021,
22 June 3, 2021, July 13, 2021, and August 10, 2021; and
- 23 56. Exhibit 56: Copies of Emails from Department's BPC and Employer, dated February 25,
24 2022.



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

In Re Matter of:) **PUA Case No. 21-0160**
)
Amelita Vidal,)
)
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 3, 2022 at approximately 9:00 a.m. at the Administrative Hearing Office. Appellant Amelita Vidal (“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 Labor Certification Worker Dennis Cabrera, PUA Coordinators Maria Annamae Adaza and Jenny Lee (collectively, “PUA Coordinators/Adjudicators”). There were no other witnesses that provided testimony at the hearing. The following were admitted into evidence:

1. Exhibit 1: Copy of Appellant’s Application Snapshot, filed July 29, 2020;
2. Exhibit 2: Copies of Appellant’s Weekly Certifications from March 29, 2020 to July 17, 2021;
3. Exhibit 3: Copy of the Department’s Disqualifying Determination, dated July 2, 2021;
4. Exhibit 4: Copy of the Department’s Initial Notice of Overpayment, dated August 24, 2021;
5. Exhibit 5: Copy of Appellant’s Request to file an Appeal, filed September 17, 2021;
6. Exhibit 6: Copy of the Notice of Hearing, issued on September 17, 2021;
7. Exhibit 7: Copy of Appellant’s Resignation Letter submitted to Employer, dated March 30, 2020;
8. Exhibit 8: Copy of Employer’s Personnel Action form, dated March 30, 2020;
9. Exhibit 9: Copy of Appellant’s Self-Certification Letter, dated October 1, 2020;
10. Exhibit 10: Copies of the Department’s Case notes, dated October 26, 2020 and October 27, 2020;

11. Exhibit 11: Copy of Email Communications between the Department and Employer, dated June 8, 2021;
12. Exhibit 12: Copy of Appellant's Self-Certification Letter, dated June 18, 2021;
13. Exhibit 13: Copies of Email Communications between Department and Employer, dated June 29, 2021 to August 5, 2021;
14. Exhibit 14: Copies of Department's Case Notes, dated June 8, 2021, June 29, 2021, and July 2, 2021;
15. Exhibit 15: Copy of Department's Overpayment Interview Notes, dated August 24, 2021;
16. Exhibit 16: Copies of Department's Case Notes, dated August 25, 2021, September 2, 2021, and September 8, 2021;
17. Exhibit 17: Copies of Email Communications between Benefit Payment Control Unit ("BPC") and Department of Finance, dated June 29, 2021 to July 7, 2021;
18. Exhibit 18: Copy of BPC's Audit Summary;
19. Exhibit 19: Copy of Portal Payment Register;
20. Exhibit 20: Copies of Benefit Check Stubs, dated August 12, 2020, September 22, 2020, October 1, 2020, October 13, 2020, October 20, 2020, April 28, 2021, and June 9, 2021;
21. Exhibit 21: Copy of Appellant's Naturalization Certificate, issued on August 20, 2021;
22. Exhibit 22: Copies of Appellant's Husband's Medical Records from Kagman CHC, dated September 9, 2021 and September 13, 2021; and
23. Exhibit 23: Certificate of Appreciation given to Appellant from Kagman CHC.

For the reasons stated below, the Department's Disqualifying Determination dated July 2, 2021 is **AFFIRMED**. Appellant is not eligible for benefits for the period of March 29, 2020 to September 4, 2021. In addition, the Department's Notice of Overpayment dated August 24, 2021 is **AFFIRMED**. An overpayment occurred in the amount of \$19,035.00. However, the undersigned finds that a partial waiver is appropriate and warranted, as discussed below.

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

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

1 (“FPUC”).² On December 27, 2020, the Continued Assistance for Unemployed Workers Act of 2020
2 (“Continued Assistance Act”) amended and created new provisions of said federal unemployment
3 insurance programs, which, among other things, extended the PUA and FPUC programs to March 13,
4 2021.³ On March 11, 2021, the American Rescue Plan Act of 2021 (“ARPA”) extended the programs
5 to September 6, 2021. The CNMI Department of Labor is charged with the responsibility in
6 administering the above-mentioned programs in the CNMI in accordance to applicable law.⁴ The
7 CNMI Department of Labor Administrative Hearing Office has been designated to preside over
8 appeals of agency decisions.

9 Upon review of the records, the appeal is timely filed. Accordingly, jurisdiction is established.

10 III. PROCEDURAL BACKGROUND & ISSUES

11 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. On
12 July 2, 2021, the Department issued a Disqualifying Determination effective March 29, 2020 to
13 September 4, 2021. Appellant did not file a request to appeal this Disqualifying Determination. On
14 August 24, 2021, the Department issued a Notice of Overpayment. On September 17, 2021, Appellant
15 filed the present appeal of the Notice of Overpayment and the matter was scheduled for an
16 Administrative Hearing. As stated in the Notice of Hearing, the issues on appeal are: (1) whether the
17 appeal is timely filed; (2) whether Appellant is eligible for PUA; and (3) whether an overpayment
18 occurred and funds should be returned.

19 IV. FINDINGS OF FACT

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

- 22 1. Prior to the COVID-19 pandemic, Appellant, a U.S. Citizen,⁵ was employed as a Medical
23 Assistant at Kagman Community Health Center, Inc. (“Kagman CHC”), located in Kagman
24 Village, Saipan Island.⁶ As a Medical Assistant, Appellant was paid \$12.50 per hour.⁷

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

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

28 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.

⁵ Exhibit 21.

⁶ Exhibit 1; *see also* Exhibit 8.

⁷ Exhibits 1 and 8.

Appellant's job duties included arranging laboratory services, administering injections and medications, and performing routine specimen collection and tests.⁸

2. On March 30, 2020, Appellant submitted her resignation letter to Kagman CHC,⁹ effective March 30, 2020.¹⁰ The reasons for Appellant's resignation were personal.¹¹ First, Appellant resigned because of her fear of contracting COVID-19 due to the nature of her work, her age, her husband's age and his pre-existing health problems.¹² Second, based on Department's investigation, representatives of Kagman CHC also said that Appellant was asked to resign to avoid termination for reasons not specified or identified by Kagman CHC.¹³ Despite this, Kagman CHC presented the Appellant with a Certificate of Appreciation for her "outstanding contribution and performance as a Medical Assistant" since October 18, 2015.
3. From March 30, 2020 to May 4, 2020, Kagman CHC paid Appellant paid time off ("PTO")¹⁴ and Appellant received her customary wages for this period.
4. On July 29, 2020, Appellant submitted an application¹⁵ for unemployment assistance under the PUA and FPUC programs administered by the Department. In the initial application,¹⁶ Appellant self-certified under penalty of perjury that: (a) Appellant's employment was directly affected by COVID-19 when she had to quit her job as a direct result of COVID-19; and (b) Appellant's employment was affected since March 31, 2020.¹⁷
5. Subsequently, Appellant submitted weekly certifications to claim continued benefits from March 29, 2020 to July 17, 2021.¹⁸ In each weekly certification, Appellant self-certified that: (a) Her employment was still affected by COVID-19 because she had to quit her job as a direct result of COVID-19; (b) She is able and available for work during the claimed week; and (c) She earned zero dollars in gross income during each of the claimed weeks.¹⁹
6. The answers provided in Appellant's initial application and weekly certifications were submitted under penalty of perjury. It is Appellant's responsibility to provide true, accurate,

⁸ Exhibit 1.

⁹ Exhibits 7, 8 and 12.

¹⁰ Exhibits 7 and 8.

¹¹ Exhibits 7 and 12.

¹² Exhibit 7 and 12.

¹³ Exhibits 11-13.

¹⁴ Exhibit 8.

¹⁵ Exhibit 1.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Exhibit 2.

¹⁹ *Id.*

1 and complete answers. Moreover, it is Appellant's responsibility to be informed about the
2 program by reading the PUA Benefit Rights Information Handbook and other official written
3 material regarding PUA.

4 7. Based on the answers on Appellant's initial and weekly certifications, Appellant's claim was
5 systematically adjudicated and processed for payment by the online portal.

6 8. As demonstrated by an internal audit,²⁰ confirmed with the Department of Finance,²¹ and
7 confirmed by the Appellant,²² Appellant received a total amount of \$19,035.00 in federal
8 unemployment benefits, which were issued in paper checks²³ as follows:

9 a. On August 12, 2020, Appellant was paid \$16,410.00 (Check No. 0001221) in
10 unemployment benefits for weeks ending April 4, 2020 through August 1, 2020.

11 b. On September 22, 2020, Appellant was paid \$690.00 (Check No. 0004885) in
12 unemployment benefits for weeks ending September 12, 2020 through
13 September 19, 2020.

14 c. On October 1, 2020, Appellant was paid \$345.00 (Check No. 0007954) for week
15 ending September 26, 2020.

16 d. On October 13, 2020, Appellant was paid \$345.00 (Check No. 0010766) for week
17 ending October 3, 2020.

18 e. On October 20, 2020, Appellant was paid \$345.00 (Check No. 0012645) for week
19 ending October 10, 2020.

20 f. On April 28, 2021, Appellant was paid \$300.00 (Check No. 0026739) for LWA
21 benefits for week ending August 1, 2020.

22 g. On June 9, 2021, Appellant was paid \$600.00 (Check No. 0027367) for LWA benefits
23 for weeks ending August 8, 2020 through August 15, 2020.

24 9. On July 2, 2021, the Department issued a Disqualifying Determination effective from
25 March 29, 2020 to September 4, 2021.²⁴ The Determination stated that a supporting document
26 titled "Personnel Action Form" from Kagman CHC indicated that the reason for Appellant's
27 resignation was "to take care of personnel issues", effective March 30, 2020, and based on
28 face-to-face meeting on June 25, 2021, Appellant said she was worried about her exposure to

²⁰ Exhibit 18.

²¹ Exhibits 17 and 19.

²² Exhibit 20.

²³ See Exhibit 20.

²⁴ Exhibit 3.

1 patients who might have COVID-19 and infect her spouse who was 79 years old with health
2 issues.²⁵ Based on these, the Department concluded that the fear of COVID-19 was not a
3 qualifying reason to receive PUA benefits and Appellant had not provided substantiating
documents that relate to any other identified COVID-19 qualifying reasons for eligibility.

4 10. Appellant did not file a request for reconsideration or request for appeal of the Department's
5 Disqualifying Determination dated July 2, 2021.

6 11. Appellant's claim was part of the Department's Benefit Payment Control Unit ("BPC") audit.

7 12. On August 24, 2021, the Department's BPC issued an Initial Notice of Overpayment for the
8 total amount of \$19,035.00 in federal unemployment benefits for weeks ending April 4, 2020
9 through October 10, 2020.²⁶ The total overpayment amounted to \$7,935.00 in PUA benefits,
10 \$10,200.00 in FPUC benefits, and \$900.00 in Lost Wages Assistance ("LWA") benefits.²⁷
11 Specifically, for weeks ending April 4, 2020 through May 2, 2020, the Department found that
12 Appellant made excessive earnings due to her PTO benefits.²⁸ The Department also
13 determined that the reason for Appellant's resignation was "to take care of personal issues"
which was not a qualifying reason for eligibility.²⁹

14 13. On August 24, 2021, Appellant received a copy of the Initial Notice of Overpayment in her
15 face-to-face meeting with Department's PUA Coordinator/Adjudicator.³⁰ Appellant did not
16 sign the Initial Notice of Overpayment, but she was informed by the Department that she had
10 calendar days to file her appeal, that is, on or before September 3, 2021.

17 14. On September 2, 2021, PUA Coordinator/Adjudicator called Appellant and she asked for
18 more time to decide and PUA Coordinator/Adjudicator "extended until 09/08/2021".³¹

19 15. On September 8, 2021, PUA Coordinator/Adjudicator met with Appellant and Appellant
20 signed the Initial Notice of Overpayment and Appellant "opted to appeal", instead of agreeing
21 to the findings of the Notice of Overpayment and to a payment plan agreement.³²

22 16. However, Appellant did not file her Request to Appeal the Notice of Overpayment until
23 September 17, 2021.³³ Appellant delayed in filing her appeal because she was keeping her

24 ²⁵ *Id.*

25 ²⁶ Exhibit 4.

26 ²⁷ *Id.*

27 ²⁸ *Id.*

28 ²⁹ *Id.*

³⁰ Exhibit 16.

³¹ *Id.*

³² *Id.*

³³ Exhibit 5.

1 husband's medical appointment and because her husband's medical condition worsened, and
2 she was trying to find an attorney to assist her with her appeal of the Notice of Overpayment.³⁴

3 17. Appellant has not returned to work and her monthly expenses of about \$700.00 currently
4 exceeds her household income, which consist of her late husband's social security insurance
5 benefits of about \$410.00. Additionally, Appellant is receiving other public assistance
6 including food stamps and Medicaid. Since Appellant has spent all the unemployment
benefits, Appellant is unable to repay the overpayment without incurring a financial hardship.

7 V. CONCLUSIONS OF LAW

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

10 **1. For good cause, the 10-day deadline for filing the appeal shall be extended to 30 days.**
11 **Appellant's appeal was timely filed.**

12 Generally, an appeal should be filed within ten days after the Notice of Determination was issued
13 or served to the claimant. However, the Department may extend the period to thirty days by a showing
14 of good cause.³⁵ Good cause means: (1) illness or disability; (2) keeping an appointment for a job
15 interview; (3) attending a funeral of a family member; and (4) any other reason which would prevent
a reasonable person from complying as directed.³⁶

16 Here, the Department issued the Notice of Overpayment on August 24, 2021, and Appellant
17 received the Notice of Overpayment on that same day.³⁷ The Department informed Appellant that she
18 had 10 calendar days to appeal through the instructions provided in the Notice, an interview on
19 August 25, 2021,³⁸ the BRI Handbook, and other published materials. The Department's PUA
20 Coordinator/Adjudicator met with Appellant on September 2, 2021 and she told the Appellant that
21 the deadline for her to decide was extended to September 8, 2021. On September 8, 2021, Appellant
22 told the PUA Coordinator/Adjudicator that she would appeal. However, the Appellant did not take
23 any other steps and filed her appeal with the Administrative Hearing Office late, on September 17,
24 2021. When asked during the hearing, Appellant testified that she was late filing her appeal because
25 she was keeping appointments for her interview with USCIS for her application for naturalization,
her oath taking ceremony as a U.S. citizen, and her husband's medical appointment, her husband's

26 _____
³⁴ See Exhibit 22.

27 ³⁵ HI. Rev. Statute § 383-38(a).

28 ³⁶ HAR § 12-5-81(j).

³⁷ Exhibit 16.

³⁸ See Exhibit 16.

1 medical problems worsened, she was the only caregiver, and she was trying to find an attorney to
2 assist her with her appeal. Appellant's interview and oath taking ceremony for her application to
3 naturalize as a U.S. citizen could not have interfered with her timely filing her appeal because
4 Appellant was admitted as a U.S. citizen on August 20, 2021, which is *prior* to when the Department
5 issued and served Notice of Overpayment to the Appellant on August 24, 2021. As to the reason that
6 she was trying to seek legal assistance, Appellant testified that she did not get a response until three
7 weeks later from the Micronesia Legal Services Corporation. Appellant submitted copies of her
8 husband's medical records which substantiate that around the time that Appellant received the Notice
9 of Overpayment, Appellant did have a medical appointment on September 9, 2021 and her husband's
10 condition was worsening such that Appellant needed to stay at home to care for him and assist him
11 with everyday activities. Appellant and her husband did not have any other household or family
12 member to assist with his care. Based on this reason, the undersigned finds there is good cause to
13 extend the filing period to 30 days. Accordingly, because Appellant filed her Request to Appeal 24
14 calendar days after the Notice of Overpayment was issued and served, the Appeal was timely filed.

15 **2. Appellant's employment was not affected as a direct result of COVID-19.**

16 In accordance with the CARES Act and Continued Assistance Act, payment of PUA and FPUC
17 benefits are available to "covered individuals." A "covered individual" is someone who: (1) is not
18 eligible for regular compensation or extended benefits under State or Federal law or pandemic
19 emergency unemployment compensation under Section 2107 of the CARES Act, including an
20 individual who has exhausted all rights to regular unemployment or extended benefits under State or
21 Federal law or Pandemic Emergency Unemployment Compensation under Section 2107;³⁹ (2) self-
22 certifies⁴⁰ that the individual is unemployed, partially unemployed, or unable or unavailable to work⁴¹
23 as a direct result⁴² of a listed COVID-19 reason in Section 2102(a)(3)(A)(ii) of the CARES Act, and
24 (3) provides required documentation of employment/self-employment within the applicable period of
25 time.⁴³

26 ³⁹ This condition is generally not at issue with claimants in the CNMI because there are no other State or Federal
27 unemployment insurance programs in the CNMI.

28 ⁴⁰ The PUA program utilizes initial and weekly applications where claimants self-certify and report under penalty of
perjury.

⁴¹ A claimant must be able to work and be available for work, as defined by Hawaii state law, in order to be eligible
for benefits. *See* HAR § 12-5-35.

⁴² Pursuant to 20 CFR § 625.5, unemployment is considered a "direct result" of the pandemic where the employment
is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events
precipitated or exacerbated by the pandemic.

⁴³ Section 241 of the Continued Assistance Act requires that an individual must provide documentation substantiating
employment or self-employment, or the planned commencement of employment or self-employment, if he or she

1 With respect to condition (2) listed above, Section 2102 (a)(3)(A)(ii)(I) of the CARES Act
2 specifically identifies the COVID-19 qualifying reasons⁴⁴ as:

- 3 (aa) The individual has been diagnosed with COVID-19 or is
4 experiencing symptoms of COVID-19 and is seeking a medical
5 diagnosis;
- 6 (bb) A member of the individual's household has been diagnosed with
7 COVID-19;
- 8 (cc) The individual is providing care for a family member or a member of
9 the individual's household who has been diagnosed with COVID-19;
- 10 (dd) A child or other person in the household for which the individual has
11 primary caregiving responsibility is unable to attend school or
12 another facility that is closed as a direct result of the COVID-19
13 public health emergency and such school or facility care is required
14 for the individual to work;
- 15 (ee) The individual is unable to reach the place of employment because
16 of a quarantine imposed as a direct result of the COVID-19 public
17 health emergency;
- 18 (ff) The individual is unable to reach the place of employment because
19 the individual has been advised by a health care provider to
20 quarantine due to concerns related to COVID-19;
- 21 (gg) The individual was scheduled to commence employment and does
22 not have a job or is unable to reach the job as a direct result of the
23 COVID-19 public health emergency;
- 24 (hh) The individual has become the breadwinner or major support for a
25 household because the head of the household has died as a direct
26 result of COVID-19;
- 27 (ii) The individual has to quit his or her job as a direct result of COVID-
28 19;
- (jj) The individual's place of employment is closed as a direct result of
the COVID-19 public health emergency; or
- (kk) The individual meets any additional criteria established by the US
Secretary of Labor for unemployment assistance under PUA.

Additional criteria established by the US Secretary of Labor under item (kk)⁴⁵, above, includes:

- (1) The individual is an independent contractor who is unemployed (total
or partial) or is unable or unavailable to work because of the COVID-
19 public health emergency has severely limited his or her ability to
continue performing the customary job;
- (2) The individual has been denied continued unemployment benefits
because the individual refused to return to work or accept an offer of
work at a worksite that, in either instance, is not in compliance with

files a new application for PUA on or after January 31, 2021, or, if the individual applied for PUA before January 31,
2021 and receives PUA benefits on or after December 27, 2020. Failure to supply said documents, and any other
relevant, requested documents is a justifiable basis to deny benefits under HAR § 12-5-81(j).

⁴⁴ These reasons are further defined or illustrated in UIPL 16-20, Change 4.

⁴⁵ See Unemployment Insurance Program Letter 16-20 and 16-20, Change 5.

1 local, state, or national health and safety standards directly related to
2 COVID-19. This includes, but is not limited to, those related to facial
3 mask wearing, physical distancing measures, or the provision of
4 personal protective equipment consistent with public health
5 guidelines;

6 (3) An individual provides services to an educational institution or
7 educational service agency and the individual is unemployed or
8 partially unemployed because of volatility in the work schedule that
9 is directly caused by the COVID-19 public health emergency. This
10 includes, but is not limited to, changes in schedules and partial
11 closures; and

12 (4) An individual is an employee and their hours have been reduced or
13 the individual was laid off as a direct result of the COVID-19 public
14 health emergency.

15 Here, Appellant self-certified in her application and weekly certification under penalty of perjury
16 under (ii) COVID-19 qualifying reason listed above, that she had to quit her job as a direct result of
17 the COVID-19 public health emergency.⁴⁶ Prior to the pandemic, Appellant worked as a Medical
18 Assistant at Kagman CHC, which remained open during the pandemic because it is considered
19 essential. Effective March 31, 2020, Appellant resigned from Kagman CHC because she is the only
20 caregiver for her husband who had several underlying medical conditions that put him at a higher risk
21 of developing severe outcomes if he contracted COVID-19 such as death, admission to intensive care
22 unit, and hospitalization, and Appellant feared contracting coronavirus from performing her job duties
23 at Kagman CHC. While the undersigned recognizes the difficult circumstances that Appellant was
24 placed during the pandemic, voluntarily resigning from employment out of a general concern and fear
25 about exposure to COVID-19 does not make Appellant eligible for PUA and FPUC benefits. When
26 questioned during the Administrative Hearing, Appellant confirmed that she was not advised by any
27 health care provider to self-quarantine because of concerns. Based on testimony and substantiating
28 information, Kagman CHC implemented COVID-19 preventative measures including but not limited
to distancing, supplies of PPEs which were provided and required of every staff, screening of patients
before entering the clinic, and COVID-19 testing of staff. Appellant did not voice any concerns
regarding Kagman CHC's preventative measures or request any reasonable accommodation such as
reassignment to a new position or different job duties. Moreover, Appellant also confirmed that she
did not meet any of the other COVID-19 qualifying reasons listed above for work weeks ending April
4, 2020 through October 10, 2020. Accordingly, the undersigned finds that Appellant's employment

⁴⁶ Exhibits 1 and 2.

1 was not affected as a direct result of any of the above COVID-19 qualifying reasons.

2 **3. Appellant was overpaid and is entitled to a partial waiver.**

3 “Benefits shall be paid promptly in accordance with a determination, redetermination, or decision
4 or appeal.”⁴⁷ However, “[a]ny individual who has received any amount as benefits . . . to which the
5 individual was not entitled shall be liable for the amount unless the overpayment was received without
6 fault on the part of the recipient and its recovery would be against equity and good conscience.”⁴⁸
Fault⁴⁹ is defined as:

- 7 (A) A material statement made by the individual which the individual
8 knew or should have known to be incorrect; or
9 (B) Failure to furnish information which the individual knew or should
10 have known to be material; or
(C) Acceptance of a payment which the individual either knew or
reasonably could have been expected to know was incorrect.

11 Based on federal guidance, “contrary to equity and good conscience” is tantamount to placing an
12 individual below the poverty line and taking away basic necessities to live. In evaluating equity and
13 good conscience,⁵⁰ the factors to consider include, but are not limited to:

- 14 (A) Whether notice of a redetermination was given to the claimant, as
required ...
15 (B) Hardship to the claimant that the repayment may impose; and
16 (C) The effect, if any, that the repayment will have upon the
fulfillment of the objectives of the program.⁵¹

17 Considering that Appellant’s unemployment was not affected as a direct result of the COVID-19
18 public health emergency, Appellant should not have been paid PUA or FPUC benefits. Moreover,
19 considering that Appellant does not contest the amount listed in the Notice of Overpayment and
20 Appellant confirmed receiving the total sum of \$19,035.00, it is clear that the overpayment occurred.

21
22 ⁴⁷ HRS § 383-43.

23 ⁴⁸ HRS § 383-44. Section 2104(f)(2) of the CARES Act requires individuals who have received FPUC overpayments
24 to repay these amounts to the state agency. Thereunder, the state has authority to waive repayments of FPUC if the
25 payment was without fault on the part of the individual and such repayment would be contrary to equity and good
26 conscience. Section 201(d) of the Continued Assistance Act amends Section 2102(d) of the CARES Act and
authorizes states to waive the repayment if the state determines that the payment of PUA was without fault on the
part of any such individual and such repayment would be contrary to equity and good conscience. This waiver
authority applies to overpayments that meet this criterion at any time since the PUA program began.

27 ⁴⁹ HRS 12-5-83.

⁵⁰ *Id.*

28 ⁵¹ PUA benefits were designed to be a critical lifeline for qualifying individuals facing a financial crisis amidst a
pandemic. Issues of fraud and overpayments are of great consequence that jeopardizes the integrity of the program
and availability of funds for eligible or qualified individuals.

1 In determining whether Appellant is entitled to a waiver of the overpayment, the undersigned must
2 review how the overpayment occurred and whether Appellant meets the legal standard, as stated
3 above. Specifically, the two issues are: (1) whether the Appellant is at fault for the overpayment and
4 (2) whether it would be against equity and good conscience to recover the overpayment.

5 There are two periods of disqualification to consider under the Notice of Overpayment: (1) the
6 weeks ending April 4, 2020 through May 2, 2020 and (2) the weeks ending May 9, 2020 through
7 October 10, 2020. With respect to the overpayment for the weeks ending April 4, 2020 through
8 May 2, 2020, Appellant was at fault for the overpayment for these weeks because she did not report
9 any of her PTO earnings in her weekly certifications for these weeks. As previously discussed,
10 Appellant is responsible for the answers that she puts in her initial and weekly applications. Further,
11 Appellant is also responsible for reading the Benefits Rights Information Handbook and other
12 materials published by the Department so she can submit informed and accurate answers on her initial
13 and weekly applications. Upon review of her claims, it appears that Appellant was paid unemployment
14 benefits based on the answers she submitted on her weekly certifications. Specifically, for weeks
15 ending April 4, 2020 through May 2, 2020, Appellant self-certified that she had to quit her job due to
16 COVID-19 and she received zero dollars in wages for that time. Appellant knew that during these
17 weeks she was paid out her PTO and therefore, she knew or should have known that she received her
18 customary wages during these weeks. Therefore, the undersigned finds that for the weeks ending April
19 4, 2020 through May 2, 2020, Appellant was at fault for the overpayment.

20 As for the second period of overpayment, the undersigned finds that some of the fault may be
21 assigned to the Appellant, but the overpayment occurred mainly due to the fault of the Department
22 and the Department's systematic review and adjudication of Appellant's application. First and
23 foremost, the Department is required to institute controls for adjudication of claims and payment of
24 benefits, but this did not occur with Appellant's claim. The online portal systematically adjudicated
25 Appellant's claims based on the information that she provided on the application, without looking
26 into the inconsistencies in Appellant's responses and self-certifications, which should have alerted the
27 Department that she did not qualify. For example, Appellant self-certified that "I had to quit my job
28 as a direct result of COVID-19," but she also responded that she "Quit Freehand", answered "Yes"
when asked if she separated from her job because she had family responsibilities that she had to attend
to, and she included in her weekly certification for the week ending April 4, 2020 an explanation for
her zero earnings as follows: "I worked as a Medical Assistant and I am 62 years old and I have a
high risk of getting COVID-19 and I my [sic] husband is 79 year old and high risk of getting covid19

1 also. Second, while it is the Appellant's responsibility to read and understand the program
2 requirements as listed in the PUA Benefit Rights Information Handbook, the Handbook did not
3 elaborate or explain the self-certifying COVID-19 reason "I had to quit my job as a direct result of
4 COVID-19." While Appellant's self-certification that she quit her job as a direct result of COVID-19
5 was technically incorrect, Appellant genuinely believed she fit into this category. The undersigned
6 finds that the primary reasons for Appellant's resignation were her fear of contracting COVID-19,
7 which she genuinely believed fit into this COVID-19 qualifying reason. While the undersigned
8 recognizes that Kagman CHC told the Department that Appellant was allowed to resign in lieu of
9 termination unrelated to COVID-19, Kagman CHC did not specify the reasons for possible
10 termination and despite this, Kagman CHC presented the Appellant with a Certificate of Appreciation
11 for her "outstanding contribution and performance as a Medical Assistant" since October 18, 2015.⁵²

12 Lastly, in this case, the undersigned finds that repayment would be contrary to equity and good
13 conscience. Appellant testified that she used all the money to pay arrearages in bills, rent, moving
14 expenses, car payments, other basic necessities, and to help her children in the Philippines. Since
15 voluntarily resigning, Appellant has not returned to the workforce because she was the sole caregiver
16 for her husband. Appellant further testified that her current household income, comprising only of her
17 late husband's social security benefits of about \$400.00, falls below her necessary monthly expenses,
18 approximately \$700.00, which is supplemented by other public benefits such as food assistance and
19 Medicaid. Considering Appellant's immediate and basic needs, the undersigned finds that requiring
20 repayment of all the overpayment would pose an incredible hardship. Appellant plans to return to
21 work. Upon Appellant's return to the workforce, Appellant might be able to repay some of the
22 overpayment.

23 Therefore, in consideration of the fact that the overpayment of \$13,410.00 for the weeks ending
24 May 9, 2020 through October 10, 2020 were made mostly through the fault of the Department and
25 repayment would be contrary to equity and good conscience, a waiver of this overpayment amount is
26 appropriate and warranted. Although it would be contrary to equity and good conscience, the
27 undersigned finds that a waiver of the overpayment for weeks ending April 4, 2020 through May 2,
28 2020 is not appropriate because it does not meet the legal standards set out above since Appellant was
at fault for self-certifying to material information that she knew was inaccurate. Accordingly,

⁵² Exhibit 23.

Appellant is entitled to only a partial waiver; Appellant does not have to repay the amount of \$13,410.00 for the weeks ending May 9, 2020 through October 10, 2020.

VI. DECISION

For the reasons stated above, it is ORDERED that:

1. The CNMI Department of Labor's Disqualifying Determination, dated July 2, 2021, is **AFFIRMED**;
2. The Appellant is **NOT ELIGIBLE** to receive benefits from March 29, 2020 through September 4, 2021;
3. The CNMI Department of Labor's Notice of Overpayment, dated August 24, 2021, is **AFFIRMED**;
4. Appellant was overpaid in the total amount of **\$19,035.00**;
5. However, Appellant is entitled to a partial waiver for repayment in the amount of \$13,410.00 in PUA and FPUC benefits paid out for weeks ending May 9, 2020 through October 10, 2020; and
6. Appellant is **ORDERED** to report to the Department's Benefit Payment Control Unit to discuss options for repayment or offsetting the remaining overpayment amount of \$4,725.00, in accordance with the applicable rules.

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 Building #1357, Mednilla Avenue, Capitol Hill, Saipan, CNMI 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, and 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 **28th** day of September, 2022.

/s/

CATHERINE J. CACHERO
Administrative Hearing Officer



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

In Re Matter of:	)	PUA Case No. 21-0168
	)	
Juan Suda Kapileo,	)	
	)	
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 March 3, 2022 at 9:00 a.m. at the Administrative Hearing Office. Appellant Juan Suda Kapileo ("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 Donald Camacho Jr.

Witness: Nero S. Ortizo, Chief Executive Officer of Marianas Wireless, LLC

Exhibits:

1. Exhibit 1: Copy of Appellant's Application Snapshot, dated April 22, 2021;
2. Exhibit 2: Copy of Appellant's Weekly Certification (manual version) for December 27, 2020 to January 2, 2021;
3. Exhibit 3: Copy of Department's Disqualifying Determination, dated October 5, 2021;
4. Exhibit 4: Copy of Appellant's Request to File an Appeal and supporting documents, filed on October 13, 2021;
5. Exhibit 5: Copy of the Notice of Hearing, issued on October 13, 2021;
6. Exhibit 6: Copy of Certification of Employment from Ipwan Security Service, dated September 22, 2021;
7. Exhibit 7: Copies of Appellant's Employment Certifications from Marianas Wireless, LLC, dated September 16, 2021 and October 1, 2021;

8. Exhibit 8: Copy of Northern Mariana Islands Portal Communication from the Department to the Appellant, dated August 10, 2021;
9. Exhibit 9: Copy of Department's Case Notes, dated September 16, 2021;
10. Exhibit 10: Copy of Department's Case Notes, dated September 29, 2021;
11. Exhibit 11: Copy of NMI Portal Communication from the Department, dated September 30, 2021;
12. Exhibit 12: Copy of Department's Case Notes, dated October 5, 2021;
13. Exhibit 13: Copy of Department's Case Notes, dated October 5, 2021;
14. Exhibit 14: Copy of Department's Email from Benefit Payment Control Unit, dated February 18, 2022; and
15. Exhibit 15: Copy of the PUA Benefit Rights Information Handbook.

For the reasons stated below, the Department's Determination dated October 5, 2021 is **AFFIRMED**. Appellant is not eligible for benefits from 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 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.

Upon review of the records, the appeal is timely filed. Accordingly, jurisdiction is established.

III. PROCEDURAL BACKGROUND & ISSUES

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 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.

1 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon
2 review of Appellant's application and supporting documents, the Department issued a Disqualifying
3 Determination on October 5, 2021. On October 13, 2021, Appellant filed the present appeal and the
4 matter was scheduled for a hearing. As stated in the Notice of Hearing, the issues on appeal are: (1)
5 whether Appellant is eligible for PUA and FPUC benefits; and (2) whether an overpayment occurred
and funds should be returned.

6 IV. FINDINGS OF FACT

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

- 9 1. Appellant, a U.S. citizen, has not had a recent attachment to the CNMI work force prior to the
10 COVID-19 pandemic. Specifically, Appellant last worked as a security guard for Ipwan
11 Security Services in 2018.⁵
- 12 2. Appellant was not employed anywhere else since 2018, but he has performed "odd jobs" such
13 as cleaning his friends' yards, throwing trash, and other similar work.⁶ Appellant does not
14 own a business and does not have a business license for these "odd jobs" or any other type of
15 business.⁷ Moreover, Appellant does not report the income from his odd jobs in any business
16 related tax filings such as monthly business gross revenue tax ("BGRT") filings.⁸
- 17 3. On April 22, 2021, Appellant submitted an application⁹ for unemployment assistance under
18 the PUA and FPUC programs administered by the Department. In the initial application,¹⁰
19 Appellant self-certified under penalty of perjury that:
 - 20 a. His employment was directly affected by COVID-19 when his place of employment
21 was closed as a direct result of the COVID-19 public health emergency;
 - 22 b. He is self-employed, a business owner, or a gig worker, or a worker for a religious
23 organization whose unemployment was a direct result of COVID-19; and
 - 24 c. Appellant's employment was affected since March 14, 2020.

25 ⁵ See Exhibit 6.

⁶ Exhibit 4.

⁷ *Id.*

⁸ *Id.*

⁹ Exhibit 1.

¹⁰ *Id.*

- 1 4. Appellant submitted a weekly certification to claim continued benefits from
2 December 27, 2020 to January 2, 2021.¹¹ In the weekly certification,¹² Appellant self-
3 certified:
- 4 a. His employment was still affected by COVID-19 because his place of employment
5 was closed as a direct result of the COVID-19 public health emergency;
 - 6 b. He was offered work by “RM SYSTEM CONST” as an “OFFICE ADMIN”; and
 - 7 c. He earned zero income during the claimed week.
- 8 5. The answers provided in Appellant’s initial application and weekly certifications were
9 submitted under penalty of perjury.¹³ It is Appellant’s responsibility to provide true, accurate,
10 and complete answers. Moreover, it is Appellant’s responsibility to be informed about the
11 program by reading the PUA Benefit Rights Information Handbook¹⁴ and other official
12 written material regarding PUA. It is also Appellant’s responsibility to provide true, accurate
13 and complete documents and evidence to substantiate his claims.
- 14 6. Based on the evidence presented and testimony provided, Appellants self-certifications under
15 his application and weekly certifications were inaccurate and untrue. Specifically,
16
- 17 a. Appellant’s place of employment was not closed;
 - 18 b. Appellant does not own a business;¹⁵ and
 - 19 c. Appellant was offered employment but by a company called “Marianas Wireless,
20 LLC”, and Appellant was scheduled to commence work on October 8, 2021 because
21 the company was waiting for additional projects to be confirmed and contracts to
22 signed.¹⁶
- 23 7. On October 5, 2021, the Department issued a determination disqualifying Appellant from
24 benefits effective from December 27, 2020 to September 4, 2021 because the Department
25 found that Appellant’s unemployment was affected prior to the pandemic, Appellant failed to
submit business records to substantiate his claims as an independent contractor whose
unemployment is a direct result of COVID-19 pandemic (e.g., business licenses; business

¹¹ Exhibit 2.

¹² *Id.*

¹³ See Exhibits 1-2.

¹⁴ See Exhibit 15.

¹⁵ See Exhibit 4.

¹⁶ See Exhibit 7.

gross revenue tax filing), and Appellant was scheduled to commence work on October 18, 2021, which is after the pandemic eligibility period of September 4, 2021.¹⁷

8. On October 13, 2021, Appellant filed the present appeal¹⁸ and the matter was scheduled for an Administrative Hearing.¹⁹ As discussed during the Administrative Hearing, Appellant is appealing because he believes that he is self-employed despite not having his own a business, not having a valid business license, not filing business gross revenue tax filings or other similar filings, and he was scheduled to commence work on October 18, 2021.²⁰

9. While the appeal was pending, Department's Benefit Payment Control Unit confirmed that there is no overpayment issue in this case because Appellant has not received any unemployment benefits.²¹

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 employment was not affected as a direct result of COVID-19.

In accordance with the CARES Act and Continued Assistance Act, payment of PUA and FPUC benefits are available to "covered individuals." A "covered individual" is someone who: (1) is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under Section 2107 of the CARES Act, including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law or Pandemic Emergency Unemployment Compensation under Section 2107;²² (2) self-certifies²³ that the individual is unemployed, partially unemployed, or unable or unavailable to work²⁴ as a direct result²⁵ of a listed COVID-19 reason in Section 2102(a)(3)(A)(ii) of the CARES Act, and

¹⁷ See Exhibit 3.

¹⁸ Exhibit 4.

¹⁹ Exhibit 5.

²⁰ See *id.*

²¹ See Exhibit 14.

²² This condition is generally not at issue with claimants in the CNMI because there are no other State or Federal unemployment insurance programs in the CNMI.

²³ The PUA program utilizes initial and weekly applications where claimants self-certify and report under penalty of perjury.

²⁴ A claimant must be able to work and be available for work, as defined by Hawaii state law, in order to be eligible for benefits. See HAR § 12-5-35.

²⁵ Pursuant to 20 CFR § 625.5, unemployment is considered a "direct result" of the pandemic where the employment is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events precipitated or exacerbated by the pandemic.

(3) provides required documentation of employment/self-employment within the applicable period of time.²⁶

With respect to condition (2) listed above, Section 2102 (a)(3)(A)(ii)(I) of the CARES Act specifically identifies the COVID-19 qualifying reasons²⁷ as:

- (aa) The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- (bb) A member of the individual's household has been diagnosed with COVID-19;
- (cc) The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;
- (dd) A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
- (ee) The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
- (ff) The individual is unable to reach the place of employment because the individual has been advised by a health care provider to quarantine due to concerns related to COVID-19;
- (gg) The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;
- (hh) The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
- (ii) The individual has to quit his or her job as a direct result of COVID-19;
- (jj) The individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or
- (kk) The individual meets any additional criteria established by the US Secretary of Labor for unemployment assistance under PUA.

Additional criteria established by the US Secretary of Labor under item (kk)²⁸, above, includes:

- (1) The individual is an independent contractor who is unemployed (total or partial) or is unable or unavailable to work because of the COVID-

²⁶ Section 241 of the Continued Assistance Act requires that an individual must provide documentation substantiating employment or self-employment, or the planned commencement of employment or self-employment, if he or she files a new application for PUA on or after January 31, 2021, or, if the individual applied for PUA before January 31, 2021 and receives PUA benefits on or after December 27, 2020. Failure to supply said documents, and any other relevant, requested documents is a justifiable basis to deny benefits under HAR § 12-5-81(j).

²⁷ These reasons are further defined or illustrated in UIPL 16-20, Change 4.

²⁸ See Unemployment Insurance Program Letter 16-20 and 16-20, Change 5.

- 1 19 public health emergency has severely limited his or her ability to
2 continue performing the customary job;
- 3 (2) The individual has been denied continued unemployment benefits
4 because the individual refused to return to work or accept an offer of
5 work at a worksite that, in either instance, is not in compliance with
6 local, state, or national health and safety standards directly related to
7 COVID-19. This includes, but is not limited to, those related to facial
8 mask wearing, physical distancing measures, or the provision of
9 personal protective equipment consistent with public health
10 guidelines;
- 11 (3) An individual provides services to an educational institution or
12 educational service agency and the individual is unemployed or
13 partially unemployed because of volatility in the work schedule that
14 is directly caused by the COVID-19 public health emergency. This
15 includes, but is not limited to, changes in schedules and partial
16 closures; and
- 17 (4) An individual is an employee and their hours have been reduced or
18 the individual was laid off as a direct result of the COVID-19 public
19 health emergency.
20

21 As indicated above, it is Appellant's responsibility to be informed about the program and
22 eligibility requirements and to provide true, accurate and complete evidence to substantiate his claims.
23 Here, Appellant failed to submit evidence to substantiate that his employment was directly affected
24 by a COVID-19 qualifying reason under item (aa) through (kk). First, it is clear that Appellant
25 separated from his employment in 2018, which is prior to the COVID-19 pandemic. Second, while
Appellant argued that he was "self-employed" performing "odd jobs", his argument is not persuasive
because he did not own a business or have a valid business license. Further, Appellant has not reported
his income from "odd jobs" on any business gross revenue tax filings or any other tax filings; nor has
Appellant provided any other evidence to show loss of income or that his customary work were
severely limited due to COVID-19 public health emergency. Logically, Appellant's self-certification
that his employment was affected by COVID-19 public health emergency because his place of
employment closed²⁹ was not true because he was neither employed nor self-employed at the time of
the COVID-19 public health emergency. Third, with respect to the offer of employment from
Marianas Wireless, LLC, based on substantiating testimony and supporting documents, Appellant was
not scheduled to commence this employment until October 18, 2021, which is after the PUA/FPUC
program eligibility period of September 4, 2021. Fourth, Appellant's argument that he was generally
limited in looking for work and being offered work during the pandemic does not satisfy any of the

²⁹ See Exhibit 1.

1 COVID-19 qualifying reasons under (aa) through (kk) above. Moreover, when asked about each
2 qualifying reasons under items (aa) through (kk) above, Appellant responded in the negative.

3 In conclusion, based on the evidence presented and testimony provided, the undersigned finds that
4 Appellant's unemployment was not a direct result of a COVID-19 qualifying reason. Accordingly,
5 Appellant is not a "covered individual" eligible for PUA and FPUC benefits.

6 VI. DECISION

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

- 8 1. The CNMI Department of Labor's Disqualifying Determination, dated October 5, 2021,
9 is **AFFIRMED**; and
- 10 2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of
11 December 27, 2020 to September 4, 2021.

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

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

24 So ordered this **3rd** day of October, 2022.

25 /s/

CATHERINE J. CACHERO
Administrative Hearing Officer



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

In Re Matter of:) PUA Case No. 21-0170
)
Alex Y. Gablinez,)
)
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 March 10, 2022 at approximately 9:00 a.m. and on April 21, 2022 at approximately 10:00 a.m., both at the Administrative Hearing Office, Saipan Island. Appellant Alex Y. Gablinez (“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 Maria Annamae Adaza at the March 10, 2022 Administrative Hearing and PUA Coordinator Esco Francene Kileleman at the April 21, 2022 Administrative Hearing. There were no other witnesses that provided testimony at the hearing. A list of the admitted evidence are appended to the end of this Administrative Order.

For the reasons stated below, the Department’s Determination dated October 1, 2021 is **AFFIRMED**. Appellant is not eligible for benefits for the period of May 3, 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

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

1 Compensation (“FPUC”).² On December 27, 2020, the Continued Assistance for Unemployed
2 Workers Act of 2020 (“Continued Assistance Act”) amended and created new provisions of said
3 federal unemployment insurance programs, which, among other things, extended the PUA and
4 FPUC programs to March 13, 2021.³ On March 11, 2021, the American Rescue Plan Act of 2021
5 (“ARPA”) extended the programs to September 6, 2021. The CNMI Department of Labor is
6 charged with the responsibility in administering the above-mentioned programs in the CNMI in
7 accordance to applicable law.⁴ The CNMI Department of Labor Administrative Hearing Office
8 has been designated to preside over appeals of agency decisions.

9 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon
10 review of Appellant’s application and supporting documents, the Department issued a
11 Disqualifying Determination and/or Notice of Overpayment on October 1, 2021. On October 15,
12 2021, Appellant filed the present appeal and the matter was scheduled for a hearing. As stated in
13 the Notice of Hearing, the issues on appeal are: (1) whether the appeal is timely filed; (2) whether
14 Appellant is eligible for PUA; and (3) whether an overpayment occurred and funds should be
15 returned.

16 Upon review of the records, the appeal is not timely filed. Accordingly, jurisdiction is not
17 established.

18 III. FINDINGS OF FACT

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

- 21 1. Immediately prior to the COVID-19 pandemic, Appellant was not attached to the CNMI
22 work force. Specifically, Appellant last worked as a gardener at Curtwill Corp. doing
23 business as Curtwill Enterprises (“Curtwill Enterprises”), but he separated with Curtwill
24 Enterprises on or around May 20, 2016 when Appellant’s employment authorization
25 under the CNMI-Only Transitional Worker (CW-1) visa classification expire.⁵ Since his
26 employment with Curtwill Enterprises, Appellant has not been employed anywhere else.

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

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

⁵ See Exhibit 21.

2. In order to have income and support himself, Appellant sells plants, but Appellant neither owns a business nor does he have a business license for selling plants or any other goods.⁶ Moreover, Appellant does not report his income on any business or income related tax filings such as a monthly business gross revenue tax filings.
3. On or around September 13, 2021, Appellant submitted an Initial Claim Application for PUA Benefits.⁷ In his initial application, Appellant selected “Text Message Notification (If Available)” as the method for receiving notifications.⁸ Appellant self-certified under penalty of perjury that:
 - a. Appellant is an Alien/Refugee Lawfully Authorized to Work in the U.S.,⁹ and
 - b. Appellant answered “No” to the question “Are you unemployed as a direct result of a pandemic or major disaster?”¹⁰
4. Appellant submitted weekly certifications to claim continued benefits for May 3, 2020 to July 23, 2020, December 27, 2020 to June 19, 2021, and August 1, 2021 to September 4, 2021.¹¹
5. It is Appellant’s responsibility to provide true, accurate and complete answers in his initial application and weekly certifications. Moreover, it is Appellant’s responsibility to be informed about the program by reading the PUA Benefit Rights Information Handbook¹² and other official written material regarding the program.¹³ It is also Appellant’s responsibility to provide true, accurate and complete documents and evidence to substantiate his claims.
6. In his initial application and his weekly certifications, Appellant did not respond to the question or select any of the options to: “How did the COVID-19 pandemic cause your unemployment?”¹⁴ On several responses including on questions relating to his

⁶ See Exhibits 4, 10, and 20.

⁷ Exhibit 1.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* Note, on or around September 13, 2021, PUA Coordinator entered Appellant’s responses to create a portal account for the Appellant. In the process, PUA Coordinator changed Appellant’s response to the question “Are you unemployed as a direct result of a pandemic or major disaster?” from “No” to “Yes”. See Exhibit 1 (handwritten note on page 5). Compare Exhibit 16.

¹¹ Exhibit 2.

¹² See Exhibit 7.

¹³ See Exhibits 1 and 2.

¹⁴ See Exhibits 1 and 2.

1 employment and job offers that these were not applicable to him because he is a “deportee”
2 and has no work authorization and is not eligible to work.¹⁵

3 7. With respect to Appellant’s immigration status and employment authorization, Appellant
4 provided testimony and substantiating evidence to demonstrate that:

- 5 a. Appellant is a citizen and national of the Republic of the Philippines;
6 b. Appellant was last granted and approved a CW-1 visa from October 19, 2015 to
7 May 20, 2016 when he was petitioned by his employer C & R Properties Inc.;¹⁶
8 c. Subsequently, Appellant went through removal proceedings before the
9 Immigration Court, Saipan.¹⁷ Upon requests of the parties, the Immigration Court
10 Judge entered an Order for Administrative Closure, which temporarily paused the
11 removal proceedings.¹⁸

12 8. However, based on evidence and testimony provided, Appellant has no employment
13 authorization for the claimed period.

14 9. Further, Appellant has no pending visa petition or application for employment
15 authorization before the U.S. Citizenship and Immigration Services (USCIS). Appellant
16 has no other documents or evidence to demonstrate that he has immigration status and
17 employment authorization during the relevant claiming period.

18 10. Based on its review and investigations¹⁹ of Appellant’s application, weekly certifications
19 and supporting documents, the Department disqualified Appellant from benefits from
20 May 3, 2020 to September 4, 2021 because the Department found that Appellant’s
21 unemployment was not related to or due to a direct result of COVID-19 pandemic.²⁰

22 11. On October 1, 2021, the Department notified Appellant via text message and issued to
23 him electronically via NMI Portal message²¹ and via email²² the Determination.

24 12. The Determination clearly stated that Appellant had ten calendar days to file an appeal
25 and that the appeal “**must be received or postmarked by 10/11/2021.**”²³

26
27 ¹⁵ See Exhibit 1.

28 ¹⁶ See Exhibit 21.

29 ¹⁷ See Exhibit 10-12, 22, and 23.

30 ¹⁸ Exhibit 23.

31 ¹⁹ See Exhibits 15, 17, 18.

²⁰ Exhibit 3.

²¹ Exhibits 13-14.

²² Exhibit 15.

²³ *Id.*

13. On October 15, 2021, Appellant filed the present appeal²⁴ and the matter was scheduled for an Administrative Hearing.²⁵
14. When asked why his appeal was filed late, Appellant claimed that he filed within five days of receiving the Determination. In his testimony, Appellant did not dispute that the Determination was issued to him on or around October 1, 2021 via the NMI Portal and via email, but he could not testify to or provide proof of other steps he took to request reconsideration or appeal of the Determination within ten days.
15. As discussed during the Administrative Hearing and in his written statements, Appellant is appealing the Department's Determination because he believes that deportees like himself are automatically eligible for benefits and he is self-employed selling plants and his work was affected as a result of COVID-19 pandemic.
16. On March 8, 2022, the Department entered Appellant's information into the Systematic Alien Verification for Entitlements (SAVE) database maintained by USCIS, Verification Division.²⁶ 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 has no immigration status.²⁷
17. While the appeal was pending, the Department conducted further review and confirmed with the Department's Benefit Payment Control Unit that no overpayment occurred because Appellant has not received any unemployment benefits.

IV. 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.²⁸ 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

²⁴ Exhibit 4.

²⁵ Exhibit 5.

²⁶ Exhibit 25.

²⁷ *Id.*

²⁸ HI. Rev. Statute § 383-38(a).

1 reason which would prevent a reasonable person from complying as directed.²⁹

2 Here, on October 1, 2021, the Department notified the Appellant by text message and then
3 sent via email and via the NMI Portal a message the Determination. The Determination clearly
4 stated that Appellant had ten calendar days to file an appeal and that the appeal “**must be received**
5 **or postmarked by 10/11/2021.**” (Emphasis in original).³⁰ Appellant did not file his Appeal until
6 October 15, 2021, 14 days after the Determination was issued. When asked why his Appeal was
7 filed late, Appellant did not dispute that the Determination was issued to him on or around
8 October 1, 2021, but Appellant claimed that he filed within five days of receiving the
9 Determination. Appellant could not testify to or provide proof of other steps he took to request
10 reconsideration or appeal of the Determination within ten days. Generally, the failure to follow
11 instructions and the failure to timely review text notifications, NMI Portal messages and emails
12 are not good cause for an extension. As acknowledged in his initial application and weekly
13 certifications, it is claimant’s responsibility to read the Benefit Rights Information Handbook and
14 all published materials. The Determination provided Appellant with instructions on how to file
15 his appeal through multiple avenues and clear deadline. Also, Appeal instructions and information
16 could be found in the Benefit Rights Information Handbook, the Appeal Form, and through
17 newspaper articles. Notably, Appellant did not take any other steps to request reconsideration or
18 appeal the Determination within the ten-day deadline. Therefore, the undersigned finds that
19 Appellant failed to act within the 10-day deadline, there is no good cause to extend the deadline,
20 and therefore the Appeal is untimely.

21 Considering that Appellant’s Appeal is untimely, the Department’s Determination is final and
22 the latter issues are moot. Even if a 30-day extension was granted for good cause and/or
23 Appellant’s appeal was timely filed, Appellant remains ineligible to receive benefits for the period
24 of May 3, 2020 to September 4, 2021 because his employment was not affected as a direct result
25 of COVID-19 and because he did not have employment authorization during this time, as
26 explained below.

27 **2. Appellant’s employment was not affected as a direct result of COVID-19.**

28 In accordance with the CARES Act and Continued Assistance Act, payment of PUA and
29 FPUC benefits are available to “covered individuals.” A “covered individual” is someone who:

30
31 ²⁹ HAR § 12-5-81(j).

³⁰ Appeal

(1) is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under Section 2107 of the CARES Act, including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law or Pandemic Emergency Unemployment Compensation under Section 2107;³¹ (2) self-certifies³² that the individual is unemployed, partially unemployed, or unable or unavailable to work³³ as a direct result³⁴ of a listed COVID-19 reason in Section 2102(a)(3)(A)(ii) of the CARES Act, and (3) provides required documentation of employment/self-employment within the applicable period of time.³⁵

With respect to condition (2) listed above, Section 2102 (a)(3)(A)(ii)(I) of the CARES Act specifically identifies the COVID-19 qualifying reasons³⁶ as:

- (aa) The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- (bb) A member of the individual's household has been diagnosed with COVID-19;
- (cc) The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;
- (dd) A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
- (ee) The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;

³¹ This condition is generally not at issue with claimants in the CNMI because there are no other State or Federal unemployment insurance programs in the CNMI.

³² The PUA program utilizes initial and weekly applications where claimants self-certify and report under penalty of perjury.

³³ A claimant must be able to work and be available for work, as defined by Hawaii state law, in order to be eligible for benefits. *See* HAR § 12-5-35.

³⁴ Pursuant to 20 CFR § 625.5, unemployment is considered a "direct result" of the pandemic where the employment is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events precipitated or exacerbated by the pandemic.

³⁵ Section 241 of the Continued Assistance Act requires that an individual must provide documentation substantiating employment or self-employment, or the planned commencement of employment or self-employment, if he or she files a new application for PUA on or after January 31, 2021, or, if the individual applied for PUA before January 31, 2021 and receives PUA benefits on or after December 27, 2020. Failure to supply said documents, and any other relevant, requested documents is a justifiable basis to deny benefits under HAR § 12-5-81(j).

³⁶ These reasons are further defined or illustrated in UIPL 16-20, Change 4.

- (ff) The individual is unable to reach the place of employment because the individual has been advised by a health care provider to quarantine due to concerns related to COVID-19;
- (gg) The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;
- (hh) The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
- (ii) The individual has to quit his or her job as a direct result of COVID-19;
- (jj) The individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or
- (kk) The individual meets any additional criteria established by the US Secretary of Labor for unemployment assistance under PUA.

Additional criteria established by the US Secretary of Labor under item (kk)³⁷, above, includes:

- (1) The individual is an independent contractor who is unemployed (total or partial) or is unable or unavailable to work because of the COVID-19 public health emergency has severely limited his or her ability to continue performing the customary job;
- (2) The individual has been denied continued unemployment benefits because the individual refused to return to work or accept an offer of work at a worksite that, in either instance, is not in compliance with local, state, or national health and safety standards directly related to COVID-19. This includes, but is not limited to, those related to facial mask wearing, physical distancing measures, or the provision of personal protective equipment consistent with public health guidelines;
- (3) An individual provides services to an educational institution or educational service agency and the individual is unemployed or partially unemployed because of volatility in the work schedule that is directly caused by the COVID-19 public health emergency. This includes, but is not limited to, changes in schedules and partial closures; and
- (4) An individual is an employee and their hours have been reduced or the individual was laid off as a direct result of the COVID-19 public health emergency.

Here, in his application and weekly certifications, Appellant did not specify how his employment was affected by the COVID-19 public health emergency. When asked to clarify, Appellant stated that his last employment was with Curtwill Enterprises and it was only until the

³⁷ See Unemployment Insurance Program Letter 16-20 and 16-20, Change 5.

1 expiration of his CW-1 on or around May 20, 2016. Appellant also explained that he believes he
2 is self-employed and experienced a loss of income because he could not sell his plants during
3 COVID-19 pandemic.

4 Based on the evidence and testimony provided, the undersigned does not find Appellant's
5 arguments persuasive. First, Appellant failed to submit evidence to substantiate that his
6 employment was directly affected by a COVID-19 qualifying reason. It is clear from the evidence
7 and Appellant's testimony that Appellant's unemployment predated the COVID-19 pandemic.
8 Since his separation with his last employer, Curtwill Enterprises, around May 20, 2016, Appellant
9 has not had any attachment to the CNMI workforce. Second, while Appellant may consider
10 himself self-employed, his argument is not persuasive because he did not own a business or have
11 a valid business license. Further, Appellant has not reported his income on any business gross
12 revenue tax or any other income tax filing. Appellant has not provided any evidence to show loss
13 of income or that his customary work were severely limited due to COVID-19 public health
14 emergency. Generally, the loss of potential sales or loss of opportunity is not analogous to
15 COVID-19 severely limiting a claimant's ability to perform work activities. Finally, when asked
16 at the Administrative Hearing about the COVID-19 qualifying reasons listed above, items (aa)
17 through (kk), Appellant responded in the negative. Therefore, based on the evidence and
18 testimony provided, the undersigned finds that Appellant's unemployment was not a direct result
19 of a COVID-19 qualifying reason. Accordingly, Appellant is not a "covered individual" eligible
20 for PUA and FPUC benefits.

21 **3. Appellant is not able and available to work in the CNMI.**

22 In accordance with the CARES Act, an individual must also be able and available to work in
23 the CNMI during the week that benefits are claimed. "An individual shall be
24 deemed able and available for work . . . if the individual is able and available for suitable work
25 during the customary work week of the individual's customary occupation which falls within the
26 week for which a claim is filed."³⁸ "An individual shall be deemed **able** to work if the individual
27 has the physical and mental ability to perform the usual duties of the individual's customary
28 occupation or other work for which is the individual is reasonably fitted by training and
29 experience."³⁹ "An individual shall be deemed **available** for work only if the individual is ready
30

31 ³⁸ HAR § 12-5-35(a)

³⁹ HAR § 12-5-35(a)(1) (emphasis added).

1 and willing to accept employment for which the individual is reasonably fitted by training and
2 experience. The individual must intend and wish to work, and there must be no undue restrictions
3 either self-imposed or created by force of circumstances which prevent the individual from
4 accepting employment.”⁴⁰ For qualified aliens, the inquiry of whether an individual is “able and
5 available” also hinges on whether they are authorized to work during the weeks claimed. *See* 43
6 Com. Reg. 044736 (Jan. 28, 2021); *see also* 43 Com. Reg. 045439 (Feb. 28, 2021); *see also* 43
7 Com. Reg. 046852 (June 28, 2021).

8 Here, based on the evidence provided and Appellant’s testimony, Appellant has no
9 employment authorization during the claimed period of May 3, 2020 to September 4, 2021.
10 Appellant is a citizen and national of the Republic of the Philippines who last had a valid CW-1
11 visa on May 20, 2016.⁴¹ Appellant testified and self-certified to being a “deportee” with no
12 employment authorization during the claimed weeks, and thus he was not eligible to work in the
13 CNMI.⁴² It is clear from the record that Appellant went through removal proceedings,⁴³ but the
14 proceedings were administratively closed by the Immigration Court Judge.⁴⁴ Appellant presented
15 no other documentation to show employment authorization during the relevant claimed period.
16 Further, Appellant has no pending visa petitions or application for employment authorization
17 before USCIS.⁴⁵ Accordingly, Appellant is not able and available to work in the CNMI because
18 he does not have any employment authorization during the claimed weeks.

19 V. DECISION

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

- 21 1. The CNMI Department of Labor’s Disqualifying Determination, dated October 1, 2021,
22 is **AFFIRMED**; and
- 23 2. Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of May 3, 2020 to
24 September 4, 2021.

25 If a party is aggrieved by this Order and would like to contest the decision, he or she must
26 submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The
27

28 ⁴⁰ HAR § 12-5-35(a)(2) and (b) (emphasis added).

29 ⁴¹ Exhibit 21.

30 ⁴² *See* Exhibits 1-2.

31 ⁴³ *See* Exhibits 20-23.

⁴⁴ *See* Exhibit 23. An administrative closure “is a docket management tool that is used to temporarily pause removal proceedings.” *Matter of W-Y-U*, 27 I&N Dec. 17, 18 (BIA 2017).

⁴⁵ Exhibit 25.

1 written request should be supported by legal, factual, or evidentiary reasons to reopen the
2 decision. The written request must be submitted to the Administrative Hearing Office, either in
3 person at Building #1357, Mednilla Avenue, Capitol Hill, Saipan, CNMI or via email at
4 hearing@dol.gov.mp.

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

11 So ordered this 20th day of October, 2022.

12
13 /s/

14 **CATHERINE J. CACHERO**
15 Administrative Hearing Officer
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LIST OF ADMITTED EVIDENCE

1. Exhibit 1: Copy of the Appellant's Initial Claim Application for PUA Benefits (manual version), filed on or about September 13, 2021;
2. Exhibit 2: Copy of the Appellant's Weekly Certifications (handwritten by Appellant), for May 3, 2020 to July 23, 2020, December 27, 2020 to June 19, 2021, and August 1, 2021 to September 4, 2021;
3. Exhibit 3: Copy of Department's Disqualifying Determination, dated October 1, 2021;
4. Exhibit 4: Copy of Appellant's Request to file an Appeal, including supporting documents, filed on October 15, 2021;
5. Exhibit 5: Copy of Copy of the Notice of Hearing, issued on October 15, 2021;
6. Exhibit 6: Copy of Department's Email from Benefit Payment Control Unit, dated March 3, 2022;
7. Exhibit 7: Copy of the PUA Benefit Rights Information Handbook;
8. Exhibit 8: Copy of Department's Foreign National Worker Permit, issued on November 27, 2009, expiring on November 27, 2011;
9. Exhibit 9: Copies of Appellant's Passport pages (expired), showing admission to the CNMI on November 8, 1989 and Appellant's alien card (expired);
10. Exhibit 10: Copies of Appellant's Self-Certification Letters, dated July 14, 2020, July 21, 2020, August 1, 2020, April 6, 2021, and June 23, 2021;
11. Exhibit 11: Copy of Notice of Hearing in Removal Proceedings, dated April 18, 2019;
12. Exhibit 12: Copy of Notice of Hearing in Removal Proceedings, dated June 19, 2020;
13. Exhibit 13: Copy of NMI Portal Preview Message, dated October 1, 2021;
14. Exhibit 14: Copy of NMI Portal Email Log Detail View, dated October 1, 2021;
15. Exhibit 15: Copy of Email Communications between PUA Coordinator and Appellant, dated October 1, 2021;
16. Exhibit 16: Copy of Appellant's Application Snapshot (online version), dated September 13, 2021;
17. Exhibit 17: Copy of Department's Case Notes, dated September 14, 2021;
18. Exhibit 18: Copy of Department's Case Notes, dated September 15, 2021;
19. Exhibit 19: Copy of Order Continuing Hearing, issued on March 15, 2022;
20. Exhibit 20: Copy Appellant's Statements (handwritten), dated April 18, 2022;

- 1 21. Exhibit 21: Copy of USCIS Form I-797A, Notice of Action, CW, valid from October 19, 2015
- 2 to May 20, 2016;
- 3 22. Exhibit 22: Copy of Notice of Hearing in Removal Proceedings, dated September 1, 2020;
- 4 23. Exhibit 23: Copy of Order of Immigration Judge re: Motion for Administrative Closure, dated
- 5 September 8, 2021;
- 6 24. Exhibit 24: Copy of Department's Case Notes, dated March 15, 2022; and
- 7 25. Exhibit 25: Copy of Department's SAVE Response (immigration verification results),
- 8 initiated on March 8, 2022.

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



In Re Matter of:) **PUA Case No. 21-0182**
)
Melba C. Briones,)
)
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 May 3, 2022 at 9:00 a.m. and on June 3, 2022 at 1:30 p.m. at the Administrative Hearing Office, Saipan. Appellant Melba C. Briones ("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 Reyes Camacho. There were no other witnesses that provided testimony at the hearing. The Administrative Hearings were assisted by an interpreter, Arlene Rafanan and Maria Shieriline Owens, respectively. The following documents were admitted into evidence:

1. Exhibit 1: Copy of the Appellant's Application Snapshot (new), filed August 6, 2020;
2. Exhibit 2: Copy of the Appellant's Application Snapshot (reopen), filed February 22, 2021;
3. Exhibit 3: Copies of Appellant's Weekly Certifications, dated January 10, 2021 to January 16, 2021, January 24, 2021 to February 13, 2021, February 21, 2021 to March 6, 2021, April 11, 2021 to May 22, 2021, and August 22, 2021 to September 4, 2021.
4. Exhibit 4: Copy of Department's five Disqualifying Determinations, dated December 13, 2021;
5. Exhibit 5: Copy of Appellant's Request to file an Appeal, filed December 20, 2021;
6. Exhibit 6: Copy of the Notice of Hearing, issued on December 21, 2021;
7. Exhibit 7: Copy of Email from Benefit Payment Control Unit, dated April 26, 2022.

8. Exhibit 8: Copies of Certification Letters from Saint Trading Company, Inc., dated March 5, 2021 and August 20, 2021;
9. Exhibit 9: Copies of Appellant's Timesheets for pay periods January 6, 2021 to September 28, 2021;
10. Exhibit 10: Copy of USCIS Form I-797A, CW-1 valid from October 1, 2020 to September 30, 2021;
11. Exhibit 11: Copies of Appellant's Paystubs for pay periods January 2, 2020 to May 12, 2020 and January 6-19, 2021;
12. Exhibit 12: Copy of Department's Case Notes, dated November 3, 2021; and
13. Exhibit 13: Copy of Department's Case Notes, dated and March 31, 2022.

For the reasons stated below, the Department's five Disqualifying Determinations, all dated December 13, 2021, are **AFFIRMED**. Appellant is not eligible for benefits for the following periods: January 10, 2021 to January 16, 2021; January 24, 2021 to February 13, 2021; February 21, 2021 to March 6, 2021; April 11, 2021 to May 22, 2021; and August 22, 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.

Upon review of the records, the appeal is timely filed. Accordingly, jurisdiction is established.

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 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.

III. PROCEDURAL BACKGROUND & ISSUES

Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. On December 13, 2021, the Department issued five Disqualifying Determination. On December 20, 2021, Appellant filed the present appeal and the matter was scheduled for a hearing. As stated in the Notice of 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 Food Preparation Worker at Saint Trading Company, Inc. ("Employer"), located in San Jose Village, Saipan Island.⁵ As testified to by Appellant and the Department, under the terms of her employment, Appellant regularly worked 35 hours per week.⁶ In early 2021, Appellant was paid \$7.41 hourly. Appellant later received a pay increase and she was paid \$7.69 hourly, starting on or about April 2021.
2. Due to the economic impact of the pandemic, Employer implemented cost-cutting measures that affected Appellant's employment. Specifically, effective March 18, 2020, Appellant was furloughed by Employer.⁷ Appellant was eventually recalled back to work by Employer. However, Appellant's regular work schedule of 35 hours per week was temporarily reduced, effective December 23, 2020.⁸
3. On August 6, 2020, Appellant submitted an application⁹ for unemployment assistance under the PUA and FPUC programs administered by the Department. In the initial application,¹⁰ Appellant self-certified under penalty of perjury that: (a) Appellant's employment was directly affected by COVID-19 when her place of employment closed as a direct result of the COVID-19 public health emergency; and (b) Appellant's employment was affected since March 18, 2020.
4. Subsequently, on February 22, 2021, Appellant submitted an application to reopen¹¹ certifying

⁵ See Exhibits 1-2.

⁶ See Exhibit 11.

⁷ Exhibit 8.

⁸ Exhibit 8.

⁹ Exhibit 1.

¹⁰ *Id.*

¹¹ Exhibit 2.

under penalty of perjury that: (a) Appellant's employment was directly affected by COVID-19 when her place of employment closed as a direct result of the COVID-19 public health emergency; and (b) Appellant's employment was affected since December 27, 2020.

5. Appellant submitted weekly certifications¹² to claim continued benefits for the relevant claimed weeks. In each of the weekly certifications, Appellant reported that: (a) her employment was still affected by COVID-19 because her hours were reduced; (b) she is able and available for work during the claimed weeks; and (c) she earned income during the claimed weeks.
6. Contrary to her application and weekly certifications, Appellant's place of employment was not closed during the claimed periods in question and Appellant received her customary pay and hours for those time periods, working and earning 35 hours or more for each work week.¹³
7. On December 13, 2021, the Department issued five determinations¹⁴ in which the Department disqualified the Appellant from PUA and FPUC benefits for the following periods: January 10, 2021 to January 16, 2021; January 24, 2021 to February 13, 2021; February 21, 2021 to March 6, 2021; April 11, 2021 to May 22, 2021; and August 22, 2021 to September 4, 2021.¹⁵ The Department found that for these claim periods Appellant's wages exceeded \$269.15, which equals her normal, customary wages, and therefore Appellant was not considered "unemployed".¹⁶
8. On December 20, 2021, Appellant filed the present appeal¹⁷ and the matter was scheduled for an Administrative Hearing.¹⁸
9. While the appeal was pending, Department's Benefit Payment Control Unit confirmed that there is no overpayment issue in this case because Appellant has not received any unemployment benefits for the claim periods that she is disqualified.¹⁹

V. CONCLUSIONS OF LAW

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

¹² Exhibit 3.

¹³ See Exhibit 9.

¹⁴ Exhibit 4.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Exhibit 5.

¹⁸ Exhibit 6.

¹⁹ Exhibit 7.

1 **1. Appellant's employment was not affected as a direct result of COVID-19 during the**
2 **claim periods in question.**

3 In accordance with the CARES Act and Continued Assistance Act, payment of PUA and FPUC
4 benefits are available to "covered individuals." A "covered individual" is someone who: (1) is not
5 eligible for regular compensation or extended benefits under State or Federal law or pandemic
6 emergency unemployment compensation under Section 2107 of the CARES Act, including an
7 individual who has exhausted all rights to regular unemployment or extended benefits under State or
8 Federal law or Pandemic Emergency Unemployment Compensation under Section 2107;²⁰ (2) self-
9 certifies²¹ that the individual is unemployed, partially unemployed, or unable or unavailable to work²²
10 as a direct result²³ of a listed COVID-19 reason in Section 2102(a)(3)(A)(ii) of the CARES Act, and
11 (3) provides required documentation of employment/self-employment within the applicable period of
12 time.²⁴

13 With respect to condition (2) listed above, Section 2102 (a)(3)(A)(ii)(I) of the CARES Act
14 specifically identifies the COVID-19 qualifying reasons²⁵ as:

- 15 (aa) The individual has been diagnosed with COVID-19 or is
16 experiencing symptoms of COVID-19 and is seeking a medical
17 diagnosis;
- 18 (bb) A member of the individual's household has been diagnosed with
19 COVID-19;
- 20 (cc) The individual is providing care for a family member or a member of
21 the individual's household who has been diagnosed with COVID-19;
- 22 (dd) A child or other person in the household for which the individual has
23 primary caregiving responsibility is unable to attend school or
24 another facility that is closed as a direct result of the COVID-19
25 public health emergency and such school or facility care is required
26 for the individual to work;

27 ²⁰ This condition is generally not at issue with claimants in the CNMI because there are no other State or Federal
28 unemployment insurance programs in the CNMI.

29 ²¹ The PUA program utilizes initial and weekly applications where claimants self-certify and report under penalty of
30 perjury.

31 ²² A claimant must be able to work and be available for work, as defined by Hawaii state law, in order to be eligible
32 for benefits. See HAR § 12-5-35.

33 ²³ Pursuant to 20 CFR § 625.5, unemployment is considered a "direct result" of the pandemic where the employment
34 is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events
35 precipitated or exacerbated by the pandemic.

36 ²⁴ Section 241 of the Continued Assistance Act requires that an individual must provide documentation substantiating
37 employment or self-employment, or the planned commencement of employment or self-employment, if he or she
38 files a new application for PUA on or after January 31, 2021, or, if the individual applied for PUA before January 31,
39 2021 and receives PUA benefits on or after December 27, 2020. Failure to supply said documents, and any other
40 relevant, requested documents is a justifiable basis to deny benefits under HAR § 12-5-81(j).

41 ²⁵ These reasons are further defined or illustrated in UIPL 16-20, Change 4.

- (ee) The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
- (ff) The individual is unable to reach the place of employment because the individual has been advised by a health care provider to quarantine due to concerns related to COVID-19;
- (gg) The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;
- (hh) The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
- (ii) The individual has to quit his or her job as a direct result of COVID-19;
- (jj) The individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or
- (kk) The individual meets any additional criteria established by the US Secretary of Labor for unemployment assistance under PUA.

Additional criteria established by the US Secretary of Labor under item (kk)²⁶, above, includes:

- (1) The individual is an independent contractor who is unemployed (total or partial) or is unable or unavailable to work because of the COVID-19 public health emergency has severely limited his or her ability to continue performing the customary job;
- (2) The individual has been denied continued unemployment benefits because the individual refused to return to work or accept an offer of work at a worksite that, in either instance, is not in compliance with local, state, or national health and safety standards directly related to COVID-19. This includes, but is not limited to, those related to facial mask wearing, physical distancing measures, or the provision of personal protective equipment consistent with public health guidelines;
- (3) An individual provides services to an educational institution or educational service agency and the individual is unemployed or partially unemployed because of volatility in the work schedule that is directly caused by the COVID-19 public health emergency. This includes, but is not limited to, changes in schedules and partial closures; and
- (4) An individual is an employee and their hours have been reduced or the individual was laid off as a direct result of the COVID-19 public health emergency.

For the time periods in question, Appellant submitted a claim for PUA and FPUC benefits self-certifying under penalty of perjury that her employment was affected as a direct result of COVID-19

²⁶ See Unemployment Insurance Program Letter 16-20 and 16-20, Change 5.

1 because her Employer was closed and later her hours were reduced. However, upon review of the
2 Appellant's paystubs and timesheet records, Appellant's place of employment was not closed for the
3 claim periods in question. Moreover, during the claim periods in question, Appellant received her
4 customary hours and wages of at least 35 hours weekly and her employment was not affected by
5 COVID-19. Therefore, for the time periods in question, Appellant did not meet any of the COVID-
6 19 qualifying reasons listed above and Appellant's employment was not affected as a direct result of
COVID-19. Accordingly, Appellant is not eligible to receive PUA and FPUC benefits.

7 VI. DECISION

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

- 9 1. The CNMI Department of Labor's five Disqualifying Determinations, all dated December 13,
2021, are **AFFIRMED**; and
10 2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the periods of January 10,
11 2021 to January 16, 2021, January 24, 2021 to February 13, 2021, February 21, 2021 to March
12 6, 2021, April 11, 2021 to May 22, 2021, and August 22, 2021 to September 4, 2021.

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

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

22 So ordered this **5th** day of October, 2022.

/s/

23 **CATHERINE J. CACHERO**
24 Administrative Hearing Officer
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28



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

In Re Matter of:) PUA Case No. 22-0197
)
Zenaida C. Tuazon,)
)
Appellant,) ADMINISTRATIVE ORDER GRANTING
) PARTIES' REQUEST FOR DISMISSAL
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
Appellee.)

This matter is scheduled for an Administrative Hearing on October 18, 2022 at 9:00 a.m. On August 11, 2022, Appellant filed a written request to withdraw her appeal. Subsequently, on October 3, 2022, the Department filed a Motion to Dismiss stating that the parties have resolved the issues on Appeal, the Appellant understood the reasons she was disqualified, and that upon further discussions with the Appellant, she agreed to repay the amount of overpayment in the Notice of Overpayment, dated June 14, 2022, in monthly installments of \$40.00. The Department included the Payment Plan Agreement that Appellant signed on October 3, 2022. Subsequently, on October 3, 2022, Appellant confirmed in writing that she 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 October 18, 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 **4th** day of October, 2022.

/s/

Catherine J. Cachero
Administrative Hearing Officer

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



In Re Matter of:) PUA Case No. 22-0199
)
Clare E. Moses,)
)
Appellant,) ORDER
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

On September 20, 2022, the undersigned issued an Order Re-Opening the record in this matter so that the CNMI Department of Labor's Benefit Payment Control Unit ("BPC") may re-audit Appellant's claim and submit its findings as to the Appellant's eligibility for a blanket waiver.

On September 22, 2022, BPC filed with the Administrative Hearing Office its findings and an Amended Notice of Overpayment, which it issued on September 20, 2022. The Department found that Appellant was eligible for a partial waiver in the amount of \$384.00 for weeks ending August 8, 2020, August 22, 2020, and August 29, 2020. BPC also filed copies of Appellant's "Acknowledgement & Request for Action" of the Amended Notice of Overpayment and "Payment Plan Agreement", both of which were signed and agreed to by the Appellant on September 21, 2022. On September 23, 2022, Appellant acknowledged in writing that she received BPC's filings.

In consideration of the above, the Amended Notice of Overpayment issued on September 20, 2022 is final and the record in this matter is hereby closed.

So ordered this 23rd day of September, 2022.

/s/

CATHERINE J. CACHERO
Administrative Hearing Officer



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

In Re Matter of:) PUA Case No. 22-0204
)
John Patrick Caragay,)
)
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 October 11, 2022 at approximately 1:00 p.m. at the Administrative Hearing Office. Due to the ongoing public health emergency, the hearing was held online via Zoom. Appellant John Patrick Caragay (“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 Coordinators Kristian Parulan and Pernalynn Camacho. There were no other witnesses that provided testimony at the hearing. A list of the admitted evidence are added to the end of this Order.

For the reasons stated below, the Department’s Determination dated March 8, 2022 is **AFFIRMED**. Appellant is not eligible for benefits from July 18, 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 the 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

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

6 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon
7 review of Appellant’s application and supporting documents, the Department issued a Disqualifying
8 Determination on March 8, 2022. On March 11, 2022, Appellant filed the present appeal and the
9 matter was scheduled for a hearing.

10 Upon review of the records, the appeal is timely filed. Accordingly, jurisdiction is established. As
11 stated in the Notice of Hearing, the issues on appeal are: (1) whether Appellant is eligible for PUA;
12 and (2) whether an overpayment occurred and funds should be returned.

13 III. FINDINGS OF FACT

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

- 16 1. Prior to the COVID-19 pandemic, Appellant, a U.S. citizen, was employed as a Casino Dealer
17 at Imperial Pacific International (CNMI), LLC (“Employer”), located in Garapan Village,
18 Saipan Island. As a full-time Casino Dealer, Appellant was paid an hourly rate of \$7.86 and
19 he worked 40 hours weekly.
- 20 2. Due to the economic impact of the pandemic, Employer temporarily closed starting on
21 March 17, 2020, and it implemented cost-cutting measures that affected Appellant’s
22 employment. Specifically, effective April 6, 2020, Appellant was furloughed by Employer.⁵
23 Appellant’s furlough status was extended at least seven times; on June 21, 2021, Employer
24 extended his furlough to September 30, 2021.⁶
- 25 3. On or around June 18, 2020, Appellant submitted an application⁷ for unemployment
26 assistance under the PUA and FPUC programs administered by the Department.

27
28
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
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 See Exhibit 12.

⁶ See Exhibit 12.

⁷ Exhibit 1.

- 1 4. Subsequently, Appellant submitted an online weekly certification to claim continued benefits
2 from July 18, 2021 to July 24, 2021.⁸ In this weekly certification, Appellant reported that:
- 3 a. His employment was still affected by COVID-19 because he is an employee and his
4 hours were reduced or he was laid off as a direct result of COVID-19 public health
5 emergency;
- 6 b. He is able and available for work during the claimed week; and
- 7 c. He earned zero income during the claimed week.⁹
- 8 5. The answers provided in Appellant's initial application and weekly certification were
9 submitted under penalty of perjury. It is Appellant's responsibility to provide true, accurate,
10 and complete answers. Moreover, it is Appellant's responsibility to be informed about the
11 program by reading the PUA Benefit Rights Information Handbook and other official written
12 material regarding PUA.
- 13 6. Based on the answers on Appellant's initial and his weekly certification, Appellant's claim
14 was processed for payment. As demonstrated by an internal audit,¹⁰ Appellant received via
15 direct deposit a total of \$11,020.00 in PUA and FPUC benefits for the weeks ending March
16 20, 2021 to September 4, 2021.¹¹
- 17 7. On June 4, 2021, Appellant purchased a round-trip plane ticket for travel to Manila,
18 Philippines, departing from Saipan on July 18, 2021 and returning to Saipan on
19 February 2, 2022.¹²
- 20 8. Appellant travelled to the Philippines on those dates and while off-island, Appellant failed to
21 submit his weekly certifications to claim continued benefits from July 25, 2021 to September
22 4, 2021. The Department disqualified Appellant for failing to submit his weekly certifications.
- 23 9. A couple of weeks after his return from the Philippines, on or about February 18, 2022,
24 Appellant submitted a letter requesting reconsideration of his disqualification.¹³ In his letter
25 requesting reconsideration, Appellant stated that in July 2021, he went home to the Philippines
26 due to a family matter.¹⁴ Appellant also submitted his manual weekly certifications for weeks

⁸ See Exhibit 2.

⁹ *Id.*

¹⁰ Exhibit 17.

¹¹ *See id.*

¹² See Exhibit 14.

¹³ See Exhibit 4.

¹⁴ *Id.*

beginning July 25, 2021 to September 4, 2021¹⁵ and his Records of Contact Log, dated February 16, 2022.¹⁶

10. On March 8, 2022, the Department issued a determination disqualifying Appellant from PUA and FPUC benefits from July 18, 2021 to September 4, 2021 because it was found that the Appellant was not considered “able and available to work” in the CNMI since he was in the Philippines during that time.¹⁷

11. On the same day, the matter was also referred to the Department’s Benefit Payment Control Unit (“BPC”) for investigation of possible overpayment.¹⁸

12. As part of the investigation, BPC requested copies of his itinerary.¹⁹

13. On March 11, 2022, Appellant filed the present appeal²⁰ and the matter was scheduled for an Administrative Hearing.²¹

14. On June 22, 2022, BPC issued a Notice of Overpayment²² for the total amount of \$580.00 in federal unemployment benefits for week ending July 24, 2021. Specifically, this amounted to \$310.00 in PUA benefits and 270.00 in FPUC benefits.²³

15. On June 24, 2022, Appellant acknowledged receiving the Notice of Overpayment and agreed to its findings and signed a Payment Plan Agreement.²⁴

16. Appellant has made two payments towards the overpayment amount as follows:

a. On July 15, 2022, Appellant paid \$145.00, all of which went towards the FPUC Overpayment amount; and

b. On August 12, 2022, Appellant paid \$145.00, of which \$20.00 went towards the PUA Overpayment amount and \$125.00 went towards the FPUC Overpayment amount.²⁵

17. However, as discussed during the Administrative Hearing, Appellant is appealing the Notice of Overpayment. Appellant had misunderstood that he was required to sign the Notice of Overpayment and the Payment Plan Agreement for his appeal to proceed, which is incorrect.

¹⁵ See Exhibit 2.

¹⁶ See Exhibit 15.

¹⁷ See Exhibit 3.

¹⁸ See Exhibit 18.

¹⁹ See Exhibits 14 and 18.

²⁰ Exhibit 5.

²¹ Exhibit 6.

²² Exhibit 8.

²³ *Id.*

²⁴ *Id.*

²⁵ See Exhibit 16.

18. On August 16, 2022, the Department instructed Appellant to stop making payments towards the Overpayment until after his appeal is heard and decided.²⁶

19. Appellant has spent all of the benefits on bills, necessary expenses, and supporting his extended family in the Philippines. To date, Appellant remains on furlough status with his Employer. However, Appellant has found two other jobs. First, Appellant is employed as a part-time server and cashier for Triple J Enterprises where he is paid \$8.00 per hour for 20-25 hours a week. Second, Appellant is working for CNMI Department of Labor as a full-time personnel for COVID-19 Response, working five days per week, 8 hours a day, at an hourly rate of \$12.00. However, this employment will end in March 2023. Appellant testified that he is able to pay back the remaining overpayment amount of \$290.00 if ordered to do so.

IV. CONCLUSIONS OF LAW

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

1. Appellant was not able and available to work in the CNMI from July 18, 2021 to September 4, 2021 because he was off-island.

In accordance with the CARES Act, an individual must be able and available to work in the CNMI during the week that benefits are claimed. “An individual shall be 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.”²⁷ “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.”²⁸ “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.”²⁹

In determining whether an individual is able and available, it is proper to consider the individual's geographical location at the time benefits are claimed.³⁰ Generally, a claimant must be in the CNMI

²⁶ See Exhibit 18.

²⁷ HAR § 12-5-35(a)

²⁸ HAR § 12-5-35(a)(1) (emphasis added).

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

³⁰ See HAR § 12-5-3(b) (“The geographical extent of such area is limited to the area in which the individual lives and within which the individual reasonably can be expected to commute to work.”)

1 to be able and available to work.³¹ If a claimant is not physically able or available for work, he or she
2 may be disqualified for benefits, unless the reason he or she is unable or unavailable is directly related
3 to a COVID-19 reason, such as illness and orders to quarantine.

4 Here, Appellant was not able or available to work in the CNMI from July 18, 2021 to
5 February 1, 2022 because he was off-island for personal, family matters unrelated to COVID-19. As
6 a preliminary matter, the undersigned recognizes the limitations and volatility in travel during the
7 COVID-19 pandemic. However, on June 4, 2021, Appellant purchased his round trip plane ticket to
8 Manila, Philippines for travel from July 18, 2021 to February 2, 2022.³² Appellant's physical location
9 in the Philippines unduly restricted his ability and availability to work within the CNMI. This self-
10 restriction was not lifted until Appellant returned to the CNMI on February 2, 2022. Accordingly, the
11 undersigned finds that Appellant was not "able and available" to work in the CNMI during the claimed
12 period from July 18, 2021 to September 4, 2021, and therefore Appellant was not eligible to receive
13 benefits for this period.

14 **2. Appellant was overpaid and is not entitled to a waiver.**

15 "Benefits shall be paid promptly in accordance with a determination, redetermination, or decision
16 or appeal."³³ However, "[a]ny individual who has received any amount as benefits . . . to which the
17 individual was not entitled shall be liable for the amount unless the overpayment was received without
18 fault on the part of the recipient and its recovery would be against equity and good conscience."³⁴
19 Fault³⁵ is defined as:

- 20 (A) A material statement made by the individual which the individual
- 21 knew or should have known to be incorrect; or
- 22 (B) Failure to furnish information which the individual knew or should
- 23 have known to be material; or
- 24 (C) Acceptance of a payment which the individual either knew or
- 25 reasonably could have been expected to know was incorrect.

26
27 ³¹ 42 Com. Reg. 044471 (Nov. 28, 2020); 43 Com. Reg. 045423 (Feb. 28, 2021); 43 Com. Reg. 045555 (Mar. 28,
2021).

28 ³² See Exhibit 14.

29 ³³ HRS § 383-43.

30 ³⁴ HRS § 383-44. Section 2104(f)(2) of the CARES Act requires individuals who have received FPUC overpayments
to repay these amounts to the state agency. Thereunder, the state has authority to waive repayments of FPUC if the
payment was without fault on the part of the individual and such repayment would be contrary to equity and good
conscience. Section 201(d) of the Continued Assistance Act amends Section 2102(d) of the CARES Act and
authorizes states to waive the repayment if the state determines that the payment of PUA was without fault on the
part of any such individual and such repayment would be contrary to equity and good conscience. This waiver
authority applies to overpayments that meet this criterion at any time since the PUA program began.

³⁵ HRS 12-5-83.

1 Based on federal guidance, “contrary to equity and good conscience” is tantamount to placing an
2 individual below the poverty line and taking away basic necessities to live. In evaluating equity and
3 good conscience,³⁶ the factors to consider include, but are not limited to:

- 4 (A) Whether notice of a redetermination was given to the claimant, as
5 required ...
- 6 (B) Hardship to the claimant that the repayment may impose; and
- 7 (C) The effect, if any, that the repayment will have upon the
8 fulfillment of the objectives of the program.³⁷

8 Here, Appellant should not have been paid benefits under the PUA and FPUC programs. In
9 addition, Appellant does not contest the amounts listed in the Notice of Overpayment and confirmed
10 that he received the benefits. Therefore, it is clear that an overpayment occurred in the total amount of
11 \$580.00 for week ending July 24, 2021.

12 As discussed in the Hearing, Appellant is appealing the overpayment and asking for a waiver.
13 However, ultimately, the undersigned finds that Appellant was at fault for the overpayment and it is
14 not contrary to equity and good conscience to have him repay the overpayment. Appellant certified
15 and acknowledged that it is his responsibility to read the Benefit Rights Information Handbook and
16 any other published materials relating to the programs. Appellant also self-certified that he would
17 provide accurate and complete information. However, his weekly certification for July 18, 2021 to July
18 24, 2021 was not accurate and did not provide complete information. Specifically, Appellant failed to
19 disclose that he was travelling to the Philippines starting July 18, 2021 until February 2, 2022, and
20 therefore Appellant is not in fact able and available to work in the CNMI during that time. Appellant
21 knew or should have known that he was not able and available to work in the CNMI because he
22 purchased his roundtrip ticket on June 4, 2021, over one month prior to the weekly certification. This
23 material information led to the overpayment. As described above, any fault of the Appellant restricts
24 eligibility of a waiver. Accordingly, Appellant is not entitled to a waiver of repayment.

25 V. DECISION

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

- 27 1. The CNMI Department of Labor’s Disqualifying Determination, dated March 8, 2022, is
28 **AFFIRMED**;

30

³⁶ *Id.*

³⁷ PUA benefits were designed to be a critical lifeline for qualifying individuals facing a financial crisis amidst a pandemic. Issues of fraud and overpayments are of great consequence that jeopardizes the integrity of the program and availability of funds for eligible or qualified individuals.

2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of July 18, 2021 to September 4, 2021;
3. The CNMI Department of Labor's Notice of Overpayment, dated June 22, 2022, is **AFFIRMED**;
4. Appellant was overpaid in the total amount of **\$580.00** for week ending July 24, 2021;
5. Appellant is not entitled to a waiver for repayment of this overpaid amount; and
6. Appellant is **ORDERED** to report to the Department's Benefit Payment Control Unit to continue repayment of the remaining overpaid amount of **\$290.00**, in accordance with the applicable rules.

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 Building #1357, Mednilla Avenue, Capitol Hill, Saipan, CNMI 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, and 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 **20th** day of October, 2022.

/s/

CATHERINE J. CACHERO
Administrative Hearing Officer

LIST OF ADMITTED EVIDENCE

1. Exhibit 1: Copy of the Appellant's Application Snapshot (new), dated June 18, 2020;
2. Exhibit 2: Copies of Weekly Certifications, for week beginning from July 18, 2021 to July 24, 2021 (online version) and for weeks beginning July 25, 2021 to September 4, 2021 (manual versions);
3. Exhibit 3: Copy of Department's Disqualifying Determination, dated March 8, 2022, effective July 18, 2021 to September 4, 2021;
4. Exhibit 4: Copy of Appellant's Request for Reconsideration Letter, received on February 18, 2022;
5. Exhibit 5: Copy of Appellant's Request to File an Appeal, filed on March 11, 2022;
6. Exhibit 6: Copy of the Notice of Hearing, issued on March 11, 2022;
7. Exhibit 7: Copies of Orders Continuing Hearing, issued on July 8, 2022 and August 4, 2022;
8. Exhibit 8: Copy of Department's Notice of Overpayment, dated June 22, 2022, and Payment Plan Agreement, signed June 24, 2022;
9. Exhibit 9: Copy of Appellant's U.S. passport, valid from January 15, 2016 to January 14, 2026;
10. Exhibit 10: Copy of the PUA Benefit Rights Information Handbook;
11. Exhibit 11: Copies of Appellant's Employer's Internal Memorandum, dated February 6, 2020 and March 16, 2020;
12. Exhibit 12: Copies of Appellant's Employer's Notices of Furlough #1-#8, dated April 6, 2020, June 5, 2020, July 10, 2020, September 10, 2020, December 30, 2020, January 15, 2021, March 30, 2021, and June 21, 2021;
13. Exhibit 13: Copy of Appellant's Certificate of Employment, dated February 15, 2022;
14. Exhibit 14: Copy of Appellant's Flight Itinerary, dated June 4, 2021, for travel from July 18, 2021 to February 2, 2022;
15. Exhibit 15: Records of Contact Log, dated February 16, 2022;
16. Exhibit 16: Copy of Appellant's Payment Certifications and Cash Receipts, dated July 15, 2022 and August 12, 2022;
17. Exhibit 17: Copy of Department's Benefit Payment Control Unit Audit Sheet; and
18. Exhibit 18: Copies of Department's Case Notes, dated March 8, 2022 and August 16, 2022.

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



In Re Matter of:) **PUA Case No. 22-0208**
)
Manzurul Alam,)
)
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 August 30, 2022 at approximately 9:00 a.m. at the Administrative Hearing Office, Saipan. Appellant Manzurul Alam (“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 Emelda Camacho. There were no other witnesses who provided testimony at the hearing. The following were admitted into evidence:

1. Exhibit 1: Copy of Appellant’s Application Snapshot (initial), filed on August 9, 2020;
2. Exhibit 2: Copy of Appellant’s Application Snapshot (reopen), filed on March 3, 2021;
3. Exhibit 3: Copy of the Department’s Disqualifying Determination, dated March 21, 2022;
4. Exhibit 4: Copy of Appellant’s Request to File an Appeal and supporting documents, filed on March 30, 2022;
5. Exhibit 5: Copy of the Notice of Hearing, issued on March 30, 2022;
6. Exhibit 6: Copy of Appellant’s Employment Authorization Document (“EAD Card”), C09 category, valid from December 16, 2020 to December 16, 2021;
7. Exhibit 7: Copy of Appellant’s Lawful Permanent Resident Card, valid from April 7, 2021 to April 7, 2031;
8. Exhibit 8: Copy of the Department’s SAVE Verification Result, dated October 18, 2021;
9. Exhibit 9: Copy of Appellant’s Employment Certification, dated February 24, 2021;
10. Exhibit 10: Copy of Appellant’s Employment Certification, dated January 19, 2022;

- 1 11. Exhibit 11: Copies of Appellant's Business Licenses: two licenses for construction (valid from
2 August 22, 2020 to August 22, 2021 and valid from August 22, 2021 to August 22, 2022);
3 and one license for translation services (valid from September 28, 2021 to August 22, 2022);
- 4 12. Exhibit 12: Copies of Expenditure Statements from Triple M Enterprises ("Triple M") for
5 2020 and 2021;
- 6 13. Exhibit 13: Copy of Triple M's Business Gross Revenue Tax ("BGRT") filings for January
7 2019 to December 2019;
- 8 14. Exhibit 14: Copy of Triple M's BGRT filings for January 2020 to December 2020;
- 9 15. Exhibit 15: Copy of Triple M's BGRT filings for January 2021 to December 2021;
- 10 16. Exhibit 16: Copies of Triple M's Quarterly Withholding Tax Returns for all quarters of 2020;
11 and the first three quarters of 2021;
- 12 17. Exhibit 17: Copies of Appellant's Form W-2CM from Triple M for 2020 and 2021;
- 13 18. Exhibit 18: Copy of Department's Benefit Payment Control Unit's Email Communication,
14 dated August 22, 2022;
- 15 19. Exhibit 19: Copy of Department's Case Notes; dated March 21, 2022; and
- 16 20. Exhibit 20: Copy of Appellant's Form 1040CM from Triple M for 2019, 2020, and 2021

17 For the reasons stated below, the Department's Disqualifying Determination dated
18 March 21, 2022 is **AFFIRMED**. Appellant is not eligible for benefits from April 4, 2021 to
19 September 4, 2021.

18 II. JURISDICTION

19 On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of 2020
20 was signed into law creating new temporary federal programs for unemployment benefits called
21 Pandemic Unemployment Assistance ("PUA")¹ and Federal Pandemic Unemployment Compensation
22 ("FPUC").² On December 27, 2020, the Continued Assistance for Unemployed Workers Act of 2020
23 ("Continued Assistance Act") amended and created new provisions of said federal unemployment
24 insurance programs, which, among other things, extended the PUA and FPUC programs to March 13,
25 2021.³ On March 11, 2021, the American Rescue Plan Act of 2021 ("ARPA") extended the programs
26 to September 6, 2021. The CNMI Department of Labor is charged with the responsibility in

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

28 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").

1 administering the above-mentioned programs in the CNMI in accordance to applicable law.⁴ The
2 CNMI Department of Labor Administrative Hearing Office has been designated to preside over
3 appeals of agency decisions.

4 Upon review of the records, the appeal is timely filed. Accordingly, jurisdiction is established.

5 **III. PROCEDURAL BACKGROUND & ISSUES**

6 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. On
7 March 21, 2022, the Department issued a Disqualifying Determination. On March 30, 2022, Appellant
8 filed the present appeal of the Determination and the matter was scheduled for an Administrative
9 Hearing. As stated in the Notice of Hearing, the issues on appeal are: (1) whether Appellant is eligible
10 for PUA; and (2) whether an overpayment occurred and funds should be returned.

11 **IV. FINDINGS OF FACT**

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

- 14 1. Appellant is currently a lawful permanent resident ("LPR"), with an LPR card that is valid
15 from April 7, 2021 to April 7, 2031.⁵ Prior to his LPR status being granted, Appellant had an
16 EAD card under C09 category, valid from December 16, 2020 to December 15, 2021.⁶
- 17 2. On August 9, 2020, Appellant submitted an initial application⁷ for unemployment assistance
18 under the PUA and FPUC programs administered by the Department. In the initial
19 application,⁸ Appellant self-certified under penalty of perjury that:
 - 20 a. He was self-employed, a business owner, or a gig worker, or a worker for a religious
21 organization whose unemployment was a direct result of COVID-19;
 - 22 b. The name of his business was "Triple M. Enterprises";
 - 23 c. He recently received a notice of termination, layoff or military separation;
 - 24 d. The date of Layoff, Termination or Military Separation was March 29, 2020;
 - 25 e. His place of employment was directly affected by COVID-19 when his employment
26 closed; and
 - 27 f. Appellant's employment was affected since March 29, 2020.

28 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.

⁵ Exhibit 7; *see also* Exhibit 8.

⁶ Exhibit 6.

⁷ Exhibit 1.

⁸ *Id.*

3. Subsequently, on March 3, 2021, Appellant submitted an application to reopen his claim for benefits⁹. In this application to reopen,¹⁰ Appellant self-certified to the same information as in the initial application, except that: (a) he was *not* self-employed, a business owner, or a gig worker, or a worker for a religious organization whose unemployment was a direct result of COVID-19; and (b) his employment was *affected since November 16, 2020*.
4. The answers provided in Appellant's applications were submitted under penalty of perjury,¹¹ and as such, it is Appellant's responsibility to provide true, accurate, and complete answers, including providing reliable documents to substantiate his claims.
5. No weekly certifications, pay stubs, or other payroll records from Appellant were submitted and filed prior to the Administrative Hearing.
6. Based on the evidence presented and testimony provided, Appellant's self-certifications in his applications were not accurate or complete. Moreover, Appellant's testimony during the hearing were often inconsistent with his earlier testimony, the Employment Certifications, copies of company's tax filings, and/or other supporting documents submitted.
 - a. Appellant consistently testified and is supported by business records in that: (i) Appellant owns a company called "Triple M Enterprises"; (ii) he had valid licenses to operate two types of businesses, construction and translation services¹²; (iii) he was self-employed as "Project Coordinator"; and (iv) he worked around 80 hours-biweekly.¹³
 - b. However, with respect to how much Appellant was paid and how COVID-19 pandemic affected his self-employment, during the hearing, Appellant testified inconsistently to being paid "minimum wages" of \$8.00 per hour. Meanwhile, the Employer Certification stated \$7.25 per hour,¹⁴ but Triple M Enterprises' Employer's Quarterly Withholdings showed he was paid \$2,400.00 quarterly in the first three quarters of 2021¹⁵ and his Form W-2CM showed \$9,600.00 in annual income in 2021.¹⁶

⁹ Exhibit 2.

¹⁰ *Id.*

¹¹ Exhibits 1-2.

¹² See Exhibit 11.

¹³ See Exhibits 1, 2 and 9.

¹⁴ See Exhibit 9.

¹⁵ Exhibit 16.

¹⁶ Exhibit 17.

- 1 c. Similarly, during the hearing, Appellant testified under oath and under penalty of
2 perjury to being the only owner of Triple M Enterprises. However, the Employment
3 Certification Appellant submitted to the Department to substantiate his claims were
4 signed by his wife, Touhida Alam, as “Owner”.¹⁷ The Employment Certification
5 signed by Mrs. Alam also did not identify the company name that was Appellant’s
6 employer and was provided under Touhida Alam’s letterhead, not the letterhead of
7 Triple M Enterprises.¹⁸
- 8 d. Contrary to his self-certifications and testimony, Triple M Enterprises was not closed
9 in 2021 and Appellant was able to work. Triple M Enterprises’ tax filings showed the
10 company’s reported monthly business gross revenue in 2021 were much higher than
11 those in 2019 and early 2020.¹⁹ Also, Triple M Enterprises’ Quarterly Withholding
12 Tax Returns for 2021, showed that Appellant worked and was paid wages during the
13 first three quarters of 2021.²⁰
- 14 e. Appellant testified and provided supporting documents to show that Appellant
15 performed translation services for his wife’s company, Touhida Alam Translation
16 Services, since February 19, 2020, and he was laid off from March 16, 2020. However,
17 his testimony and supporting documents are unclear on when he returned to
18 performing services, how much he was paid and how many hours he worked for his
19 wife’s company. Based on Appellant’s testimony, by 2021, Appellant’s hours and
20 income for translation services had returned to the same as prior to the pandemic.
- 21 f. Appellant failed to submit to the Department or at the Administrative Hearing Office
22 any other documents showing his pay or wage records, including pay stubs to show
23 his hours or wages from April 4, 2021 to September 4, 2021.
- 24 7. On March 21, 2022, the Department issued a Disqualifying Determination²¹ effective
25 April 4, 2021 to September 4, 2021 because the Department found that Appellant’s self-
26 employment was not affected by the COVID-19 pandemic.²²
- 27 8. On March 30, 2022, Appellant filed the present appeal²³ of the Determination and the matter
28

¹⁷ See Exhibit 9.

¹⁸ See *id.*

¹⁹ See Exhibits 13, 14 and 15.

²⁰ Exhibit 15.

²¹ See Exhibits 3 and 19.

²² Exhibit 3.

²³ Exhibit 4.

was scheduled for an Administrative Hearing.²⁴

9. While the appeal was pending, the Department's Benefit Payment Control Unit confirmed that there was no overpayment issue in this matter because Appellant had not received any unemployment benefits for the period of disqualification being appealed.²⁵

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 employment was not affected as a direct result of COVID-19.

In accordance with the CARES Act and Continued Assistance Act, payment of PUA and FPUC benefits are available to "covered individuals." A "covered individual" is someone who: (1) is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under Section 2107 of the CARES Act, including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law or Pandemic Emergency Unemployment Compensation under Section 2107;²⁶ (2) self-certifies²⁷ that the individual is unemployed, partially unemployed, or unable or unavailable to work²⁸ as a direct result²⁹ of a listed COVID-19 reason in Section 2102(a)(3)(A)(ii) of the CARES Act, and (3) provides required documentation of employment/self-employment within the applicable period of time.³⁰

With respect to condition (2) listed above, Section 2102 (a)(3)(A)(ii)(I) of the CARES Act specifically identifies the COVID-19 qualifying reasons³¹ as:

²⁴ Exhibit 5.

²⁵ Exhibit 18.

²⁶ This condition is generally not at issue with claimants in the CNMI because there are no other State or Federal unemployment insurance programs in the CNMI.

²⁷ The PUA program utilizes initial and weekly applications where claimants self-certify and report under penalty of perjury.

²⁸ A claimant must be able to work and be available for work, as defined by Hawaii state law, in order to be eligible for benefits. See HAR § 12-5-35.

²⁹ Pursuant to 20 CFR § 625.5, unemployment is considered a "direct result" of the pandemic where the employment is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events precipitated or exacerbated by the pandemic.

³⁰ Section 241 of the Continued Assistance Act requires that an individual must provide documentation substantiating employment or self-employment, or the planned commencement of employment or self-employment, if he or she files a new application for PUA on or after January 31, 2021, or, if the individual applied for PUA before January 31, 2021 and receives PUA benefits on or after December 27, 2020. Failure to supply said documents, and any other relevant, requested documents is a justifiable basis to deny benefits under HAR § 12-5-81(j).

³¹ These reasons are further defined or illustrated in UIPL 16-20, Change 4.

- (aa) The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- (bb) A member of the individual's household has been diagnosed with COVID-19;
- (cc) The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;
- (dd) A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
- (ee) The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
- (ff) The individual is unable to reach the place of employment because the individual has been advised by a health care provider to quarantine due to concerns related to COVID-19;
- (gg) The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;
- (hh) The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
- (ii) The individual has to quit his or her job as a direct result of COVID-19;
- (jj) The individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or
- (kk) The individual meets any additional criteria established by the US Secretary of Labor for unemployment assistance under PUA.

Additional criteria established by the US Secretary of Labor under item (kk)³², above, includes:

- (1) The individual is an independent contractor who is unemployed (total or partial) or is unable or unavailable to work because of the COVID-19 public health emergency has severely limited his or her ability to continue performing the customary job;
- (2) The individual has been denied continued unemployment benefits because the individual refused to return to work or accept an offer of work at a worksite that, in either instance, is not in compliance with local, state, or national health and safety standards directly related to COVID-19. This includes, but is not limited to, those related to facial mask wearing, physical distancing measures, or the provision of personal protective equipment consistent with public health guidelines;

³² See Unemployment Insurance Program Letter 16-20 and 16-20, Change 5.

- 1 (3) An individual provides services to an educational institution or
2 educational service agency and the individual is unemployed or
3 partially unemployed because of volatility in the work schedule that
4 is directly caused by the COVID-19 public health emergency. This
5 includes, but is not limited to, changes in schedules and partial
6 closures; and
- 7 (4) An individual is an employee and their hours have been reduced or
8 the individual was laid off as a direct result of the COVID-19 public
9 health emergency.

10 In this case, the time period relevant to Appellant's appeal is the disqualification period from
11 April 4, 2021 to September 4, 2021. As shown through Triple M Enterprises' BGRT filings, filed with
12 the CNMI Department of Finance, Division of Revenue and Taxation ("Rev. & Tax."), from May
13 2021 to September 2021, Triple M Enterprises was not closed and its income was not directly affected
14 by COVID-19 pandemic. In fact, the company's monthly business gross revenue for the relevant
15 months were significantly more than the company's monthly business gross revenue during the same
16 time period in 2020.³³ The company's 2021 monthly business gross revenue were also much higher
17 compared to the company's 2019 monthly business gross revenue. With respect to Appellant's wages,
18 Triple M Enterprises reported in its Employer's Quarterly Withholding Tax Returns, filed with Rev.
19 & Tax. (Form OS-3705), Appellant's quarterly gross wages for the first three quarters of 2021 were
20 more than his quarterly gross wages in 2020.³⁴ In addition, Appellant submitted copies of his Wage
21 and Tax Statements (Form W-2CM) from Triple M Enterprises for 2020 and 2021 (none for 2019),
22 and based on these documents Appellant received \$9,600.00 in wages, tips or other compensation in
23 2021, compared to the much lesser amount of \$1,740.00 in 2020.³⁵

24 The answers provided in Appellant's initial and application to reopen were submitted under
25 penalty of perjury,³⁶ and as such, it is Appellant's responsibility to provide true, accurate, and
26 complete answers, including providing reliable documents to substantiate his claims. No weekly
27 certifications, pay stubs, or other payroll records from Appellant were submitted and filed prior to the
28 Administrative Hearing to show that his wages or income may have been directly impacted by
COVID-19 pandemic from April 4, 2021 to September 4, 2021. Appellant's testimony during the
hearing were often inconsistent with his earlier testimony, the Employment Certifications, copies of
company's tax filings, and/or other supporting documents submitted.

³³ See and compare Exhibits 14 and 15.

³⁴ Appellant did not submit any records of any other wages and/or hours with Triple M.

³⁵ See Exhibit 17.

³⁶ Exhibits 1-2.

1 As evidenced by Triple M Enterprises' BGRT filings and Form OS-3705 filings, Appellant's
2 ability to continue performing customary work and earn income through his construction company
3 was not severely limited by COVID-19 public health emergency from April 4, 2021 to
4 September 4, 2021. Therefore, during this time period, Appellant was not an independent contractor
5 who was unemployed or unable to work because of COVID-19 public health emergency. Moreover,
6 as testified to during the hearing, Appellant did not meet any of the COVID-19 qualifying reasons
7 listed above for the period in which he was disqualified. Based on applicable law and the evidence
8 provided, from April 4, 2021 to September 4, 2021, Appellant's employment was not affected as a
9 direct result of COVID-19. Accordingly, Appellant is not a "covered individual" and PUA and FPUC
10 benefits are not available to him during the relevant disqualification period of April 4, 2021 to
11 September 4, 2021.

12 VI. DECISION

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

- 14 1. The CNMI Department of Labor's Disqualifying Determination, dated March 21, 2022, is
15 **AFFIRMED**; and
- 16 2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of April 4, 2021 to
17 September 4, 2021.

18 If a party is aggrieved by this Order and would like to contest the decision, he or she must submit
19 a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The written
20 request should be supported by legal, factual, or evidentiary reasons to reopen the decision. The
21 written request must be submitted to the Administrative Hearing Office, either in person at Building
22 #1357, Mednilla Avenue, Capitol Hill, Saipan, CNMI or via email at hearing@dol.gov.mp.

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

28 So ordered this **20th** day of September, 2022.

/s/

CATHERINE J. CACHERO
Administrative Hearing Officer



PAGE 049189



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

In Re the Matter of:

Labor Case No. 22-009

Vicenta M. Magofna,

Complainant,

ORDER OF DISMISSAL

v.

Bank of Saipan,

Respondent.

This matter came for an Order to Show Cause Hearing on October 21, 2022 at 9:00 a.m. at the Administrative Hearing Office. The hearing was held online. Complainant Vincenta M. Magofna ("Complainant") was present and self-represented. Respondent Bank of Saipan ("Respondent") was not present but represented by Attorney Matthew Gregory.

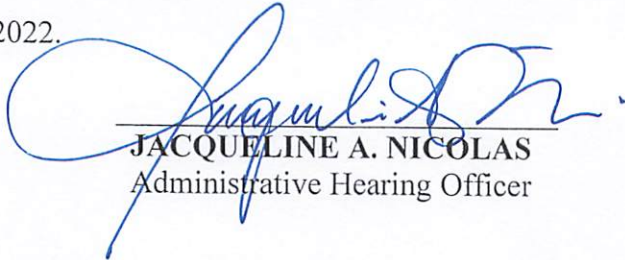
Pursuant to 3 CMC § 4947(a), "the hearing officer may, after notice and an opportunity to be heard is provided to the parties, dismiss *sua sponte* a complaint that the hearing officer finds to be without merit." Pursuant to NMIAC § 80-20.2-130(c), dismissal is warranted on the following grounds: (1)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

Here, Complainant initiated a labor case against Respondent for a pay cut and demotion. On July 15, 2022, Respondent filed a Motion to Dismiss for lack of jurisdiction. The undersigned Hearing Officer issued an Order to Show Cause why the case should not be dismissed for lack of jurisdiction and failure to state a claim. During the Order to Show Cause Hearing, the Complainant did not contest the Respondent's Motion to Dismiss. Further, the Administrative Hearing Officer found there was no showing of a labor or agency violation in the complaint.

Based on a review of the filings and applicable law, the undersigned finds that dismissal is appropriate. Accordingly, pursuant to 3 CMC § 4947, this matter is hereby **DISMISSED**. Any

1 person or party aggrieved by this Order may appeal by filing the Notice of Appeal form and filing
2 fee with the Administrative Hearing Office within fifteen (15) days from the date of this Order.¹

3 So ordered this 21st day of October, 2022.

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5 JACQUELINE A. NICOLAS
6 Administrative Hearing Officer
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28 ¹ 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 the Matter of:) **Consolidated Labor Case Nos. 22-010 to 22-012**
)
Sakil Kazi,)
Musa Miah,)
Abu Taher,)
) **ORDER DISMISSING COMPLAINTS**
Complainants,)
)
v.)
)
Asia Pacific, Inc.,)
)
Respondent.)

This matter came for an Order to Show Cause Hearing on October 18, 2022 at approximately 9:00 a.m. at the Administrative Hearing Office in Saipan. Complainants Sakil Kazi, Musa Miah, and Abu Taher (collectively, “Complainants”) were present and self-represented. Respondent Asia Pacific, Inc. (“Respondent”) was present and represented by authorized representative Mohammad F. Ahmed, and Attorney Michael Dotts. Interpreter Manzurul Alam was also present to facilitate communication.

Pursuant to 3 CMC § 4962, “[n]o labor complaint may be filed more than six months after the date of the last-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** dismiss the complaint with prejudice.” NMIAC § 80-20.1-465(e). Emphasis added. 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.”

On August 8, 2022, Complainants initiated a labor complaint against Respondent for unpaid wages and unlawful reduction in force. The Complaints fail to demonstrate: (1) legal authorization to work in the CNMI for the entire time period alleged; (2) factual basis to support claims for unpaid wages and unlawful reductions in force; and (3) claims arising within the six-month statute of limitations.

1 Based on the filings and evidence presented during the hearing, the undersigned finds that
2 dismissal is appropriate. First, the complainants failed to show legal authorization to work in the
3 CNMI for the entire time period alleged. Without demonstrating legal authorization to work in
4 the CNMI during the relevant time period, jurisdiction is not clearly established.¹ Second, the
5 Complaints fail to explain how Respondent violated the CNMI Minimum Wage Act or Unlawful
6 Reduction in Force law. The bare allegations that work was not provided or money is owed is
7 insufficient to show a violation of the respective law. Third, the complaints do not allege any
8 claims arising within the six-month statute of limitations. In Labor Case 22-010, Complainant
9 Kazi is seeking unpaid wages arising from January 1, 2016 to January 1, 2022. In Labor Case 22-
10 011, Complainant Miah is seeking unpaid wages arising from January 1, 2017 to January 1, 2021.
11 In Labor Case 22-012, Complainant Taher is seeking unpaid wages arising from January 1, 2018
12 to January 1, 2022. Since the complaint was filed on August 8, 2022, Complainants can only
13 recover unpaid wages as far back as February 1, 2022—assuming jurisdiction and sufficient
14 allegations are pled. While Complainants testified to working in June of 2022, this was not
15 included as part of the complaint. For the reasons stated above, Complainants failed to show cause
16 why the Complaints should not be dismissed.

17 Accordingly, pursuant to 3 CMC § 4947(a), this matter is hereby **DISMISSED**. In the
18 event Complainants can overcome the above-stated issues, they may file an amended complaint
19 for claims within the applicable statute of limitations. Further, in light of the allegations of
20 unauthorized employment, the clerk is **ORDERED** to copy and transmit the file to Enforcement.²

21 ¹ “The Administrative Hearing Office does not have jurisdiction with respect to the claims of tourists. Those claims
22 are pursued in the Commonwealth Superior Court.” NMIAC § 80-20.1-450(e). “It is the intent of the legislature that
23 the [Commonwealth Employment Act of 2007] shall not apply to persons admitted to the Commonwealth as tourists,
24 or to persons employed illegally... it is the intent of the Legislature that . . . illegally employed by prohibited from
25 using the terms of this Act to receive or available themselves of a legal right or benefit.” PL 15-108.

26 ² Pursuant to 3 CMC § 4940, the Department’s Enforcement, Compliance, and Monitoring Section has the authority
27 to conduct investigations as the Department may deem appropriate and necessary to ensure compliance with
28 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).

1 Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal
2 form and filing fee with the Administrative Hearing Office within fifteen (15) days from the date
3 of this Order.³

4 So ordered this 19th day of October, 2022.

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6 /s/
7 **JACQUELINE A. NICOLAS**
8 Administrative Hearing Officer
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28 ³ 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. 22-013**
)
Paulina Pascual,)
)
Complainant,) **ORDER OF DISMISSAL**
)
v.)
)
Asia Pacific Hotels, Inc., dba Crowne Plaza)
Resort Saipan,)
)
Respondent.)

On August 10, 2022, Complainant initiated a labor case against Respondent for the alleged violation of the employment preference law and discrimination. Upon review of the filings, a status conference was held to discuss a number of deficiencies in the filings. On October 11, 2022, Respondent, by and through counsel, filed a Motion to Dismiss the above-captioned case for failure to state a claim upon which relief can be granted pursuant to NMIAC § 80-20.130(c)(1)(E). Subsequently, on October 13, 2022, Complainant filed a response to withdraw the complaint.

Upon review, dismissal is appropriate. Pursuant to 3 CMC § 4947(a), “the hearing officer may, after notice and an opportunity to be heard is provided to the parties, dismiss [] 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). Further, “[a] complaint may be dismissed upon its abandonment or settlement by the parties.” NMIAC § 80-20.1-485 (b).

First, Complainant fails to state a claim for a violation of the employment preference requirement. The employment preference law requires CNMI employers to give preferential employment opportunities to U.S. citizens, U.S. permanent residents, and CNMI permanent

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1 residents. 3 CMC §§ 4521 et. seq.;¹ *see also* NMIAC § 80-20.1-220.² The employment
2 preference law does not provide any protections when another US Citizen is offered the job – as
3 is the case in here. Second, Complainant fails to establish subject matter jurisdiction for the
4 discrimination claim. The CNMI Department of Labor Administrative Hearing Office has limited
5 jurisdiction to enforce local labor and wage laws. 3 CMC § 4942³; *see also* NMIAC § 80-20.1-
6 450(b)(1)-(3). This Office does not have jurisdiction with respect to federal equal employment
7 opportunity laws, such as the alleged age and gender discrimination. And third, Complainant does
8 not contest dismissal.

8 Accordingly, for the reasons stated above, this complaint is hereby **DISMISSED**. Any person
9 or party aggrieved by this Order may appeal by submitting the Notice of Appeal form and filing
10 fee with the Administrative Hearing Office within fifteen (15) days from the date of this Order.⁴

11
12 So ordered this 18th day of October, 2022.

13 /s/

14 **JACQUELINE A. NICOLAS**
15 Chief Administrative Hearing Officer
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22 ¹ “A citizen or CNMI permanent resident or U.S. permanent resident who is qualified for a job may make a claim for
23 damages if an employer has not met the requirements of 3 CMC § 4525, the employer rejects an application for the
24 job without just cause, and the employer employs a person who is not a citizen or CNMI permanent resident or U.S.
25 permanent resident for the job.” 3 CMC § 4528(a). “

26 ² “Employers shall give qualified citizens, CNMI permanent residents, and U.S. permanent residents preference over
27 foreign national worker, transitional worker, or other nonimmigration aliens.”

28 ³ “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 limited to any violation of this chapter
and regulations promulgated thereunder.” 3 CMC § 4942. “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).

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.



In Re the Matter of:

Labor Case No. 22-002 (T)

Glendale O. Hofschneider,

Complainant,

ORDER OF DISMISSAL

V.

Four Seasons Intl. Corp. dba Queen's
Restaurant,

Respondent.

Pursuant to NMIAC § 80-20.1-485 (b), “[a] complaint may be dismissed upon its abandonment or settlement by the parties.” On October 11, 2022, Complainant filed a written request to voluntarily dismiss her complaint. Respondent did not contest or object to dismissal.

Accordingly, pursuant to NMIAC § 80-20.1-485(b), this matter is hereby **DISMISSED**. Further, Enforcement's deadline to submit a written determination is hereby **VACATED**. 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.¹

So ordered this 17th day of October, 2022.

/s/

JACQUELINE A. NICOLAS

Chief Administrative Hearing Officer

¹ 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:) Enforcement Investigation No. 22-011-07
) Compliance Agency Case No. 22-012
Department of Labor, Enforcement and)
Compliance,)
)
Complainant,) ORDER AND JUDGMENT
v.)
)
Success International Corporation,)
)
Respondent.)

I. INTRODUCTION

This matter came for an Administrative Hearing on September 22, 2022 at 9:00 a.m. at the Administrative Hearing Office. Complainant CNMI Department of Labor, Enforcement, Monitoring, and Compliance Section (“Enforcement”) was present and represented by Labor Law Enforcement Specialist III Norman Rasiang. Respondent Success International Corporation (“Respondent”) was presented and represented by Company President Guojun Miao, Accountant Jarelyn Villacanas, and Attorney Cong Nie.

II. BACKGROUND

Based on their investigation in *Luzhou Zhao v. Success International Corporation*, Labor Case 22-003, Enforcement initiated the above-captioned compliance agency case. In this case, Enforcement filed an Amended Determination and Notice of Violation on September 8, 2022.¹ Therein, Enforcement alleged the following claims:

1. Unauthorized employment in violation of 3 CMC § 4963;
2. Failure to post a Job Vacancy Announcement in violation of 3 CMC § 4522;
3. A violation of the Employment Preference requirement under 3 CMC § 4521; and
4. A wage and hour violation under 4 CMC § 9222.

¹ Enforcement’s Amended Determination and Exhibits are hereby incorporated into this Order and Judgment.

1 In support of Enforcement's Amended Determination, Enforcement included 14 supporting
2 documents or proposed exhibits. On September 14, 2022, Respondent's counsel filed a Notice of
3 Not Contesting Violations Stated in the Amended Determination, Notice of Violation.² During
4 the Administrative Hearing, Respondent confirmed that they do not contest the allegations.
5 Further, both parties were amenable to a sanction of \$2,000 per violation, for a total of \$8,000.³

6 III. JUDGMENT

7 Accordingly, **JUDGMENT** is hereby entered against Respondent.

- 8 1. Respondent violated 3 CMC § 4963 and is sanctioned \$2,000.
- 9 2. Respondent violated 3 CMC § 4522 and is sanctioned \$2,000.
- 10 3. Respondent violated 3 CMC § 4521 and is sanctioned \$2,000.
- 11 4. Respondent violated 4 CMC § 9222 and is sanctioned \$2,000.

12 Respondent is **ORDERED** to pay the entire sanction of \$8,000 in two installments:

- 13 1. The amount of \$4,000 is due on or before September 30, 2022, close of business; and
- 14 2. The amount of \$4,000 is due on or before October 14, 2022, close of business.

15 Enforcement may request to reopen this case and seek additional sanctions in the event
16 Respondent fails to timely pay or cure the above-mentioned violations. Any person or party
17 aggrieved by this Order may appeal by filing the Notice of Appeal form and filing fee with the
18 Administrative Hearing Office within fifteen (15) days from the date of this Order.

19 So ordered this **22nd** day of September, 2022.

20 /s/

21 **JACQUELINE A. NICOLAS**
22 Administrative Hearing Officer

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28 ² Respondent's Notice is hereby incorporated into this Order and Judgment.

³ Enforcement did not pursue continuing violations for each allegation and Respondent did not object to \$8,000.



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

In Re the Matter of:

) Compliance Agency Case No. 22-011

)
) Department of Labor, Enforcement and
) Compliance Section,

)
) Complainant,

) ORDER OF DISMISSAL

)
) v.

)
) Pacific Rainbow, CNMI, Inc.,

)
) Respondent.

On September 20, 2022, the Department filed a request to dismiss the above-captioned agency case due to Respondent's compliance with the Notice of Warning. There are no further compliance issues or violations. Based on above, the undersigned finds dismissal appropriate. Accordingly, the above-captioned case is hereby **DISMISSED**.

So ordered this **21st** day of September, 2022.

/s/

JACQUELINE A. NICOLAS

Administrative Hearing Officer



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

In Re Matter of:) **DUA Case No. 22-005**
)
)
Arlene Muna,)
)
)
Appellant,) **ORDER OF DISMISSAL**
)
)
v.)
)
)
CNMI Department of Labor,)
Division of Employment Services-DUA,)
)
Appellee.)

This matter came before the undersigned for an Administrative Hearing on September 23, 2022 at 9:00 a.m. at the Administrative Hearing Office. Appellant Arlene Muna ("Appellant") was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Disaster Unemployment Assistance program ("Appellee" or "Department") was present and represented by Labor Certification Worker Dennis Cabrera.

Upon further investigation and review of additional information provided by Appellant, the Department issued a determination denying Appellant benefits. The determination was issued on August 25, 2022 and explained that based on the total reduced wages and other sources of income, Appellant was earning in excess of the weekly benefit amount and not monetarily eligible. During the hearing, Appellant confirmed her understanding and stated she no longer wishes to pursue this appeal. The Department confirmed that there are no objections to dismissal.

Based on above, the undersigned finds dismissal appropriate. Accordingly, this appeal is hereby **DISMISSED**.

So ordered this **23rd** day of September, 2022.

/s/

JACQUELINE A. NICOLAS
Administrative Hearing Officer

Second Level Appeal Rights

This decision becomes final unless you file a request for review by the Regional Employment and Training Administrator, U.S. Department of Labor, within fifteen (15) days after the date of this order, shown above. The request for review can be filed directly with the Regional Administrator by mailing the request to: ETA Regional Administrator, U.S. Department of Labor; 90 7th Street, Ste. 17-300; San Francisco, CA 94103, or through the CNMI Department of Labor, Administrative Hearing Office at 1357 Mednilla Ave, Capitol Hill, Saipan, 96950 for transmittal to the Regional Administrator. The timely request can also be emailed to the Regional Administrator at RO6-RA-SF@dol.gov. *The request for review should include the Appellant's name, claimant ID/or case docket number, and a copy of this decision.*

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



In Re Matter of:) **DUA Case No. 22-007**
)
Teresita P. Pangelinan,)
)
Appellant,) **ADMINISTRATIVE ORDER**
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-DUA,)
)
Appellee.)

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on September 7, 2022 and October 4, 2022 at 9:00 a.m. at the Administrative Hearing Office. Appellant Teresita P. Pangelinan (“Appellant”) was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Disaster Unemployment Assistance program (“Appellee” or “Department”) was present and represented by Labor Certification Worker Dennis Cabrera, Labor Certification Technician Labian Muna, and Labor Certification Technician Vivian Fleming.

For the reasons stated below, the Department’s Determination dated June 26, 2019 is **AFFIRMED**. Appellant is not eligible for benefits for the period of December 22, 2018 to April 27, 2019.

II. JURISDICTION

The Disaster Unemployment Assistance program (DUA) was established under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (42 U.S.C. 5121), as amended. By Executive Order No. 12673, the Federal Emergency Management Agency (FEMA) was delegated the responsibility of administering the Stafford Act and FEMA further delegated the US Department of Labor in administering the DUA program and payment of DUA benefit

1 assistance, in conjunction with the applicable state agencies. Effective April 6, 2022¹ and in
2 accordance with 20 CFR 625.30(a), the CNMI Department of Labor, Administrative Hearing
3 Office was designated to hear Disaster Unemployment Appeals stemming from Super Typhoon
4 Yutu (DR-4404-MP).

5 Upon review of the records, the appeal is timely filed. Accordingly, jurisdiction is established.

6 **III. PROCEDURAL BACKGROUND & ISSUES**

7 On October 24, 2018, Super Typhoon Yutu devastated the islands of Tinian and Saipan. On
8 October 26, 2018, the US President issued a major disaster declaration and made federal funding
9 available to affected individuals. Said relief included disaster unemployment benefits to eligible
10 claimants. Appellant filed a claim for unemployment benefits under the DUA program for the
11 above-mentioned disaster (DR-4404-MP). Appellant's claim was ultimately denied by the CNMI
12 Department of Labor and Appellant sought to appeal the Department's denial.

13 On May 9, 2022, the Administrative Hearing Office issued a Notice of Hearing. The ultimate
14 issue on appeal is whether Appellant is eligible for DUA benefits. This issue of eligibility is
15 dependent on the following three sub-issues: (1) Whether the application and appeal were timely
16 filed; (2) whether Appellant is a U.S. Citizen, Non-Citizen National; or Qualified Alien; and (3)
17 Whether Appellant's unemployment was a direct result of Super Typhoon Yutu. The focus on
18 the analysis rests with sub-issue 3.

19 During the scheduled hearings, the undersigned heard arguments and received testimony and
20 exhibits from both sides. The following exhibits were admitted into evidence:

- 21 1. Exhibit 1: Copy of USDOL Letter, dated October 31, 2018;
- 22 2. Exhibit 2: Copy of USDOL Extension, dated December 13, 2018;
- 23 3. Exhibit 3: Copy of USDOL Extension, dated January 23, 2019;
- 24 4. Exhibit 4: Copy of Department Press Releases and News Articles;
 - 25 a. DUA Press Release, dated November 16, 2018;
 - 26 b. Saipan Tribune Article, dated November 16, 2018;
 - 27 c. Saipan Tribune Article, dated December 10, 2018;
- 28 5. Exhibit 5: Copy of DUA Benefit Rights and Responsibilities Handbook;

¹ Originally, the Hawaii Employment Security Appeals Referee's Office (ESARO) was the designated entity to decide appeal cases for this disaster. Due to the ESARO's extensive backlog, the CNMI Department of Labor's Administrative Hearing Office was designated to hear first level appeals on April 6, 2022.

6. Exhibit 6: Copy of the Appellant's Employment Certification Letter, dated November 21, 2018;
7. Exhibit 7: Copy of Appellant's Weekly Certifications;
8. Exhibit 8: Copy of Department's DUA System Printout
9. Exhibit 9: Copy of Appellant's Permanent Resident Card, valid January 6, 2013 to January 6, 2024;
10. Exhibit 10: Copy of Department's SAVE Results;
11. Exhibit 11: Copy of Appellant's Workman's Compensation Claim Documents;
12. Exhibit 12: Copy of Request for Separation Information Form, received April 21, 2019;
13. Exhibit 13: Copy of Physician Letter, dated June 21, 2019
14. Exhibit 14: Copy of Department's Disqualifying Determination, dated June 26, 2019;
15. Exhibit 15: Copy of Appellant's Appeal Letter, dated July 18, 2019;
16. Exhibit 16: Copy of Notice of Hearing, issued May 9, 2022; and
17. Exhibit 17: Copy of Order, issued September 12, 2022.

IV. FINDINGS OF FACT

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

1. On October 24, 2018, Super Typhoon Yutu struck the CNMI.
2. On October 26, 2018, President Trump authorized federal disaster aid to help individuals in the CNMI recover from the onslaught of Super Typhoon Yutu. The assistance was authorized under major disaster declaration number 4404-DR. Among other things, the declaration authorized federal aid for the Disaster Unemployment Assistance (DUA) program to assist individuals who became unemployed as a direct result of the major disaster.²
3. The CNMI Department of Labor is the state agency responsible for administering the DUA program in the CNMI.
 - a. The Department announced the program and began to accept applications on November 16, 2018.

² Exhibit 1.

- 1 b. The Department issued a number of press releases³ and published a Benefit Rights
2 and Responsibilities Handbook⁴ to inform potential claimants.
- 3 4. With respect to this disaster, DUA benefits in the amount of \$336 per week were available
4 for eligible claimants starting with week beginning date of October 28, 2018 and can be
5 paid up to week ending date of April 27, 2019 (“Disaster Assistance Period”).⁵
- 6 5. Originally, the filing deadline for DUA applications was December 16, 2018.⁶ Due to
7 ongoing hardships, the filing deadline was then extended to January 15, 2019.⁷ Once
8 again, the filing deadline was extended to February 14, 2019.⁸
- 9 6. Appellant resided and worked in the CNMI at the time of the disaster.⁹
- 10 a. Appellant began working as a housing attendant for Imperial Pacific International
11 (“Employer”) since April 26, 2016. Appellant was a full-time employee and paid
12 an annual rate of \$15,080.00.
- 13 b. Appellant was stationed at the Vestcor Apartments. Appellant was responsible for
14 cleaning both the rooms, doing laundry, and maintaining or cleaning the outdoor
15 public areas.
- 16 c. After Super Typhoon Yutu, Appellant continued to work full time for Employer
17 until she was injured. Specifically, Appellant did not experience any change in her
18 hours or pay because of the typhoon.
- 19 7. Over one month after the typhoon, on December 11, 2018, Appellant was in a workplace
20 accident. Specifically, Appellant was sweeping leaves and dirt in an outdoor public area
21 when she lost her balance, fell backwards, and landed on cement.
- 22 a. To be clear, this incident did not arise due to additional responsibilities or a change
23 in responsibilities imposed after the typhoon. Appellant’s regular job duties
24 included sweeping that outdoor public area. Appellant regularly swept that area
25 before and after the typhoon.

³ Exhibit 4

⁴ Exhibit 5.

⁵ Exhibits 1 and 5.

⁶ “An initial application for DUA shall be filed by an individual with the State agency of the applicable State within 30 days after the announcement date of the major disaster as the result of which the individual became unemployed . . .” 20 CFR § 625.8

⁷ Exhibit 2.

⁸ Exhibit 3.

⁹ Exhibit 8.

1 b. Additionally, the public area was unchanged by the typhoon. Specifically, there
2 was always leaves and dirt to sweep in that area. There were no new fixtures. There
3 was no typhoon damage or debris.

4 c. The area, however, was wet and slippery because of rain, unrelated to the typhoon.

5 8. Immediately after the accident, Appellant was taken to the hospital.

6 9. Due to the accident, Appellant sustained a hip fracture and underwent surgery on
7 December 18, 2018.¹⁰

8 a. When released from the hospital, Appellant had to go to physical therapy and
9 reported improved mobility—despite substantial pain.

10 b. Appellant was unable to carry heavy objects or exert much force. Additionally,
11 Appellant could not sit, stand or walk for long periods without experiencing
12 significant pain.

13 c. Nonetheless, Appellant was cleared to return to work approximately two weeks
14 after her first surgery.¹¹

15 10. After the accident, Appellant filed a claim for workman's compensation¹² and received
16 payments for missed work weeks until January 24, 2019. Appellant was compensated
17 \$140 per week.

18 11. On or around January of 2019, Employer recalled Appellant back to work. Appellant told
19 Employer that she was in too much pain and was not ready to return to work. Appellant
20 did not return to work.

21 12. On or around April 2, 2019, Employer terminated Appellant because she was unable to
22 work.

23 13. Appellant filed an employment discrimination claim with the Equal Opportunity
24 Commission. In resolving the dispute, Employer stated they would rehire Appellant when
25 she was ready to return to work.

26 ¹⁰ Exhibit 13.

27 ¹¹ Appellant provided contradictory testimony regarding the events after this operation. Further, Appellant had poor
28 recall of the events and was unable to relay all the necessary information. This finding was based on numerous
clarifications made during the second hearing.

¹² Exhibit 11.

1 14. On or around April 22, 2019, Appellant began filing claims for unemployment benefits
2 under the DUA program. The applications were incomplete and did not provide sufficient
3 information.¹³

4 a. Under each weekly certification, Appellant states that she was not able and
5 available to work during the claimed weeks but fails to further explain.

6 b. Appellant's weekly certification fails to demonstrate how her employment was
7 directly affected by Super Typhoon Yutu.

8 15. Appellant reports looking for other work but did not receive any job offers. At or around
9 this time, Appellant reports that she was still in significant pain and basic activities like
10 walking was difficult.

11 16. Upon the Department's request¹⁴ for additional information about Appellant's separation
12 from Employer, Employer reported that she was on medical leave due to a work-related
13 injury since December 11, 2018.

14 17. Based on the information provided, the Department denied Appellant's claim. On June
15 26, 2019, the Department issued a Determination, for weeks ending December 22, 2018
16 to April 27, 2019. There, the Department explained that Appellant was not eligible for
17 DUA because she was "not available for work due to [an] injury not related to the
18 disaster."¹⁵

19 18. On July 18, 2019, Appellant filed an appeal¹⁶ by submitting a letter to the Department. In
20 her appeal, Appellant reiterates that she was in a workplace accident and sustained an
21 injury that limited her ability to work. Appellant's appeal does not address the eligibility
22 requirements or contest her ability or availability to work during the claimed weeks.

23 19. Appellant's recovery has been ongoing.

24 a. Appellant had a second operation on or around November of 2021 to address
25 associated pain in her legs and help her walk better.

26 b. Appellant had a third operation on or around June or July of 2022 to address
27 associated back pain.

28 ¹³ Exhibits 6-7.

¹⁴ Exhibit 12.

¹⁵ Exhibit 14.

¹⁶ Exhibit 15.

1 20. Appellant did not feel able to return to the work she did until after the third surgery.

2 21. During the hearing, the Department conceded to the issue of timeliness and citizenship.

- 3 a. Appellant filed her unemployment claims within the disaster assistance period.¹⁷
- 4 b. Appellant filed her appeal within 60 days of the Department's Determination
- 5 letter.¹⁸
- 6 c. At all times relevant to this claim, Appellant was a U.S. permanent resident with
- 7 authorization to work in the CNMI.¹⁹

8 V. CONCLUSIONS OF LAW

9 Under the DUA program, federal assistance is made available to eligible claimants from a

10 specific geographic area that is adversely affected by a declared disaster. Pursuant to 20 CFR

11 625.4, an individual is eligible to receive a payment of DUA with respect to a week of

12 unemployment if:

- 13 (a) That week begins during a Disaster Assistance Period;
- 14 (b) The applicable State for the individual has entered into an
- 15 Agreement which is in effect with respect to that week;
- 16 (c) The individual is an unemployed worker or an unemployed self-
- 17 employed individual;
- 18 (d) The individual's unemployment with respect to that week is
- 19 caused by a major disaster...
- 20 (e) The individual has filed a timely initial application for DUA and,
- 21 as appropriate, a timely application for a payment of DUA with
- 22 respect to that week;
- 23 (f) That week is a week of unemployment for the individual;
- 24 (g) The individual is able to work and available for work within the
- 25 meaning of the applicable State law...
- 26 (h) The individual has not refused a bona fide offer of employment
- 27 in a suitable position, or refused without good cause to resume or
- 28 commence suitable self-employment ...

¹⁷ Exhibits 6-7.

¹⁸ Exhibit 15.

¹⁹ Exhibits 9-10.

- (i) The individual is not eligible for compensation ... or for waiting period credit for such week under any other Federal or State law ...

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

1. Appellant was not unemployed as a direct result of the disaster.

As stated above, an individual's unemployment must have been caused by the major disaster. Pursuant to 20 CFR 625.5, an individual's unemployment is caused by a major disaster if: (1) the unemployment was a direct result of the major disaster; (2) the individual is unable to reach the place of employment as a direct result of the major disaster; (3) the individual was to commence employment and does not have a job or unable to reach the job as a direct result of the major disaster; (4) the individual has become the breadwinner or major support for a household because the head of household died as a direct result of the major disaster or; (5) the individual cannot work because of an injury caused as a direct result of the major disaster.²⁰ For purposes of above, "direct result" of a major disaster is where the unemployment is an immediate result of the major disaster itself, and not the result of a longer chain of events precipitated or exacerbated by the disaster.²¹ This "direct result" is evident when the unemployment resulted from: (1) the physical damage or destruction of the place of employment; (2) the place of employment was physically inaccessible because it was closed by the federal, state, or local government in immediate response to the disaster.²²

Appellant does not satisfy this requirement. Here, Appellant testified that her work and pay were not affected by the disaster. Instead, Appellant was not unemployed or terminated until approximately 6 months after the disaster.

Further, this termination resulted after a workplace injury that was unrelated to the disaster. The Appellant unsuccessfully argues that, but for the typhoon, she would not have gotten hurt. The undersigned hearing officer disagrees. First, the timing of the disaster and incident are too far apart to determine a "direct result" under the rules above. Second, considering Appellant's testimony that sweeping outside was part of her regular job duties, she swept in that area before

²⁰ 20 CFR 625.5(a).

²¹ 20 CFR 625.5 (c).

²² *Id.*

1 and after the disaster, and the area was wet and slippery for reasons unrelated to the typhoon,
2 nothing from the circumstances can demonstrate a causal link. Considering above, Appellant fails
3 to show that her unemployment was the direct result of the disaster.

4 **2. Appellant was not able or available to work.**

5 “An individual shall be deemed able and available for work . . . if the individual
6 is able and available for suitable work during the customary work week of the individual's
7 customary occupation which falls within the week for which a claim is filed.”²³ “An individual
8 shall be deemed *able* to work if the individual has the physical and mental ability to perform the
9 usual duties of the individual's customary occupation or other work for which is the individual is
10 reasonably fitted by training and experience.”²⁴ “An individual shall be deemed *available* for
11 work only if the individual is ready and willing to accept employment for which the individual is
12 reasonably fitted by training and experience. The individual must intend and wish to work, and
13 there must be no undue restrictions either self-imposed or created by force of circumstances which
14 prevent the individual from accepting employment.”²⁵ If a claimant is not physically able or
15 available for work, he or she may be disqualified for DUA, unless the reason he or she is unable
16 or unavailable is directly related to the disaster.

17 Appellant also fails to satisfy this requirement. During the administrative hearing, Appellant
18 argued that she attempted to look for work but no one would hire her. Appellant's argument is
19 unpersuasive considering that Employer agreed to rehire her for a job she was able to perform,
20 when she was willing to return. However, Appellant did not follow up on this referral or job offer
21 because she was in substantial pain and unable to exert much physical activity. Specifically,
22 Appellant was medically restricted from carrying heavy objects, unable to sit or stand for long
23 periods, and experienced significant pain when walking. Based on these restrictions, Appellant
24 was unable to perform that same or substantially similar work. This pain was so severe that
25 Appellant required assistance performing daily tasks, physical therapy, and additional operations.
26 Based on her testimony, Appellant did not feel ready to return to work until her third surgery in
27 2022. Accordingly, Appellant was not able and available to work.

28 ///

²³ HAR § 12-5-35(a)

²⁴ HAR § 12-5-35(a)(1) (emphasis added).

²⁵ HAR § 12-5-35(a)(2) and (b) (emphasis added).

VI. DECISION

As discussed above, Appellant's unemployment was not a direct cause of the disaster and Appellant was not able and available to work. Accordingly, Appellant fails to satisfy all the necessary eligibility requirements to receive DUA benefits. For the reasons stated above, it is ORDERED that:

1. The CNMI Department of Labor's Disqualifying Determination, dated June 26, 2019, is **AFFIRMED**;
2. The Appellant is **NOT ELIGIBLE** to receive DUA benefits for the period of December 22, 2018 to April 27, 2019.

So ordered this 6th day of October, 2022.

/s/

JACQUELINE A. NICOLAS
Chief Administrative Hearing Officer

Second Level Appeal Rights

This decision becomes final unless you file a request for review by the Regional Employment and Training Administrator, U.S. Department of Labor, within fifteen (15) days after the date of this order, shown above. The request for review can be filed directly with the Regional Administrator by mailing the request to: ETA Regional Administrator, U.S. Department of Labor; 90 7th Street, Ste. 17-300; San Francisco, CA 94103, or through the CNMI Department of Labor, Administrative Hearing Office at 1357 Mednilla Ave, Capitol Hill, Saipan, 96950 for transmittal to the Regional Administrator. The timely request can also be emailed to the Regional Administrator at RO6-RA-SF@dol.gov. *The request for review should include the Appellant's name, claimant ID/or case docket number, and a copy of this decision.*



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



In Re Matter of:) **DUA Case No. 22-009**
)
Amalia A. Guanlao,)
)
Appellant,) **ADMINISTRATIVE ORDER**
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-DUA,)
)
Appellee.)

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on September 21, 2022 at 9:00 a.m. at the Administrative Hearing Office. Appellant Amalia A. Guanlao (“Appellant”) was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Disaster Unemployment Assistance program (“Appellee” or “Department”) was present and represented by Labor Certification Worker Dennis Cabrera.

For the reasons stated below, the Department’s Re-Determination dated August 23, 2019 is **AFFIRMED**. Appellant is not eligible for benefits for the entire Disaster Assistance Period.

II. JURISDICTION

The Disaster Unemployment Assistance program (DUA) was established under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (42 U.S.C. 5121), as amended. By Executive Order No. 12673, the Federal Emergency Management Agency (FEMA) was delegated the responsibility of administering the Stafford Act and FEMA further delegated the US Department of Labor in administering the DUA program and payment of DUA benefit assistance, in conjunction with the applicable state agencies. Effective April 6, 2022¹ and in accordance with 20 CFR 625.30(a), the CNMI Department of Labor, Administrative Hearing

¹ Originally, the Hawaii Employment Security Appeals Referee’s Office (ESARO) was the designated entity to decide appeal cases for this disaster. Due to the ESARO’s extensive backlog, the CNMI Department of Labor’s Administrative Hearing Office was redesignated to hear first level appeals on April 6, 2022.

Office was designated to hear Disaster Unemployment Appeals stemming from Super Typhoon Yutu (DR-4404-MP).

Upon review of the records, the appeal is timely filed. Accordingly, jurisdiction is established.

III. PROCEDURAL BACKGROUND & ISSUES

On October 24, 2018, Super Typhoon Yutu devastated the islands of the CNMI. On October 26, 2018, the US President issued a major disaster declaration and made federal funding available to affected individuals. Said relief included disaster unemployment benefits to eligible claimants.

Here, Appellant filed a claim for unemployment benefits under the DUA program for the above-mentioned disaster (DR-4404-MP). Appellant's claim was ultimately denied by the CNMI Department of Labor and Appellant sought to appeal the Department's denial.

Upon redesignation, on May 9, 2022, the Administrative Hearing Office issued a Notice of Hearing. The issue on appeal is whether Appellant is eligible for DUA benefits. The issue of eligibility was further broken down into the following three sub-issues: (1) Whether the application and appeal were timely filed; (2) whether Appellant is a U.S. Citizen, Non-Citizen National; or Qualified Alien; and (3) Whether Appellant's unemployment was a direct result of Super Typhoon Yutu.

During the scheduled hearing, the undersigned heard arguments and received testimony and exhibits from both sides. The following exhibits were admitted into evidence:

1. Exhibit 1: Copy of USDOL Letter, dated October 31, 2018;
2. Exhibit 2: Copy of USDOL Extension, dated December 13, 2018;
3. Exhibit 3: Copy of USDOL Extension, dated January 23, 2019;
4. Exhibit 4: Copy of Department Press Releases and News Articles;
 - a. Saipan Tribune Article, dated November 16, 2018;
 - b. Saipan Tribune Article, dated December 10, 2018;
5. Exhibit 5: Copy of DUA Benefit Rights and Responsibilities Handbook;
6. Exhibit 6: Copy of Appellant's Initial Application, filed December 14, 2018;
7. Exhibit 7: Copy of the Appellant's Identification
 - a. Saipan Drivers License
 - b. Philippine Passport
8. Exhibit 8: Copy of Appellant's EAD Cards

- a. EAD Card, Category C18, Valid from December 23, 2016- December 22, 2017;
 - b. EAD Card, Category C18, Valid from February 13, 2018 to February 12, 2019;
 - c. EAD Card, Category C18, Valid from July 26, 2019 to July 25, 2020;
 - d. EAD Card, Category C18, Valid from September 21, 2020 to September 20, 2021; and
 - e. EAD Card, Category C18, Valid from February 7, 2022 to February 6, 2023.
9. Exhibit 9: Copy of Appellant's Employment Verification Documents
- a. Certificate of Employment from Amalgamated Systems, LLC;
 - b. Certificate of Employment from Pacific Eco Laundry, Inc.; and
 - c. Paystubs from Pacific Eco Laundry, Inc.
10. Exhibit 10: Copy of Department's Disqualifying Determination, dated February 21, 2019;
11. Exhibit 11: Copy of Department's Email Communication;
12. Exhibit 12: Copy of Department's SAVE Results;
13. Exhibit 13: Copy of Department's Disqualifying Re-Determination, dated August 23, 2019;
14. Exhibit 14: Copy of Appellant's Appeal Letter, filed September 17, 2019; and
15. Exhibit 15: Copy of Notice of Hearing, issued May 9, 2022.

IV. FINDINGS OF FACT

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

1. On October 24, 2018, Super Typhoon Yutu struck the CNMI.
2. On October 26, 2018, President Trump authorized federal disaster aid to help individuals in the CNMI recover from the onslaught of Super Typhoon Yutu. The assistance was authorized under major disaster declaration number 4404-DR.
3. Among other things, the declaration authorized federal aid for the Disaster Unemployment Assistance (DUA) program to assist individuals who became unemployed as a direct result of the major disaster.²
4. The CNMI Department of Labor is the state agency responsible for administering the DUA program in the CNMI.

² Exhibit 1.

- 1 a. The Department announced the program and began to accept applications on
2 November 16, 2018.³
- 3 b. The Department issued a number of press releases⁴ and published a Benefit Rights
4 and Responsibilities Handbook⁵ to inform potential claimants.
- 5 5. With respect to this disaster, DUA benefits in the amount of \$336 per week were
6 available for eligible claimants starting with week beginning date of October 28, 2018
7 and can be paid up to week ending date of April 27, 2019 (“Disaster Assistance Period”).⁶
- 8 6. Originally, the filing deadline for DUA applications was December 16, 2018.⁷ Due to
9 ongoing hardships, the filing deadline was then extended to January 15, 2019.⁸ Once
10 again, the filing deadline was extended to February 14, 2019.⁹
- 11 7. Appellant resided¹⁰ and worked in the CNMI at the time of the disaster.
 - 12 a. First, Appellant was working at Pacific Eco Laundry. Appellant resigned from
13 Pacific Eco Laundry to begin as an Accountant at Amalgamated Systems, LLC
14 (“Employer”).¹¹
 - 15 b. Appellant’s position was full time and paid \$7.50 per hour.
- 16 8. When Super Typhoon Yutu struck the CNMI, Appellant’s place of employment was
17 totally destroyed and closed due to lack of power and water. Considering the devastation
18 of the business, Appellant was without work.¹²
- 19 9. On or around December 14, 2018, Appellant began filing claims¹³ for unemployment
20 benefits under the DUA program.
 - 21 a. Appellant claimed unemployment benefits for week beginning October 28, 2018
22 to week ending December 8, 2018.

³ Exhibit 4.

⁴ *Id.*

⁵ Exhibit 5.

⁶ Exhibits 1 and 5.

⁷ “An initial application for DUA shall be filed by an individual with the State agency of the applicable State within 30 days after the announcement date of the major disaster as the result of which the individual became unemployed” 20 CFR § 625.8

⁸ Exhibit 2.

⁹ Exhibit 3.

¹⁰ See Exhibit 7 (Driver’s License)

¹¹ Exhibit 9.

¹² *Id.*

¹³ Exhibit 6.

b. Appellant certified she was laid off due to Super Typhoon Yutu.

c. Appellant further certified that she was not a U.S. Citizen and did not have immigration status.

d. Appellant did not file any weekly certifications.

10. Appellant's application included supporting documents regarding identification,¹⁴ employment authorization,¹⁵ and employment verification.¹⁶

11. Based on the information provided, the Department issued a disqualifying determination¹⁷ on February 21, 2019. There, the Department denied Appellant's claim after finding she was not a U.S. Citizen, Non-Citizen National or Qualified Alien.

12. Subsequently, the Department initiated a second investigation¹⁸ and requested additional documents for consideration. Appellant did not provide additional documents to demonstrate satisfactory immigration status during the claimed weeks.

13. On September 9, 2019, the Department issued a re-determination,¹⁹ disqualifying Appellant for the same reason, as stated above.

14. On August 23, 2019, Appellant filed an appeal by submitting a letter²⁰ to the Department. In her appeal, Appellant reiterates that she has lived and worked in Saipan for many years. Appellant did not provide additional information to demonstrate that she was a U.S. Citizen, Non-Citizen National, or Qualified Alien.

15. The appeal was transmitted to the Hawaii Employment Security Appeals Referee's Office (ESARO), who was originally designated to decide appeal cases for this disaster. Due to the ESARO's extensive backlog, the CNMI Department of Labor's Administrative Hearing Office was redesignated to hear first level appeals on April 6, 2022.

16. On May 9, 2022, the Administrative Hearing Office issued a Notice of Hearing²¹ informing the parties of the scheduled hearing and issues on appeal.

¹⁴ Exhibit 7.

¹⁵ Exhibit 8.

¹⁶ Exhibit 9.

¹⁷ Exhibit 10.

¹⁸ See Exhibit 11-12.

¹⁹ Exhibit 13.

²⁰ Exhibit 14.

²¹ Exhibit 15.

17. The Administrative Hearing was held on September 21, 2022, as scheduled.

18. During the hearing, the Department conceded to the issue of timeliness and unemployment. Specifically, the Department does not contest that:

- a. Appellant filed her unemployment claims within the disaster assistance period.
- b. Appellant filed her appeal within 60 days of the Department's Re-determination letter.
- c. Appellant's unemployment was a direct result of Super Typhoon Yutu.

V. CONCLUSIONS OF LAW

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

1. Appellant was not a U.S. Citizen, Non-Citizen National, or Qualified Alien during the claimed weeks.

Under the DUA program, federal assistance is made available to eligible claimants from a specific geographic area that is adversely affected by a declared disaster. In addition to meeting all of the eligibility requirements set forth under 20 CFR part 625,²² an individual must have satisfactory immigration status.

Under the Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA"), federal public benefits – such as DUA – can only be provided to United States citizens, non-citizen nationals, and qualified aliens. A qualified alien²³ is defined as legal permanent residents, refugees, aliens paroled into the U.S. for at least one year, aliens granted asylum or related relief,

²² Pursuant to 20 CFR 625.4, an individual is eligible to receive a payment of DUA with respect to a week of unemployment if:

- (a) That week begins during a Disaster Assistance Period;
- (b) The applicable State for the individual has entered into an Agreement which is in effect with respect to that week;
- (c) The individual is an unemployed worker or an unemployed self-employed individual;
- (d) The individual's unemployment with respect to that week is caused by a major disaster...
- (e) The individual has filed a timely initial application for DUA and, as appropriate, a timely application for a payment of DUA with respect to that week;
- (f) That week is a week of unemployment for the individual;
- (g) The individual is able to work and available for work within the meaning of the applicable State law...
- (h) The individual has not refused a bona fide offer of employment in a suitable position, or refused without good cause to resume or commence suitable self-employment ...
- (i) The individual is not eligible for compensation ... or for waiting period credit for such week under any other Federal or State law ...

²³ Public Law 104-193

1 Cuban-Haitian entrants, certain battered spouses and children, certain victims of abuse and
2 extreme cruelty, and certain victims of trafficking. Qualified aliens must also have an
3 employment authorization document (EAD). Individuals holding only an EAD do not qualify
4 for DUA benefits.

5 Here, Appellant is a Philippine National with employment authorization to work in the CNMI
6 under Category C18. Employment authorization under Category C18 is granted to individuals
7 who are pending deportation or under an order of supervision. Category C18 is not linked to any
8 qualified alien provision. Further, Appellant testified that she does not satisfy any of the qualified
9 alien provisions, never applied for said immigration statuses, and has no evidence to show said
10 immigration statuses. Accordingly, based on the information and investigation, Appellant is not
11 a U.S. Citizen, Non-Citizen National or Qualified Alien.

12 VI. DECISION

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

- 14 1. The CNMI Department of Labor's Disqualifying Re-Determination, dated August 23,
15 2019 is **AFFIRMED**;
- 16 2. The Appellant is **NOT ELIGIBLE** to receive DUA benefits for the entire disaster
17 assistance period.

18 So ordered this **22nd** day of September, 2022.

19 /s/

20 **JACQUELINE A. NICOLAS**
21 Administrative Hearing Officer
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Second Level Appeal Rights

This decision becomes final unless you file a request for review by the Regional Employment and Training Administrator, U.S. Department of Labor, within fifteen (15) days after the date of this order, shown above. The request for review can be filed directly with the Regional Administrator by mailing the request to: ETA Regional Administrator, U.S. Department of Labor; 90 7th Street, Ste. 17-300; San Francisco, CA 94103, or through the CNMI Department of Labor, Administrative Hearing Office at 1357 Mednilla Ave, Capitol Hill, Saipan, 96950 for transmittal to the Regional Administrator. The timely request can also be emailed to the Regional Administrator at RO6-RA-SF@dol.gov. *The request for review should include the Appellant's name, claimant ID/or case docket number, and a copy of this decision.*



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

In Re the Matter of:

Shirley G. Danganan,

Appellant,

v.

CNMI Department of Labor,
Division of Employment Services-DUA,
Appellee.

DUA Case No. 22-010

ADMINISTRATIVE ORDER

On September 28, 2022, Appellant filed a written request to voluntarily withdraw her appeal for the above-captioned case. Appellant explained she is moving off island and no longer wishes to contest the redetermination.

In consideration of above, the undersigned finds that there are no issues on appeal. Accordingly, this appeal is hereby **DISMISSED** and the Administrative Hearing scheduled for October 5, 2022 is hereby **VACATED**.

So ordered this **29th** day of September, 2022.

/s/

JACQUELINE A. NICOLAS
Administrative Hearing Officer

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



In Re the Matter of:

)
) DUA Case No. 22-011
)
)

Jovito Jose,

)
)
) Appellant,
)

)
)
) ADMINISTRATIVE ORDER
)

)
)
) v.
)
)

)
) CNMI Department of Labor,
) Division of Employment Services-DUA,
) Appellee.
)
)

On October 11, 2022, the Department filed a Motion to Dismiss stating that the parties met to discuss and resolve the issues of the case. On the same day, the Department served a Notice of Monetary Determination to the Appellant through personal service. On October 12, 2022, Appellant confirmed, in writing, that he agreed with the Department's Motion to Dismiss.

In consideration of above, the undersigned finds that there are no issues on appeal. Accordingly, this appeal is hereby **DISMISSED** and the previously scheduled Administrative Hearing is hereby **VACATED**.

So ordered this **13th** day of October, 2022.

/s/

JACQUELINE A. NICOLAS
Administrative Hearing Officer