



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

FOR PUBLICATION

IN THE SUPERIOR COURT

OF THE

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

<b>MICHAEL P. CODY,</b>	)	<b>Civil Action No. 09-0079E</b>
	)	
<b>Petitioner,</b>	)	
	)	
<b>vs.</b>	)	<b>ORDER DENYING RESPONDENT'S</b>
	)	<b>MOTION FOR RECONSIDERATION</b>
<b>NORTHERN MARIANA ISLANDS</b>	)	<b>OF COURT'S FINAL ORDER</b>
<b>RETIREMENT FUND; and the NMIRF</b>	)	
<b>BOARD OF TRUSTEES,</b>	)	
	)	
<b>Respondents.</b>	)	
	)	
	)	

---

I. INTRODUCTION

**THIS MATTER** came for hearing on July 15, 2010 at 1:30 p.m. in Courtroom 223A for Respondent's Motion for Reconsideration. Counsel Jeanne Rayphand appeared on behalf of Petitioner, Michael P. Cody (hereinafter "Petitioner"). Counsel Carolyn M. Kern appeared on behalf of Respondent, Northern Mariana Islands Retirement Fund and the NMIRF Board of Trustees (hereinafter "NMIRF" or "Defendant").

In its Motion, Defendant argues that there is an internal inconsistency in this honorable Court's Order that resulted from applying the Fund's regulations as they existed in 2006; regulations that were amended before this matter was heard by this honorable Court. Defendant asks this Court to declare the 2006 regulations null and void since they were in conflict with P.L. 13-60.



1 Defendant later argued, that Petitioner failed to meet this requirement as well.

2 In its Final Order, the Court determined that Petitioner had satisfied the requirements of P.L. 13-  
3 60 and therefore, reversed the Administrator’s decision denying Petitioner’s disability retirement in the  
4 amount of 66 2/3% of his salary.

### 5 III. AUTHORITY

6 Motions for reconsideration are governed by Rule 59 and are considered an extraordinary  
7 measure to be taken at the Court’s discretion. *See Yuba Natural Resources, Inc. v. United States*, 904  
8 F.2d 1577, 1583 (Fed. Cir. 1990). The Commonwealth Supreme Court articulated a limited number of  
9 grounds to warrant a court to revisit an already decided matter. Consequently, only an “intervening  
10 change of controlling law, the availability of new evidence, or the need to correct a *clear error* or  
11 prevent manifest injustice” are sufficient grounds for reconsideration. *Camacho v. J.C. Tenorio*  
12 *Enterprises, Inc.*, 2 N.M.I. 408, 414 (1992).

13 The Court may look to interpretations of the Federal Rules of Civil Procedure case law for  
14 guidance in interpreting our local counterpart Rule because the Commonwealth Rules are patterned after  
15 the Federal Rules. *Ada v. K. Sadhwani's, Inc.*, 3 N. Mar. I. 303, 311 n.3 (1992).

16 The purpose of Rule 59(e) is to provide the court with a means for correcting errors that may  
17 have “crept into the proceeding,” while the court still holds jurisdiction over the case. *Sosebee v. Astrue*,  
18 494 F.3d 583, 589 (7th Cir. 2007). Federal case law acknowledges four grounds that justify altering or  
19 amending a judgment: to incorporate an intervening change in the law, to reflect new evidence not  
20 available at the time of trial, to correct a clear legal error, and to prevent manifest injustice. *See e.g.*  
21 *Greyhound Lines, Inc. V. Wade*, 485 F.3d 1032, 1036 (8th Cir. 2007).

22 In its Motion to Reconsider, Defendant asks this Court to revisit its previous ruling arguing that  
23 there is a need to correct a clear legal error or prevent a manifest injustice citing *Angello v. Luis Vuitton*,  
24 6 N. Mar. I. 165 (2000).

1 **IV. DISCUSSION**

2 Constitutions as well as statutes are construed to operate prospectively only, unless, on the face  
3 of the instrument or enactment, the contrary intention is manifest beyond reasonable question.  
4 *Shreveport v. Cole*, 129 U.S. 36, 43 (1889). “[R]etroactivity is not favored in the law,” and  
5 “congressional enactments and administrative rules will not be construed to have retroactive effect  
6 unless their language requires this result.” *Barbara Landgraf v. USI Film Products*, 511 U.S. 244, 264  
7 (citing *Bowen v. Georgetown University Hospital*, 488 U.S. 204, 208 (1988)). Keeping these general  
8 principles in mind, the Court will address Defendant’s Motion for Reconsideration.

9 Defendant moves this Court to reconsider the Order issued on June 15, 2010, arguing that there is  
10 a need to correct a clear legal error. Defendant argues that NMIAC § 110-10-220(a) as it existed in  
11 2006, was null and void from the time it was first adopted because it was in conflict with P.L .13-60.  
12 Thus, Defendant argues that this Court should have declared the 2006 regulation null and void, and then  
13 applied the 2008 regulation, adopted June 2008, which subsequently amended its predecessor.<sup>1</sup>

14 However, Defendant fails to recognize that the 2006 regulation was the law that was in effect at  
15 the time Petitioner became disabled. Although the 2008 regulation might have amended its counterpart,  
16 the Court was bound to look at the 2006 regulation since this was the law in effect at the time of  
17 Petitioner’s disability.

18 In addition, pursuant to this Court’s Order, the Court stated that Petitioner became a member of  
19 the Fund in March 1989 and became disabled in 2006. Therefore, the Court determined that NMIAC §  
20 110-10-220(a) was the applicable statute to apply. NMIAC § 110-10-220(a) makes clear that a person  
21 who became a member prior to December 5, 2003 should have benefits construed at 66 2/3% of their  
22 salary earned. (Emphasis added).

---

23  
24  
25 <sup>1</sup> This regulation removed the language allowing members who became members prior to December 5, 2003 to have their benefits computed at 66 2/3%.

1 Notwithstanding, Defendant argues that the Court should strike down the 2006 regulation since it  
2 was in conflict with P.L. 13-60, an argument which has just recently surfaced. Defendant supports its  
3 position with Attorney General's Opinion 05-18 (hereinafter "AG's Opinion"), which does not address  
4 disability benefits, but does conclude that the amendments contained in PL 13-60 relating to reducing the  
5 unfunded mandates for retirement benefits could not apply to employees who were members of the Fund  
6 prior to the effective date of the law. (Emphasis added). The Court does not see how this opinion helps  
7 Respondent's argument nor does the Court find that this opinion binds the Court in anyway whatsoever.

8 In addition, the Court does not believe that the AG's Opinion is in conflict with this Court's  
9 Order because Petitioner had a right to disability at the time he became a member of the Fund in 1989,  
10 but because his disability did not vest until Petitioner did in fact become disabled, Petitioner had to  
11 satisfy the requirements of the law that were in effect at the time of the disability, which in this case was  
12 P.L.13-60. In its Final Order, this Court determined that Petitioner did satisfy these requirements.

13 In addition, the Court stated that the 1/3 decrease in Petitioner's disability was a substantial  
14 impairment to Petitioner's contract, but because NMIAC § 110-10-220(a) distinguished between the  
15 benefits members would receive prior to 13-60 and after 13-60, the Court determined that Petitioner's  
16 contractual obligations were not violated. Furthermore, whether or not the Fund erred by attempting to  
17 restrict the application of P.L. 13-60 through NMIAC § 110-10-220(a) is not presently before the Court.

18 1 CMC § 9104 covers the procedures for adopting regulations. Subsection (c) provides in part:  
19 "No regulation adopted is valid unless adopted in substantial compliance with this section. A judicial  
20 proceeding for a declaratory judgment to contest any regulation on the ground of noncompliance with  
21 the procedural requirements of this section must be commenced within one year from the effective date  
22 of the regulation."

23 Thus, the Fund had 1 year to challenge the law, but instead amended the regulation in 2008,  
24 which was over a year and a half after Petitioner applied for disability. The Court believes that because  
25 the Fund changed the 2006 regulation in 2008, this amendment does not apply to Petitioner. With that

1 said, the Court does believe that the 2008 regulation could apply to persons becoming disabled after the  
2 2008 amendment took effect. However, in the case at bar, this amendment was not in effect at the time  
3 Petitioner became disabled and thus, does not apply to Petitioner.

4 Moreover, the Board of Trustees, in promulgating the regulations to implement P.L. 13-60  
5 clearly and carefully insured that P.L.13-60 would only apply to persons who became members of the  
6 Fund prior to the enactment of P.L. 13-60, thus protecting the contractual rights of those persons. The  
7 2006 Regulation was consistent with the AG's Opinion which stated that P.L. 13-60 applies  
8 prospectively and applies only to persons hired on or after December 5, 2003. The 2008 regulation was  
9 neither in effect at the time Petitioner became a member nor was in effect at the time Petitioner applied  
10 for disability retirement.

11 In conclusion, the fact that a disability benefit is contingent on a member subsequently becoming  
12 disabled does not negate the contract nor the member's enforceable right to disability benefits when he  
13 began his employment.

14 **V. CONCLUSION**

15 Defendant has failed to demonstrate to this Court why it should change its earlier ruling applying  
16 NMIAC § 110-10-220(a) to the case at bar. For the foregoing reasons, Defendant's Motion for  
17 Reconsideration is **DENIED.**

18  
19 **So ORDERED this 21<sup>st</sup> day of July, 2010.**

20  
21 \_\_\_\_\_ / s /  
22 David A. Wiseman, Associate Judge  
23  
24  
25