

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

In the Matter of:	)	D.C. No. 16-016
TRI Enterprises, Inc.,	)	
<i>dba</i> Marianas Visiting Nurses,	)	
Appellant,	)	<b>ADMINISTRATIVE ORDER</b>
	)	
v.	)	
	)	
Department of Labor – Citizen Job Availability	)	
and Citizen Job Placement Section,	)	
Appellee.	)	
	)	

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This denial appeal came on for hearing on January 24, 2017, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant TRI Enterprises, Inc., *dba* Marianas Visiting Nurses (“Employer”) appeared through its President, Gia Ramos. The Department’s Citizen Availability and Job Placement Section (“Job Placement Section”) was represented by James Ulloa. Hearing Officer Jerry Cody, presiding.

**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 appellant’s timely appeal of a Notice of Denial (“Denial”) issued by the Job Placement Section on December 13, 2016. [A copy of the Denial was entered into evidence as Hearing Exhibit 1.]

The Job Placement Section denied Employer’s request for a Certificate of Good Standing (i.e., Certificate of Compliance), citing three grounds:

1. Employer failed to submit to the Department of Labor (“DOL”) quarterly Total Workforce Listings for four quarters in 2015 and two quarters for 2016 in accordance with the Employment Rules and Regulations (“Regulations”), codified in the Northern Mariana Islands Administrative Code (“NMIAC”) § 80-20.1-505(b).
2. Employer failed to submit to the Department Workforce Plans in 2015 and 2016 in accordance with Regulations at NMIAC § 80-20.1-510(c).

The Employer operates a business that supplies home nurses and nurse aides for home care in the CNMI. Currently, the business employs about 20 full-time employees.

The two separate grounds for the Denial are discussed below:

**Quarterly Total Workforce Listings:** 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 submitted in a document called the Total Workforce Listing. The Department requires employers to submit this information in order to qualify for a Certification of Compliance. [Testimony of Mr. Ulloa.]

In this case, Employer failed to submit Total Workforce Listings for four quarters in 2015 and two quarters in 2016. After Employer received the Denial, it promptly prepared and filed all of the missing Total Workforce Listings from 2015 and 2016. These were collectively entered into evidence as Hearing Exhibit 2. At Hearing, Employer’s President explained that she had been unaware of the Department’s Regulations. As soon as she realized her mistake, she took immediate steps to correct the record. [Testimony of Ms. Ramos.]

**Workforce Plan for 2015:** Department Regulations require employers to file an updated Workforce Plan every 12 months. Regs. at NMIAC § 80-20.1-510(c). In this case, Employer failed to submit Workforce Plans in 2015 or 2016 to the Job Placement Section. Employer’s President testified that she had been unaware of the obligation to do so. As soon as she received the Denial, President Ramos prepared Workforce Plans and submitted them to the Hearing Office. [Copies of Workforce Plans for 2015 and 2016 were entered into evidence as Hearing Exhibits 3 and 4, respectively.]

Mr. Ulloa of the Job Placement Section noted that the “Timetable” section of each Workforce Plan was not correctly filled out. President Ramos offered to correct this deficiency in the near future.

### **CONCLUSIONS OF LAW**

The Job Placement Section denied Employer’s request for a Certificate of Good Standing based on two deficiencies; failure to submit quarterly Total Workforce Listings and failure to submit two annual Workforce Plans.

As to the first ground, Employer submitted all missing Total Workforce Listings along with her appeal letter. At Hearing, Employer also submitted the most recent (3<sup>rd</sup> Quarter) Total Workforce Listing. The document shows that Employer currently employs a total of 20 full-time employees, and 6 of these workers are U.S. status-qualified workers (4 U.S. citizens, one permanent resident and one Palauan citizen). Accordingly, Employer meets the minimum Workforce Participation percentage of 30% of its workforce being U.S. status-qualified.

As to the second ground, as stated above, Employer submitted Workforce Plan for 2015 and 2016, but the Timetable section was incomplete. This deficiency needs to be corrected on a new Workforce Plan for 2017.

At Hearing, the Job Placement Section took the position that given the Employer's prompt response to the Denial, the Department would not press for substantial monetary sanctions, but would agree with a suspended sanction. [Testimony of Mr. Ulloa.]

Based on the facts presented, the Hearing Officer finds that the Denial should be reversed and the Employer sanctioned one thousand dollars; however, the entire fine shall be suspended for one year, then extinguished, provided that Employer commits no further violations of labor statutes and regulations during that one-year period. In addition, Employer shall be ordered to submit to Mr. Ulloa a corrected Workforce Plan for 2017 within thirty days of the issuance of this Order. The Denial shall be reversed provided that Employer submits the above-noted documents in accordance with this Order in a timely manner.

**Good cause having been shown, IT IS HEREBY ORDERED:**

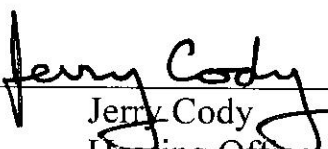
1. **Denial is reversed:** The Department's Denial of a Certificate of Good Standing for TRI Enterprises, Inc., is REVERSED, provided that Appellant TRI Enterprises, Inc., complies with the terms of this Order, as set forth. The Department is instructed to issue the Certification of Good Standing to Appellant after Appellant has submitted the document specified in paragraph 3, below.
2. **Suspended Sanctions:** For the reasons stated above, Appellant TRI Enterprises, Inc., is hereby FINED one thousand dollars (\$1,000); however, the fine shall be SUSPENDED for one year, then extinguished, provided that Appellant commits no further violation of labor statutes and regulations in that period, and complies with the other terms set forth below. 3 CMC §§ 4528(f)(2) and 4947(11).

3. **Revised 2017 Workforce Plan:** Appellant TRI Enterprises, Inc. is ORDERED to submit to Mr. James Ulloa of the Citizen Job Placement Section a revised 2017 Workforce Plan that correctly fills out the Timetable section as noted during the Hearing. The Plan shall be submitted within thirty (30) days after the date of issuance of this Order.

4. **Warning:** If Appellant fails to comply with the terms of this Order, it shall be subject to a possible reinstatement of the suspended sanction plus additional monetary sanctions, after a due process hearing on this issue.

5. **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: January 26, 2017

  
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Jerry Cody  
Hearing Officer