

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



COMMONWEALTH REGISTER

**VOLUME 45
NUMBER 10
OCTOBER 28, 2023**

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VOLUME 45 NUMBER 10 October 28, 2023

ADOPTED

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Public Notice of Certification and Adoption
Of Regulations (§60-40)
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Commonwealth Ports Authority

Francisco C. Ada/Saipan International Airport
PO BOX 501055 • SAIPAN • MP • 96950
Phone: (670) 237-6500/01 Fax: (670) 234-5962
E-Mail Address: cpa.admin@pticom.com Website: <https://cnmiports.com>



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

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

Volume 45, Number 07, pp. 050023–31, of July 28, 2023

Amendments to the Commonwealth Ports Authority Personnel Rules and Regulations

ACTION TO ADOPT THESE PROPOSED RULES AND REGULATIONS: Pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a), the Commonwealth Ports Authority HEREBY ADOPTS AS PERMANENT the Proposed Amendments to the Personnel Rules and Regulations of the Commonwealth Ports Authority published in Number 07 of Volume 45 of the Commonwealth Register. I certify by signature below that as published, such adopted regulations are a true, complete, and correct copy of the referenced Proposed Regulations.

PRIOR PUBLICATION: The substance of these regulations was published in Volume 45, Number 07, pp. 050023–31 of the Commonwealth Register.

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

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

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

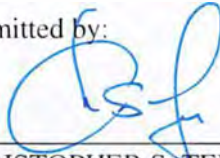
At a Personnel Affairs Committee meeting held on September 29, 2023, the Committee agreed to recommend to the CPA Board of Directors that the Proposed Regulations be adopted. The CPA Board of Directors adopted the Proposed Regulations as final at the September 29, 2023, Board of Directors meeting.

TERMS, SUBSTANCE, AND DESCRIPTION OF THE SUBJECTS AND ISSUES INVOLVED: These adopted regulations amend CPA's Personnel Rules and Regulations by defining the terms "attending physician" and "immediate family member;" expanding the use of sick leave to include care for immediate family members; establishing documentation requirements for qualifying as a "domestic partner;" increasing the number of hours of donated sick leave an employee may receive; requiring an employee work at least 1,250 hours in the calendar year to receive a sick leave donation; and defining the term "calendar year," as used in NMIAC § 40-40-425.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 29th day of September, 2023, at Saipan, Commonwealth of the Northern Mariana Islands.

Submitted by:

Date: September 29, 2023


CHRISTOPHER S. TENORIO
Executive Director

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

Dated this 16 day of October, 2023.


EDWARD MANIBUSAN
Attorney General

Filed and Recorded by:

Date: 10-27-23


ESTHER R.M. SAN NICOLAS
Commonwealth Registrar

§ 40-40-415 Sick Leave

(a) An employee commences sick leave accrual at the beginning of the first full pay period following the employee's employment. Each employee will accrue four hours of sick leave per pay period. If an employee's accrued sick leave is depleted, any additional days the employee is not at work will be deducted from accrued annual leave. When accrued annual leave has been depleted, the employee will go on leave without pay (LWOP). If an official holiday occurs while an employee is on sick leave, that day will not be deducted from accrued sick leave.

(b) When an employee is absent due to illness or to care for an immediate family member, the employee himself/herself, unless incapacitated, should give notice of his/her illness to the employee's supervisor within the first hour of scheduled duty or the entire day may be charged against annual leave, at the discretion of the immediate supervisor. Each employee returning from sick leave after an absence of three days or more shall furnish a written certification from the attending physician regarding the employee's illness. If the required certification is not furnished, all absence which would have been covered by such certification shall be indicated on the time and attendance record and payroll as absent without leave (AWOL). The Executive Director may require certification for such other period(s) of illness as is determined appropriate due to suspected abuse of the sick leave benefit.

(c) Sick leave may be accumulated and carried over to succeeding years up to 1,040 hours of sick leave. A report showing the accrued sick leave balance will be provided to the employee each pay period. Any current employee with sick leave in excess of the 1,040- hour threshold will no longer accrue sick leave until such time that their sick leave hours are reduced to 1,040 hours or below.

(d) The use of sick leave is subject to the following special provisions:

- (1) Falsification of an illness report shall be considered sufficient cause for disciplinary action, including termination from employment.
- (2) Accrued and unused sick leave will not prevent a termination for medical reasons. Employees are not entitled to exhaust accrued and unused sick leave.
- (3) No employee shall be allowed to undertake gainful employment while on sick leave status.

(e) Sick leave accrued for service with the government in any branch or agency shall vest in the employee upon accrual and shall remain vested so long as the individual is employed by the government, provided that if such employee is separated from government service for a period longer than three years, the employee shall be divested of accumulated sick leave.

(f) "Attending physician" as used within this Section shall mean licensed healthcare professionals, such as medical doctors, physician assistants, nurses, physical therapists, dentists, and orthodontists, and other licensed alternative medicine practitioners, such as licensed chiropractors or licensed practitioners of traditional medicine, that provided care directly to the employee.

(g) "Immediate family member" as used within this Section shall be defined as including the employee's parent (including step or adoptive), spouse, domestic partner, sibling (including step or half), child

(including step, adopted, or children-in-law), grandparents, mother-in-law and father-in-law (including step or adoptive).

(I) To qualify as a "domestic partner" under this Section, the employee must submit at least three of the following items to the Human Resource Manager for inclusion in that employee's personnel file:

(i) Affidavit of Domestic Partnership

(ii) Joint mortgage or lease for a residence identifying both parties as responsible for payments;

(iii) Designation of each other as a primary beneficiary for life insurance or retirement benefits;

(iv) Durable power of attorney for health care or financial management;

(v) Joint ownership of a motor vehicle;

(vi) Record of joint checking or savings account;

(vii) Other forms of evidence depicting significant joint financial interdependency.

§ 40-40-425 Sick Leave Donation

(a) An employee may, in writing on a Commonwealth Ports Authority-approved form, donate his/her accrued sick leave to another Commonwealth Ports Authority employee who has completed his/her probationary status and who is in need of medical treatment. An employee under medical treatment must provide certification from his/her attending physician on his/her medical status and duration of time that he/she shall be on medical leave. Sick leave donation requests must be approved, in writing, in advance by the Executive Director or her or his designee, prior to the transfer of sick leave and subject to the following:

(1) An employee donating his/her accrued sick leave does so voluntarily and without compensation or sick leave replacement. The donation shall be limited to 160 hours;

(2) The employee requesting donation must provide certification that he/she is undergoing medical treatment and the number of days he/she is expected to be on medical leave. Under no circumstances may the requesting employee receive more than 480 hours of donated sick leave per calendar year; during his/her employment with the Commonwealth Ports Authority;

(3) The employee requesting the donation must have worked at least 1,250 hours in the calendar year.

(4) The employee receiving a sick leave donation has exhausted all his annual leave, sick leave, and accrued comp-time hours;

(45) The employee receiving a sick leave donation shall not accrue any other leave while on medical leave status.

(b) The term "calendar year" as used within this Section shall mean a one-year period ending on the date the requested donated leave is received by the employee.

(bc) Any Commonwealth Ports Authority employee may also donate accrued sick leave to non-Commonwealth Ports Authority CNMI government employees subject to the CNMI Sick Leave Bank Regulations (NMIAC, Title 10, Chapter 10-50) being administered by the Office of the Personnel Management.

§ 40-40-445 Bereavement Leave for a Death in the Immediate Family

(a) An employee who suffers a death in his or her immediate family will be given a maximum of five days leave with pay.

(b) Immediate family shall be defined as including the employee's parent (including step or adoptive), spouse, domestic partner, sibling (including step or half), child (including step, adopted, or children-in-law), grandparents, mother-in-law and father-in-law (including step or adoptive). ~~For the purposes of this section a "Domestic partner" is defined to be a person with whom the CPA employee has a personal household relationship and with whom the employee has established substantial personal ties for several years.~~

(1) To qualify as a "domestic partner" under this Section, the employee must submit at least three of the following items to the Human Resource Manager for inclusion in that employee's personnel file:

(i) Affidavit of Domestic Partnership

(ii) Joint mortgage or lease for a residence identifying both parties as responsible for payments;

(iii) Designation of each other as a primary beneficiary for life insurance or retirement benefits;

(iv) Durable power of attorney for health care or financial management;

(v) Joint ownership of a motor vehicle;

(vi) Record of joint checking or savings account;

(vii) Other forms of evidence depicting significant joint financial interdependency.



STATE BOARD OF EDUCATION

Commonwealth of the Northern Mariana Islands ---- *Public School System*
PO Box 501370 Saipan, MP 96950 • Tel. 670 664-3711 • E-mail: boc.admin@cnmipss.org



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Chairperson

Herman M. Atalig, SGM
(Ret)
Vice-Chairperson

Gregory P. Borja
Secretary/Treasurer

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Member

Maisie B. Tenorio
Member

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Ronald E. Snyder, EdD
Non Public School Rep.

Vacant
Student Representative

PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF REGULATIONS OF THE STATE BOARD OF EDUCATION – PUBLIC SCHOOL SYSTEM REGULATIONS CHAPTER 60-40

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED REGULATIONS

Volume 45, Number 05, pp 049766-049788, of May 31, 2023

ACTION TO ADOPT PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands, ("CNMI"), State Board of Education ("Board"), 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 Board announced that it intended to adopt them as permanent, and now does so. (Id.) A true copy is attached.

I also certify by signature below that, as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed Regulations, and that they are being adopted without modification or amendment.

PRIOR PUBLICATION: The prior publication was as stated above. The Board adopted the regulations as final at its meeting of October 13, 2023.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY: None. The regulations were adopted as proposed and published.

AUTHORITY: The Board has the authority to adopt rules and regulations in furtherance of its duties and responsibilities pursuant to Article XV of the CNMI Constitution, Public Law 6-10 as amended and the CNMI Administrative Procedure Act.

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 Board has considered fully all written and oral submissions respecting the proposed regulations of which it was aware. The Board was not aware of any written or oral submissions. Upon this adoption of the regulations, the Board, 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:

The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form and legal sufficiency) . As such, further approval is not required.

I DECLARE under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 20th day of October, 2023, at Tinian, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:

Submitted by:


ANTONIO L. BORJA
Chairperson, State Board of Education

10.24.2023
Date

Filed and Recorded by:


ESTHER R.M. SANT NICOLAS
Commonwealth Registrar

10.28.23
Date



Commonwealth Ports Authority

Francisco C. Ada/Saipan International Airport

PO BOX 501055 • SAIPAN • MP • 96950

Phone: (670) 237-6500/01

Fax: (670) 234-5962

E-Mail Address: cpa.admin@pticom.com

Website: <https://cnmports.com>



PUBLIC NOTICE

Proposed Amendments to the Airport Rules and Regulations of the Commonwealth Ports Authority

The Executive Director of the Commonwealth Ports Authority ("CPA") hereby notifies the public that the Commonwealth Ports Authority intends to promulgate amendments to its Airport Rules and Regulations.

INTENDED ACTION TO ADOPT THESE PROPOSED AMENDMENTS TO THE AIRPORT RULES AND REGULATIONS OF THE COMMONWEALTH PORTS AUTHORITY: Notice is hereby given pursuant to 1 CMC § 9104(a) of the Administrative Procedure Act that the Commonwealth Ports Authority intends to promulgate the following amendments to its Airport Rules and Regulations.

TERMS, SUBSTANCE, AND DESCRIPTION OF THE SUBJECTS AND ISSUES INVOLVED: These proposed regulations amend CPA's Airport Rules and Regulations by increasing the public parking fees listed in NMIAC § 40-10.1-1275.

AUTHORITY: The substance of the following proposed amendments was approved by the CPA Board of Directors at the August 31, 2023, CPA Special Board Meeting. These proposed amendments are for publication in the Commonwealth Register for Notice and Comment pursuant to the Administrative Procedure Act and for approval by the Attorney General pursuant to 1 CMC § 2153(e). The Commonwealth Ports Authority has the authority to promulgate these regulations pursuant to 2 CMC § 2122.

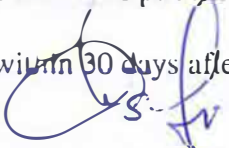
DIRECTIONS FOR FILING AND PUBLICATION: These Proposed Regulations shall be published in the Commonwealth Register in the section on Proposed and Newly Adopted Regulations, 1 CMC § 9102(a)(1), and posted in convenient places in the civic center and in local governments in each senatorial district, both in English and in the principal vernacular. 1 CMC § 9104(a)(1).

TO PROVIDE COMMENTS: Persons or entities wishing to submit comments must do so in writing to Mr. Christopher S. Tenorio, Executive Director, CPA, by means of one of the following: Email, fax, mail, or hand-delivery to the CPA Administrative Office located on the Second Floor of the Francisco C. Ada/Saipan International Airport with the subject line "**Comments on Proposed Airport Rules and Regulations.**"

Commonwealth Ports Authority
P.O. Box 501055 Saipan, MP 96950
Tel. (670) 237-6500/6501
Fax: (670) 234-5962
Email: cpa.admin@pticom.com

All written comments shall be submitted within 30 days after publication of this notice.

Submitted by:


CHRISTOPHER S. TENORIO
Executive Director, CPA

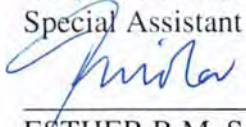
9/1/23
Date

Received by:


OSCAR M. BABAUTA
Special Assistant for Administration

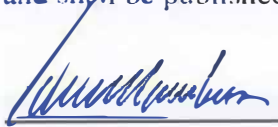
10/16/23
Date

Filed and Recorded by:


ESTHER R.M. SAN NICOLAS
Commonwealth Registrar

10-27-23
Date

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


EDWARD MANIBUSAN
Attorney General

10/17/2023
Date

[Insert Chamorro and Carolinian translations]



Commonwealth Ports Authority

Francisco C. Ada/Saipan International Airport
PO BOX 501055 • SAIPAN • MP • 96950

Phone: (670) 237-6500/01 Fax: (670) 234-5962
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NUTISIAN PUPBLIKU

Manmaproponi na Tinilaika gi Areklamentu yan Regulasion Plâsa giya Commonwealth Ports Authority

I Eksakatibu Direktot nu i Commonwealth Ports Authority (“i CPA”) ha infotma guini i pupbliku na i Commonwealth Ports Authority ha intensiona para u cho’gui i amenda siha gi iyon-niha Areklamentu yan Regulasion Plâsa.

I AKSION NI MA’INTENSIONA PARA U ADÂPTA ESTI I MANMAPROPONI NA TINILAIKA SIHA GI AREKLAMENTU YAN REGULASION PLÂSA GIYA COMMONWEALTH PORTS AUTHORITY: I nutisia guini manâ’i sigun para i CMC § 9104(a) gi Âkton “Administrative Procedure” na i Commonwealth Ports Authority ha intensiona para u cho’gui i tinattiyi na amenda siha gi iyon-niha Areklamentu yan Regulasion Plâsa.

I TEMA, SUSTÂNSIA, YAN I DISKRIPSION I SUHETU NI MASUMÂRIA YAN ASUNTU NI TINEKKA: Esti i manmaproponi na regulasion siha ha amenda i Areklamentu yan Regulasion Plâsa ni ma’aomenta i parking fees pupbliku ni malista gi halum NMIAC § 40-10.1-1275.

ÂTURIDAT: I “substance” nu i tinattiyi na manmaproponi na tinilaika siha ginen maninaprueba ni i Kuetpun Mandirektot CPA gi Agostu 31, 2023, gi Huntan Kuetpun Mandirektot CPA. Esti i manmaproponi na tinilaika siha para u mapupblika gi halum Rehistran Commonwealth gi Nutisia yan Upiñon sigun gi Âkton Administrative Procedure yan para u inaprueba ni Abugâdu Hinirât sigun para i i CMC § 2153(e). I Commonwealth Ports Authority gai aturidât para u cho’gui esti siha na regulasion sigun para i 2 CMC § 2122.

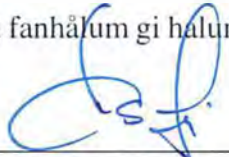
DIREKSION PARA U MAPO’LU YAN PUPBLIKASION: Esti i Manmaproponi na Regulasion siha debi na u mapupblika gi halum Rehistran Commonwealth gi halum seksion i Manmaproponi yan i Mannuebu na Manma’adâpta na Regulasion siha, i CMC § 9102(a)(1), ya u mapega hâlum gi kumbinienti na lugât gi halum civic center yan gi halum ufisinan gubietnamentu gi kada distritun senadot, parehu Inglis yan i prinsipât na lingguâhin natibu. i CMC § 9104(a)(1).

PARA U MAPRIBENIYI UPIÑON SIHA: I petsona siha pat atyu i malagu manna’halum upiñon siha debi di u macho’gui gi tinigi’ para guatu as Siñot Christopher S. Tenorio, Eksakatibun Direktot, CPA, gi unu na tinattiyi na manera: Email, fax, mail o sino intrega hâlum gi Ufisinan Atministradot i CPA ni gaigi gi Sigundu na Bibienda gi plâsan Francisco C. Ada/Saipan International yan i suhetu na râya “**I Upiñon siha gi Manmaproponi na Areklamentu yan Regulasion Plâsa.**”

Commonwealth Ports Authority
P.O. Box 501055 Saipan, MP 96950
Tel. (670) 237-6500/6501
Fax: (670) 234-5962
Email: cpa.admin@pticom.com

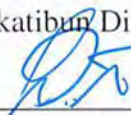
Todu i tinigi' na upiñon siha debi na u fanhålum gi halum trenta (30) dihas dispues di pupblikasion nu esti na nutisia.

Nina'hålum as:


CHRISTOPHER S. TENORIO
Eksakatibun Direktot CPA

10/06/23
Fetcha

Rinisibi as:


OSCAR M. BABAUTA
Ispisiât na Ayudânti para i Atministrasion

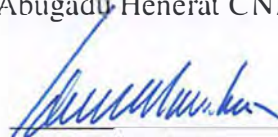
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Pine'lu yan Ninota as:


ESTHER R.M. SAN NICOLAS
Rehistran Commonwealth

10.27.23
Fetcha

Sigun i l CMC § 2153(e) yan i l CMC § 9104(a)(3) i manmaproponi na regulasion siha ni mañechettun guini ni manmaribisa yan manma'aprueba kumu fotma yan sufisienti ligât ginin i Abugâdu Henerât CNMI yan debi na u mapupblika, l CMC § 2153(f).


EDWARD MANIBUSAN
Abugâdu Hinirât

10/17/2023
Fetcha



ARONGORONGOL TOULAP

Ppwommwol Liiwel ngáli Alléghúl me Mwóghutughutúl Personnel reel Commonwealth Ports Authority

Executive Director-il Commonwealth Ports Authority (“CPA”) e arongaar toulap bwe Commonwealth Ports Authority re mángemángil ebwe aronga liiwel ngáli Alléghúl me Mwóghutughutúl Personnel.

MÁNGEMÁNGIL MWÓGHUT REEL REBWE ADÓPTÁÁLI PPWOMWOL LIIWEL NGÁLI PERSONNEL ALLÉGH ME MWÓGHUTUGHUTÚL COMMONWEALTH PORTS AUTHORITY: Arongorong yeel nge sáangi 1 CMC § 9104(a) reel Administrative Procedure Act bwe Commonwealth Ports Authority re mángemángil rebwe arongawow liiwel ikka e amwirimwiritiw ngáli Alléghúl me Mwóghutughutúl Personnel.

KKAPASAL, AWEWEEL, ME FFATAAL REEL KKPASAL ME AUTOL: Ppwommwol liiwel kkaal e liiweli Alleghúl me Mwóghutughutúl Personnel sáangi CPA reel igha re ayoora weeweel kkapas iye “attending physician” me “immediate family member”, aschéélapayló yááyál mille “sick leave” ebwe schuulong lemelem ngáli “immediate family members”; ghikkillil pappid ikka e bwe bwal toolong ngáli “domestic partner”, ebwe lapaló oorál “sick leave” iye rebwe donate-li escháy schóól angaang emmwelil bwughi; re tipáli bwe schóól angaang e tarabwaaghóli 1,250 oora llól “calendar year” reel ebwe bwughi mille “sick leave donation”; me ebwe ffat weeweel kkapas iye “calendar year”, igha re yááyá llól NMIAC § 40-40-425.

BWÁNGIL: Autol ppwommwol liiwel ikka e amwirimwiritiw aa átirow sáangi CPA Board-il Directors wóól Alimaté 2, 2023, CPA Board-il Directors igha re yéélágh. Ppwommwol liiwel nge ngáli arongorong me llól Commonwealth Register ngáli Arongorong me Kkapas sáangi Administrative Procedure Act me ngáli átirow sáangi Soulemelemil Allégh Lapalap sáangi 1 CMC § 2153(e). Eyoor bwángil Commonwealth Ports Authority reel rebwe aronga mwóghutughut kkaal sáangi 2 CMC § 2122.

AFAL REEL AMMWELIL ME AKKATÉÉWOWUL: Ebwe akkatééwow Ppwommwol Mwóghutughut kkaal me llól Commonwealth Register llól táliil Ppwommwol me Ffél Mwóghutughut ikka ra adóptááli, 1 CMC § 9102(a)(1), me ebwe appaschetá llól civic center me bwal llól bwulasiyol gobetnameento llól senatorial district, fengál reel English me Mwáliyaasch. 1 CMC § 9104(a)(1).

REEL ISIISILONGOL KKAPAS: Aramas ngäre schóó kka re tipáli rebwe isiisilong ischil kkapas rebwe isii ngáli Mr. Christopher S. Tenorio, Executive Director, CPA, ebwe yááyá eew meleyil ikka e amwirimwiritiw: Email, fax, kkatta ngäre bwughiló CPA Administrative Office iye e lo Second Floor me Francisco C. Ada/Saipan International Airport fengál wóól “subject line” bwe **“Comments on Proposed Procurement Rules and Regulations.”**

Commonwealth Ports Authority
P.O. Box 501055 Saipan, MP 96950
Tel. (670) 237-6500/6501
Fax: (670) 234-5962
Email: cpa.admin@pticom.com

Alongal ischil kkapas ebwe toolong llól eliigh (30) ráál mwiril aal akkatééwow arongorong yeel.

Isáliyalong:


CHRISTOPHER S. TENORIO
Executive Director, CPA

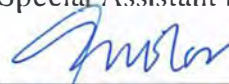
10/06/23
Ráál

Bwughiyal:


OSCAR M. BABAUTA
Special Assistant ngáli Administration

10/16/23
Ráál

Ammwelil:


ESTHER R.M. SAN NICOLAS
Commonwealth Registrar

10.27.23
Ráál

Sángi 1 CMC § 2153(e) me 1 CMC § 9104(a)(3) ra takkal amwuri fischiiy me átirowa ppwommwol mwóghutughut ikka e appasch bwe aa ffil reel fféérúl me legal sufficiency sángi Soulemelemil Allégh Lapalapal CNMI me ebwe akkatééwow. 1 CMC § 2153(f).


EDWARD MANIBUSAN
Soulemelemil Allégh Lapalap

10/17/2023
Ráál

§ 40-10.1-1275 Public Parking Fee

(a) All vehicles owned by members of the general public shall park their vehicles in designated public parking areas, and shall pay a public parking fee, as follows:

Parking Category	Fee
0 minutes to 30 minutes	\$3
30 to 60 minutes	\$5
Each additional hour (or fraction of an hour)	\$2
Daily rate (maximum 24 hours)	\$20
Annual rate per vehicle for employees of airport tenants	\$75
Rate per vehicle for frequent flyers – annual	\$400
Rate per vehicle for frequent flyers – semi annual	\$250
Annual rate per vehicle for service and delivery vehicles	\$200

(b) No fee is imposed for CPA vehicles, for vehicles owned by CPA employees and officials, for cars rented from companies with whom CPA has an operating agreement, and for U.S. government and CNMI government vehicles.

Modified, I CMC § 3806(f), (g).



Commonwealth Healthcare Corporation

Commonwealth of the Northern Mariana Islands

1178 Hinemlu' St. Garapan, Saipan, MP 96950



PUBLIC NOTICE OF PROPOSED AMENDMENTS TO THE CHCC CHARGEMASTER FOR VARIOUS FEES

INTENDED ACTION TO ADOPT THESE PROPOSED REVISIONS TO THE RULES AND REGULATIONS:

The Commonwealth Healthcare Corporation (CHCC) intends to adopt as permanent the attached additional Chargemaster pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The additional Chargemaster will become effective 10 days after adoption and publication in the Commonwealth Register. (1 CMC § 9105(b))

AUTHORITY: The Board of Trustees may prepare and adopt rules and regulations to assure delivery of quality health care and medical services and the financial viability of the Corporation that will best promote and serve its purposes. 3 CMC Section 2826(c).

THE TERMS AND SUBSTANCE: These are new fees.

THE SUBJECTS AND ISSUES INVOLVED: New fees.

DIRECTIONS FOR FILING AND PUBLICATION: This Notice of Proposed Amendments to the Chargemaster shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations (1 CMC § 9102(a)(1)) and posted in convenient places in the civic center and in local government offices in each senatorial district, both in English and in the principal vernacular (1CMC § 9104(A)(1)) codified at NMIAC Sections 140-10.8-101. Copies are available upon request from Tiffany Crisostomo, Director of Revenue.

TO PROVIDE COMMENTS: Send or deliver your comments to Tiffany Crisostomo, Director of Revenue, tiffany.crisostomo@chcc.health, Attn: *Amendments to the Chargemaster for Various Fees* at the above address, fax or email address, with the subject line "Amendments to the Chargemaster for Various Fees." 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)).

P.O. Box 500409 CK, Saipan, MP 96950
Telephone: (670) 236-8201/2 FAX: (670) 233-8756

History: Amdts Adopted 39 Com. Reg. 39592 (Apr. 28, 2017); Amdts Proposed 38 Com. Reg. 39040 (Dec. 28, 2016); Amdts Adopted 23 Com. Reg. 17842 (Apr. 23, 2001); Amdts Proposed 23 Com. Reg. 17614 (Jan. 19, 2001); Amdts Adopted 21 Com. Reg. 16855 (July 23, 1999); Amdts Proposed 21 Com. Reg. 16779 (May 19, 1999).

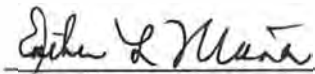
Commission Comment: In June 2008, CPA made emergency amendments to this part addressing fees and charges for incineration and aircraft waste handling services. See 30 Com. Reg. 28519 (June 27, 2008). These amendments were effective for only 120 days from June 3, 2008. The notice referred to the permanent adoption of the amendments pursuant to an attached notice of proposed regulations. However, no such notice was attached and Chamorro and Carolinian translations were not published. The regulations were re-proposed in March of 2012. 34 Com. Reg. 32372 (Mar. 29, 2012). If adopted, these sections will be codified as § 40-10.1-1280 and § 40-10.1-1285.

The original paragraphs were not designated. The Commission designated subsections (a) and (b).

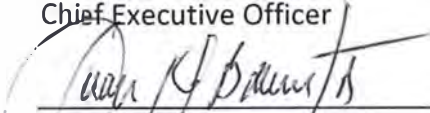
The 2001 amendments amended subsections (a) and (b) and deleted former subsection (c).

These proposed amendments to the Chargemaster, for Various Fees were approved by the CHCC Board of Trustees and the CHCC CEO.

Submitted by:


ESTHER L. MUNA
Chief Executive Officer

10/24/23
Date


JUAN N. BABAUTA
Board Chair

10/24/2023
Date

Filed and
Recorded by:


ESTHER M. SAN NICOLAS
Commonwealth Registrar

10.27.23
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 25th day of October, 2023.


EDWARD E. MANIBUSAN
Attorney General

Fee Edits - as of 09/2023

REV CODE	CHARGE CODE	CPT	MOD	Description	COVID Related ?	Reason for change	Previous Price	New Price
310	315000180967	81220		CFTR GENE ANALYSIS COMMON VARIANTS	N	NEW	N/A	\$1,669.80
960	965002583253	47760		ANAST XTRHEPATC BILIARY DUCTS & GI TRACT	N	NEW	N/A	\$6,762.66
360	365000289423	67840		EXC LESION EYELID W/O CLSR/W/SIMPLE DIR CLOSURE	N	NEW	N/A	\$ 1,745.28
960	965002583254	67840		EXC LESION EYELID W/O CLSR/W/SIMPLE DIR CLOSURE	N	NEW	N/A	\$ 500.52
360	365000289424	35184		RPR CONGENITAL AV FISTULA EXTREMITIES	N	NEW	N/A	\$ 2,763.57
370	365000289425	00350		ANESTHESIA MAJOR VESSELS NECK NOS	N	NEW	N/A	\$ 423.60
771	775000480587	0134A		IMM ADMN SARSCOV2 BIVALENT 50 MCG/0.5 ML BST	N	NEW	N/A	\$ 85.17
370	365000289426	00880		ANESTHESIA MAJOR LOWER ABDOMINAL VESSELS NOS	N	NEW	N/A	\$ 635.40
960	365000289427	37660		LIGATION OF COMMON ILIAC VEIN,	N	NEW	N/A	\$ 3,937.71
771	775000480588	0111A		IMM ADMN SARSCOV2 25 MCG/0.25 ML 1ST DOSE	N	NEW	N/A	\$ 85.17
300	315000180968	86258		GLIADIN ANTIBODY EACH IMMUNOGLOBULIN CLASS	N	NEW	N/A	\$ 36.15
300	315000180969	81270		AK2 GENE ANALYSIS PVAL617PHE VARIANT	N	NEW	N/A	\$ 274.98
300	315000180970	83521		IMMUNOGLOBULIN LIGHT CHAINS FREE EACH	N	NEW	N/A	\$ 51.81
771	775000480587	0144A		ADM SRSCV2 BVL 25MCG/.25MLA	N	NEW	N/A	\$ 85.17
771	775000480589	0154A		ADM SARSCV2 BVL 10MCG/.2MLA	N	NEW	N/A	\$ 85.17
960	365000289428	49422		REMOVAL TUNNELED INTRAPERITONEAL CATHETER	N	NEW	N/A	\$ 656.10
969	965002583255	64831		SUTURE DIGITAL NERVE HAND/FOOT 1 NERVE	N	NEW	N/A	\$ 2,208.63
300	315000180973	87637		IADNA SARSCOV2 & INF A&B & RSV MULT AMP PROBE TQ	N	NEW	N/A	\$ 427.89
960	965002583256	19083		BX BREAST W/DEVICE 1ST LESION ULTRASOUND GUID	N	NEW	N/A	\$ 466.05
960	965002583257	62273		INJECTION EPIDURAL BLOOD/CLOT PATCH	N	NEW	N/A	\$ 346.05
960	965002583258	37607		LIG/BANDING ANGIOACCESS ARTERIOVENOUS FISTULA	N	NEW	N/A	\$ 1,114.02
960	965002583259	21931		EXCISION TUMOR SOFT TIS BACK/FLANK SUBQ 3 CM/>	N	NEW	N/A	\$ 1,457.97
960	965002583260	19081		BX BREAST W/DEVICE 1ST LESION STEREOTACTIC GUID	N	NEW	N/A	\$ 495.48



Commonwealth Healthcare Corporation

Commonwealth gi Sankattan na Islas Mariãnas
1178 Hinemlu' St. Garapan, Saipan, MP 96950



NUTISIAN PUBLIKU PUT I MANMAPROPONI NA AMENDA SIHA GI CHCC CHARGEMASTER PARA DIFIRENTIS NA ÂPAS

I AKSION NI MA'INTENSIONA PARA U ADÂPTA ESTI I MANMAPROPONI NA TINILAIKA GI AREKLAMENTU YAN REGULASION SIHA: I Commonwealth Healthcare Corporation (i CHCC) ha intensiona para u adâpta komu petmanienti i mañechettun na hina'halum Chargemaster sigun gi maneran i Âkton Administrative Procedure, 1 CMC § 9104(a). I hina'halum Chargemaster siempri umifektibu gi halum dies (10) dihas dispues di adâptasion yan publikasion gi halum Rehistran Commonwealth. (1 CMC § 9105(b))

ATURIDÂT: I Board of Trustees siña mapripâra yan adâpta i areklamentu yan regulasion siha para u mana'garantiha na manmannânâ'i kuâlidât na inadahn hinemlu' yan setbisiun mediku yan i macho'cho'chu' na fainansiât nu i Corporation ni mäs ha na'adilantão yan sietbi i rason-ñiha siha. 3 CMC Seksiona 2826(c).

I TEMA YAN SUSTÂNSIAN I PALÂBRA SIHA: Mannuebu na âpas siha.

I SUHETU NI MASUMÂRIA YAN ASUNTU NI TINEKKA: Nuebu na âpas siha.

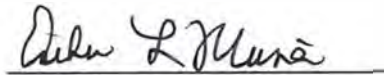
DIREKSION PARA U MAPO'LU YAN PARA U MAPUPBLIKA: Esti na nutisia put i Manmaproponi na Amenda siha gi Chargemaster siempri mapupblika gi halum Rehistran Commonwealth halum i seksiona gi maproponi yan nuebu na manma'adâpta na regulasion siha (1 CMC § 9102(a)(1)) yan mapega gi halum kumbinienti na lugât halum i civic center yan halum i ufisinan gubietnamentu gi kada distritun senadot, parehu gi finu' Inglis yan i prinsipât na linguâhi natibu (1 CMC § 9104(A)(1)) codified gi NMIAC na Seksiona 140-10.8-101. Managuaha kopia yanggin marikuesta ginen as Tiffany Crisostomo, i Direktot Reditu.

PARA U MAPRIBENIYI UPIÑON SIHA: Na'hânão pat intrega hălum i upiñom-mu guatu as Tiffany Crisostomo, i Direktot Reditu, tiffany.crisostomo@chcc.health, Attn: "Amenda gi Chargemaster, para Difirentis na Âpas" gi sanhilu' na address, fax osino email address, yan i suhetu na rãya "Amenda gi Chargemaster, para Difirentis na Âpas." I upiñon siha debi na u fanhălum gi halum trenta (30) dihas ginen i fetchan publikasiön esti na nutisia. Put fabot na'hălum i infotmasion, upiñon pat testimonion kinentrãm-mu siha. (1 CMC § 9104(a)(2)).

P.O. Box 500409 CK, Saipan, MP 96950
Telephone: (670) 236-8201/2 FAX: (670) 233-8756

Esti i manmaproponi na amenda siha gi Chargemaster, para Difirentis Ápas ginen maninaprueba ni i Kuetpun CHCC Trustees yan i CHCC CEO.

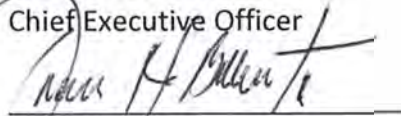
Nina'hålum as:



ESTHER L. MUNA
Chief Executive Officer

10/24/23

Fetcha



JUAN N. BABAUTA
Kabesiyun Kuetpu

10/24/2023

Fetcha

Pine'lu yan
Ninota as:



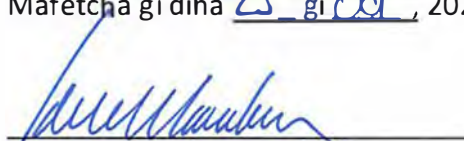
ESTHER M. SAN NICOLAS
Rehistran Commonwealth

10.27.23

Fetcha

Sigun i 1 CMC § 2153 (e), (Inaprueban Abugådu Hiniråt i regulasion siha ni para u macho'gui kumu fotma) yan i 1 CMC § 9104 (a) (3) (hentan inaprueban Abugådu Hiniråt) i manmaproponi na regulasion siha ni mañechettun guini ni manmaribisa yan manma'aprueba kumu fotma yan sufisient i ligåt ginin i CNMI Abugådu Heneråt yan debi na u mapupblika, 1 CMC § 2153 (f) (pupplikasion areklamentu yan regulasion siha).

Mafetcha gi diha 25th gi Oct, 2023.



EDWARD E. MANIBUSAN
Abugådu Hiniråt

Fee Edits - as of 09/2023

REV CODE	CHARGE CODE	CPT MOD	Description	COVID Related ?	Reason for change	Previous Price	New Price
310	315000180967	81220	CFTR GENE ANALYSIS COMMON VARIANTS	N	NEW	N/A	\$1,669.80
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771	775000480587	0134A	IMM ADMN SARSCOV2 BIVALENT 50 MCG/0.5 ML BST	N	NEW	N/A	\$ 85.17
370	365000289426	00880	ANESTHESIA MAJOR LOWER ABDOMINAL VESSELS NOS	N	NEW	N/A	\$ 635.40
960	365000289427	37660	LIGATION OF COMMON ILIAC VEIN,	N	NEW	N/A	\$ 3,937.71
771	775000480588	0111A	IMM ADMN SARSCOV2 25 MCG/0.25 ML 1ST DOSE	N	NEW	N/A	\$ 85.17
300	315000180968	86258	GLIADIN ANTIBODY EACH IMMUNOGLOBULIN CLASS	N	NEW	N/A	\$ 38.15
300	315000180969	81270	AK2 GENE ANALYSIS P.VAL617PHE VARIANT	N	NEW	N/A	\$ 274.98
300	315000180970	83521	IMMUNOGLOBULIN LIGHT CHAINS FREE EACH	N	NEW	N/A	\$ 51.81
771	775000480587	0144A	ADM SRSCV2 BVL 25MCG/.25ML A	N	NEW	N/A	\$ 85.17
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Commonwealth Healthcare Corporation

Commonwealth of the Northern Mariana Islands
1178 Hinemlu' St. Garapan, Saipan, MP 96950



ARONGORONGOL TOULAP REEL PPWOMMWOL LIIWEL NGALI CHCC CHARGEMASTER NGALI AKKÁÁW ÓBWÓSS PUBLIC NOTICE OF PROPOSED AMENDMENTS TO THE CHCC CHARGEMASTER FOR VARIOUS FEES

MÁNGEMÁNGIL MWÓGHUTH REEL REBWE ADÓPTÁÁLI PPWOMMWOL SIIWEL NGALI ALLÉGH ME MWÓGHUTUGHUT: Commonwealth Healthcare Corporation (CHCC) re mángemángil rebwe adóptááli Chargemaster ikka e schuulong ikka e appasch bwe ebwe lléghló sáangi mwóghutughutúl Administrative Procedure Act, 1 CMC § 9104(a). Chargemaster ikka rebwe bwal aschuulong ebwe bwunguló seigh (10) ráál mwiril aal adóptááli me akkatééwowul me llól Commonwealth Register. (1 CMC § 9105(b))

BWÁNGIL: Emmwel bwe Board of Trustees rebwe ayoora mmwelil me adóptááli allégh me mwóghutughut reel ebwe ffat issisiwowul ghatchúl health care me alilisil mediku me mille financial viability sáangi Corporation iye ebwe ghatch le alisi fféerú aar angaang. 3 CMC Tálil 2826(c).

KKAPASAL ME WEEWEEL: Ikkaal ffél óbwóss.

KKAPASAL ME AUTOL: Ffél óbwóss.

AFAL REEL AMMWELIL ME AKKATÉÉWOWUL: Ebwe akkatééwow Arongorongol Ppwommwol Liiwel ngáli Chargemaster me llól Commonwealth Register llól tálil ppwommwol me ffél mwóghutughut ikka ra adóptááli (1 CMC § 9102(a)(1)) me ebwe appaschetá llól civic center llól bwulasiyol gobetnameento me llól senatorial district, fengál reel English me mwáliyaasch (1CMC § 9104(A)(1)) iye e itittiw me NMIAC Tálil 140-10.8-101. Emmwel ubwe tingór pappidil mille sáangi Tiffany Crisostomo, Director-il Revenue.

REEL ISIISILONGOL KKAPAS: Afanga ngare bwughiló yóómw ischil kkapas ngáli Tiffany Crisostomo, Director-il Revenue, tiffany.crisostomo@chcc.health, Attn: Amendments to the Chargemaster, for Various Fees reel féléfél iye e lo weiláng, fax ngare email address, fengál wóól subject line bwe "Amendments to the Chargemaster, for Various Fees." Ebwe toolong

P.O. Box 500409 CK, Saipan, MP 96950
Telephone: (670) 236-8201/2 FAX: (670) 233-8756

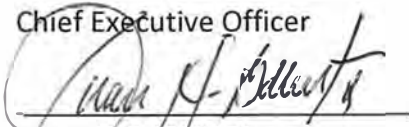
ischil kkapas llól eliigh (30) ráál mwiril aal akkatééwow arongorong yeel. Isiisilong yóómw data, views ngare angiingi. (1 CMC § 9104(a)(2)).

Aa átirow ppwommwol liiwel kkaal ngáli Chargemaster, for Various Fees sáangi CHCC Board-il Trustees me CHCC CEO.

Isáliyalong:


ESTHER L. MUNA
Chief Executive Officer

10/24/23
Ráál


JUAN N. BABAUTA
Board Chair

10/24/2023
Ráál

Ammwelil:


ESTHER M. SAN NICOLAS
Commonwealth Registrar

10.27.23
Ráál

Sáangi 1 CMC § 2153(e) (sáangi átirowal AG reel mwóghutughut kkaal bwe aa lléghlól reel fféerúl me ebwe arongowow) me 1 CMC § 9104(a)(3) (sáangi átirowal AG) reel ppwommwol mwóghutughut ikka e appasch bwe ra takkal amwuri fischiiy me aa lléghló reel fféerúl me legal sufficiency sáangi Soulemelemil Allégh Lapalapal CNMI me ebwe akkatééwow, 1 CMC § 2153(f) (arongowowul allégh me mwóghutughut).

Ghikkill wóól 25 ráálil Oct 2023.


EDWARD E. MANIBUSAN
Soulemelemil Allégh Lapalap

Fee Edits - as of 09/2023

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771	775000480587	0144A	ADM SRSCV2 BVL 25MCG/.25MLA	N	NEW	N/A	\$ 85.17
771	775000480589	0154A	ADM SARSCV2 BVL 10MCG/.2ML A	N	NEW	N/A	\$ 85.17
960	365000289428	49422	REMOVAL TUNNELED INTRAPERITONEAL CATHETER	N	NEW	N/A	\$ 656.10
969	965002583255	64831	SUTURE DIGITAL NERVE HAND/FOOT 1 NERVE	N	NEW	N/A	\$ 2,208.63
300	315000180973	87637	IADNA SARSCOV2 & INF A&B & RSV MULT AMP PROBE TQ	N	NEW	N/A	\$ 427.89
960	965002583256	19083	BX BREAST W/DEVICE 1ST LESION ULTRASOUND GUID	N	NEW	N/A	\$ 466.05
960	965002583257	62273	INJECTION EPIDURAL BLOOD/CLOT PATCH	N	NEW	N/A	\$ 346.05
960	965002583258	37607	LIG/BANDING ANGIOACCESS ARTERIOVENOUS FISTULA	N	NEW	N/A	\$ 1,114.02
960	965002583259	21931	EXCISION TUMOR SOFT TIS BACK/FLANK SUBQ 3 CM/>	N	NEW	N/A	\$ 1,457.97
960	965002583260	19081	BX BREAST W/DEVICE 1ST LESION STEREOTACTIC GUID	N	NEW	N/A	\$ 495.48



CNMI DEPARTMENT OF LABOR

ADMINISTRATIVE HEARING OFFICE

In Re Matter of:) **Labor Case No. 23-011**
)
Jimmy O. Blancia,)
)
Complainant,) **ORDER OF DISMISSAL**
)
v.)
)
Saipan Ice and Water Company,)
)
Respondent.)

On September 20, 2023, the undersigned ordered Complainant to show cause why his complaint for discrimination should not be dismissed for lack of jurisdiction and failure to state a claim. On September 26, 2023, Complainant filed a response to the Order to Show Cause stating he would like to withdraw the claim for discrimination and amend his complaint for a violation of the employment preference law. Additionally, Complainant requested: (1) an Order finding an employment preference violation occurred; (2) an Order for Enforcement to initiate an agency case; and (3) additional time to respond to the Order to show cause.

Complainant's requests are denied. First, it is Complainant's burden to prove a violation by a preponderance of evidence at a hearing – the undersigned cannot simply decide a violation occurred based on allegations. Second, while the undersigned may refer matters to Enforcement for investigation, the undersigned cannot order Enforcement to initiate a case. To do so would pierce this office's impartiality and Enforcement's discretion. And third, additional time to respond to the Order to Show Cause is not necessary since Complainant is withdrawing the complaint for discrimination. In the event Complainant wishes to proceed with a different claim, he must file a new complaint.

Based on Complainant's request to withdraw the discrimination claim, the Complaint is **DISMISSED** pursuant to NMIAC § 80-20.1-485(b). All pending deadlines are vacated.

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

4 So ordered this 26th day of September, 2023.

5 /s/

6 **JACQUELINE A. NICOLAS**
7 Chief Administrative Hearing Officer
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CNMI DEPARTMENT OF LABOR

ADMINISTRATIVE HEARING OFFICE

In Re Matter of:) **Labor Case No. 23-013**
)
Manoj Kewlani,)
)
Complainant,) **ADMINISTRATIVE DECISION**
) **DISMISSING COMPLAINT FOR**
v.) **FAILURE TO STATE A CLAIM**
)
Asia Pacific Hotels, Inc.,)
)
Respondent.)

I. INTRODUCTION

This matter came for an Order to Show Cause hearing on October 5, 2023 at 9:00 a.m. at the Administrative Hearing Office in Saipan. Complainant Manoj Kewlani (“Complainant”) was present and self-represented. Respondent Asia Pacific Hotels, Inc. (“Respondent”) was present and represented by Human Resource Generalist Diosalyn Matagolai and Attorney Steven Pixley.¹

II. APPLICABLE LAW AND ANALYSIS

Pursuant to 3 CMC § 4947(a), “the hearing office may, after notice and an opportunity to be heard is provided to the parties, dismiss *sua sponte* a complaint that the hearing officer finds to be without merit.” 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 § 80-20.1 -485(b).

On June 9, 2023, Complainant initiated a labor case against Respondent for a violation of employment preference law. Contradictory to an employment preference violation, Complainant submitted a statement regarding the issues and grievances he had while working. On June 20, 2023, Respondent filed an answer denying the allegations and stated that Complainant was

¹ Respondent was accompanied by staff of the company, Wilfredo Barbo, Orlando Soriano, Christie Sablan, Crispin Holiganga, and James Tudela. The staff were present to serve as witnesses, but did not provide testimony.

1 terminated with cause. Upon review of the pleadings, Complainant failed to state a claim or allege
2 any facts to demonstrate a violation of the employment preference law.² Specifically, there is no
3 showing that Complainant: (1) was entitled to preference; (2) applied for a job; (3) was denied
4 employment without cause; and (4) the employer hired a foreign worker. Accordingly,
5 Complainant was ordered to show cause why his complaint should not be dismissed for failure to
6 state a claim.

7 During the Order to Show Cause Hearing, Complainant did not contest the proposed
8 dismissal of his employment preference case and could not show how his other grievances with
9 management³ rose to the level of a violation of CNMI labor laws.

10 III. CONCLUSION

11 Based on the foregoing, dismissal is appropriate. Accordingly, the complaint is hereby
12 **DISMISSED**, with prejudice.

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

16 So ordered this 5th day of October, 2023.

17 /s/

18 **JACQUELINE A. NICOLAS**
19 Chief Administrative Hearing Officer
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23 ² Generally, US citizens and permanent residents shall be given preference for employment in the Commonwealth. 3
24 CMC § 4521.² Any citizen, CNMI permanent resident, or U.S. permanent resident who is qualified for a job, as
25 described in a job vacancy announcement, may file a complaint making a claim for damages if an employer rejects
26 an application for the job without just cause² a person who is not a citizen, CNMI permanent resident, or U.S.
27 permanent resident for the job. NMIAC § 80-20.1-455.

28 ³ First, Complainant felt discriminated against but could not identify the protected class or CNMI labor law protecting
him from the alleged discrimination. Second, Complainant disagreed with management decisions regarding his work,
schedule, and leave. Again, Complainant could not demonstrate how these disagreements rose to the level of a
violation in law. Third, Complainant was also upset that his last paycheck was withheld when he failed to follow off
boarding procedures to pick up his paycheck. His paycheck was ready for pick up but Complainant incorrectly
believed he was not permitted on the work premises to pick it up. His final paycheck was provided to him at the
hearing and Complainant did not dispute the hours or amount. While Complainant attempted to dispute a payout of
his leave, Respondent explained he was not entitled to it and Complainant did not pursue the issue further.



CNMI DEPARTMENT OF LABOR

ADMINISTRATIVE HEARING OFFICE

In Re Matter of:) Labor Case No. 23-023
)
Sonet Majumder,)
)
Complainant,) ADMINISTRATIVE ORDER
) DISMISSING COMPLAINT
v.)
)
Moses Security Services,)
)
Respondent.)

I. INTRODUCTION

This matter came for an Order to Show Cause hearing on October 17, 2023 at 9:00 a.m. at the Administrative Hearing Office in Saipan. Complainant Sonet Majumder (“Complainant”) was present and self-represented.¹ Respondent Moses Security Services (“Respondent”) was present and represented by President Hari Talukder.

II. APPLICABLE LAW AND ANALYSIS

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 § 80-20.1-485(b). Additionally, a complaint may be dismissed upon abandonment. NMIAC § 80-20.1-485(b).

On August 29, 2023, Complainant filed a complaint against Respondent for unpaid wages and overtime beginning November 2015 to March 2023. Upon review of the pleadings, the undersigned found: (1) a majority of Complainant’s allegations fall outside the six-month statute

¹ Mr. Majumder was accompanied by Mio Kim who acted as his personal interpreter for the proceedings.

1 of limitations;² and (2) jurisdiction³ cannot be established for the remaining claims because
2 Complainant did not provide sufficient documentation to show legal authorization to work in the
3 CNMI during the relevant time period (i.e., an approved CW Petition form authorizing
4 Complainant to work for Respondent during the relevant time period). Accordingly, Complainant
5 was ordered to show cause why the complaint should not be dismissed for lack of jurisdiction and
6 failure to state a claim.

7 Complainant did not respond to the above-stated deficiencies. During the Order to Show
8 Cause Hearing, the undersigned further explained the applicable law and issues with the
9 complaint. In response, Complainant stated on record that he no longer wanted to proceed with
10 his claims at the Administrative Hearing Office and wants to pursue his claim at the NMI Superior
11 Court. The undersigned finds that Complainant wishes to abandon the above-captioned labor case.

12 III. CONCLUSION

13 Based on the foregoing, dismissal is appropriate. Accordingly, this matter is hereby
14 **DISMISSED** pursuant to NMIAC §80-20.1-485(b).

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

18 So ordered this 17th day of October, 2023.

19 /s/

20 JACQUELINE A. NICOLAS

21 Chief Administrative Hearing Officer

27 ² No labor complaint may be filed more than six months after the date of the last-occurring event that is the subject
28 of the complaint, except in cases where the actionable conduct was not discoverable upon the last-occurring event".
3 CMC § 4962. "If a complaint is not timely filed, the hearing officer *shall* dismiss the complaint with prejudice."
NMIAC § 80-20.1-465(e). Emphasis added.

³ With respect to employment of foreign national workers, the Administrative Hearing Office has jurisdiction over
"all actions involving alleged violations of the labor and wage laws of the Commonwealth" 3 CMC § 4942
(emphasis added); see also NMIAC § 80-20.1-450(b). Importantly, "[t]he Administrative Hearing Office does not
have jurisdiction with respect to claims of tourists. Those claims are pursuant in the Commonwealth Superior Court."
NMIAC § 80-20.1-450(e); see also PL 15-108, § 2 ("It is the intent of the Legislature that this Act shall not apply to
persons admitted to the Commonwealth as tourists, or to persons employed illegally...").



CNMI DEPARTMENT OF LABOR

ADMINISTRATIVE HEARING OFFICE

In Re Matter of:) **Labor Case No. 23-024**
Chan Miah,)
Complainant,) **DISMISSAL ORDER**
v.)
Alima Phone Store,)
Respondent.)

Pursuant to 3 CMC § 4947(a), “the hearing office may, after notice and an opportunity to be heard is provided to the parties, dismiss *sua sponte* a complaint that the hearing officer finds to be without merit.” 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 § 80-20.1-485(b).

On August 31, 2023, Complainant initiated a labor case against Respondent for unpaid wages, violation of employment preference law, and unlawful reduction in force. Therein, Complainant alleged (1) employer forced him to do a job that is different from employment contract; (2) employer charged him for employment renewal; and (3) he is owed back wages from May 24, 2016 to July 22, 2016. Complainant fails to provide any allegations with respect to the employment preference violation and unlawful reduction in force. Additionally, Complainant fails to provide proof that he is lawfully employed. Upon review of the legal deficiencies in the Complaint, Complainant was ordered to show cause why complaint should not be dismissed for failure to state a claim within the six-month statute of limitations and failure to state a claim for employment preference. The deadline in the Order to Show Cause has passed and Complainant failed to provide the necessary allegations or otherwise show cause.

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1 Based on the pleadings and applicable law, the undersigned finds:

2 **1. Complainant fails to state a claim within the six-month statute of limitations.**

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

7 As stated above, Complainant alleges that he worked and was owed wages from May 24,
8 2016 to July 22, 2016. His last date of employment was July 22, 2016. Based on the allegations,
9 Complainant knew he was owed wages since 2016. However, for an unknown reason,
10 Complainant waited over 7 years to file his complaint. Since the alleged claims accrued outside
11 the six-month statute of limitations, they are time-barred.

12 **2. Complainant fails to state a claim to demonstrate a violation of the employment
13 preference requirement.**

14 Upon review of the Complaint and supplemental filing, Complainant failed to allege any
15 facts to demonstrate a violation of the employment preference law.¹ Specifically, there is no
16 showing that Complainant: (1) was entitled to preference; (2) applied for a job; (3) was denied
17 employment without cause; and (4) the employer hired a foreign worker. Instead, Complainant
18 simply checked a box on the standardized complaint form without any explanation. Accordingly,
the undersigned finds this claim to be frivolous and without merit.

19 **3. Complainant fails to state sufficient allegations to demonstrate an unlawful
20 reduction in force.**

21 The applicable law with respect to reductions in force does not take away a company’s
22 business judgment and discretion in initiating mass lay-offs or company closures. Instead, the
23 applicable reduction in force statutes and regulations prescribe a process and necessary notice

24
25 ¹ A citizen or CNMI permanent resident or U.S. permanent resident who is qualified for a job may make a claim for
26 damages if an employer has not met the requirements of 3 CMC § 4525, the employer rejects an application for the
27 job without just cause, and the employer employs a person who is not a citizen or CNMI permanent resident or U.S.
28 permanent resident for the job. 3 CMC § 4528. “In the full-time workforce of any employer, the percentage of citizens,
U.S. permanent residents, and CNMI permanent residents and their immediate relatives employed shall equal or
exceed the percentage of citizens, U.S. permanent residents, and CNMI permanent residents and their immediate
relatives in the available private sector workforce unless attainment of this goal is not feasible within the current
calendar year after all reasonable efforts have been made by the employer.” 3 CMC § 4525

1 requirements to do so. "An employer who employs foreign national workers may reduce the
2 number of current employees based on economic necessity. The employer shall provide notice to
3 the Department at least sixty days prior to the reduction in force." 3 CMC § 4937. *See also*
4 NMIAC § 80-20.1-240.

5 Here, there is no showing of a mass lay-off or company closure. In fact, there are no
6 allegations with respect to this claim. Accordingly, Complainant fails to show an unlawful
7 reduction in force.

8 Based on the foregoing, dismissal is appropriate. Accordingly, the complaint is hereby
9 **DISMISSED** with prejudice.

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

13 So ordered this **29th** day of September, 2023.

14 /s/

15 **JACQUELINE A. NICOLAS**

16 Chief Administrative Hearing Officer
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CNMI DEPARTMENT OF LABOR

ADMINISTRATIVE HEARING OFFICE

In Re Matter of:) Enforcement Investigation No. 23-002-05
) Compliance Agency Case No. 23-002
Department of Labor, Enforcement and)
Compliance,)
Complainant,) ADMINISTRATIVE DECISION
v.) DENYING RESPONDENT'S MOTION
TO RECONSIDER
Capital Saipan Corporation dba Koblerville)
Market,)
Respondent.)

I. INTRODUCTION

This matter came for a Motion Hearing on October 19, 2023 at 9:00 a.m. at the Administrative Hearing Office in Saipan. Complainant CNMI Department of Labor, Enforcement, Monitoring, and Compliance Section ("Enforcement") was present and represented by Labor Law Enforcement Specialist III Arlene Rafanan. Respondent Capital Saipan Corporation dba Koblerville Market ("Respondent") was not present but represented by Attorney Stephen Nutting.

This motion hearing was scheduled to hear arguments and clarify issues related to Respondent's Motion to Reconsider and to Vacate Judgment and Order Awarding Sanctions ("Respondent's Motion"). Based on the information presented and applicable law, Respondent's Motion is **DENIED**.

II. BACKGROUND

On June 7, 2023, the Department issued a Determination and Notice of Violation against Respondent for failure to timely submit quarterly compliance records for fiscal year 2021 and 2022. The matter was scheduled for a hearing and Respondent failed to appear. On July 20, 2023, a Judgment and Order imposing sanctions was issued against Respondent. On August 31, 2023, Respondent filed a Motion to Reconsider and to Vacate Judgment and Order Awarding Sanctions ("Motion"). In support of the Motion, Respondent argued a lack of due process because they did not receive the Notice of Hearing and Judgment and Order Awarding Sanction when it was issued.

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III. APPLICABLE LAW

Generally, “[a] motion for reconsideration may be granted for mistake, inadvertence, surprise, or excusable neglect . . . or other reason justifying relief.” NMIAC § 80-20.1-485(i). “A party may file a motion for reconsideration within fifteen days after service of an order.” *Id. See also* NMIAC § 80-20.1-615. “After a decision on a motion for reconsideration is signed, no further motions or filings may be made with the Administrative Hearing Office other than a notice of appeal.” NMIAC § 80-20.1-485(i).

IV. FINDINGS OF FACT

Based on the filings and information presented, the undersigned finds:

1. On June 7, 2023, the Department issued a Determination and Notice of Violation against Respondent for failure to timely submit quarterly compliance records for fiscal year 2021 and 2022. Specifically, the Determination provides that Respondent violated NMIAC §80-20.1-505 by failing to submit the quarterly total workforce listing and NMIAC § 80-20.1-510 by failing to submit the annual workforce plan.
2. The hearing was initially scheduled for July 6, 2023 and rescheduled to July 20, 2023 upon Respondent’s Request for a Continuance.
3. On July 6, 2023, the undersigned issued Order Continuing Hearing. This Order Continuing Hearing served as notice of the July 20, 2023 hearing. The parties had approximately 2 weeks advance notice of the hearing.
4. The Order Continuing Hearing was served to all parties by alternative means (e.g., email) on July 6, 2023 – the same day it was issued. Specifically, the Notice was attached to an email sent to Respondent and Respondent’s counsel based on contact information on file.
 - a. A print out of the email and attachment were included with the proof of service.
 - b. Respondent’s counsel confirmed his email on the print out was correct.
 - c. Respondent’s counsel confirmed that he received the email on July 6, 2023 but for some unknown reason does not recall an attachment.
5. Respondent and Respondent’s counsel failed to appear to the hearing.
6. On July 20, 2023, the undersigned issued a Judgment and Order Awarding Sanctions.
 - a. Respondent was found in violation of NMIAC § 80-20.1-505 for failure to submit a 2022 Total Workforce Listing, NMIAC § 80-20.1-505 for failure to

1 submit a 2022 Workforce Plan, and NMIAC § 80-20.1-455 for failure to submit
2 a business license.

3 b. Respondent was sanctioned \$2,000 for each violation.

4 c. This Judgment and Order also provided Respondent's appeal rights and deadline
5 to remit payment.

6 7. The Judgment and Order Awarding Sanctions was served to all parties by alternative
7 means (e.g., email) on July 20, 2023. Specifically, the Notice was attached to an email
8 sent to Respondent and Respondent's counsel based on same contact information on file.

9 a. A print out of the email and attachment were included with the proof of service.

10 b. Respondent's counsel confirmed his email on the print out was correct.

11 c. Respondent's counsel confirmed his client received the Judgment and Order
12 Awarding Sanctions.

13 8. On August 31, 2023, Respondent filed the present motion to reconsider.

14 V. CONCLUSIONS OF LAW

15 Based on the findings and applicable law, the undersigned concludes:

16 1. The parties were given adequate notice of the July 20, 2023 scheduled hearing.¹

17 2. The notice was properly served in accordance to NMIAC § 80-20.1-475(d)(4).²
18 Considering that Respondent's counsel confirmed receiving the email and the email
19 included the attached notice, Respondent had actual notice of the scheduled hearing.

20 3. Pursuant to NMIAC § 80-20.1-480 (1), Respondent's failure to appear for the noticed
21 hearing constituted a waiver to contest the allegations. The amount of the sanctions or fine
22 was permissible by law.³

23 4. Respondent's Motion is untimely.⁴ The deadline to file a motion to reconsider was August
24 4, 2023 but Respondent filed the motion on August 31, 2023.

25 ¹ In accordance with the Administrative Procedures Act, parties must be given adequate notice of an agency hearing.
26 See 1 CMC § 9109.

27 ² "Notice may be given by telephone or electronic mail as the Administrative Hearing Officer determines
28 appropriate." NMIAC § 80-20.1-475(d)(4). "Employers and employees are responsible for keeping contact
information in the Department's records up to date and accurate." NMIAC § 80-20.1-475(c).

³ Pursuant to NMIAC § 80-20.1-485(c), the hearing officer has authority to levy a fine not to exceed \$2,000 for each
violation or impose any other sanction, order, or relief as may reasonably give effects to the requirements of
Commonwealth law.

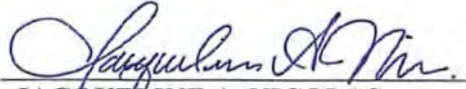
⁴ "A party may file a motion for reconsideration within fifteen days after service of an order." NMIAC § 80-20.1-
485(i); See also NMIAC § 80-20.1-615.

1 5. Respondent's Motion for lack of notice and due process has no merit. Parties were
2 provided adequate notice and had the opportunity to be heard at a hearing. The fact that
3 Respondent didn't appear for the scheduled hearing or timely file motions is not a
4 deprivation of due process.

5 VI. DECISION

6 Respondent's Motion to Reconsider and to Vacate Judgment and Order Awarding Sanctions
7 is **DENIED**. Any person or party aggrieved by this Order may appeal by filing the Notice of
8 Appeal form and filing fee with the Administrative Hearing Office within fifteen (15) days from
9 the date of this Order.

10 So ordered this **19th** day of October, 2023.

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12 JACQUELINE A. NICOLAS
13 Chief Administrative Hearing Officer
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CNMI DEPARTMENT OF LABOR

ADMINISTRATIVE HEARING OFFICE

In Re Matter of:) **Enforcement Investigation No. 23-010-07**
) **Compliance Agency Case No. 23-007**
Department of Labor, Enforcement and)
Compliance,)
Complainant,) **FINDINGS OF FACT AND**
v.) **CONCLUSIONS OF LAW**
JDEX Corporation,)
Respondent.)

I. INTRODUCTION

This matter came for an Administrative Hearing on September 13, 2023 at 9:00 a.m. at the Administrative Hearing Office in Saipan. Complainant CNMI Department of Labor, Enforcement, Monitoring, and Compliance Section ("Enforcement") was present and represented by Labor Law Enforcement Specialist III Arlene Rafanan. Respondent JDEX Corporation ("Respondent") was present and represented by President, Rossana Pinote.¹

II. BACKGROUND

On August 21, 2023, Enforcement filed a Determination and Notice of Violation against Respondent for: (1) employing a foreign national worker without authorization to legally work in the CNMI in violation of 3 CMC § 4963 (j); and (2) providing false or misleading information to the Department pursuant in violation of 3 CMC § 4963 (d). After resolving a scheduling conflict, the matter was scheduled for an Administrative Hearing. The Notice was issued and served on August 25, 2023. The hearing was scheduled for September 13, 2023 and both parties appeared. During the above-scheduled hearing, the undersigned heard testimony from both sides as to: (1) whether the alleged violations occurred; and, if so (2) what the appropriate sanction should be. Enforcement requested the maximum penalty. The parties stipulated to admission of all the Department's proposed exhibits. Respondent provided no additional documents for review.

¹ Respondent's Register Agent Gloria Sabado was present to observe but did not testify the hearing.

III. APPLICABLE LAW

The Department's Enforcement, Compliance, and Monitoring Section ("Enforcement") has authority to conduct investigations and inspect worksites to enforce the applicable labor laws, ensure lawful working conditions, employer-supplied benefits, and the health and safety of foreign national workers. 3 CMC §§ 4939-4940. When appropriate, "the [Enforcement] may commence an action against an employer or a foreign national worker for an alleged violation of the labor or wage laws of the Commonwealth. 3 CMC § 4941(b). In order to commence an action, Enforcement must adhere to the following process outlined under NMIAC§ 80-20.1-435:

If upon inspection a violation is found of any provision of the Commonwealth Employment Act of 2007, as amended, the Minimum Wage and Hour Act, as amended, or the Department regulations promulgated pursuant to Commonwealth law, the investigator may, within thirty days:

(a) Warning.

Issue a warning to the responsible party to correct the violation. If the responsible party does not comply within ten days and correct the violation, the Chief of the Enforcement Section may issue a notice of violation.

(b) Notice of violation.

Issue a notice of violation to the responsible party. Upon issuance of a notice of violation, an action is opened in the Administrative Hearing Office with the Chief of the Enforcement Section as the complainant. If the notice of violation is issued in circumstances where the complaint has been filed with the Administrative Hearing Office by an individual complainant, the caption on the case may be amended to reflect the Chief of the Enforcement Section as the complainant.

NMIAC § 80-20.1-435.² In filing a Notice of Violation, an agency case is initiated and Enforcement has the burden to prove their case in a hearing.³

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² *Compra* NMIAC § 80-20.2-110 ("Within ten days of the initiation of an investigation the Chief of Labor or his designee shall either: (a) issue a warning and request to correct the violation . . . or (b) issue a notice of violation and conduct a hearing pursuant to 1 CMC § 9109.")

³ Unless otherwise provided by statute, the proponent of an administrative order or decision has the burden of proof. 1 CMC § 9109(i). *In re San Nicolas*, 1 NMI 329 (1990). Burden of proof in an adjudicatory proceeding is the burden of going forward with the evidence on all substantive issues. *In re San Nicolas*, 1 NMI 329 (1990).

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IV. JURISDICTION

The Administrative Hearing Office has jurisdiction over “*all actions* involving alleged violations of the labor and wage laws of the Commonwealth ...” 3 CMC § 4942 (emphasis added).

As discussed above, Enforcement initiated an agency case for alleged violations of employer prohibitions under 3 CMC § 4963. Based on the alleged violations of labor laws of the Commonwealth, jurisdiction is established.

V. FINDINGS OF FACT

During the hearing, the parties presented a number of conflicting and circumstantial evidence. In consideration of the evidence provided and credibility of witness testimony, the undersigned issues the following findings of fact:

1. Respondent operates two distinct businesses: (1) Zi Salon; and (2) C-Air Refrigeration and Airconditioning Parts and Repair.
2. The claim regarding unauthorized employment case involves Zi Salon.
 - a. Zi Salon is owned and operated by Rossana Pinote, also known as Rossana Dela Vega.
 - b. Zi Salon does not operate regular hours and opens for appointments only.
 - c. Sometime prior to the investigation, Pinote decided to sell business and was showing the salon to interested buyers.
 - d. As of the date of the hearing, the business was sold.
3. The claim regarding false and misleading statements involves C-Air Refrigeration and Airconditioning Parts and Repair.
4. Enforcement’s investigation began as a random worksite inspection at Zi Salon in As Perdido, Saipan. On April 19, 2023, Enforcement entered Zi Salon and was greeted by Mr. Rogelio “Roger” Papa.
5. Mr. Papa held himself out as a barber at Zi Salon.
 - a. Mr. Papa had access to a restricted area behind the counter.
 - b. Mr. Papa had his name and cost of services handwritten on several Zi Salon business cards on the front desk.⁴

⁴ Exhibit 3.

- 1 6. Based on the line of questioning between Enforcement and Mr. Papa, Enforcement issued
2 a Request for Production of Documents.⁵ Respondent timely submitted the requested
3 records.⁶
- 4 7. Upon review, Enforcement requested additional documents going further back from 2020
5 to 2021.⁷ Again, Respondent timely submitted the requested records.⁸
- 6 8. On July 13, 2023, Respondent conducted an interview to clarify some issues.
- 7 9. Ultimately, Enforcement found that some of Respondent's statements and records were
8 contradictory or conflicting.
- 9 a. First, Enforcement found records had different start dates for employee, Ralph
10 Noceda.⁹ Specifically, the total workforce listing states that Mr. Noceda started
11 employment in October 1, 2020. However, the PUA separation notices indicated
12 that Mr. Noceda started July 1, 2019. Enforcement believes the correct date was
13 on the total workforce listing and the separation notice was falsified in order for
14 Mr. Noceda to avail of unemployment benefits under PUA.
- 15 b. Second, Enforcement found records had different titles for Ms. Pinote.¹⁰ One
16 contract listed Ms. Pinote as the employee and another contract listed Ms. Pinote
17 as the employer. Ms. Pinote explained that this discrepancy was a clerical error.
- 18 10. On July 28, 2023, Enforcement officially opened an investigation against Respondent
19 based on the information gathered.
- 20 11. At all times relevant to this case, Mr. Papa's immigration status and authorization to work
21 was unclear. Sometime before the hearing, Mr. Papa allegedly departed the CNMI.
- 22 12. On August 21, 2023, Enforcement filed a Determination and Notice of Violation against
23 Respondent for employing a foreign national worker without authorization to legally work
24 in the CNMI in violation of 3 CMC § 4963 (j); and providing false or misleading
25 information to the Department pursuant in violation of 3 CMC § 4963 (d). In support of
26 the Determination, the Department filed eight proposed exhibits.

27 ⁵ Exhibit 1.

28 ⁶ Respondent submitted the records on May 1, 2023. The deadline to submit records was May 1, 2023.

⁷ Exhibits 2.

⁸ Respondent submitted the records on June 5, 2023. The deadline to submit the records was June 12, 2023.

⁹ Exhibits 4a-7b.

¹⁰ Exhibits 8-8a.

1 13. During the scheduled hearings, the undersigned heard testimony from Ms. Pinote and the
2 assigned Labor Law Enforcement Specialist. Respondent did not offer any proposed
3 exhibits but stipulated to the admission of all the Enforcement's proposed exhibits. There
4 were no other witnesses.

5 VI. CONCLUSIONS OF LAW

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

8 1. Enforcement's Determination and Notice of Violation is timely.

9 Enforcement began their investigation in April but only discovered a potential violation on
10 July 28, 2023. Before the 30-day deadline, Enforcement filed a Notice of Violation on August
11 21, 2023. Accordingly, Enforcement's Determination and Notice of Violation is timely.

12 2. Enforcement fails to prove a violation of unauthorized employment under 3 CMC § 13 4963.

14 Employers are subject to a number prohibitions when employing foreign national workers. 3
15 CMC § 4963. Among other things, "[a]n employer shall not employ a person who is not a citizen
16 or permanent resident and who has not entered the Commonwealth without authorization to
17 work." 3 CMC § 4963 (j). To demonstrate a violation of unauthorized employment, Enforcement
18 must show: (1) The employer employed an individual; and (2) the individual is not a U.S. Citizen
19 or Permanent Resident or entered the Commonwealth without authorization to work. 3 CMC §
20 4963 (j).

21 As a preliminary matter, it is important to note that alleging facts in a Determination or Notice
22 of Violation is not the same as proving or establishing facts in a hearing. In this case, Enforcement
23 alleged that Mr. Papa had no status. Enforcement came to this conclusion because they found
24 that: (1) Mr. Papa was a former employee at Jigz Barbershop; (2) Jigz Barbershop did not renew
25 or repatriate Mr. Papa; and (3) Zi Salon never processed a CW-1 petition to employ Mr. Papa.
26 Enforcement did not present testimonial or documentary evidence to support these allegations.
27 When questioned how Enforcement knew about Mr. Papa's former employment and status, the
28 Labor Law Enforcement Specialist explained she was a customer at Jigz Barbershop when Mr.
Papa would cut hair. This explanation is not persuasive because personal knowledge of Mr. Papa's
former employment does not prove current employment authorization or immigration status.
Moreover, while Respondent confirmed they never submitted a CW-1 petition to employ Mr.

1 Papa, it falls short of showing that Mr. Papa did not have work authorization under other visas or
2 employment authorization categories. While the undersigned recognizes that Mr. Papa has since
3 departed the CNMI and Enforcement may no longer be able to obtain the necessary documentation¹¹
4 to verify employment authorization or status, the undersigned is unable to make logical inferences
5 based on speculation and hearsay. Without sufficient evidence to determine Mr. Papa's
6 employment authorization or status, Enforcement fails to meet their burden of proof to establish
7 a violation of unauthorized employment.

8 **3. Enforcement fails to prove a violation of providing materially false or misleading**
9 **information under 3 CMC § 4963 (i).**

10 As discussed above, there are a number of prohibitions listed under 3 CMC § 4963. For
11 example, "[a]n employer or foreign national worker shall not make a materially false statement
12 or given materially misleading information, orally or in writing, to the Department ... with respect
13 to any requirement of this chapter." 3 CMC § 4963(d). To demonstrate a violation of this
14 provision, Enforcement must show: (1) an employer or foreign national worker made a statement;
15 (2) to the Department or other executive branch employee; (3) regarding the requirements of
16 employing foreign national workers listed under 3 CMC §§ 4921 et. seq.; (4) which included
17 materially false or misleading information.

18 Enforcement fails to demonstrate a violation for both instances alleged. First, Enforcement
19 alleges Respondent provided false or misleading information to the Department when the
20 company submitted business records with conflicting information regarding Mr. Noceda's start
21 date. Considering that the false statement was in the PUA separation notices – rather than the total
22 workforce listing – Enforcement fails to show how the statement was relevant to the requirements
23 employing foreign national workers. Second, Enforcement alleges Respondent provided false or
24 misleading to the Department when the company submitted employment contracts with
25 contradicting information regarding Ms. Pinote's job title. Respondent explained this was a
26 clerical error. Further, there is no showing how that clerical error had any effect or consequence
27 with regards to the requirements for employing foreign national workers. Accordingly, the false
28 or misleading information was not material. Based on the foregoing, Enforcement fails to
establish a violation of 3 CMC § 4963(i).

¹¹ USCIS publishes a list of acceptable documents for verifying employment authorization.

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VII. DECISION

For the reasons stated above, the Department has failed to meet their burden of proof to establish the alleged violations against Respondent. Accordingly, judgment is entered in favor of Respondent and no sanctions are imposed.

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.

So ordered this 22nd day of September, 2023.

/s/

JACQUELINE A. NICOLAS
Chief Administrative Hearing Officer



CNMI DEPARTMENT OF LABOR

ADMINISTRATIVE HEARING OFFICE

In Re Matter of:) Enforcement Investigation No. 23-012-09
Department of Labor, Enforcement and Compliance,) Compliance Agency Case No. 23-008
Complainant,)
v.) ADMINISTRATIVE DECISION
One Corporation,) DISMISSING VIOLATIONS FOR
Respondent.) ENFORCEMENT'S FAILURE TO FILE
) WITHIN 30 DAYS

I. INTRODUCTION

This matter came for a Prehearing Conference on October 18, 2023 at 9:00 a.m. at the Administrative Hearing Office in Saipan. Complainant CNMI Department of Labor, Enforcement, Monitoring, and Compliance Section ("Enforcement") was present and represented by Labor Law Enforcement Specialist III Arlene Rafanan and Acting Director Jeffrey Camacho. Respondent One Corporation ("Respondent") was present and represented by Company President Sang Hyun Chun.

As further discussed below and based on applicable law and evidence presented, the alleged violations in the Determination are hereby **DISMISSED** for failure to filing within 30 days of the known violation, in accordance with NMIAC § 80-20.1-435.

II. BACKGROUND

On September 19, 2023, Enforcement filed a Determination and Notice of Violation against Respondent for unauthorized employment, job preference and failure to post a job vacancy announcement. Enforcement sought a fine in the amount of \$500 per violation, a total of \$1,500. Respondent did not file a response to the Determination. On September 22, 2023, a Notice of Prehearing Conference was issued and served to the parties. The purpose of the Prehearing Conference was to clarify the matters alleged, the parties' positions, and timeliness of the filing.

III. APPLICABLE LAW

The Department's Enforcement, Compliance, and Monitoring Section ("Enforcement") has authority to conduct investigations and inspect worksites to enforce the applicable labor laws, ensure lawful working conditions, employer-supplied benefits, and the health and safety of foreign national workers. 3 CMC §§ 4939-4940. When appropriate, "the [Enforcement] may commence an action against an employer or a foreign national worker for an alleged violation of the labor or wage laws of the Commonwealth. 3 CMC § 4941(b); *see also* NMIAC § 80-20.1-455(j).¹ The regulations further specify:

If upon inspection a violation is found of any provision of the Commonwealth Employment Act of 2007, as amended, the Minimum Wage and Hour Act, as amended, or the Department regulations promulgated pursuant to Commonwealth law, the investigator may, *within thirty days*:

(a) Warning.

Issue a warning to the responsible party to correct the violation. If the responsible party does not comply within ten days and correct the violation, the Chief of the Enforcement Section may issue a notice of violation.

(b) Notice of violation.

Issue a notice of violation to the responsible party. Upon issuance of a notice of violation, an action is opened in the Administrative Hearing Office with the Chief of the Enforcement Section as the complainant. If the notice of violation is issued in circumstances where the complaint has been filed with the Administrative Hearing Office by an individual complainant, the caption on the case may be amended to reflect the Chief of the Enforcement Section as the complainant.

NMIAC § 80-20.1-435 (emphasis added).²

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¹ In practice, Enforcement has filed a Determination or Notice of Violation to initiate an agency case at the Administrative Hearing Office.

² *Compra* NMIAC § 80-20.2-110 ("Within ten days of the initiation of an investigation the Chief of Labor or his designee shall either: (a) issue a warning and request to correct the violation . . . or (b) issue a notice of violation and conduct a hearing pursuant to 1 CMC § 9109.")

IV. ANALYSIS

In this case, Enforcement alleges a violation of 3 CMC § 4963(j) for unauthorized employment, 3 CMC § 4522 for failure to post a Job Vacancy Announcement, and 3 CMC § 4521 for failure to give job preference. Enforcement's investigation began when Enforcement received an anonymous tip about an individual "illegally working" at Respondent's worksite. Thereafter, Enforcement requested a number of business records, conducted an onsite investigation, and interviewed parties. Based on the investigation, Enforcement determined there was sufficient information to support the above-stated violations and opened a compliance agency case on August 16, 2023. Subsequently, on September 19, 2023, Enforcement filed the Notice of Violation / Determination at the Administrative Hearing Office.

When asked why the case was not filed within 30 days of discovering the alleged violations on August 16, 2023, Enforcement's investigator indicated they were unaware of the 30-day deadline and information gathered after the August 16, 2023 should push the deadline back. Upon further inquiry, the investigator conceded that the information gathered in subsequent interviews only corroborated and supported the violations they already substantiated on August 16, 2023. Subsequently, Enforcement's Acting Director argued that there is no 30-day deadline and Enforcement has unfettered authority to file cases whenever they want upon completion of an investigation.

As a preliminary matter, the undersigned recognizes Enforcement's authority to investigate labor issues and initiate agency cases under 3 CMC § 4941(b) and NMIAC §80-20.1-455(i). However, for the reasons discussed below, the undersigned rejects Enforcement's argument that this authority is unregulated and allows them to file cases whenever their investigation is complete. First, Enforcement's arguments are solely based on opinion and are not fully developed legal arguments or otherwise supported by law.³ Specifically, Enforcement could not point to a single statute, regulation, or persuasive authority to support their argument.⁴ Notably, Enforcement misunderstands that their authority to act must be deeply rooted in statute or

³ A party must do more than simply state their argument or cite to random law or instances to be sufficient developed and cognizable. Consequently, when a party fails to sufficiently develop an argument, the issues are deemed waived. *See In Re Blankenship*, 3 NMI 209, 216 (1992) (waiving issues the party did not discuss or analyze).

⁴ When the Department's interpretation of regulations is not supported by a thorough legal review, discretionary authority, or understanding of the regulation, it is "neither reasonable nor consistent with the terms of the regulations and clearly erroneous." *Government NMI v. Micronesian Insurance Underwriters, Inc.*, 2 CR 777, *aff'd in part and rev'd in part*, 3 CR 731 (DNMI App. Div. 1989).

1 regulation.⁵ Second, Enforcement's opinion and interpretation of the law is in direct contrast to
2 NMIAC § 80-20.1-435, which requires action, if any, within 30 days of finding a violation.⁶
3 Third, Enforcement's interpretation and sole reliance on NMIAC § 80-20.1-455 is misconstrued
4 and in conflict with canons of interpretations. Specifically, the regulations should be read as a
5 whole.⁷ Further, Enforcement's interpretation would render the 30 days deadline in NMIAC §
6 80-20.1-435 useless.⁸ And lastly, Enforcement's argument is illogical and would lead to one-
7 sided absurd results⁹ that would allow enforcement to hold employers and businesses hostage by
8 initiating cases five or ten years after the fact, simply because they did not complete their
9 investigation sooner. This flies against basic constructs of fairness, would allow evidence to
10 deteriorate, and conflicts with principles of timely prosecution and efficiency in the administrative
11 hearing process. More important, this interpretation would allow an arbitrary abuse of discretion.

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15 ⁵ Administrative law deals with non-autonomous agencies that exercise limited discretion through a predefined
16 process. Such agencies have no inherent rights, and may only exercise the authority vested in them by constitution
17 or statute. *Northern Marianas College v. Civil Serv. Comm'n*, 2006 MP 4 ¶ 8.

18 ⁶ Enforcement cannot ignore established Department regulations. "It is axiomatic that an agency must comply with
19 its own rule." *Benavente v. Marianas Pub. Land Corp.*, 2000 MP 13 ¶ 31. "It is an elemental principle of
20 administrative law that agencies are bound to follow their own regulations. An agency is obliged to abide by the
21 regulations it promulgates. The government must follow its own regulations. Actions by an agency of the executive
22 branch in violation of its own regulations are illegal and void." *CNMI Nutritional Assistance Program v. Santos*,
23 SC-17-0215, Order (July 31, 2018) at 5 (internal citations and quotations omitted). "If a regulation or provision is
24 certain, unambiguous and obligatory, an agency cannot just 'interpret' it to reach another result." *Government NMI*
25 *v. Micronesian Insurance Underwriters, Inc.*, 2 CR 777, *aff'd in part and rev'd in part*, 3 CR 731 (DNMI App. Div.
26 1989).

27 ⁷ Similar to statutory interpretation, all parts of the regulations should be read and applied in harmony. "It is a basic
28 canon of statutory interpretation that all part of an enactment should be harmonized with each other as well as with
the general intent of the whole enactment, with meaning and effect given to all provisions. The Supreme Court must
give effect, if possible, to every clause and word of a statute." *Deleon Guerrero v. Dep't Publ. Lands*, 2011 MP 3 ¶
11. "Statutory interpretation must be guided not by a single sentence or member of a sentence, but looking to the
provisions of the whole law, and to its object and policy." *Commonwealth v. Sablan*, 2016 MP 12 ¶ 10.

⁸ "The rule against surplusage is a common law canon of construction, which embodies the well-established principle
that the proper interpretation of a legislative enactment seeks to provide meaning to every word of the statute – not
render language of the enactment redundant." *Commonwealth v. Reiong*, 2015 MP 13 ¶ 9. "One statutory provision
should not be construed to make another provision either inconsistent or meaningless." *Commonwealth v. Laniyo*,
2012 MP 1 ¶ 10. "It [can be] presumed that legislature intended to enact an effective law; it is not to be presumed
that legislation is a vain effort, or a nullity." *Estate of Faisao v. Tenorio*, 4 NMI 260 (1995). "One statutory provision
should not be construed to make another provision inconsistent or meaningless." *In re Estate of Rofag*, 2 NMI 18
(1991).

⁹ "It is a well-established rule of statutory construction that a court should avoid interpretations of a provision which
would defy common sense or lead to absurd results." *Kabir v. Barcinas*, 2009 MP 19 ¶ 35; *Commonwealth v. Yao*,
2007 MP 12 ¶ 8; *Commonwealth Ports Auth. v. Hakubotan Saipan Enters., Inc.*, 2 NMI 212 (1991).

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V. FINDINGS AND CONCLUSIONS

Based on the foregoing, the undersigned finds and concludes:

1. Enforcement discovered the alleged violation(s) on or before August 16, 2023.
2. Enforcement filed a Notice of Violation/Determination at the Administrative Hearing Office on September 19, 2023.
3. Enforcement failed to initiate an agency case with the Administrative Hearing Office, within the 30 days, as required by NMIAC § 80-20.1-435.
4. Enforcement's failed to show that their case should not be dismissed for untimeliness.

VI. CONCLUSION

Accordingly, this case is **DISMISSED**. Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of this Order.

So ordered this 18th day of October, 2023.



JACQUELINE A. NICOLAS
Chief Administrative Hearing Officer



CNMI DEPARTMENT OF LABOR

ADMINISTRATIVE HEARING OFFICE

In Re Matter of:) **Enforcement Investigation No. 23-01-05T**
) **Compliance Agency Case No. 23-001(T)**
Department of Labor, Enforcement and)
Compliance,)
Complainant,) **ORDER OF DISMISSAL**
v.)
HJ 2 Corporation,)
Respondent.)

I. INTRODUCTION

This matter came for a Status Conference on September 27, 2023 at 9:30 a.m. at the Administrative Hearing Office in Saipan. Complainant CNMI Department of Labor, Enforcement, Monitoring, and Compliance Section (“Enforcement”) was present and represented by Labor Law Enforcement Specialist 1 Patrick King. Respondent HJ 2 Corporation (“Respondent”) was present and represented by Company President Moon Soo Jang and Mr. Jang’s personal interpreter Mr. Jin Koo Cho.

II. BACKGROUND

On September 7, 2023, Enforcement filed a Determination and Notice of Violation against Respondent for failure to submit required records. Enforcement sought the maximum fine in the amount of \$2,000 per violation, a total of \$4,000.¹ Respondent did not file a response to the Determination. On September 15, 2023, a Notice of Status Conference was issued and served to the parties.

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¹ While the case involves a records violation, the determination does not clearly identify which missing records are at issue. First, the investigator reported that Employer failed to timely submit 4 different types of records (e.g., total workforce listing, workforce plan, annual corporate report, and tax returns) for the first and second quarter of FY2023 – seemingly a total of 8 missing records. However, the workforce plan and annual corporate report are not submitted on a quarterly basis – reducing the violations to a total of 6 missing records. Then, the investigator concluded with requesting the maximum \$2,000 per violation or \$4,000 total—seemingly only 2 violations in total. Given the inconsistencies, it is unclear how the investigator calculated the number of violations in the Determination.

III. DISCUSSION

The Department's Enforcement, Compliance, and Monitoring Section ("Enforcement") has authority to conduct investigations and inspect worksites to enforce the applicable labor laws, ensure lawful working conditions, employer-supplied benefits, and the health and safety of foreign national workers. 3 CMC §§ 4939-4940. When appropriate, "the [Enforcement] may commence an action against an employer or a foreign national worker for an alleged violation of the labor or wage laws of the Commonwealth. 3 CMC § 4941(b). To commence an action, Enforcement must comply with the procedure in NMIAC§ 80-20.1-435. The regulation provides:

If upon inspection a violation is found of any provision of the Commonwealth Employment Act of 2007, as amended, the Minimum Wage and Hour Act, as amended, or the Department regulations promulgated pursuant to Commonwealth law, the investigator may, *within thirty days*:

(a) Warning.

Issue a warning to the responsible party to correct the violation. If the responsible party does not comply within ten days and correct the violation, the Chief of the Enforcement Section may issue a notice of violation.

(b) Notice of violation.

Issue a notice of violation to the responsible party. Upon issuance of a notice of violation, an action is opened in the Administrative Hearing Office with the Chief of the Enforcement Section as the complainant. If the notice of violation is issued in circumstances where the complaint has been filed with the Administrative Hearing Office by an individual complainant, the caption on the case may be amended to reflect the Chief of the Enforcement Section as the complainant.

NMIAC § 80-20.1-435 (emphasis added).² In addition to filing within thirty days, Enforcement has the burden to prove their case in a hearing.³ Pursuant to 3 CMC § 4947 and NMIAC § 80-20.1-485, each proven violation is subject to \$2,000 in fines or other sanctions.

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² *Compra* NMIAC § 80-20.2-110 ("Within ten days of the initiation of an investigation the Chief of Labor or his designee shall either: (a) issue a warning and request to correct the violation . . . or (b) issue a notice of violation and conduct a hearing pursuant to 1 CMC § 9109.")

³ Unless otherwise provided by statute, the proponent of an administrative order or decision has the burden of proof. 1 CMC § 9109(i). *In re San Nicolas*, 1 NMI 329 (1990). Burden of proof in an adjudicatory proceeding is the burden of going forward with the evidence on all substantive issues. *In re San Nicolas*, 1 NMI 329 (1990).

IV. ANALYSIS

Generally, employers are required to maintain and submit a number of employment-related records.⁴ Employers who fail to timely submit required records are subject to fines, fees, sanctions, or penalties.

Enforcement's investigation regarding Respondent's records began when Enforcement received a list of companies who did not timely submit required records. Based on the information collected, Enforcement opened an investigation May 9, 2023. Aside from a phone call to the employer and an email with the Department, there was little investigation conducted. Seemingly, a written request for documents or notice of warning was not issued. On September 7, 2023, Enforcement filed a determination seeking a total of \$4,000 in sanctions for a number of missing records. Based on the information provided, Enforcement discovered violation in May but did not file their case until September. Accordingly, Enforcement failed to file their case within 30 days of discovering the violation.

V. CONCLUSION

Based on the foregoing, Enforcement failed to comply with NMIAC § 80-20.1-435. Accordingly, this case is **DISMISSED**. Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of this Order.

So ordered this 27th day of September, 2023.

/s/

JACQUELINE A. NICOLAS

Chief Administrative Hearing Officer

⁴ Specifically, "[a]n employer for any foreign national worker shall keep, and present immediately . . . (a) personnel records for each foreign national worker . . . (b) payroll records for each foreign national worker . . . (c) documentation for each foreign national worker . . . and (d) business license and any other information or documentation required by regulation. 3 CMC § 4967. Similarly, the regulations require that "[a]n employer of a foreign national worker shall keep for at least two years, and present immediately upon written request . . . (a) personnel records for each foreign national worker . . . (b) payroll records for each foreign national worker . . . (c) receipts for cash payments, cancelled checks or deposit records of payment of wages and overtime . . . (d) documentation for each foreign national worker . . . (e) the employer's business license . . . and (f) the number and type of employment related accidents or illnesses" NMIAC § 80-20.1-501. Additionally, applicable employers must submit a Total Workforce Listing pursuant to NMIAC § 80-20.1-505 and a Workforce Plan pursuant to NMIAC § 80-20.1-510. "Every employer shall maintain sufficient documentation to demonstrate compliance with federal and Commonwealth employment requirements as provided in law and applicable regulations." NMIAC § 80-20.1-425.



CNMI DEPARTMENT OF LABOR

ADMINISTRATIVE HEARING OFFICE

In Re Matter of:) PUA Case No. 22-0195
)
Alexandria Castro,)
)
Appellant,) ADMINISTRATIVE ORDER GRANTING
) APPELLANT'S REQUEST FOR
v.) DISMISSAL
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
Appellee.)

This matter was scheduled for an Administrative Hearing on October 3, 2023 at 9:00 a.m. at the Administrative Hearing Office in Saipan. On October 2, 2023, Appellant's counsel filed a request to dismiss the matter as resolved. In support of the request, Appellant provided a signed Notice of Overpayment and a Payment Plan Agreement. Based on the documents filed, Appellant no longer contests the dismissal and will be repaying \$25.00 bi-weekly. The Department does not oppose the dismissal.

In consideration of the above, the undersigned finds dismissal is appropriate. Accordingly, this appeal is hereby **DISMISSED** and the Administrative Hearing scheduled for October 3, 2023 at 9:00 a.m. is **VACATED**. The Department's Amended Notice of Overpayment dated January 18, 2023 is **FINAL**. Appellant is not eligible for PUA benefits and overpaid in the total amount of \$12,900 with the amount of \$1,240 waived for weeks ending February 8, 2020 through October 31, 2020. Appellant shall promptly repay the remaining balance of \$11,660.

If a party is aggrieved by this order and would like to contest the decision, he or she must submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5.93. The written request should be supported by legal, factual, or evidentiary reasons to reopen the decision. The written request must be submitted to the Administrative Hearing Office, either in person at 1357 Mednilla Avenue, Capitol Hill, Saipan, CNMI, or via email at hearing@dol.gov.mp.

1 In the event a request to reopen the decision is granted, the matter shall be scheduled for
2 a subsequent hearing. In the event a request to reopen the decision is denied, and if the Appellant
3 still disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI
4 Superior Court under the local Administrative Procedures Act within 30 days. *See* 1 CMC § 9112.
5 All forms, filing fees, and filing deadlines for judicial review will be established by the applicable
6 law and court rule.

7 So ordered this 3rd day of October, 2023.

8 /s/

9 **JACQUELINE A. NICOLAS**
10 Chief Administrative Hearing Officer
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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re Matter of:) PUA Case No. 22-0216
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Rong Shan Cui,)
)
Appellant,) ADMINISTRATIVE ORDER
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

I. INTRODUCTION

This matter came for an Administrative Hearing on June 9, 2023 at approximately 1:30 p.m. at the Administrative Hearing Office in Saipan. Appellant Rong Shan Cui (“Appellant”) was present and represented by attorney Stephen C. Woodruff. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance Program (“Appellee” or “Department”) was present and represented by PUA Program Coordinator Emelda Camacho. There were no other witnesses that provided testimony at the hearing. Interpreter Brandon Doggett facilitated communications during the hearing. A list of the documents that were admitted into evidence at the hearing is appended at the end of this Order. On June 14, 2023, the undersigned issued an Order granting parties time to file post-administrative hearing briefs no later than 4:00 p.m., June 30, 2023. Parties timely filed their briefs.

For the reasons stated below, the Department’s Determination dated February 1, 2022 is **AFFIRMED**. Appellant is not eligible for benefits for the period of December 27, 2020 to March 13, 2021.

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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 Department is charged with the responsibility in administering these programs in the CNMI in accordance with applicable law.⁴ The Department’s Administrative Hearing Office has been designated to preside over appeals of agency decisions.

Upon review of the records, Appellant’s appeal is timely. Accordingly, jurisdiction is established.

III. PROCEDURAL BACKGROUND & ISSUES

Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon review of Appellant’s application and supporting documents, the Department issued a Disqualifying Determination dated February 1, 2022, effective December 27, 2020 to March 13, 2021. On May 29, 2022, Appellant filed the present appeal, and the matter was subsequently scheduled for a hearing. As stated in the Notice of Hearing, the issues on appeal are: (1) whether the appeal is timely filed; (2) whether Appellant is eligible for PUA; and (3) whether an overpayment occurred and funds should be returned.

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.

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 General Manager at New World Saipan, Inc. ("Employer"), located in Saipan, CNMI.⁵
2. Due to the economic impact of the pandemic, Employer closed its business and Appellant was furloughed from work effective March 14, 2020.⁶
3. On or around July 28, 2020, Appellant applied for unemployment assistance under the PUA and FPUC programs administered by the Department.⁷
4. The Department issued a Disqualifying Determination with mail date February 1, 2022.⁸ The Determination disqualified Appellant from PUA and FPUC benefits from December 27, 2020 to March 13, 2021 because Appellant was not a U.S. citizen, non-citizen national, or a qualified alien during this time.⁹
5. On May 19, 2022, Appellant followed up with the Department regarding his application for benefits.¹⁰ At this in-person meeting, the Department provided Appellant a copy of the Determination.¹¹
6. On May 29, 2022, Appellant submitted his appeal of the Determination via email arguing that he is qualified for benefits.¹²
7. On May 31, 2022, the Department entered Appellant's information into the Systematic Alien Verification for Entitlements ("SAVE") database maintained by USCIS, Verification Division.¹³ The SAVE database is used to determine the immigration status

⁵ Exhibit 5.

⁶ Exhibit 6.

⁷ Exhibit 1.

⁸ Exhibit 7.

⁹ *Id.*

¹⁰ Exhibit 13.

¹¹ *Id.*

¹² Exhibit 14.

¹³ Exhibit 8.

1 of PUA applicants so only those entitled to benefits receive them. The SAVE results
2 indicated that Appellant is a CNMI Long Term Resident (“LTR”) with employment
3 authorization document (“EAD”) C37, from May 13, 2021 to May 12, 2026.¹⁴

4 8. Appellant provided testimony and substantiating evidence to demonstrate the following
5 with respect to his immigration status and employment authorization:

6 a. Appellant’s Form I-94 shows he entered the CNMI on August 30, 2017 and was
7 granted advance parole until August 29, 2018.¹⁵

8 b. Additionally, Appellant was granted employment authorization with Category
9 C11 and corresponding EAD valid from June 12, 2017 to December 31, 2018, and
10 extended from June 12, 2017 to June 29, 2019.¹⁶

11 c. Subsequently, Appellant applied for the LTR status and EAD Category C37.
12 Appellant’s LTR and EAD applications were received by U.S. Citizenship and
13 Immigration Services (“USCIS”) on or about July 30, 2020.¹⁷ USCIS granted
14 Appellant’s LTR and EAD Category C37, valid from May 13, 2021 to
15 May 12, 2026.¹⁸

16 9. Appellant has no other documents or evidence to demonstrate that he is a qualified alien
17 from December 27, 2020 to March 13, 2021. Further, as discussed during the
18 Administrative Hearing, it is uncontested and agreed to by the parties that Appellant did
19 not apply or request for re-parole or to renew his EAD Category C11 after the expiration
20 of his parole and EAD on June 29, 2019.

21 10. While Appellant’s appeal was pending, the Department’s Benefit Payment Control Unit
22 confirmed no overpayment of benefits to Appellant.¹⁹

23
24 ¹⁴ *Id.*

25 ¹⁵ Exhibit 5.

26 ¹⁶ Exhibit 2. *See also Exhibit 3* (USCIS Approval Notice, dated January 10, 2019, shows EAD Category C11 valid from June 12, 2017 to June 29, 2019).

¹⁷ *See Exhibit 4.*

¹⁸ Exhibit 2.

¹⁹ Exhibit 11.

V. CONCLUSIONS OF LAW

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

1. Appellant's appeal is timely filed.

Generally, an appeal should be filed within ten (10) days after the Notice of Determination was issued and delivered to the claimant.²⁰ However, the Department may extend the period to thirty (30) days by a showing of good cause.²¹ 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.²²

Here, Appellant was unable to file his Request to File an Appeal within ten days from the date of the Disqualifying Determination. The Determination had a mail date of February 1, 2022. Appellant claimed he never received the Determination until May 19, 2022 when he followed up with the Department. The Department did not produce any evidence that the Determination was mailed to Appellant on or about February 1, 2022. Further, the Department did not produce evidence that the Determination was delivered to Appellant in any other manner (e.g., via his email or PUA portal). On May 19, 2022, the Department informed Appellant of the Determination in-person and provided him with a copy. On May 29, 2022, Appellant filed his Request to Appeal form via email to the Administrative Hearing Office. Accordingly, the undersigned finds that Appellant timely filed within ten days after the Determination was delivered to him on May 19, 2022.²³

2. Appellant is not a qualified alien.

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

²⁰ HI. Rev. Statute § 383-38(a).

²¹ HI. Rev. Statute § 383-38(a).

²² HAR § 12-5-81(j).

²³ See HI. Rev. Statute § 383-38(a).

1 defined as:

- 2 1. An alien admitted for permanent residence under the Immigration and Nationality Act (INA);
- 3 2. An alien granted asylum under § 208 of the INA;
- 4 3. A refugee admitted to the US under § 207 of the INA;
- 5 4. An alien paroled into the US under § 212(d)(5) of the INA for at least one year;
- 6 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;
- 7 6. An alien granted conditional entry pursuant to § 203 (a)(7) of the INA;
- 8 7. An alien who is a Cuban or Haitian entrant as defined in § 501(e) of the Refugee Education Assistance Act of 1980; or
- 9 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.

10 Here, Appellant argues that he is a qualified alien because he maintained lawful immigration status and has employment authorization under Category C11 from December 27, 2020 to 11 March 13, 2021. "C11" is a code used by USCIS to denote an employment authorization 12 document ("EAD") that an alien is paroled into the U.S. because of public interest or temporarily 13 for emergency reasons. Category C11 fits into the parolee provision of "qualified alien" definition 14 provided the one-year requirement is met and for the claim period. Multiple time periods cannot 15 be combined to meet the one-year requirement. Upon review of the available evidence, the 16 undersigned finds that Appellant does not have sufficient evidence to establish his qualified alien 17 status, as defined above.

18 Here, Appellant's Form I-94 shows he entered the CNMI on August 30, 2017 and was granted 19 advance parole until August 29, 2018. Additionally, Appellant was granted EAD Category C11 20 from June 12, 2017 to June 29, 2019. Subsequently, Appellant applied for the LTR status and 21 EAD Category C37. USCIS received Appellant's applications on or about July 30, 2020 and 22 subsequently granted Appellant's LTR and EAD Category C37, valid from May 13, 2021 to 23 May 12, 2026. There is a break or gap from the time that Appellant's parolee status and EAD 24 Category C11 expired on June 30, 2019 to May 31, 2021. Appellant has no other documentation 25 or evidence of status or EAD during this break or gap. As discussed during the Administrative 26 Hearing, it is uncontested that Appellant never applied for re-parole or applied to renew his EAD

1 Category C11, while his LTR and EAD Category 37 applications were pending adjudication from
2 USCIS.

3 Appellant argues that he never lost his parolee status, and to support this argument, he
4 provided copies of notices from USCIS showing that the validity of his parolee status and EAD
5 Category C11 were automatically extended. The undersigned disagrees with Appellant. While the
6 undersigned recognizes that Appellant's parolee status and EAD Category C11 were
7 automatically extended from June 29, 2019 to October 28, 2019,²⁴ the very same USCIS notice
8 that extended Appellant's status also stated and required that,

9 Parolees who want to maintain their parole status beyond October
10 28, 2019, *should submit a re-parole request* as soon as possible. . . .
11 Individuals who submit a re-parole request will receive a letter from
12 USCIS granting parole, unless there is a specific reason to deny the
request as determined on a case-by-case basis. USCIS will grant
parole with an expiration date no later than June 29, 2020.²⁵

13 During the Administrative Hearing, the Appellant testified under oath that he did not submit
14 a re-parole request or application to renew his EAD. Additionally, Appellant has no other
15 documents showing that his parole status and EAD C11 were extended or granted beyond
16 October 28, 2019, such as a letter from USCIS granting parole or EAD showing C11 category
17 beyond October 28, 2019. While the undersigned recognizes that Appellant provided copies of
18 subsequent notices from USCIS showing that parole status and EAD categories, these notices also
19 stated in relevant part that, "[t]his specific extension of parole will apply *only to current parolees*
20 *whose parole status will expire on June 29, 2020.*"²⁶

21 Based on the evidence and testimony provided at the Administrative Hearing, the undersigned
22 finds insufficient evidence to show that Appellant was paroled for one year during the relevant

23 ²⁴ See Exhibit 12 (USCIS press release dated June 28, 2019).

24 ²⁵ *Id.* (italicized emphases added).

25 ²⁶ See Exhibit 12, the release dated June 17, 2020, extended parole status and EAD for those whose parole status would
26 expire on *June 29, 2020* to be valid until August 17, 2020. For individuals who met the requirements and had current
status and EAD, USCIS automatically extended the same parolee status and EAD three times in 2020: On June 17,
August 11, and December 30, 2020. USCIS then extended this parole and EAD one more time in June 16, 2021.²⁶
Each time, USCIS identified that this specific extension of parole applies for parolees with an EAD expiring on June
29, 2020.

claim period. Further, when questioned with regards to each of the other provisions of the qualified alien statute, as listed above, Appellant answered in the negative. Accordingly, Appellant is not a qualified alien during the claim period of December 27, 2020 to March 13, 2021.

VI. DECISION

For the reasons stated above, it is ORDERED that:

1. The CNMI Department of Labor's Disqualifying Determination, dated February 1, 2022, is **AFFIRMED**; and
2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of December 27, 2020 to March 13, 2021.

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

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

So ordered this **26th** day of September, 2023.


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

Documents Admitted into Evidence

1. Exhibit 1: Copy of Appellant's Application Snapshot, filed July 28, 2020;
2. Exhibit 2: Copies of Appellant's three (3) Employment Authorization Cards: (1) Category C11, June 12, 2017 to December 31, 2018; (2) Category C11, June 12, 2017 to June 29, 2019; and (3) Category 37, May 12, 2021 to May 12, 2026.
3. Exhibit 3: Copies of USCIS Form I-797, Notices of Action: (1) Approval Notice, dated January 10, 2019, C11 valid from June 12, 2017 to June 29, 2019; and (2) Receipt Notice, dated September 14, 2020, Form I-765, Application for Employment Authorization;
4. Exhibit 4: Copy of USCIS Form I-797, Receipt Notice, dated August 13, 2020, Application for Employment Authorization, Classification C37;
5. Exhibit 5: Copy of Appellant's Most Recent Form I-94, showing class of admission "DA", until August 29, 2018;
6. Exhibit 6: Copy of Appellant's Employment Certification, dated September 29, 2020;
7. Exhibit 7: Copy of Department's Disqualifying Determination, dated February 1, 2022;
8. Exhibit 8: Department's SAVE verification results, initiated May 31, 2022;
9. Exhibit 9: Copies of news article from the *Marianas Variety* and the *Saipan Tribune* regarding the PUA appeals and reconsideration process, posted October 15, 2020 and October 16, 2020;
10. Exhibit 10: Copy of the Department's PUA Benefit Rights Information Handbook;
11. Exhibit 11: Copy of Email from Department's Benefit Payment Control Unit, dated December 29, 2022;
12. Exhibit 12: Copies of USCIS Press Releases dated June 28, 2019, June 17, 2020, August 11, 2020, June 16, 2021, and December 27, 2018;
13. Exhibit 13: Copy of Department's Case Notes, created May 19, 2022; and
14. Exhibit 14: Copy of Appellant's Request to file an Appeal, filed via email on May 29, 2022.



CNMI DEPARTMENT OF LABOR

ADMINISTRATIVE
HEARING OFFICE

In Re Matter of:) PUA Case No. 23-0226
)
Lee Mar Quismundo,)
)
Appellant,)
) ADMINISTRATIVE ORDER
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
Appellee.)

This matter came before the undersigned for an in-person Administrative Hearing on October 12, 2023 at approximately 9:00 a.m. at the Administrative Hearing Office, Saipan. Appellant Lee Mar Quismundo (“Appellant”) was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance Program (“Appellee” or “Department”) was present and self-represented by PUA Adjudication – Team Leader Francene Kileleman and PUA Program Supervisor Joseph Pangelinan, Jr. No other witnesses or parties appeared. Documents admitted into evidence are listed and described at the end of this Order.

For the reasons stated below, the Department’s Disqualifying Re-Determinations dated September 19, 2023 and September 26, 2023 are **AFFIRMED**. Appellant is not eligible for benefits for the period of May 30, 2021 to July 10, 2021.

I. JURISDICTION

On March 27, 2020, the Coronavirus Aid Relief and Economic Security (“CARES”) Act of 2020 was signed into law creating new temporary federal programs for unemployment benefits called Pandemic Unemployment Assistance (“PUA”)¹ and Federal Pandemic Unemployment Compensation (“FPUC”).² On December 27, 2020, the Continued Assistance for Unemployed Workers Act of 2020 (“Continued Assistance Act”) amended and created new provisions of said

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

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

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

7 Upon review of the records, Appellant’s appeal is not timely. Accordingly, jurisdiction is not
8 established.

9 II. PROCEDURAL HISTORY & ISSUES

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
12 Disqualifying Determination dated January 11, 2023. On January 30, 2023, Appellant filed the
13 present appeal and the matter was scheduled for a hearing. As stated in the Notice of Hearing, the
14 issues on appeal were: (1) whether the appeal is timely filed; (2) whether Appellant is eligible for
15 PUA; and (3) whether an overpayment occurred and funds should be returned.

16 III. FINDINGS OF FACT

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

- 19 1. Prior to the COVID-19 pandemic, Appellant, a U.S. citizen, was employed full-time as a
20 cook at the Kensington Hotel Saipan (“Employer”), located in San Roque Village,
21 Saipan.⁵ Appellant was paid \$8.00 per hour and he worked 40 hours per week.⁶
- 22 2. Due to the economic impact of the COVID-19 pandemic, Employer furloughed Appellant,
23 effective November 27, 2020 to June 3, 2021.⁷
- 24 3. On or around July 30, 2020, Appellant applied for unemployment assistance benefits
25

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
29 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 9.

⁶ *Id.*

⁷ *Id.*

1 under the PUA and FPUC programs administered by the Department.⁸ In his initial
2 application and subsequent applications for benefits,⁹ Appellant self-certified under
3 penalty of perjury that the following relevant information are true:

- 4 a. His employment was affected as a direct result of COVID-19 because he was
5 unable to reach his place of employment because of a quarantine imposed as a
6 direct result of the COVID-9 public health emergency and his place of
7 employment was closed because of the COVID-19 public health emergency;
8 b. His employment was affected since February 23, 2020; and
9 c. He understood that it was his responsibility to read the Benefit Rights Information
10 Handbook ("BRI Handbook").
11

12 4. Employer recalled Appellant to work. However, beginning June 3, 2021, Appellant was
13 unable and unavailable to work due to a non-COVID 19 related reason. Around that time,
14 Appellant verbally notified his supervisor that he was resigning. Subsequently, on
15 June 20, 2021, Appellant submitted to his Employer a written resignation, effective
16 June 20, 2021.¹⁰ Appellant voluntarily quit because he expected to receive PUA 2 and
17 PUA 3 benefits, which he planned to use to return to the Philippines.

18 5. On January 11, 2023, the Department issued a Disqualifying Determination effective
19 March 21, 2021 to September 4, 2021 because Appellant resigned from Employer on
20 March 24, 2021 and was not able and unavailable to work.¹¹

21 6. The Department published information regarding the PUA program requirements,
22 processes, deadlines in the BRI Handbook,¹² press releases, and news articles.¹³ Appellant
23 admitted that he received the BRI Handbook at the time he first applied for benefits, but
24 he read only half of the BRI Handbook and he did not read the press releases or news
25 articles published by the Department regarding the appeals process and requirements.
26

27 ⁸ See Exhibit 1.

28 ⁹ *Id.*

29 ¹⁰ Exhibit 8.

¹¹ Exhibit 2.

¹² Exhibit 10.

¹³ Exhibit 11.

- 1 7. Although the January 11, 2023 Determination, the BRI Handbook, and other available
2 published materials included appeal instructions and deadlines to file, Appellant did not
3 file his appeal until January 30, 2023.¹⁴ When asked why he did not file within the ten-
4 day deadline, Appellant stated in his Appeal Form¹⁵ and at the Administrative Hearing
5 that he did not regularly open his PUA portal and so he received the Disqualifying
6 Determination after the ten-day deadline had already passed.
- 7 8. Upon Appellant filing his appeal, the Administrative Hearing Office issued a Notice of
8 Hearing scheduling the matter for a hearing as to the issues on appeal.
- 9 9. While this appeal was pending, the Department issued Re-Determinations on
10 September 19, 2023 and September 26, 2023.¹⁶ These two Re-Determinations disqualified
11 Appellant effective May 30, 2021 to July 10, 2021 because Appellant resigned from
12 employment effective June 3, 2021, and was therefore unable and unavailable to work.¹⁷
- 13 10. On September 25, 2023, the Department issued a Notice of Overpayment in the total
14 amount of \$7,295.00. On the same day, the Department's Benefit Payment Control Unit
15 also issued a Notice of Overpayment Waiver waiving the amount of \$6,153.00.¹⁸
- 16 11. On September 27, 2023, Appellant acknowledged receiving the Notice of Overpayment
17 and Notice of Overpayment Waiver.¹⁹ Appellant also signed and agreed to the
18 Department's findings of overpayment and waiver.²⁰ At the Administrative Hearing, both
19 the Department and Appellant confirmed that there is no longer an overpayment issue.
20

21 IV. CONCLUSIONS OF LAW

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

- 24 **1. Appellant's appeal is not timely filed.**
- 25
- 26

27 ¹⁴ See Exhibit 12.

28 ¹⁵ *Id.*

29 ¹⁶ See Exhibits 2-3.

¹⁷ *Id.*

¹⁸ See Exhibits 4-5.

¹⁹ *Id.*

²⁰ *Id.*

1 Generally, an appeal should be filed within ten (10) days after the Notice or Determination
2 was issued and delivered to the claimant.²¹ However, the Department may extend the period to
3 thirty (30) days by a showing of good cause.²² Good cause means: (1) illness or disability; (2)
4 keeping an appointment for a job interview; (3) attending a funeral of a family member; and (4)
5 any other reason which would prevent a reasonable person from complying as directed.²³

6 Here, the January 11, 2023 Determination was issued and transmitted to Appellant on
7 January 11, 2023. Therein, Appellant was advised that he was disqualified, but had the right to
8 appeal the Determination within ten days from the date the Determination is issued. The
9 Determination also stated that if Appellant does not timely file, he loses the right to appeal. The
10 second page of the Determination provided instructions on how to file an appeal. In addition, as
11 demonstrated by the Department, Appellant was provided with instructions on how to file his
12 appeal through multiple avenues. Specifically, appeal instructions could be found on the BRI
13 Handbook, the Determination, the Appeal Form, and multiple press releases and newspaper
14 articles. Notably, as acknowledged and self-certified on Appellant's applications for benefits, it
15 is the Appellant's responsibility to read the BRI Handbook and all other published materials.
16 Appellant admitted that he received a copy of the BRI Handbook when he first applied for
17 benefits, read only about half of the Handbook, and never read the other published materials.
18

19 Ultimately, Appellant did not timely file his appeal. The undersigned finds that Appellant
20 failed to act within the ten-day deadline despite being informed of the deadline, his appeal rights,
21 and instructions on how to appeal. Moreover, Appellant failed to justify good cause for an
22 extension of the ten-day deadline. When asked why he did not file within the ten-day deadline,
23 Appellant stated in his Request to Appeal Form and at the Administrative Hearing that he did not
24 regularly open his PUA portal and so he received the January 11, 2023 Disqualifying
25 Determination after the ten-day deadline had already passed. Generally, the failure to follow
26 instructions and regularly check one's PUA portal, or emails, are not good cause for an extension.
27

28
29 ²¹ HI. Rev. Statute § 383-38(a).

²² HI. Rev. Statute § 383-38(a).

²³ HAR § 12-5-81(j).

1 Accordingly, Appellant's appeal is untimely filed and there is no good cause for an extension.
2 Because Appellant's Appeal is untimely, the Department's Re-Determinations dated
3 September 19, 2023 and September 26, 2023 are final and the latter issues are moot.

4 **V. DECISION**

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

- 6 1. The CNMI Department of Labor's Disqualifying Re-Determinations dated
7 September 19, 2023 and September 26, 2023 are both **AFFIRMED**; and
8 2. The Appellant is **NOT ELIGIBLE** to receive PUA and FPUC benefits for the period of
9 May 30, 2021 to July 10, 2023.

10 If a party is aggrieved by this Order and would like to contest the decision, he or she must
11 submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The
12 written request should be supported by legal, factual, or evidentiary reasons to reopen the
13 decision. The written request must be submitted to the Administrative Hearing Office, either in
14 person at 1357 Mednilla Avenue, Capitol Hill Saipan MP 96950 or via email at
15 hearing@dol.gov.mp.
16

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

23 So ordered this **17th** day of October, 2023.

24
25
26 
27 Catherine J. Cachero
28 *Pro Tem* Administrative Hearing Officer
29

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Documents Admitted into Evidence

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1. Exhibit 1: Copies of all of Appellant's Application Snapshots filed on July 30, 2020 (new), September 22, 2020 (reopen), March 3, 2021 (additional), and March 11, 2021 (reopen);
2. Exhibit 2. Copies of the Department's Disqualifying Determinations issued on January 11, 2023 and September 19, 2023;
3. Exhibit 3. Copies of the Department's Re-Determinations dated September 21, 2023 and September 26, 2023;
4. Exhibit 4. Copy of the Department's Amended Notice of Overpayment issued on September 25, 2023;
5. Exhibit 5. Copy of the Department's Benefit Payment Control Unit's Notice of Overpayment Waiver;
6. Exhibit 6. Copy of the Department's Benefit Payment Control Unit's Audit Sheet;
7. Exhibit 7. Copies of the Department's Case Notes dated January 11, 2023 and September 29, 2023;
8. Exhibit 8. Copy of Appellant's Resignation Letter dated June 20, 2021;
9. Exhibit 9. Copies of Appellant's Employer's Initial and Revised Verification of Employment Forms dated January 11, 2023;
10. Exhibit 10. Copy of the Department's Benefits Rights Information Handbook;
11. Exhibit 11. Copies of Newspaper Articles regarding Appeals Process posted on Marianas Variety on October 15, 2020 and Saipan Tribune on October 16, 2020; and
12. Exhibit 12. Copy of Appellant's Request to File an Appeal and supporting documents filed by the Appellant on January 30, 2023.