

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



COMMONWEALTH REGISTER

**VOLUME 44
NUMBER 11
NOVEMBER 28, 2022**

COMMONWEALTH REGISTER

VOLUME 44 NUMBER 11 NOVEMBER 28, 2022

ADOPTED

Public Notice of Certification and Adoption of Regulations Commonwealth Ports Authority	049225
Public Notice of Certification and Adoption of New Fees For Various Services Commonwealth Healthcare Corporation	049229

DOL/PUA/CAC/DUA ORDERS

Labor Case No. 22-015 Subject: Order Dismissing Complaint In the Matter of: Gailthea L. Olopai v. MIR Corporation Department of Labor	049232
PUA Case No. 22-0206 Subject: Administrative Order In the Matter of: Vincent G. Cabrera v. CNMI Department of Labor, Division of Employment Services-PUA Department of Labor	049234
PUA Case No. 22-0207 Subject: Administrative Order In the Matter of: Mohammad Abu Hassan Chowdhury v. CNMI Department of Labor, Division of Employment Services-PUA Department of Labor	049246
DUA Case No. 22-015 Subject: Administrative Order In the Matter of: Maria M. Del Pozo v. CNMI Department of Labor, Division of Employment Services-DUA Department of Labor	049253



Commonwealth Ports Authority

Francisco C. Ada/Saipan International Airport
PO BOX 501055 • SAIPAN • MP • 96950
Phone: (670) 237-6500/01 Fax: (670) 234-5962
E-Mail Address: cpa.admin@pticom.com Website: <https://cnmiports.com>



PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF REGULATIONS FOR THE COMMONWEALTH PORTS AUTHORITY (CPA)

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER AS PROPOSED AMENDMENTS TO THE AIRPORT RULES AND REGULATIONS OF THE COMMONWEALTH PORTS AUTHORITY

Volume 44, Number 03, pp. 048238–45, of March 28, 2022

Amendments to the Commonwealth Ports Authority Airport Rules and Regulations

ACTION TO ADOPT THESE PROPOSED RULES AND REGULATIONS: Pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a), the Commonwealth Ports Authority HEREBY ADOPTS AS PERMANENT the Proposed Amendments to the Airport Rules and Regulations of the Commonwealth Ports Authority published in Number 03 of Volume 44 of the Commonwealth Register. I certify by signature below that as published, such adopted regulations are a true, complete, and correct copy of the referenced Proposed Regulations.

PRIOR PUBLICATION: The substance of these regulations was published in Volume 44, Number 03, pp. 048238–45 of the Commonwealth Register.

AUTHORITY: The authority for promulgation of regulations for CPA is set forth in 2 CMC § 2122.

EFFECTIVE DATE: These amendments to the Commonwealth Ports Authority's Airport Rules and Regulations will become effective ten days after publication of this Notice of Adoption in the Commonwealth Register. 1 CMC § 9105(b).

COMMENTS, MODIFICATIONS, AND AGENCY CONCISE STATEMENT: During the 30-day comment period, the Authority received no comments regarding the Proposed Regulations. No individual requested the Authority issue a concise statement of the principal reasons for or against the adoption of the Proposed Regulations.


At an Airport Facilities Committee meeting held on November 3, 2022, the Committee agreed to recommend to the CPA Board of Directors that the Proposed Regulations be adopted. The CPA Board of Directors adopted the Proposed Regulations as final at the November 3, 2022, Board of Directors meeting.

TERMS, SUBSTANCE, AND DESCRIPTION OF THE SUBJECTS AND ISSUES INVOLVED: The adopted regulations amend the Airport Rules and Regulations to clarify that off-premises vehicle rental permittees cannot solicit customers at any CPA airport, to make the off-premises vehicle rental permit fees more equitable to Rota and Tinian off-premises vehicle rental businesses, to clarify insurance coverage requirements, to require vehicle rental businesses submit a CNMI business license, and to require each vehicle rental business present themselves in a neat and professional manner.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 3rd day of November, 2022, at Saipan, Commonwealth of the Northern Mariana Islands.

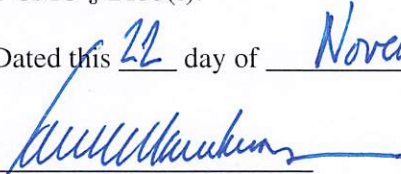
Submitted by:

Date: November 3, 2022

for 
CHRISTOPHER S. TENORIO
Executive Director

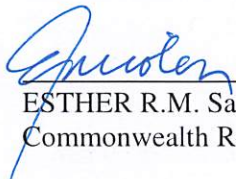
Pursuant to 1 CMC § 2153(e) and 1 CMC § 9104(a)(3) the certified final regulations have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published. 1 CMC § 2153(f).

Dated this 22 day of November, 2022.


EDWARD MANIBUSAN
Attorney General

Filed and Recorded by: _____

Date: 11.23.2022


ESTHER R.M. San Nicolas
Commonwealth Registrar

§ 40-10.1-245 Permit Required for Vehicle Rental Service

(a) No vehicle rental business or solicitation for such business may be conducted upon or within the airport unless:

(1) On-premises Vehicle Rental Concessionaires. The vehicle rental business is operating under the terms of a valid lease or concession agreement with the Authority; or,

(2) Off-premises Vehicle Rental Permittees. The vehicle rental business shall obtain and have in full force and effect a written permit issued by the Executive Director, upon such terms and conditions as he shall deem to be in the best interests of the Authority. Such permit shall authorize the permittee to pick up pre-confirmed and prearranged customers only and only at such areas as the Executive Director shall designate for customer pick-up. In no event shall permittee be allowed to solicit customers at the airport, nor shall permittees be allowed to pick up any disembarking passengers or their baggage at the customs/passenger arrival area of the airport nor at the commuter terminal ~~of the Francisco C. Ada/Saipan International Airport.~~

(b) Any vehicle rental business operating under the terms and conditions of a permit issued under this section shall provide transportation for its customers by unmarked vehicles, so as not to encourage the solicitation of customers at the airport. The term "solicitation" as used in this section shall be specifically defined to mean the asking of a passenger or other person if he or she desires to rent a vehicle. Use of the public vehicular parking area by vehicle rental business operating under the terms of subsection (a)(2) is strictly prohibited. Such vehicle rental businesses shall not suffer or permit its customers to use such areas to pick up or drop off any rental vehicle, or for the storage of any rental vehicle. Permits issued under subsection (a)(2) shall not be exclusive. The fee for any permit issued under subsection (a)(2) shall ~~be not be less than 150% of the highest Minimum Annual Guarantee of any car rental concessionaire operating at that specific airport. If the highest Minimum Annual Guarantee changes after a permit is issued, then the permit fee shall be adjusted within thirty days to reflect that change. five thousand dollars per month for Francisco C. Ada/Saipan International Airport, three thousand five hundred dollars per month for Benjamin Taisacan Manglona and Tinian International Airports. Permit fees and~~ shall be payable monthly in advance. Failure to pay such permit fee within seven days of its due date shall serve to invalidate any permit understanding. Any vehicle rental business operating at or upon the airport without a valid permit, or in violation of the terms and conditions of its permit, or this subchapter, shall be subject to such penalties as set forth under § 40-10.1-255(f) and may have its privilege to conduct such business at the airport terminated pursuant to § 40-10.1-105.

(c) Each vehicle rental business servicing the Airport under § 40-10.1-245(a)(2) shall carry at least the following insurance coverage for its customers: Liability for bodily injury, including death (limits \$100,000.00 for each person, \$300,000.00 each accident) and for property damage (limit \$50,000.00).*

*So in original; see the comment to this section.

(d) Each vehicle rental business shall submit a CNMI business license, a certificate of insurance, and a copy of the insurance policy for review by the Executive Director prior to obtaining a permit to operate a vehicle rental business at the airport. A certificate or certificates evidencing such insurance shall provide that such insurance coverage will not be cancelled or reduced without at least thirty days prior written notice to the Authority.

(e) Each vehicle rental business shall employ or permit the employment of only such personnel as will assure a high standard of service to the public. All such personnel, while on duty, shall be clean, neat in appearance and courteous at all times and shall be appropriately attired, with uniforms in such instances as are appropriate. If the vehicle rental business does not have a uniform, dress shirt and dress pants shall be worn, with shoes. Personnel may not wear zoris, tank tops, or T-shirts, unless it is the vehicle rental business's uniform. Personnel shall not use improper language, act in a loud, boisterous or otherwise improper manner or be permitted to solicit business in an inappropriate manner.

Modified, 1 CMC § 3806(c), (d), (e), (f).

History: Amdts Adopted 26 Com. Reg. 21710 (Jan. 22, 2004); Amdts Proposed 25 Com. Reg. 21465 (Nov. 17, 2003); Amdts Adopted 16 Com. Reg. 11809 (Mar. 15, 1994); Amdts Proposed 16 Com. Reg. 11681 (Feb. 15, 1994); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (d).

The 1994 amendments amended and readopted subsections (a) through (d). The 2004 amendments amended subsection (b).

In subsection (c), it appears that the following language was erroneously omitted in the 1994 amendments: "Each vehicle rental business servicing the Airport under Subpart (a) [subsection (a)(1)] of this Part 2.9 [§ 40-10.1-245] shall carry such insurance coverage for its customers as is provided in its agreement with the Authority. Each vehicle rental business servicing the Airport under subpart (b) [subsection (a)(2)] of this Part 2.9 [§ 40-10.1-245] shall carry at least the following insurance coverage for its customers:" Compare 14 Com. Reg. at 9552 (Aug. 15, 1992) and 16 Com. Reg. at 11688-89 (Feb. 15, 1994).



Commonwealth Healthcare Corporation

Commonwealth of the Northern Mariana Islands
1178 Hinemlu' St. Garapan, Saipan, MP 96950



PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF NEW FEES FOR VARIOUS SERVICES OF THE COMMONWEALTH HEALTHCARE CORPORATION

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED RULES AND REGULATIONS
Volume 44, Number 09, pp. 049019-049025, of September 28, 2022

NEW TO THE CHCC CHARGEMASTER

ACTION TO ADOPT PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands, COMMONWEALTH HEALTHCARE CORPORATION ("CHCC"), HEREBY ADOPTS AS PERMANENT regulations the Proposed Regulations which were published in the Commonwealth Register at the above-referenced pages, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The CHCC announced that it intended to adopt them as permanent, and now does so. (Id.) A true copy is attached. I also certify by signature below that:

as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed Regulations,

and that they are being adopted as published.

PRIOR PUBLICATION: The prior publication was as stated above.

MODIFICATIONS FROM PROPOSED REGULATIONS: Adoption as New Fees to the Chargemaster for Various Services.

AUTHORITY: The Corporation is empowered by the Legislature to adopt these rules and regulations pursuant to 3 CMC Section 2826(c).

EFFECTIVE DATE: Pursuant to the APA, 1 CMC sec. 9105(b), these adopted regulations are effective 10 days after compliance with the APA, 1 CMC §§ 9102 and 9104(a) or (b), which, in this instance, is 10 days after this publication in the Commonwealth Register.

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC sec. 9104(a)(2), the Corporation has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the Corporation, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a

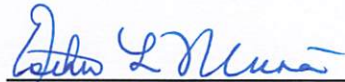
P.O. Box 500409 CK, Saipan, MP 96950
Telephone: (670) 236-8201/2 FAX: (670) 233-8756

concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

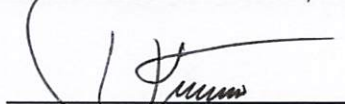
The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC sec. 2153(e)

I DECLARE under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 21st of November, 2022 at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:



ESTHER L. MUNA
Chief Executive Officer, CHCC



EDWARD M. DELEON GUERRERO
Chair, CHCC Board of Trustees

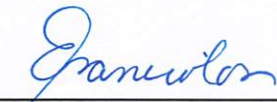
Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the certified final regulations, modified as indicated above from the cited proposed regulations, have been reviewed and approved as to form and legal sufficiency by the CNMI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

Dated the 22 day of November, 2022.



EDWARD MANIBUSAN
Attorney General

Filed and
Recorded by:



ESTHER M. SAN NICOLAS
Commonwealth Registrar

11.23.2022

Date

P.O. Box 500409 CK, Saipan, MP 96950
Telephone: (670) 236-8201/2 FAX: (670) 233-8756

FEE EDITS

CPT	MOD	Description	COVID Related?	Reason for change	Previous Price	New Price
35221	26	RPR BLOOD VESSEL DIRECT INTRA-ABDOMINAL	N	NEW	N/A	\$5,144.37
99417	26	PROLONGED OFFICE/OUTPATIENT E/M SVC EA 15 MIN	N	NEW	N/A	\$114.45
81234		DMPK GENE ANALYSIS EVAL DETECT ABNORMAL ALLELES	N	NEW	N/A	\$411.00
0240U		INFCT DS RNA 3 TARGETS UPPER RESP SPECIMEN XPRT	Y	NEW	N/A	\$427.89
0241U		INFCT DS RNA 4 TARGETS UPPER RESP SPECIMEN XPRT	Y	NEW	N/A	\$427.89
87505		NFCT AGENT DNA/RNA GASTROINTESTINAL PATHOGEN	N	NEW	N/A	\$384.87
87506		IADNA-DNA/RNA GI PTHGN MULTIPLEX PROBE TQ 6-11	N	NEW	N/A	\$788.97
87507		IADNA-DNA/RNA GI PTHGN MULTIPLEX PROBE TQ 12-25	N	NEW	N/A	\$1,250.34
87483		CNS DNA/RNA AMP PROBE MULTIPLE SUBTYPES 12-25 TARGETS	N	NEW	N/A	\$1,250.34
87154		CULTURE TYPING ID BLD PTHGN&RESIST TYPING 6+TRGT	N	NEW	N/A	\$654.18
87636		IADAN SARSCOV2& INF A&B MUT AOMPLIFIED PROBE TQ	Y	NEW	N/A	\$427.89
87637		IADNA SARSCOV2 & INF A&B & RSV MULT AMP PROBE TQ	Y	NEW	N/A	\$427.89
33285	26	INSERTION SUBQ CARDIAC RHYTHM MONITOR INCLUDING PROGRAMMING	N	NEW	N/A	\$268.50
33285	TC	INSERTION SUBQ CARDIAC RHYTHM MONITOR INCLUDING PROGRAMMING	N	NEW	N/A	\$24,997.11
33286	26	REMOVAL SUBQ CARDIAC RYTHYM MONITOR	N	NEW	N/A	\$265.35
33286	TC	REMOVAL SUBQ CARDIAC RYTHYM MONITOR	N	NEW	N/A	\$1,906.62
93285	26	PRGRMG DEV EVAL SCRMS IN PERSON	N	NEW	N/A	\$80.85
93285	TC	PRGRMG DEV EVAL SCRMS IN PERSON	N	NEW	N/A	\$114.09
93291	26	INTERROG DEV EVAL SCRMS IN PERSON	N	NEW	N/A	\$57.30
93291	TC	INTERROG DEV EVAL SCRMS IN PERSON	N	NEW	N/A	\$75.69
93298	26	REMOTE INTEROG DEV EVAL SCRMS	N	NEW	N/A	\$82.26
G2066	TC	REMOTE INTEROG DEVC 30D TECHNICAL SUPPORT	N	NEW	N/A	\$114.09
0650T		REMOTE PRGRMG DEV EVAL SCRMS	N	NEW	N/A	\$114.09
00214	26	ANESTHESIA FOR INTRACRANIAL PROCEDURES BURR HOLES	N	NEW	N/A	\$588.06



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

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In Re Matter of:)	Labor Case No. 22-015
)	
Gailthea L. Olopai,)	
)	
Complainant,)	ORDER DISMISSING COMPLAINT
)	
v.)	
)	
MIR Corporation,)	
)	
Respondent.)	
)	

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This matter came before the undersigned for a Status Conference on October 24, 2022 at approximately 10:30 a.m. at the Administrative Hearing Office in Saipan. Complainant Gailthea L. Olopai (“Complainant” or “Ms. Olopai”) was present and self-represented. Respondent MIR Corporation (“Respondent” or “MIR Corp.”) was present and represented by its authorized representative President and Manager Mir M.R. Panna.

Pursuant to 3 CMC § 4962, “[n]o labor complaint may be filed more than six months after the date of the last –occurring event that is the subject of the complaint, except in cases where the actionable conduct was not discoverable upon the last-occurring event.” See also 4 CMC § 9246. “If a complaint is not timely filed, the hearing office *shall* dismiss the complaint with prejudice.” NMIAC § 80-20.1-465(e) (emphasis added). Pursuant to 3 CMC § 4947(a), “the hearing officer may, after notice and an opportunity to be heard is provided to the parties, dismiss *sua sponte* a complaint that the hearing officer finds to be without merit.”

Here, Ms. Olopai initiated a labor complaint against MIR Corp. when she filed her complaint on September 22, 2022. Ms. Olopai alleged the following claims against MIR Corp.: (1) unpaid wages/violation of CNMI minimum wage law; (2) unlawful reduction in force; (3) unsafe working conditions; and (4) discrimination.

Based on the filings and clarification made during the Status Conference, the undersigned finds that *sua sponte* dismissal of the complaint is appropriate because Ms. Olopai failed to demonstrate factual basis to support any claims arising within the six-month statute of limitations. First, Ms. Olopai failed to explain how Respondent violated the CNMI Minimum Wage Act or

1 the Unlawful Reduction in Force law. The complaint stated that Ms. Olopai was paid minimum
2 wage of \$7.25 hourly. When asked to clarify when she was not paid the minimum wage, Ms.
3 Olopai said she abandoned this claim and she admitted that she did not have a claim under the
4 CNMI minimum wage law. Second, Ms. Olopai failed to allege in her complaint any claims
5 arising within the six-month statute of limitations. Since the complaint was filed on
6 September 22, 2022, Ms. Olopai can only recover unpaid wages and make claims as far back as
7 March 22, 2022. In her complaint and at the Status Conference, Ms. Olopai stated that she last
8 worked for MIR Corp. on or around January 28, 2022. Respondent said Ms. Olopai received her
9 last pay check on or around February 4, 2022. Ms. Olopai stated in her complaint and at the
10 hearing that she learned she was terminated by MIR Corp. from her co-worker right around the
11 end of January 2022. Therefore, any actionable conduct was discoverable at this time and
12 Ms. Olopai should have filed the complaint within six months of learning of her termination. For
13 these reasons, the complaint is dismissed, pursuant to 3 CMC §§ 4947(a) and 4962, stated above.

14 Accordingly, this matter is hereby **DISMISSED**, pursuant to 3 CMC §§ 4947(a) and
15 NMIAC § 80-20.1-465(e). In the event that the Complainant can overcome the above-stated
16 issues, she may file an amended complaint for claims within the applicable statute of limitations.
17 Further, any person or party aggrieved by this Order may appeal this dismissal by filing the Notice
18 of Appeal Form¹ and filing fee² with the Administrative Hearing Office within fifteen (15) days
19 from the date of this Order.

20 So ordered this **25th** day of October, 2022.

21
22 /s/
23 **Catherine J. Cachero**
24 Administrative Hearing Officer
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31 ¹ The Notice of Appeal Form is available online at www.marianaslabor.net. Hard copies of the Notice of Appeal Form are available for pick up at the Administrative Hearing Office.
² The aggrieved person or party must file the completed Notice of Appeal 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. 22-0206
Vincent G. Cabrera, Appellant, ADMINISTRATIVE ORDER
v. Appellee.
CNMI Department of Labor, Division of Employment Services-PUA,

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on September 13, 2022 at approximately 9:00 a.m. and on October 14, 2022 at approximately 1:00 p.m., at the Administrative Hearing Office, Saipan. Appellant Vincent G. Cabrera ("Appellant") was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services - Pandemic Unemployment Assistance program ("Department") was present and represented by PUA Coordinators Emelda Camacho and Kristian Parulan. There were no other witnesses that provided testimony at the hearing. A list of the documents that were admitted into evidence is added to the end of this Order.

For the reasons stated below, the Department's Re-Determination, dated September 22, 2022 is AFFIRMED. Appellant is not eligible for benefits from August 1, 2021 to August 7, 2021 because Appellant did not conduct the required work search contacts during that claimed week.

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") and Federal Pandemic Unemployment Compensation ("FPUC"). 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

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.

1 FPUC programs to March 13, 2021.³ On March 11, 2021, the American Rescue Plan Act of 2021
2 (“ARPA”) extended the programs to September 6, 2021. The CNMI Department of Labor is
3 charged with the responsibility in administering the above-mentioned programs in the CNMI in
4 accordance to applicable law.⁴ The CNMI Department of Labor Administrative Hearing Office has
5 been designated to preside over appeals of agency decisions.

6 Upon review of the records, Appellant’s appeal of the Determination is timely filed.
7 Accordingly, jurisdiction is established.

8 III. PROCEDURAL BACKGROUND & ISSUES

9 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. On
10 March 4, 2022, the Department issued a Disqualifying Determination, effective from August 1,
11 2021 to August 14, 2021. On March 16, 2022, Appellant filed the present appeal and the matter was
12 scheduled for a hearing. As stated in the Notice of Hearing, the issues on appeal are: (1) whether the
13 appeal is timely filed; (2) whether Appellant is eligible for PUA; and (3) whether an overpayment
14 occurred and funds should be returned.

15 IV. FINDINGS OF FACT

16 In consideration of the evidence provided and credibility of witnesses’ testimony, the
17 undersigned issues the following findings of fact:

- 18 1. Prior to the COVID-19 pandemic, Appellant, a U.S. citizen, was employed as a full-time
19 Programs Manager at Marianas Behavioral Health International (“MBHI”), located in
20 Saipan, CNMI.⁵ As Programs Manager, Appellant worked 80 hours biweekly and he was
21 paid \$480.00 biweekly.⁶
- 22 2. Due to the impact of the COVID-19 pandemic, MBHI reduced Appellant’s work hours to 10
23 hours bi-weekly (effective March 30, 2020)⁷ and then Employer subsequently furloughed
24 Appellant (effective October 26, 2020).⁸
- 25 3. On or around June 17, 2020, Appellant submitted an initial application for benefits under the
26 PUA and FPUC programs administered by the Department.⁹ In his initial application,¹⁰
27

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

29 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
30 Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state
31 law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and
guidance.

⁵ See Exhibits 2, 10 and 11.

⁶ See Exhibit 2.

⁷ Exhibit 10.

⁸ Exhibit 11.

1 Appellant self-certified under penalty of perjury that: (a) Appellant's employment was
2 directly affected by COVID-19 because he was unable to perform tasks due to the public
3 health emergency and was unable to serve clients due to limited resources; and (2)
4 Appellant's employment was affected since March 30, 2020.

5 4. On or around October 20, 2020, Appellant submitted additional application for
6 unemployment benefits.¹¹ In this application, Appellant self-certified that: (a) His place of
7 employment was closed since March 30, 2020 as a direct result of the COVID-19 public
8 health emergency;¹² and (2) His hours were reduced to part-time hours, as of March 28,
9 2020.¹³

10 5. Subsequently, Appellant submitted an application (re-open)¹⁴ and weekly certifications to
11 claim continued benefits, including for weeks August 1, 2021 to August 14, 2021.¹⁵

12 6. In all of his applications for federal unemployment benefits, Appellant chose email as his
13 preferred method of service.¹⁶ Additionally, in each of these applications, Appellant
14 acknowledged that it is his responsibility to read the PUA Benefit Rights Information
15 Handbook ("BRI Handbook") and any other official written material provided. Notably, the
16 BRI Handbook was publicly available throughout the program and included important
17 information regarding program requirements and processes—including appeals process.
18 Moreover, the Department issued a number of press releases to clarify the appeals process
19 and directed claimants to the BRI Handbook and applicable forms. Additionally, the
20 Department issued a number of press releases to clarify the work search contact
21 requirement.

22 7. On June 2, 2021, Appellant submitted a job application and supporting documents such as
23 resume and police clearance to the CNMI Public School System ("PSS") Human Resources
24 Office.¹⁷

25 8. On August 2, 2021, Appellant emailed U.S. Customs and Border Protection ("CBP") to
26 inquire as to where and how to apply as a border patrol agent in Saipan.¹⁸

27
28 ⁹ Exhibit 1.

¹⁰ *Id.*

29 ¹¹ *See* Exhibit 2.

30 ¹² *Id.*

¹³ *Id.*

31 ¹⁴ Exhibit 3.

¹⁵ Exhibit 4.

32 ¹⁶ Exhibits 1-3.

¹⁷ Exhibit 19.

¹⁸ Exhibit 25.

- 1 9. On or around August 7, 2021, PSS offered Appellant a full-time, non-certified position as
2 Teacher Aide (Special Education Program).¹⁹
- 3 10. On August 9, 2021, Appellant received a response from CBP, including information on the
4 application process.²⁰
- 5 11. On August 12, 2021, PSS emailed Appellant a signed Letter of Intent to Hire and informed
6 Appellant that his employment documents were being routed.²¹ Additionally, in this email,
7 PSS told Appellant that should he accept the employment offer, he should complete the
8 Medical Clearance form and submit a copy to PSS Human Resources Office.²² Appellant
9 completed and submitted the Medical Clearance form.
- 10 12. On August 14, 2021, PSS emailed Appellant to inform him that his New Hire Contract was
11 ready for his review and signature.²³ PSS sent as attachments to the email, PSS Notice of
12 Personal Action, PSS Employment Contract, a New Hire Packet, and other attachments
13 regarding the Employee Orientation for SY 2021-2022.²⁴ The New Hire Packet included
14 various forms that Appellant had to complete such as PSS Employee Information Sheet, PSS
15 Pre-Employment Checklist Form, USCIS Form I-9, PSS Allotment Form, W-4 Form, and
16 insurance benefits.²⁵ Appellant was also reminded to submit a copy of a valid Medical
17 Clearance form if he had not done so yet.²⁶ Appellant reviewed the email including all
18 attachments and completed all necessary pre-employment documents.
- 19 13. Beginning August 17, 2021, Appellant was employed by PSS as a full-time Teacher Aide
20 under his two-year contract.²⁷
- 21 14. On March 3, 2022, Appellant emailed the Department to follow-up on his last two weeks of
22 claims for federal unemployment benefits.²⁸
- 23 15. The next day, on March 4, 2022, the Department issued and mailed a Disqualifying
24 Determination, effective from August 1, 2021 to August 14, 2021. Appellant was
25 disqualified for not meeting the three work search contacts requirement.²⁹ The Determination
26

27 ¹⁹ See Exhibit 19 (PSS Letter RE: Intent to Offer Non-Certified Employment as Teacher Aide (Special Education
Program)).

28 ²⁰ Exhibit 26. Since Appellant's initial email with CPB, Appellant has received various emails from CBP regarding
career opportunities, including Career Expos.

29 ²¹ Exhibit 19.

30 ²² *Id.*

31 ²³ Exhibit 19.

32 ²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Exhibit 12.

²⁸ See Exhibit 17 (email dated March 3, 2022).

1 provided Appellant with appeal deadline and instructions.³⁰ Specifically, the Determination
2 provided:

- 3 a. That Appellant had ten calendar days from the mail date on the Determination to file
4 an appeal and instructions on how to file an appeal;
- 5 b. That the appeal “**must be received or postmarked by 03/14/2022**. If you do not
6 make the deadline, you lose the right to appeal this determination.” (Emphasis in
7 original)
- 8 c. That, if Appellant decided to file an appeal, he may choose one of the following
9 methods of filing: (i) By email: Complete the “I appeal” section, scan the page and
10 email it to the hearing@dol.gov.mp; or (ii) By postal mail: Complete the “I appeal”
11 section, make a copy, and mail it.

12 The instructions in the Determination did not include any additional form(s) that must be
13 included in the appeal, such as the Request to Appeal form.³¹

14 16. On March 8, 2022, the Department emailed and informed Appellant that his remaining two
15 weeks—ending August 7, 2021 and August 14, 2021—have been adjudicated and issued a
16 disqualification due to inadequate job searches.³²

17 17. On the same day, March 8, 2022, Appellant responded that he will appeal the decision.³³

18 18. On March 9, 2022, the Department responded and provided Appellant with incorrect appeal
19 instructions.³⁴ Specifically, the Department informed Appellant that he “may fill out a
20 “Request for Reconsideration or Appeal Form” document from our marianaslabor.net site
21 and *have it submitted at our PUA HQ office in Capitol Hill, Bldg. #1334*.”³⁵ (Emphasis
22 added). While Appellant could submit his Appeal in person, it should have been submitted
23 to the Administrative Hearing Office in Capitol Hill, Building #1357.

24 19. On March 10, 2022, Appellant wrote back and asked the Department if he needed to submit
25 his appeal at headquarters or if he can upload his “Request for Reconsideration or Appeal
26 Form” to the same email thread.³⁶ On March 11, 2022, the Department responded that
27 Appellant could also upload to the same email thread his Reconsideration/Appeal
28

29 ²⁹ See Exhibits 5 and 9.

30 ³⁰ Exhibits 2-4.

31 ³¹ *Id.*

32 ³² See Exhibit 17 (email dated March 8, 2022).

³³ *Id.*

³⁴ Exhibit 17 (email dated March 9, 2022).

³⁵ *Id.* (email dated March 9, 2022).

³⁶ *Id.* (email dated March 10, 2022).

1 document.³⁷

2 20. On March 14, 2022, the Department received an appeal from Appellant via email to
3 info@puamarianas.com.³⁸ The Department forwarded Appellant's appeal to the
4 Administrative Hearing Office (hearing@dol.gov.mp) on the same day, but Appellant only
5 submitted the signed Determination with the "I appeal" selected and a copy of PSS
6 Employment Verification letter attached.³⁹

7 21. Upon receiving the email from the Department, on March 14, 2022, the Administrative
8 Hearing Office emailed the Appellant a Request for Reconsideration or Appeal form.⁴⁰

9 22. Although Appellant responded that he would get the form back to the Administrative
10 Hearing Office by the end of the day on March 15, 2022, Appellant did not properly file his
11 Request to Appeal form with the Administrative Hearing Office until on March 16, 2022.⁴¹

12 23. Upon filing the Appeal, the matter was scheduled for an Administrative Hearing.⁴²

13 24. As discussed during the Administrative Hearing and in his Request to Appeal Form,⁴³
14 Appellant was appealing the Department's Determination because he was already hired to
15 work for PSS and he did not know about the work search requirement.

16 25. With respect to the overpayment issue, the Department's Benefit Payment Control Unit
17 ("BPC") conducted further review and confirmed that no overpayment occurred in this
18 case.⁴⁴

19 26. Upon review of the additional documentation that Appellant submitted, the Department
20 issued an amended Disqualifying Determination ("Re-Determination") on September 22,
21 2022,⁴⁵ effective from August 1 to 7, 2021 because the Department determined that
22 Appellant did not meet the minimum job search requirement.⁴⁶

23 V. CONCLUSIONS OF LAW

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

26 1. Appellant's appeal is timely filed.

27
28 ³⁷ *Id.* (email dated March 11, 2022).

29 ³⁸ *See* Exhibit 17 (emails dated March 14, 2022).

30 ³⁹ *Id.*

31 ⁴⁰ Exhibit 17 (email dated March 14, 2022).

32 ⁴¹ Exhibit 17. *See also* Exhibit 6.

⁴² *See* Exhibits 7-8.

⁴³ Exhibit 6.

⁴⁴ *See* Exhibit 18.

⁴⁵ Exhibit 22.

⁴⁶ *Id.*

1 Generally, an appeal should be filed within ten days after the Notice of Determination was
2 issued or served to the claimant. However, the Department may extend the period to thirty days by
3 a showing of good cause.⁴⁷ Good cause means: (1) illness or disability; (2) keeping an appointment
4 for a job interview; (3) attending a funeral of a family member; and (4) any other reason which
5 would prevent a reasonable person from complying as directed.⁴⁸

6 When Appellant filed his applications for unemployment benefits, starting with his initial
7 application on or around June 17, 2020, Appellant acknowledged that it is his responsibility to read
8 the BRI Handbook and any other official written material provided. Moreover, the Department
9 issued a number of press releases to clarify the appeals process and directed claimants to the BRI
10 Handbook and applicable forms.

11 The Department issued the Determination on March 4, 2022.⁴⁹ The Determination clearly stated
12 the 10-calendar day deadline and stated that the appeal “**must be received or postmarked by**
13 **03/14/2022**. If you do not make the deadline, you lose the right to appeal this determination.”
14 (Emphasis in original).⁵⁰ By March 8, 2022, Appellant received information from the Department
15 that his remaining two weeks ending August 7, 2021 and August 14, 2021 had been adjudicated and
16 issued a disqualification due to inadequate job searches. From March 9 to 11, 2022 Appellant
17 received incorrect instructions from the Department that he could submit his appeal to PUA
18 Headquarters office in Capitol Hill, Building #1334 or via upload through the same email thread.
19 Appellant should have submitted his appeal to the Administrative Hearing Office via email to
20 hearing@dol.mp.gov, via post mail, or in-person in Capitol Hill, Bldg. #1357. On March 14, 2022,
21 the Appellant filed his Appeal with PUA Headquarters via the email thread as instructed by the
22 Department. The appeal was forwarded to the Administrative Hearing Office on March 14, 2022,
23 but Appellant did not submit the Request to Appeal form to the Administrative Hearing Office until
24 two days later, on March 16, 2022.

25 Generally, the failure to read and follow instructions is not good cause for an extension.
26 However, it is apparent that Appellant relied on the Department’s incorrect filing instructions
27 instead of following the instructions on the BRI Handbook, press releases, Determination and appeal
28 form. In consideration of Appellant’s attempt and diligence in following up and trying to confirm
29 that he can submit the Appeal to PUA Headquarters via the email thread before the March 14, 2022
30

31 ⁴⁷ HI. Rev. Statute § 383-38(a).

32 ⁴⁸ HAR § 12-5-81(j).

⁴⁹ See Exhibits 2-4.

⁵⁰ Exhibits 2-3.

1 deadline, the undersigned finds good cause to extend the filing deadline to 30 days. In light of this
2 good cause extension, Appellant's appeal is timely filed.

3 **2. From August 1 to 7, 2021, Appellant is not able and available to work in the CNMI**
4 **because he did not meet the minimum three work search contact requirement that**
5 **week.**

6 In accordance with the CARES Act, an individual must be able and available to work in the
7 CNMI during the week that benefits are claimed. "An individual shall be
8 deemed able and available for work . . . if the individual is able and available for suitable work
9 during the customary work week of the individual's customary occupation which falls within the
10 week for which a claim is filed."⁵¹ "An individual shall be deemed *able* to work if the individual has
11 the physical and mental ability to perform the usual duties of the individual's customary occupation
12 or other work for which is the individual is reasonably fitted by training and experience."⁵² "An
13 individual shall be deemed *available* for work only if the individual is ready and willing to accept
14 employment for which the individual is reasonably fitted by training and experience. The individual
15 must intend and wish to work, and there must be no undue restrictions either self-imposed or created
16 by force of circumstances which prevent the individual from accepting employment."⁵³

17 Effective June 13, 2021, Hawaii reinstated the work search requirement for all PUA claimants.
18 Specifically, "[a]n individual may be considered *available* for work any week in which the
19 individual has met the work search requirement."⁵⁴ Because the CNMI follows Hawaii state law
20 with respect to unemployment benefits, CNMI claimants must "make a minimum of three work
21 search contacts each week, unless⁵⁵ otherwise provided" to demonstrate availability.⁵⁶ With respect
22 to work search contacts, "the [claimant] shall maintain a record of all work search contacts and may
23 be required to submit such records upon request by the Department."⁵⁷ Activities that are considered
24 "work search contacts" include: (1) registering for work at the Department, other employment
25 agency, or work placement program; (2) apply for work, submitting resumes, or interviewing with
26 potential employers; (3) attending job search seminars or relevant employment seminars; or (4)
27 other similar work search activities which are generally made by individuals in a similar occupation
28 who are genuinely interested in obtaining work.⁵⁸ Ultimately, a claimant who fails to make a

29
30 ⁵¹ HAR § 12-5-35(a)

31 ⁵² HAR § 12-5-35(a)(1) (emphasis added).

32 ⁵³ HAR § 12-5-35(a)(2) and (b) (emphasis added).

⁵⁴ HAR § 12-5-35(c).

⁵⁵ See HAR §12-5-35(c)(4).

⁵⁶ HAR §12-5-35(c)(1).

⁵⁷ HAR §12-5-35(c)(2).

1 minimum of three work search contacts each week is not available for work and may be held
2 ineligible for benefits.⁵⁹

3 Here, pursuant to the Re-Determination that the Department issued on September 22, 2022, it is
4 uncontested that Appellant conducted activities that met the work search requirement for the week
5 of August 8-14, 2021. As testified to by the Appellant, he is appealing the denial of benefits for the
6 remaining claimed week that he is disqualified, August 1 to 7, 2021.

7 First and foremost, the undersigned finds that the Department demonstrated that Appellant was
8 provided with information and instructions on the requirement for work search contacts, including
9 keeping accurate records of the work search contacts for the weeks claimed. It is Appellant's
10 responsibility to provide true, accurate, and complete answers in his applications and weekly
11 certifications, including completing his Record of Contacts and Work Search History and retaining
12 documentation to show that he conducted the work search contacts. Moreover, as discussed above, it
13 is Appellant's responsibility to be informed about the program by reading the PUA Benefits Rights
14 Information Handbook and other official written material regarding the program, including press
15 releases and newspaper articles regarding the work search requirements. Ultimately, based on the
16 evidence presented and testimony available, including Appellant's own admission that he did not
17 know about the requirement, the undersigned finds that Appellant failed to be informed about the
18 work search requirements, including failing to read newspaper articles and press releases published
19 by the Department regarding the requirement.

20 Based on the documentation and testimony that Appellant provided, PSS offered him a full-
21 time, non-certified position as a Teacher Aide on or around August 7, 2021.⁶⁰ Appellant received a
22 signed Letter of Intent to Hire via email from PSS on August 12, 2021, along with the Letter of
23 Intent to Hire dated August 7, 2021 and instructions to complete a Medical Clearance form. Based
24 on the evidence and testimony presented, the earliest that Appellant could have received a bona fide
25 job offer from PSS was on or around the date on the Letter of Intent to Hire (August 7, 2021). This
26 was followed by PSS's email on August 12, 2021 sending him the signed Letter of Intent to Hire
27 .Therefore, the undersigned finds that before August 7, 2021, Appellant could not have conducted
28 any activity that would qualify as job search contact relating to his job offer from PSS such as
29 medical certification, orientation, training, or other job requirements. Appellant has documentation
30 that he emailed CBP to inquire as to where and how to apply as a border patrol agent in Saipan, but
31

32 ⁵⁸ HAR §12-5-35(c)(3).

⁵⁹ HAR §12-5-35(c)(5).

⁶⁰ See Exhibit 19.

1 this is the only record that he could provide of job search contacts for the week of August 1 to 7,
2 2021, and Appellant could not recall or provide substantiating documentation as to any other
3 activity that would qualify as a work search contact for that week. Therefore, based on the
4 applicable law and available evidence, the undersigned finds that Appellant was not able and
5 available to work for the period of August 1 to 7, 2021 because he failed to conduct the required
6 three work search contacts as required.

7 VI. DECISION

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

- 9 1. The CNMI Department of Labor's Disqualifying Re-Determination, dated September 22,
10 2022, is **AFFIRMED**; and
- 11 2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits from August 1, 2021 to
12 August 7, 2021.

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

18 In the event a request to reopen the decision is granted, the matter shall be scheduled for a
19 subsequent hearing. In the event a request to reopen the decision is denied, and if the Appellant still
20 disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI
21 Superior Court under the local Administrative Procedures Act within 30 days. *See* 1 CMC § 9112.
22 All forms, filings fees, and filing deadlines for judicial review will be as established by the
23 applicable law and court rule.

24 So ordered this 15th day of November, 2022.

25 /s/

26 **CATHERINE J. CACHERO**
27 Administrative Hearing Officer

28 List of Documents Admitted into Evidence

29 The following documents were admitted into evidence:

- 30 1. Exhibit 1: Copy of Appellant's Application Snapshot (new), filed June 17, 2020;
- 31 2. Exhibit 2: Copy of Appellant's Application Snapshot (additional), filed October 20, 2020;
- 32 3. Exhibit 3: Copy of Appellant's Application Snapshot (reopen), filed January 24, 2021;

- 1 4. Exhibit 4: Copies of Appellant's Weekly Certifications for August 1-7, 2021 and August 8-14,
2 2021 (online and paper versions);
- 3 5. Exhibit 5: Copy of Department's Disqualifying Determination, dated March 4, 2022 (effective
4 August 1, 2021 to August 14, 2021);
- 5 6. Exhibit 6: Copy of Appellant's Request to file an Appeal, filed March 16, 2022;
- 6 7. Exhibit 7: Copy of the Notice of Hearing, issued on March 16, 2022;
- 7 8. Exhibit 8: Copies of the Orders Continuing Hearing, issued on July 15, 2022 and
8 August 4, 2022;
- 9 9. Exhibit 9: Copy of Department's Case Notes, dated March 4, 2022;
- 10 10. Exhibit 10: Copy of Appellant's Employment Verification Letter, dated June 8, 2020;
- 11 11. Exhibit 11: Copy of Appellant's Employment Certification, dated August 21, 2021;
- 12 12. Exhibit 12: Copy of Appellant's Verification of Employment from CNMI Public School
13 System, Human Resource Office, dated March 14, 2022;
- 14 13. Exhibit 13: Copy of the PUA Benefit Rights Information Handbook;
- 15 14. Exhibit 14: Copies of Newspaper Articles from the *Marianas Variety* and *Saipan Tribune*
16 regarding PUA Appeals Process, dated October 15-16, 2020;
- 17 15. Exhibit 15: Copies of Newspaper Articles from *Marianas Variety* and *Saipan Tribune*
18 regarding work search requirements, both dated July 22, 2021;
- 19 16. Exhibit 16: Copy of Department's Press Release FAQ: PUA Work Search Requirement;
- 20 17. Exhibit 17: Copies of Emails between Appellant, PUA Marianas (info@puamarianas.com)
21 and Department of Labor Administrative Hearing Office, dated March 14-16, 2022;
- 22 18. Exhibit 18: Copy of Email from Department's Benefit Payment Control Unit, dated August
23 30, 2022;
- 24 19. Exhibit 19: Copies of Emails from CNMI Public School System ("PSS") to Appellant,
25 including attachments, dated August 12, 2021 and August 14, 2021;
- 26 20. Exhibit 20: Copy of Order, issued on September 13, 2022;
- 27 21. Exhibit 21: Copies of Orders Continuing Hearing, issued on September 23, 2022 and
28 October 4, 2022;
- 29 22. Exhibit 22: Copy of Re-Determination, issued on September 22, 2022;
- 30 23. Exhibit 23: Copy of Department's Case Notes, dated September 15, 2022;
- 31 24. Exhibit 24: Copy of Portal Messages between Department and Appellant, dated September 15,
32 2022 and September 16, 2022;

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- 25. Exhibit 25: Copy of Appellant’s Email to U.S. Customs and Border Protection (“CBP”), sent on August 2, 2022, including Emails between Department and Appellant, sent September 15, 2022 and September 19, 2022; and
- 26. Exhibit 26: Copies of Emails between Appellant and CBP on August 2, 2021, August 9, 2021, June 9, 2022, June 23, 2022, and August 30, 2022.

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



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4	In Re Matter of:)	PUA Case No. 22-0207
5	Mohammad Abu Hassan Chowdhury,)	
6)	
7	Appellant,)	ADMINISTRATIVE ORDER
8	v.)	
9	CNMI Department of Labor,)	
10	Division of Employment Services-PUA,)	
11)	
12	Appellee.)	

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on November 1, 2022 at approximately 9:00 a.m. at the Administrative Hearing Office in Saipan, CNMI. Appellant Mohammad Abu Hassan Chowdhury (“Appellant”) was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program (“Department”) was present and represented by Department’s Benefit Payment Control Unit (“BPC”) Supervisor Vincent DLG Sablan. There were no other witnesses that provided testimony at the hearing. A list of the documents admitted into evidence is added to the end of this Order.

For the reasons stated below, the Department’s Notice of Overpayment dated August 24, 2020 is **AFFIRMED**. Appellant was overpaid in the total amount of \$12,975.00 for the weeks ending March 21, 2020 to June 27, 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 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 to

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.

1 March 13, 2021.³ On March 11, 2021, the American Rescue Plan Act of 2021 (“ARPA”) extended
2 the programs to September 6, 2021. The CNMI Department of Labor is charged with the responsibility
3 in administering the above-mentioned programs in the CNMI in accordance to applicable law.⁴ The
4 CNMI Department of Labor Administrative Hearing Office has been designated to preside over
5 appeals of agency decisions.

6 Upon review of the records, the appeal is not timely filed. Accordingly, jurisdiction is not
7 established.

8 III. PROCEDURAL BACKGROUND & ISSUES

9 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon
10 review of Appellant’s application and supporting documents, the Department issued and served to the
11 Appellant a Notice of Overpayment on August 24, 2020. On March 17, 2022, Appellant filed the
12 present appeal and the matter was scheduled for a hearing.

13 As stated in the Notice of Hearing, the issues on appeal are: (1) whether the appeal is timely filed;
14 (2) whether Appellant is eligible for PUA; and (3) whether an overpayment occurred and funds should
15 be returned.

16 IV. FINDINGS OF FACT

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

- 19 1. Prior to the COVID-19 pandemic, Appellant was employed as a full-time Taxi Driver at New
20 Sunrise Corp. (“Employer”), located in Saipan, CNMI.⁵ As a Taxi Driver, Appellant generally
21 worked 32 hours per week and was paid \$9.97 hourly.
- 22 2. Due to the economic impact of the pandemic, Employer implemented cost-cutting measures
23 that affected Appellant’s employment. Specifically, effective March 16, 2020, Appellant was
24 furloughed because Employer instituted a temporary closure.⁶ Subsequently, Appellant was
25 recalled to work on June 30, 2021, but his hours were reduced to only 8 hours per week.⁷
- 26 3. On or around July 2, 2020, Appellant submitted an application⁸ for unemployment assistance
27

28 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.

⁵ Exhibit 7.

⁶ See *id.*

⁷ *Id.* See also Exhibit 5.

⁸ Exhibit 1.

1 under the PUA and FPUC programs administered by the Department. In the initial
2 application,⁹ Appellant self-certified under penalty of perjury that:

- 3 a. Appellant is an Alien/Refugee Lawfully Admitted to U.S.;
- 4 b. Appellant's status would expire on September 30, 2020;
- 5 c. Appellant's employment was directly affected by COVID-19 when his place of
6 employment closed; and
- 7 d. Appellant's employment was affected since March 15, 2020.

8 4. Subsequently, Appellant submitted an application to reopen and weekly certifications to claim
9 continued benefits from week ending March 21, 2020 to June 27, 2020.

10 5. The answers provided in Appellant's applications and weekly certifications were submitted
11 under penalty of perjury.¹⁰ Accordingly, it is Appellant's responsibility to provide true,
12 accurate, and complete answers. Moreover, it is also Appellant's responsibility to be informed
13 about the program by reading the PUA Benefit Rights Information Handbook¹¹ and other
14 official, published written materials regarding the program.¹²

15 6. Based on the answers on Appellant's applications and weekly certifications, Appellant's claim
16 was processed for payment. As demonstrated by an internal audit¹³ and confirmed by witness
17 testimony, Appellant received a total of \$12,975.00 in federal unemployment benefits for
18 weeks ending March 21, 2020 to June 27, 2020.

19 7. With respect to Appellant's immigration status and employment authorization, Appellant
20 provided testimony and substantiating evidence to demonstrate that he had CW-1 status and
21 corresponding employment authorization from October 1, 2019 to September 30, 2021.¹⁴

22 8. On September 28, 2021, the Department entered Appellant's information into the Systematic
23 Alien Verification for Entitlements (SAVE) database maintained by USCIS, Verification
24 Division.¹⁵ This database is used to determine the immigration status of PUA applicants so
25 only those entitled to benefits receive them. The SAVE results¹⁶ confirmed that Appellant has
26 employment authorization and that it was extended to May 28, 2022.

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⁹ *Id.*

¹⁰ *See* Exhibits 1-3.

¹¹ *See* Exhibits 1-2; *see also* Exhibit 14.

¹² *See* Exhibit 13.

¹³ Exhibit 15

¹⁴ Exhibit 8.

¹⁵ Exhibit 9.

¹⁶ *Id.*

- 1 9. On August 24, 2020, BPC issued a Notice of Overpayment for the total amount of \$12,975.00
2 in federal unemployment benefits for weeks ending March 21, 2020 to June 27, 2020.¹⁷
3 Specifically, this amounted to \$5,175.00 in PUA benefits and \$7,800.00 in FPUC benefits.¹⁸
4 10. Appellant received the Notice of Overpayment on August 24, 2020¹⁹ and he concurred and
5 agreed to repay the overpayment.²⁰
6 11. Appellant has made payments towards the overpayment as demonstrated by the Payment Plan
7 Agreements he signed on August 24, 2020 and August 25, 2021.²¹ In total, to date, Appellant
8 has paid \$7,960.00 of the overpayment amount. The remaining balance is \$5,015.00 in
9 overpayment.
10 12. On March 17, 2022, Appellant filed the present appeal²² and the matter was scheduled for an
11 Administrative Hearing.²³
12 13. In his Request to Appeal and as discussed during the Administrative Hearing, Appellant
13 claimed that he filed his appeal after the 10-day deadline because he did not know about the
14 appeals process and only learned about the appeals process from a friend the week before
15 filing his appeal.²⁴
16 14. Appellant also stated that he is appealing the Notice of Overpayment because he still has
17 reduced hours of only 8 hours per week and he has to support his family members.

18 V. CONCLUSIONS OF LAW

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

21 1. Appellant's appeal is not timely filed.

22 Generally, an appeal should be filed within ten days after the Notice of Determination was issued
23 or served to the claimant. However, the Department may extend the period to thirty days by a showing
24 of good cause.²⁵ Good cause means: (1) illness or disability; (2) keeping an appointment for a job
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28 ¹⁷ Exhibit 4.

¹⁸ *Id.*

¹⁹ *See* Exhibits 4 and 10.

²⁰ *Id.* *See also* Exhibit 11.

²¹ *See* Exhibit 11.

²² *See* Exhibit 5.

²³ *See* Exhibit 6.

²⁴ *See* Exhibit 5.

²⁵ HI. Rev. Statute § 383-38(a).

1 interview; (3) attending a funeral of a family member; and (4) any other reason which would prevent
2 a reasonable person from complying as directed.²⁶

3 On or around July 2, 2020, Appellant filed an application for PUA and FPUC benefits. Therein,
4 Appellant acknowledged that it is his responsibility to read the PUA Benefit Rights Information
5 Handbook (“BRI Handbook) and any other official, published written material provided by the
6 Department.²⁷ Notably, the BRI Handbook was publicly available and made available to all claimants.
7 The BRI Handbook included important information regarding the programs’ requirements and
8 process, including appeals procedure.²⁸ The Department also issued a number of press releases,
9 including those published in local newspapers²⁹ to clarify the appeals process and direct claimants to
10 the BRI Handbook. Moreover, the Notice of Overpayment that the Department issued to Appellant
11 provided appeals instructions and the 10-day appeal deadline.³⁰

12 Here, Appellant did not file his appeal of the August 24, 2020 Notice of Overpayment until
13 March 17, 2022,³¹ more than one and a half year after the Notice of Overpayment was issued and
14 served to him. When asked why he filed late, Appellant stated in his appeal form³² and during the
15 Hearing that he did not know about the appeals process until he learned about it from his friend just a
16 week before filing his request to appeal. Considering that Appellant was provided instructions on how
17 to file an appeal and the 10-day deadline, Appellant is not entitled to a good cause extension. Even if
18 Appellant had good cause to extend the 10-day deadline to 30 days, Appellant’s appeal would still be
19 untimely because he filed his Appeal more than one and a half year after the Notice of Overpayment
20 was issued. Accordingly, Appellant’s appeal of the Notice of Overpayment was untimely and the
21 undersigned does not have jurisdiction to review the Notice of Overpayment. Therefore, the Notice
22 of Overpayment is final.

23 VI. DECISION

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

- 25 1. The CNMI Department of Labor’s Notice of Overpayment, dated August 24, 2020, is
26 **AFFIRMED**;

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²⁶ HAR § 12-5-81(j).

²⁷ See Exhibits 1-2.

²⁸ See Exhibit 14.

²⁹ See Exhibit 13.

³⁰ Exhibit 4.

³¹ See Exhibit 5.

³² *Id.*

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- 2. Appellant was overpaid in the total amount of **\$12,975.00** and is not entitled to a waiver for repayment; and
- 3. Appellant is **ORDERED** to report to the Department’s Benefit Payment Control Unit to discuss options for repayment or offsetting the overpayment, in accordance with the applicable rules.

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 Building #1357, Mednilla Avenue, Capitol Hill, Saipan, CNMI 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, and 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 1st day of November, 2022.

/s/
CATHERINE J. CACHERO
Administrative Hearing Officer

Admitted Evidence

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1. Exhibit 1: Copy of Appellant's Application Snapshot (new), dated July 2, 2020;
2. Exhibit 2: Copy of Appellant's Application Snapshot (reopen), dated March 5, 2021;
3. Exhibit 3: Copy of Appellant's Weekly Certifications (online versions) for weeks ending March 21, 2020 to June 27, 2020;
4. Exhibit 4: Copy of Appellant's Notice of Overpayment, dated and issued on August 24, 2020;
5. Exhibit 5: Copy of Appellant's Request to File an Appeal and supporting documents filed on March 17, 2022;
6. Exhibit 6: Copies of the Notice of Hearing and Orders Continuing Hearing, issued March 17, 2022, July 21, 2022, and August 4, 2022;
7. Exhibit 7: Copies of Appellant's Employer New Sunrise Corp.' Memorandum (issued March 21, 2020) and Certificates of Employment (issued on December 27, 2020 and August 23, 2021);
8. Exhibit 8: Copies of Two USCIS Forms I-797A, Appellant's CW-1, valid from October 1, 2019 to September 30, 2020 and from October 1, 2020 to September 30, 2021;
9. Exhibit 9: Copy of Department's SAVE Results initiated on September 28, 2021;
10. Exhibit 10: Copy of Department's Case Note, dated September 11, 2020;
11. Exhibit 11: Copies of Payment Plan Agreements that Appellant signed and dated August 24, 2020 and August 25, 2021;
12. Exhibit 12: Copies of Payment Certifications and Cash Receipts for Payments Made by Appellant for Years 2020, 2021 and 2022;
13. Exhibit 13: Copies of Newspaper Articles from *Marianas Variety* (dated October 15, 2020) and from *Saipan Tribune* (dated October 16, 2020), publishing press releases from the Department regarding the Appeals Process;
14. Exhibit 14: Copy of Department's Benefit Rights Information Handbook; and
15. Exhibit 15: Copy of Department's BPC Audit Sheet.



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

In Re the Matter of:

Maria M. Del Pozo,

Appellant,

v.

CNMI Department of Labor,
Division of Employment Services-DUA,
Appellee.

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) **DUA Case No. 22-015**
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) **ADMINISTRATIVE ORDER**
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12 On November 15, 2022, the Department filed a Motion to Dismiss stating that the parties
13 met to discuss and resolve the issues of the case. On the same day, the Department served a Notice
14 of Monetary Determination finding the Appellant eligible for DUA benefits for weeks ending
15 November 3, 2018 to December 1, 2018. On November 15, 2022, Appellant confirmed, in
16 writing, that she did not contest the new determination and does not oppose the Department’s
17 Motion to Dismiss.

18 In consideration of above, the undersigned finds that there are no issues on appeal.
19 Accordingly, this appeal is hereby **DISMISSED** and the previously scheduled Administrative
20 Hearing is hereby **VACATED**.

21 So ordered this **15th** day of November, 2022.

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23 /s/

24 **JACQUELINE A. NICOLAS**
25 Chief Administrative Hearing Officer
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