

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

In the Matter of:	)	D.C. No. 17-006
Fidel P. Mallari, Jr.,	)	
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 March 30, 2017, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant Fidel P. Mallari, Jr. appeared together with the General Manager of his business, Victor P. Mallari. The Department’s Citizen Availability and Citizen Job Placement Section (“Job Placement”) 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 March 3, 2017. [A copy of the Denial was entered into evidence as Hearing Exhibit 1.]

Appellant Fidel P. Mallari, Jr., *dba* Reliable Manpower (“Employer”) operates a manpower company on Saipan. The Job Placement Section denied Employer’s request for a Certification of Good Standing, citing three grounds:

- (1) Employer failed to post job vacancy announcements on the DOL website for five maintenance worker positions in 2016, and one general support worker job in 2015 and 2016, as required by Employer Rules and Regulations (“Regulations”), codified in the Northern Mariana Islands Administrative Code (“NMIAC”), at § 80-20.1-225(a). [Hearing Exhibit 1.]

(2) Employer failed to post Employer Declarations on the DOL website in 2015, in connection with job vacancy announcements (“JVAs”) for general maintenance workers, a construction supervisor and carpenters, that were posted by Employer. Regulations at NMIAC § 80-20.1-235(e). [Hearing Exhibit 1.]

(3) Employer failed to submit Workforce Plans in 2015 and 2016 in accordance with Regulations at NMIAC § 80-20.1-510;

(4) Employer’s 2017 Workforce Plan is deficient in certain respects; and

(5) Employer failed to submit quarterly Total Workforce Listings in 2015 and 2016, as required by the Regulations at NMIAC § 80-20.1-505(b-c).

**1. Failure to Post Job Vacancy Announcements on DOL’s Website For Numerous Positions in 2015 and 2016.**

Department Regulations require employers who are renewing CW-1 status workers to post job announcements on the Department’s website. Regs. at NMIAC § 80-20.1-225(a). In this case, the Job Placement Section alleged that Employer had not posted JVAs on the Department of Labor (“DOL”) website for its five general maintenance CW-1 status employees in 2016. Employer’s General Manager Victor Mallari admitted that the company had not posted JVAs on DOL’s website in 2016 for those renewals. [Testimony of Mr. Victor Mallari.] Mr. Mallari noted that his company advertised the jobs using a local radio station instead of the Department’s website because Employer was running out of time to file the CW Petitions. *Id.* In addition, Employer admitted that it had neglected to post a JVA in 2015 and 2016 for a general support worker position. [Hearing Exhibit 2.]

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

The Department’s “Employer Declaration” Regulation requires an employer to post an online “declaration” on the Department of Labor (“DOL”) website ([www.marianaslabor.net](http://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 the Denial, Job Placement charged that Employer had failed to post timely Employer Declarations in connection with three JVAs that Employer posted on August 1, 2015. [Hearing Exhibit 1.]

The Hearing Officer notes that one day after Employer posted the JVAs, on August 2, 2015, Typhoon Soudelor slammed into Saipan and knocked out power to the island for many weeks. Mr. Ulloa confirmed that DOL's website was "down" for more than two months. In short, Employer was physically incapable of posting any Employer Declarations on DOL's website in the months following its August 1, 2015 posting. Given this history, the Hearing Officer finds that Employer should be excused from this charge.

### **3. Failure to Submit Workforce Plans for 2015 and 2016.**

DOL Regulations require employers to file an updated Workforce Plan once every 12 months. [Regs. at NMIAC § 80-20.1-510.] In this case, the evidence shows that Employer failed to submit Workforce Plans in either 2015 or 2016. [Testimony of Mr. Ulloa.]

Employer admitted that it had not filed Workforce Plans in 2015 and 2016. General Manager Malari testified that he had been unaware in those years that Employer was required to file a Workforce Plan.

### **4. Employer Submitted a Deficient Workforce Plan for 2017.**

Recently, Employer submitted a Workforce Plan for 2017. [A copy of the Plan was entered into evidence as Hearing Exhibit 2.] Mr. Ulloa testified that the Plan that Employer submitted is deficient in that it leaves two categories blank: specific vocational preparation (SVP Range) and timetable for accomplishing the replacement of foreign national workers. [Testimony of Mr. Ulloa.]

At Hearing, Employer took note of the deficiencies and promised to correct the document in the near future. [Testimony of Mr. Victor Mallari.]

### **5. Failure to Submit Quarterly Total Workforce Listings for 2015 and 2016.**

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.]

Employer admits that it failed to submit Total Workforce Listings for all quarters of 2015 and 2016. In preparation for requesting the Certificate of Good Standing in February 2017, Employer prepared and submitted all of the missing Total Workforce Listings for 2016. [The four Listings for 2016 were entered into evidence collectively as Hearing Exhibit 3(a-d).] The documents show that as of December 31, 2016, Employer employed 7 full-time workers: 5 CW-status workers, one holder of an EAD (Employment Authorization Document) and one permanent resident. [See Total Workforce Listing for 4<sup>th</sup> Quarter of 2016 at Hearing Exhibit 3d.]<sup>1</sup>

### **DISCUSSION**

The evidence established that: (1) Employer failed to post JVAs for 5 general maintenance worker positions in 2016 and one JVA for a general support worker in 2015 and 2016; (2) Employer failed to submit Workforce Plans for 2015 and 2016; (3) Employer submitted a deficient Workforce Plan for 2017; and (4) Employer failed to submit quarterly Total Workforce Listings in 2015 and 2016. [Regs at NMIAC §§ 80-20.1-235(e), 505(b) and 510.]

Employer shall be excused from the charge that it failed to file Employer Declarations in response to JVAs posted on August 1, 2015, due to the fact that Typhoon Soudelor hit Saipan the day after the posting, knocking out the DOL website and cutting off the Department's electricity for more than two months.

In February 2017, Employer took steps to correct some of the deficiencies by submitting Total Workforce Listings for all four quarters of 2016. [See Hearing Exhibits 3(a-d).]

At Hearing, Job Placement testified that it would accept a reversal of its denial, provided that Employer is sanctioned monetarily for the above-cited violations. Job Placement left it to the Hearing Officer to determine the appropriate amount of sanctions.

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<sup>1</sup> The Total Workforce Listings produced by Employer all listed Fidel P. Mallari Jr. as an employee with a salary. The Hearing Officer notes that as a sole practitioner, Fidel Mallari cannot employ himself. Therefore, Mr. Mallari should refrain from listing himself as an employee in future Total Workforce Listings.

## **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).

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 the 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 that Employer intentionally chose not to post 6 JVAs in 2016, and did not submit Workforce Plans and Total Workforce Listings for two full years. As mitigating factor, the Hearing Officer notes that Employer recently filed its missing documentation for 2016 and attempted to submit a Workforce Plan for 2017. Additionally, Employer expressed remorse at its past failure to comply with the Regulations and promised to be more compliant in the future.

Based on the foregoing, the Hearing Officer holds that Employer should be sanctioned \$2,000; however, \$500 of the fine shall be suspended for one year, then extinguished, on the condition that Employer pays the remaining portion of the fine and commits no further violations of CNMI labor law during the one-year period following the issuance of the Order. Additionally, Employer shall be ordered to file a corrected Workforce Plan for 2017 within thirty days. Finally, Employer asked that it be allowed to pay the sanction in several installments due to his ongoing cash-flow problems. This request, which was unopposed by the Department of Labor, shall be granted.

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

1. **Denial is reversed:** For the reasons stated above, the Department’s Denial of a Certification of Good Standing for Appellant Fidel P. Mallari Jr. is hereby REVERSED, provided that Appellant complies with the terms of the Order, as set forth below. The Department is instructed to issue the Certification of Compliance (i.e., Certificate of Good Standing) to Appellant as soon as the \$1,500 portion of the sanction has been paid.

2. **Sanctions:** For the reasons stated above, Appellant Fidel P. Mallari Jr. is hereby FINED two thousand dollars (\$2,000); however, \$500 of the fine shall be SUSPENDED for ONE YEAR, then extinguished, provided that Appellant pays the remaining \$1,500 portion of the sanction and complies with the other terms of this Order set forth below. 3 CMC §§ 4528(f)(2) and 4947(11).

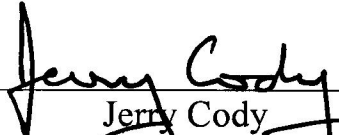
3. **Payment Terms:** Appellant Fidel P. Mallari Jr. is ORDERED to pay the \$1,500 portion of the fine in five \$300 installments, with each installment due on or before the 15<sup>th</sup> day of each month, beginning in April 2017, and continuing each month thereafter until fully paid. Payment shall be made to the CNMI Treasury; a copy of each payment receipt shall be filed with the Hearing Office on or before the payment deadline.

4. **2017 Workforce Plan:** Appellant Fidel P. Mallari Jr. is ORDERED to submit a corrected Workforce Plan for 2017 to the Department's Citizen Job Placement and Citizen Job Availability Section (attn.: James Ulloa) no later than **thirty (30) days** after the date of issuance of this Order. [Regs. at NMIAC § 80-20.1-510.]

5. **Warning:** If Appellant fails to comply with its continuing obligation to comply with DOL's statutes and regulations during the suspension period, he shall be subject to a possible reinstatement of the suspended sanction plus additional monetary sanctions, after a due process hearing on this issue.

6. **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: March 31, 2017

  
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Jerry Cody  
Hearing Officer