COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY

In the Matter of:	)	**Labor Case No. 17-018**
	)	**Secretary Appeal No. 2019-001**
Zaji O. Zajradhara,	)	
	)	
Appellant,	)	**FINAL ORDER**
	)	
v.	)	
	)	
Nippon General Trading Corporation dba Country House Restaurant,	)	
	)	
Appellee.	)	

I. INTRODUCTION

On March 28, 2019, Appellant Zaji O. Zajradhara ("Appellant") filed an appeal to the Administrative Order granting Appellee's Nippon General Trading Corporation dba Country House Restaurant ("Appellee") Motion to Dismiss. On April 26, 2019, Appellee filed a Brief of Appellee and Cross Appeal. For the following reasons, the undersigned hereby **AFFIRMS** the above-stated Administrative Order.

II. BACKGROUND

This matter concerns an alleged violation of the CNMI's employment preference statute for a bartending position at Appellee's business. On June 2, 2017, Appellant filed a hand written complaint alleging the following:

> On 3-22-2017, I applied to the above stated Company via their contact email advertised within their JVA. I have previously applied for the same positions advertised

> (Bartender) back in 6-4-2016. I have also previously filed a Complaint against this Company.
>
> The position – JVA: 17-03-46295, is presently held by a Contract Worker – all (5) positions are Contract Worker Renewal Visa position [*sic*]!
>
> To this day, I have neither been contacted for an interview nor hired; though I believe that I am qualified for the position.
>
> I seek back pay from date of application – and that this Company be sanctioned!!

On August 14, 2017, a mediation between the above-captioned parties was conducted, but ultimately failed. Subsequently, on October 10, 2017, Appellee filed a Motion to Dismiss arguing, in part, that Appellant's complaint contained false allegations. Specifically, Appellee argued:

1. Appellant knowingly filed false allegations against Appellee;
2. Appellant's statement that he was not contacted for an interview was a lie;
3. Appellant's statement that he was qualified for the position is also a lie;
4. Appellee hires "status qualified" workers whenever possible; and
5. The Complainant presented other false information in his resume.

Additionally, Appellee requested an award of attorney fees.

On October 11, 2017, Appellant filed a Response in Opposition to the Motion to Dismiss. Therein, Appellant stated, among other things, that the above-mentioned false information was a mistake and the test given to determine qualifications was discriminatory.[1]

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[1] Appellant fails to articulate how the alleged discrimination is relevant in establishing or rebutting a violation of the employment preference statute.

On October 16, 2017, Appellee filed a Reply to Complainant's Response. Effectively, Appellee reiterates that dismissal is appropriate because: (1) Appellee refuted the pertinent allegations in the complaint; and (2) the allegations in the complaint are insufficient to maintain a cause of action for the employment preference statute.

A hearing was held on October 9, 2018. On March 19, 2019, the Administrative Hearing Office issued an Administrative Order granting the motion to dismiss but declining to award attorney's fees in the matter. On March 28, 2019, Appellant filed an appeal to the dismissal. The grounds for appeal were unclear. On April 26, 2019, Appellee filed a Brief of Appellee and Cross-Appeal. Therein, Appellee argues that nothing in the Appellant's filing warrants reversal or remand of the March 19th Administrative Order. Further, Appellee argues that the matter should be remanded for an award of fees and costs. On April 28, 2019, Appellant filed a response to the cross appeal. Appellant's response makes several inflammatory and salacious statements, however, again, the statements were irrelevant to the issue or unsupported in law or fact.

III. LEGAL STANDARD

Pursuant to 3 CMC § 4528(g),

> [w]ithin fifteen days of issuance, any person or party affected by findings, decisions, or orders made pursuant to subsection (f) of this section may appeal to the Secretary. Upon appeal, the Secretary may, in the Secretary's discretion, restrict review to the existing records, supplement the record with new evidence, hear oral argument, or hear the matter de novo pursuant to 1 CMC §§ 9109 and 9110. The Secretary shall have the same powers as a hearing officer in addition to other powers pursuant to this section. Upon completion of review, the Secretary shall affirm or modify the finding, decision, or order in writing. Any modification shall include supplemental findings. The Secretary's decision shall constitute final action for purposes of judicial review.

3 CMC § 4528(g).[2]

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the parties' filings, the undersigned finds a number of issues on appeal. As a preliminary matter, the undersigned notes that all arguments that are irrelevant, incomplete, and baseless in law or fact will not be considered or further discussed in this Order.

1. Dismissal was warranted as the Appellant fails to state sufficient allegations to support a claim for a violation of the employment preference statute.

Generally, "[c]itizens and CNMI permanent residents and U.S. permanent residents shall be given preference for employment in the Commonwealth." 3 CMC § 4521; *see also* NMIAC § 80-20.1-101 ("It is the policy of the Commonwealth that citizens, CNMI permanent residents and U.S. permanent residents shall be given preference for employment in the private sector workforce in the Commonwealth. . . ."). "A citizen or CNMI permanent resident or U.S. permanent resident who is qualified for a job may make a claim for damages if an employer has not met the requirements of 3 CMC § 4525, the employer rejects an application for the job without just cause, and the employer

[2] Parties seeking review under the CNMI Administrative Procedure Act must first exhaust all intra-agency appeals expressly mandated either by statute or by the agency's regulations. Thereunder, an agency action should be overturned only when the agency has relied on factors the Legislature has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decisions that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. *Calvo v. NMI Scholarship Advisory Bd*., 2009 MP 2 ¶ 10; *see also Pacific Security Alarm, Inc. v. CPA*, 2006 MP 17 ¶14. Agency actions are entitled to a presumption of regularity. Consequently, an agency is not required to justify an action or decision unless the presumption of regularity has been rebutted by evidence suggesting that the agency decision is arbitrary and capricious. *Id*.; *see also Pacific Security Alarm, Inc., v. CPA*, 2006 MP 17 ¶15. The term "arbitrary and capricious" characterizes a decision or action taken by an administrative agency or inferior court meaning willful and unreasonable action without consideration or in disregard of facts or without determining principle. *In re Blankenship*, 3 NMI 209 ¶ 15 (1992). The standard of review for an appeal alleging an arbitrary and capricious action is similar to, if not the same as, the abuse of discretion standard. A court will review an action or decision alleged to be arbitrary and capricious to determine whether the action was reasonable and based on information sufficient to support the decision at the time it was made. *Id* at ¶ 16.

employs a person who is not a citizen or CNMI permanent resident or U.S. permanent resident for the job." 3 CMC § 4528(a)[3]; *see also* NMIAC § 80-20.1-455(f) ("Any citizen, CNMI permanent resident, or U.S. permanent resident who is qualified for a job, as described in a job vacancy announcement, may file a complaint making a claim for damages if an employer rejects an application for the job without just cause and the employer employs a person who is not a citizen, CNMI permanent resident, or U.S. permanent resident for the job."); *see also* NMIAC § 80-20.1-220(a) ("No employer may hire a foreign national worker, transitional worker, or other nonimmigrant alien if a qualified citizen, CNMI permanent resident, or U.S. permanent resident applied for the job in a timely fashion.").[4]

Pursuant to NMIAC § 80-20.2-130(c)(1), a party may file a motion to dismiss on the following grounds: lack of jurisdiction over the subject matter; lack of jurisdiction over the person; insufficiency of process; insufficiency of service of process; and failure to state a claim upon which relief can be granted. While the Administrative Hearing Office has not specifically adopted nor bound to the pleading or motion to dismiss standard under Commonwealth Rules of Civil Procedure and its progeny of cases—they may be instructive.

[3] Section 4525 states, "[i]n the full-time workforce or any employer, the percentage of citizens, U.S. permanent residents, and CNMI permanent residents and their immediate relatives employed shall equal or exceed the percentage of citizens, U.S. permanent residents, and CNMI permanent residents and their immediate relatives in the available private sector workforce unless attainment of this goal is not feasible within the current calendar year after all reasonable efforts have been made by the employer." 3 CMC § 4525. "The current percentage specified by the Department . . . is 30%." NMIAC § 80-20.1-210(c)(3). This provision, however, "shall not apply to employers of fewer than five employees, provided however, the Secretary may, by regulation, require each business to have a least one employee who is a citizen or CNMI permanent resident and U.S. permanent resident, or remove the exemption available to employers against whom two or more judgments are entered in Department proceedings in any two year period. "No waivers are available with respect to the workforce participation objective." NMIAC 80-20.1-210(f); *contra* NMIAC § 80-20.1-215.

[4] "The Secretary shall promulgate regulations to implement the intent of this chapter pursuant to the Administrative Procedures Act including any delegation of the Secretary's duties as imposed herein to any employee of the Department." 3 CMC § 4530.

Having reviewed the record, the undersigned finds that dismissal was warranted because the complaint fails to include sufficient allegations to support a claim for a violation under 3 CMC § 4528(a). Specifically, there are no allegations in the complaint regarding: (1) the employer's failure to meet the 30% workforce objective requirement; (2) the employer rejected the application without just cause; and (3) the employer employs a person who is not a citizen, CNMI permanent resident or U.S. permanent resident for the job. Instead, Complainant simply alleges that he applied and was never contacted or interviewed for the bartender position. Said allegations are insufficient to provide notice of the claim to which the opposing party must defend against and insufficient to state a claim—especially when they are proven to be false statements. Accordingly, dismissal was warranted.

2. The failure to hire Appellant was justified considering the lack of qualifications and multiple misrepresentations by Appellant.

The Department's regulations provide, in part, "[t]he term 'just' cause' for rejecting an application for employment includes the lawful criteria that an employer normally applies in making hiring decisions such as rejecting persons with criminal records for positions of trust, ***rejecting persons who present fraudulent or inaccurate documentation in support of the application***; rejecting persons without an education degree necessary for the position, ***rejecting persons with unfavorable recommendations from prior employment***, rejecting persons with an employment history indicating an ability to perform the job successfully, rejecting persons with an educational background making it unlikely that the necessary education or training to hold the position could be accomplished successfully within a reasonable time; and similar just causes." NMIAC § 80-20.1-455(f)(1) (emphasis added). Notably, the aforementioned list of "just causes" is not exhaustive. "Any criteria in making hiring decisions advanced in support of just cause must be consistent with the published job vacancy announcement for the job and must be a part of the employer's established hiring procedures." NMIAC § 80-20.1-455(f)(2).

Contrary to the allegations made in the complaint, Appellant was interviewed for the bartender position on April 21, 2017. The decision not to hire Appellant was supported by a number of reasons. According to Appellee, Appellant was not qualified to bartend. Appellant represented that he had approximately twelve (12) years' worth of experience as a bartender. However, given the opportunity to demonstrate his bartending ability and skill in a practical test, Appellant was unable to correctly make any of the common drinks requested. While Appellant argues he could learn how to make the drinks, Appellee's decision to reject Appellant's application was partly due to false information in the Appellant's resume. Specifically, in an attempt to follow up on Complainant's qualifications and experience, the businesses in his resume did not exist or could not be reached. Given the inability to perform and the viewed misrepresentations by Appellant, the undersigned finds that Appellee had just cause to reject Appellant's application.

3. Appellant fails to meet his burden in filing an appeal.

Administrative adjudications enjoy a presumption of regularity. *Estate of Muna v. Commonwealth*, 2000 MP 2 ¶ 13. One who attacks an administrative adjudication bears the burden of rebutting the presumption of regularity by evidence of unfairness or prejudice in the proceedings. The burden of rebutting the presumption is a heavy one. *Id*.

Appellant alludes to and accuses of unfairness and discrimination—however, Appellant fails to present even a scintilla of evidence to support his unfounded accusations. For example, Appellant states; "I have repeatedly sent requests for the adjudication . . . yet, when a white/male attorney sent in a request for adjudication Mr. [S]oll, completes one which totally negates the original premise of what he was 'supposed' to be looking into; which was/is if [Appellee] gave me an arbitrary test, and applied a standard that it did not apply to its foreign workers."[5] Appellant harps on this

[5] Upon review of the record, there is no such filing for requests of adjudication from Appellant.

"arbitrary test" yet fails to show any evidence why it was an unfair or discriminatory under the circumstance. Moreover, Appellant fails to articulate why the hiring practice to test an applicant's alleged skills and qualifications was unjustified.[6]

Further, instead of combatting issues of unfairness or prejudice in the proceedings, Appellant merely reiterates his arguments made at the hearing. Specifically, Appellant argues that there were no false misrepresentations in the complaint, but mistakes he made "due in part because of his many filings at the time." First, as further discussed below, a party's pro se status does not excuse them from the applicable rules. Second, in consideration of Commonwealth law favoring the finality of judgments, reiterated arguments are inadequate towards meeting his burden in appeal.[7] Third, Appellant's arguments are unpersuasive because the records shows that the statements made in the complaint were proven to be plainly false. Fourth, if it were an innocent mistake, the Appellant should have taken steps to cure his mistake (i.e., amend the complaint) to preserve the integrity of the adjudications—rather than litigating ancillary or moot issues. It should be noted that filing a complaint is a very serious matter that initiates legal proceedings and investigations. The appellant's inability to keep track of his numerous bare bone complaints and the unverified allegations made therein, despite the attestations of a certifying signature,[8] are telling of a deeper issue and cut against the authenticity and

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[6] It should further be noted that Appellant may be arguing discrimination based on federal laws outside the jurisdiction of this Office. This venue is limited to adjudication of Appellant's CNMI employment preference statute. Accordingly, discussion on the alleged discrimination is limited.

[7] Commonwealth law favors the finality of decisions, to "maintain consistency and avoid reconsideration of matters once decided during the course of a single continuing lawsuit." *Cushnie v. Arriola*, 2000 MP 7 ¶ 14. Accordingly, it is the general practice of the court "to refuse to reopen what has been decided." *Id*.

[8] The signature of the complaint "constitutes a certificate by the signer that he or she has read the pleading; that to the best of his or her knowledge, information and belief, there are good grounds to support it; and that it is not filed for purposes of delay." NMIAC § 80-20.1-455(e).

credibility of Appellant's complaints and appeals—as well as a serious diversion of the Commonwealth Legislature's intent in enacting the employment preference statute.[9]

In short, Appellant's filings simply deflects serious holes in his claim, points fingers, and confuses the issues. Further, there was substantial evidence in the record to support the decision in the March 19, 2019 Administrative Order. In fact, the records shows: (1) the Motion to Dismiss was supported by 7 exhibits; (2) both parties had a meaningful opportunity to respond in the filings and during oral arguments; and (3) the Administrative Order analyzes the records and comes to a logical and reasonable conclusion. Clearly, the Appellant fails to meet its burden in rebutting the presumption of regularity with evidence of unfairness or prejudice.

4. Pro se status does not excuse a party from applicable rules.

The undersigned finds that it is imperative to recognize the underlying policies and the parties' arguments as to accommodations and leniency towards pro se litigants. While a party has the irrefutable right to proceed as a pro se litigant, it undoubtedly presents obstacles in construing pleadings, filings, and arguments. Oftentimes, the Administrative Hearing Officer's duties in maintaining impartiality, upholding applicable rules or regulations, and ensuring that a decision is well supported by the record are in direct conflict. The overwhelming majority of complainants at the Administrative Hearing Office are pro se litigants without the legal acuity to articulate elaborate arguments or strategize a course through procedural minefields. Purposefully, the administrative complaint process at the Department of Labor was designed to give added accommodations and simplified procedures to ensure access to justice. Further, where there is a lack of binding precedent, mandatory bright-line rules, or strictly enforced standards, the Administrative Hearing Officer's arduous task in balancing competing

[9] *See* PL 15-108 ("The overall guiding policy with respect to foreign national workers is to provide for a stable work force and protect due process rights without creating entitlements.").

policies supports the need for discretion and liberal construction of pleadings, filings, and arguments.

That being said, there must be a limit to accommodations and liberal construction afforded to pro se pleadings and filings. While the Department's regulations specifically provide for added accommodations, the Commonwealth Supreme Court found that one's pro se status does not excuse repeated, unexcused, and prejudicial violations of the applicable rules. *Villagomez v. Sablan*, 4 NMI 396 (1996). Further, the undersigned agrees that it is beyond the duty of the adjudicator to make or strain to infer unfounded or baseless arguments on behalf of the party. Accordingly, where even a liberal construction would not add meaning to the filings, dismissal is appropriate.

In this matter, Appellant's complaint asserts a blanket entitlement to relief solely because he applied and was not interviewed. The adjudicator must make unreasonable leaps and bounds to even infer a violation of the CNMI employment preference statute. Appellant argues that additional discovery will prove his claim, however, the initiation of the baseless complaint is not a fishing expedition. Further, Appellant's request for discovery was denied and the time for discovery in this matter has passed. In reviewing the filings on appeal, the undersigned finds that, even the most liberal construction, within the confines of the regulations, fails to add any meaning to Appellant's pleadings. Further, it should be noted that Appellant's filings in the appeal fall below the standard of conduct mandated by NMIAC § 80-20.1-480(c).[10] Accordingly, Appellant may not use his pro se status to excuse mistakes or applicable rules.

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[10] Without cause or justification, Appellant makes salacious arguments that are baseless in law or fact—unfairly impugning the integrity of the parties, irrationally questioning the impartiality of the Hearing Officer, and disrespecting the proceedings of the Administrative Hearing Office. For example, Appellant states, "ATTORNEY SCOGGINS IS AN OVERT RACIST CLOWN DISGUISING HIMSELF AS AN ATTORNEY WHEN I RELAITY [*sic*] ALL HE IS IS A LIAR FOR HIRE . . . ." and "RINGS OF AN INSECURE WHITEMAN [*sic*] TO ME." Also, Appellant further states that the Hearing Officer acted for "the sake of saving his brother in juris," and "rescuing his brother." Without any actual evidence or showing of discrimination to support his accusations,

5. Appellee's Cross Appeal is untimely.

The deadline to appeal is established by statute and mirrored in the Department's regulations. *Compare* 3 CMC § 4948 and NMIAC § 80-20.1-620(b). Certainly, the statute is controlling. The statute provides, "within fifteen days of issuance, any person or party affected by findings, decisions, or orders . . . may appeal to the Secretary." 3 CMC § 4948(a). Further, "[i]f no appeal is made to the Secretary within fifteen days, the findings, decisions, or orders ***shall be unreviewable*** administrative or judicially." *Id* (emphasis added).[11] Administrative proceedings that are not appealed within the designated time for appeal become final under the principle of administrative res judicata. *Flores v. Commonwealth*, 2004 MP 9 ¶ 11.

Here, the Administrative Order on appeal was issued on March 19, 2019. The parties were served on March 20, 2019. On March 27, 2019, Appellant filed an appeal to overturn the dismissal. On April 28, 2019, Appellee filed a cross appeal to overturn the denial of attorney's fees.[12] Despite the persuasive arguments made for awarding attorney's fees in cases where vexatious complainants file meritless, frivolous, or

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Appellant seriously jeopardizes his credibility through inappropriate mudslinging. Despite Appellant's misinformed and misdirected accusations, the undersigned finds that the Appellee and Hearing Officer simply made legal arguments and logical conclusions based on the facts presented.

[11]The doctrine of exhaustion of administrative remedies requires parties challenging agency actions and decisions to exhaust all administrative remedies before seeking judicial review. *Cody v. NMI Retirement Fund*, 2011 MP 16 ¶ 11. When exhausting administrative remedies, claimants must comply with an agency's deadlines and other critical procedural rules. Additionally, the exhaustion doctrine requires that claimant's raise issues with the agency or lose the right to challenge those issues in court. *Marianas Insurance Co. v.* CPA, 2007 MP 24 ¶ 14. The time limit for filing an intra-agency appeal is mandatory and jurisdictional. *Rivera v. Guerrero*, 4 NMI 79 (1993). A court lacks jurisdiction to review administrative decisions not timely appealed during the administrative process. *Rivera v. Guerrero*, 4 NMI 79 (1993). A court has no jurisdiction to review administrative decisions unless timely appealed during the administrative process. *Pac. Saipan Technical Contractors v. Rahman*, 2000 MP 14 ¶ 14.

[12] Generally, under the "American Rule," each party is responsible for paying its own attorneys' fees and costs, "unless specific authority granted by statute, contract, or court rule allows for the assessment of those expenses against the other party." *Atom's Co. Ltd. v. Orlando Mallari,* SC-15-0237 (NMI Super. Ct. June 7, 2018) (Written Decision Following Evidentiary Hearing Awarding Costs in the Amount of $55.00 and Attorneys' Fees in the Amount of $187.50 at 2). Additionally, an adjudicator may award attorney's fees in the interest of fairness and equity. Under the regulations, "[a]ny complainant or respondent may by motion, file and recover sanctions and attorney's fees for an opposing party's advocation of a claim or defense that is frivolous, without merit, or in bad faith." NMIAC § 80-20.2-140; *see also* NMIAC 80-20.2-130(c)(5).

fraudulent complaints, Appellee's cross appeal to overturn the decision of attorney's fees is outside the fifteen deadline under 3 CMC § 4948(a). Accordingly, the Administrative Order, with respect to the issue of attorney's fees, is final.

V. CONCLUSION

For the foregoing reasons, the Administrative Order dismissing the complaint, dated March 19, 2019, is hereby **AFFIRMED**.

So ordered this **13th** day of June, 2019.

/s/
VICKY BENAVENTE
Secretary of Labor