

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

In the Matter of:)	C.A.C. No. 17-003-04(T)
CNMI Department of Labor,)	
Labor Enforcement Section,)	
Complainant,)	ADMINISTRATIVE ORDER
)	
v.)	
)	
Jesus P. Cruz,)	
<i>dba</i> EJ Snack Mobile/EJ Auto Repair Shop,)	
Respondent.)	
)	

This Agency Case came on for hearing on August 2, 2017, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. The Department’s Labor Enforcement Section was represented by Cassandra Cabrera. Respondent Jesus P. Cruz did not appear personally but sent his wife and Assistant General Manager, Edna O. Cruz, to represent him at the hearing. Hearing Officer Jerry Cody, presiding. The parties testified from the Tinian Labor Office via a Skype internet connection to the Hearing Officer who was in the Hearing Office in Saipan.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on a Determination, Notice of Violation and Notice of Hearing (“Determination”) filed by the Department’s Enforcement Section (Tinian Labor Office) on June 27, 2017. [A copy of Determination was entered into evidence as Hearing Exhibit 1.] The Determination alleges that Respondent Jesus P. Cruz, *dba* EJ Snack Mobile and EJ Auto Repair Shop (“Employer”), committed the following regulatory violations: (1) Employer failed to submit his quarterly Total Workforce Listing as requested by the Enforcement Section in a document request served on Employer in April 2017; (2) Employer failed to file an annual Workplace Plan, as requested by Enforcement in a document request served on Employer in April 2017; and (3) Employer neglected to file Employer Declarations with respect to a Job Vacancy Announcement (JVA) posted by Employer in March 2017.

Employer owns a business called “EJ Snack Mobile” in Tinian. Mr. Cruz also holds a business license for “EJ Auto Repair Shop,” but that shop is not in operation at this time. Employer Jesus P. Cruz is currently undergoing medical treatment in Saipan and is absent from Tinian part of every week. In his absence, his wife, Edna O. Cruz, serves as Assistant Manager and operates the business. Ms. Cruz was responsible for posting the JVAs in this case and she received the document request served by the Enforcement Section on April 7, 2017. [Testimony of Ms. Cruz.]

Employer currently employs two full-time employees - Russell Manalo and Alma Lacson, both of whom hold CW-1 status. Ms. Lacson’s employment will end in October 2017 when her CW-1 status expires; however, Employer intends to renew Mr. Manalo’s CW employment in 2018. [Testimony of Ms. Cruz.] Ms. Cruz, who holds permanent resident status, is a part-time employee of the business. *Id.*

Employer recently submitted a Petition to USCIS to renew the CW -1 employment of Mr. Manalo. Also, Employer submitted another Petition to employ a CW-1 status worker (Aman Ullah) to work at EJ’s Auto Repair Shop in 2018. *Id.*

1. Failure to Submit Workforce Plan for First Quarter of 2017.

DOL Regulations require employers to file an updated Workforce Plan once every 12 months. [CNMI Employment Rules and Regulations (“Regs.”), codified in the Northern Marianas Administrative Code (“NMIAC”) at § 80-20.1-510.] In this case, Employer admitted that it had not filed Workforce Plans in 2016 or 2017. [Testimony of Ms. Cruz.]

On April 7, 2017, Enforcement served Employer with a Business Establishment Compliance and Monitoring Request (hereinafter, “Request”) that instructed Employer to produce a number of business-related documents to Enforcement within 10 business days. [The Request was entered into evidence as Hearing Exhibit 2.] The Request asked Employer to produce a Workforce Plan, among other documents, within ten days of the date of the Request. Even after receiving the Request, Employer failed to submit a Workforce Plan to the Department of Labor. Employer brought a draft Workforce Plan to the Hearing but it was incomplete. [Ms. Cruz testified that since her husband has been ill, she has been too busy to complete the form.]

Based on the evidence, Enforcement asked that Employer be sanctioned for failing to file a Workforce Plan for 2017, as requested in April 2017, and as required by labor Regulations. [Regs. at NMIAC § 80-20.1-510.]

2. Failure to Submit Quarterly Total Workforce Listing for the First Quarter of 2017.

DOL Regulations require employers to submit information *on a quarterly basis* regarding “the number and classification of employees for whom wages were paid during the quarter.” [Regs. at NMIAC § 80-20.1-505(b).] This information is required to be submitted in a document called the “Total Workforce Listing,” due on the last day of the month following each quarter [for example, the Listing for the 1st quarter (Jan. to March) is due on April 30; the Listing for the 2nd quarter (April to June) is due on July 31.]

At Hearing, Ms. Cruz admitted that Employer has never submitted a Total Workforce Listing to the Department of Labor. As stated above, on April 7, 2017, Enforcement served Employer with a Request (Hearing Exhibit 2) that asked Employer to produce a Total Workforce Listing. Employer’s Asst. Manager, Ms. Cruz, received the Request and spoke with Enforcement officials about the Request; nevertheless, she later failed to submit the Total Workforce Listing for 2017, as requested. At Hearing, Ms. Cruz brought an unsigned, incomplete draft of Employer’s Total Workforce Listing, but it was deemed incomplete by the Enforcement representative. [Testimony of Ms. Cabrera.]

Based on the evidence, Enforcement moved for an order sanctioning Employer for failing to file the quarterly Total Workforce Listing, as requested in April 2017, and as required by labor Regulations. [Regs. at NMIAC § 80-20.1-505(b).]

3. Failure to Post “Employer Declarations” For Prospective Job Applicants.

The Department requires employers to post online “declarations” to each online responder on the Department of Labor (“DOL”) website (www.marianaslabor.net) in cases where the employer has rejected a U.S.-status qualified worker for a particular job and instead, hired a foreign national worker for the position. [Regs. at NMIAC § 80-20.1-235(e).] In such cases, the regulation requires the employer to post a short response on the website, explaining: (1) the action it took with respect to each applicant who posted a response to the job vacancy; and (2) the reason(s) why that person was not hired for the position. *Id.*

In its Determination, Enforcement charged that Employer had failed to post timely Employer Declarations in connection with a JVA that Employer posted for a Maintenance and Repair job in March 2017. [Hearing Exhibit 1.]

In fact, Employer had posted an earlier JVA in October 2016 regarding the Maintenance and Repair Worker position. At that time, Employer had also failed to post Employer Declarations in response to numerous online responders. [Testimony of Ms. Cabrera.] On December 7, 2016, Ms. Cabrera of the Tinian Enforcement Section gave a verbal warning to Employer (Edna Cruz) regarding Employer's obligation to respond online to each JVA responder. At that time, Enforcement warned Employer that a future failure to post Employer Declarations could result in sanctions. *Id.*

In March 2017, Employer posted another JVA for a Maintenance and Repair job on the DOL website; the JVA ran from March 16 to 31, 2017. Department records show that two U.S. citizens responded to the posting, but that Employer failed to post any responses to these responders. [A printout of the JVA, JVA No. 17-03-47070, listing two responses, was entered into evidence as Hearing Ex. 3.]

At Hearing, Ms. Cruz admitted that *she never reviewed the DOL website* after she posted the JVA. Therefore, she never saw or acted upon the two responders' applications. Nevertheless, Employer then submitted a Petition to hire a CW-1 status worker for the Maintenance Worker job. As of the date of hearing, the Petition remains pending with USCIS. [Testimony of Mrs. Cruz.]

Based on the evidence, Enforcement requested an order sanctioning Employer for failing to post employer declarations to the two responders who responded to the JVA in March 2017. [Regs. at NMIAC § 80-20.1-235(e).]

DISCUSSION

The evidence established that: (1) Employer failed to submit a Workforce Plan for 2017, even after being served with a written Request to do so; (2) Employer failed to submit a quarterly Total Workforce Listing in 2017, even after being served with a written Request to do so; and (3) Employer failed to post Employer Declarations to responders of a JVA posted in March 2017, even though Employer had been warned by Enforcement in December 2016, of its obligation to post Employer Declarations. [Regs. at NMIAC §§ 80-20.1-235(e), 505(b) and 510.]

Sanctions:

In cases of violations under Chapter 2 of the Commonwealth Employment Act of 2007 (see 3 CMC § 4527), the Hearing Officer is authorized, but not required, to levy a maximum fine of \$2,000 for each violation. 3 CMC § 4528(f)(2). In its Determination, Enforcement asked the Hearing Officer to impose a monetary fine of \$2,000 against Employer, plus any other sanctions that the Hearing Officer deemed appropriate. [Determination (Hearing Ex. 1) at p. 3 (recommendation).]

The amount of fines in this area is left to the discretion of the Hearing Officer. The standard in determining appropriate sanctions should be one of reasonableness and fairness, in accordance with the general principle, that “[t]he hearing officer is authorized to...[u]se [his] inherent powers ...to further the interests of justice and fairness in proceedings.” Regs. at § 80- 50.4-820(h) and (o).

In this case, the Hearing Officer finds that a substantial fine should be assessed against this Employer, given the violations admitted to and proven at hearing. First, Employer failed to post employer declarations to responders of a JVA, even though Employer had been warned by Enforcement in December 2016, of its obligation to post such declarations. More importantly, Employer’s Assistant Manager admitted that *she never even reviewed those responders* after the JVA was posted in March 2017. Employer’s neglect in this regard is serious, given the fact that Employer evidently has petitioned USCIS to approve a CW-1 worker for the maintenance position. In the Petition for a CW-1 worker, an employer must attest under the penalty of perjury that no qualified U.S. workers are interested in the job. Yet, how could this Employer attest that there were no qualified U.S. workers interested in the maintenance worker position if it never checked its own JVA; thus, in essence, it ignored those citizens who responded to the job advertisement? For this violation, the Hearing Officer finds that Employer should be sanctioned the maximum sanction of \$2,000. 3 CMC § 4528(f)(2).

In addition, Employer failed to file a current Workforce Plan and Total Workforce Listing, despite being served with a written Request in April 2017 to do so. Even without a request from DOL, such documents are required to be filed on an annual (Workforce Plan) or quarterly (Total Workforce Listing) basis. For this violation, Employer should be sanctioned an additional \$500.

The one mitigating factor in this case is Mr. Cruz’s health, which requires him to travel to Saipan on a weekly basis, leaving his wife, Ms. Cruz, to manage the business. The aggravating factors are that each of these violations could have been


avoided if Employer had complied with specific requests made by Enforcement. A further aggravating factor is that Employer remains well-below compliance with 3 CMC § 4525, which mandates that 30% of an employer's workforce should be comprised of U.S. citizens or permanent residents. Employer's business employs no full-time U.S. citizens or permanent residents; thus, Employer falls well below the statutory workforce participation goal.

In summary, the Employer shall be sanctioned a total of \$2,500 for these violations. In view of the Employer's current illness, the sanction shall be payable in monthly installments of \$500 each, as specified below.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Judgment:** For the reasons stated above, judgment is entered against Respondent Jesus P. Cruz on the charges asserted in the Department's Determination, filed in this case on June 27, 2017. For his conduct, Respondent shall be sanctioned as set forth below.
2. **Sanctions:** For the reasons stated above, Respondent Jesus P. Cruz is hereby FINED a total sanction of two thousand five hundred dollars (\$2,500). The sanction shall be payable in five installments of \$500 each. The payments shall be due on or before the following dates: September 15, October 15, November 15, December 15, 2017, and January 15, 2018. Respondent shall pay the CNMI Treasury and present proof of payment to the Hearing Office on or before each payment date. [3 CMC §§ 4528(f)(2) and 4947(11).]
3. **Submit Documents:** Respondent is hereby ORDERED to submit a complete Total Workforce Listing and complete Workforce Plan for 2017, no later than September 15, 2017. Failure to produce these documents in a timely manner may result in further sanctions.
4. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: August 25, 2017



Jerry Cody
Hearing Officer