

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



COMMONWEALTH REGISTER

**VOLUME 45
NUMBER 01
JANUARY 28, 2023**

COMMONWEALTH REGISTER

VOLUME 45 NUMBER 01 JANUARY 28, 2023

PROPOSED

Public Notice of Proposed Amendments
to the Procurement Rules and Regulations
Commonwealth Ports Authority 049396

ORDERS

CNMI Cannabis Commission
Order No.: 2022-01
Subject: Order Authorizing the Establishment of the Committee
on Licensing and the Committee on Personnel
CNMI Cannabis Commission 049403

Labor Case No. 22-014
Subject: Order of Dismissal
In the Matter of: Feng Yu v. Island Star International Inc.
Department of Labor 049406

PUA No. 22-0189
Subject: Administrative Order
In the Matter of: Anthony Rangamar v. CNMI Dept. of Labor,
Division of Employment Services-PUA
Department of Labor 049410

Labor Case No. 22-0202
Subject: Administrative Order Granting
Parties' Request for Dismissal
In the Matter of: Augustus R. Loste II v. CNMI Dept. of Labor,
Division of Employment Services-PUA
Department of Labor 049424

PUA Case No.	22-0210	
Subject:	Administrative Order	
In the Matter of:	Yunpeng Zhang v. CNMI Dept. of Labor, Division of Employment Services-PUA.	
Department of Labor		049425
PUA Case No.	22-0214	
Subject:	Administrative Order Granting Department's Motion to Dismiss	
In the Matter of:	Martin R. Omelau v. CNMI Dept. of Labor, Division of Employment Services-PUA	
Department of Labor		049436
DUA Case No.	22-012	
Subject:	Administrative Order	
In the Matter of:	Adora Mae R. Aque . CNMI Dept. of Labor, Division of Employment Services-DUA	
Department of Labor		049437
DUA Case No.	22-013	
Subject:	Administrative Order	
In the Matter of:	Jocelyn D. Anastacio v. CNMI Dept. of Labor, Division of Employment Services-DUA	
Department of Labor		049438
DUA Case No.	22-014	
Subject:	Administrative Order	
In the Matter of:	Charon De Guzman De Lara v. CNMI Dept. of Labor, Division of Employment Services-DUA	
Department of Labor		049439
DUA Case No.	22-018	
Subject:	Administrative Order	
In the Matter of:	Rosalinda T. Ramos v. CNMI Dept. of Labor, Division of Employment Services-DUA	
Department of Labor		049440
Enf. Inv. Case No.	22-008-03	
Comp. Agency Case No. :	22-010	
Subject:	Final decision	
In the Matter of:	Dept. of Labor, Enforcement & Compliance v. Mohammed Ayub Ali	
Department of Labor		049441



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@ptic.com Website: <https://cnmpiports.com>



PUBLIC NOTICE

Proposed Amendments to the Procurement 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 Procurement Rules and Regulations.

INTENDED ACTION TO ADOPT THESE PROPOSED AMENDMENTS TO THE PROCUREMENT 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 Procurement Rules and Regulations.

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

AUTHORITY: The substance of the following proposed amendments was approved by the CPA Board of Directors at the December 22, 2022, CPA Board of Directors 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.

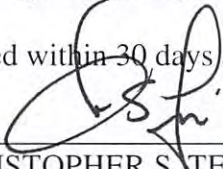
DIRECTIONS FOR FILING AND PUBLICATION: These Proposed Regulations shall be published in the Commonwealth Register in the section on Proposed and Newly Adopted Regulations, 1 CMC § 9102(a)(1), and posted in convenient places in the civic center and in local governments in each senatorial district, both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

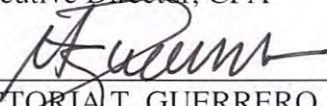
All written comments shall be submitted within 30 days after publication of this notice.

Submitted by:


CHRISTOPHER S. TENORIO
Executive Director, CPA

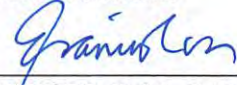
1/23/2023
Date

Received by:


VICTORIA T. GUERRERO
Acting Special Assistant for
Administration

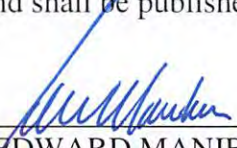
1/24/2023
Date

Filed and Recorded by:


ESTHER R.M. SAN NICOLAS
Commonwealth Registrar

1. 27. 20 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

1/24/2023
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>



NUTISIAN PUPBLIKU

Manmaproponi na Amenda gi Areklamentu yan Regulasion Procurement i 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-ñiha Areklamentu yan Regulasion Procurement.

I AKSION NI MA’INTENSIONA PARA U ADAPTA ESTI I MANMAPROPO NI NA AMENDA SIHA GI AREKLAMENTU YAN REGULASION PROCUREMENT I COMMONWEALTH PORTS AUTHORITY: I nutisia guini maná’i sigun para 1 CMC § 9104(a) gi Ákton “Administrative Procedure” na i Commonwealth Ports Authority ha intensiona para u cho’gui i tinattiyi na amenda siha gi iyon-ñiha Areklamentu yan Regulasion Procurement.

I TEMA, SUSTANSIA, YAN I DISKRIPSION I SUHETU NI MASUMÁRIA YAN ASUNTU NI TINEKKA: Esti i manmaproponi na regulasion siha inamenda i Areklamentu yan Regulasion Procurement para u ribisa i tutát ni tumutuhun i dinimánda ni para u manahálum rikuesta gi tinigi’ quotation osino tinigi’ presiu ginen maseha tres na mampusipbli gi osino off-island na kumpaniha. I maproponi na regulasió n lokkui’ ha aturisa i maneran nu “open purchase orders” para i bál in procurement ginen \$10,000.00 yan pápa’.

ÁTURIDAT: I “substance” nu i tinattitiyi na manmaproponi na amenda siha ginen maninaprueba ni i Kuetpun Direktot CPA gi Disembri 22, 2022, gi Huntan Kuetpun Direktot CPA. Esti i manmaproponi na amenda siha para u mapupblika gi halum Rehistran Commonwealth gi Nutisia yan Upiñon sigun gi Ákton Administrative Procedure yan para u inaprueba ni Abugádu Hinirát sigun para i 1 CMC § 2153(e). I Commonwealth Ports Authority gai aturidát para u cho’gui esti siha na regulasion sigun para i 2 CMC § 2122.

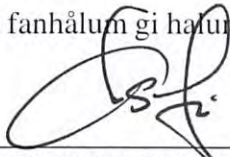
DIREKSION PARA U MAPO’LU YAN PUPBLIKASION: Esti i Manmaproponi na Regulasion siha debi na u mapupblika gi halum Rehistran Commonwealth gi halum seksiona ni Manmaproponi yan i Mannuebu na Manma’adáp ta na Regulasion siha, 1 CMC § 9102(a)(1), ya u mapega hálum gi kumbinienti na lugát gi halum civic center yan gi halum ufisinan gubietnamentu gi kada distritun senadot, parehu Inglis yan i prinsipát na lingguá hin natibu. 1 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 hálum gi Ufisinan Atministradot i CPA ni gaigi gi Sigundu na Bibienda gi plá san Francisco C. Ada/Saipan International yan i suhetu na ráya “**I Upiñon siha gi Manmaproponi na Areklamentu yan Regulasion Procurement.**”

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 ha lum trenta (30) dihas dispues di puplikasion nu esti na nutisia.

Nina'hålum as:


CHRISTOPHER S. TENORIO
Eksakatibun Direktot, CPA


1/23/2023
Fetcha

Rinisibi as:


VICTORIA T. GUERRERO
Acting Ispisiat na Ayudanti para i
Administrasion

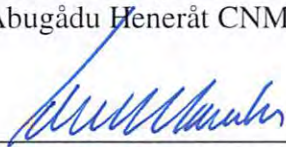
1/24/2023
Fetcha

Pine'lu yan Ninota as:


ESTHER R.M. SAN NICOLAS
Rehistran Commonwealth

1.27.2023
Fetcha

Sigun i 1 CMC § 2153(e) yan i 1 CMC § 9104(a)(3) i manmaproponi na regulasion siha ni mañechettun guini ni manmaribisa yan manma' aprueba kumu fotma yan sufisienti ligat ginin i Abugadu Henerat CNMI yan debi na u mapuplika, 1 CMC § 2153(f).


EDWARD MANIBUSAN
Abugadu Hinirat

1/24/2023
Fetcha



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>



ARONGORONGOL TOULAP

Ppwommwol Liiwel ngáli Alléghúl me Mwóghutughutúl Procurement 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 Procurement.

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 Procurement.

KKAPASAL, AWEEWEEL, ME FFATAAL REEL KKAPASAL ME AUTOL: Ppwommwol mwóghutughut ebwe liiweli Alléghúl me Mwóghutughutúl Procurement iye ebwe fféerú sefááliy llapal iye e ayoorá ammwelil rebwe isiisilong mille “written quotation” ngáre “written price” sáangi elescháy “off-island vendors” ikka re lo bwe “potential”. Ppwommwol mwóghutughut e ayoorá bwángil mwóghutughutúl “open purchase orders” ngáli “procurement value from \$10,000.00 and below.”

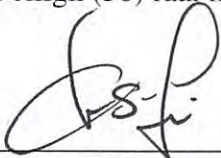
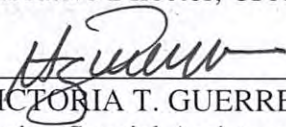
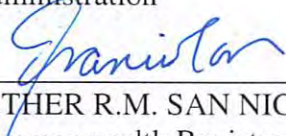
BWÁNGIL: Autol ppwommwol liiwel ikka e amwirimwiritiw aa átirow sáangi CPA Board-il Directors wóól Tumwur 22, 2022, CPA Board-il Directors igha re yéélágh. Ppwommwol liiwel nge ngáli arongorong me llól Commonwealth Register ngáli Arongorong me Kkupas sáangi Administrative Procedure Act me ngáli átirow 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 táлил Ppwommwol me Ffél Mwóghutughut ikka ra adóptááli, 1 1 CMC § 9102(a)(1), me ebwe appaschetá llól civic center me bwal llól bwulásiyol gobetnameento llól senatorial district, fengál reel English me Mwáliyaasch. 1 CMC § 9104(a)(1).


REEL ISIISILONGOL KKAPAS: Aramas ngáre 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 ngáre 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	<u>1/23/2023</u> Ráál
Bwughiyal:	 _____ VICTORIA T. GUERRERO Acting Special Assistant ngáli Administration	<u>1/24/2024</u> Ráál
Ammwelil:	 _____ ESTHER R.M. SAN NICOLAS Commonwealth Registrar	<u>1-27-2023</u> 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 sáangi Soulemelemil Allégh Lapalap CNMI me ebwe akkatééwow. 1 CMC § 2153(f).

 _____ EDWARD MANIBUSAN Soulemelemil Allégh Lapalap	<u>1/24/2023</u> Ráál
---	--------------------------

§ 40-50-210 Small Purchases

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

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

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

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

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



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
CANNABIS COMMISSION

P.O. BOX 500135 Saipan, MP 96950
Email: info@cnmicannabis.org
(670) 488-0420 | (670) 488-2627

CNMI CANNABIS COMMISSION ORDER NO: 2022-01

Order Authorizing the Establishment of the Committee on Licensing and the Committee on Personnel

For good cause determined at the December 14, 2022, public meeting of the CNMI Cannabis Commission, which was duly public noticed, and based on the authority granted by the laws of the Commonwealth and the Regulations of the CNMI Cannabis Commission, NMAIC Chapter 180-10.1, the CNMI Cannabis Commission hereby ORDERS AS FOLLOWS:

1. ESTABLISHMENT OF THE COMMITTEE ON LICENSING

The CNMI Cannabis Commission shall establish the Committee on Licensing. The Committee on Licensing shall be composed of at least 2 (two) Commissioners. For the purposes of this Committee, 2 (two) members present during meetings of the Committee shall constitute a quorum. The Committee on Licensing shall be delegated the authority to receive, review, and approve commercial cannabis licenses or deny the application, brought to the Committee by the Managing Director or his or her designee. Review of application by the Committee shall be conducted in a duly publicly noticed meeting as described in 1 CMC §9910. Decisions of the Committee on Licensing related to the approval or denial of commercial cannabis license applications shall represent the decision of the CNMI Cannabis Commission. The internal processes for Commercial License Applications under the Committee on Licensing shall be the following:

CNMI Cannabis Commission regulation § 180-10.1-325 outlines the processes the Commission will undertake in review of submitted applications.

The Commission designates the Managing Director to serve on the Commission's behalf in reviewing a submitted application to determine compliance with the Act and Commission regulations.

Should the Managing Director determine that an application contains all required documentation and information required in §180-10.1-310, the Managing Director is authorized to provide the applicant with an Approval In Principle letter to notify the applicant that they have met the initial requirements and must schedule an inspection of the proposed licensed premises. The Approval In Principle determination does not constitute approval of the application or the issuance of a license to operate.

In the process of reviewing an application, the Chairperson of the Commission may delegate a member of the Commission to assist in the review and processing of the application. This Commissioner shall recuse his or herself from final action on that application.

Commissioners delegated to assist in application review and processing shall serve under the Managing Director.

The Managing Director will coordinate with the applicant for the inspection of the proposed licensed premises. If the applicant passes the inspection, the Managing Director will provide the Commission's Committee on Licensing a written report on the applicant, the findings of the inspection, and submit a recommendation for approval or denial for the Committee determination. If the applicant fails the inspection, the Managing Director shall provide the applicant with a notice of the failed inspection and will provide 15 calendar days from the date of the notice to submit a written response that demonstrates the deficiencies have been corrected. An applicant may request to the Managing Director for one extension of the 15-day time limit. If an applicant does not submit a timely plan of correction or if the plan of correction does not correct the deficiencies in a manner that would bring the applicant into compliance, the Managing Director is given the authority to deny the application. If the plan of correction appears, on its face, to correct the deficiencies, the Managing Director will schedule another inspection. If an applicant fails the second inspection, the Managing Director is given authority to deny the application unless the applicant shows good cause for the Commission to perform additional inspections. Denial of Application will follow the regulations provided in §180-10.1-335, and a written report will be provided by the Managing Director to the Committee on Licensing regarding the basis for denial.

At a properly announced meeting of the Commission's Committee on Licensing, the Managing Director will present the report to the Committee, along with the recommendation on the application, and final decision on the application will be voted on by the Committee members. The Committee's decision on an application is final based on the determination of the majority of the Commissioners present during the vote.

Approval of Application and Issuance of License will follow the regulations provided in §180-10.1-330. Denial of Application will follow the regulations provided in §180-10.1-335.

The Committee on Licensing shall meet in a duly noticed public meeting as described in 1 CMC § 9910 and will conduct an election of officers to determine the leadership of the Committee.

2. ESTABLISHMENT OF THE COMMITTEE ON PERSONNEL

The CNMI Cannabis Commission will establish the Committee on Personnel. The Committee on Personnel shall be composed of least 2 (two) Commissioners. For the purposes of this Committee, 2 (two) members present during meetings of the Committee shall constitute a quorum. The Committee on Personnel shall be delegated the authority to hire the Managing Director of the CNMI Cannabis Commission, pursuant to 4 CMC § 53009 and NMIAC § 180-10.1-120. The decision of the Committee on Personnel shall represent the decision of the Commission and will be conducted in a duly publicly noticed meeting as described in 1 CMC § 9910.

The Committee on Licensing shall meet in a duly noticed public and will conduct an election of officers to determine the leadership of the Committee.

3. IT IS HEREBY FURTHER ORDERED that the Managing Director shall take steps necessary to ensure that this order is published in the Commonwealth Register, and this

Order take effect 10 (ten) days after its publication in the Commonwealth Register and shall remain in effect until it is repealed or replaced by subsequent Order of the Commission.

SO ORDERED this 31st day of December, 2022

Signature:



MATTHEW DELEON GUERRERO
ACTING CHAIRMAN



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

1
2
3
4
5
6
7
8
9
10

In Re the Matter of:)	Labor Case No. 22-014
)	
Feng Yu,)	
)	
Complainant,)	ORDER OF DISMISSAL
)	
v.)	
)	
Island Star International, Inc.,)	
)	
Respondent.)	

I. INTRODUCTION

This matter came for an Order to Show Cause Hearing on October 18, 2022 at approximately 1:00 p.m. at the Administrative Hearing Office in Saipan. Complainant Feng Yu was present and self-represented. Respondent Island Star International, Inc. (“Respondent”) was not present but represented by Attorney Michael Dotts. Interpreter Brandon Doggett was also present to facilitate communication.

I. BACKGROUND

Based on the matters discussed at the hearing, this matter involves issues with subject matter jurisdiction, statute of limitation, and pending civil litigation. Considering all the issues, and in order to offer the parties the opportunity to be fully heard, the undersigned ordered for the parties to file a Motion to Dismiss and/or Request for a Stay, and any response thereto.

II. DISCUSSION

1. Respondent’s Motion for Summary Disposition is denied.

Instead of filing the ordered briefs, Respondent filed a Motion for Summary Disposition and a number of supporting exhibits. Complainant filed a general denial that is non-responsive to the legal arguments and provides no clarity to the issues. Based on the filings, the parties’ working relationship and agreements thereunder are unclear and contested. While Respondent argues that Complainant was a company shareholder, not an employee – Complainant claims otherwise. There is no evidence showing that Complainant was never an employee. For that reason, there

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 are genuine issues of material fact. Accordingly, the Respondent's Motion for Summary
2 Disposition is **DENIED**.

3 **2. Claims outside the 6-month Statute of Limitation are time-barred.**

4 Pursuant to 3 CMC § 4947(a), "the hearing officer may, after notice and an opportunity
5 to be heard is provided to the parties, dismiss [] a complaint that the hearing officer finds to be
6 without merit." Pursuant to NMIAC § 80-20.2-130(c), dismissal is warranted on the following
7 grounds: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person;
8 (3) insufficiency of process; (4) insufficiency of service of process; and (5) failure to state a claim
9 upon which relief can be granted. *See also* NMIAC § 80-20.1-485(b). "If a complaint is not timely
10 filed, the hearing office *shall* dismiss the complaint with prejudice" for failure to state a claim
11 upon which relief can be granted. NMIAC § 80-20.1-465(e). Pursuant to 3 CMC § 4962, "[n]o
12 labor complaint may be filed more than six months after the date of the last-occurring event that
13 is the subject of the complaint, except in cases where the actionable conduct was not discoverable
14 upon the last-occurring event."

15 Here, Complainant filed a complaint for unpaid wages in the amount of \$75,040.00 for
16 alleged work from November 18, 2020 to June 30, 2022. However, Complainant filed this
17 complaint on September 1, 2022. Based on the applicable law, Complainant can only potentially
18 recover wages accruing six months before the complaint. Specifically, Complainant is limited to
19 wages accrued from March 1, 2022 to September 1, 2022. After notice and opportunity to respond
20 to this issue, Complainant failed to show cause why the claims from November 18, 2020 through
21 February 28, 2022 should not be dismissed. Accordingly, the claims arising out the six-month
22 statute of limitations is hereby **DISMISSED**, with prejudice.

23 **3. Complainant fails to establish a claim for unpaid wages under the CNMI Minimum
24 Wage Act.**

25 Pursuant to 3 CMC § 4947(a), "the hearing officer may, after notice and an opportunity
26 to be heard is provided to the parties, dismiss [] a complaint that the hearing officer finds to be
27 without merit." Pursuant to NMIAC § 80-20.2-130(c), dismissal is warranted on the following
28 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).

1 In this case, Complainant seeks unpaid wages under the CNMI Minimum Wage Act. *See*
2 4 CMC § 9221 (“Every employer ... shall pay to each employee employed by him or her, a
3 minimum wage . . . of \$3.05 per hour”); *see also* 4 CMC § 9222 (“No employer shall employ
4 any employee in excess of 40 hours a week, unless the employee receives compensation for
5 employment in excess of such weekly hours at a rate not less than one and one half-times the
6 regular rate at which he is employed.”). As the complaining party, Complainant has the burden to
7 establish a viable claim against Respondent.

8 While there is clearly underlying legal issues and factual determinations pending in the
9 civil court, the undersigned finds that there is not enough in the complaint and subsequent filings
10 to demonstrate a violation of the CNMI Minimum Wage Act. While Complainant makes bare
11 allegations of an employment relationship and accrual of wages, there is no evidence to support
12 said working relationship and defined wages. For example, there is no showing of employment
13 verification conducted to authorize foreign employment, employment contract demonstrating title
14 and wages, timesheets of approved work, W2 Forms, or any other tax or business records. Instead,
15 Complainant simply documented work performed on certain pay periods. Aside from
16 authentication and credibleness issues, this document is insufficient to demonstrate that the work
17 was authorized by Respondent, that Respondent agreed to pay Complainant a certain amount, or
18 that Respondent was an employee. Moreover, Complainant fails to sufficiently respond to the
19 arguments and evidence that Complainant is a shareholder, entitled to dividends, rather than
20 wages. Accordingly, Complainant fails to state a claim upon which relief can be granted and
21 remaining claims are **DISMISSED**.

22 III. CONCLUSION

23 Based on the applicable law and evidence provided, Complainant fails to meet his burden in
24 establishing a claim upon which relief can be granted. Further, Complainant failed to show cause
25 why the complaint should not be dismissed.

26 It is hereby ordered:

- 27 1. Complainant’s claims accruing from November 18, 2020 through February 28, 2022 are
28 dismissed with prejudice; and
2. Complainant’s claims accruing from March 1, 2022 through September 1, 2022 are
dismissed without prejudice.

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

4 So ordered this 9th day of January, 2023.

5
6 /s/

7 **JACQUELINE A. NICOLAS**
8 Chief Administrative Hearing Officer
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

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

10 Based on the record, Appellant’s appeal of the January 12, 2022 Determination was not timely
11 filed. Accordingly, jurisdiction was not established and the January 12, 2022 Determination was final.
12 In addition, during the Administrative Hearing, Appellant withdrew his appeal of the Department’s
13 Determination and he stated that he was appealing only the Notice of Overpayment dated
14 May 11, 2022. Appellant’s appeal of the May 11, 2022 Notice of Overpayment was timely filed.
15 Accordingly, jurisdiction was established on Appellant’s appeal of the Notice of Overpayment.

16 III. PROCEDURAL BACKGROUND & ISSUES

17 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. On
18 January 12, 2022, the Department issued to the Appellant a Disqualifying Determination, effective
19 December 27, 2020 to September 4, 2021. On February 1, 2022, Appellant filed the present appeal
20 and the matter was scheduled for a hearing. As stated in the Notice of Hearing, the three issues on
21 appeal are: (1) whether the appeal is timely filed; (2) whether Appellant is eligible for unemployment
22 benefits; and (3) whether an overpayment occurred and funds should be returned.

23 IV. FINDINGS OF FACT

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

- 26 1. Prior to the COVID-19 pandemic, Appellant, a U.S. citizen, was employed as a Security
27

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

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

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

32 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 Officer at G4S Secure Solutions CNMI, Inc. (“G4S”), in Saipan, CNMI.⁵ As a Security
2 Officer, Appellant was paid \$7.25 hourly and he regularly worked at least 32 hours weekly.⁶
3 2. Due to the economic impact of the COVID-19 pandemic, G4S implemented cost cutting
4 measures that affected Appellant. Specifically, G4S reduced Appellant’s hours, effective in
5 February 2020.⁷
6 3. On July 1, 2020, Appellant submitted an application for unemployment benefits under the
7 PUA and FPUC programs administered by the Department.⁸ In his initial application,
8 Appellant self-certified under penalty of perjury that: (a) his position at G4S was part-time
9 (less than 30 hours); (b) his hours were reduced due to COVID-19 public health emergency;
10 and (c) the reduction in his hours was effective February 1, 2020.⁹
11 4. Subsequently, on November 18, 2020, Appellant submitted an application to reopen his claim
12 for unemployment benefits.¹⁰ Appellant self-certified in this application that: (a) he was
13 “Working Full Time” for a “Private Business” (without identifying the name of the business);
14 and (b) his hours were reduced due to COVID-19 public health emergency as of
15 February 1, 2020.¹¹
16 5. On December 22, 2020, Appellant submitted another application to reopen.¹² In this
17 application to reopen, Appellant self-certified that: (a) his employment was directly affected
18 by COVID-19 public health emergency for other reasons not listed (without specifying how);
19 (b) he had not recently received a notice of termination, layoff or military separation; and
20 (c) his employment was affected since February 2, 2020.¹³
21 6. Appellant also submitted weekly certifications to claim continued unemployment benefits.¹⁴
22 On his weekly certifications¹⁵ for the relevant claimed weeks, Appellant self-certified under
23 penalty of perjury to the following:
24 a. Appellant’s place of employment was closed as a direct result of the COVID-19 public
25

26 ⁵ Exhibits 1, 12, 13 and 14.

27 ⁶ Exhibits 12, 13 and 14.

28 ⁷ Exhibits 11-14.

28 ⁸ Exhibit 1.

29 ⁹ *Id.*

29 ¹⁰ Exhibit 2.

30 ¹¹ *Id.*

30 ¹² Exhibit 3.

31 ¹³ *Id.*

31 ¹⁴ Exhibit 5.

32 ¹⁵ Exhibit 5.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

- health emergency;
- b. Other than for reasons that were the direct result of the COVID-19 Public Emergency, Appellant was able and available to go to work during the claimed weeks; and
- c. Appellant earned the following wages:
 - i. For week ending February 15, 2020, he did not work and earn wages;
 - ii. For week ending April 25, 2020, he worked and earned \$232.00 in wages;
 - iii. For week ending June 13, 2020, he worked and earned \$232.00 in wages; and
 - iv. For week ending June 20, 2020, he worked and earned \$329.88 in wages.¹⁶
- 7. On his weekly certification for week ending December 26, 2020,¹⁷ Appellant self-certified under penalty of perjury that: (a) COVID-19 Public Health Emergency caused his unemployment for other reason not listed (without specifying the reason); (b) other than for reasons that were the direct result of the COVID-19 Public Emergency, Appellant was able and available to go to work during the claimed weeks; (c) Appellant was still unemployed as a direct result of COVID-19 public health emergency; and (d) Appellant worked and earned wages during the week, but he did not specify or disclose the amount of wages earned.
- 8. By submitting his applications and weekly certifications, Appellant certified and acknowledged to certain responsibilities.¹⁸ First, Appellant answered that he understood that the answers he provided in his applications and weekly certifications were submitted under penalty of perjury.¹⁹ This meant it is Appellant’s responsibility to provide true, accurate, and complete answers. Second, it was Appellant’s responsibility to be informed about the programs by reading the Department’s Benefit Rights Information Handbook (“BRI Handbook”)²⁰ and other official written materials regarding the programs.
- 9. Appellant’s self-certifications in his applications and weekly certifications were not entirely truthful, forthcoming, accurate or complete. Specifically, Appellant’s unemployment, starting December 21, 2020, was unrelated to COVID-19 public health emergency because he was terminated by G4S due to multiple disciplinary actions, including poor attendance.²¹ Further, contrary to Appellant’s self-certification, G4S was not closed during the weeks ending

¹⁶ Exhibit 5.
¹⁷ *Id.*
¹⁸ See Exhibits 1-3.
¹⁹ See Exhibits 1-3, and 5.
²⁰ See Exhibit 17.
²¹ See Exhibits 14-15, 19.

1 February 15, 2020, April 25, 2020, June 13, 2020 and June 20, 2020. In addition, as
2 demonstrated by G4S' records,²² Appellant misfiled his hours and/or earned wages as follows:

- 3 a. For week ending February 15, 2020, Appellant claimed he did not work,²³ but in fact,
4 he worked 28.17 hours and earned \$204.23;
5 b. For week ending April 25, 2020, Appellant claimed he worked (without reporting his
6 hours or wages),²⁴ but in fact he worked 22 hours and earned \$159.50; and
7 c. For week ending June 13, 2020, Appellant claimed he earned \$232.00,²⁵ but in fact he
8 worked 32.93 hours and earned \$238.74.²⁶

9 10. Based on the answers on Appellant's applications and weekly certifications, Appellant's
10 claims were processed for payment. As demonstrated by an internal audit,²⁷ Appellant
11 received a total amount of \$16,885.00 in unemployment benefits.²⁸

12 11. On April 28, 2022, a PUA Coordinator reviewed Appellant's claim and supporting
13 documents, and she contacted Appellant to provide supporting documents to substantiate his
14 claims, including updated Certification of Employment, all check stubs and/or timesheets to
15 substantiate his claimed earnings from 2020 to 2021.²⁹ Appellant was provided 90 days to
16 upload the documents to his HireMarianas Portal.

17 12. On January 12, 2022, the Department issued a Disqualifying Determination to Appellant,
18 effective December 27, 2020 to September 4, 2021, because the Department determined that
19 Appellant failed to provide the requested supporting documents to substantiate his claims.³⁰

20 13. The Determination provided Appellant with instructions on how to file an appeal.³¹
21 Specifically, the Determination stated that the appeal "must be received or postmarked by
22 01/22/2022. If you do not make the deadline, you lose the right to appeal this determination."³²

23 14. On February 1, 2022, Appellant filed an appeal of the January 12, 2022 Determination³³ and
24
25

26 ²² See Exhibits 19-20.

27 ²³ See Exhibit 5.

28 ²⁴ *Id.*

29 ²⁵ *Id.*

30 ²⁶ Exhibit 15.

31 ²⁷ Exhibit 16.

32 ²⁸ *Id.*

²⁹ Exhibit 18.

³⁰ Exhibit 6.

³¹ *Id.*

³² *Id.*

³³ Exhibit 9.

1 the matter was scheduled for an Administrative Hearing.³⁴ Appellant's explanation for filing
2 after the 10-day deadline is that he filed on February 1, 2022 and was informed that he filed
3 his appeal incorrectly, but he corrected and filed the corrected forms on the same day.³⁵

4 15. On May 11, 2022, BPC issued a Notice of Overpayment for the total amount of \$1,060.00.³⁶
5 Specifically, this overpayment amounted to \$520.00 in PUA benefits and \$540.00 in FPUC
6 benefits.³⁷ For weeks ending February 15, 2020, April 25, 2020 and June 13, 2020, the
7 Department determined that Appellant misfiled his earnings and/or he earned equal to or
8 greater than his customary wages during the claimed weeks.³⁸ In addition, the Department
9 determined that for week ending June 20, 2020, Appellant's earnings of \$329.88 for the week
10 equals or exceeds his customary wages and by earning his normal, customary wages,
11 Appellant was not considered unemployed, and therefore, ineligible for PUA and FPUC
12 benefits for that week.³⁹ Lastly, the Department Determined that Appellant was ineligible for
13 week ending December 26, 2020 because it was confirmed by G4S that Appellant was
14 terminated with cause on December 21, 2020.⁴⁰

15 16. On May 17, 2022, Appellant received and acknowledged the Notice of Overpayment and a
16 Payment Plan Agreement.⁴¹

17 17. As discussed during the Administrative Hearing, Appellant withdrew his appeal of the
18 Department's Determination dated January 12, 2022 and he was appealing only the Notice of
19 Overpayment dated May 11, 2022.

20 18. Appellant requested a waiver from repaying the overpayment amount claiming that the
21 overpayment occurred without his fault and because he has spent most of the funds to pay for
22 expenses, food, utility bills, and other basic necessities. Appellant has returned to work, has
23 some of the benefits he received remaining, and is not supporting any dependents. Although
24 Appellant's income exceeds his expenses, he shares responsibility for household expenses
25 with a live-in girlfriend and his individual share of expenses does not exceed his income.
26
27

28 ³⁴ See Exhibit 10.

29 ³⁵ Exhibit 9.

30 ³⁶ Exhibit 7.

31 ³⁷ *Id.*

32 ³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Exhibit 8.

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 of the Notice of Overpayment was timely.

Generally, an appeal should be filed within ten days after the Notice of Determination or Notice of Overpayment was issued or served to the claimant. However, the 10-day deadline may be extended to thirty days by a showing of good cause.⁴² 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.⁴³

As discussed during the Administrative Hearing, Appellant withdrew his appeal of the Department's January 12, 2022 Determination. Based on these reasons, this Determination is final and Appellant is not eligible for benefits from December 27, 2020 to September 4, 2021.

With respect to the Notice of Overpayment, while his appeal of the Determination was still pending, the Department issued the Notice of Overpayment on May 11, 2022, and by May 17, 2022, Appellant received a copy of the Notice of Overpayment. When he received the Notice of Overpayment on May 17, 2022, Appellant marked that he requests an appeal with the Administrative Hearing Office. Accordingly, the undersigned finds that Appellant's appeal of the Notice of Overpayment is timely filed within the 10-day deadline.

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

In accordance with the CARES Act and Continued Assistance Act, payment of PUA and FPUC benefits are available to "covered individuals." A "covered individual" is someone who: (1) is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under Section 2107 of the CARES Act, including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law or Pandemic Emergency Unemployment Compensation under Section 2107;⁴⁴ (2) self-certifies⁴⁵ that the individual is unemployed, partially unemployed, or unable or unavailable to work⁴⁶

⁴² HI. Rev. Statute § 383-38(a).

⁴³ HAR § 12-5-81(j).

⁴⁴ This condition is generally not at issue with claimants in the CNMI because there are no other State or Federal unemployment insurance programs in the CNMI.

⁴⁵ The PUA program utilizes initial and weekly applications where claimants self-certify and report under penalty of perjury.

⁴⁶ A claimant must be able to work and be available for work, as defined by Hawaii state law, in order to be eligible

1 as a direct result⁴⁷ of a listed COVID-19 reason in Section 2102(a)(3)(A)(ii) of the CARES Act, and
2 (3) provides required documentation of employment/self-employment within the applicable period of
3 time.⁴⁸

4 With respect to condition (2) listed above, Section 2102 (a)(3)(A)(ii)(I) of the CARES Act
5 specifically identifies the COVID-19 qualifying reasons⁴⁹ as:

- 6
- 7 (aa) The individual has been diagnosed with COVID-19 or is
8 experiencing symptoms of COVID-19 and is seeking a medical
9 diagnosis;
 - 10 (bb) A member of the individual's household has been diagnosed with
11 COVID-19;
 - 12 (cc) The individual is providing care for a family member or a member of
13 the individual's household who has been diagnosed with COVID-19;
 - 14 (dd) A child or other person in the household for which the individual has
15 primary caregiving responsibility is unable to attend school or
16 another facility that is closed as a direct result of the COVID-19
17 public health emergency and such school or facility care is required
18 for the individual to work;
 - 19 (ee) The individual is unable to reach the place of employment because
20 of a quarantine imposed as a direct result of the COVID-19 public
21 health emergency;
 - 22 (ff) The individual is unable to reach the place of employment because
23 the individual has been advised by a health care provider to
24 quarantine due to concerns related to COVID-19;
 - 25 (gg) The individual was scheduled to commence employment and does
26 not have a job or is unable to reach the job as a direct result of the
27 COVID-19 public health emergency;
 - 28 (hh) The individual has become the breadwinner or major support for a
29 household because the head of the household has died as a direct
30 result of COVID-19;
 - 31 (ii) The individual has to quit his or her job as a direct result of COVID-
32 19;
 - (jj) The individual's place of employment is closed as a direct result of
the COVID-19 public health emergency; or

for benefits. See HAR § 12-5-35.

⁴⁷ Pursuant to 20 CFR § 625.5, unemployment is considered a "direct result" of the pandemic where the employment is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events precipitated or exacerbated by the pandemic.

⁴⁸ Section 241 of the Continued Assistance Act requires that an individual must provide documentation substantiating employment or self-employment, or the planned commencement of employment or self-employment, if he or she files a new application for PUA on or after January 31, 2021, or, if the individual applied for PUA before January 31, 2021 and receives PUA benefits on or after December 27, 2020. Failure to supply said documents, and any other relevant, requested documents is a justifiable basis to deny benefits under HAR § 12-5-81(j).

⁴⁹ These reasons are further defined or illustrated in UIPL 16-20, Change 4.

1 (kk) The individual meets any additional criteria established by the US
2 Secretary of Labor for unemployment assistance under PUA.

3 Additional criteria established by the US Secretary of Labor under item (kk)⁵⁰, above, includes:

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

25 Here, Appellant submitted applications and weekly certifications self-certifying, under penalty of
26 perjury, that his hours were reduced as a direct result of COVID-19 public health emergency.
27 Specifically, in his applications and weekly certifications for the relevant claimed weeks, Appellant
28 self-certified that his employment remained affected by COVID-19 public health emergency because
29 his hours were reduced by G4S effective February 1, 2020.

30 Based on applicable law and evidence provided, Appellant does not meet any of the COVID-19
31 qualifying reasons for the relevant claimed weeks that he was disqualified for benefits and found to
32 have been overpaid benefits. First, while Appellant initially experienced a reduction of work hours
with G4S, he did not experience a reduction of hours in the weeks in question. For weeks ending
February 15, 2020, April 25, 2020, and June 13, 2020, Appellant misreported the amount of earnings
that he received. In addition, for week ending June 20, 2020, Appellant's earnings were equal to or
exceeded his customary wages. Thus, during these weeks in question, Appellant's employment was

⁵⁰ See Unemployment Insurance Program Letter 16-20 and 16-20, Change 5.

1 not affected by COVID-19 public health emergency because he received equal to or more than his
2 customary wages. Second, Appellant's separation from his employment with G4S on December 21,
3 2020 was not due to COVID-19 qualifying reasons. Instead, Appellant was terminated by G4S due to
4 performance and personal reasons (poor attendance), which were unrelated to COVID-19 Public
5 Health Emergency. Finally, when asked about each of the COVID-19 qualifying reasons listed above,
6 Appellant answered in the negative. Therefore, during the claimed weeks in question, Appellant's
7 employment was not affected as a direct result of a COVID-19 reason, above.

8 **3. Appellant was overpaid and he is not entitled to a waiver.**

9 "Benefits shall be paid promptly in accordance with a determination, redetermination, or decision
10 or appeal."⁵¹ However, "[a]ny individual who has received any amount as benefits . . . to which the
11 individual was not entitled shall be liable for the amount unless the overpayment was received without
12 fault on the part of the recipient and its recovery would be against equity and good conscience."⁵²
13 Fault⁵³ is defined as:

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

19 Based on federal guidance, "contrary to equity and good conscience" is tantamount to placing an
20 individual below the poverty line and taking away basic necessities to live. In evaluating equity and
21 good conscience,⁵⁴ the factors to consider include, but are not limited to:

- 22 (A) Whether notice of a redetermination was given to the claimant, as
23 required ...
24 (B) Hardship to the claimant that the repayment may impose; and

27 ⁵¹ HRS § 383-43.

28 ⁵² HRS § 383-44. Section 2104(f)(2) of the CARES Act requires individuals who have received FPUC overpayments
29 to repay these amounts to the state agency. Thereunder, the state has authority to waive repayments of FPUC if the
30 payment was without fault on the part of the individual and such repayment would be contrary to equity and good
31 conscience. Section 201(d) of the Continued Assistance Act amends Section 2102(d) of the CARES Act and
authorizes states to waive the repayment if the state determines that the payment of PUA was without fault on the
part of any such individual and such repayment would be contrary to equity and good conscience. This waiver
authority applies to overpayments that meet this criterion at any time since the PUA program began.

32 ⁵³ HRS 12-5-83.

⁵⁴ *Id.*

1 (C) The effect, if any, that the repayment will have upon the
2 fulfillment of the objectives of the program.⁵⁵

3 Considering that Appellant's employment was not directly affected by COVID-19 public health
4 emergency during the claimed weeks in question, Appellant should not have been paid benefits under
5 PUA and FPUC programs. Moreover, considering that Appellant admitted to having received the
6 amounts in question, it is clear that an overpayment occurred. As discussed above, waiver of
7 repayment is granted if the overpayment was made without fault on the part of the claimant and such
8 repayment would be contrary to equity and good conscience. Thus, in determining whether Appellant
9 is entitled to a waiver, the undersigned must consider how the overpayment occurred and whether
10 Appellant meets this legal standard.

11 Here, Appellant filed applications for federal unemployment benefits in which he acknowledged
12 and agreed to his responsibility to read the BRI Handbook and any other official written materials
13 provided or published by the Department. Appellant was also responsible for getting the necessary
14 information and supporting documents so that he can submit informed, accurate and complete answers
15 on his applications and weekly certifications, including verifying with his timesheets and paystubs his
16 earnings so that he can submit informed, accurate and truthful answers.

17 Based upon the evidence, and as discussed above, Appellant was paid benefits based on the
18 answers that he submitted on his applications and weekly certifications. On May 11, 2022, BPC issued
19 a Notice of Overpayment for the total amount of \$1,060.00 for weeks ending February 15, 2020, April
20 25, 2020 and June 13, 2020 because the Appellant misreported in his weekly certifications the amount
21 of earnings that he received. Although Appellant testified that he verified his timesheet when reporting
22 his income on his weekly certifications, his responses on his weekly certifications for these claimed
23 weeks were not entirely true, accurate, or complete. First, Appellant falsely self-certified in his weekly
24 certifications that for weeks ending February 15, 2020, April 25, 2020, June 13, 2020 and
25 June 20, 2020, G4S, which is his place of employment was closed as a direct result of the COVID-19
26 public health emergency. Second, Appellant misreported in his weekly certifications⁵⁶ his earnings in
27 these weeks.⁵⁷ Finally, with respect to week ending December 26, 2020, Appellant certified that his
28 employment remained impacted by COVID-19 public health emergency. The undersigned finds that
29

30 ⁵⁵ PUA benefits were designed to be a critical lifeline for qualifying individuals facing a financial crisis amidst a
31 pandemic. Issues of fraud and overpayments are of great consequence that jeopardizes the integrity of the program
and availability of funds for eligible or qualified individuals.

32 ⁵⁶ See Exhibit 5.

⁵⁷ Compare Exhibit 16.

1 Appellant knew or should have known that his employment was not directly affected by COVID-19
2 because his employment with G4S ended on December 21, 2020 due to personal and performance
3 issues unrelated to COVID-19 pandemic. Therefore, fault for the overpayment for these claimed
4 weeks must be assigned to the Appellant.

5 Lastly, considering that Appellant testified that he is presently employed and he would be able to
6 submit to a repayment plan, the undersigned finds that it would not cause undue financial hardship
7 for Appellant to repay the total overpayment of \$1,060.00. Appellant has spent some of the
8 unemployment benefits that he received to pay for necessary expenses and basic necessities. However,
9 Appellant acknowledged that he still has some of the benefits remaining. While his household
10 expenses presently exceed his individual income, Appellant testified that he is not supporting any
11 dependents and he shares his household expenses with a live-in girlfriend who is also employed. Thus,
12 the undersigned finds that Appellant has unemployment benefits remaining and Appellant's monthly
13 share of his expenses do not exceed his individual income and, therefore, it would not be against
14 equity and good conscience to recover the overpayment. Accordingly, based on the applicable law
15 and evidence provided, Appellant is not entitled to a waiver of repayment.

16 VI. DECISION

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

- 18 1. The CNMI Department of Labor's Disqualifying Determination, dated January 12, 2022, is
19 AFFIRMED;
- 20 2. The Appellant is NOT ELIGIBLE to receive PUA benefits for the period of
21 December 27, 2020 to September 4, 2021;
- 22 3. The CNMI Department of Labor's Notice of Overpayment, dated May 11, 2022, is
23 AFFIRMED;
- 24 4. Appellant was overpaid in the total amount of \$1,060.00;
- 25 5. Appellant is not entitled to a waiver for repayment; and
- 26 6. Appellant is ORDERED to report to the Department's Benefit Payment Control Unit by to
27 discuss options for repayment or offsetting the overpayment, in accordance with the
28 applicable rules.

29 If a party is aggrieved by this Order and would like to contest the decision, he or she must submit
30 a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The written
31 request should be supported by legal, factual, or evidentiary reasons to reopen the decision. The
32

1 written request must be submitted to the Administrative Hearing Office, either in person at Building
2 #1357, Mednilla Avenue, Capitol Hill, Saipan, CNMI or via email at hearing@dol.gov.mp.

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

9 So ordered this 21st day of December, 2022.

10 /s/

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

13 **Lists of Documents Admitted As Evidence**

- 14 1. Exhibit 1: Copy of Appellant's Application Snapshot (initial), filed July 1, 2020;
- 15 2. Exhibit 2: Copy of Appellant's Application Snapshot (re-open), filed November 18, 2020;
- 16 3. Exhibit 3: Copy of Appellant's Application Snapshot (re-open), filed December 22, 2020;
- 17 4. Exhibit 4: Copy of Appellant's Northern Mariana Islands Portal – UI Application;
- 18 5. Exhibit 5: Copy of Appellant's Weekly Certifications for the following period:
19 February 9, 2020 to February 15, 2020; April 19, 2020 to April 25, 2020; June 7, 2020 to June
20 20, 2020; and December 20, 2020 to December 26, 2020;
- 21 6. Exhibit 6: Copy of the Department's Disqualifying Determination, dated January 12, 2022,
22 effective December 27, 2020 to September 4, 2021;
- 23 7. Exhibit 7: Copy of the Department's Notice of Overpayment, dated May 11, 2022;
- 24 8. Exhibit 8: Copy of Payment Plan Agreement (proposed), signed by Appellant on May 17, 2022;
- 25 9. Exhibit 9: Copy of Appellant's Request to file an Appeal, filed February 1, 2022;
- 26 10. Exhibit 10: Copy of the Notice of Hearing, issued February 2, 2022;
- 27 11. Exhibit 11: Copy of Employer G4S Secure Solutions CNMI, Inc.'s ("G4S") Verification of
28 Partial Unemployment Status Pandemic Unemployment Assistance (PUA), dated
29 June 19, 2020;
- 30 12. Exhibit 12: Copy of G4S's Separation Notice, dated June 16, 2020;
- 31 13. Exhibit 13: Copy of G4S's Verification of Employment for Pandemic Unemployment
32 Assistance, dated June 16, 2020;

- 1 14. Exhibit 14: Copy of G4S's Verification of Employment for Pandemic Unemployment
2 Assistance, dated May 17, 2022;
- 3 15. Exhibit 15: Copy of Emails between Department's Benefit Payment Control Unit ("BPC") and
4 Appellant, dated May 6, 2022 to May 11, 2022;
- 5 16. Exhibit 16: Copy of BPC's Audit Sheet;
- 6 17. Exhibit 17: Copy of Department's Pandemic Unemployment Assistance & Federal Pandemic
7 Unemployment Compensation Benefits Rights Information Handbook ("BRI Handbook");
- 8 18. Exhibit 18: Copy of Department's Case Note, contact date April 28, 2022;
- 9 19. Exhibit 19: Copy of Emails between BPC and G4S, dated April 28, 2022 to May 4, 2022,
10 including attached timesheets and G4S' Verification of Employment Status Pandemic
11 Unemployment Assistance (PUA), dated June 19, 2020;
- 12 20. Exhibit 20: Copy of G4S's Consolidated Duty Attendance Summary Report for Appellant for
13 February 2, 2020 to December 26, 2020; and
- 14 21. Exhibit 21: Copy of Department's Case Notes, dated May 9, 2022.
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32



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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

In Re Matter of:)	PUA Case No. 22-0202
)	
Augustus R. Loste II,)	
)	
Appellant,)	ADMINISTRATIVE ORDER GRANTING
)	PARTIES' REQUEST FOR DISMISSAL
v.)	
)	
CNMI Department of Labor,)	
Division of Employment Services-PUA,)	
)	
Appellee.)	

The above-captioned matter was continued for an Administrative Hearing for January 19, 2023 at 9:00 a.m. On January 17, 2023, Appellant filed a written request to withdraw his appeal stating that he will work out the overpayment with the Department. On the same day, the Department's Benefit Payment Control Unit ("BPC") filed a Motion to Dismiss stating that Appellant agreed to use his remaining eligible claims and scheduled bi-weekly payments to repay the overpaid amount. In support of the Motion to Dismiss, BPC also filed copies of Appellant's "Acknowledgement & Request for Action" and "Payment Plan Agreement", both of which were signed and agreed to by the Appellant. After close of business on January 18, 2023, Appellant acknowledged receipt of BPC's Motion to Dismiss and he confirmed in writing that he agreed with BPC's Motion to Dismiss.

In consideration of the foregoing, the undersigned finds dismissal is appropriate. Accordingly, this appeal is **DISMISSED** and the Administrative Hearing scheduled for January 19, 2023 at 9:00 a.m. is **VACATED**. The Department's Determination, dated March 9, 2022, and the Notice of Overpayment, dated December 15, 2022, are both **FINAL**. In the event that the Appellant disagrees with a subsequent determination or notice, Appellant may file a new appeal.

So ordered this **19th** day of January, 2023.

/s/
Catherine J. Cachero
Administrative Hearing Officer



1 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
2 DEPARTMENT OF LABOR
3 ADMINISTRATIVE HEARING OFFICE

4 In Re Matter of:) PUA Case No. 22-0210
5 Yunpeng Zhang,)
6 Appellant,) ADMINISTRATIVE ORDER
7 v.)
8 CNMI Department of Labor,)
9 Division of Employment Services-PUA,)
10 Appellee.)
11)
12)

13 I. INTRODUCTION

14 This matter came before the undersigned for an Administrative Hearing on November 29, 2022
15 and on December 12, 2022, both at approximately 9:00 a.m., at the Administrative Hearing Office,
16 Saipan, CNMI. Appellant Yunpeng Zhang (“Appellant”) was present and self-represented. Appellee
17 CNMI Department of Labor Division of Employment Services – Pandemic Unemployment
18 Assistance program (“Department”) was present and represented by PUA Coordinators Naomi
19 Camacho and Pernalynn Camacho. There were no other witnesses who provided testimony.
20 Interpreter Brandon Doggett facilitated communications during the Administrative Hearing. A list of
21 the documents admitted into evidence are added to the end of this Order.

22 For the reasons stated below, the Department’s Determination dated March 22, 2022 is
23 **AFFIRMED**. Appellant is not eligible for benefits from March 8, 2020 to September 4, 2021. Further,
24 the Department’s Notice of Overpayment dated November 21, 2022 is **AFFIRMED**. Appellant was
25 overpaid in the total amount of \$1,120.00. However, the Department determined that Appellant is
26 eligible for a full waiver of this overpayment amount because Appellant is not at fault for the
27 overpayment and it would be contrary to equity and good conscience to recover the overpaid benefits.
28 Appellant has agreed to the Department’s findings.

29 II. JURISDICTION

30 On March 27, 2020, the Coronavirus Aid Relief and Economic Security (“CARES”) Act of 2020
31 was signed into law creating new temporary federal programs for unemployment benefits called
32

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

10 Based on the record, Appellant’s appeal of the March 22, 2022 Determination is timely filed.
11 Accordingly, jurisdiction is established.

12 III. PROCEDURAL BACKGROUND & ISSUES

13 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon
14 review of Appellant’s application and supporting documents, the Department issued a Disqualifying
15 Determination dated March 22, 2022. On March 31, 2022, Appellant filed the present appeal and the
16 matter was scheduled for a hearing. As stated in the Notice of Hearing, the issues on appeal are:
17 (1) whether Appellant is eligible for PUA and FPUC benefits; and (2) whether an overpayment
18 occurred and funds should be returned.

19 IV. FINDINGS OF FACT

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

- 22 1. Appellant, a national of the Republic of China,⁵ has not had an attachment to the CNMI work
23 force since Appellant entered the CNMI on October 15, 2016 under a tourist visa.⁶
24 Specifically, Appellant was not lawfully employed by any CNMI business, employer or other
25 entity prior to the COVID-19 public health emergency. However, Appellant has performed
26 laborer services for individuals and families, such as transporting and handling materials,

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

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

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

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

32 ⁵ Exhibit 13.

⁶ See Exhibit 16.

- 1 construction and builder helper, yard cleaning and tree cutting.⁷
- 2 2. Appellant does not own a business and he does not have a business license for these services
- 3 or any other type of business. Moreover, Appellant does not report the income from his laborer
- 4 services in any business related tax filings such as monthly business gross revenue tax
- 5 (“BGRT”) filings.
- 6 3. Based on the evidence presented, including copies of Appellant’s income tax returns (Form
- 7 1040CM) for years 2019, 2020 and 2021, Appellant had no attachment to the CNMI
- 8 workforce and he did not suffer any loss of income due to the COVID-19 pandemic.
- 9 Appellant’s performance of laborer services were not severely limited by COVID-19
- 10 pandemic and Appellant’s self-reported income in his Form 1040CMs show that his income
- 11 was greater and increased in years 2020 and 2021 compared to year 2019.⁸
- 12 4. On September 20, 2020, Appellant submitted an application⁹ for unemployment assistance
- 13 under the PUA and FPUC programs administered by the Department. In the initial
- 14 application,¹⁰ Appellant self-certified under penalty of perjury that:
- 15 a. Appellant is an Alien/Refugee lawfully admitted to U.S.;
- 16 b. Appellant’s employment was directly affected by COVID-19 when he was scheduled
- 17 to commence employment and does not have a job or is unable to reach the job as a
- 18 direct result of the COVID-19 public health emergency; and
- 19 c. Appellant’s employment was affected since March 13, 2020.
- 20 5. Based on the answers on Appellant’s application, Appellant’s claim was processed for
- 21 payment. As demonstrated by an internal audit¹¹ and confirmation with the Department’s and
- 22 Appellant’s testimony, Appellant received a total amount of \$1,120.00 in federal
- 23 unemployment benefits by paper check.¹²
- 24 6. The answers provided in Appellant’s application were submitted under penalty of perjury.¹³
- 25 It is Appellant’s responsibility to provide true, accurate, and complete answers, documents
- 26 and evidence to substantiate his claims. Moreover, it is Appellant’s responsibility to be

27

28

29 ⁷See Exhibits 8-10

30 ⁸ See Exhibits 11, 12 and 22.

31 ⁹ Exhibit 1.

32 ¹⁰ *Id.*

¹¹ Exhibit 5.

¹² *Id.*

¹³ See Exhibit 1.

1 informed about the program by reading the Department's Benefit Rights Information
2 Handbook¹⁴ and other official written material regarding the programs.

3 7. Based on the evidence presented and testimony provided, Appellant's self-certifications under
4 his application were inaccurate and untrue. Specifically, during the relevant claim period:

- 5 a. Appellant was not scheduled to commence employment with a business or employer;
- 6 b. Appellant did not have a job prior to COVID-19 pandemic; and
- 7 c. Appellant was not unable to reach his job as a direct result of the COVID-19 public
8 health emergency.

9 8. With respect to Appellant's immigration status and employment authorization, Appellant
10 provided testimony and substantiating evidence to demonstrate the following:

- 11 a. When Appellant first entered the CNMI in 2016, Appellant entered under a tourist
12 visa-waiver program;¹⁵
- 13 b. Appellant applied for asylum and withholding of removal, but his application was
14 pending at the time of his claims for federal unemployment benefits were filed and
15 this application remains pending;¹⁶
- 16 c. Appellant had an employment authorization document ("EAD") under the
17 corresponding C08 classification, valid from May 17, 2020 to May 16, 2022;¹⁷
- 18 d. Appellant is before the U.S. Immigration Court for removal proceedings, but his
19 hearing that was set for March 16, 2022 was rescheduled for April 13, 2023;¹⁸ and
- 20 e. Appellant has no other documents or evidence to demonstrate that he is a qualified
21 alien during the relevant claim period.

22 9. On November 5, 2020 and March 11, 2022, the Department entered Appellant's information
23 into the Systematic Alien Verification for Entitlements (SAVE) database maintained by
24 USCIS, Verification Division.¹⁹ This database is used to determine the immigration status of
25 PUA applicants so only those entitled to benefits receive them. The SAVE results²⁰ confirmed
26 Appellant had an EAD, C08 classification, valid from May 17, 2020 to May 16, 2022.

27 10. On March 22, 2022, the Department issued a determination disqualifying Appellant from PUA
28

29 ¹⁴ See Exhibit 20

¹⁵ See Exhibit 16.

¹⁶ See Exhibit 15.

¹⁷ See Exhibit 14, 17, and 18.

¹⁸ See Exhibit 19.

¹⁹ See Exhibit 18.

²⁰ Exhibit 18.

1 and FPUC benefits from March 8, 2020 to September 4, 2021 because the Department found
2 that Appellant is not a U.S. Citizen, Non-citizen National, or a Qualified Alien during the
3 claimed period.²¹

4 11. On March 31, 2022, Appellant filed the present appeal and the matter was scheduled for an
5 Administrative Hearing.²² As discussed during the Administrative Hearing, Request to File
6 an Appeal form and in his supporting document, Appellant is appealing because he was given
7 an EAD as an asylum seeker, CW workers are eligible for PUA and FPUC benefits, and they
8 are foreign workers just like him.²³

9 12. On November 21, 2022, while the Appellant's appeal of the Determination was still pending,
10 the Department's Benefit Payment Control Unit ("BPC") issued a Notice of Overpayment for
11 the total amount of \$1,120.00 in federal unemployment benefits.²⁴ Specifically, this amounted
12 to \$310.00 in PUA benefits and \$810.00 in Lost Wages Assistance ("LWA") benefits.²⁵ The
13 Department found that based on the investigation and audit conducted, it was determined that
14 due to Appellant's EAD category of C08, asylum applicant with pending asylum application,
15 Appellant was deemed ineligible for PUA and FPUC benefits because EAD category C08
16 does not meet the criteria of a U.S. Citizen, Non-national, or Qualified Alien.²⁶ Furthermore,
17 the Department found that based on Appellant's 2019-2020 tax records, Forms 1040CM, there
18 was no proof of loss of income or attachment to the CNMI workforce.²⁷ However, the
19 Department granted full waiver of repayment of this overpayment because Appellant was not
20 at fault and repayment would be contrary to equity and good conscience.²⁸

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

25 Pursuant to the CARES Act and Continued Assistance Act, payment of PUA and FPUC benefits
26 are available to "covered individuals". A "covered individual" is someone who: (1) is not eligible for
27

28 ²¹ Exhibit 2.

29 ²² Exhibit 3.

30 ²³ See Exhibits 3 and 8.

31 ²⁴ Exhibit 5.

32 ²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

1 regular compensation or extended benefits under state or federal law or pandemic emergency
2 unemployment compensation under Section 2107 of the CARES Act, including an individual who
3 has exhausted all rights to regular unemployment or extended benefits under state or federal law or
4 Pandemic Emergency Unemployment Compensation under Section 2107;²⁹ (2) self-certifies³⁰ that the
5 individual is unemployed, partially unemployed, or unable or unavailable to work³¹ as a direct result³²
6 of a listed COVID-19 reason in Section 2102(a)(3)(A)(ii) of the CARES Act, and (3) provides
7 required documentation of employment/self-employment within the applicable period of time.³³

8 With respect to condition (2) listed above, Section 2102 (a)(3)(A)(ii)(I) of the CARES Act
9 specifically identifies the COVID-19 qualifying reasons³⁴ as:

- 10 (aa) The individual has been diagnosed with COVID-19 or is
11 experiencing symptoms of COVID-19 and is seeking a medical
12 diagnosis;
- 13 (bb) A member of the individual's household has been diagnosed with
14 COVID-19;
- 15 (cc) The individual is providing care for a family member or a member of
16 the individual's household who has been diagnosed with COVID-19;
- 17 (dd) A child or other person in the household for which the individual has
18 primary caregiving responsibility is unable to attend school or
19 another facility that is closed as a direct result of the COVID-19
20 public health emergency and such school or facility care is required
21 for the individual to work;
- 22 (ee) The individual is unable to reach the place of employment because
23 of a quarantine imposed as a direct result of the COVID-19 public
24 health emergency;
- 25 (ff) The individual is unable to reach the place of employment because
26 the individual has been advised by a health care provider to
27 quarantine due to concerns related to COVID-19;
- 28 (gg) The individual was scheduled to commence employment and does
29 not have a job or is unable to reach the job as a direct result of the

24 ²⁹ This condition is generally not at issue with claimants in the CNMI because there are no other State or Federal
25 unemployment insurance programs in the CNMI.

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

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

30 ³² Pursuant to 20 CFR § 625.5, unemployment is considered a "direct result" of the pandemic where the employment
31 is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events
32 precipitated or exacerbated by the pandemic.

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

³⁴ These reasons are further defined or illustrated in UIPL 16-20, Change 4.

- 1 COVID-19 public health emergency;
- 2 (hh) The individual has become the breadwinner or major support for a
household because the head of the household has died as a direct
3 result of COVID-19;
- 4 (ii) The individual has to quit his or her job as a direct result of COVID-
19;
- 5 (jj) The individual's place of employment is closed as a direct result of
the COVID-19 public health emergency; or
- 6 (kk) The individual meets any additional criteria established by the US
7 Secretary of Labor for unemployment assistance under PUA.

8 Additional criteria established by the U.S. Secretary of Labor under item (kk)³⁵, above, includes:

- 9
- 10 (1) The individual is an independent contractor who is unemployed (total
or partial) or is unable or unavailable to work because of the COVID-
11 19 public health emergency has severely limited his or her ability to
continue performing the customary job;
- 12 (2) The individual has been denied continued unemployment benefits
because the individual refused to return to work or accept an offer of
13 work at a worksite that, in either instance, is not in compliance with
local, state, or national health and safety standards directly related to
14 COVID-19. This includes, but is not limited to, those related to facial
mask wearing, physical distancing measures, or the provision of
15 personal protective equipment consistent with public health
guidelines;
- 16 (3) An individual provides services to an educational institution or
educational service agency and the individual is unemployed or
17 partially unemployed because of volatility in the work schedule that
is directly caused by the COVID-19 public health emergency. This
18 includes, but is not limited to, changes in schedules and partial
closures; and
- 19 (4) An individual is an employee and their hours have been reduced or
20 the individual was laid off as a direct result of the COVID-19 public
health emergency.
- 21
- 22
- 23

24 Here, Appellant has no substantiating documents to show that his employment was directly
25 affected by a COVID-19 qualifying reason under item (aa) through (kk), above. First, it is clear from
26 Appellant's testimony and documents that he was never employed or offered bona fide employment
27 by any employer or business since he arrived in the CNMI from the Republic of China in 2016 under
28 a tourist-waiver visa.³⁶ While the undersigned recognizes that Appellant performed services for
29 individuals and families, there is no evidence that Appellant suffered any loss of income or was
30 otherwise severely limited in performing customary work as a direct result of the COVID-19 public

31 _____
³⁵ See Unemployment Insurance Program Letter 16-20 and 16-20, Change 5.

32 ³⁶ See Exhibit 16.

1 health emergency. Appellant testified that he did not own a business, he did not have a valid business
2 license, and he did not report any business gross revenue in any BGRT filings. Moreover, according
3 to copies of Appellant's income tax returns (Form 1040CM) for years 2019, 2020 and 2021, Appellant
4 did not suffer any loss of income and his performance of services for individuals and families were
5 not severely limited. In fact, according to these tax records that in 2020 and 2019, Appellant was able
6 to perform additional services and earn additional income. Therefore, based on testimony and
7 evidence provided, Appellant's self-certifications in his application and weekly certifications for PUA
8 and FPUC benefits that his employment was affected by COVID-19 public health emergency was not
9 true. Accordingly, based on the evidence presented and testimony provided, the undersigned finds
10 that Appellant's employment was not affected as a direct result of a COVID-19 qualifying reason,
11 and Appellant is not a "covered individual" under the CARES Act and Continued Assistance Act.

12 **2. Appellant was not a qualified alien.**

13 PUA and FPUC are federal public benefits as defined by 8 USC §1611(c). As a condition of
14 eligibility for any federal public benefit, such as PUA and FPUC benefits, the claimant must be a
15 "qualified alien" at the time relevant to the claim.³⁷ Pursuant to 8 USC §1641, "qualified alien" is:

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

28 Section 265 of the Continued Assistance Act provides that a Commonwealth Only Transitional
29 Worker (CW-1) shall be considered a "qualified alien" for purposes of eligibility for PUA and FPUC
30 benefits.³⁸

31 Here, the Department disqualified Appellant from PUA and FPUC benefits from March 8, 2020
32 to September 4, 2021 because the Department found that Appellant was not a U.S. Citizen, Non-

³⁷ 8 USC §1611(a).

³⁸ As provided in UIPL 16-20, change 4, page I-16, "CW-1 workers may receive PUA and FPUC if they meet all PUA eligibility requirements beginning with claims filed after December 27, 2020 (i.e., claim effective dates beginning on or after January 3, 2021)."

1 citizen National, or a Qualified Alien for the period. Appellant is a citizen of the Republic of China³⁹
2 and when he entered the CNMI in October 2016, Appellant entered under a tourist visa-waiver
3 program. Subsequently, on or around August 22, 2018, Appellant submitted an application for asylum
4 and for withholding of removal (Form I-589).⁴⁰ Appellant was approved an EAD under C08
5 classification as an asylum seeker because of his pending application. Appellant's C08 EAD was valid
6 from May 17, 2020 to May 16, 2022.⁴¹ Appellant argued that because he applied for asylum and
7 withholding of removal and was approved an EAD under C08 classification, he should be eligible for
8 PUA and FPUC benefits, much like CW-1 foreign workers. This argument is unpersuasive. As
9 discussed and listed above, under the applicable laws, as a condition for PUA and FPUC benefits,
10 claimant must be a "qualified alien". The definition of "qualified alien" includes "an alien who is
11 *granted* asylum under section 208 of [the INA]"⁴² and "an alien whose *deportation is being withheld*
12 *under section 243(h) of [the INA]."*⁴³ Since Appellant's application for asylum and withholding of
13 removal remained pending during the claim period, Appellant is not a "qualified alien" under these
14 applicable laws because Appellant has not been granted either asylum status or withholding from
15 deportation.⁴⁴ Finally, Appellant testified that he does not have any other documents of any other
16 lawful immigration status during the relevant claim period. Accordingly, Appellant was not a
17 qualified alien and he is ineligible to receive PUA and FPUC benefits during the relevant claim period.

18 VI. DECISION

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

- 20 1. Department's Disqualifying Determination, dated March 22, 2022, is **AFFIRMED**;
- 21 2. Appellant is **NOT ELIGIBLE** to receive PUA and FPUC benefits from March 8, 2020 to
22 September 4, 2021.
- 23 3. Department's Notice of Overpayment, dated November 21, 2022, is **AFFIRMED**;
- 24 4. Appellant was overpaid in the total amount of **\$1,120.00**;
- 25 5. However, full waiver of repayment of this overpayment is **GRANTED** to Appellant.

26 If a party is aggrieved by this Order and would like to contest the decision, he or she must submit
27 a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The written
28

29 ³⁹ Exhibit 13.

⁴⁰ See Exhibit 15.

⁴¹ See Exhibits 14, 17 and 18.

⁴² See 8 U.S.C. §1641(b)(5).

⁴³ See 8 U.S.C. §1641(b)(5).

⁴⁴ Appellant is before the U.S. Immigration Court for removal proceedings, but Appellant's hearing is scheduled for
32 April 2023 and he has not yet been granted withholding of removal. See Exhibits 19-20.

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

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

9 So ordered this 9th day of January, 2023.

10
11 /s/
CATHERINE J. CACHERO
12 Administrative Hearing Officer
13

14 **Documents Admitted As Evidence**

- 15 1. Exhibit 1: Copy of Application Snapshot (new), dated September 20, 2020;
16 2. Exhibit 2: Copy of Department's Disqualifying Determination, dated March 22, 2022;
17 3. Exhibit 3: Copy of Appellant's Request to File an Appeal and supporting documents, filed
18 March 31, 2022;
19 4. Exhibit 4: Copies of the Notice of Hearing and Orders Continuing Hearing, issued on
20 March 31, 2022, April 5, 2022, August 4, 2022, November 15, 2022, and November 30, 2022;
21 5. Exhibit 5: Copy of Department's Notice of Overpayment, dated November 21, 2022;
22 6. Exhibit 6: Copies of Department's Case Notes, dated November 21, 2022, March 11, 2022
23 and March 22, 2022
24 7. Exhibit 7: Copy of Department Benefit Payment Control Unit's Email Communication, dated
25 November 23, 2022;
26 8. Exhibit 8: Copy of Appellant's Statement, "The Reason Why I Disagree with the
27 Determination", dated March 30, 2022;
28 9. Exhibit 9: Copy of Appellant's Self-Written Letter, dated October 26, 2020;
29 10. Exhibit 10: Copies of Appellant's Letters of Employment Certification, dated May 4, 2021;
30 11. Exhibit 11: Copy of Appellant's Form 1040CM Tax Return for Year 2019;
31 12. Exhibit 12: Copy of Appellant's Form 1040CM Tax Return for Year 2020, including receipts
32 of payment;

- 1 13. Exhibit 13: Copy of Appellant's Passport, valid December 23, 2014 to December 22, 2024;
- 2 14. Exhibit 14: Copies of Appellant's Drivers' License, Employment Authorization Card, and
- 3 Social Security Card;
- 4 15. Exhibit 15: Copy of Appellant's Form I-589, Application for Asylum and for Withholding
- 5 Removal, signed August 22, 2018;
- 6 16. Exhibit 16: Copy of Appellant's Form I-94 (CBP print out/chart);
- 7 17. Exhibit 17: Copy of Appellant's Employment Authorization Card, valid May 17, 2020 to May
- 8 16, 2022;
- 9 18. Exhibit 18: Copies of Department's SAVE Verification Results, dated November 5, 2020 and
- 10 March 11, 2022;
- 11 19. Exhibit 19: Copies of U.S. Immigration Court's Notice of Hearing in Removal Proceedings,
- 12 dated October 28, 2021, and Appellant's Mobile Screenshot of showing pending hearing on
- 13 April 13, 2023 at 9:00 AM with Immigration Judge Clarence Wagner;
- 14 20. Exhibit 20: Copy of Department's Benefit Rights Information Handbook;
- 15 21. Exhibit 21: Copy of Email Communication, dated November 28, 2022; and
- 16 22. Exhibit 22: Copy of Appellant's Form 1040CM Tax Return for Year 2021.
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32



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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>In Re the Matter of:</p> <p>Jocelyn D. Anastacio,</p> <p style="padding-left: 100px;">Appellant,</p> <p style="padding-left: 100px;">v.</p> <p>CNMI Department of Labor, Division of Employment Services-DUA, Appellee.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>DUA Case No. 22-013</p> <p>ADMINISTRATIVE ORDER</p>
---	---	--

On January 6, 2023, the parties filed a joint stipulation to dismiss this above-captioned case as moot when the Department agreed to consider additional weekly certifications. Upon review of the joint stipulation, the undersigned finds that the parties no longer wish to pursue this appeal and dismissal is warranted. Accordingly, this appeal is hereby **DISMISSED** and any pending deadlines or hearings with the Administrative Hearing Office is **VACATED**.

So ordered this 9th day of January, 2023.

/s/

JACQUELINE A. NICOLAS
Chief Administrative Hearing Officer



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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>In Re the Matter of:</p> <p>Charon De Guzman De Lara,</p> <p style="padding-left: 100px;">Appellant,</p> <p style="padding-left: 100px;">v.</p> <p>CNMI Department of Labor, Division of Employment Services-DUA, Appellee.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>DUA Case No. 22-014</p> <p>ADMINISTRATIVE ORDER</p>
---	--	--

On January 6, 2023, the parties filed a joint stipulation to dismiss this above-captioned case as moot when the Department agreed to consider additional weekly certifications. Upon review of the joint stipulation, the undersigned finds that the parties no longer wish to pursue this appeal and dismissal is warranted. Accordingly, this appeal is hereby **DISMISSED** and any pending deadlines or hearings with the Administrative Hearing Office is **VACATED**.

So ordered this **9th** day of January, 2023.

/s/

CATHERINE J. CACHERO
Administrative Hearing Officer



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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>In Re the Matter of:</p> <p>Rosalinda T. Ramos,</p> <p style="padding-left: 100px;">Appellant,</p> <p style="padding-left: 100px;">v.</p> <p>CNMI Department of Labor, Division of Employment Services-DUA, Appellee.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>DUA Case No. 22-018</p> <p>ADMINISTRATIVE ORDER</p>
---	--	--

On January 6, 2023, the parties filed a joint stipulation to dismiss this above-captioned case as moot when the Department agreed to consider additional weekly certifications. Upon review of the joint stipulation, the undersigned finds that the parties no longer wish to pursue this appeal and dismissal is warranted. Accordingly, this appeal is hereby **DISMISSED** and any pending deadlines or hearings with the Administrative Hearing Office is **VACATED**.

So ordered this 9th day of January, 2023.

/s/

JACQUELINE A. NICOLAS
Chief Administrative Hearing Officer

- 1 1. Failure to maintain and submit required records pursuant to 3 CMC § 4967;
- 2 2. Unauthorized employment in violation of 3 CMC § 4963;
- 3 3. Failure to post a job vacancy announcement in violation of 3 CMC § 4522; and
- 4 4. A violation of the employment preference requirement under 3 CMC § 4521.

5 The matter was scheduled for an administrative hearing.

6 During the Administrative Hearing, Respondent did not object to any of the allegations or
7 proposed exhibits. Upon full notice of the allegations and an opportunity to respond, Respondent
8 confirmed and admitted to each violation.

9 III. DISCUSSION

10 1. Respondent was afforded due process.

11 The Administrative Hearing Office operates on the pillars of due process. In general, due
12 process requires notice and an opportunity to be heard. Due process does not guarantee that the
13 result of a government action will be to a citizen's liking or that the person will have multiple
14 opportunities to relitigate their case.

15 Upon review, Respondent was afforded sufficient notice and an opportunity to be heard. First,
16 a copy of the Department's allegations and potential violations were served to Respondent. The
17 initial determination was filed in April 7, 2022 and served April 8, 2022. The amended
18 determination was filed August 23, 2022 and served the same day. Second, the hearing was
19 scheduled months in advance – despite the fact that the Administrative Procedures Act provides
20 that 10 days' notice is sufficient. Third, the notice included the issues to be discussed at the
21 hearing and instructions on hearing procedure. Fourth, a hearing was held and Respondent was
22 present. While present, Respondent was assisted by an interpreter, reminded of the applicable
23 rules and process provided in the Notice, and clearly admitted to all the violations, multiple times.
24 This bell cannot be unrung.

25 2. There is insufficient basis to reopen the case.

26 As a preliminary matter, it is important to note that Respondent's request for reconsideration
27 is not based on a legal, evidentiary, or factual mistake. Instead, Respondent's request states: "I
28 believe I was unable to present my case properly during the December 01, 2022 hearing ...
because I was not represented by legal counsel. I believe my rights were violated and I failed to
get fair justice during the hearing since I was not represented by a lawyer." The request further
states: "due to the economic crisis caused by the pandemic, I believe the December 9, 2022

1 administrative order is [sic] unfair burden to me and my business.” This is insufficient to reopen
2 Respondent’s case.

3 While the undersigned recognizes a person’s right² to retain counsel, the party must do so at
4 their own expense and in advance of the hearing. The initial Notice of Hearing, issued on May 5,
5 2022, gave Respondent sufficient instruction and time to act. Specifically, the Notice provided:
6 “You have the right to hire an attorney to represent you at your hearing, at your expense If
7 you choose to retain counsel, please do so before the hearing to avoid delays.” Respondent’s
8 failure to retain counsel in advance of his hearing or to otherwise prepare is not a sufficient basis
9 to reopen a hearing.

10 Further, the fact that the case was decided against the Respondent is not a sufficient basis to
11 reopen the case. As described in the order, Respondent admitted to the 25 violations alleged
12 against him for failure to maintain required record, unauthorized employment, failure to post a
13 job vacancy announcement, and the employment preference requirement. The fact that
14 Respondent is affected by the pandemic’s economic crisis is not an excuse to violate the law.
15 Further, the fact that Respondent illegally employed unauthorized foreigners when local workers
16 are entitled to preference only magnifies the gravity of the violations and exacerbates the CNMI’s
17 economic crisis. While Respondent forgets that the economic crisis was a basis for the suspended
18 sanction, whether he can afford the consequences of his actions in the midst of a pandemic is not
19 relevant to procedural or substantive due process concerns. Simply, Respondent cannot violate
20 the law then cry foul when he does not want to pay the sanction for the admitted violation.

21 IV. JUDGMENT

22 Accordingly, Respondent’s Request for Reconsideration is **DENIED**. This Order, along with
23 the Order Judgment issued December 9, 2022 is a **FINAL AGENCY DECISION**.

- 24 1. Respondent committed one violation for failure to maintain and submit required records
25 pursuant to 3 CMC § 4967;
- 26 2. Respondent committed eight violations for unauthorized employment in violation of 3
27 CMC § 4963;
- 28 3. Respondent committed eight violations for failure to post a job vacancy announcement in
violation of 3 CMC § 4522; and

² NMIAC § 80-20.1-455(n).

1 4. Respondent committed eight violations for a violation of the employment preference
2 requirement under 3 CMC § 4521.

3 Pursuant to 3 CMC §4964 and NMIAC § 80-20.1-485(c), Respondent is **SANCTIONED**
4 \$2,000 for each violation, a total of \$50,000, all suspended except \$8,000. Respondent is
5 **ORDERED** to pay the entire sanction of \$8,000 in monthly installments of at least \$500.00, on
6 or before the 15th of each month, beginning January 2023. Monthly payments shall continue until
7 the imposed sanction is fully paid. Payment may be made by check or money order to the CNMI
8 Treasury. A receipt or other proof of payment must be promptly submitted to the Administrative
9 Hearing Office by the due date of each payment.

10 The amount of \$42,000 is **SUSPENDED** provided that Respondent satisfied all the following
11 conditions:

- 12 1. Respondent timely pays the above-mentioned sanctions; and
- 13 2. Respondent commits no further violations of CNMI labor laws and regulations for a
14 period of one (1) year after payment of the sanction is complete.

15 Enforcement is **ORDERED** to monitor the terms and conditions of Respondent's suspended
16 sanction and may file a request to reopen this case should Respondent fail to comply. In that
17 event, Respondent shall be subject to a reinstatement of all or part of the suspended sanction
18 without the need for an additional hearing.

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

24 So ordered this 4th day of January, 2023.

25 /s/
26 **JACQUELINE A. NICOLAS**
27 Chief Administrative Hearing Officer
28