

**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
SAIPAN, TINIAN, ROTA and NORTHERN ISLANDS**



COMMONWEALTH REGISTER

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

In Re Matter of:) Labor Case No. 18-067
) Secretary Appeal No. 21-001
)
SM Farhad Mhamud,)
Appellant,) FINAL AGENCY DECISION
v.)
Osman Gani dba Saipan Security Service,)
Respondent.)

I. INTRODUCTION

On January 20, 2021, Appellant filed a timely notice of appeal regarding the Order Granting Respondent's Motion to Dismiss for Lack of Jurisdiction ("Order"). Appellant argues that the Administrative Hearing Office decision was based on a legal error that would have otherwise altered the decision when: (1) the Hearing Office erroneously gave labor regulations priority over a statute; and (2) the Hearing Office misinterpreted labor regulations. Appellant is seeking reversal of the above-mentioned order, reinstatement of his labor case, and an award of costs and attorney's fees.

II. LEGAL STANDARD

"An appeal is commenced by filing a notice of appeal on the standard form provided by the Department and payment of the fee . . ." NMIAC 80-20.1-490(a). "The record before the Secretary consists of the complaint, pleadings filed, exhibits, and order of the hearing officer." NMAIC § 80-20.1-490(c). "When the Secretary is exercising jurisdiction over appeals from final orders of the Administrative Hearing Office, the Secretary shall have all the powers and responsibilities of a hearing officer. No hearing or oral argument on an appeal is required." NMIAC 80-20.1-490(d). "In a review on appeal, the Secretary may restrict review to the existing record, supplement the record with new evidence, hear oral argument, or hear the matter de novo pursuant to 1 CMC §§ 9109 and 9110. Upon completion of review, the

1 Secretary shall affirm, reverse or modify the findings, decision, or order of the hearing office.”
2 NMIAC § 80-20.1-490 (e).

3 III. DISCUSSION

4 Here, Appellant argues that the Administrative Hearing Office incorrectly limited the broad
5 jurisdictional authority under Section 4942 by: (1) prioritizing a regulation over statute and (2)
6 misinterpreting the labor regulations. For the reasons stated below, Appellant’s arguments are
7 **AFFIRMS** the Administrative Hearing Office Order.

8 1. There is no conflict between 3 CMC § 4942 and NMIAC 80-20.1-450(b).

9 As discussed, “[t]he Administrative Hearing Office shall have original jurisdiction to
10 resolve all actions involving alleged violations of the labor and wage laws of the
11 Commonwealth, including but not limited to any violation of this chapter and regulations
12 promulgated thereunder.” 3 CMC § 4942. The Employment Rules and Regulations further
13 provide:

14 The Administrative Hearing Office shall have jurisdiction over
15 complaints filed with the Administrative Hearing Office by U.S.
16 **Citizens, CNMI permanent residents or U.S. permanent**
17 **residents**, and agency complaints filed by the Department, with
18 respect to violations of the requirements of job preference and
19 workforce participation pursuant to the Commonwealth
Employment Act of 2007, as amended, and other violations of
labor laws application in the Commonwealth. ...

20 The Administrative Hearing Office shall have jurisdiction over
21 complaints filed with the Administrative Hearing Office by
22 **foreign national workers,**¹ and agency complaints filed by the
23 Department, with respect to violations of Commonwealth law and
regulations regarding employment and other labor laws applicable
in the Commonwealth. ...

24 The Administrative Hearing Office shall have jurisdiction over
25 complaints filed with the Administrative Hearing Office by other

26 ¹ “‘Foreign national worker’ means a person who is not a United States citizen, a United States permanent resident, a
27 CNMI permanent resident, or an immediate relative of the United States citizen or a United States permanent
28 resident, or an immediate relative of a CNMI permanent resident, and who entered the CNMI as a nonimmigrant
prior to November 28, 2010 for the declared purpose of being employed in the Commonwealth.” NMIAC § 80-20.1-
080(k).

1 **nonimmigrant aliens²** with respect to violations of
2 Commonwealth law and regulations regarding employment.

3 NMIAC § 80-20.1-450(b)(1)-(3) (emphasis added).

4 While the language in Section 4942 is broad, a full reading of the Public Law 15-108 clearly
5 demonstrates that this provision is with respect to employment of foreign nationals and
6 adjudication of employment disputes of said foreign nationals. *See* PL 15-108; *see also* 3 CMC
7 §§ 4911 et. seq. In reviewing Section 4942 and the above-cited regulation, the undersigned finds
8 no conflict with respect to jurisdiction of foreign national workers. Considering there is no
9 conflict, the Department must uphold and follow its regulations.³

10 **2. There is no precedence showing that Section 4942 has been extended to employees
11 beyond foreign national workers.**

12 As stated above, the broad jurisdictional authority under Section 4942 is with respect to
13 employment of foreign nationals and adjudication of employment disputes of said foreign
14 nationals. While precedence shows that jurisdiction can be extended to common law
15 employment claims applicable in the Commonwealth, there has been no precedence to support
16 extending Section 4942 beyond disputes brought by foreign nationals.

17 Contrary to claims by foreign national workers, there are limitations with respect to claims
18 of tourists and illegal employment relationships. Importantly, “[t]he Administrative Hearing

19 ² “‘Nonimmigrant alien’ means a person described in Section 101(a)(15) of the Immigration and Nationality Act, 8
20 U.S.C. 1101(a)(15).” NMIAC § 80-20.1-080(p).

21 ³ The CNMI Superior Court has found:

22 It is an elemental principle of administrative law that agencies are bound to
23 follow their own regulations. An agency is obliged to abide by the regulations it
24 promulgates. The Government must follow its own regulations. Action by an
25 agency of the executive branch in violation of its own regulations are illegal and
26 void. As a general rule, when the rights of an individual are affected, an agency
27 must follow its own procedure, even where the internal procedures are more
28 rigorous than otherwise would be required. If an agency fails to follow its own
 regulations, it may result in a violation of an individual’s constitutional rights to
 due process. Should an agency in its proceedings violate its rules and prejudice
 results, the proceedings are tainted and any action resulting from the
 proceedings cannot stand.

29 *CNMI Nutritional Assistance Program v. Santos*, SC-17-0215T (NMI Sup. Ct., July 31, 2018) (Order Estopping
30 CNMI Nutritional Assistance Program from Collecting on a Food Stamp Overpayment of \$1650.00 due to its (1)
31 Failure to Follow Procedures Provided in NMIAC § 55-30-001 et. seq. and (2) Because the Cost of Collection
32 Proceeding Will Exceed the Amount to be Recovered Pursuant To NMIAC § 55-30-285(B)(4)(iv) at 5) (internal
33 citations and quotations omitted).

1 Office does not have jurisdiction with respect to claims of tourists. Those claims are pursuant in
2 the Commonwealth Superior Court.” NMIAC § 80-20.1-450(e).⁴ The rationale to exclude
3 tourists is based on explicit legislative intent from Public Law 15-108. Thereunder, the
4 Legislature specifically stated:

5 It is the intent of the Legislature that this Act shall not
6 apply to persons admitted to the Commonwealth as tourists,
7 *or to persons employed illegally*, i.e. without the approval
8 of the Department of Labor, or to those persons employing
9 other illegally in the Commonwealth *unless specific*
10 *provision has been made herein*. It is the intent of the
11 Legislature that persons illegally employing others or
12 illegally employed be prohibited from using the terms of
13 this Act to receive or avail themselves of a legal right or
14 benefit.

15 PL 15-108, § 2 (emphasis added).

16 The Administrative Hearing Office established precedence in limiting jurisdiction over
17 claims involving illegal employment relationships. 42 Com. Reg. 044123 (September 28, 2020).
18 This has been the practice of the Administrative Hearing Office, in part, because there are often
19 collateral issues, such as federal immigration or claims that are criminal in nature, that are so
20 intertwined in illegal employment relationships that the Administrative Hearing Office cannot
21 extend jurisdiction over these issues or fully resolve the claims. *See* 42 Com. Reg. 044118
22 (September 28, 2020); *see also* 42 Com. Reg. 044121 (September 28, 2020); *see also* Com.
23 Reg. 044308 (October 28, 2020); *see also* 42 Com. Reg. 044059 (Aug. 28, 2020); *see also* 42
24 Com. Reg. 044063 (Aug. 28, 2020).

25 **3. Jurisdiction has not been established.**

26 A foreign national worker is “a person who is not a United States citizen, a United States
27 permanent resident, a CNMI permanent resident, or an immediate relative of a United States
28 citizen or a United States permanent resident, or an immediate relative of a CNMI permanent

⁴ The history of these regulations are significant. In January 2008, the Department of Labor adopted the Employment Rules and Regulations, to comply with PL 15-108. Title VII of US Public Law 110-229, the Consolidated Natural Resources Act of 2008 (CRNA), enacted on May 8, 2008, extended the Immigration and Nationality Act (INA) and other provisions of United States immigration law to the Commonwealth of the Northern Mariana Islands. On March 22, 2010, CNMI Public Law 17-1, the Immigration Conformity Act, became law and repealed immigration responsibilities of the Commonwealth. In May of 2010, the Department amended the Employment Rules and Regulations.

1 resident and who entered the CNMI as a nonimmigrant for the declared purposes of being
2 employed in the Commonwealth.” 3 CMC § 4911; *see also* NMIAC § 80-20.1-080(k).

3 Here, there is no showing that Appellant is a foreign national worker. Specifically, the Order
4 states: “The Complainant does not contend that he qualified as a U.S. Citizen, U.S. permanent
5 resident, CNMI permanent resident, foreign national worker, or nonimmigrant alien as defined
6 by the applicable regulations.” Order at 2. On appeal, Appellant argues that such an inquiry is
7 not necessary because the regulations cannot limit or conflict with a governing statute.

8 Considering that the referenced governing statute is with respect to foreign national workers,
9 Appellant’s argument is not persuasive. However, the undersigned finds it important to note that
10 challenges to the regulations and statutory interpretation are more appropriate on judicial review
11 and beyond the jurisdiction or scope of authority of the agency. *See* 42 Com. Reg. 044008 (Aug.
12 28, 2020).

13 IV. CONCLUSION

14 Based on a review of the record and applicable law, the undersigned finds that dismissal was
15 proper. Accordingly, pursuant to NMIAC § 80-20.1-490 (e), the Administrative Hearing Office
16 Order Granting Respondent’s Motion to Dismiss for Lack of Jurisdiction is **AFFIRMED**.

17 ORDERED this 23 day of February, 2021.

18 
19 _____
20 VICKY BENAVENTE
21 Secretary of Labor
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28

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



In Re the Matter of:

Labor Case No. 19-038

Shi Yunxiao,

Complainant,

v.

Donghui Jewelry Group Corp.,

Respondent.

**ORDER REQUIRING PARTY
PRESENCE AND TESTIMONY TO BE
MADE WITHIN THE CNMI**

Here, Complainant filed a labor complaint for, among other things, unpaid wages and wrongful termination. Upon review of the complaint, the matter was referred to the Department's Enforcement, Compliance, and Monitoring Section ("Enforcement") for additional investigation. On August 1, 2019, Enforcement submitted a written determination finding unpaid wages in the amount of \$13,750. When the matter was scheduled for a hearing, Complainant had already departed the CNMI. Moreover, due to the threat of the COVID-19 pandemic, travel restrictions imposed an undue burden for Complainant to return to the CNMI. While Complainant has remained in contact with the Administrative Hearing Office to pursue his claim, his departure presented several obstacles and legal questions: (1) Whether the Administrative Hearing Office has jurisdiction or authority to take testimony or conduct Administrative Hearings outside the CNMI; and (2) Whether dismissal in this case is appropriate.

Upon review of the parties' filings and applicable law, the undersigned finds:

1. **There is no applicable statute or regulation that allows parties to testify from outside the CNMI.**

Complainant's Brief argues that the Administrative Hearing Office should defer to how the courts afford due process to parties who depart the CNMI. Moreover, Complainant's Brief cites to both local and federal rules which allow for testimony to be taken by videoconferencing in order to accommodate witness testimony from remote location.

1 The Department's Administrative Hearing Office is a creature of statute and only holds the
2 authority specifically granted to it under statute or regulation. *See* NMIAC § 80-20.1-001. While
3 the undersigned can appreciate the legal authority and arguments made by Complainant, there is
4 no comparable rule or regulation that allows the undersigned to conduct hearings or take
5 testimony outside the CNMI. Moreover, the undersigned is cautious to avoid exceeding scope of
6 authority or implicating other state or international laws for conducting hearings or taking
7 testimony outside the CNMI. Generally, a party's presence at a hearing is required in order to
8 avoid default judgment. NMIAC § 80-20.1-480. While the Administrative Hearing Office has
9 taken testimony and conducted hearings via video conferencing or telephone, these circumstances
10 are generally limited to parties of the labor case being present within the CNMI.¹ Initially, these
11 accommodations were made to afford due process and meaningful access to parties residing in
12 Tinian or Rota. More recently, changes to operation were made to address and mitigate the
13 COVID-19 public health emergency. *See* AO-20-04, In Re Administrative Hearing Office
14 Operations and Proceedings in Response to COVID-19. The accommodations made under the
15 above-stated limited circumstances were never intended to widen the authority of the
16 Administrative Hearing Office or contradict regulations or established precedence² requiring a
17 parties' presence in the CNMI during an administrative hearing. Considering the absence of
18 authority, the undersigned finds that the Complainant must be within the CNMI to testify or
19 participate in the Administrative Hearing.

20 **2. At this time, dismissal pursuant to NMIAC § 80-20.1-480(l) or NMIAC § 80-20.1-485(b)**
21 **is not warranted.**

22 "A complaint may be dismissed upon its abandonment A party shall be deemed to have
23 abandoned a request for a hearing if neither the party nor the party's representative appears at the
24 time and place fixed for the hearing, *unless good cause is shown.*" NMIAC § 80-20.1-485(b)
(emphasis added). Moreover, "[e]xcept for good cause shown, failure of a party to appear at a
25 hearing after timely being served notice to appear shall be deemed to constitute a waiver of any

26
27 ¹ In this matter, the undersigned began an online Administrative Hearing to which the Complainant was appearing
28 from California. The undersigned ordered the parties to submit briefs and ended the hearing to address the potential
legal issues, deficiencies, and ramifications of off-island parties.

² *See* 42 Com. Reg. 044042 (Aug. 28, 2020); *see also* 42 Com. Reg. 044328 (Oct. 28, 2020); *see also* 42 Com. Reg.
044386 (Oct. 28, 2020).

1 right to pursue or contest the allegations in the complaint.” NMIAC § 80-20.1-480(1) (emphasis
2 added).³

3 Here, the undersigned finds that Complainant has established good cause. Specifically,
4 Complainant alleges that he left Saipan due to intimidation and threats of violence. Moreover,
5 due to the COVID-19 public health emergency, travel poses a substantial risk to health and undue
6 financial burden due to quarantine and testing costs. Ultimately, the undersigned recognizes the
7 extreme circumstances preventing Complainant from actively pursuing his claim from within the
8 CNMI. Also, the undersigned recognizes that Complainant has not abandoned his claim. Instead,
9 Complainant has diligently pursued the claim and remained in contact with the Administrative
10 Hearing Office. Accordingly, for these reasons, the undersigned finds that dismissal under
NMIAC § 80-20.1-480 and NMIAC § 80-20.1-485 are not appropriate at this time.

11 In order to afford Complainant meaningful access and due process within the confines of the
12 applicable rules and regulations, the Administrative Hearing scheduled for March 18, 2021 at
13 9:00 a.m. is hereby **VACATED**. The parties are hereby on notice that a status conference to
14 address Complainant’s return to the CNMI and schedule this matter for an Administrative Hearing
15 is set for **September 16, 2021 at 9:00 a.m.** at the Administrative Hearing before the undersigned.
16 Due to the ongoing COVID-19 public health emergency, this Administrative Hearing will be held
telephonically.⁴ The parties’ or their authorized representatives are ordered to appear.

17
18 So ordered this **16th** day of March, 2021.

19 /s/

20 **JACQUELINE A. NICOLAS**
21 Administrative Hearing Officer
22
23
24

25 ³ This order does not preclude Respondent’s from filing a Motion to Dismiss pursuant to NMIAC § 80-20.2-130(c)(1).

26 ⁴ The Administrative Hearing Office will call the parties a couple minutes before the scheduled hearing using the
27 contact information provided by the parties. The Administrative Hearing Office will only call parties within the CNMI.
28 Please ensure your preferred contact information is correct and up to date. Additionally, to avoid interruptions, the
parties should ensure they are in a quiet place with a good connection. If you are disconnected during the hearing, the
Administrative Hearing Office will attempt to reconnect with you. Please refer to *Administrative Order 20-04 In re
Administrative Hearing Office Operations and Proceedings in Response to COVID-19 (issued July 7, 2020)* for
information and instructions on telephonic and online hearings. This document may be found under the Department
website, www.marianaslabor.net, under Hearing Division tab for “Administrative Orders.”



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

In Re Matter of:) **Consolidated Labor Case Nos.**
) **20-007 and 20-008**
SM Jenus and Shosel Rana,)
)
Complainants,) **ADMINISTRATIVE ORDER**
) **DISMISSING CLAIMS FOR LACK OF**
v.) **JURISDICTION AND FAILURE TO**
) **STATE A CLAIM WITHIN THE**
Wilfredo D. Percil dba WRP Island Servitiks,) **STATUTE OF LIMITATIONS**
)
Respondent.)

I. INTRODUCTION

This matter came for an Administrative Hearing on January 13, 2021 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held online and telephonically. Complainants SM Jenus and Shosel Rana (collectively, "Complainants") were present and self-represented. Respondent Wilfredo D. Percil dba WRP Island Servitiks ("Respondent") was present and self-represented. Interpreter Mohammad F. Ahmed facilitated communications during the Administrative Hearing. The Department's Enforcement, Compliance, and Monitoring Section ("Enforcement") was also present and represented by Labor Law Enforcement Specialist Arlene Rafanan. There were no other witnesses to give testimony at the hearing.

II. BACKGROUND & PROCEDURAL HISTORY

On February 20, 2020, Complainants filed a labor complaint for unpaid wages, among other things. The Respondents were given an opportunity to respond to the Complaint but did not file a written Answer. Upon review of the filings, the matter was referred to Enforcement for further investigation. On September 21, 2020, Enforcement filed a written determination stating their investigation found unpaid wages for each complainant. Specifically, Enforcement found a claim for unpaid wages and recommended damages to each Complainant. The matter was scheduled for a prehearing conference, to which the parties did not contest Enforcement's findings and recommendations, except for the disagreement over the applicable six-month statute of

1 limitations. On November 19, 2020, the undersigned scheduled the matter for the present
2 Administrative Hearing.

3 III. ANALYSIS

4 1. The Administrative Hearing Office lacks jurisdiction over tax and CW-1 regulations.

5 With respect to employment of foreign national workers, the Administrative Hearing Office
6 has jurisdiction over “*all actions*” involving alleged violations of the labor and wage laws of the
7 Commonwealth . . .” 3 CMC § 4942 (emphasis added). The Employments Rules and Regulations
8 further provide:

9 The Administrative Hearing Office shall have jurisdiction over
10 complaints filed with the Administrative Hearing Office by U.S.
11 Citizens, CNMI permanent residents or U.S. permanent
12 residents, and agency complaints filed by the Department, with
13 respect to violations of the requirements of job preference and
14 workforce participation pursuant to the Commonwealth
15 Employment Act of 2007, as amended, and other violations of labor
16 laws application in the Commonwealth. . .

17 The Administrative Hearing Office shall have jurisdiction over
18 complaints filed with the Administrative Hearing Office by **foreign**
19 **national workers**,¹ and agency complaints filed by the
20 Department, with respect to violations of Commonwealth law and
21 regulations regarding employment and other labor laws applicable
22 in the Commonwealth. . .

23 The Administrative Hearing Office shall have jurisdiction over
24 complaints filed with the Administrative Hearing Office by other
25 **nonimmigrant aliens**² with respect to violations of
26 Commonwealth law and regulations regarding employment.

27 NMIAC § 80-20.1-450(b)(1)-(3) (emphasis added).

28 Notably, in Labor Case 20-007, Complainant SM Jenus also alleged that Respondent “never
pay tax, making CW1 problem” under the other claims. After an investigation and a hearing, it is
clear that said allegations stem from tax payment issues with the Department of Finance and

¹ “‘Foreign national worker’ means a person who is not a United States citizen, a United States permanent resident, a
CNMI permanent resident, or an immediate relative of the United States citizen or a United States permanent
resident, or an immediate relative of a CNMI permanent resident, and who entered the CNMI as a nonimmigrant
prior to November 28, 2010 for the declared purpose of being employed in the Commonwealth.” NMIAC § 80-20.1-
080(k).

² “‘Nonimmigrant alien’ means a person described in Section 101(a)(15) of the Immigration and Nationality Act, 8
U.S.C. 1101(a)(15).” NMIAC § 80-20.1-080(p).

1 regulations promulgated by the U.S. Department of Labor. Neither issues or allegations fall within
2 a CNMI labor law or violation within the Administrative Hearing Office's jurisdiction.
3 Accordingly, said claims are dismissed for lack of jurisdiction.

4 **2. The Administrative Hearing Office lacks jurisdiction over claims between illegal
5 employment relationships.**

6 As stated above, the CNMI statute and Employment Rules and Regulations define jurisdiction
7 with respect to claims by U.S. Citizens, CNMI permanent residents or U.S. permanent residents,
8 foreign national workers, and nonimmigrant aliens. *See* 3 CMC § 4942; *see also* NMIAC § 80-
9 20.1-450(b)(1)-(3). Importantly, "[t]he Administrative Hearing Office does not have jurisdiction
10 with respect to claims of tourists. Those claims are pursuant in the Commonwealth Superior
11 Court." NMIAC § 80-20.1-450(e).³ The rationale to exclude tourists is based on explicit
12 legislative intent from Public Law 15-108. Thereunder, the Legislature specifically stated:

13 It is the intent of the Legislature that this Act shall not apply to
14 persons admitted to the Commonwealth as tourists, *or to persons*
15 *employed illegally*, i.e. without the approval of the Department of
16 Labor, or to those persons employing other illegally in the
17 Commonwealth *unless specific provision has been made herein*.
18 It is the intent of the Legislature that persons illegally employing
19 others or illegally employed be prohibited from using the terms of
20 this Act to receive or avail themselves of a legal right or benefit.

21 PL 15-108, § 2 (emphasis added).

22 With respect to the unpaid wages claim, Complainants worked for Respondents without valid
23 employment authorization. Specifically, during the relevant time period, Complainant's
24 Commonwealth Only Transitional Workers ("CW-1") petition was denied for failure to abide by
25 the temporary labor certification process. Specifically, Respondent did not obtain a prevailing
26 wage determination and did not advertise the job vacancy announcement. Moreover, as discussed
27 during the Administrative Hearing, the parties were hired under one job category but put to work
28 in another job category. Respondent further indicated that he allowed the Complainants to

³ The history of these regulations are significant. In January 2008, the Department of Labor adopted the Employment Rules and Regulations, to comply with PL 15-108. Title VII of US Public Law 110-229, the Consolidated Natural Resources Act of 2008 (CRNA), enacted on May 8, 2008, extended the Immigration and Nationality Act (INA) and other provisions of United States immigration law to the Commonwealth of the Northern Mariana Islands. On March 22, 2010, CNMI Public Law 17-1, the Immigration Conformity Act, became law and repealed immigration responsibilities of the Commonwealth. In May of 2010, the Department amended the Employment Rules and Regulations.

1 continue working after the CW-1 petition was denied because the Complainants' needed work
2 and money. In consideration of above, Complainants were not U.S. Citizens, CNMI permanent
3 residents or U.S. permanent residents, foreign national workers, and nonimmigrant aliens, as
4 defined by the regulations. The undersigned further finds that Complainants were employed
5 illegally and the Administrative Hearing Office lacks jurisdiction of claims arising from an illegal
6 employment relationship.

7 **3. The six-month statute of limitations time-bars a part of Complainants' claim.**

8 Pursuant to 3 CMC § 4962, "[n]o labor complaint may be filed more than six months after the
9 date of the last-occurring event that is the subject of the complaint, except in cases where the
10 actionable conduct was not discoverable upon the last-occurring event." "If a complaint is not
11 timely filed, the hearing office *shall* dismiss the complaint with prejudice." NMIAC § 80-20.1-
12 465(e). Emphasis added. "The hearing officer may, after notice and an opportunity to be heard is
13 provided to the parties, dismiss *sua sponte* a complaint that the hearing officer finds to be without
14 merit." 3 CMC § 4947.

15 Here, Complainants filed their complaint on February 20, 2020. In LC-20-007, Complainant
16 alleges unpaid wages arising from July 17, 2019 to September 27, 2019. In LC-20-008,
17 Complainant alleges unpaid wages arising beyond June 1, 2019. The claims arising outside the
18 six-month statute of limitation must be dismissed.

19 **IV. CONCLUSION**

20 Based on the above-stated findings of fact and conclusions of law, the undersigned finds that
21 the Administrative Hearing Office lacks jurisdiction with respect to the complaints from the
22 above-captioned Complainants. Accordingly, Consolidated Labor Cases Nos. 20-007 and 20-008
23 are hereby dismissed, *sua sponte*. Any person or party aggrieved by this Order may appeal by
24 filing the Notice of Appeal form and filing fee with the Administrative Hearing Office within
25 fifteen (15) days from the date of this Order.⁴

26 So ordered this 1st day of March, 2021.

27 /s/

28 **JACQUELINE A. NICOLAS**
Administrative Hearing Officer

⁴ The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative Hearing Office, with the applicable filing fee.

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



In Re the Matter of:

Labor Case No. 20-019

Tat Mong Choi,

Complainant,

ORDER OF DISMISSAL

v.

Imperial Pacific International (CNMI), LLC,

Respondent.

After a prehearing conference to which the parties failed to show, this matter was scheduled for an Order to Show Cause Hearing to determine why this case should not be dismissed. This matter came for an Order to Show Cause Hearing on March 3, 2021 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Complainant Tat Mong Choi ("Complainant") was not present telephonically but designated an authorized representative to appear on his behalf, Huang Cheng. Respondent Imperial Pacific International (CNMI), LLC ("Respondent") failed to designate an authorized representative to appear for the hearing and was not present. The Department's Enforcement, Compliance, and Monitoring Section ("Enforcement") was present and represented by Labor Law Enforcement Specialist Arlene Rafanan.

Here, the parties were given sufficient notice and opportunity to respond as to why this case should not be dismissed. Specifically, on January 28, 2021, the Notice of Hearing was issued and served to the contact information provided by the parties, pursuant to NMIAC § 80-20.1.475(d)(4). With regards to the authorized representative for Complainant, Mr. Cheng stated that he was only present to relay information to the Complainant. When asked why this case should not be dismissed, Mr. Cheng further stated that he is not a lawyer, has no personal knowledge of this case, and Complainant departed the CNMI in July 2020 with no plans to return. The authorized representative cannot replace or stand in the shoes of the Complainant. Further, the authorized representative is not equipped to represent Complainant and participate in the

1 hearing. Based on above, the undersigned finds that the parties failed to show good cause as to
2 why this case should not be dismissed. Accordingly, pursuant to NMIAC § 80-20.1-485(b), this
3 matter is hereby **DISMISSED**.

4 Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form
5 and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of
6 this Order.¹

7 So ordered this **3rd** day of March, 2021.

8
9 /s/

JACQUELINE A. NICOLAS
Administrative Hearing Officer

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28 ¹ The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the
Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative
Hearing Office, with the applicable filing fee.

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



In Re the Matter of:

Labor Case No. 20-022

Yinan Hu,

Complainant,

ORDER OF DISMISSAL

v.

Imperial Pacific International (CNMI), LLC,

Respondent.

After a prehearing conference to which the parties failed to show, this matter was scheduled for an Order to Show Cause Hearing to determine why this case should not be dismissed. This matter came for an Order to Show Cause Hearing on March 3, 2021 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Complainant Yinan Hu ("Complainant") was not present. Respondent Imperial Pacific International (CNMI), LLC ("Respondent") was not present. The Department's Enforcement, Compliance, and Monitoring Section ("Enforcement") was present and represented by Labor Law Enforcement Specialist Arlene Rafanan.

Here, the parties were given sufficient notice and opportunity to respond as to why this case should not be dismissed. Specifically, on February 4, 2021, the Notice of Hearing was issued and served to the contact information provided by the parties, pursuant to NMIAC § 80-20.1.475(d)(4). During the hearing, Enforcement indicated that Complainant departed the CNMI in October and is unaware as to whether Complainant plans to return. Enforcement further indicated that requests for documents and notices to Respondent were properly served but remain unanswered. Specifically, Respondent designates an email address for electronic service of process but does not have anyone authorized to appear for investigations and hearings. Based on above, the undersigned finds that the parties failed to show good cause as to why this case should not be dismissed. Accordingly, pursuant to NMIAC § 80-20.1-485(b), this matter is hereby

DISMISSED.

1 Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form
2 and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of
3 this Order.¹

4 So ordered this 3rd day of March, 2021.

6 /s/

7 **JACQUELINE A. NICOLAS**
8 Administrative Hearing Officer
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28 ¹ The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the
Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative
Hearing Office, with the applicable filing fee.



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

In Re Matter of:) PUA Case No. 20-0027
Ray L. Mailuyal)
Appellant,)
v.) ORDER DENYING REQUEST TO
CNMI Department of Labor,) REOPEN;
Division of Employment Services-PUA,) FINAL AGENCY DECISION
Appellee.)

This matter came before the undersigned on February 23, 2021 pursuant to Appellant's request to reopen the decision issued on November 12, 2020 for the above-captioned case. For the reasons stated below, the Appellant's request is hereby **DENIED**.

Pandemic Unemployment Assistance ("PUA") and Federal Pandemic Unemployment Compensation ("FPUC") was intended to support workers and employment affected by the COVID-19 pandemic. Pursuant to HAR §12-5-93(h)-(i), a decision may be reopened by written motion of the parties' or the Administrative Hearing Officer's own motion. If a case is reopened, "the [Administrative Hearing Officer] shall schedule the matter for further hearing and notify the parties to the appeal" HAR §12-5-93(i). A decision can only be reopened once by a particular party. HAR §12-5-93(j). In the event that an application to reopen is denied or parties have further objections to a subsequent decision, the parties may obtain judicial review. *Id.*

Here, Appellant filed a written request to reopen the decision because "I applied for PUA benefits, in good faith" and the COVID-19 public health emergency has "greatly affected me personally, physically, emotionally, as well as my mobility and capabilities to continue to find job or to assume work." Appellant further stated, "I don't understand why DOL gave me month 'first' and then, 3 months later I was told I don't qualify and need to return the money." Also, Appellant states, "[i]t's very hard taking care of my dialysis mother and at the same time trying to deal with this difficult situation."

1 The undersigned finds there is insufficient basis to support reopening this decision. As a
2 preliminary matter, the undersigned recognizes that these have been exceptionally difficult times
3 for everyone. However, the undersigned must uphold the applicable laws based on the
4 circumstances of this case. Cases should not be reopened simply to relitigate issues that have
5 already been decided after a hearing to which both parties had an opportunity to be heard—
6 especially absent a legal, factual, or evidentiary error demonstrating the unwarranted deprivation
of benefits.

7 Upon review of the Administrative Decision and admitted exhibits, Appellant does not qualify
8 for PUA benefits.¹ First, in the Appellant's application, Appellant certified under penalty of
9 perjury that his COVID-19 qualifying reason was because he was scheduled to commence
10 employment but does not have a job or unable to reach the job as a direct result of COVID-19.
11 However, during the Administrative Hearing, it was learned that Appellant resigned from
12 employment in December 2019 due to miscommunication and performance issues unrelated to
13 COVID-19. Appellant testified he had no other employment besides odd jobs, like bush-cutting,
14 and had not worked since. While Appellant claimed that he was promised a warehouse job by the
15 same employer, Appellant failed to show there was a bona fide work offer or that he was ever
16 scheduled to commence employment. Furthermore, when asked about the remaining qualifying
17 reasons during the Administrative Hearing, Appellant responded in the negative. Contrary to
18 Appellant's prior testimony, Appellant now indicates he was a self-employed independent
19 contractor. In addition to the conflicting testimony, Appellant provides no business license,
20 employment contracts, BGRTs, or other documentary evidence to support his claim as an
21 independent contractor. Based on the information Appellant provided, Appellant does not meet
any of the COVID-19 qualifying reasons to receive PUA benefits.

22 With respect to the overpayment issue, it is important to reiterate that this overpayment
23 occurred based on the false information provided on the Appellant's application. Because
24 Appellant self-certified, under penalty of perjury, that the information he provided on his
25 application were true and correct – the application was processed for payment. As stated in the
26 application, Appellant is responsible for reading the PUA Benefits Rights Information Handbook
27 so that he can provide the necessary information to correctly adjudicate his claim. Furthermore,

28 ¹ The claimant must attest that he or she is able and available for work, as defined by Hawaii law, except they are unemployed, partially unemployed, or unable to work or unavailable for work as a direct result¹ of a COVID-19 reason identified in Section 2102 (a)(3)(A)(ii)(I) of the CARES Act.

1 considering that this program operates based on self-certifications, Appellant is responsible for
2 the information he provides or fails to provide in his application or weekly certifications to the
3 Department. Considering that the Appellant's false information contributed to the overpayment,
4 fault was assigned to Appellant.² Since Appellant was considered at fault, Appellant was not
entitled to a waiver of repayment.³

5 In conclusion, Appellant does not provide any new information to justify reopening this case
6 or reversing the decision. Accordingly, based on the applicable law and circumstances of this
7 case, Appellant's request to reopen is **DENIED**. The Administrative Order, issued November 12,
8 2020, and this present Order Denying Request to Reopen shall constitute a **FINAL AGENCY**
9 **DECISION**.

10 In the event a party aggrieved by this Order would like to dispute or contest this decision, said
11 party may seek judicial review with the CNMI Superior Court under the local Administrative
12 Procedures Act within 30 days of this Order. *See* 1 CMC § 9112.

13 So ordered this 24th day of February, 2021.

14
15 /s/

16 **JACQUELINE A. NICOLAS**
17 Administrative Hearing Officer
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27 ² Fault is defined as: "(A) A material statement made by the individual which the individual knew or should have
28 known to be incorrect; or (B) Failure to furnish information which the individual knew or should have known to be
material; or (C) Acceptance of a payment which the individual either knew or reasonably could have been expected
to know was incorrect." HRS 12-5-83.

³ "Any individual who has received any amount as benefits . . . to which the individual was not entitled shall be
liable for the amount unless the overpayment was received *without fault* on the part of the recipient and its recovery
would be against equity and good conscience." HRS § 383-44. Emphasis added.



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

In Re Matter of:) PUA Case No. 20-0037
)
Elizabeth A. Berganio,)
)
Appellant,) ORDER DENYING REQUEST TO
) REOPEN;
) FINAL AGENCY DECISION
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

This matter became before the undersigned on February 24, 2021 pursuant to Appellant's request to reopen the decision issued on February 11, 2021 for the above-captioned case. For the reasons stated below, the Appellant's request is hereby **DENIED**.

Pandemic Unemployment Assistance ("PUA") and Federal Pandemic Unemployment Compensation ("FPUC") was intended to support workers and employment affected by the COVID-19 pandemic. Pursuant to HAR § 12-5-93(h)-(i), a decision may be reopened by written motion of parties' or the Administrative Hearing Officer's own motion. If a case is reopened, "the [Administrative Hearing Officer] shall schedule the matter for further hearing and notify the parties to the appeal..." HAR § 12-5-93(j). In the event that an application to reopen is denied or parties have further objections to a subsequent decision, the parties may obtain judicial review. *Id.*

Here, Appellant filed a written request to reopen the decision. Appellant did not state the basis of her appeal. Nonetheless, Appellant did refer to Federal Immigration Judge Jesus Clemente's order granting Department of Homeland Security's Motion to Appear for Telephonic Appearance in the Matter of BERGANIO, ELIZABETH ABELLA, In Removal Proceedings, File No. A205285746.

The undersigned finds there is insufficient basis to support reopening the decision. Cases should not be reopened to relitigate issues that have already been decided after a hearing to which

both parties had an opportunity to be heard, especially absent a legal, factual, or evidentiary error demonstrating the unwarranted deprivation of benefits.

Upon review of the Administrative Decision and admitted exhibits, Appellant does not qualify for PUA benefits. First, Appellant produced no evidence to prove that she was authorized to work in the CNMI during the weeks she claimed PUA. Moreover, during the hearing it was learned that Appellant was only authorized to work from July 09, 2014 to July 08, 2015. Second, Appellant is not a qualified alien eligible for PUA. Although the undersigned recognized that Appellant submitted an application for asylum and that Appellant was scheduled to appear at an upcoming removal proceeding in Immigration Court, such did not prove that Appellant was an alien whose deportation was being withheld under 243(h) or whose removal was being withheld under 241(b)(3) of the INA. Finally, Appellant has not produced new information in her request to reopen justifying the reopening of this case or reversing of the decision.

Accordingly, based on the applicable law and circumstances of this case, Appellant's request to reopen is **DENIED**. The Administrative Order, issued on February 11, 2021, and this present Order Denying Request to Reopen shall constitute a **FINAL AGENCY DECISION**.

In the event a party aggrieved by this Order would like to dispute or contest this decision, said party may seek judicial review with the CNMI Superior Court under the local Administrative Procedures Act within 30 days of this Order. See 1 CMC § 9112.

So ordered this 17th day of March, 2021.

/s/: Joey P. San Nicolas
JOEY P. SAN NICOLAS
Pro Tem Hearing Officer

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



In Re Matter of:) **PUA Case No. 20-0038**
)
Nerissa L. Cayetano,)
)
Appellant,) **ADMINISTRATIVE ORDER**
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on December 14, 2020 at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Appellant Nerissa L. Cayetano ("Appellant") was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program ("Appellee" or "Department") was present and represented by Jake Maratita, PUA Program Supervisor, Angel Ray Guerrero, PUA Coordinator, and Brittany Takai, PUA Coordinator. There were no other witnesses who gave testimony at the hearing.

Exhibits:

1. Exhibit 1: Request to File an Appeal (filed November 19, 2020);
2. Exhibit 2: Department Determination (mail date October 20, 2020);
3. Exhibit 3: Copy of Appellant's EAD Card;
4. Exhibit 4: Employer Memorandum (dated March 16, 2020);
5. Exhibit 5: Separation Notice (dated July 31, 2020);
6. Exhibit 6: Application Snapshot;
7. Exhibit 7: Department's SAVE Verification (initiated November 06, 2020);
8. Exhibit 8: Notice of Overpayment (dated December 10, 2020).

1 For the reasons stated below, the Department's Determination dated October 20, 2020 and
2 Department's Notice of Overpayment are **AFFIRMED**. Claimant is not eligible for benefits for
3 the period of March 22, 2020 to December 26, 2020.

4 **II. JURISDICTION**

5 On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of
6 2020 was signed into law creating new temporary federal programs for unemployment benefits
7 called Pandemic Unemployment Assistance ("PUA")¹ and Federal Pandemic Unemployment
8 Compensation ("FPUC").² On March 29, 2020, the CNMI Government executed an agreement
9 with the US Secretary of Labor to operate the PUA and FPUC program in accordance to
10 applicable law.³ The CNMI Department of Labor is charged with the responsibility in
11 administering the above-mentioned programs in the CNMI. The CNMI Department of Labor
12 Administrative Hearing Office has been designated to preside over first level appeals of the
13 aforesaid programs.

14 Upon review of the records, the appeal was timely filed. Accordingly, jurisdiction is
15 established.

16 **III. PROCEDURAL HISTORY & ISSUE**

17 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon
18 review of Appellant's application and supporting documents, the Department issued a
19 disqualifying determination on October 20, 2020. The Department's determination found that
20 Appellant was not eligible to receive PUA effective March 22, 2020 to December 26, 2020
21 because the Department found that Appellant was not a qualified alien. On November 19, 2020,
22 Appellant filed a request to appeal the disqualifying determination. As stated in Notice of Hearing,
23 the issues on appeal are: (1) whether the Appeal is timely filed; (2) whether Appellant is a
24 qualified alien eligible for PUA and (3) whether there are any overpayments necessitating the
25 return of PUA funds in this case.

26 ¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

27 ² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

28 ³ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

IV. FINDINGS OF FACT

In consideration of the evidence provided and credibility of witness testimony, the undersigned issues the following findings of fact:

1. Prior to the pandemic, Appellant was employed as a Supervisor at JP World Corporation ("Employer"), located in Gualo Rai, Saipan. Prior to COVID-19, Appellant generally worked 43 hours per week for the hourly rate of \$9.20.
2. Effective March 22, 2020, Appellant's hours were reduced to 40 hours per week. There was no further reduction in hours reported and Appellant continues to work for Employer.
3. On August 15, 2020, Appellant filed an application to claim PUA and FPUC benefits.⁴ In the application, Appellant certified under penalty of perjury that 1) she was an alien/refugee lawfully admitted to the U.S. and 2) her employment hours were reduced due to COVID-19, since March 22, 2020.
4. In an effort to verify Appellant's claim that she was an alien/refugee lawfully admitted to the U.S., the Department, on October 15, 2020, entered Appellant's information into the Systematic Alien Verification for Entitlements (SAVE) database maintained by USCIS, Verification Division.⁵ Although the SAVE results did not show that Appellant was an alien/refugee lawfully admitted to the U.S. it did show that Appellant was admitted to temporarily work in the United States until November 06, 2020. Moreover, the SAVE results showed that Appellant had an Employment Authorization Document card with the Category 09.
5. On October 20, 2020, the Department disqualified Appellant from receiving PUA benefits effective March 22, 2020 to December 26, 2020.⁶ The Determination found that Appellant was not a U.S. Citizen, Non-citizen National, or Qualified Alien eligible for PUA.
6. On November 19, 2020, Appellant filed the present Appeal claiming to be a qualified alien.⁷

⁴ Exhibit 6.

⁵ Exhibit 7.

⁶ Exhibit 2.

⁷ Exhibit 1.

1 7. Appellant is not a permanent resident, alien granted asylum, refugee, an alien pending
2 deportation or removal, an alien granted conditional entry, a Cuban or Haitian entrant, or
3 an alien battered or subject to extreme cruelty.

4 8. On December 10, 2020, the Department issued a Notice of Determination of PUA
5 Overpayment.⁸ Appellant received \$9,180.00 in Federal Pandemic Unemployment
6 Compensation and \$2,317.40 in Pandemic Unemployment Assistance.

7 **V. CONCLUSIONS OF LAW**

8 In consideration of the above-stated findings and applicable law, the undersigned issues the
9 following conclusions of law:

10 **1. This appeal is timely filed.**

11 Generally, an appeal should be filed within ten days after the Notice of Determination was
12 issued or served to the claimant. However, the Department may extend the period to thirty days
13 by a showing of good cause.⁹ Good cause means: (1) illness or disability; (2) keeping an
14 appointment for a job interview; (3) attending a funeral of a family member; and (4) any other
reason which would prevent a reasonable person from complying as directed.¹⁰

15 Here, Appellant received the disqualifying determination on October 20, 2020. The Appellant
16 did not file her Appeal until November 19, 2020 – approximately 29 days after receiving the
17 determination. Although the Appeal was filed beyond the ten-day deadline, the undersigned
18 recognizes that this is due to the faulty instructions included on the determination. Specifically,
19 the determination indicated that an appellant may choose to submit their appeal by email.
20 Appellant stated that she emailed her appeal on October 29, 2020 and was subsequently instructed
21 by the Department to submit an appeal form to the Administrative Hearing Office, which she did
22 on November 19, 2020. However, despite the technical errors and inconsistent filing instructions,
23 the undersigned finds that Appellant acted diligently to pursue this appeal. Based on above, there
24 is good cause to extend the filing period to 30 days from the day Appellant received the
determination. Accordingly, Appellant's filing is timely.

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27 _____
28 ⁸ Exhibit 8.

⁹ HI. Rev. Statute § 383-38(a).

¹⁰ HAR § 12-5-81(j).

2. Appellant's employment was not affected as a direct result of COVID-19.

Pursuant to Section 2102 of the CARES Act of 2020, Public Law 116-136, there are a number of requirements to meet the eligibility standard of PUA. First, the claimant cannot be qualified for regular unemployment, extended benefits under state or federal law, or pandemic emergency unemployment compensation (PEUC).¹¹ Second, the claimant must attest¹² that he or she is able and available for work, as defined by Hawaii law, except they are unemployed, partially unemployed, or unable to work or unavailable for work as a direct result¹³ of a COVID-19 reason identified in Section 2102 (a)(3)(A)(ii)(I) of the CARES Act:

- (a) The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- (b) A member of the individual's household has been diagnosed with COVID-19;
- (c) The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;
- (d) A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
- (e) The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
- (f) The individual is unable to reach the place of employment because the individual has been advised by a health care provider to quarantine due to concerns related to COVID-19;
- (g) The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;
- (h) The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
- (i) The individual has to quit his or her job as a direct result of COVID-19;
- (j) The individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or
- (k) The individual is an independent contractor who is unemployed (total or partial) or is unable or unavailable to work because of the COVID-19 public health emergency has severely limited his or her ability to continue performing the customary job.

Here, Appellant submitted a claim for PUA self-certifying under penalty of perjury that her employment hours were reduced due to COVID-19, from 43 hours per week to 40 hours per week.

¹¹ This is not at issue in this case. Appellant testified that she did not receive any other benefits from any other state or federal program.

¹² The PUA program relies on self-certifications and self-reporting under penalty of perjury.

¹³ Pursuant to 20 CFR § 625.5, unemployment is considered a "direct result" of the pandemic where the employment is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events precipitated or exacerbated by the pandemic.

1 Employer did not close operations. Moreover, Appellant continues to work for Employer at 40
2 hours per week. Based on the evidence and testimony provided, Appellant's employment was
3 not affected as a direct result of COVID-19. Accordingly, Appellant is not eligible to receive PUA
4 benefits.

5 **3. Appellant is not a qualified alien eligible for PUA.**

6 PUA and FPUC are federal public benefits as defined by 8 USC §1611(c). As a condition of
7 eligibility for any federal public benefit, the claimant must be a "qualified alien" at the time
8 relevant to the claim. 8 USC §1611(a). Pursuant to 8 USC §1641, the term "qualified alien" is:

- 9 1. An alien admitted for permanent residence under the Immigration and Nationality Act
10 (INA);
- 11 2. An alien granted asylum under § 208 of the INA;
- 12 3. A refugee admitted to the US under § 207 of the INA;
- 13 4. An alien paroled into the US under § 212(d)(5) of the INA for at least one year;
- 14 5. An alien whose deportation is being withheld under § 243(h) of the INA ... or whose
15 removal is being withheld under § 241 (b)(3) of the INA;
- 16 6. An alien granted conditional entry pursuant to § 203 (a)(7) of the INA;
- 17 7. An alien who is a Cuban or Haitian entrant as defined in § 501(e) of the Refugee
18 Education Assistance Act of 1980; or
- 19 8. An alien who (or whose child or parent) has been battered or subject to extreme cruelty
20 in the U.S. and otherwise satisfies the requirements of § 431(c) of the Act.

21 Here, Appellant submitted a claim self-certifying that she was an alien/refugee lawfully
22 admitted to the U.S. However, the SAVE results do not support her claim that she is an
23 alien/refugee lawfully admitted to the U.S. The SAVE results do indicate that Appellant is an
24 EAD, Category 09. Category 09 is a code that USCIS utilizes for applicants pending an
25 adjustment of status. While the undersigned recognizes that Appellant has a pending application
26 or petition with USCIS, said petition has not been approved or granted. Moreover, the
27 undersigned finds that Appellant does not meet any other provision of the qualified alien statute.
28 Accordingly, Appellant does not meet the definition of a qualified alien. More importantly,
Appellant was not a qualified alien at the time of the weeks she is claiming PUA benefits.

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4. An overpayment occurred and Appellant is required to pay the amount back.

“Benefits shall be paid promptly in accordance with a determination, redetermination, or decision or appeal.”¹⁴ However, “[a]ny individual who has received any amount as benefits . . . to which the individual was not entitled shall be liable for the amount unless the overpayment was received without fault on the part of the recipient and its recovery would be against equity and good conscience.”¹⁵ Fault¹⁶ is defined as:

- (A) A material statement made by the individual which the individual knew or should have known to be incorrect; or
- (B) Failure to furnish information which the individual knew or should have known to be material; or
- (C) Acceptance of a payment which the individual either knew or reasonably could have been expected to know was incorrect.

Based on federal guidance, “contrary to equity and good conscience” is tantamount to placing an individual below the poverty line and taking away basic necessities to live. In evaluating equity and good conscience,¹⁷ the factors to consider include, but are not limited to:

- (A) Whether notice of a redetermination was given to the claimant, as required . . .
- (B) Hardship to the claimant that the repayment may impose; and
- (C) The effect, if any, that the repayment will have upon the fulfillment of the objectives of the program.¹⁸

Considering that Appellant was not a qualified alien eligible to receive PUA and her employment was not directly affected by the COVID-19 pandemic, the \$2,317.40 in PUA benefits and \$9,180.00 in FPUC benefits received by Appellant is an overpayment.¹⁹

¹⁴ HRS § 383-43.

¹⁵ HRS § 383-44. Section 2104(f)(2) of the CARES Act requires individuals who have received FPUC overpayments to repay these amounts to the state agency. However, under UIPL 15-20, the state has authority to waive repayments of FPUC if the payment was without fault on the part of the individual and such repayment would be contrary to equity and good conscience. Section 201(d) of the Continued Assistance Act amends Section 2102(d) of the CARES Act and authorizes states to waive the repayment if the state determines that the payment of PUA was without fault on the part of any such individual and such repayment would be contrary to equity and good conscience. This waiver authority applies to overpayments that meet this criterion at any time since the PUA program began.

¹⁶ HRS 12-5-83.

¹⁷ *Id.*

¹⁸ PUA benefits were designed to be a critical lifeline for qualifying individuals facing a financial crisis amidst a pandemic. Issues of fraud and overpayments are of great consequence that jeopardizes the integrity of the program and availability of funds for eligible or qualified individuals.

¹⁹ See Notice of Overpayment, issued December 10, 2020.

1 Here, the undersigned finds Appellant did not provide a material statement that she should
2 have known was incorrect. Moreover, there was no evidence to show that Appellant failed to
3 furnish material information to the Department. Therefore, the overpayment was not the fault of
4 Appellant. Nonetheless, the undersigned finds that repayment by Appellant would not be contrary
5 to equity and good conscience. Here, Appellant continues to work 40 hours per week for
6 Employer at the hourly rate of \$9.20. Appellant further testified that although she supports her
7 family members in the Philippines and in the CNMI, she will pay back the overpayment if
8 required to do so. Accordingly, Appellant is not entitled to a waiver and requiring Appellant to
9 return the overpayment is not contrary to equity and good conscience.

10 VI. CONCLUSION

11 For the reasons stated above, it is ORDERED that:

- 12 1. The CNMI Department of Labor's Determination is **AFFIRMED**;
- 13 2. The Appellant is **INELIGIBLE** to receive PUA benefits for the weeks of March 23,
14 2020 to December 26, 2020.
- 15 3. The CNMI Department of Labor's Notice of Overpayment is **AFFIRMED**;
- 16 4. Appellant shall promptly submit to a repayment plan, with the Benefit Payment Control
17 Unit. Appellant shall pay monthly installments of, at least, \$100.00 by the first of each
18 month, beginning April 01, 2021, until the entire overpayment is completely paid;
- 19 5. The CNMI Department of Labor Benefit Payment Control Unit shall notify the CNMI
20 Department of Finance of this overpayment in federal funds. Where possible, BPC shall
21 collect any of Appellant's tax rebates, tax refunds, stimulus checks, or other federal funds
22 to satisfy this debt.

23 If a party is aggrieved by this Order and would like to contest the decision, he or she must
24 submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5.93. The
25 written request should be supported by legal, factual, or evidentiary reasons to reopen the
26 decision. The written request must be submitted to the Administrative Hearing Office, either in
27 person at 1357 Mednilla Avenue, Capitol Hill Saipan MP 96950) or via email at
28 hearing@dol.gov.mp.

In the event a request to reopen the decision is granted, the matter shall be scheduled for a
subsequent hearing. In the event a request to reopen the decision is denied, or if the Appellant

1 still disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI
2 Superior Court under the local Administrative Procedures Act. *See* 1 CMC § 9112. All forms,
3 filings fees, and filing deadlines for judicial review will be as established by the applicable law
4 and court rule.

5 So ordered this 17th day of March, 2021.

6
7 /s/

JOEY P. SAN NICOLAS

Pro Tem Administrative Hearing
Officer

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



In Re Matter of:) PUA Case No. 20-0041
)
Choump Luangphinit,)
)
) ADMINISTRATIVE ORDER
Appellant,)
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on December 17, 2020 at 9:00 a.m. at the Administrative Hearing Office. Appellant Choump Luangphinit (“Appellant”) attempted to appear via Microsoft Teams from Laos. However, due to the fact the Administrative Hearing Office does not have jurisdiction or the authority to conduct hearings outside of the CNMI, Appellant was not authorized to participate in the hearing. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program (“Appellee” or “Department”) was present and represented by Jake Maratita, PUA Program Supervisor and Colleen Diaz, PUA Coordinator. The sole witness at the hearing was Colleen Diaz.

Exhibits:

1. Exhibit 1: Department Determination dated November 03, 2020;
2. Exhibit 2: Request for Appeal dated November 23, 2020;
3. Exhibit 3: Letter from IPI Management dated March 16, 2020;
4. Exhibit 4: Notices of Furlough dated April 06, 2020, May 4, 2020, and June 5, 2020;
5. Exhibit 5: Appellant’s Application Snapshot;
6. Exhibit 6: Copy of Appellant’s US Passport; and
7. Exhibit 7: Appellant November 10, 2020 email to Department.

For reasons stated below, the Department’s Determination dated November 03, 2020 is

1 **AFFIRMED.** Claimant is not eligible for benefits for the period of March 19, 2020 to December
2 26, 2020.

3 II. JURISDICTION

4 On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of
5 2020 was signed into law creating new temporary federal programs for unemployment benefits
6 called Pandemic Unemployment Assistance ("PUA")¹ and Federal Pandemic Unemployment
7 Compensation ("FPUC").² On March 29, 2020, the CNMI Government executed an agreement
8 with the US Secretary of Labor to operate the PUA and FPUC program in accordance to
9 applicable law³. The CNMI Department of Labor is charged with the responsibility in
10 administering the above-mentioned programs in the CNMI. The CNMI Department of Labor
11 Administrative Hearing Officer has been designed to preside over first level appeals of the
12 aforesaid programs.

13 Upon review of the records, the appeal was timely filed. Accordingly, jurisdiction is
14 established.

15 III. PROCEDURAL HISTORY AND ISSUE

16 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon
17 review of Appellant's application and supporting documents, the Department issued and mailed
18 its disqualifying determination on November 03, 2020. The Department's determination found
19 that Appellant was not eligible to receive PUA effective March 19, 2020 to December 26, 2020.
20 On November 23, 2020, Appellant filed a request to appeal the disqualifying determination. As
21 stated in the Notice of Hearing, the issues on appeal are: (1) whether the Appeal was timely filed;
22 (2) whether Appellant is eligible for PUA; and (3) whether there are any overpayments.

23 VI. FINDINGS OF FACT

24 In consideration of the evidence provided and credibility of witness testimony, the
25 undersigned issues the following findings of fact:

- 26 1. Prior to the pandemic, Appellant, a US citizen, was employed as an Assistant Director for
27 Public Area Hotel Operations for Imperial Pacific International (CNMI), LLC

28 ¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

³ Pursuant to Section 2102(h) of the CARES Act of 2020, (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

1 (“Employer”). Appellant was working 40 hours a week and was earning \$2,164.98 every
2 two weeks.

3 2. On March 17, 2020, Employer closed its operations due to the COVID-19 pandemic. To
4 date, Employer has not reopened operations.

5 3. On March 19, 2020, Appellant exited the CNMI and relocated to Laos. As of the
6 date of the Hearing, Appellant has not returned to the CNMI, and is currently residing in
7 Laos.

8 4. On April 06, 2020, Employer furloughed Appellant.

9 5. On June 17, 2020, Appellant filed an application to claim PUA and FPUC benefits. In
10 the application, Appellant certified under penalty of perjury that his place of employment
11 was closed as a direct result of the COVID-19 public health emergency.

12 6. Appellant has not received any payment or benefits from PUA or FPUC.

13 7. On November 03, 2020, the Department disqualified Appellant from receiving PUA
14 benefits effective March 19, 2020 to December 26, 2020. The Determination was based
15 on the fact that Appellant was not considered “able” and “available” to work in the CNMI
16 since he was physically located outside of the CNMI.

17 8. On November 10, 2020, Appellant attempted to file an appeal of the Determination by
18 emailing a letter to the Administrative Hearing Office. On November 23, 2020, Appellant
19 submitted the correct PUA Appeal Form to the Administrative Hearing Office.

20 V. CONCLUSION OF LAW

21 In consideration of the above-stated findings and applicable law, the undersigned issues the
22 following conclusions of law:

23 1. The appeal is timely filed.

24 Generally, an appeal should be filed within ten days after the Notice of Determination was
25 issued or served on the claimant. However, the Department may extend the period to thirty days
26 by a showing of good cause.⁴ Good cause means (1) illness or disability; (2) keeping an
27 appointment for a job interview; (3) attending a funeral of a family member; (4) any other reason
28 which would prevent a reasonable person from complying as directed.⁵

⁴ HI. Re. Statute § 383-38-(a)

⁵ HAR § 12-5-87(j)

1 Here, Appellant did not file his Appeal until November 23, 2020-approximately twenty days
2 after receiving the determination. Although the Appeal was filed beyond the ten-day deadline the
3 undersigned recognizes that this is due to faulty instructions included on the determination. In
4 spite of the faulty instructions, the Appellant attempted to email his initial request to appeal on
5 November 10, 2020 and eventually submitted his Appeal Form at the Administrative Hearing
6 Office on November 23, 2020. Accordingly, the Appellant acted diligently to pursue this appeal.
7 Based on the above, there is good cause to extend the filing period to 30 days from the day
8 Appellant received the determination. Accordingly, Appellant's filing is timely.

8 **2. Appellant's employment was affected as a direct result of COVID-19.**

9 Pursuant to Section 2102 of the CARES Act of 2020, Public Law 116-136, there are a number
10 of requirements to meet the eligibility standard of PUA. First, the claimant cannot be qualified
11 for regular unemployment, extended benefits under state or federal law, or pandemic emergency
12 unemployment compensation (PEUC).⁶ Second, the claimant must attest⁷ that he or she is able
13 and available for work, as defined by Hawaii law, except they are unemployed, partially
14 unemployed, or unable to work or unavailable to work as a direct result ⁸of a COVID-19 reason
15 identified in Section 2102(a)(3)(A)(ii)(I) of the CARES Act:

- 16 (a) The individual has been diagnosed with COVID-19 or is
17 experiencing symptoms of COVID-19 and is seeking a medical
18 diagnosis;
- 19 (b) A member of the individual's household has been diagnosed
20 with COVID-19;
- 21 (c) The individual is providing care for a family member or a
22 member of the individual's household who has been diagnosed
23 with COVID-19;
- 24 (d) A child or other person in the household for which the individual
25 has primary caregiving responsibility is unable to attend school
26 or another facility that is closed as a direct result of the COVID-
27 19 public health emergency and such school or facility care is
28 required for individual to work;
- (e) The individual is unable to reach the place of employment
because of a quarantine imposed as a direct result of the COVID-
19 public health emergency.

⁶ This is not at issue in this case.

⁷ The PUA program relies on self-certifications and self-reporting under penalty of perjury.

⁸ Pursuant to 20 CFR § 625.5, unemployment is considered a "direct result" of the pandemic where the employment is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events precipitated or exacerbated by the pandemic.

- (f) The individual is unable to reach the place of employment because the individual has been advised by a health care provider to quarantine due to concerns related to COVID-19;
- (g) The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of COVID-19 public health emergency;
- (h) The individual has become the breadwinner or major support for a household because the health of the household has died as a direct result of COVID-19;
- (i) The individual has to quit his or her job as a direct result of COVID-19;
- (j) The individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or
- (k) The individual is an independent contractor who is unemployed (total or partial) or is unable or unavailable to work because of the COVID-19 public health emergency has severely limited his or her ability to continue performing the customary job.

Generally, the CNMI was heavily impacted by the threat of COVID-19. Due to the threat of COVID-19 and pursuant to the Governor's Executive Orders, there were closures of government offices, restrictions on private businesses, and an overall reduction in revenue from the immediate halt in tourism. Here, the undersigned notes that Appellant's employer, Imperial Pacific International (CNMI), LLC, closed its casino operations as result of the economic impact prompted by COVID-19 pandemic. Specifically, Employer relied almost exclusively on the tourism industry to operate the casino. When tourism came to an abrupt halt, Employer did not have sufficient income or revenue to sustain operations or payroll. To date, Employer has not resumed or reopened operations. Accordingly, the undersigned finds that Appellant's employment was affected as a direct result of COVID-19.

3. Appellant was not able and available to work in the CNMI, effective March 19, 2020.

A claimant must be able to work and be available for work to be eligible for benefits. "An individual shall be deemed able and available for work... if the individual is able and available for suitable work during the customary work week of the individual's customary occupation which falls within the week for which a claim is filed."⁹ "An individual shall be deemed *able* to work if the individual has the physical and mental ability to perform the usual duties of the individual's customary occupation or other work for which is the individual is reasonably fitted

⁹ HAR § 12-5-35(a)

1 by training and experience.”¹⁰ “An individual shall be deemed *available* for work only if the
2 individual is ready and willing to accept employment for which the individual is reasonably fitted
3 by training and experience. The individual must intend and wish to work, and there must be no
4 undue restrictions either self-imposed or created by force of circumstances which prevent the
5 individual from accepting employment.”¹¹ In determining whether an individual is able and
6 available, it is proper to consider the individual’s geographical location at the time benefits are
7 claimed.¹² If a claimant is not physically able or available for work, he or she may be disqualified
8 for PUA, unless the reason he or she is unable or unavailable is directly related to a COVID-19
reason, such as illness and orders to quarantine.

9 Here, although Appellant claimed PUA benefits for the period of March 19, 2020 to December
10 26, 2020, he was not physically in the CNMI during the claimed weeks. As of the date of the
11 hearing, Appellant was residing in the country of Laos. Therefore, Appellant’s physical location
12 outside of the CNMI unduly restricted Appellant’s availability and ability to work within the
13 CNMI. This restriction cannot be lifted until Appellant returns to the CNMI. Accordingly, the
14 undersigned finds that Appellant was not “able and available” to work in the CNMI, as defined
by law, effective March 19, 2020.

15 **4. An overpayment did not occur.**

16 “Benefits shall be paid promptly in accordance with a determination, redetermination, or
17 decision or appeal.”¹³ However, “[a]ny individual who has received any amount as benefits . . .
18 to which the individual was not entitled shall be liable for the amount unless the overpayment was
19 received without fault on the part of the recipient and its recovery would be against equity and
20 good conscience.”¹⁴

21 Here, Appellant did not receive PUA benefits. Therefore, an overpayment did not occur.

22 **VI. CONCLUSION**

23 For reasons stated above, it is ORDERED that:

- 24 1. The CNMI Department of Labor’s Determination is **AFFIRMED**; and

25
26 ¹⁰ HAR § 12-5-35(a)(1)(emphasis added).

27 ¹¹ HAR § 12-5-35(a)(2) and (b) (emphasis added).

28 ¹² See HAR § 12-5-35(b) (“The geographical extent of such area is limited to the area in which the individual lives and within which the individual reasonably can be expected to commute to work.”)

¹³ HRS § 383-43.

¹⁴ HRS § 383-44.

1 2. The Appellant is **NOT ELIGIBLE** to receive PUA Benefits for the period of March 19,
2 2020 to December 26, 2020.

3 If a party is aggrieved by this Order and would like to contest the decision, he or she must
4 submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The
5 written request should be supported by legal, factual, or evidentiary reasons to reopen the
6 decision. The written request must be submitted to the Administrative Hearing Office, either in
7 person at 1357 Mednilla Avenue, Capitol Hill Saipan MP 96950) or via email at
8 hearing@dol.gov.mp.

9 In the event a request to reopen the decision is granted, the matter shall be scheduled for a
10 subsequent hearing. In the event a request to reopen the decision is denied, or if the Appellant
11 still disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI
12 Superior Court under the local Administrative Procedures Act. *See* 1 CMC § 9112. All forms,
13 filings fees, and filing deadlines for judicial review will be as established by the applicable law
14 and court rule.

15 So ordered this 17th day of March, 2021.

16 /s/: Joey P. San Nicolas
17 JOEY P. SAN NICOLAS
18 Pro Tem Administrative Hearing Officer
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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



In Re Matter of:) PUA Case No. 20-0042
)
Trent J. Mendiola,)
)
Appellant,) **ADMINISTRATIVE ORDER**
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on January 11, 2021 at 9:00 am at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held online. Appellant Trent J. Mendiola ("Appellant") failed to appear at the hearing. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program ("Appellee" or "Department") was present and represented by Labor Certification Worker Dennis Cabrera, PUA Coordinator Carol Hosono, PUA Coordinator Cameron Atalig and PUA Supervisor Sharon Palacios. There were no other witnesses who gave testimony at the hearing.

Exhibits:

1. Exhibit 1: Determination mail dated December 15, 2020;
2. Exhibit 2: Request to File an Appeal dated December 14, 2020;
3. Exhibit 3: Appellant's Notification of Personnel Action;
4. Exhibit 4: Appellant's Application Snapshot;
5. Exhibit 5: Email from Walter Manglona dated December 10, 2020;
6. Exhibit 6: Notice of Overpayment dated January 11, 2021;
7. Exhibit 7: Letter from Robert Hunter dated February 24, 2021;
8. Exhibit 8: Letter from Robert Hunter dated March 04, 2020.

1 For the reasons stated below, the Department's Determination dated December 15, 2020 and
2 the Department's Notice of Overpayment of January 11, 2021 are **AFFIRMED**. Claimant is not
3 eligible for benefits for the period of March 06, 2020 to December 26, 2020.

4 II. JURISDICTION

5 On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of
6 2020 was signed into law creating new temporary federal programs for unemployment benefits
7 called Pandemic Unemployment Assistance ("PUA")¹ and Federal Pandemic Unemployment
8 Compensation ("FPUC").² On March 29, 2020, the CNMI Government executed an agreement
9 with the US Secretary of Labor to operate the PUA and FPUC program in accordance to
10 applicable law.³ The CNMI Department of Labor is charged with the responsibility in
11 administering the above-mentioned programs in the CNMI. The CNMI Department of Labor
12 Administrative Hearing Office has been designated to preside over first level appeals of the
13 aforesaid programs.

14 Upon review of the records, the appeal was timely filed. Accordingly, jurisdiction is
15 established.

16 III. PROCEDURAL HISTORY & ISSUE

17 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon
18 review of Appellant's application and supporting documents, the Department issued and mailed
19 its disqualifying determination on December 15, 2020. The Department's determination found
20 that Appellant was not eligible to receive PUA effective March 06, 2020 to December 26, 2020.
21 On December 14, 2020, Appellant filed a request to appeal the disqualifying determination. As
22 stated in Notice of Hearing, the issues on appeal are whether the appeal is timely filed, whether
23 Appellant is eligible for PUA and whether there are any overpayments necessitating the return of
24 PUA funds in this case.

25 ///

26 ¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

27 ² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

28 ³ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

IV. FINDINGS OF FACT

In consideration of the evidence provided and credibility of witness testimony, the undersigned issues the following findings of fact:

1. Prior to the pandemic, Appellant was employed as a Bus Driver, under a limited term appointment, at the Department of Community and Cultural Affairs ("DCCA"). Appellant was stationed at the Office on Aging in Saipan. Appellant worked for Employer from July 17, 2019 to March 06, 2020. Appellant worked 40 hours per week for the hourly rate of \$7.61.⁴
2. Pursuant to Appellant's Notification of Personnel Action ("NOPA"), his employment expired on March 06, 2020.⁵
3. On March 04, 2020, after earlier advising Appellant that he had been selected to fill a separate vacant Bus Driver position at DCCA, Departmental Head, Secretary Robert Hunter ("Secretary Hunter"), cancelled Appellant's selection due to unavailability of funds and due to austerity measures that were soon to be implemented.⁶
4. On August 06, 2020, Appellant filed an application to claim PUA and FPUC benefits. In the application, Appellant certified that he was scheduled to commence employment and was not able to reach his job as a direct result of the COVID-19 public health emergency.
5. DCCA Office on Aging Director Walter Manglona ("Director Manglona") advised the Department, in an email dated December 10, 2020, that Appellant was not furloughed. Rather, according to Director Manglona, Appellant's employment contract expired on March 06, 2020.
6. On December 15, 2020, the Department disqualified Appellant from receiving PUA benefits effective March 06, 2020 to December 26, 2020.⁷ The Determination was based on the fact that Appellant's separation from work was not related to the pandemic.
7. On January 11, 2021, the Department issued a Notice of Overpayment, stating that Appellant was overpaid \$9,180.00 in FPUC benefits and \$10,230.00 in PUA benefits.

⁴ Exhibit 4.

⁵ Exhibit 3.

⁶ Exhibit 8.

⁷ Exhibit 2

1 8. On December 10, 2020, Walter A. Manglona emailed the Department to clarify that
2 DCCA's decision not to hire Appellant after March 06, 2020, was made before the
3 implementation of COVID-19 protocols in the CNMI.

4 9. Despite being served with the notice of hearing in this case, Appellant failed to appear at
5 the hearing.

6 V. CONCLUSIONS OF LAW

7 In consideration of the above-stated findings and applicable law, the undersigned issues the
8 following conclusions of law:

9 1. The Appeal was timely filed.

10 Generally, an appeal should be filed within ten days after the Notice of Determination was
11 issued or served on the claimant. However, the Department may extend the period to thirty days
12 by a showing of good cause.⁸ Good cause means (1) illness or disability; (2) keeping an
13 appointment for a job interview; (3) attending a funeral of a family member; (4) any other reason
14 which would prevent a reasonable person from complying as directed.⁹

15 Since Appellant filed his appeal in this case on December 14, 2020, ~~the same date the~~
16 ~~Department Determination was issued~~ (Note: the determination was issued mail date
17 ~~December 15, 2020 the appeal was filed on the 14th~~), Appellant's appeal was timely filed.

18 2. Appellant's employment was not affected as a direct result of COVID-19.

19 Pursuant to Section 2102 of the CARES Act of 2020, Public Law 116-136, there are a number
20 of requirements to meet the eligibility standard of PUA. First, the claimant cannot be qualified
21 for regular unemployment, extended benefits under state or federal law, or pandemic emergency
22 unemployment compensation (PEUC).¹⁰ Second, the claimant must attest¹¹ that he or she is able
23 and available for work, as defined by Hawaii law, except they are unemployed, partially
24 unemployed, or unable to work or unavailable for work as a direct result¹² of a COVID-19 reason
25 identified in Section 2102 (a)(3)(A)(ii)(I) of the CARES Act:

26
27 ⁸ HI. Re. Statute § 383-38-(a)

⁹ HAR § 12-5-87(j)

¹⁰ This is not at issue in this case.

¹¹ The PUA program relies on self-certifications and self-reporting under penalty of perjury.

¹² Pursuant to 20 CFR § 625.5, unemployment is considered a "direct result" of the pandemic where the employment

- (a) The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- (b) A member of the individual's household has been diagnosed with COVID-19;
- (c) The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;
- (d) A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
- (e) The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
- (f) The individual is unable to reach the place of employment because the individual has been advised by a health care provider to quarantine due to concerns related to COVID-19;
- (g) The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;
- (h) The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
- (i) The individual has to quit his or her job as a direct result of COVID-19;
- (j) The individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or
- (k) The individual is an independent contractor who is unemployed (total or partial) or is unable or unavailable to work because of the COVID-19 public health emergency has severely limited his or her ability to continue performing the customary job.

Here, Appellant certified that he was scheduled to commence employment and was not able to reach his job as a direct result of the COVID-19 public health emergency.

Based on the evidence presented at the hearing, the undersigned finds that Appellant's employment was not affected as a direct result of the COVID-19 pandemic. First, pursuant to Appellant's Notification of Personnel Action, Appellant's limited term employment expired on March 06, 2020. Second, although DCCA Secretary Hunter earlier advised Appellant that he would be hired as a DCCA Bus Driver under a separate vacancy announcement, he rescinded his statement on March 04, 2020, stating that Appellant would not be hired due to a lack of funds and due to austerity measures that were to take effect in two weeks.¹³ Finally, Hunter's letter was corroborated by Director Manglona who also stated in an email to the Department that Appellant was not hired after March 06, 2020 because of austerity measures that were in place at DCCA

is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events precipitated or exacerbated by the pandemic.

¹³ Walter A. Manglona further clarified in his December 10, 2020 email to the Department that the austerity measures he referred to in his letter to Appellant was unrelated to the COVID-19 public health emergency.

1 prior to the COVID-19 public health emergency. Accordingly, Appellant's employment was not
2 affected as a direct result of COVID-19 and Appellant does not qualify for PUA.

3 **3. An overpayment occurred and Appellant is required to pay the amount back.**

4 "Benefits shall be paid promptly in accordance with a determination, redetermination, or
5 decision or appeal."¹⁴ However, "[a]ny individual who has received any amount as benefits . . .
6 to which the individual was not entitled shall be liable for the amount unless the overpayment was
7 received without fault on the part of the recipient and its recovery would be against equity and
8 good conscience."¹⁵ The CNMI has the authority to waive repayment of PUA and FPUC
9 overpayments. Moreover, the CNMI may waive repayment if the payment was made without fault
10 on the part of the individual and such repayment would be contrary to equity and good
11 conscience.¹⁶

12 Fault¹⁷ is defined as:

- 13 (A) A material statement made by the individual which the
14 individual knew or should have known to be incorrect; or
15 (B) Failure to furnish information which the individual knew or
16 should have known to be material; or
(C) Acceptance of a payment which the individual either knew or
reasonably could have been expected to know was incorrect.

17 Based on federal guidance, "contrary to equity and good conscience" is tantamount to placing an
18 individual below the poverty line and taking away basic necessities to live. In evaluating equity
19 and good conscience,¹⁸ the factors to consider include, but are not limited to:

- 20 (A) Whether notice of a redetermination was given to the claimant,
21 as required ...
22 (B) Hardship to the claimant that the repayment may impose; and
23 (C) The effect, if any, that the repayment will have upon the
24 fulfillment of the objectives of the program.¹⁹

25 ¹⁴ HRS § 383-43.

26 ¹⁵ HRS § 383-44.

27 ¹⁶ Section 2104(f)(2) of the CARES Act of 2020, Public Law 116-136; *See* UIPL 16-20, Change 4. *See also* Section
201(d) of the Continued Assistance Act.

28 ¹⁷ HRS 12-5-83.

¹⁸ *Id.*

¹⁹ PUA benefits were designed to be a critical lifeline for qualifying individuals facing a financial crisis amidst a
pandemic. PUA is not an excuse to refuse suitable work. PUA is not free or unencumbered money. Issues of fraud

1 Considering that Appellant was not eligible to receive PUA and his employment was not
2 directly affected by the COVID-19 pandemic, the \$9,180.00 in FPUC benefits and \$10,230.00 in
3 PUA benefits received by Appellant is an overpayment.²⁰

4 Here, there was no evidence to show 1) that Appellant intentionally gave a materially incorrect
5 statement to the Department, 2) that Appellant received payment he should have known was
6 incorrect or 3) that Appellant failed to furnish material evidence. Accordingly, the undersigned
7 finds that the overpayment was not Appellant's fault. However, because Appellant failed to
8 appear at the hearing, there is also no evidence to show that the imposition of repayment will
9 cause a hardship on Appellant. Therefore, based on the applicable law and evidence presented,
10 the undersigned finds that repayment by Appellant would not be contrary to equity and good
11 conscience.

12 VI. CONCLUSION

13 For the reasons stated above, it is ORDERED that:

- 14 1. The CNMI Department of Labor's Determination is **AFFIRMED**; and
- 15 2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of March 06,
16 2020 to December 26, 2020.
- 17 3. The CNMI Department of Labor's Notice of Overpayment is **AFFIRMED**;
- 18 4. Appellant shall promptly submit to a repayment plan, with the Benefit Payment Control
19 Unit. Appellant shall pay monthly installments of, at least, \$100.00 by the first of each
20 month, beginning April 01, 2021, until the entire overpayment is completely paid;
- 21 5. The CNMI Department of Labor Benefit Payment Control Unit shall notify the CNMI
22 Department of Finance of this overpayment in federal funds. Where possible, BPC shall
23 collect any of Appellant's tax rebates, tax refunds, stimulus checks, or other federal funds
24 to satisfy this debt.

25
26
27 _____
28 and overpayments are of great consequence that jeopardizes the integrity of the program and availability of funds for
eligible or qualified individuals.

²⁰ See Notice of Overpayment, issued January 11, 2020.

1 If a party is aggrieved by this Order and would like to contest the decision, he or she must
2 submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5.93. The
3 written request should be supported by legal, factual, or evidentiary reasons to reopen the
4 decision. The written request must be submitted to the Administrative Hearing Office, either in
5 person at 1357 Mednilla Avenue, Capitol Hill Saipan MP 96950) or via email at
6 hearing@dol.gov.mp.

7 In the event a request to reopen the decision is granted, the matter shall be scheduled for a
8 subsequent hearing. In the event a request to reopen the decision is denied, or if the Appellant
9 still disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI
10 Superior Court under the local Administrative Procedures Act. *See* 1 CMC § 9112. All forms,
11 filings fees, and filing deadlines for judicial review will be as established by the applicable law
12 and court rule.

13 So ordered this 17th day of March, 2021.

14 /s/
15 **JOEY P. SAN NICOLAS**
16 *Pro Tem* Administrative Hearing
17 Officer
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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re Matter of:) PUA Case No. 20-0043
)
Elina Gharti Chhetri,)
)
Appellant,) ADMINISTRATIVE ORDER
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on January 25, 2021 at 9:00 am at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held online.¹ Appellant Elina Gharti Chhetri (“Appellant”) was present and was represented by Matthew J. Holley, Esq. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program (“Appellee” or “Department”) was present and represented by Labor Certification Worker Dennis Cabrera and PUA Coordinator Rayzor Tebuteb. There were no other witnesses who gave testimony at the hearing.

Exhibits:

1. Exhibit 1: Department’s Determination mail dated November 24, 2020;
2. Exhibit 2: Appellant’s Request for Appeal dated December 15, 2020;
3. Exhibit 3: Department’s Determination mail dated October 20, 2020;
4. Exhibit 4: Appellant’s Request for Reconsideration dated October 19, 2020;
5. Exhibit 5: Appellant’s Application Snapshot
6. Exhibit 6: Copy of Appellant’s EAD Card;
7. Exhibit 7: SAVE Response dated October 28, 2020;

¹ Although the hearing was initially held online, the hearing was eventually conducted telephonically due to poor audio connection.

8. Exhibit 8: SAVE Response dated November 02, 2020;
9. Exhibit 9: Email from Dennis Cabrera September 18, 2020;
10. Exhibit 10: Email from David King dated October 01, 2020;
11. Exhibit 11: Appellant's Parole from February 20, 2018;
12. Exhibit 12: Federal Register dated December 9, 2020;
13. Exhibit 13: Notice of Action dated August 06, 2018;
14. Exhibit 14: Copy of Appellant's EAD cards from December 24, 2016 to October 24, 2020;
15. Exhibit 15: Letter from Marianas Creations, LLC dated March 17, 2020;
16. Exhibit 16: Copy of Appellant's Passport with I-94 Stamp; and
17. Exhibit 17: Email from David King dated November 17, 2020.

For the reasons stated below, the Department's Determination dated November 24, 2020 is **AFFIRMED**. Claimant is ineligible for benefits for the period of March 15, 2020 to December 26, 2020.

///

///

II. JURISDICTION

On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of 2020 was signed into law creating new temporary federal programs for unemployment benefits called Pandemic Unemployment Assistance ("PUA")² and Federal Pandemic Unemployment Compensation ("FPUC").³ On March 29, 2020, the CNMI Government executed an agreement with the US Secretary of Labor to operate the PUA and FPUC program in accordance to applicable law.⁴ The CNMI Department of Labor is charged with the responsibility in administering the above-mentioned programs in the CNMI. The CNMI Department of Labor Administrative Hearing Office has been designated to preside over first level appeals of the aforesaid programs.

² See Section 2102 of the CARES Act of 2020, Public Law 116-136.

³ See Section 2104 of the CARES Act of 2020, Public Law 116-136.

⁴ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

1 Upon review of the records, the appeal was timely filed. Accordingly, jurisdiction is
2 established.

3 III. PROCEDURAL HISTORY & ISSUE

4 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon
5 review of Appellant's application and supporting documents, the Department issued and mailed
6 its first disqualifying determination on October 20, 2020. The Department's determination found
7 that Appellant was not eligible to receive PUA effective March 15, 2020 to December 26, 2020.
8 On October 19, 2020, Appellant filed a request for reconsideration. The Department issued and
9 mailed a second disqualifying determination on November 24, 2020. On December 15, 2020,
10 Appellant filed a request to appeal the disqualifying determination. As stated in the Notice of
11 Hearing, the issues on appeal are whether the appeal is timely filed, whether Appellant is eligible
12 for PUA and whether there are any overpayments necessitating the return of PUA funds in this
13 case.

14 IV. FINDINGS OF FACT

15 In consideration of the evidence provided and credibility of witness testimony, the
16 undersigned issues the following findings of fact:

- 17 1. Prior to the pandemic, Appellant was employed as a Manager at Marianas Creations, LLC
18 ("Employer"). Appellant worked for Employer from February 22, 2020 to March 17,
19 2020. Appellant worked 40 hours per week for the hourly rate of \$8.00. As Manager,
20 Appellant oversaw retail sales and bartender duties.⁵
- 21 2. On March 17, 2020, Employer furloughed Appellant due to the Governor's Executive
22 Order 2020-04 declaring a public health emergency.⁶
- 23 3. On June 17, 2020, Appellant filed an application to claim PUA and FPUC benefits. In
24 the application, Appellant certified under penalty of perjury that she was an alien/refugee
25 lawfully admitted to the U.S. and that her place of employment was closed as a direct result
26 of the COVID-19 public health emergency.⁷

27 ⁵ Exhibit 5.

28 ⁶ Exhibit 16.

⁷ Exhibit 5.

- 1 4. On October 01, 2020, U.S. Department of Labor UI Program Specialist David King
2 emailed Labor Certification Worker Dennis Cabrera advising that TPS was not a qualified
3 alien, unless it falls under “an alien whose deportation is being withheld.”⁸
- 4 5. On October 20, 2020, the Department issued and/or mailed a determination disqualifying
5 Appellant from PUA benefits because it deemed that Appellant did not meet the
6 qualifications required by the CARES Act of 2020 for Pandemic Assistance.⁹
- 7 6. On October 19, 2020, Appellant filed her Request for Reconsideration at the CNMI
8 Department of Labor stating that she qualified to receive PUA benefits because she was
9 paroled into the United States under Temporary Protected Status since 2015.¹⁰
- 10 7. The Department, on October 26, 2020, entered Appellant’s information into the
11 Systematic Alien Verification for Entitlements (SAVE) database maintained by USCIS,
12 Verification Division.¹¹ The SAVE results revealed that Appellant was under temporary
13 protected status and was temporarily authorized to work in the United States. Moreover,
14 the SAVE results showed that Appellant had Employment Authorization Document cards
15 with the Categories A12 (temporary protected status granted under 8 CFR 244.12) and
16 C09 (adjustment of status applicant). The SAVE results further showed that Appellant’s
17 Category A12 was effective August 06, 2018 to June 24, 2019 and Category C09 was
18 effective October 25, 2019 to October 24, 2020.
- 19 8. On October 29, 2020, the Department conducted a second SAVE verification and found
20 that Appellant had a pending I-485 Application to Register for Permanent Residence or
21 Adjust Status.¹²
- 22 9. On November 17, 2020, UI Specialist David King emailed Labor Certification Worker
23 Dennis Cabrera again reiterating his position that TPS status alone is not sufficient to
24 qualify for PUA purposes, unless it falls under an alien whose deportation is being
25 withheld.¹³

⁸ Exhibit 11.

⁹ Exhibit 3.

¹⁰ Exhibit 4.

¹¹ Exhibit 7.

¹² Exhibit 8.

¹³ Exhibit 18.

10. On November 24, 2020, the Department issued and/or mailed a determination disqualifying Appellant from PUA benefits because it deemed that Appellant was not a qualified alien eligible to receive PUA.¹⁴
11. On December 15, 2020, Appellant filed her Appeal Form at the CNMI Department of Labor, Administrative Hearing Office. Appellant argues that she is eligible to receive PUA benefits because she is under Temporary Protected Status.¹⁵
12. On February 20, 2018, Appellant, a Nepali national, was paroled into the United States until June 24, 2018, as evidenced by the I-94 stamp placed in Appellant's passport.¹⁶
13. On August 06, 2018, Appellant's Temporary Protected Status was extended to June 24, 2019. The benefits of TPS are temporary protection from removal (or deportation) and employment authorization in the United States. TPS was granted to Nepali citizens in the United States after an earthquake devastated Nepal in 2015.¹⁷
14. On December 09, 2020, the Department of Homeland Security issued a notice in Vol. 85, No. 237 of the Federal Register, announcing that I-94 forms issued under the TPS designations for Nepal with an expiration date of June 24, 2018 were automatically extended to October 04, 2021.¹⁸
15. Appellant has Employment Authorization Document ("EAD")¹⁹ cards valid for the following periods:²⁰
- a. Category C19: October 20, 2015 to December 24, 2016;
 - b. Category A12: February 03, 2017 to June 24, 2018;
 - c. Category A12: August 06, 2018 to June 24, 2019; and
 - d. Category C09: October 25, 2019 to October 24, 2020.

¹⁴ Exhibit 1.

¹⁵ Exhibit 2.

¹⁶ Exhibit 17.

¹⁷ Exhibit 14.

¹⁸ Exhibit 13.

¹⁹ An EAD is a work permit that allows noncitizens to work in the United States.

²⁰ Exhibit 15.

V. CONCLUSIONS OF LAW

In consideration of the above-stated findings and applicable law, the undersigned issues the following conclusions of law:

1. The Appeal was timely filed.

Generally, an appeal should be filed within ten days after the Notice of Determination was issued or served to the claimant. However, the Department may extend the period to thirty days by a showing of good cause.²¹ Good cause means: (1) illness or disability; (2) keeping an appointment for a job interview; (3) attending a funeral of a family member; and (4) any other reason which would prevent a reasonable person from complying as directed.²²

Here, Appellant electronically received the disqualifying determination on November 24, 2020. The Appellant did not file her Appeal until December 15, 2020 – approximately 20 days after receiving the determination. Although the Appeal was filed beyond the ten-day deadline, the undersigned recognizes that this is due to the faulty instructions included on the determination. Specifically, the determination incorrectly indicated that the deadline to file her appeal was December 15, 2020. However, despite the technical errors and inconsistent filing instructions, the undersigned finds that Appellant acted diligently to pursue this appeal. Based on above, there is good cause to extend the filing period to 30 days from the day Appellant received the determination. Accordingly, Appellant's filing is timely.

2. Appellant's employment was affected as a direct result of COVID-19.

Pursuant to Section 2102 of the CARES Act of 2020, Public Law 116-136, there are a number of requirements to meet the eligibility standard of PUA. First, the claimant cannot be qualified for regular unemployment, extended benefits under state or federal law, or pandemic emergency unemployment compensation (PEUC).²³ Second, the claimant must attest²⁴ that he or she is able and available for work, as defined by Hawaii law, except they are unemployed, partially unemployed, or unable to work or unavailable for work as a direct result²⁵ of a COVID-19 reason identified in Section 2102 (a)(3)(A)(ii)(I) of the CARES Act:

²¹ HI. Rev. Statute § 383-38(a).

²² HAR § 12-5-81(j).

²³ This is not at issue in this case.

²⁴ The PUA program relies on self-certifications and self-reporting under penalty of perjury.

²⁵ Pursuant to 20 CFR § 625.5, unemployment is considered a "direct result" of the pandemic where the employment is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events precipitated or exacerbated by the pandemic.

- (a) The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- (b) A member of the individual's household has been diagnosed with COVID-19;
- (c) The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;
- (d) A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
- (e) The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
- (f) The individual is unable to reach the place of employment because the individual has been advised by a health care provider to quarantine due to concerns related to COVID-19;
- (g) The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;
- (h) The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
- (i) The individual has to quit his or her job as a direct result of COVID-19;
- (j) The individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or
- (k) The individual is an independent contractor who is unemployed (total or partial) or is unable or unavailable to work because of the COVID-19 public health emergency has severely limited his or her ability to continue performing the customary job.

Generally, the CNMI was heavily impacted by the threat of COVID-19. Due to the threat of COVID-19 and pursuant to the Governor's Executive Orders, there were closures of government offices, restrictions on private businesses, and an overall reduction in revenue from the immediate halt in tourism. Here, Employer, a bar and restaurant heavily reliant on the tourism industry, closed its doors on March 18, 2020 due to the Governor's Executive Order declaring a public health emergency. Accordingly, the undersigned finds that Appellant's employment was affected as a direct result of COVID-19 public health emergency.

3. Appellant is not a qualified alien eligible for PUA.

PUA and FPUC are federal public benefits as defined by 8 USC §1611(c). As a condition of eligibility for any federal public benefit, the claimant must be a “qualified alien” at the time relevant to the claim. 8 USC §1611(a). Pursuant to 8 USC §1641, the term “qualified alien” is:

1. An alien admitted for permanent residence under the Immigration and Nationality Act (INA);
2. An alien granted asylum under § 208 of the INA;
3. A refugee admitted to the US under § 207 of the INA;
4. An alien paroled into the US under § 212(d)(5) of the INA for at least one year;
5. An alien whose deportation is being withheld under § 243(h) of the INA ... or whose removal is being withheld under § 241 (b)(3) of the INA;
6. An alien granted conditional entry pursuant to § 203 (a)(7) of the INA;
7. An alien who is a Cuban or Haitian entrant as defined in § 501(e) of the Refugee Education Assistance Act of 1980; or
8. An alien who (or whose child or parent) has been battered or subject to extreme cruelty in the U.S. and otherwise satisfies the requirements of § 431(c) of the Act.

Appellant argues that she is a qualified alien because she was paroled into the United States for at least one year. The undersigned acknowledges that Appellant was paroled into the United States from February 20, 2018 to June 24, 2018 and that her parole was extended to October 24, 2021. However, being paroled for one year is not sufficient to prove one is a qualified alien. For Appellant to be a qualified alien under 8 USC §1641, she must prove that she was paroled into the US under section 212(d)(5) for at least one year. Based on the evidence presented, Appellant has not met her burden of showing she was paroled into the US under section 212(d)(5) for at least one year. Here, Appellant was granted parole, as evidenced by her I-94 stamp, and was granted Temporary Protected Status under section 244 of the INA. However, there is no evidence that Appellant was paroled under section 212(d)(5).

Similarly, Appellant argues that she is a qualified alien because her removal is being withheld. The undersigned notes that under section 244 of the INA, Appellant may not be removed from the US as long as she is under Temporary Protected Status. However, under 8 USC §1641, Appellant must prove that she is an alien whose removal is being withheld under 241(b)(3) of the INA. The undersigned finds that Appellant’s removal is being withheld under 244 of the INA, not 241(b)(3).

1 Accordingly, Appellant was not a qualified alien at the time of the weeks claimed and is
2 therefore not eligible for PUA.

3 **4. An overpayment did not occur.**

4 “Benefits shall be paid promptly in accordance with a determination, redetermination, or
5 decision or appeal.”²⁶ However, “[a]ny individual who has received any amount as benefits . . .
6 to which the individual was not entitled shall be liable for the amount unless the overpayment was
7 received without fault on the part of the recipient and its recovery would be against equity and
8 good conscience.”²⁷

9 Here, Appellant did not receive PUA benefits. Therefore, an overpayment did not occur.

11 **VI. CONCLUSION**

13 For the reasons stated above, it is ORDERED that:

- 14 1. The CNMI Department of Labor’s Determination is **AFFIRMED**; and
15 2. The Appellant is **INELIGIBLE** to receive PUA benefits for the period of March 15,
16 2020 to December 26, 2020.

17
18 If a party is aggrieved by this Order and would like to contest the decision, he or she must
19 submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5.93. The
20 written request should be supported by legal, factual, or evidentiary reasons to reopen the
21 decision. The written request must be submitted to the Administrative Hearing Office, either in
22 person at 1357 Mednilla Avenue, Capitol Hill Saipan MP 96950) or via email at
23 hearing@dol.gov.mp.

24 In the event a request to reopen the decision is granted, the matter shall be scheduled for a
25 subsequent hearing. In the event a request to reopen the decision is denied, or if the Appellant
26 still disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI

27
28 ²⁶ HRS § 383-43.

²⁷ HRS § 383-44.

1 Superior Court under the local Administrative Procedures Act. *See* 1 CMC § 9112. All forms,
2 filings fees, and filing deadlines for judicial review will be as established by the applicable law
3 and court rule.

4 So ordered this 10th day of March, 2021.

5
6 /s/

7 **JOEY P. SAN NICOLAS**

8 *Pro Tem* Administrative Hearing
9 Officer
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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re Matter of:) **PUA Case No. 21-0045**
)
Amalia A. Guanlao,)
)
Appellant,) **ADMINISTRATIVE ORDER**
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on February 16, 2021 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Appellant Amalia A. Guanlao ("Appellant") was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program ("Appellee" or "Department") was present and represented by PUA Coordinator Rikki Camacho and Labor Certification Worker Dennis Cabrera. There were no other witnesses who gave testimony at the hearing.

1. Exhibit 1: Appellant's Application Snapshot;
2. Exhibit 2: Determination (mail date December 28, 2020);
3. Exhibit 3: Determination (mail date February 5, 2021);
4. Exhibit 4: Notice of Overpayment (mail date February 9, 2021);
5. Exhibit 5: Request to File an Appeal and Letter (filed January 6, 2021);
6. Exhibit 6: Notice of Hearing (issued January 6, 2021);
7. Exhibit 7: Employer Memo (dated March 30, 2020);
8. Exhibit 8: 1-797 Notice of Action (Notice Date of August 14, 2020);
9. Exhibit 9: 1-797 Notice of Action (Notice Date of September 21, 2020);
10. Exhibit 10: (4) Employment Authorization Documents;
11. Exhibit 11: Save Results (Initiated 1/27/21); and
12. Exhibit 12: Check Stubs from 3/2/20-12/6/20.

1 For the reasons stated below, the Department's Determination dated February 5, 2021 is
2 **AFFIRMED**. Appellant is not eligible for benefits for the period of February 2, 2020 to
3 December 26, 2020. Moreover, because the Appellant is not eligible, Appellant was overpaid
4 Claimant is overpaid in the amount of \$12,128.36.

5 II. JURISDICTION

6 On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of
7 2020 was signed into law creating new temporary federal programs for unemployment benefits
8 called Pandemic Unemployment Assistance ("PUA")¹ and Federal Pandemic Unemployment
9 Compensation ("FPUC").² On March 29, 2020, the CNMI Government executed an agreement
10 with the US Secretary of Labor to operate the PUA and FPUC program in accordance to
11 applicable law.³ The CNMI Department of Labor is charged with the responsibility in
12 administering the above-mentioned programs in the CNMI. The CNMI Department of Labor
13 Administrative Hearing Office has been designated to preside over appeals of agency decisions.

14 Upon review of the records, the appeal was timely filed. Accordingly, jurisdiction is
15 established.

16 III. PROCEDURAL HISTORY & ISSUES

17 On December 24, 2020, Appellant filed a claim for unemployment benefits under the PUA
18 and FPUC programs. On December 28, 2020, the Department issued a determination finding
19 Appellant monetarily eligible to receive PUA. Appellant mistakenly filed an appeal for this
20 determination. Following the Appeal, the Department issued a Disqualifying Determination on
21 February 5, 2021 and a Notice of Overpayment on February 9, 2021. The Disqualifying
22 Determination found that Appellant was not a U.S. Citizen, Non-Citizen National, or Qualified
23 Alien eligible to receive PUA. As stated in the Notice of Hearing issued, the issues on appeal are:
24 (1) whether Appellant is eligible for PUA; and (2) whether an overpayment occurred and funds
25 should be returned.

26 ///

27 ///

28 ¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

³ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

IV. FINDINGS OF FACT

In consideration of the evidence provided and credibility of witness testimony, the undersigned issues the following findings of fact:

1. Prior to the pandemic, Appellant was employed as an accountant for Ocean Bee (“Employer #1”). Appellant worked for Employer #1 from February or March 2019 to March 2020. Appellant worked approximately 80 hours biweekly, at a rate of \$12.86 per hour. On or around March of 2020, Employer #1 shut down and Appellant was transferred to work as an accountant at the same rate for a sister company, Yantze Corporation (“Employer #2”). At Employer #2, Appellant worked reduced hours since March 2, 2020.⁴
2. A notice of the reduction of hours was provided and effective as of March 30, 2020.⁵ The notice indicates the reduction in hours is based on precautionary healthcare measures, such as social distancing. Employer # 2 did not shut down until on or around December of 2020. Appellant worked reduced hours, ranging from 55 to 70 hours per pay period from March 2, 2020 to December 6, 2020.⁶
3. On December 24, 2020, Appellant filed an online application to claim PUA and FPUC benefits dating back to March 2, 2020.⁷ In the application, Appellant self-certified under penalty of perjury that her employment was affected as a direct result of COVID-19 due to a COVID-19 reason that was not listed in the application. When asked to clarify this reason, Appellant testified it was because she was placed on reduced hours. Appellant further testified that she did not meet any of the qualifying reasons listed under the CARES Act.
4. Appellant’s last day of employment with Employer #2 was February 8, 2021. Appellant does not know whether she is terminated or furloughed because she has not received the notice from her employer yet. When asked about the reason for separation from employment, Appellant indicated that Employer #2 asked her to stop working because the company no longer has enough money to pay her salary. As of the date of this hearing, Appellant indicated Employer #2 is still open and some employees, such as her boss, are still working.

⁴ Exhibit 12.

⁵ Exhibit 7.

⁶ Exhibit 12.

⁷ Exhibit 1.

- 1 5. On December 28, 2020, the Department issued a determination finding Appellant was
2 monetarily eligible.⁸ The determination stated that Appellant was financially eligible
3 because her partial earnings from Employer # 2 did not exceed the Weekly Benefit
4 Amount (“WBA”). This determination was limited to her monetary eligibility and
5 indicated that Appellant “must meet all other eligibility requirements of the law in order
6 to receive payment.”⁹
- 7 6. On January 6, 2021, Appellant appealed the monetary determination. However, during the
8 Administrative Hearing, Appellant clarified there was nothing in this determination that
9 she disagreed with—rather, she disagreed with the later issued determination and notice
10 of overpayment.
- 11 7. On February 5, 2021, the Department disqualified Appellant from receiving PUA
12 benefits.¹⁰ The Determination found that Appellant was not a U.S. Citizen, Non-Citizen
13 National, or Qualified Alien.
 - 14 a. Appellant believes she is a qualified alien because she has lived and worked in the
15 CNMI for a substantial number of years. However, Appellant is not aware of her
16 immigration status and has no other documents to substantiate her qualified alien
17 status.
 - 18 b. Based on her testimony, is not a permanent resident, alien granted asylum, refugee,
19 alien paroled into the U.S. for at least one consecutive year during the pandemic
20 assistance period, an alien pending deportation or removal, an alien granted
21 conditional entry, a Cuban or Haitian entrant, or an alien battered or subject to
22 extreme cruelty.
 - 23 c. Appellant was granted employment authorization with the Category C18.¹¹
24 Appellant has Employment Authorization Document (“EAD”)¹² cards¹³ valid for
25 the following periods:
 - 26 i. December 23, 2016 to December 22, 2017;
 - 27 ii. February 13, 2018 to February 12, 2019;

⁸ Exhibit 2.

⁹ *Id.*

¹⁰ Exhibit 3

¹¹ C18 refers to the EAD Code used for aliens whose employment is authorized based on a final order of deportation or order of supervision.

¹² An EAD is a work permit that allows noncitizens to work in the United States.

¹³ Exhibit 10.

- 1 iii. July 26, 2019 to July 25, 2020; and
- 2 iv. September 21, 2020 to September 20, 2021.
- 3 d. To account for the gap between her third and fourth EAD card (i.e., July 25, 2020
- 4 to September 21, 2020), Appellant indicated she applied to renew her C18 EAD
- 5 on July 9, 2020 and it was approved on September 21, 2020.¹⁴
- 6 e. On or around January 27, 2021, the Department entered Appellant's information
- 7 into the Systematic Alien Verification for Entitlements ("SAVE") database
- 8 maintained by USCIS, Verification Division. This database is used to determine
- 9 the alien status of PUA applicants so only those entitled to benefits receive them.
- 10 The SAVE results indicate that Appellant has no status and released on an Order
- 11 of Supervision with temporary employment authorized under category C18.
- 12 8. On February 9, 2021, the Department personally served Appellant with a Notice of
- 13 Overpayment.¹⁵ The Notice of Overpayment indicates that Appellant was overpaid in the
- 14 total amount of \$12,128.36 for the weeks ending March 7, 2020 to November 28, 2020.
- 15 Of this total amount \$9,180 is attributable to FPUC and \$2,948.36 is attributable to PUA.
- 16 9. Appellant confirmed that she received the total sum of \$12,128.36 by direct deposit on
- 17 January 7, 2021. Appellant does not dispute the amounts or the fact that she received the
- 18 money. Appellant indicated she spent approximately \$4,000 of the total amount given to
- 19 her and has approximately \$8,000 of the funds in her account.
- 20 10. Appellant indicated that the \$4,000 she spent was used to catch up on rental payments,
- 21 household bills for water, power, and telephone/internet, groceries, and school tuition.
- 22 Appellant indicated her basic monthly expenses range from \$1,200 to \$1,500 but her
- 23 household income is approximately \$1,000 to \$1,200. Appellant indicated that her
- 24 husband is still working and able to utilize his salary towards their basic needs. Appellant
- 25 stated that, if found ineligible, she is willing to return the \$8,000 in her possession and
- 26 enter a repayment plan of approximately \$100 per month.
- 27 11. The Department indicated that the overpayment was a result of a technical glitch that was
- 28 not the fault of the Appellant. The Department further indicated that it would not contest
- a waiver of the amount she spent if she were to repay the remaining amount she has in her
- possession.

¹⁴ Exhibit 9; *see also* Exhibit 8.

¹⁵ Exhibit 4.

V. CONCLUSIONS OF LAW

In consideration of the above-stated findings and applicable law, the undersigned issues the following conclusions of law:

1. Appellant's employment was not affected as a direct result of COVID-19.

Pursuant to Section 2102 of the CARES Act of 2020, Public Law 116-136, there are a number of requirements to meet the eligibility standard of PUA. First, the claimant cannot be qualified for regular unemployment, extended benefits under state or federal law, or pandemic emergency unemployment compensation (PEUC).¹⁶ Second, the claimant must attest¹⁷ that he or she is able and available for work, as defined by Hawaii law, except they are unemployed, partially unemployed, or unable to work or unavailable for work as a direct result¹⁸ of a COVID-19 reason identified in Section 2102 (a)(3)(A)(ii)(I) of the CARES Act:

- (a) The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- (b) A member of the individual's household has been diagnosed with COVID-19;
- (c) The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;
- (d) A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
- (e) The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
- (f) The individual is unable to reach the place of employment because the individual has been advised by a health care provider to quarantine due to concerns related to COVID-19;
- (g) The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;
- (h) The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
- (i) The individual has to quit his or her job as a direct result of COVID-19;
- (j) The individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or
- (k) The individual is an independent contractor who is unemployed (total or partial) or is unable or unavailable to work because of the COVID-19 public health emergency has severely limited his or her ability to continue performing the customary job.

¹⁶ This is not at issue in this case. Appellant testified that she did not receive any other benefits from any other state or federal program.

¹⁷ The PUA program relies on self-certifications and self-reporting under penalty of perjury.

¹⁸ Pursuant to 20 CFR § 625.5, unemployment is considered a "direct result" of the pandemic where the employment is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events precipitated or exacerbated by the pandemic.

1 Here, Appellant submitted a claim for PUA self-certifying under penalty of perjury that her
2 employment was affected as a direct result of COVID-19 for a reason not listed above. When
3 asked to clarify what her reason was, Appellant indicated it was due to the reduction in hours.

4 For the reasons stated below, the undersigned finds that Appellant's employment was not
5 affected as a direct result of a COVID-19 reason under the CARES Act. First, when questioned
6 with respect to each COVID-19 qualifying reason, Appellant responded in the negative. When
7 further questioned regarding reason (d), Appellant indicated that her minor child was participating
8 in online school but her husband was available to care for him while she was at work. When
9 further questioned regarding reason (j), Appellant indicated that the employer did not close
10 entirely. As illustrated under UIPL 16-20, change 4, a claimant does not qualify under (j) if the
11 business is partially open.

12 Based on the evidence and testimony provided, Appellant's employment was not affected as
13 a direct result of COVID-19. Accordingly, Appellant is not eligible to receive PUA benefits.

14 **2. Appellant was overpaid and entitled to a partial waiver.**

15 "Benefits shall be paid promptly in accordance with a determination, redetermination, or
16 decision or appeal."¹⁹ However, "[a]ny individual who has received any amount as benefits . . .
17 to which the individual was not entitled shall be liable for the amount unless the overpayment was
18 received without fault on the part of the recipient and its recovery would be against equity and
19 good conscience."²⁰ Fault²¹ is defined as:

- 20 (A) A material statement made by the individual which the
21 individual knew or should have known to be incorrect; or
22 (B) Failure to furnish information which the individual knew or
23 should have known to be material; or
24 (C) Acceptance of a payment which the individual either knew or
25 reasonably could have been expected to know was incorrect.

26 Based on federal guidance, "contrary to equity and good conscience" is tantamount to placing an
27 individual below the poverty line and taking away basic necessities to live. In evaluating equity
28 and good conscience,²² the factors to consider include, but are not limited to:

- (A) Whether notice of a redetermination was given to the claimant,
as required ...
(B) Hardship to the claimant that the repayment may impose; and

¹⁹ HRS § 383-43.

²⁰ HRS § 383-44.

²¹ HRS 12-5-83.

²² *Id.*

(C) The effect, if any, that the repayment will have upon the fulfillment of the objectives of the program.²³

Considering that Appellant's employment was not affected as a direct result of a qualifying COVID-19 reason and there is insufficient documentation to substantiate Appellant's qualified alien status, Appellant should not have been paid benefits under PUA or FPUC. Moreover, considering that Appellant does not contest the amount listed in the Notice of Overpayment and confirmed receiving the total sum of \$12,128.36—it is clear that the overpayment occurred.

However, in this case, the Department testified that the overpayment occurred due to a technical glitch in the online portal—through no fault of the Appellant. Upon review of her initial application, the undersigned notes that she did clearly stated that her COVID-19 qualifying reason was "other" and that she did not lie under the "self-certification" section. The undersigned further finds that repayment of the \$4,000 that was already spent would be contrary to equity and good conscience because: (1) the money was used to pay for basic necessities and important bills; (2) Appellant is no longer working; and (3) the Appellant's monthly household expenses exceed their single income household. The undersigned is not willing to waive the entire amount because this order notifies the parties that Appellant is not eligible and an overpayment occurred. In the event that Appellant continues to accept or spend the remaining funds, she would be considered "at fault," as defined above.

VI. CONCLUSION

For the reasons stated above, it is ORDERED that:

1. The CNMI Department of Labor's Determination, dated February 5, 2021, is **AFFIRMED**;
2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of February 2, 2020 to December 26, 2020;
3. The CNMI Department of Labor's Notice of Overpayment, dated February 9, 2021, is **AFFIRMED**;
4. Appellant was overpaid in the total amount of \$12, 128.36;

²³ PUA benefits were designed to be a critical lifeline for qualifying individuals facing a financial crisis amidst a pandemic. Issues of fraud and overpayments are of great consequence that jeopardizes the integrity of the program and availability of funds for eligible or qualified individuals.

- 1 5. The amount of \$4,000 is waived but Appellant shall promptly repay the remaining
2 balance of \$8,128.36; and
- 3 6. The CNMI Department of Labor Benefit Payment Control Unit shall assist Appellant in
4 proceeding with repayment and notify the Administrative Hearing Office when
5 repayment is complete.

6 If a party is aggrieved by this Order and would like to contest the decision, he or she must
7 submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The
8 written request should be supported by legal, factual, or evidentiary reasons to reopen the
9 decision. The written request must be submitted to the Administrative Hearing Office, either in
10 person at 1357 Mednilla Avenue, Capitol Hill Saipan MP 96950) or via email at
11 hearing@dol.gov.mp.

12 In the event a request to reopen the decision is granted, the matter shall be scheduled for a
13 subsequent hearing. In the event a request to reopen the decision is denied, or if the Appellant
14 still disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI
15 Superior Court under the local Administrative Procedures Act. *See* 1 CMC § 9112. All forms,
16 filings fees, and filing deadlines for judicial review will be as established by the applicable law
17 and court rule.

18 So ordered this 17th day of February, 2021.

19 /s/

20 JACQUELINE A. NICOLAS
21 Administrative Hearing Officer
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**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**

In Re Matter of:) **PUA Case No. 21-0047**
)
Haiyan Zong,)
)
Appellant,) **ADMINISTRATIVE ORDER**
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on February 18, 2021 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Appellant Haiyan Zong ("Appellant") was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program ("Appellee" or "Department") was present and represented by PUA Supervisor Sharon Palacios and PUA Coordinator Vince Sablan. Interpreter Brandon Doggett facilitated communications. There were no other witnesses who gave testimony at the hearing.

1. Exhibit 1: Appellant's Application Snapshot;
2. Exhibit 2: Application Summary
3. Exhibit 3: Disqualifying Determination (mail date January 14, 2021);
4. Exhibit 4: Notice of Overpayment (mail date December 21, 2020)
5. Exhibit 5: Request to File an Appeal (filed January 7, 2021);
6. Exhibit 6: Notice of Hearing (issued January 8, 2021);
7. Exhibit 7: Copy of Save Results (initiated on December 13, 2020)
8. Exhibit 8: Copy of Appellant's ID Forms/EAD Card
9. Exhibit 9: Copy of Appellant's Employment Certification Letter
10. Exhibit 10: Copy of Appellant's Furlough Notice (dated March 23, 2020)
11. Exhibit 11: Copy of Appellant's Separation Notice (dated December 1, 2020)

1 12. Exhibit 12: Tracking Information for the Notice of Overpayment

2 13. Exhibit 13: Updated EAD Card (Valid from 12/26/20 to 12/25/21)

3 For the reasons stated below, the Department's Determination dated January 14, 2021 and the
4 Notice of Overpayment dated December 21, 2020 is **AFFIRMED**. Claimant is not eligible for
5 benefits for the period of February 2, 2020 to December 26, 2020. An overpayment occurred in
6 the amount of \$16,720.00 however the undersigned finds that a waiver is appropriate.

7 II. JURISDICTION

8 On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of
9 2020 was signed into law creating new temporary federal programs for unemployment benefits
10 called Pandemic Unemployment Assistance ("PUA")¹ and Federal Pandemic Unemployment
11 Compensation ("FPUC").² On March 29, 2020, the CNMI Government executed an agreement
12 with the US Secretary of Labor to operate the PUA and FPUC program in accordance to
13 applicable law.³ The CNMI Department of Labor is charged with the responsibility in
14 administering the above-mentioned programs in the CNMI. The CNMI Department of Labor
15 Administrative Hearing Office has been designated to preside over appeals of agency decisions.

16 Upon review of the records, the appeal was timely filed. Accordingly, jurisdiction is
17 established.

18 III. PROCEDURAL HISTORY & ISSUES

19 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon
20 review of Appellant's application and supporting documents, the Department issued a Notice of
21 Overpayment with the mail date of December 21, 2020. The Notice of Overpayment indicates
22 that Appellant's claim was audited and found to be overpaid in the total amount of \$16,720.00.
23 On January 7, 2021, Appellant filed an appeal. Subsequently, on January 14, 2021, the
24 Department issued a Disqualifying Determination finding that Appellant was not a United States
25 citizen, non-citizen national, or qualified alien eligible for PUA benefits, effective February 2,
26 2020 to December 26, 2020. As stated in the Notice of Hearing issued January 8, 2021, the issues

27 ¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

28 ² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

³ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

1 on appeal are: (1) whether the appeal is timely filed; (2) whether Appellant is eligible for PUA;
2 and (3) whether an overpayment occurred and funds should be returned.

3 IV. FINDINGS OF FACT

4 In consideration of the evidence provided and credibility of witness testimony, the
undersigned issues the following findings of fact:

- 5 1. Appellant worked as waitstaff at Asia Pacific Hotels, Inc dba Kanoa Resort Saipan
6 ("Employer") from September 14, 2012 to December 25, 2020.⁴ Prior to the pandemic,
7 Appellant regularly worked 40 hours weekly at a rate of \$8.25 per hour.⁵ Effective March
8 1, 2020, Appellant's hours were reduced to 21 hours a week. Appellant's last day of
9 employment was March 22, 2020. On March 23, 2020, Appellant was placed on unpaid
10 furlough.⁶ In a letter dated December 1, 2020, Appellant was notified that her position
11 was eliminated due to drastic organizational restructuring prompted by the economic
12 impact of COVID-19.⁷ To date, Appellant has not been recalled or otherwise returned to
13 the workforce.
- 14 2. Shortly after, Kanoa Resort was converted into a quarantine facility to isolate incoming
15 travelers and persons diagnosed with COVID-19. Once converted, the facility did not
16 operate as a hotel or restaurant and was not open to the general public. Only staff involved
17 in the quarantine operations stayed on board. To date, the resort is closed and solely
operates as a quarantine facility.
- 18 3. On June 17, 2020, Appellant filed an application to claim PUA and FPUC benefits.⁸ In
19 the application, Appellant certified under penalty of perjury that her place of employment
20 was closed as a direct result of the COVID-19 public health emergency, starting March
21 22, 2020. Appellant also certified that she is a "refugee/alien lawfully admitted in the
22 U.S." Appellant read the PUA Benefit Rights Information Handbook using google
23 translate.
- 24 4. Appellant met with Department employees on a number of occasions and was led to
25 believe she could apply and was eligible.

26
27
28 ⁴ Exhibit 9.

⁵ *Id.*

⁶ Exhibit 10.

⁷ Exhibit 11.

⁸ Exhibit 1.

- 1 5. Based on her application and documents provided, Appellant's application was not
2 flagged and benefit payments were processed by the Department's online portal. In
3 August of 2020, Appellant received two payments of PUA and FPUC benefits by direct
4 deposit. Appellant did not remember the exact date or amount. Appellant indicated that
5 she spent all the money received on rent arrearages, medical bills, household bills,
6 groceries, and her minor child's tuition.
- 7 6. On December 13, 2020, the Department entered Appellant's information into the
8 Systematic Alien Verification for Entitlements (SAVE) database maintained by USCIS,
9 Verification Division.⁹ This database is used to determine the immigration status of PUA
10 applicants so only those entitled to benefits receive them.
- 11 7. The SAVE results indicate that Appellant is a non-national of the U.S. who is admitted
12 for a specific reason and for a limited period of time. The results further indicate that
13 Appellant is temporarily allowed to work under EAD Code or Category C09.¹⁰
- 14 8. On December 21, 2020, the Department served Appellant with a Notice of Overpayment
15 by postal mail.¹¹ The Notice of Overpayment indicates that Appellant was overpaid in the
16 total amount of \$16,720.00 for the weeks ending March 28, 2020 to August 1, 2020. Of
17 this total amount, \$10,200 is attributable to FPUC and \$6,520 is attributable to PUA. The
18 Notice of Overpayment also stated that the reason was due to a determination that
19 Appellant was not qualified based on her citizenship status.
- 20 9. The Notice of Overpayment was available for pick up at the Appellant's PO Box on
21 December 23, 2020.¹² Appellant did not pick up the Notice of Overpayment from her PO
22 Box until January 4, 2020 because she did not check her mail during the holiday season
23 and was not made aware or otherwise expecting important mail.
- 24 10. On January 7, 2021, Appellant appealed the Notice of Overpayment because she believes
25 she is a qualified alien eligible for PUA and FPUC benefits.¹³ Notably, Appellant does
26 not dispute: (1) the identifying information or PO box address; (2) the amounts listed in
27 the Notice of Overpayment; or (3) the fact that she received the money.

⁹ Exhibit 7.

¹⁰ *Id.*

¹¹ Exhibit 4 and Exhibit 12.

¹² Exhibit 12.

¹³ Exhibit 5.

1 11. On January 8, 2021, the Administrative Hearing Office issued a Notice of Hearing
2 identifying the following three issues to be discussed at the Administrative Hearing: (1)
3 whether the appeal was timely; (2) whether Appellant was eligible for PUA; and (3)
4 whether an overpayment occurred necessitating repayment of benefits.¹⁴

5 12. On January 14, 2021, the Department issued a Disqualifying Determination finding that
6 Appellant was not eligible for PUA and FPUC benefits because she is not a U.S. Citizen,
7 Non-national Citizen, or Qualified Alien.

8 a. Appellant believes she is a qualified alien because she has lived and worked in the
9 CNMI for a substantial number of years. However, Appellant is not aware of her
10 immigration status and has no documents, aside from her employment
11 authorization card, to substantiate her qualified alien status.

12 b. Based on her testimony, Appellant is not a permanent resident, alien granted
13 asylum, refugee, alien paroled into the U.S. for at least one consecutive year during
14 the pandemic assistance period, an alien pending deportation or removal, an alien
15 granted conditional entry, a Cuban or Haitian entrant, or an alien battered or
16 subject to extreme cruelty.

17 c. Appellant was granted employment authorization with the Category C09.¹⁵
18 Appellant has Employment Authorization Document ("EAD")¹⁶ card valid for
19 December 26, 2019 to December 25, 2020.¹⁷ Appellant's EAD was subsequently
20 renewed under Category C09 and effective December 26, 2020 to December 25,
21 2021.¹⁸

22 V. CONCLUSIONS OF LAW

23 In consideration of the above-stated findings and applicable law, the undersigned issues the
24 following conclusions of law:

25 **1. For good cause shown, the filing appeal shall be extended to thirty days. Appellant's
26 appeal is timely.**

27 Generally, an appeal should be filed within ten days after the Notice of Determination was
28 issued or served to the claimant. However, the undersigned may extend the period to thirty days

¹⁴ Exhibit 6.

¹⁵ Exhibit 8.

¹⁶ An EAD is a work permit that allows noncitizens to work in the United States.

¹⁷ Exhibit 8.

¹⁸ Exhibit 13.

1 by a showing of good cause.¹⁹ Good cause means: (1) illness or disability; (2) keeping an
2 appointment for a job interview; (3) attending a funeral of a family member; and (4) any other
3 reason which would prevent a reasonable person from complying as directed.²⁰

4 In this case, the Department issued two notices: (1) Notice of Overpayment issued December
5 21, 2020; and (2) a Disqualifying Determination issued January 14, 2021—after the appeal was
6 filed. First, the Benefit Control Unit issued a Notice of Overpayment in December 21, 2020. The
7 Notice of Overpayment was not uploaded to the portal but through postal mail. The tracking
8 shows that the Notice of Overpayment was available for pick up at Appellant's PO Box by
9 December 23, 2020. Appellant did not pick up the package until January 4, 2021—after the 10-
10 day deadline to file an appeal. Second, on January 14, 2021, the Department issued the
11 Disqualifying Determination. Appellant received the disqualifying determination when it was
12 uploaded to her portal. By the time she received the Disqualifying Determination, she already
13 filed an appeal and was pending an Administrative Hearing.

14 Generally, the fact that Appellant did not pick up her notice once it was delivered to the correct
15 address is not good cause for an extension. However, the undersigned recognizes there was a two
16 two-day delay in delivery, the two legal holidays prompting closures of offices and preventing
17 access to her PO Box, and the incomplete appeal instructions provided in the Notice of
18 Overpayment. The undersigned further recognizes that Appellant was not attempting to evade
19 service but simply did not know or expect anything in the PO Box—especially since she had
20 received her PUA and believed the payments were proper. However, when Appellant picked up
21 her mail, the undersigned finds she acted diligently by filing her appeal three days later. Based on
22 above, the undersigned finds there is good cause to extend the filing period to 30 days.
23 Accordingly, the appeal is timely filed.

24 **2. Appellant's employment was affected as a direct result of COVID-19.**

25 Pursuant to Section 2102 of the CARES Act of 2020, Public Law 116-136, there are a number
26 of requirements to meet the eligibility standard of PUA. First, the claimant cannot be qualified
27 for regular unemployment, extended benefits under state or federal law, or pandemic emergency
28 unemployment compensation (PEUC).²¹ Second, the claimant must attest²² that he or she is able
and available for work, as defined by Hawaii law, except they are unemployed, partially

¹⁹ HI. Rev. Statute § 383-38(a).

²⁰ HAR § 12-5-81(j).

²¹ This is not at issue in this case.

²² The PUA program relies on self-certifications and self-reporting under penalty of perjury.

1 unemployed, or unable to work or unavailable for work as a direct result²³ of a COVID-19 reason
2 identified in Section 2102 (a)(3)(A)(ii)(I) of the CARES Act:

- 3 (a) The individual has been diagnosed with COVID-19 or is experiencing symptoms of
4 COVID-19 and is seeking a medical diagnosis;
5 (b) A member of the individual's household has been diagnosed with COVID-19;
6 (c) The individual is providing care for a family member or a member of the individual's
7 household who has been diagnosed with COVID-19;
8 (d) A child or other person in the household for which the individual has primary
9 caregiving responsibility is unable to attend school or another facility that is closed as
10 a direct result of the COVID-19 public health emergency and such school or facility
11 care is required for the individual to work;
12 (e) The individual is unable to reach the place of employment because of a quarantine
13 imposed as a direct result of the COVID-19 public health emergency;
14 (f) The individual is unable to reach the place of employment because the individual has
15 been advised by a health care provider to quarantine due to concerns related to
16 COVID-19;
17 (g) The individual was scheduled to commence employment and does not have a job or is
18 unable to reach the job as a direct result of the COVID-19 public health emergency;
19 (h) The individual has become the breadwinner or major support for a household because
20 the head of the household has died as a direct result of COVID-19;
21 (i) The individual has to quit his or her job as a direct result of COVID-19;
22 (j) The individual's place of employment is closed as a direct result of the COVID-19
23 public health emergency; or
24 (k) The individual is an independent contractor who is unemployed (total or partial) or is
25 unable or unavailable to work because of the COVID-19 public health emergency has
26 severely limited his or her ability to continue performing the customary job.

18 Here, Appellant submitted a claim for PUA self-certifying under penalty of perjury that her
19 place of employment was closed as a direct result of the COVID-19 public health emergency. As
20 indicated above, Appellant worked as waitstaff at a restaurant in Kanoa Resort. Notably, early in
21 the CNMI's pandemic response, Kanoa Resort was identified as and converted into a quarantine
22 site for incoming travelers and diagnosed persons. After helping clear and clean the resort to
23 prepare for the quarantine conversion, Appellant was placed on furlough effective March 23,
24 2020. While Kanoa Resort was technically open, the restaurants were not operating, the location
25 was guarded and closed to the general public, and staff that were involved in quarantine operations
26 did not stay on. Appellant has not returned to the workforce and, to date, Kanoa Resort continues
27
28

²³ Pursuant to 20 CFR § 625.5, unemployment is considered a "direct result" of the pandemic where the employment is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events precipitated or exacerbated by the pandemic.

1 to operate as a quarantine location. Accordingly, the undersigned finds that Appellant's
2 employment was affected as a direct result of the COVID-19 qualifying reasons listed above.

3 **3. Appellant is not a qualified alien.**

4 PUA and FPUC are federal public benefits as defined by 8 USC §1611(c). As a condition of
5 eligibility for any federal public benefit, the claimant must be a "qualified alien" at the time
6 relevant to the claim. 8 USC §1611(a). Pursuant to 8 USC §1641, the term "qualified alien" is:

- 7 1. An alien admitted for permanent residence under the Immigration and Nationality Act
8 (INA);
- 9 2. An alien granted asylum under § 208 of the INA;
- 10 3. A refugee admitted to the US under § 207 of the INA;
- 11 4. An alien paroled into the US under § 212(d)(5) of the INA for at least one year;
- 12 5. An alien whose deportation is being withheld under § 243(h) of the INA ... or whose
13 removal is being withheld under § 241 (b)(3) of the INA;
- 14 6. An alien granted conditional entry pursuant to § 203 (a)(7) of the INA;
- 15 7. An alien who is a Cuban or Haitian entrant as defined in § 501(e) of the Refugee
16 Education Assistance Act of 1980; or
- 17 8. An alien who (or whose child or parent) has been battered or subject to extreme cruelty
18 in the U.S. and otherwise satisfies the requirements of § 431(c) of the Act.

19 Here, Appellant is appealing the Notice of Determination of Overpayment and Disqualifying
20 Determination finding Appellant ineligible for PUA because she is not a U.S. Citizen, Non-
21 national Citizen, or Qualified Alien. Appellant argues she is a qualified alien because she has an
22 EAD with Category C09.

23 Based on the evidence and testimony provided, Appellant does not meet the definition of a
24 qualified alien. First, the SAVE results indicate that Appellant is an EAD, Category C09.
25 Category C09 is a code that USCIS utilizes for applicants pending an adjustment in status.
26 Category C09 is not considered a qualified alien. Second, Appellant provides no other evidence
27 to contradict or rebut the SAVE results. Although Appellant has a pending application for
28 permanent residency, that application has not been approved or granted and therefore cannot be
used to substantiate her qualified alien status. Third, when questioned to determine whether
Appellant may fit into any other provision of the qualified alien definition, Appellant responded
in the negative. Accordingly, Appellant was not a qualified alien at the time of the weeks she is
claiming PUA benefits.

///

4. Appellant was overpaid and entitled to a waiver.

“Benefits shall be paid promptly in accordance with a determination, redetermination, or decision or appeal.”²⁴ However, “[a]ny individual who has received any amount as benefits . . . to which the individual was not entitled shall be liable for the amount unless the overpayment was received without fault on the part of the recipient and its recovery would be against equity and good conscience.”²⁵ Fault²⁶ is defined as:

- (A) A material statement made by the individual which the individual knew or should have known to be incorrect; or
- (B) Failure to furnish information which the individual knew or should have known to be material; or
- (C) Acceptance of a payment which the individual either knew or reasonably could have been expected to know was incorrect.

Based on federal guidance, “contrary to equity and good conscience” is tantamount to placing an individual below the poverty line and taking away basic necessities to live. In evaluating equity and good conscience,²⁷ the factors to consider include, but are not limited to:

- (A) Whether notice of a redetermination was given to the claimant, as required . . .
- (B) Hardship to the claimant that the repayment may impose; and
- (C) The effect, if any, that the repayment will have upon the fulfillment of the objectives of the program.²⁸

Considering that Appellant is not a qualified alien, Appellant should not have been paid benefits under PUA or FPUC. Moreover, considering that Appellant does not contest the amount listed in the Notice of Overpayment and confirmed receiving the total sum of \$16,720.00—it is clear that the overpayment occurred.

²⁴ HRS § 383-43.

²⁵ HRS § 383-44. Section 2104(f)(2) of the CARES Act requires individuals who have received FPUC overpayments to repay these amounts to the state agency. However, under UIPL 15-20, the state has authority to waive repayments of FPUC if the payment was without fault on the part of the individual and such repayment would be contrary to equity and good conscience. Section 201(d) of the Continued Assistance Act amends Section 2102(d) of the CARES Act and authorizes states to waive the repayment if the state determines that the payment of PUA was without fault on the part of any such individual and such repayment would be contrary to equity and good conscience. This waiver authority applies to overpayments that meet this criterion at any time since the PUA program began.

²⁶ HRS 12-5-83.

²⁷ *Id.*

²⁸ PUA benefits were designed to be a critical lifeline for qualifying individuals facing a financial crisis amidst a pandemic. Issues of fraud and overpayments are of great consequence that jeopardizes the integrity of the program and availability of funds for eligible or qualified individuals.

1 However, in this case, the undersigned finds that this overpayment occurred due to the fault
2 of the Department and technical error in the online portal. First, the Department is required to
3 institute benefit payment controls and run a SAVE inquiry to confirm identification or eligibility
4 for all aliens before issuing benefits. This inquiry did not occur and the online portal automatically
5 processed Appellant's application based on the information provided on the application. Second,
6 the technically incorrect answer Appellant provided regarding her citizenship was not her fault.
7 Specifically, when asked about citizenship, Appellant answered she was an "Alien/Refugee
8 Lawfully Admitted to the U.S." Appellant genuinely believed to fit into this category because she
9 entered the CNMI legally, has resided in the CNMI for a number of years, married a U.S. citizen,
10 and undergoing the permanent resident application process. Furthermore, while it is the
11 Claimant's responsibility to read and understand the program requirements as listed in the PUA
12 benefits rights information handbook, this handbook defines "Qualified Aliens"—not
13 "Alien/Refugee Lawfully Admitted to U.S." This overly technical language is very confusing and
14 only compounded by language barriers when: (1) the form and PUA benefit rights information
15 handbook were not translated for persons with limited English proficiency; and (2) the Appellant
16 was led to believe she was eligible during three interviews with an adjudicator early in the
17 program.

18 Moreover, the undersigned finds that that repayment would be contrary to equity and good
19 conscience. Here, Appellant was given two payments in August. At the time, she had no notice
20 that this payment was made in error and used the money to pay arrearages in bills for rent, utilities,
21 and her minor child's school tuition. Appellant testified under oath that all the money has been
22 spent on bills, food, and other necessary expenses arising during the pandemic. Appellant further
23 testified that the household income, comprising only of her husband's retirement income, falls
24 below their necessary expenses for the family of five and their household debt is rising at
25 incredible rates due to her husband's growing medical expenses and travel for cancer treatment.
26 Appellant's place of employment continues to be used as a quarantine facility and Appellant has
27 no other prospects for income. Considering Appellant's immediate and basic needs, repayment
28 of PUA benefits poses an incredible hardship.

In consideration of the fact that payment was made through no fault of the Appellant and
repayment would be contrary to equity and good conscience, a waiver of the entire overpayment
of \$16,720.00 is appropriate and warranted.

VI. CONCLUSION

For the reasons stated above, it is ORDERED that:

1. The CNMI Department of Labor's Disqualifying Determination, dated January 14, 2021, is **AFFIRMED**;
2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of February 2, 2020 to December 26, 2020.
3. The CNMI Department of Labor's Notice of Overpayment, dated December 21, 2020, is **AFFIRMED**;
4. Appellant was overpaid in the total amount of \$16,720.00 however, based on above, repayment of the entire amount is hereby **WAIVED**; and
5. The CNMI Department of Labor Benefit Payment Control Unit shall create an issue or notation on Appellant's online portal to prevent and control future overpayment issues.

If a party is aggrieved by this Order and would like to contest the decision, he or she must submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5.93. The written request should be supported by legal, factual, or evidentiary reasons to reopen the decision. The written request must be submitted to the Administrative Hearing Office, either in person at 1357 Mednilla Avenue, Capitol Hill Saipan MP 96950) or via email at hearing@dol.gov.mp.

In the event a request to reopen the decision is granted, the matter shall be scheduled for a subsequent hearing. In the event a request to reopen the decision is denied, or if the Appellant still disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI Superior Court under the local Administrative Procedures Act. *See* 1 CMC § 9112. All forms, filings fees, and filing deadlines for judicial review will be as established by the applicable law and court rule.

So ordered this **23rd** day of February, 2021.

/s/

JACQUELINE A. NICOLAS
Administrative Hearing Officer



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

In Re Matter of:) PUA Case No. 21-0048
Peter R. Muna,)
Appellant,) ADMINISTRATIVE ORDER
v.)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
Appellee.)

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on January 27, 2021 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Appellant Peter R. Muna ("Appellant") was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program ("Appellee" or "Department") was present and represented by PUA Coordinator Colleen Diaz and Labor Certification Worker Dennis Cabrera. There were no other witnesses who gave testimony at the hearing.

1. Exhibit 1: Appellant's Application Snapshot;
2. Exhibit 2: Initial Disqualifying Determination (mail date September 1, 2020);
3. Exhibit 3: Request for Reconsideration (filed August 28, 2020);
4. Exhibit 4: Second Disqualifying Determination (mail date January 11, 2021);
5. Exhibit 5: Request to File an Appeal and Letter (filed January 12, 2021);
6. Exhibit 6: Notice of Hearing (issued January 12, 2021); and
7. Exhibit 7: Copy of Letter from CPA (Dated March 10, 2020).

For the reasons stated below, the Department's Determination dated January 11, 2021 is **AFFIRMED**. Claimant is not eligible for benefits for the period of February 2, 2020 to March 13, 2021.

///

II. JURISDICTION

On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of 2020 was signed into law creating new temporary federal programs for unemployment benefits called Pandemic Unemployment Assistance ("PUA")¹ and Federal Pandemic Unemployment Compensation ("FPUC").² On December 27, 2020, the Continued Assistance for Unemployed Workers Act of 2020 ("Continued Assistance Act") amended and created new provisions of said federal unemployment insurance programs, which, among other things, extended the PUA and FPUC programs.³ The CNMI Department of Labor is charged with the responsibility in administering the above-mentioned programs in the CNMI in accordance to applicable law.⁴ The CNMI Department of Labor Administrative Hearing Office has been designated to preside over appeals of agency decisions.

Upon review of the records, the appeal was timely filed. Accordingly, jurisdiction is established.

III. PROCEDURAL HISTORY & ISSUES

Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon review of Appellant's application and supporting documents, the Department issued the Initial Disqualifying Determination on September 1, 2020. On August 28, 2020, Appellant requested the Department reconsider his claim. On January 11, 2021, the Department issued a second Disqualifying Determination stating that Appellant did not provide any new evidence to substantiate his eligibility for PUA and the initial determination was reaffirmed. On January 12, 2021, Appellant filed a request to appeal the second determination. As stated in the Notice of Hearing issued that same day, the issues on appeal are: (1) whether Appellant is eligible for PUA; and (2) whether an overpayment occurred and funds should be returned.

IV. FINDINGS OF FACT

In consideration of the evidence provided and credibility of witness testimony, the undersigned issues the following findings of fact:

¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

³ See Consolidated Appropriations Act, 2021, Division N, Title II, Subtitled A ("Continued Assistance for Unemployed Workers Act of 2020" or "Continued Assistance Act").

⁴ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

- 1 2. Appellant did not have a recent attachment to the CNMI work force prior to the pandemic.
2 From 2015 to 2017, Appellant worked as a teacher in Kagman Highschool. From 2017 to
3 August 2018, Appellant worked as a teacher in Da'ok Highschool. Appellant voluntarily
4 separated from employment in September 2018 to return to school. Appellant attended
5 Framingham State University program offered by Northern Marianas College from
6 September 2018 to December 2019. While in school, Appellant was not employed.
- 7 3. Upon graduation, Appellant sought work but was unsuccessful. Specifically, Appellant
8 applied with Census 2020 but was not offered a job. Also, Appellant applied and
9 interviewed for a job with the Commonwealth Ports Authority ("CPA"), but the job
10 vacancy announcement and position was rescinded due the devastating financial impact of
11 the COVID-19 pandemic.⁵ During 2020, Appellant continued to look for work but was
12 not hired or scheduled to commence employment.
- 13 4. On June 17, 2020, Appellant filed a paper application to claim PUA and FPUC benefits.
14 His paper application was inputted into the online PUA portal on August 27, 2020.⁶ In the
15 application, Appellant certified under penalty of perjury that his employment was affected
16 as a direct result of COVID-19 because he "was scheduled to commence employment and
17 do not have a job or am unable to reach the job as a direct result of the COVID-19 public
18 health emergency." Appellant also self-certified, "Other reason not listed here." Appellant
19 self-certified that his employment was affected as of August 2, 2018.
- 20 5. On September 1, 2020, the Department disqualified Appellant from receiving PUA
21 benefits from February 2, 2020 to December 26, 2020.⁷ The Determination found that the
22 Appellant's was not qualified under the selected COVID-19 qualifying reason because he
23 did not receive a bona fide job offer and therefore not scheduled to commence
24 employment.
- 25 6. Subsequently, Appellant filed a request for Reconsideration. Because there were no
26 additional documents or explanation to support his request, the Department requested
27 Appellant supply additional information or documents to substantiate his eligibility. In a
28 letter dated December 29, 2020, Appellant responded to the request for additional

⁵ Exhibit 7.

⁶ Exhibit 1.

⁷ Exhibit 2.

documents by explaining, “[t]he Pandemic may not have caused my unemployment but it sure did prevents [sic] me for [sic] being gainfully employed.”⁸

6. Appellant did not supply any additional documents within the requested deadline and a Second Disqualifying Determination was made based on the information and supporting documents available. This determination disqualified Appellant from benefits from February 2, 2020 to March 13, 2021 because the Department found there was no evidence to substantiate eligibility for PUA.

7. On January 12, 2020, Appellant filed the present Appeal.⁹ In support of the Appeal, Appellant included, among other things, the letter to the Department dated December 29, 2020 and a letter from CPA rescinding the job vacancy announcement, dated March 10, 2020.

8. To date, Appellant did not receive any PUA or FPUC benefits.¹⁰

V. CONCLUSIONS OF LAW

In consideration of the above-stated findings and applicable law, the undersigned issues the following conclusions of law:

1. Appellant’s employment was not affected as a direct result of COVID-19.

In accordance with the CARES Act and Continued Assistance Act, payment of PUA and FPUC benefits are available to “covered individuals.” A “covered individual” is someone who: (1) is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under Section 2107 of the CARES Act, including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law or Pandemic Emergency Unemployment Compensation under Section 2107;¹¹ (2) self-certifies¹² that the individual is unemployed, partially unemployed, or unable or unavailable to work¹³ as a direct result¹⁴ of a listed COVID-19 reason in Section 2102(a)(3)(A)(ii) of the CARES Act, and

⁸ Exhibit 5.

⁹ Exhibit 3.

¹⁰ Accordingly, overpayments and waivers are not at issue in this case and not discussed further.

¹¹ This condition is generally not at issue with claimants in the CNMI because there are no other State or Federal unemployment insurance programs in the CNMI.

¹² The PUA program utilizes initial and weekly applications where claimants self-certify and report under penalty of perjury.

¹³ A claimant must be able to work and be available for work, as defined by Hawaii state law, in order to be eligible for benefits. See HAR § 12-5-35.

¹⁴ Pursuant to 20 CFR § 625.5, unemployment is considered a “direct result” of the pandemic where the employment is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events precipitated or exacerbated by the pandemic.

1 (3) provides required documentation of employment/self-employment within the applicable period of
2 time.¹⁵

3 With respect to condition (2) listed above, Section 2102 (a)(3)(A)(ii)(I) of the CARES Act
4 specifically identifies the COVID-19 qualifying reasons¹⁶ as:

- 5 (aa) The individual has been diagnosed with COVID-19 or is
6 experiencing symptoms of COVID-19 and is seeking a medical
7 diagnosis;
- 8 (bb) A member of the individual's household has been diagnosed with
9 COVID-19;
- 10 (cc) The individual is providing care for a family member or a
11 member of the individual's household who has been diagnosed
12 with COVID-19;
- 13 (dd) A child or other person in the household for which the individual
14 has primary caregiving responsibility is unable to attend school
15 or another facility that is closed as a direct result of the COVID-
16 19 public health emergency and such school or facility care is
17 required for the individual to work;
- 18 (ee) The individual is unable to reach the place of employment
19 because of a quarantine imposed as a direct result of the COVID-
20 19 public health emergency;
- 21 (ff) The individual is unable to reach the place of employment
22 because the individual has been advised by a health care provider
23 to quarantine due to concerns related to COVID-19;
- 24 (gg) The individual was scheduled to commence employment and
25 does not have a job or is unable to reach the job as a direct result
26 of the COVID-19 public health emergency;
- 27 (hh) The individual has become the breadwinner or major support for
28 a household because the head of the household has died as a
direct result of COVID-19;
- (ii) The individual has to quit his or her job as a direct result of
COVID-19;
- (jj) The individual's place of employment is closed as a direct result
of the COVID-19 public health emergency; or
- (kk) The individual is an independent contractor who is unemployed
(total or partial) or is unable or unavailable to work because of
the COVID-19 public health emergency has severely limited his
or her ability to continue performing the customary job.

¹⁵ Section 241 of the Continued Assistance Act requires that an individual must provide documentation substantiating employment or self-employment, or the planned commencement of employment or self-employment, if he or she files a new application for PUA on or after January 31, 2021, or, if the individual applied for PUA before January 31, 2021 and receives PUA benefits on or after December 27, 2020.

¹⁶ These reasons are further defined or illustrated in UIPL 16-20, Change 4.

1 Here, Appellant submitted a claim for PUA and FPUC Benefits self-certifying, under penalty
2 of perjury, that his employment was affected as a direct result of COVID-19 because he “was
3 scheduled to commence employment and do not have a job or am unable to reach the job as a
4 direct result of the COVID-19 public health emergency.” Appellant also self-certified, “Other
5 reason not listed here.” Appellant self-certified that his employment was affected as of August 2,
6 2018.

7 First, PUA eligibility is strictly limited to the specific COVID-19 qualifying reasons, stated
8 above. The undersigned recognizes the widespread and devastating economic impact of the
9 COVID-19 pandemic. Clearly, the COVID-19 pandemic was the catalyst in the abrupt halt in
10 tourism, diminishing revenues across the CNMI’s public and private sectors, and fiscally-
11 necessary reductions in operations and force. However, the fact that employers were not hiring or
12 that there were little to no jobs available is not a COVID-19 qualifying reason.

13 Second, Appellant did not have recent attachment to the workforce. Based on the qualifying
14 COVID-19 reasons (aa) through (ff) and (hh) through (kk), Appellant’s employment cannot be
15 affected as a direct result of said COVID-19 reasons when his unemployment predated the
16 pandemic. Further, when questioned under oath as to each of these qualifying COVID-19 reasons,
17 Appellant responded in the negative. Specifically, under (cc), Appellant stated he was caring for
18 his elderly mother but confirmed her condition was unrelated to COVID-19. Also, under (dd),
19 Appellant stated he would care for his minor goddaughter but confirmed he was not the primary
20 caregiver.

21 Third, contrary to Appellant’s self-certification, he was not scheduled to commence
22 employment with CPA or any other employer. During the Administrative Hearing, Appellant
23 clarified that the position he interviewed for was rescinded but he was never offered the position
24 or scheduled to commence employment.¹⁷ Accordingly, Appellant does not qualify under reason
25 (gg).

26 Based on the applicable law and evidence provided, Appellant does not meet any of the
27 COVID-19 qualifying reasons. Accordingly, Appellant’s employment was not affected as a direct
28 result of COVID-19 and Appellant is not eligible to receive PUA or FPUC benefits.

///

///

¹⁷ See Exhibit 7.

VI. DECISION

For the reasons stated above, it is ORDERED that:

1. The CNMI Department of Labor's Disqualifying Determination dated January 11, 2021, is **AFFIRMED**; and
2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of February 2, 2020 to March 13, 2021.

If a party is aggrieved by this Order and would like to contest the decision, he or she must submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The written request should be supported by legal, factual, or evidentiary reasons to reopen the decision. The written request must be submitted to the Administrative Hearing Office, either in person at 1357 Mednilla Avenue, Capitol Hill Saipan MP 96950) or via email at hearing@dol.gov.mp.

In the event a request to reopen the decision is granted, the matter shall be scheduled for a subsequent hearing. In the event a request to reopen the decision is denied, or if the Appellant still disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI Superior Court under the local Administrative Procedures Act. *See* 1 CMC § 9112. All forms, filings fees, and filing deadlines for judicial review will be as established by the applicable law and court rule.

So ordered this 26th day of February, 2021.

/s/

JACQUELINE A. NICOLAS
Administrative Hearing Officer

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



In Re Matter of:) **PUA Case No. 21-0049**
)
Lorna R. Maramba,)
)
Appellant,) **ADMINISTRATIVE ORDER**
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on February 09, 2021 at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Appellant Lorna R. Maramba ("Appellant") was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program ("Appellee" or "Department") was present and represented by Dennis Cabrera, Labor Certification Worker and Pheona David, PUA Coordinator. There were no other witnesses who gave testimony at the hearing.

Exhibits:

1. Exhibit 1: Department Determination (mail date January 21, 2021);
2. Exhibit 2: Amended Department Determination (mail date January 29, 2021);
3. Exhibit 3: Appellant's Appeal Form (dated January 22, 2021);
4. Exhibit 4: Letter from AA Enterprises, Inc. (dated July 29, 2020);
5. Exhibit 5: Letter from Mail Express (dated October 01, 2020);
6. Exhibit 6: Application Snapshot;
7. Exhibit 7: USCIS Notice of Action (dated September 16, 2020);
8. Exhibit 8: USCIS Notice of Action (dated September 26, 2019);
9. Exhibit 9: Labor Certification (dated January 14, 2021); and
10. Exhibit 10: Copy of Appellant's Passport and Social Security Card.

For the reasons stated below, the Department's Amended Determination dated January 29, 2021 is **AFFIRMED**. Claimant is not eligible for benefits for the period of March 08, 2020 to December 26, 2020.

II. JURISDICTION

On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of 2020 was signed into law creating new temporary federal programs for unemployment benefits called Pandemic Unemployment Assistance ("PUA")¹ and Federal Pandemic Unemployment Compensation ("FPUC").² On March 29, 2020, the CNMI Government executed an agreement with the US Secretary of Labor to operate the PUA and FPUC program in accordance to applicable law.³ The CNMI Department of Labor is charged with the responsibility in administering the above-mentioned programs in the CNMI. The CNMI Department of Labor Administrative Hearing Office has been designated to preside over first level appeals of the aforesaid programs.

Upon review of the records, the appeal was timely filed. Accordingly, jurisdiction is established.

III. PROCEDURAL HISTORY & ISSUE

Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon review of Appellant's application and supporting documents, the Department issued a disqualifying determination on January 21, 2021. The Department's determination found that Appellant was not eligible to receive PUA effective March 08, 2020 to March 13, 2021 because the Department found that Appellant failed to provide additional documents to the Department in a timely manner. On January 22, 2021, Appellant filed a request to appeal the disqualifying determination. On January 29, 2021, the Department issued an amended disqualifying determination. The amended Department's determination found that Appellant was not eligible to receive PUA effective March 08, 2020 to December 26, 2020 because of Appellant's current

¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

³ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

1 status as a CW-1 worker. As stated in the Notice of Hearing, the issues on appeal are: (1) whether
2 Appellant is a qualified alien eligible for PUA and (2) whether there are any overpayments
3 necessitating the return of PUA funds in this case.

4 IV. FINDINGS OF FACT

5 In consideration of the evidence provided and credibility of witness testimony, the
6 undersigned issues the following findings of fact:

- 7 1. Prior to the pandemic, Appellant was employed as an accountant at AA Enterprises, Inc.,
8 located in Lower Navy Hill, Saipan. Prior to COVID-19, Appellant generally worked 40
9 hours per week for the hourly rate of \$8.00. Appellant also worked part-time as an
10 accountant for another employer, Mail Express, Inc. Appellant worked 20 hours per week
11 at an hourly rate of \$12.86.
- 12 2. Appellant was furloughed from her employer at AA Enterprises, Inc. on March 15, 2020,
13 and was furloughed from her employer at Mail Express, Inc. on October 01, 2020. Both
14 companies experienced a reduction in hours as a result of the COVID-19 pandemic.
- 15 3. On August 01, 2020, Appellant filed an application to claim PUA and FPUC benefits. In
16 the application, Appellant certified under penalty of perjury that she stopped working at
17 her full-time and part-time jobs during the pandemic because the business was slow.
- 18 4. On January 21, 2021, the Department disqualified Appellant from receiving PUA benefits
19 effective March 08, 2020 to March 13, 2021. The Department denied Appellant's claim
20 because she failed to provide her proofs of identification and other supporting documents
21 in a timely manner.
- 22 5. On January 22, 2021, Appellant filed the present appeal, claiming that she was affected
23 by the pandemic since March 15, 2020.
- 24 6. On January 29, 2021, the Department issued a second Determination.⁴ The Department
25 acknowledged Appellant's submission of her documents, but found that due to
26 Appellant's CW-1 status, she was disqualified from receiving PUA effective March 08,
27 2020 to December 26, 2020.⁵

28 ⁴ The undersigned will therefore treat the second Determination as the Department's Amended Determination.

⁵ According to PUA Coordinator Pheona David, because Appellant proved that she was a CW-1 worker, the Department only disqualified Appellant up to December 26, 2020. The Department has not determined whether Appellant qualifies for the second phase of the PUA program.

- 1 7. Appellant is not a permanent resident, alien granted asylum, refugee, an alien pending
2 deportation or removal, an alien granted conditional entry, a Cuban or Haitian entrant, or
3 an alien battered or subject to extreme cruelty.

4 **V. CONCLUSIONS OF LAW**

5 In consideration of the above-stated findings and applicable law, the undersigned issues the
6 following conclusions of law:

7 **1. Appellant's employment was affected as a direct result of COVID-19.**

8 Pursuant to Section 2102 of the CARES Act of 2020, Public Law 116-136, there are a number
9 of requirements to meet the eligibility standard of PUA. First, the claimant cannot be qualified
10 for regular unemployment, extended benefits under state or federal law, or pandemic emergency
11 unemployment compensation (PEUC).⁶ Second, the claimant must attest⁷ that he or she is able
12 and available for work, as defined by Hawaii law, except they are unemployed, partially
13 unemployed, or unable to work or unavailable for work as a direct result⁸ of a COVID-19 reason
identified in Section 2102 (a)(3)(A)(ii)(I) of the CARES Act:

- 14 (a) The individual has been diagnosed with COVID-19 or is experiencing symptoms of
15 COVID-19 and is seeking a medical diagnosis;
16 (b) A member of the individual's household has been diagnosed with COVID-19;
17 (c) The individual is providing care for a family member or a member of the individual's
18 household who has been diagnosed with COVID-19;
19 (d) A child or other person in the household for which the individual has primary
20 caregiving responsibility is unable to attend school or another facility that is closed as
21 a direct result of the COVID-19 public health emergency and such school or facility
22 care is required for the individual to work;
23 (e) The individual is unable to reach the place of employment because of a quarantine
24 imposed as a direct result of the COVID-19 public health emergency;
25 (f) The individual is unable to reach the place of employment because the individual has
26 been advised by a health care provider to quarantine due to concerns related to
27 COVID-19;
28 (g) The individual was scheduled to commence employment and does not have a job or is
unable to reach the job as a direct result of the COVID-19 public health emergency;
(h) The individual has become the breadwinner or major support for a household because
the health of the household has died as a direct result of COVID-19;

26 ⁶ This is not at issue in this case. Appellant testified that she did not receive any other benefits from any other state
27 or federal program.

27 ⁷ The PUA program relies on self-certifications and self-reporting under penalty of perjury.

28 ⁸ Pursuant to 20 CFR § 625.5, unemployment is considered a "direct result" of the pandemic where the employment
is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events
precipitated or exacerbated by the pandemic.

- (i) The individual has to quit his or her job as a direct result of COVID-19;
- (j) The individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or
- (k) The individual is an independent contractor who is unemployed (total or partial) or is unable or unavailable to work because of the COVID-19 public health emergency has severely limited his or her ability to continue performing the customary job.

Generally, the CNMI was heavily impacted by the threat of COVID-19. Due to the threat of COVID-19 and pursuant to the Governor's Executive Orders, there were closures of government offices, restrictions on private businesses, and an overall reduction in revenue from the immediate halt in tourism. Here, Appellant testified that she was furloughed from her full-time job in March and from her part-time job in October, due to the slow-down in the economy. Her statements are supported by letters from her employers. Appellant's employers experienced a reduction in revenue from the immediate halt in tourism. Accordingly, based on the evidence and testimony provided, Appellant's employment was affected as a direct result of COVID-19.

2. Appellant is not a qualified alien eligible for PUA.

PUA and FPUC are federal public benefits as defined by 8 USC §1611(c). As a condition of eligibility for any federal public benefit, the claimant must be a "qualified alien" at the time relevant to the claim. 8 USC §1611(a). Pursuant to 8 USC §1641, the term "qualified alien" is:

1. An alien admitted for permanent residence under the Immigration and Nationality Act (INA);
2. An alien granted asylum under § 208 of the INA;
3. A refugee admitted to the US under § 207 of the INA;
4. An alien paroled into the US under § 212(d)(5) of the INA for at least one year;
5. An alien whose deportation is being withheld under § 243(h) of the INA ... or whose removal is being withheld under § 241 (b)(3) of the INA;
6. An alien granted conditional entry pursuant to § 203 (a)(7) of the INA;
7. An alien who is a Cuban or Haitian entrant as defined in § 501(e) of the Refugee Education Assistance Act of 1980; or
8. An alien who (or whose child or parent) has been battered or subject to extreme cruelty in the U.S. and otherwise satisfies the requirements of § 431(c) of the Act.

Here, Appellant testified that she is a qualified alien because she is an alien paroled for at least one year.

Appellant's argument fails for the following reasons. First, Appellant is a CW-1 permit holder. Category CW-1 does not fit into any type of qualified aliens entitled to benefits under the first phase of the PUA program. Second, there is no showing that Appellant was paroled into the

1 U.S. for at least one year during the weeks claimed. Finally, based on the testimony and evidence
2 presented, Appellant does not meet other provisions of the qualified alien definition. Therefore,
3 Appellant was not a qualified alien at the time of the weeks claimed.

4 **3. An overpayment did not occur.**

5 “Benefits shall be paid promptly in accordance with a determination, redetermination, or
6 decision or appeal.”⁹ However, “[a]ny individual who has received any amount as benefits . . . to
7 which the individual was not entitled shall be liable for the amount unless the overpayment was
8 received without fault on the part of the recipient and its recovery would be against equity and
9 good conscience.”¹⁰

10 Here, Appellant did not receive PUA benefits. Therefore, an overpayment did not occur.

11 **VI. CONCLUSION**

12 For the reasons stated above, it is ORDERED that:

- 13 1. The CNMI Department of Labor’s Determination is **AFFIRMED**;
14 2. The Appellant is **INELIGIBLE** to receive PUA benefits for the weeks of March 08,
15 2020 to December 26, 2020.

16 If a party is aggrieved by this Order and would like to contest the decision, he or she must
17 submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5.93. The
18 written request should be supported by legal, factual, or evidentiary reasons to reopen the
19 decision. The written request must be submitted to the Administrative Hearing Office, either in
20 person at 1357 Mednilla Avenue, Capitol Hill Saipan MP 96950) or via email at
21 hearing@dol.gov.mp.

22 ///

23 ///

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⁹ HRS § 383-43.

¹⁰ HRS § 383-44.

1 In the event a request to reopen the decision is granted, the matter shall be scheduled for a
2 subsequent hearing. In the event a request to reopen the decision is denied, or if the Appellant
3 still disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI
4 Superior Court under the local Administrative Procedures Act. *See* 1 CMC § 9112. All forms,
5 filings fees, and filing deadlines for judicial review will be as established by the applicable law
6 and court rule.

7 So ordered this 17th day of March, 2021.

8 /s/

9 **JOEY P. SAN NICOLAS**
10 *Pro Tem* Administrative Hearing
11 Officer
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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



In Re Matter of:) **PUA Case No. 21-0050**
)
Stacy Sablan Kaipat,)
)
Appellant,) **ADMINISTRATIVE ORDER**
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on February 10, 2021 at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Appellant Stacy Sablan Kaipat ("Appellant") was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program ("Appellee" or "Department") was present and represented by Eugene Tebuteb, Director of Employment Services and Maria Adaza, PUA Coordinator. There were no other witnesses who gave testimony at the hearing.

Exhibits:

1. Exhibit 1: Department Determination (mail date January 14, 2021);
2. Exhibit 2: Appellant's Appeal Form (dated January 22, 2021);
3. Exhibit 3: Application Snapshot;
4. Exhibit 4: Internship Agreement;
5. Exhibit 5: Hyatt Training Verification;
6. Exhibit 6: Certificate of Completion;
7. Exhibit 7: Copy of Mayor's ID and SS Card;
8. Exhibit 8: Letter from Josephine Mesta (dated July 27, 2020); and
9. Exhibit 9: Email from Denise Montenegro (dated January 13, 2021).

1 For the reasons stated below, the Department's Determination dated January 14, 2021 is
2 **AFFIRMED**. Claimant is not eligible for benefits for the period of March 29, 2020 to March 13,
3 2021.

4 II. JURISDICTION

5 On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of
6 2020 was signed into law creating new temporary federal programs for unemployment benefits
7 called Pandemic Unemployment Assistance ("PUA")¹ and Federal Pandemic Unemployment
8 Compensation ("FPUC").² On March 29, 2020, the CNMI Government executed an agreement
9 with the US Secretary of Labor to operate the PUA and FPUC program in accordance to
10 applicable law.³ The CNMI Department of Labor is charged with the responsibility in
11 administering the above-mentioned programs in the CNMI. The CNMI Department of Labor
12 Administrative Hearing Office has been designated to preside over first level appeals of the
13 aforesaid programs.

14 Upon review of the records, the appeal was timely filed. Accordingly, jurisdiction is
15 established.

16 III. PROCEDURAL HISTORY & ISSUE

17 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon
18 review of Appellant's application and supporting documents, the Department issued a
19 disqualifying determination on January 14, 2021. The Department's determination found that
20 Appellant was not eligible to receive PUA effective March 29, 2020 to March 13, 2021 because
21 the Department found that Appellant's unemployment was not related to the COVID-19
22 pandemic. On January 22, 2021, Appellant filed a request to appeal the disqualifying
23 determination. As stated in the Notice of Hearing, the issues on appeal are: (1) whether Appellant
24 is eligible for PUA and (2) whether there are any overpayments necessitating the return of PUA
25 funds in this case.

26 ¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

27 ² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

28 ³ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

IV. FINDINGS OF FACT

In consideration of the evidence provided and credibility of witness testimony, the undersigned issues the following findings of fact:

1. Prior to the pandemic, Appellant was an Intern at the Hyatt Regency Culinary Department, under the Northern Marianas Trades Institute ("NMTI") Culinary program. Appellant served as a Cook under the program. Appellant completed her internship on March 30, 2020.⁴ Appellant worked less than 30 hours per week and earned \$7.25 per hour.
2. Appellant earned a certificate in Culinary Arts.⁵
3. On December 03, 2020, Appellant filed an application to claim PUA and FPUC benefits. In the application, Appellant certified under penalty of perjury that her place of employment was closed as a direct result of the COVID-19 public health emergency.⁶
4. Appellant was not hired by Hyatt Regency Saipan upon completion of her internship.
5. On January 14, 2021, the Department disqualified Appellant from receiving PUA benefits effective March 29, 2020 to March 13, 2021. The Department denied Appellant's claim because her unemployment was not related to the COVID-19 pandemic.⁷
6. On January 22, 2021, Appellant filed the present appeal, claiming that the pandemic has affected her chance of finding employment.⁸

V. CONCLUSIONS OF LAW

In consideration of the above-stated findings and applicable law, the undersigned issues the following conclusions of law:

1. Appellant's employment was not affected as a direct result of COVID-19.

Pursuant to Section 2102 of the CARES Act of 2020, Public Law 116-136, there are a number of requirements to meet the eligibility standard of PUA. First, the claimant cannot be qualified for regular unemployment, extended benefits under state or federal law, or pandemic emergency

⁴ Exhibit 5.

⁵ Exhibit 6.

⁶ Exhibit 3.

⁷ Exhibit 1.

⁸ Exhibit 2.

1 unemployment compensation (PEUC).⁹ Second, the claimant must attest¹⁰ that he or she is able
2 and available for work, as defined by Hawaii law, except they are unemployed, partially
3 unemployed, or unable to work or unavailable for work as a direct result¹¹ of a COVID-19 reason
4 identified in Section 2102 (a)(3)(A)(ii)(I) of the CARES Act:

- 5 (a) The individual has been diagnosed with COVID-19 or is experiencing symptoms of
COVID-19 and is seeking a medical diagnosis;
- 6 (b) A member of the individual's household has been diagnosed with COVID-19;
- 7 (c) The individual is providing care for a family member or a member of the individual's
household who has been diagnosed with COVID-19;
- 8 (d) A child or other person in the household for which the individual has primary
caregiving responsibility is unable to attend school or another facility that is closed as
9 a direct result of the COVID-19 public health emergency and such school or facility
care is required for the individual to work;
- 10 (e) The individual is unable to reach the place of employment because of a quarantine
imposed as a direct result of the COVID-19 public health emergency;
- 11 (f) The individual is unable to reach the place of employment because the individual has
12 been advised by a health care provider to quarantine due to concerns related to
COVID-19;
- 13 (g) The individual was scheduled to commence employment and does not have a job or is
unable to reach the job as a direct result of the COVID-19 public health emergency;
- 14 (h) The individual has become the breadwinner or major support for a household because
15 the head of the household has died as a direct result of COVID-19;
- 16 (i) The individual has to quit his or her job as a direct result of COVID-19;
- 17 (j) The individual's place of employment is closed as a direct result of the COVID-19
public health emergency; or
- 18 (k) The individual is an independent contractor who is unemployed (total or partial) or is
unable or unavailable to work because of the COVID-19 public health emergency has
19 severely limited his or her ability to continue performing the customary job.

20 Here, Appellant certified that her place of employment was closed as a direct result of the
21 COVID-19 public health emergency. Based on the testimony and evidence presented at the
22 hearing, Appellant's employment was not affected by the COVID-19 pandemic.

23 First, Appellant's termination from Hyatt Regency Saipan on March 30, 2020 was due to the
24 expiration of the NMTI culinary program, not the COVID-19 public health emergency. Second,
25 Appellant was never scheduled to commence work at Hyatt Regency Saipan after the internship

26 ⁹ This is not at issue in this case. Appellant testified that she did not receive any other benefits from any other state
or federal program.

27 ¹⁰ The PUA program relies on self-certifications and self-reporting under penalty of perjury.

28 ¹¹ Pursuant to 20 CFR § 625.5, unemployment is considered a "direct result" of the pandemic where the employment
is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events
precipitated or exacerbated by the pandemic.

1 expired. Hyatt Regency Saipan could have hired Appellant at the end of the program. However,
2 Hyatt Regency Saipan did not offer Appellant a job. Accordingly, Appellant's employment was
3 not affected as a direct result of COVID-19.

4 **2. An overpayment did not occur.**

5 "Benefits shall be paid promptly in accordance with a determination, redetermination, or
6 decision or appeal."¹² However, "[a]ny individual who has received any amount as benefits . . .
7 to which the individual was not entitled shall be liable for the amount unless the overpayment was
8 received without fault on the part of the recipient and its recovery would be against equity and
9 good conscience."¹³

10 Here, Appellant did not receive PUA benefits. Therefore, an overpayment did not occur.

11 **VI. CONCLUSION**

12 For the reasons stated above, it is ORDERED that:

- 13 1. The CNMI Department of Labor's Determination is **AFFIRMED**;
14 2. The Appellant is **INELIGIBLE** to receive PUA benefits for the weeks of March 29,
15 2020 to March 13, 2021.

16 If a party is aggrieved by this Order and would like to contest the decision, he or she must
17 submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The
18 written request should be supported by legal, factual, or evidentiary reasons to reopen the
19 decision. The written request must be submitted to the Administrative Hearing Office, either in
20 person at 1357 Mednilla Avenue, Capitol Hill Saipan MP 96950) or via email at
21 hearing@dol.gov.mp.

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28 ¹² HRS § 383-43.

¹³ HRS § 383-44.

1 In the event a request to reopen the decision is granted, the matter shall be scheduled for a
2 subsequent hearing. In the event a request to reopen the decision is denied, or if the Appellant
3 still disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI
4 Superior Court under the local Administrative Procedures Act. *See* 1 CMC § 9112. All forms,
5 filings fees, and filing deadlines for judicial review will be as established by the applicable law
6 and court rule.

7 So ordered this 18th day of March, 2021.

8 /s/

9 **JOEY P. SAN NICOLAS**
10 *Pro Tem* Administrative Hearing
11 Officer
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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



In Re Matter of:) PUA Case No. 21-0060
)
Vincent U. Chung,)
)
Appellant,) ADMINISTRATIVE ORDER
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
Appellee.)

This matter came before the undersigned for an Administrative Hearing on March 10, 2021 at 1:30 p.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Appellant Vincent Chung ("Appellant") was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program ("Appellee" or "Department") was present and represented by Labor Certification Worker Dennis Cabrera. There were no other witnesses who gave testimony at the hearing.

During the Administrative Hearing, the Department indicated that the Disqualifying Determination that was filed with this Appeal was issued in error and subsequently retracted. On March 10, 2021, the Department issued a Qualifying Determination finding Appellant eligible effective week ending August 15, 2020. Appellant does not contest the March 10, 2021 Determination. Additionally, Appellant requested to withdraw the present appeal. In consideration of above, the undersigned finds that there are no issues on appeal. Accordingly, this appeal is hereby **DISMISSED**.

So ordered this 11th day of March, 2021.

/s/
JOEY PATRICK SAN NICOLAS
Pro Tem Administrative Hearing Officer

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



In Re Matter of:) PUA Case No. 21-0062
)
MD Siful Islam,)
)
Appellant,) ADMINISTRATIVE ORDER
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

Pursuant to Appellant's appeal of the Department's PUA Disqualifying Determination, dated January 25, 2021, this matter was scheduled for an Administrative Hearing on March 12, 2021 at 1:30 p.m. before the *Pro Tem* Hearing Officer. Subsequently, Appellant filed a written request to cancel or withdraw said Appeal because the Disqualifying Determination was issued in error and should be disregarded. The Department confirmed that the Disqualifying Determination was retracted and the claim is currently undergoing review.

In consideration of above, the undersigned finds that this matter is not ripe for an appeal and dismissal is appropriate. Accordingly, this appeal is hereby DISMISSED and the Administrative Hearing is scheduled for March 12, 2021 at 1:30 p.m. is hereby VACATED. In the event the Appellant disagrees with a subsequent determination or notice, Appellant may file a new appeal.

So ordered this 12th day of March, 2021.

/s/ _____
JOEY P. SAN NICOLAS
Pro Tem Administrative Hearing Officer



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

In Re Matter of:) PUA Case No. 21-0063
)
Arthur D. Santos,)
)
Appellant,) ADMINISTRATIVE ORDER
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

Pursuant to Appellant's appeal of the Department's PUA Disqualifying Determination, dated February 18, 2021, this matter was scheduled for an Administrative Hearing on March 15, 2021 at 1:30 p.m. before the *Pro Tem* Administrative Hearing Officer. Subsequently, Appellant filed a written request to cancel or withdraw said Appeal because the Disqualifying Determination was issued in error and should be disregarded. The Department confirmed that the Disqualifying Determination was retracted and the claim the currently undergoing review.

In consideration of above, the undersigned finds that this matter is not ripe for an appeal and dismissal is appropriate. Accordingly, this appeal is hereby **DISMISSED** and the Administrative Hearing scheduled for May 15, 2021 at 1:30 p.m. is **VACATED**. In the event that the Appellant disagrees with a subsequent determination or notice, Appellant may file a new appeal.

So ordered this **8th** day of March, 2021.

/s/

JOEY PATRICK SAN NICOLAS
Pro Tem Administrative Hearing Officer



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

In Re Matter of:) PUA Case No. 21-0065
)
Kyungmin Yu,)
)
Appellant,) ADMINISTRATIVE ORDER
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

Pursuant to Appellant's appeal of the Department's PUA Disqualifying Determination, dated February 18, 2021, this matter was scheduled for an Administrative Hearing on March 17, 2021 at 1:30 p.m. before the *Pro Tem* Hearing Officer. Subsequently, Appellant filed a written request to cancel or withdraw said Appeal because the Disqualifying Determination was issued in error and should be disregarded. The Department confirmed that the Disqualifying Determination was retracted and the claim is currently undergoing review.

In consideration of above, the undersigned finds that this matter is not ripe for an appeal and dismissal is appropriate. Accordingly, this appeal is hereby DISMISSED and the Administrative Hearing scheduled for March 17, 2021 at 1:30 p.m. is hereby VACATED. In the event the Appellant disagrees with a subsequent determination or notice, Appellant may file a new appeal.

So ordered this 17th day of March, 2021.

/s/ _____
JOEY P. SAN NICOLAS
Pro Tem Administrative Hearing Officer



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

In Re Matter of:) PUA Case No. 21-0066
)
Rosalinda L. Perje,)
)
Appellant,) ADMINISTRATIVE ORDER
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

Pursuant to Appellant's appeal of the Department's PUA Disqualifying Determination, dated February 18, 2021, this matter was scheduled for an Administrative Hearing on March 18, 2021 at 1:30 p.m. before the *Pro Tem* Hearing Officer. Subsequently, Appellant filed a written request to cancel or withdraw said Appeal because the Disqualifying Determination was issued in error and should be disregarded. The Department confirmed that the Disqualifying Determination was retracted and the claim is currently undergoing review.

In consideration of above, the undersigned finds that this matter is not ripe for an appeal and dismissal is appropriate. Accordingly, this appeal is hereby DISMISSED and the Administrative Hearing scheduled for March 18, 2021 at 1:30 p.m. is hereby VACATED. In the event the Appellant disagrees with a subsequent determination or notice, Appellant may file a new appeal.

So ordered this 17th day of March, 2021.

/s/ _____
JOEY P. SAN NICOLAS
Pro Tem Administrative Hearing Officer



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

In Re Matter of:) PUA Case No. 21-0067
)
Joseph A. Tudela,)
)
Appellant,) ADMINISTRATIVE ORDER
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

Pursuant to Appellant's appeal of the Department's PUA Disqualifying Determination, dated February 18, 2021, this matter was scheduled for an Administrative Hearing on March 19, 2021 at 1:30 p.m. before the *Pro Tem* Hearing Officer. Subsequently, Appellant filed a written request to cancel or withdraw said Appeal because the Disqualifying Determination was issued in error and should be disregarded. The Department confirmed that the Disqualifying Determination was retracted and the claim is currently undergoing review.

In consideration of above, the undersigned finds that this matter is not ripe for an appeal and dismissal is appropriate. Accordingly, this appeal is hereby DISMISSED and the Administrative Hearing scheduled for March 18, 2021 at 1:30 p.m. is hereby VACATED. In the event the Appellant disagrees with a subsequent determination or notice, Appellant may file a new appeal.

So ordered this 17th day of March, 2021.

/s/ _____
JOEY P. SAN NICOLAS
Pro Tem Administrative Hearing Officer



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

In Re Matter of:) PUA Case No. 21-0068
)
Jamin N. Regis,)
)
Appellant,) ADMINISTRATIVE ORDER
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

Pursuant to Appellant's appeal of the Department's determination denying Pandemic Unemployment Assistance benefits, this matter was scheduled for an Administrative Hearing on March 23, 2021 at 9:00 a.m. before the undersigned. Subsequently, Appellant filed a written request for cancel or withdraw said Appeal. The Department confirmed that there are no eligibility or overpayment issues and does not contest dismissal of this case.

Accordingly, this appeal is hereby **DISMISSED** and the Administrative Hearing scheduled for March 23, 2021 at 9:00 a.m. is **VACATED**.

So ordered this **1st** day of March, 2021.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer



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

In Re Matter of:) PUA Case No. 21-0071
)
Sherwin C. Hullana,)
)
Appellant,) ADMINISTRATIVE ORDER
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
Appellee.)

Pursuant to Appellant's appeal of the Department's determination denying Pandemic Unemployment Assistance benefits, this matter was scheduled for an Administrative Hearing on April 8, 2021 at 9:00 a.m. before the undersigned. Subsequently, Appellant filed a written request for cancel or withdraw said Appeal for a number of reasons, including the fact that he now recognizes Commonwealth Only Transitional Workers ("CW-1") were not eligible under the first round of PUA.¹ Here, Appellant no longer contests the finding in the Determination. Further, the Department confirmed that there are no overpayment issues and does not contest dismissal of this case.

Accordingly, this appeal is hereby **DISMISSED** and the Administrative Hearing scheduled for April 8, 2021 at 9:00 a.m. is **VACATED**. The Department's Disqualifying Determination dated February 10, 2021, which was the basis of this appeal shall be considered final.

So ordered this **3rd** day of March, 2021.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer

¹ Appellant also explained he did not want his appeal to affect his subsequent application for the second round of PUA and that he did not have financial assets. Hearing staff informed Appellant that filing an appeal does not affect new applications and he does not need to have financial assets to appeal a determination as there are no associated costs to filing an appeal. Nonetheless, Appellant confirmed his desire to withdraw his appeal.



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

In Re Matter of:) PUA Case No. 21-0073
Joel Masangkay,)
Appellant,) ADMINISTRATIVE ORDER
v.)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
Appellee.)

Pursuant to Appellant's appeal of the Department's determination denying Pandemic Unemployment Assistance benefits, this matter was scheduled for an Administrative Hearing on April 14, 2021 at 9:00 a.m. before the undersigned. Subsequently, Appellant filed a written request for cancel or withdraw said Appeal. The Department confirmed that there are no overpayment issues and does not contest dismissal of this case.

Accordingly, this appeal is hereby **DISMISSED** and the Administrative Hearing scheduled for April 14, 2021 at 9:00 a.m. is **VACATED**. The Department's Determination is final.

So ordered this 1st day of March, 2021.

/s/

JACQUELINE A. NICOLAS
Administrative Hearing Officer



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

In Re Matter of:) PUA Case No. 21-0075
)
Erving Joe M. Sablan,)
)
Appellant,) ADMINISTRATIVE ORDER
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

Pursuant to Appellant's appeal of the Department's PUA Disqualifying Determination, dated February 18, 2021, this matter was scheduled for an Administrative Hearing on April 20, 2021 at 9:00 a.m. before the undersigned. Subsequently, Appellant filed a written request to cancel or withdraw said Appeal because the Disqualifying Determination was issued in error and should be disregarded. The Department confirmed that the Disqualifying Determination was retracted and the claim the currently undergoing review.

In consideration of above, the undersigned finds that this matter is not ripe for an appeal and dismissal is appropriate. Accordingly, this appeal is hereby **DISMISSED** and the Administrative Hearing scheduled for April 20, 2021 at 9:00 a.m. is **VACATED**. In the event that the Appellant disagrees with a subsequent determination or notice, Appellant may file a new appeal.

So ordered this 3rd day of March, 2021.

/s/

JACQUELINE A. NICOLAS
Administrative Hearing Officer



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

In Re Matter of:) PUA Case No. 21-0076
)
Ma Teresa M. Sablan,)
)
Appellant,) ADMINISTRATIVE ORDER
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

Pursuant to Appellant's appeal of the Department's PUA Disqualifying Determination, dated February 18, 2021, this matter was scheduled for an Administrative Hearing on April 21, 2021 at 9:00 a.m. before the undersigned. Subsequently, Appellant filed a written request to cancel or withdraw said Appeal because the Disqualifying Determination was issued in error and should be disregarded. The Department confirmed that the Disqualifying Determination was retracted and the claim is currently undergoing review.

In consideration of above, the undersigned finds that this matter is not ripe for an appeal and dismissal is appropriate. Accordingly, this appeal is hereby **DISMISSED** and the Administrative Hearing scheduled for April 21, 2021 at 9:00 a.m. is **VACATED**. In the event that the Appellant disagrees with a subsequent determination or notice, Appellant may file a new appeal.

So ordered this 3rd day of March, 2021.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer



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

In Re Matter of:) PUA Case No. 21-0084
)
Issaac Williamson,)
)
Appellant,) ADMINISTRATIVE ORDER
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
Appellee.)

Pursuant to Appellant's appeal of the Department's PUA Disqualifying Determination, dated February 18, 2021, this matter was scheduled for an Administrative Hearing on May 11, 2021 at 9:00 a.m. before the undersigned. Subsequently, Appellant filed a written request to cancel or withdraw said Appeal because the Disqualifying Determination was issued in error and should be disregarded. The Department confirmed that the Disqualifying Determination was retracted and the claim the currently undergoing review.

In consideration of above, the undersigned finds that this matter is not ripe for an appeal and dismissal is appropriate. Accordingly, this appeal is hereby **DISMISSED** and the Administrative Hearing scheduled for May 11, 2021 at 9:00 a.m. is **VACATED**. In the event that the Appellant disagrees with a subsequent determination or notice, Appellant may file a new appeal.

So ordered this **15th** day of March, 2021.

/s/

JACQUELINE A. NICOLAS
Administrative Hearing Officer



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

In Re Matter of:) PUA Case No. 21-0089
)
Md O. Faruk,)
)
Appellant,) ADMINISTRATIVE ORDER
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

Pursuant to Appellant's appeal of the Department's PUA Disqualifying Determination, dated February 18, 2021, this matter was scheduled for an Administrative Hearing on May 20, 2021 at 9:00 a.m. before the undersigned. Subsequently, Appellant filed a written request to cancel or withdraw said Appeal because the Disqualifying Determination was issued in error and should be disregarded. The Department confirmed that the Disqualifying Determination was retracted and the claim the currently undergoing review.

In consideration of above, the undersigned finds that this matter is not ripe for an appeal and dismissal is appropriate. Accordingly, this appeal is hereby **DISMISSED** and the Administrative Hearing scheduled for May 20, 2021 at 9:00 a.m. is **VACATED**. In the event that the Appellant disagrees with a subsequent determination or notice, Appellant may file a new appeal.

So ordered this **5th** day of March, 2021.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer



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

In Re Matter of:) PUA Case No. 21-0090
Shirin Omar,)
Appellant,) ADMINISTRATIVE ORDER
v.)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
Appellee.)

Pursuant to Appellant's appeal of the Department's PUA Disqualifying Determination, dated February 18, 2021, this matter was scheduled for an Administrative Hearing on May 25, 2021 at 9:00 a.m. before the undersigned. Subsequently, Appellant filed a written request to cancel or withdraw said Appeal because the Disqualifying Determination was issued in error and should be disregarded. The Department confirmed that the Disqualifying Determination was retracted and the claim the currently undergoing review.

In consideration of above, the undersigned finds that this matter is not ripe for an appeal and dismissal is appropriate. Accordingly, this appeal is hereby **DISMISSED** and the Administrative Hearing scheduled for May 25, 2021 at 9:00 a.m. is **VACATED**. In the event that the Appellant disagrees with a subsequent determination or notice, Appellant may file a new appeal.

So ordered this 5th day of March, 2021.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer



Commonwealth Healthcare Corporation

Commonwealth of the Northern Mariana Islands

1 Lower Navy Hill Road Navy Hill, Saipan, MP 96950



PUBLIC NOTICE OF PROPOSED AMENDMENTS TO THE CHCC CHARGEMASTER FOR COVID-19 VACCINATIONS, COVID-19 TESTING, LAB, AND SURGICAL FEES

INTENDED ACTION TO ADOPT THESE PROPOSED REVISIONS TO THE RULES AND REGULATIONS: The Commonwealth Healthcare Corporation (CHCC) intends to adopt as permanent the attached additional Chargemaster pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The additional Chargemaster fees will become effective 10 days after adoption and publication in the Commonwealth Register. (1 CMC § 9105(b))

AUTHORITY: The Board of Trustees may prepare and adopt rules and regulations to assure delivery of quality health care and medical services and the financial viability of the Corporation that will best promote and serve its purposes. 3 CMC Section 2826(c).

THE TERMS AND SUBSTANCE: These are new fees that have arisen due to the anticipated widespread distribution of new COVID-19 virus vaccinations, new COVID-19 testing (antigen), and one lab and multiple surgical fees.

THE SUBJECTS AND ISSUES INVOLVED: COVID-19 virus vaccinations, new COVID-19 testing (antigen), and one lab and multiple surgical fees.

DIRECTIONS FOR FILING AND PUBLICATION: This Notice of Proposed Amendments to the Chargemaster shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations (1 CMC § 9102(a)(1)) and posted in convenient places in the civic center and in local government offices in each senatorial district, both in English and in the principal vernacular and will be codified at NMIAC Sections 140-10.8-101. (1 CMC § 9104(a)(1)). Copies are available upon request from Tiffany Sablan, Director of Revenue.

TO PROVIDE COMMENTS: Send or deliver your comments to Tiffany Sablan, Director of Revenue, tiffany.sablan@dph.gov.mp, Attn: *Amendments to the Chargemaster, COVID-19 Vaccination and Other Fees* at the above address, fax or email address, with the subject line "Amendments to the Chargemaster: COVID-19 Vaccination, COVID-19 Testing, Lab, and Surgical Fees." Comments are due within 30 days from the date of publication of this notice. Please submit your data, views or arguments. (1 CMC § 9104(a)(2)).

P.O. Box 500409 CK, Saipan, MP 96950
Telephone: (670) 234-8950 FAX: (670) 236-8930



These proposed amendments to the Chargemaster, COVID-19 Vaccinations, COVID-19 Testing, Lab, and Surgical Fees were approved by the CHCC Board of Trustees and the CHCC CEO.

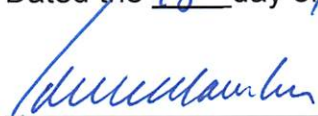
Submitted by:  03/16/21
ESTHER MUNA, CEO Date

 3/16/2021
LAURI OGUMORO, BOARD CHAIR Date

Filed and
Recorded by:  03.25.2021
ESTHER SN. NESBITT Date
Commonwealth Register

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published, 1 CMC § 2153(f) (publication of rules and regulations).

Dated the 18 day of March, 2021.


EDWARD E. MANIBUSAN
Attorney General

Fee Edits - MARCH 2021

CPT	MOD	Description	New Price
81270		JAK2 GENE	\$ 366.64
49205	26	EXC/DESTRUCTION OPEN ABDOMINAL TUMORS >10.0 CM	\$ 5,417.13
36901	26	INTRO CATH DIALYSIS CIRCUIT	\$ 2,523.69
36902	26	INTRO CATH DIALYSIS CIRCUIT W/TRLUML BALO ANGIOP	\$ 4,561.92
36903	26	INTRO CATH DIALYSIS CIRCUIT W/TCAT PLMT IV STENT	\$ 17,530.11
36904	26	PERQ THRMBC/NFS DIALYSIS CIRCUIT IMG DX ANGRPH	\$ 6,695.01
36905	26	PERQ THRMBC/NFS DIAL CIRCUIT TRLUML BALO ANGIOP	\$ 8,573.73
36906	26	PF PERQ THRMBC/NFS DIAL CIRCUIT TCAT PLMT IV STENT	\$ 21,922.02
36907	26	PF PTA DIAL CENTRAL SEG THRU CIRCUIT ALL INCL	\$ 2,302.62
36908	26	PF STENT PLMT CTR DIALYSIS SEG	\$ 6,417.15
36909	26	PF DIALYSIS CIRCUIT EMBOLJ	\$ 7,302.45
91302		SARSCOV2 VAC 5X10^10VP/.5MLIM	\$ -
0021A		IMM ADMN SARSCOV2 5X10^10VP/.5ML 1	\$ 50.82
0022A		IMM ADMN SARSCOV2 5X10^10VP/.5ML 2	\$ 85.17
91303		SARSCOV2 VAC AD26 .5ML IM	\$ -
0031A		IMM ADMN SARSCOV2 VAC AD26 .5ML	\$ 85.17
Q0243		INJECTION, CASIRIVIMAB AND IMDEVIMAB, 2400 MG	\$ -
M0243		INTRAVENOUS INFUSION, CASIRIVI AND IMDEVI	\$ 928.80
Q0245		INJECTION, BAMLANIVIMAB AND ETESEVIMAB, 2100 MG	\$ -
M0245		INTRAVENOUS INFUSION, BAMLAN AND ETESEV	\$ 928.80
0202U		NFCT DS BCT/VIR RESPIR DNA/RNA 22 TRGT SARSCOV2	\$ 1,250.34



Commonwealth Healthcare Corporation

Commonwealth of the Northern Mariana Islands
1 Lower Navy Hill Road Navy Hill, Saipan, MP 96950



NUTISIAN PUPBLIKU NU I MANMAPROPONI NA TINULAIKA NU TODU CHCC CHARGEMASTER YAN NUEBU NA ÂPAS NU YAN ABANDONA YAN TINULAIKA NU TODU NMIAC SUBCHAPTER 140-10.8, PRUGRÂMAN MEDIKÂT YAN OTTRU SIHA NA KLÂSEN ÂPAS

AKSION NI MA INTENSIONA PARA U MA ADÂPTA ESTE SIHA I MANMAPROPONI NI MARIBISA SIHA PARA I AREKLAMENTU YAN REGULASION SIHA: I Commonwealth Healthcare Corporation (CHCC) ma intensiona para u ma adâpta kumu petmanienti i mañechettun siha nuebu na Chargemaster Âpas siha, kumu para i procedures nu i Âktun Administrative Procedure, 1 CMC 9104(a). I tinulaikan todû i Chargemaster yan i nuebu na Âpas BEH siha siempre ifektibu dies (10) dihas dispues di adâptasion yan publikasion giya i Rehistran Commonwealth. (1 CMC § 9105(b))

ATURIDÂT: I inetnon i trustees siha siña ma pripâra yan ma adâpta areklamentu yan regulasion siha para u mana siguru i linakngus nu i kuâlidat na health care yan setbision Medikât siha yan i financial viability nu i Corporation ya siempre u ma hâtsa yan sietbe i intension siha. 3 CMC Seksiona 2826 (c).

I TEMA YAN SUSTÂNSIA I PALÂBRA SIHA: I nuebu na CHCC Chargemaster esta ma kumpli i tinulaika yan nuebu. I presentî NMIAC Subchapter 140-10.8, Prugrâman i Medikât yan ottru siha na klâsen âpas siempre man ma abandona yan ma tulaika todû. Pâtti sientu siempre para i nuebu na Chargemaster.




I SUHETU YAN MANERA NI SUMÂSAONAO SIHA: Todû i âpas CHCC siha man inafekta ginen esti i ma abandona yan tinulaika. Pot fâbot attan i nuebu na CHCC Chargemaster.

DIREKSION PARA U MA POLU YAN MA PUPBLIKA: Este na nutisia nu i man ma abandona yan tinulaika ni manmapropo ni pot i Regulasion siha debi na u ma publika gi hâlum i Rehistran Commonwealth gi hâlum seksiona gi hilu' i manmapropo ni yan nuebu na man ma adâpta na regulasion siha (1 CMC §9102(a)(1)) yan u mapega gi hâlum man kumbieni na lugât siha giya i civic center yan gi hâlum Ufisinan gubietnu gi kada distritun senatorial parehu yan gi linguâhi natibu. (1 CMC §9104 (a)(1)) Mana guahayi kopia siha yanggin man gâgao ginen as Tiffany Sablan, Direktot nu i Revenue.

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PARA U MAPRIBENIYI UPIÑON SIHA: Na hãlom pat na hãnao i upiñon mu guatu as Tiffany Sablan, Direktot i Revenue, tiffany.sablan@dph.gov.mp, Atension: Nuebu na âpas Chargemaster guātu gi sanhilu na address, fax pat email address, yan i rãyan suhetu "Nuebu na Âpas Chargemaster." I upiñon man ma ekspekta gi hãlum trenta (30) dihas ni tinatiyi gi fetcha nu i pupplikasion ni este na nutisia. Pot fabot na hãlom i infotmasion, upiñon pat âgumientu siha. (1 CMC § 9104(a)(2)).

Esti i manmaproponi i abandona yan tinulaika ma aprueba ginen i CHCC Board of Trustees yan i CHCC Chief Executive Officer.

Nina hãlum as:	 ESTHER L. MUNA CHIEF EXECUTIVE OFFICER	<u>03/16/21</u> Fetcha
	 LAURI OGUMORO BOARD CHAIR	<u>3/16/2021</u> Fetcha
Pine'lo yan Ninota as:	 ESTHER SN. NESBITT Rehistran Commonwealth	<u>03.25.2021</u> Fetcha

Sigun i 1 CMC § 2153 § (Inapruuban regulasion siha ni Abugãdu Hinerât na para u macho'gui kumu fotma) yan 1 CMC § 9104(a)(3) (hinentan inaprueba kumu fotma yan sufisienti ligât ginen i CNMI Abugãdu Hinerât yan debi na u ma pupblika, 1 CMC § 2153(f)(pupplikasion areklamentu yan regulasion siha).

Mafetch gi 19 diha March, 2021.


EDWARD E. MANIBUSAN
Abugãdu Hinerât

Fee Edits - MARCH 2021

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0031A		IMM ADMN SARSCOV2 VAC AD26 .5ML	\$ 85.17
Q0243		INJECTION, CASIRIVIMAB AND IMDEVIMAB, 2400 MG	\$ -
M0243		INTRAVENOUS INFUSION, CASIRIVI AND IMDEVI	\$ 928.80
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ARONGORONGOL TOULAP REEL POMMWOLSIIWEL NGÁLI ALONGAL AAR CHCC CHARGEMASTER ME FFÉL

MÁNGEMÁNGIL MWÓGHUT REEL REBWE ADÓPTÁÁLI POMMWOL SIIWEL KAL NGÁLI ALLÉGH ME MWÓGHUT: Commonwealth Healthcare Corporation (CHCC) re mángemángil rebwe adóptááli bwe ebwe lléghló fféerúl mille e appasch bwe ffél Listal Alillis ikka re ayoorai ngáliir Toulap ngáre Chargemaster sáangi mwóghutughutúl Administrative Procedures Act, 1 CMC § 9104(a). Siiwel ngáli alongal Chargemaster me ffél Óbwóssul ebwe bwunguló seigh ráál mwiril aar adóptááli me akkatééwowul me llól Commonwealth register. (1 CMC § 9105(b))

BWÁNGIL: Eyoor bwángil Board-il Trustees reel rebwe ammwela me adóptááli allégh me mwóghutughut bwe ebwe alúghúw ghatchúl health care me alillisil medical me financial viability reel Corporation bwe ebwe ghatch me fféerú mwóghutughutúl. 3 CMC Tálil 2826(c).

KKAPASAL ME AWEEWEL: Ra takkal siiweli me fféerú sefááliy ffél CHCC Chargemaster, fengál me Óbwóssul Bwulasiyol.

KKAPASAL ME ÓUTOL: Alongal óbwóssul CHCC e siiweli mereel mille re bwughi sefááliy me siiwelil. Amwuri Ffél CHCC Chargemaster me Óbwóss mereel iye e appasch.

AMMWELIL REEL AKKATÉÉWOWUL ME ARONGOWOWUL: Arongorongol Pommwol mille re Bwughi SefáAliy me Liiweli reel Mwóghutughut ebwe akkatééwow me llól Commonwealth Register llól tálil ffél me Pommwol mwóghutughut ikka ra adóptáánil (1 CMC § 9102(a)(1)) me appaschetá llól civic center me bwal llól Bwulasiyol gobetnameento llól senatorial district, fengál reel English me mwáliyaasch y will be codified at NMIAC Sections 140-10.8-101. (1 CMC § 9104(a)(1)) Emmwelil ubwe bweibwogh pappidil yeel tingór ngáli Tiffany Sablan, Direkktodil Revenue.

REEL ISIISILONGOL KKPAS: Afanga ngáre bwughiló yóómw ischil kkapas ngáli Tiffany Sablan, Direkktodil Revenue, tiffany.sablan@dph.gov.mp, Attn: Amendments to Chargemaster reel féléfél iye e lo weiláng, fax ngáre email address, ebwe lo wóól subject line bwe “Amendments to Chargemaster.” Ischil kkapas ebwe toolong llól eliigh ráál mwiril aal akkatééwow arongorong yeel. Isiisilong yóómw data, views ngáre angingi. (1 CMC § 9104(a)(2)).

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Telephone: (670) 236-8201/2 FAX: (670) 233-8756


Pommwol milikka re bwughi sefááliy me siiweli aa átirow sáangi CHCC Board-il trustees me CHCC Chief Executive Officer.

Isáliyalong: 
ESTHER MUNA
Chief Executive Officer

03/16/21
Ráál


LAURI OGUMORO, BOARD CHAIR


03/16/2021
Ráál

Ammwelil: 
ESTHER SN. NESBITT
Commonwealth Register *nan*

03.25.2021
Ráál

Sáangi 1 CMC § 2153(e) (sáangi átirowal AG reel mwóghutughut kkal bwe aa ffil reel fféerúl) me 1 CMC § 9104(a)(3) (sáangi átirowal AG) reel Pommwol mwóghutughut ikka e appasch bwe ra takkal amwuri fischiiy me átirowa bwe aa lléghló reel fféerúl me legal sufficiency sáangi Soulemelemil Allégh Lapalapal CNMI me ebwe akkatééwow, 1 CMC § 2153(f) (akkatééwowul allégh me mwóghutughut).

Aghikkilátiw wóol 19 ráálil March, 2021.


EDWARD E. MANIBUSAN
Soulemelemil Allégh Lapalap

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