

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



COMMONWEALTH REGISTER

VOLUME 44

NUMBER 06

JUNE 28, 2022

COMMONWEALTH REGISTER

**VOLUME 44
NUMBER 06
JUNE 28, 2022**

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PUBLIC NOTICE

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

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER AS PROPOSED
AMENDMENTS TO REGULATIONS
VOLUME 44, NUMBER 04, PP 048406-048413 OF APRIL 28, 2022

ACTION TO ADOPT THE AMENDMENTS TO THE CEDA BOARD OF DIRECTORS' BY-LAWS: In accordance with the Administrative Procedures Act ("APA), the Commonwealth of the Northern Mariana Islands Commonwealth Economic Development Authority HEREBY ADOPTS the amendments to the CEDA Board of Directors' By-Laws.

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


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

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

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

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

Certified and ordered by:



AUBRY M. HOCO
Chairwoman, CEDA Board of Directors

Pursuant to 1 CMC §2153(e) (AG's approval of regulations to be promulgated as to form) and 1 CMC §9104(3) (obtain AG's approval), the certified final regulations, modified as indicated above from the cited proposed regulations, have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General, and shall be published (1 CMC §2153(f) (publication of rules and regulations)).

Dated this _____ day of June 2022

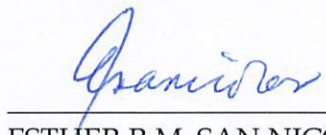


EDWARD MANIBUSAN
Attorney General




Date

Filed and recorded by:



ESTHER R.M. SAN NICOLAS
Commonwealth Registrar



Date

Amendments to the CEDA Board of Directors' By-Laws

§ 25-10-2225 MEETINGS OF THE BOARD

(a) All meetings of the Board shall be held in the Commonwealth and pursuant to Public Law 8-41; "the Open Government Act of 1992", as amended. Members of the Board of Directors who are in the Commonwealth but unable to attend a meeting in person may appear by means of internet or online video conferencing, teleconferencing, or other electronic means of communication, pursuant to Public Law 22-05

1) Members attending a meeting via internet or online video conferencing, teleconferencing, or other electronic means of communication must make sure that they are in a secure location when participating in an executive session portion of a meeting, pursuant to the Open Government Act.

2) Members who appear by means of internet or online video conferencing, teleconferencing, or other electronic means of communication shall be considered present for the purposes of a quorum.

(b) Notice of Intent to Attend Remotely. Members who plan to attend a meeting of the Board of Directors by means of internet or online video conferencing, teleconferencing, or other electronic means of communication shall inform the Chairman of the Board and the Executive Assistant at least three (3) days prior to the meeting.

§ 25-10-2235 OFFICERS OF THE AUTHORITY

~~(d) — The Board may appoint an attorney who will serve at its pleasure and whose duties and compensation may be fixed by the Board. The Attorney shall advise the Board, the Executive Director, and staff in all legal matters to which the Authority is a party or in which the Authority is legally interested, and may represent the Authority before the Legislature, Boards, and other agencies of the Commonwealth or of the United States.~~

(e)(d) The Executive Director and Comptroller shall be paid at salaries established pursuant to Public Law 19-71.

~~(f)~~(e) The Executive Director, Comptroller and other officers of the Authority may be dismissed for cause by the affirmative vote of five Board members



Office of the Secretary
Department of Finance



P. O. Box 5234 CHRBSAIPAN, MP 96950

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

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

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

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

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

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

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY: None

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

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

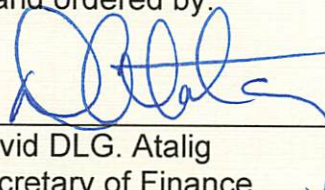
COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC sec. 9104(a)(2), the agency has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption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

are any, in response to filed comments.

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

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

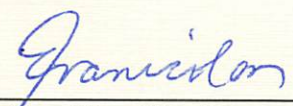
Certified and ordered by:



David DLG. Atalig
Secretary of Finance

6/27/22
Date

Filed and
Recorded by:



Esther San Nicolas
Commonwealth Registrar

06-27-2022
Date



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

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

I. INTRODUCTION

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

Exhibits:

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

- 1 10. Exhibit 10: Copy of PUA Benefits Rights Information Handbook;
- 2 11. Exhibit 11: Copy of Department's Press Release regarding the PUA Work Search
3 Requirement;
- 4 12. Exhibit 12: Copy of NMI Portal Message to Appellant regarding the PUA Work Search
5 Requirement, dated July 23, 2021;
- 6 13. Exhibit 13: Copies of News Articles posted in the *Saipan Tribune* and *Marinas Variety*
7 on July 22, 2021;
- 8 14. Exhibit 14: Copies of Doctors' Certifications;
- 9 15. Exhibit 15: Copy of Department's Benefit Payment Control Unit Email Communication,
10 dated February 17, 2022; and
- 11 16. Exhibit 16: Copy of NMI Portal showing No Work Search History, from August 7, 2021
12 to September 4, 2021.

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

16 II. JURISDICTION

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

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

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

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

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

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

3 **III. PROCEDURAL BACKGROUND & ISSUES**

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

9 **IV. FINDINGS OF FACT**

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

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

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

⁵ Exhibit 1.

⁶ *Id.*

⁷ *Id.*

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4. Subsequently, Appellant submitted weekly certifications to claim continued benefits from August 1, 2021 to September 4, 2021.⁸ In the weekly certification for August 1, 2021 to August 7, 2021, Appellant reported that his employment was still affected by COVID-19 because his place of employment is closed as a direct result of COVID-19 public health emergency; and he is able and available for work during the claimed week.⁹ However, in subsequent weekly certifications, from August 8, 2021 to September 4, 2021, Appellant reported that he is unable and unavailable to work during these weeks because of a family member's illness.¹⁰
5. The answers provided in Appellant's initial application and weekly certifications were submitted under penalty of perjury. To that effect, it is Appellant's responsibility to provide true, accurate, and complete answers. Moreover, it is Appellant's responsibility to: (1) be informed about the program by reading the PUA Benefit Rights Information Handbook and other official written material regarding PUA; (2) comply with a PUA Coordinator's requests for information in the adjudication phase; and (3) keep accurate records of the weekly claims, payments received, money earned, and work search contacts made.¹¹
6. The Department testified and provided substantiating evidence to show that Appellant was provided with information and instructions on the requirement for work search contacts, including keeping accurate records of the work search contacts for the weeks claimed.¹²
7. Based on Appellant's answers on his initial application and weekly certifications, Appellant's claim was processed, and on January 5, 2022, the Department issued a Disqualifying Determination, effective for the period of August 1, 2021 to September 4, 2021, finding that Appellant is ineligible to receive PUA and FPUC benefits for this period.¹³ The Department's stated reason for ineligibility was because Appellant "failed to meet the minimum job search requirement. From (08/01/2021-09/04/2021) you did not make three job search contacts per week as required."¹⁴

⁸ Exhibit 2.
⁹ See Exhibit 2.
¹⁰ See Exhibit 2.
¹¹ See Exhibits 1-2; see also Exhibit 10.
¹² See Exhibits 10-13.
¹³ Exhibit 3.
¹⁴ *Id.*

- 1 8. On January 13, 2022, Appellant filed the present appeal, and the matter was scheduled for
2 an Administrative Hearing.¹⁵
- 3 9. As testified to by the witnesses, Appellant has no documents or evidence to demonstrate that
4 he conducted the required three work search contacts from August 1, 2021 to September 4,
5 2021.¹⁶ When asked, Appellant testified that he did not conduct any work search contacts
6 including by registering on CNMI Department of Labor website, uploading his resume, and
7 checking job listings regularly on CNMI Department of Labor. Appellant also did not apply
8 for work in-person, call, email or otherwise contact any prospective employers regarding any
9 job vacancy announcements or use any other method that a person would normally use to
10 find employment.
- 11 10. Appellant is appealing the Department's Determination arguing that he did not conduct any
12 of the required work search contacts because he is the primary caregiver for his wife, who
13 requires constant care because of her serious, underlying medical condition, which predates
14 COVID-19 pandemic.¹⁷ Specifically, Appellant's wife's illness was diagnosed in 2019 and
15 is unrelated to COVID-19. Prior to the pandemic, Appellant's children, relatives and
16 extended family assisted in the care of Appellant's wife while Appellant continued to work.
17 At times, Appellant also paid for others to assist in his wife's caregiving. After the pandemic,
18 Appellant's son, daughter-in-law and extended family remain on island, and would be
19 available to assist in her care if Appellant returned to work.
- 20 11. Based on testimony of the Appellant, Appellant had substantial help from family members
21 and/or hired caregivers to assist with his wife's care when he worked for his Employer in
22 2019 to early 2020. However, as testified to and supported by medical records, Appellant is
23 now the primary caregiver for his wife, who requires constant attention and care.¹⁸
- 24 12. While the appeal was pending, the Department Benefit Payment Control Unit confirmed
25 there was no overpayment issue in this appeal because Appellant did not receive any
unemployment benefits for the relevant claim period, from August 1, 2021 to September 4,
2021.¹⁹

¹⁵ See Exhibits 4-6.

¹⁶ See also Exhibit 16.

¹⁷ Exhibit 9; see also Exhibit 14.

¹⁸ Exhibit 14.s

¹⁹ Exhibit 15.

V. CONCLUSIONS OF LAW

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

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

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

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

²⁰ HAR § 12-5-35(a)

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

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

²³ See HAR §12-5-35(c)(4).

²⁴ HAR §12-5-35(c)(1).

²⁵ HAR §12-5-35(c)(2).

²⁶ HAR §12-5-35(c)(5).

1 Here, as testified to by the witnesses during the hearing, Appellant did not conduct the required
2 three work search contacts for the claim period of August 1, 2021 to September 4, 2021. Appellant
3 also testified that he did not conduct any work search contacts and therefore he has no documents or
4 other evidence to demonstrate that he conducted the required three work search contacts. When
5 questioned about specific examples of work search contacts, Appellant testified that he did not
6 register on CNMI Department of Labor website, upload his resume, check any job listings regularly
7 on CNMI Department of Labor website, apply for work in-person, call, email or otherwise contact
8 any prospective employers regarding job vacancy announcements, or use any other method that a
9 person would normally use to find employment. Therefore, the undersigned finds that Appellant
10 made no effort toward being able and available to work because he failed to conduct the required
11 three work search contacts for each week.

12 Appellant is appealing the Department's Determination because he argues he could not conduct
13 the work search requirements because he is the primary caregiver for his wife, who requires constant
14 care because of preexisting serious, underlying health conditions.²⁷ The undersigned recognizes the
15 difficult circumstances that Appellant is faced in deciding whether to conduct the three work search
16 contacts and find employment or to remain by his wife's side as her primary caregiver. However,
17 under applicable law, Appellant is not exempted from making the required job search contacts due
18 to the preexisting, underlying health conditions of his spouse.²⁸ Appellant testified that his wife has
19 had serious, underlying health conditions since she was diagnosed in 2019. Appellant confirmed that
20 his wife's illness predates COVID-19 pandemic and is unrelated to COVID-19. Appellant also
21 testified that he continued to work after his wife was diagnosed; his children and members of his
22 wife's extended family assisted him in caring for her. When some of these family members departed
23 CNMI, at times, Appellant paid for a caregiver to assist with his wife's care so that he could continue
24 to work. Appellant also testified that, after the pandemic, his son, daughter-in-law, and other
25 extended family members remain on Saipan Island, and the undersigned finds that based on
Appellant's testimony these family members are able and available to assist Appellant in caring for
his wife if he were employed. Because alternative caregiving options are there, the undersigned finds
that the undue restrictions created by his wife's underlying health conditions is self-imposed by
Appellant. Under the applicable law, claimant must intend and wish to work, and there must be no

²⁷ Exhibit 14 (doctors' notes).

²⁸ See HAR § 12-5-35(c).

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

3 Based on the applicable and evidence provided, including Appellant's testimony, the
4 undersigned finds that Appellant is not able and available to work for reasons unrelated to COVID-
5 19 public health emergency. Accordingly, Appellant is not eligible for PUA and FPUC benefits.

6 VI. DECISION

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

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

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

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

22 So ordered this **7th** day of June, 2022.

23
24
25

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

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

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



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In Re Matter of:)	PUA Case No. 22-0190
)	
Jocelyn Anastacio,)	
)	
Appellant,)	ADMINISTRATIVE ORDER
)	
v.)	
)	
CNMI Department of Labor,)	
Division of Employment Services-PUA,)	
)	
Appellee.)	

I. INTRODUCTION

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

Exhibits:

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

- c. USCIS Form I-797, Approval Notice for Employment Authorization (“EAD”), C11 category, valid from April 6, 2017 to June 29, 2019;
- d. Form I-94, valid from October 29, 2019 to June 29, 2020; and
- e. EAD C37 category, valid from May 28, 2021 to May 27, 2026.

- 10. Exhibit 10: Copy of SAVE Verification Results, initiated December 20, 2021;
- 11. Exhibit 11: Copies of Case Notes, dated December 21, 2021 and January 6, 2022;
- 12. Exhibit 12: Copy of Email Communication from Department’s Benefit Payment Control Unit, dated May 19, 2022;
- 13. Exhibit 13: Copy of PUA Benefit Rights Information Handbook; and
- 14. Exhibit 14: Copies of Newspaper Articles Regarding Reconsideration and Appeals Process.

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

II. JURISDICTION

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

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

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

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

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

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

3 **III. PROCEDURAL BACKGROUND & ISSUES**

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

10 **IV. FINDINGS OF FACT**

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

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

22 ⁵ Exhibit 8.

23 ⁶ *Id.*

24 ⁷ Exhibit 6.

25 ⁸ *Id.*

⁹ Exhibit 1.

¹⁰ *See id.*

¹¹ *Id.*

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

¹² *Id.*
¹³ *See* Exhibit 2.
¹⁴ *Id.*
¹⁵ *See* Exhibits 1-2.
¹⁶ *See* Exhibits 9-10.
¹⁷ *See* Exhibit 9.
¹⁸ Exhibits 10-11.
¹⁹ Exhibit 10.

1 SAVE results also showed that Appellant's CNMI long-term resident status and EAD under
2 C37 was valid from May 28, 2021 to May 27, 2026.²⁰

3 8. On January 6, 2022, the Department issued a determination disqualifying Appellant from PUA
4 and FPUC benefits from May 30, 2021 to September 4, 2021.²¹ Based on uncontested
5 testimony and substantiating evidence provided by the Department at the Administrative
6 Hearing,²² the Department notified Appellant via text message on January 6, 2022, and then
7 emailed the Determination to the Appellant.

8 9. The Department disqualified Appellant because it determined that Appellant is not a U.S.
9 citizen, non-citizen national, or qualified alien because Appellant was a CNMI long-term
10 resident with an EAD under C37 category, valid from May 28, 2021 to May 27, 2026.²³

11 10. The Determination provided Appellant 10 days to file a request for reconsideration or appeal
12 and instructions on how to do so. Specifically, the Determination stated that the appeal "must
13 be received or postmarked by 01/16/2022."²⁴

14 11. On February 2, 2022, Appellant filed the present appeal and the matter was scheduled for an
15 Administrative Hearing.²⁵

16 12. As stated in her Appeal Form²⁶ and testimony, Appellant did not regularly review her email
17 because she lacked access to the internet and a computer and she relied on friends to assist her
18 in accessing her email. Appellant could not provide any other reason as to why she filed her
19 Appeal after the 10-day deadline.

20 13. Department testified and provided substantiating evidence to show that Appellant was
21 provided with instructions on how to file her appeal. Appeal instructions could be found in
22 the PUA Benefits Rights Information Handbook, the Disqualifying Determination, the Appeal
23 Form and through newspaper publications.²⁷

24 14. While the appeal was pending, and through testimony during the Administrative Hearing, the
25 Department confirmed there was no overpayment issue in this case.²⁸

21 ²⁰ Exhibit 10.

22 ²¹ See Exhibit 3; see also Exhibit 11.

23 ²² See Exhibit 11.

24 ²³ Exhibit 3.

25 ²⁴ *Id.*

²⁵ Exhibits 4-5.

²⁶ Exhibit 4.

²⁷ See Exhibits 3, 4, 13-14.

²⁸ Exhibit 12.

1 V. CONCLUSIONS OF LAW

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

4 **1. Appellant's appeal is not timely filed.**

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

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

²⁹ HI. Rev. Statute § 383-38(a).

³⁰ HAR § 12-5-81(j).

³¹ Exhibit 3.

³² See Exhibits 1 and 2.

³³ See Exhibit 11.

³⁴ See Exhibit 4.

³⁵ See Exhibits 1 and 2.

³⁶ See Exhibits 3, 4, 13 and 14.

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

3 Moreover, in light of the information provided, the undersigned finds that Appellant failed to
4 justify good cause for an extension of the 10-day deadline. Accordingly, the undersigned finds that
5 Appellant's appeal is untimely filed. Considering that Appellant's Appeal is untimely, the
6 Department's Determination is final and the latter issues are moot. Even if a 30-day extension was
7 granted for good cause, Appellant is still not eligible to receive PUA benefits for the period of May
8 30, 2021 to September 4, 2021 because she was a CNMI long-term resident with an EAD under C37
9 category and this status and employment authorization is not eligible, as explained below.

8 **2. Appellant is not a qualified alien.**

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

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

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

23 Here, the Department's Determination disqualified Appellant from PUA and FPUC from May 30,
24 2021 to September 4, 2021 because the Department determined that, during that period, Appellant
25 was a CNMI long-term resident with an EAD under C37 category, and CNMI long-term resident
status with EAD under C37 category is not a U.S. citizen, non-citizen national, or qualified alien.

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

6 **VI. DECISION**

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

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

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

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

22 So ordered this 9th day of June, 2022.

23 */s/*
24 _____
25 CATHERINE J. CACHERO
Pro Tem Administrative Hearing Officer

26 ³⁷ See Exhibits 9-10.

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



1	In Re the Matter of:)	Labor Case No. 19-038
2)	
3	Shi Yunxiao,)	
4)	
5	Complainant,)	ORDER DISMISSING COMPLAINANT'S
6)	COMMON LAW CLAIMS FOR LACK
7	v.)	OF SUBJECT MATTER JURISDICTION
8	Donghui Jewelry Group Corp.,)	
9)	
10	Respondent.)	

I. INTRODUCTION

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

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

II. DISCUSSION

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

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

2 The Employment Rules and Regulations further provide:

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

8 The Administrative Hearing Office shall have jurisdiction over
9 complaints filed with the Administrative Hearing Office by **foreign
national workers**,¹ and agency complaints filed by the Department,
10 with respect to violations of Commonwealth law and regulations
11 regarding employment and other labor laws applicable in the
Commonwealth. ...

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

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

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

24
25 ¹ “‘Foreign national worker’ means a person who is not a United States citizen, a United States permanent resident, a
26 CNMI permanent resident, or an immediate relative of the United States citizen or a United States permanent resident,
or an immediate relative of a CNMI permanent resident, and who entered the CNMI as a nonimmigrant prior to
November 28, 2010 for the declared purpose of being employed in the Commonwealth.” NMIAC § 80-20.1-080(k).

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

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

⁴ See *Sevugan v. ABO International Corporation*, LC-16-017, published at 41 Com. Reg. 041897 (May 28, 2019).

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

3 Principles of agency and administrative law dictate that jurisdiction is established by a
4 specific grant of authority. The Commonwealth Constitution provides for a tripartite system of
5 government, which gives rise to the separation of powers doctrine. The separation of powers
6 operates in a broad manner to confine legislative powers to the legislature, executive powers to
7 the executive, and those powers that are judicial in character to the judiciary. *Commonwealth v.*
8 *Lot No. 218-5 R/W*, 2016 MP 17 ¶ 8. The legislature cannot exceed its constitutional authority,
9 it cannot pass a law that conflicts with the Commonwealth Constitution, and it cannot delegate
10 the functions of a constitutional entity to another governmental body. *Dep't of Publ. Lands v.*
11 *Commonwealth*, 2010 MP 14 ¶ 24. Agency power is conferred by legislation or executive or
12 judicial order and is properly viewed as a means of facilitating the exercise of the governmental
13 power vested in that body which created the agency. *Northern Marianas College v. Civil Serv.*
14 *Comm'n*, 2006 MP 4 ¶ 10.⁵ However, an agency cannot enlarge its jurisdiction or
15 authority.⁶ Moreover, the agency's interpretation of its governing statute may not conflict with
16 the language chosen in the grant of authority. *Bauer v. McCoy*, 1 CR 248. Generally,
17 administrative law deals with non-autonomous agencies that exercise limited discretion through
18 a predefined process. Such agencies have no inherent rights, and *may only exercise the authority*
19 *vested in them by constitution or statute.* *Northern Marianas College v. Civil Service*
20 *Commission*, 2006 MP 4 ¶ 8 (emphasis added). Agencies are given the authority to
21 make discretionary decisions over a *limited range of matters.* *Northern Marianas College v. Civil*
22 *Service Commission*, 2006 MP 4 ¶ 10 (emphasis added).

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

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

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

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

4 **III. CONCLUSION**

5 Accordingly, dismissal pursuant to NMIAC § 80-20.2-130(c)(1)(i)(A) and NMIAC § 80-20.2-
6 145(c) is appropriate. Based on above, Complainant's claim for breach of employment contract
7 and constructive discharge are hereby **DISMISSED**.

8 So ordered this **15th** day of June, 2022.

9 /s/

10 **JACQUELINE A. NICOLAS**
11 Administrative Hearing Officer

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

7 Second, Complainant appears to allege violations of employer obligations, specifically,
8 20 CFR 655.423, which is promulgated and enforced by US Department of Labor. *See* 42 Com.
9 Reg 044063 (Aug. 28, 2020). The Administrative Hearing Office lacks jurisdiction to review said
10 claims and Complainant could not point to any other CNMI labor law violation. For this reason,
11 the Administrative Hearing Office lacks subject matter jurisdiction over this claim.

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

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

21 So ordered this **8th** day of June, 2022.

22 /s/

23 **JACQUELINE A. NICOLAS**
24 Administrative Hearing Officer

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

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

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

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

1 First, the employment preference law requires CNMI employers to give preferential
2 employment opportunities to U.S. citizens, U.S. permanent residents, and CNMI permanent
3 residents. 3 CMC §§ 4521 et. seq.;² *see also* NMIAC § 80-20.1-220.³ The employment preference
4 law does not provide any protections or preference to CW-1. *See* 3 CMC §§ 4521 et. seq; *see*
5 *also* NMIAC § 80-20.1-240(f).⁴ During the Order to Show Cause Hearing, Complainant
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11 the Administrative Hearing Office lacks subject matter jurisdiction over this claim.

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14 mandate processing of immigration papers and immigration is wholly outside the Department's
15 power, Complainant seeks a remedy upon which relief cannot be granted. For this reason,
16 Complainant fails to state a claim upon which relief can be granted.

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

21 So ordered this **8th** day of June, 2022.

22 /s/

23 **JACQUELINE A. NICOLAS**
24 Administrative Hearing Officer

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

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

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

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



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

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

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

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

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

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

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

7 Second, Complainant appears to allege violations of employer obligations, specifically,
8 20 CFR 655.423, which is promulgated and enforced by US Department of Labor. *See* 42 Com.
9 Reg 044063 (Aug. 28, 2020). The Administrative Hearing Office lacks jurisdiction to review said
10 claims and Complainant could not point to any other CNMI labor law violation. For this reason,
11 the Administrative Hearing Office lacks subject matter jurisdiction over this claim.

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

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

21 /s/

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

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

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

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

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

