



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

In the Matter of:

Zaji O. Zajradhara,

Complainant,

v.

Nippon General Trading Corporation
(SAIPAN) dba Country House Restaurant,

Respondent.

Labor Case No. 19-025

ORDER DENYING
COMPLAINANT'S
MOTION TO RECUSE

I. INTRODUCTION

This matter came before this Office pursuant to Complainant's Laymans' Motion for Continuances to Write Various Orders and Responses Due to Overt Bias and Prejudice of Sitting Hearing Officer 1 ("Complainant's Motion for Recusal" or "Complainant's Motion").2 The undersigned finds that the Motion may be decided on the applicable law and arguments, without an additional hearing. For the reasons stated below, Complainant's Motion for Recusal is hereby DENIED.

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1 While Complainant asks for a continuance, the basis and allegations in the motion is actually requesting a recusal. Accordingly, Complainant's Motion will be construed as a motion for recusal.

2 Complainant submitted this motion in connection with Labor Case No. 19-025, Labor Case No. 19-026, Labor Case No. 16-024, and Labor Case No. 17-020. It is unclear whether Complainant has served his motion to the applicable opposing party or opposing counsel.

II. LEGAL STANDARD

Pursuant to Northern Mariana Islands Administrative Code,

[a] hearing officer shall be impartial. A hearing officer *may* voluntarily enter a recusal *if the hearing officer's impartiality might be called into question*. A party may request the recusal of a hearing officer. The request must be in writing supported by a sworn affidavit based on facts as to which the affiant would be qualified to testify under evidentiary rules with respect to hearsay. The hearing officer shall decide the request based only on the written affidavit. If the hearing officer refuses the recusal, the hearing officer shall state the reasons for the refusal. A party may contest the refusal by written petition to the Secretary.

NMIAC § 80-20.1-460(d) (emphasis added).³

III. DISCUSSION

Pursuant to NMIAC § 80-20.1-460(d), the undersigned refuses to recuse herself for the following reasons:

1. Complainant's Motion is untimely.

On June 3, 2019, the undersigned issued a Referral and Scheduling Order setting various deadlines and hearings. As stated in the Order, the parties' motions were due on or before July 31, 2019. Further, the Order stated that motion hearings, if any, may be heard during the Prehearing Conference. The Prehearing Conference was scheduled and held on August

³ In comparison, when a litigant moves for recusal under 1 CMC § 3308, a trial judge is required to recuse himself or herself when a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might be questioned. 1 CMC § 3308; *Saipan Lau Lau Development, Inc. v. Superior Court (San Nicholas)*, 2000 MP 12 ¶ 5. The standard for determining that a justice has personal bias or prejudice pursuant to 1 CMC § 3308 is an objective standard. *Bank of Saipan v. Superior Court (Disqualification of Castro)*, 2002 MP 16 ¶ 30. A justice should be disqualified if alleged bias or prejudice against a party is derived from an extra-judicial source. *Id.* The mere fact that a relationship exists between a judge and an interest party, without more, does not per se require disqualification. *Id.* at ¶ 33. However, when a recusal motion is based on allegations of friendship, the court must examine the nature and extent of the relationship, and make a judgment call concerning how close and how extensive and how recent these associations are or have been. *Id.*

27, 2019 at 1:30 p.m. at the Administrative Hearing Office. Now, Complainant's Motion comes at the eve of a final decision in the matter. Based, on the Referral and Scheduling Order, Complainant's Motion is untimely.

2. There is no alleged conflict of interest.

Here, Complainant makes a blanket statement or bald assertion of bias by the undersigned. Clearly, Complainant's Motion strongly opines a disdain for the current administration, the CNMI Department of Labor, and specifically, the undersigned Administrative Hearing Officer. In doing so, Complainant makes a flurry of scandalous and unverified statements. Notably, Complainant cannot point to a specific action or relationship to support his allegations of bias. Further, the allegations fall short of evidentiary rules and standards of hearsay.

In this matter, the undersigned has not engaged in confidential mediations with the parties. Also, the undersigned has no personal or financial stake in the matter. The undersigned has no familial, personal, or business relationship with either party, its' representatives, or its affiliated partners. Further, the undersigned does not stand to benefit or lose from any decision rendered in this case. The undersigned only seeks to apply and uphold the applicable law.

3. The undersigned's previous decisions were supported by law and reasoning.

A litigant's allegations challenging the court's rulings as unfair or wrongly decided cannot form the basis of a proper motion to disqualify a judge for prejudice or bias. *Saipan Lau Lau Development, Inc. v. Superior Court (San Nicholas)*, 2000 MP 12 ¶ 7. Further, the Commonwealth Supreme Court recognized that, "the mere exercise of [] authority, without more, does not in and of itself demonstrate bias. *Id.* at 9. Further, judicial decisions, alone, do not generally raise an appearance of bias or constitute a basis for recusal. *Bank of Saipan v. Superior Court (Disqualification of Castro)*, 2002 MP 16 ¶ 36-39.

Upon review, it appears that Complainant's Motion for Recusal really stems from the undersigned's prior decisions and rulings. Specifically, Complainant's Motion states: "1#, the 'hearing officer' is directly and overtly biased against the complainant, mr [sic] zajradhara [sic], this is made clear by reviewing *every action* against the complainant, every pre-hearing, every brief, even the scheduling," Compl.'s Mot. at 1 (emphasis added).⁴ Complainant further alleges:

"THE NEWLY HIRED CNMI DEPT [sic] OF LABOR HEARING OFFICER, HAS MADE IT THEIR POINT, EXCERSIZE [sic] AND GOAL TO IN SOME WAY MAKE IT APPEAR THAT MY FILINGS ARE IN SOMEWAY 'ILLEGAL', AGGRESSIVE OR ANYOTHER [sic] FORM OF NEGATIVE OUT COMES [sic] OR OPINIONS."

Compl.'s Mot. at 1-2.

The undersigned holds impartiality, integrity, and respect for the law in the utmost regard. The above-stated allegations regarding previous decisions do not warrant recusal for a number of reasons. First, as stated by the Commonwealth Supreme Court, the Complainant's allegations regarding prior rulings and decisions cannot form the proper basis for recusal. Second, the proper course of action for reprieve of a final order is appeal, not recusal in other cases. There has been no appeal of any of the undersigned's final decisions. Third, contrary to the applicable legal standard for recusals at the Administrative Hearing Office, the above-stated allegations as to the undersigned's goals are opinion, not fact. The only agenda this office has is application of the law. And fourth, despite Complainant's attempts to continuously undermine the authority and rulings of this office, a review of the orders, rulings, procedure, and cited legal authority shows the decisions were supported by the applicable law and reason.

⁴ Notably, Complainant's Motion falls short of reviewing every action and only vaguely references previous rulings and cases.

In this matter, Complainant filed a complaint with two simple sentences—falling short of the necessary allegations for the multiple claims.⁵ Considering the bare bones complaint failed to give an adequate notice of the violations and failed to state a claim, Complainant was ordered to file additional information.⁶ Upon filing his additional information and allegations, an order was promptly issued referring the matter to the Department’s Enforcement, Compliance, and Monitoring Section (“Enforcement”). Upon review of Respondent’s Motion to Dismiss the claim for retaliation, Complainant’s Response, and Enforcement’s written determination of their investigation, the undersigned issued another order dismissing the claim for retaliation. Again, that dismissal was based on the applicable law.⁷ Lastly, another order was issued after the Prehearing Conferencing. In part, this Order sanctioned Complainant for storming out of the Prehearing Conference during oral arguments. Sanctions were imposed pursuant to regulatory authority and precedent established by the former hearing officer.⁸ As shown above, the undersigned has not acted improperly and has only held parties accountable to the applicable law. Accordingly, said allegations do not warrant recusal.

⁵ Simply, the Complaint alleged, “I applied for the job of waitstaff, I have experience [*sic*] I am being retaliated against for filing both local & federal claims against this Company. As I was not interviewed-nor hired- As a U.S. Citizen.” Complaint at 1.

⁶ The Order requesting additional information was supported by the Administrative Hearing Officer’s authority, pursuant to NMIAC § 80-20.1-485(c)(14).

⁷ The Order explained the Complainant failed to state a claim for retaliation under NMIAC § 80-20.1-455(1) as he was not an employee of Respondent. The Order further stated that this office has no jurisdiction to enforce federal statutes regarding retaliation. Despite the written explanation, Complainant mistakenly continued to argue that his claim for retaliation was valid at the Prehearing Conference instead of conceding the point.

⁸ As stated in the Order, standards of conduct at the Administrative Hearing Office are regulated pursuant to NMIAC § 80-20.1-480(c). When Complainant was not allowed to interrupt the middle of oral arguments and simply asked to wait his turn, Complainant began to yell and stormed out. In another case, the former administrative hearing officer imposed sanctions for similar conduct. *See Zajradhara v. Yen’s Corporation*, LC-17-040 (Interlocutory Order Re: Closing of Evidentiary Record; Respondent’s Closing Argument; Sanction of Complainant issued January 22, 2018 at 1) (Complainant was sanction pursuant to NMIAC § 80-20.1-480(c) when he “erupted in an unprovoked outburst, then stormed out of the hearing office.”). As a result of that hostile altercation before the former administrative hearing officer, the Department cautiously installed an emergency exit in the hearing room. Clearly, Complainant has demonstrated a pattern of abuse towards this office—regardless of the presiding hearing officer.

4. Complainant's allegations mischaracterize the proceedings and rulings.

Complainant's Motion continues to make other unverified allegations to state that the undersigned "is in no way neutral." Compl.'s Mot. at 3. As discussed below, Complainant's allegations mischaracterize the proceedings and rulings, and are not grounds for recusal in this matter. At all times, the undersigned is prepared to proceed with impartiality.⁹

First, Complainant argues that the undersigned has denied him various evidences to prove his case. This statement is false. Pursuant to NMIAC § 80-20.1-470(i), a hearing officer may, but is not required to allow discovery. Generally, the production of documents is allowed when relevant, probative, and within the limitations stated under NMIAC § 80-20.2-165. However, Complainant did not request for discovery in the matter. Further, if Complainant did not storm out of the Prehearing Conference, he would have received a copy of Respondent's exhibits.

Second, Complainant argues that the undersigned is "SIDING WITH THE PRIMARILY CHINESE BUSINESSES, THEN GOES ON SAY THAT MY CASES HAVE NO MERIT, OR THAT I AM FILING A FRIVILOIUS [*sic*] CASE. OR OTHER." Compl.'s Mot. at 2.¹⁰ This statement is also an untrue mischaracterization of the facts. As stated above, the undersigned renders rulings based on the applicable law. While it is true that Complainant's claims before the undersigned have been unmeritorious, it is either because he fails to meet his burden in proving his claim or he withdraws his complaint.¹¹

⁹ Proceeding with impartiality does not mean a disregard of applicable law.

¹⁰ The undersigned finds the racial identification unnecessary.

¹¹ For instance, in *Zajradhara v. Woo Jung Corporation*, judgment was entered in favor of respondent because (1) Complainant did not even apply for the relevant JVA and therefore, the respondent did not technically "reject" his application; and (2) a foreign worker was not hired. *Zajradhara v. Woo Jung Corporation*, LC-18-059 (Administrative Order issued May 16, 2019 at 6-7). Also, in other cases, Complainant dismissed the complaint when he failed to meet all the elements of the claim, such as, hiring a foreign national worker. See *Zajradhara v. S.W. Corporation*, LC-19-002 (Order of Dismissal at 2).

Notably, the Order in *Zajradhara v. Woo Jung Corporation* relies on precedent created by the former Hearing Officer. See *Zajradhara v. SPN China News Corporation*, LC-17-021 (Administrative Order issued July 12, 2018 at 4) ("There

Furthermore, contrary to Complainant’s Motion, the undersigned has yet to issue any monetary sanction deeming his complaint frivolous. Instead, it is opposing counsels and opposing parties filing motions for sanction for filing frivolous claims, pursuant to NMIAC § 80-20.2-130(c)(5). In this matter, Respondent argues that the claim is frivolous because Complainant cannot establish all the elements of the employment preference statute, had notice that no foreign worker was hired, yet continued to pursue the claim.

Third, Complainant argues that the undersigned is:

ALLOWING THE SO-CALLED CNMI DEPT [sic] OF LABOR PRETEND INVESTIGATORS TO DO ABSOLUTELY NO INVESTIGATION [sic] AND OR TO INSTRUCT BUSINESS TO CANCEL THEIR JVAS, SO AS TO ESCAPE THE CASES, AND OR ALLOWS [sic] TO THE COMPANIES TO STATE THAT THE [sic] CANCELLED THE JVA THAT I APPLIED FOR, JUST TO AGAIN POST THE JVA AGAINST [sic] A MONTH LATER, AND THE HEARING OFFICER FINDS NO ‘BAD FAITH’ IN SUCH CONDUCT.,.. [sic]

Compl.’s Mot. at 2.¹²

Again, this is an extreme mischaracterization. The Administrative Hearing Office and Enforcement are separate divisions of the Department of Labor—with separate authorities and different powers. To protect impartiality, the undersigned simply refers labor

are several problems with Complainant meeting the elements of this claim, based on the facts of this case. Most important is the fact that Employer never hired a foreign national worker, or anyone to fill the advertised position.”); *see also Zajradhara v. Haitian Construction Group*, LC-17-052 (Administrative Order issued May 25, 2018 at 4) (“Complainant Failed To Prove that Employer Had Filled the Vacant or Renewed Positions with Foreign National Workers; Therefore, Complainant Cannot Prevail under 3 CMC § 4528(a)”; *see also Zajradhara v. Karis Company, Ltd.*, LC-17-019 (Administrative Order issued December 28, 2017 at 6 (“Because Employer never received a job application or resume from Complainant, Complainant cannot prove that his application was unjustly rejected by Employer [and] the alleged charge must fail.”); *see also Zajradhara v. Li Feng*, LC 17-043 (Administrative Order issued July 11, 2018 at 6) (“Complainant failed to establish that Employer rejected Complainant’s job application without just cause because Complainant declined Employer’s offer to interview him for the job.”).

¹² It appears that some of Complainant’s allegations are in reference to another case.

complaints to Enforcement for investigation. The undersigned is not involved in the investigation and only learns about the outcome of the investigation in the written determination, which is filed and served to all the parties involved prior to the Administrative Hearing. Further, issues with the investigation and determination, if any, is clarified and corrected during a prehearing conference or subsequent hearing. Complainant's grievances with Enforcement, whether they have merit or not, does not warrant recusal of the hearing officer. Furthermore, it is important to note, that in consideration of due process, the undersigned cannot sanction employers for perceived violations if there is no compliance agency case initiated that gives the employers notice and opportunity to respond to the allegations.¹³ Lastly, considering that the regulations specifically allow parties to cancel a JVA and hire no one, such action, without more, is not "bad faith."¹⁴

Fourth, Complainant alleges that the undersigned "WANTS TO LIE AND STATE THAT EVERYTHING I DO IN/DURING THE HEARING CALLS FOR SACNTIONS [sic]...OR THAT I AGGRESSIVE [sic], SIMPLY BECAUSE,. [sic] I DON'T WANT TO BE A PART OF A 'KANGROO [sic] COURT'..." Compl.'s Mot. at 2. As evidenced by Complainant's own words, it is true that Complainant takes every opportunity to undermine and disrespect the Administrative Hearing Office.¹⁵ Further, Complainant rarely extends civility and continuously seeks to react, rather than listen. Complainant's conduct regularly

¹³ The decision to refrain from issuing sanctions in matters not alleged in complaint or initiated by a compliance agency case is also supported by precedent from the former hearing officer. *See Zajradhara v. Yen's Corporation*, LC-17-040 (Administrative Order issued July 11, 2018 at 9) ("The [] issue was not specifically raised in the Determination and the Department of labor did not file Agency charges against the employer for violating 3 CMC § 4963(d). Although the matter was addressed at the Hearing with the implied consent of the parties [], Enforcement never moved at Hearing to add charges related to this conduct. Accordingly, the above-noted finding *shall not be used as a basis for sanctions against this Employer.*") (Emphasis added).

¹⁴ "Employers may reevaluate their employment needs and hire no one for the proposed position." NMIAC § 80-20.1-235(c)(4).

¹⁵ The level of disrespect is apparent on the face of Complainant's Motion. For instance, Complainant's Motion unjustifiably refers to the undersigned as the "SO-CALLED HEARING OFFICER," "THIS !\$#@^%\$&," "THIS PAWN OF THE CHINESE BUSINESS COMMUNITY/FILIPINO WORKER COMMUNITY," and "A SET-UP ARTIST." Compl. Mot. at 2-3.

includes: showing up late, failing to attend, interrupting others who are speaking, becoming hostile or disrespectful to the staff and the Administrative Hearing Officer, and storming out of hearings unexcused.¹⁶ Complainant was given numerous verbal warnings and written instructions to allow him to adhere to the applicable rules and standards of conduct. As constantly stated in the undersigned's orders, party's appearing before the Administrative Hearing Officer will be held to the standard of conduct established under NMIAC § 80-20.1-480(c), and if necessary, impose sanctions pursuant to NMIAC § 80-20.1-485(c)(13). Any conduct falling below the applicable standard simply cannot be condoned or tolerated. Furthermore, Complainant cannot simply file a complaint,¹⁷ refuse to participate accordingly, then complain when he doesn't get his way—especially when the burden of proof rests with Complainant.

Fifth, Complainant argues that “THIS SO CALLED HEARING OFFICER HAS DENT]IED [*sic*] ME MEDIATIONS IN EVERY CASE, SO SHE CAN DIRECTLY GO INTO SANCTIONABLE ACTIONS” Compl.'s Mot. at 2. Again, this is false and a mischaracterization of the circumstances. The regulations do not require cases to be mediated. Further, because there is only one hearing officer and mediations involving the hearing officer create a conflict of interest,¹⁸ the undersigned has no choice but to suspend mediations until funding for a mediator or a second hearing officer has been appropriated. This is not a scheme solely directed at Complainant, but an office-wide policy to prevent

¹⁶ Complainant's Motion also states that “THIS SO-VCLLED [*sic*] HEARING OFFICER HAS NOT YET SACNTIONED [*sic*] A CHINESE COMPANY, BUT AT EVERY HEARING SHE TALKS SANCTIONS FOR ONLY ME” Compl's. Mot. at 2. In response, the undersigned notes that Orders to Show Cause for failure to appear or failure to pay have been issued to non-compliant businesses. Further, before the imposition of sanctions, the undersigned offers warnings and opportunities to correct to all. Lastly, sanctions for misconduct have not been justified where businesses do not engage in similar habitual, egregious, or unjustifiable misconduct.

¹⁷ The Complaint form, signed by Complainant, includes a declaration that states the following: “I understand that the above-stated information will serve as the basis for initiating administrative procedures regarding the subject of the complaint. I understand that I may be contacted by the Department of Labor for the purpose of providing further information or documents to substantiate the above-stated allegations, and I may be called to participate in a mediation, investigation, administrative hearing, or other legal proceeding.” Complaint at 2.

¹⁸ See *Zajradhara v. Jin Joo Corporation*, LC-18-060 (Order of Recusal issued May 16, 2019).

creating potential conflicts of interest in all cases. While the undersigned recognizes the benefits of a swift and amicable resolution through mediation, it would be irresponsible to continue to create potential conflicts of interest. Further, parties have the opportunity to engage in settlement discussions outside the office and are asked whether settlement is an option during the Prehearing Conference.

Sixth, Complainant argues, “SHE AND THE CNMI DEPT [*sic*] OF LABOR IS MAKING SURE THAT THEY DO NOT PROVIDE ME WITH THE EVIDENCE, NOR OPPORTUNITIES TO MAKE A CASE AGAINST THESE COMPANIES THAT ARE COMMITTING VIA FRAUD, AND WORKER IMMIGRATION FRAUD.” As previously advised to Complainant, this Office has no jurisdiction to entertain claims or violations in regards immigration. Further, it is not this Office’s responsibility to assist in proving his alleged immigration claims—such action would call into question the impartiality of this Office. Complainant must shoulder his own burden of proof. In the event that Complainant is filing frivolous claims in this office to assist or support his federal claims, Complainant opens himself up to a showing of bad faith. Further, copies of public records have been made available upon payment of the applicable fee.

As shown above, Complainant’s Motion simply mischaracterizes the proceedings and rulings of the Administrative Hearing Office. The above-stated allegations are a reflection of Complainant, and simply do not warrant recusal of the undersigned.

IV. CONCLUSION

For the reasons stated above, Complainant’s Motion for Recusal is hereby **DENIED**.

So ordered this **24th** day of September, 2019.

/s/
Jacqueline A. Nicolas
Administrative Hearing Officer