



By the order of the court, Judge David A Wiseman

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FOR PUBLICATION

**IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

ROYAL CROWN INSURANCE CORPORATION [RE: Bond No. 44510 issued to Xuan Corporation],
Petitioner,
v.
DIRECTOR OF LABOR, GIL M. SAN NICOLAS, DOL SECRETARY, AND THE DEPARTMENT OF LABOR, COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Respondents.

Civil Action No. 10-0032
ORDER AFFIRMING THE SECRETARY OF LABOR'S ORDER ON APPEAL

I. INTRODUCTION

THIS MATTER came before the Court for on March 15, 2012 at 1:30 p.m. in Courtroom 223A. Joe Hill, Esq. represented Royal Crown Insurance Corporation (“Petitioner”) and Meredith Callan, Esq. represented CNMI Department of Labor, *et al* (“Respondents”). The parties agreed to waive oral arguments and submit on the written briefing of this Petition for Review of the Secretary of Labor’s December 30, 2009 Order on Appeal. After considering the written arguments of the parties the Court **AFFIRMS** the Order on Appeal.

1 **II. FACTUAL AND PROCEDURAL BACKGROUND**¹

2 Jingzhu Cui (“Cui”) was a nonresident worker employed as a commercial cleaner by Xuan
3 Corporation (“Xuan”) in Tinian. Xuan secured a performance bond pursuant to 3 CMC § 4924, which
4 requires an employer to obtain a performance bond as a prerequisite for employment of nonresident
5 workers. On December 17, 2007, Petitioner issued Bond No. 44510 securing the performance of Xuan
6 regarding the employment of Cui.

7 Cui worked from January 2008 until March 2008 until he was assaulted and hospitalized at the
8 Commonwealth Health Center (“CHC”) in Saipan. After being released from the hospital in May 2008,
9 Xuan did not provide him with work, in violation of his contract.

10 On or about September 10, 2008, Cui filed a labor complaint (L.C. No. 08-189[T]) against Xuan
11 alleging a breach of contract based on a failure to provide work and attempt to force resignation. Notice
12 of Filing of Complaint was served upon Petitioner by the Department of Labor (“DOL”) the following
13 month. The labor complaint was heard by a DOL Administrative Hearing Officer (“AHO”) who issued
14 an Administrative Order dated April 14, 2009 awarding \$4,994.66 in unpaid wages and \$33,334.27 in
15 medical expenses to Cui. The Administrative Order stated that “[pursuant] to Bond No. 44510,
16 [Ppetitioner] may be held responsible for the wage award and medical expenses to the limits of the bond,
17 plus a repatriation ticket, if [Xuan] fails to pay the award. . . .”

18 Xuan subsequently failed to pay the award to Cui as ordered by the AHO, and as a result, the
19 DOL issued a Notice of Claim which was served upon Petitioner on May 5, 2009. The Notice
20 instructed Petitioner to either pay the award up to the bond limits or to file written objections. Petitioner
21 filed a written objection and the DOL filed a brief in opposition.

22 On November 25, 2009, an Administrative Order regarding Notice of Claim was issued by the
23 AHO ordering Petitioner to pay the full proceeds of the bond which included \$1,846.00 to Cui and
24 \$3,000.00 to the CHC for medical expenses, and \$572.00 towards the purchase of a repatriation airline
25 ticket.

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¹ The facts are taken from the AHO’s April 14, 2008 Administrative Order and November 25, 2009 Administrative
Order re Notice of Claim and are undisputed for purposes of this Review.

1 On December 10, 2009, Petitioner filed an appeal with the Secretary of Labor (“SOL”). The
2 SOL affirmed the AHO’s Administrative Order re Notice of Claim in all aspects through its December
3 30, 2009 Order on Appeal.

4 On August 19, 2009, Petitioner timely filed a Petition for Judicial review before this Court.
5

6 **III. ISSUES FOR REVIEW**

- 7 1. Whether the DOL lacked statutory authority to determine the issues of liability and damages
8 under the bond.
- 9 2. Whether conclusions reached by the DOL are supported by substantial evidence.
- 10 3. Whether Petitioner was denied its right to due process.

11 **IV. STANDARD OF REVIEW**

12 The standard of review the Superior Court must apply when reviewing agency actions within
13 the Administrative Procedure Act (“APA”) is set forth in 1 CMC § 9112(f).² *Camacho v. Northern*
14 *Marianas Retirement Fund*, 1 NMI 362 (1990). Section 9112(f) requires a reviewing court to decide
15 all relevant questions of law, interpret constitutional and statutory provisions, and determine the
16 meaning or applicability of an agency action. *Tenorio v. Superior Ct.*, 1 NMI 1 (1989). Specifically,
17 § 9112(f)(2), mandates that a court set aside agency action if it finds the action is found to be:
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- 19 (i) Arbitrary, capricious, an abuse of discretion, or otherwise not in
20 accordance with law; (ii) Contrary to constitutional right, power,
21 privilege, or immunity; (iii) In excess of statutory jurisdiction,
22 authority, or limitations, or short of statutory rights; (iv) Without
23 observance of procedure required by law; (v) Unsupported by
substantial evidence in a case subject to 1 CMC §§ 9108 and 9109 or
otherwise reviewed on the record of an agency hearing provided by
statute or (vi) unwarranted by facts to the extent that the facts are
subject to trial de novo by the reviewing court.

24 The standard of review for an appeal alleging an arbitrary and capricious action is similar to the
25 abuse of discretion standard. *In re Blankenship*, 3 NMI 209 ¶ 16 (1992). “A court will review an
26 action or decision alleged to be arbitrary and capricious to determine whether the action was reasonable
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28 ² The APA is found in 1 CMC §§ 9110 *et seq.*

1 and based on information sufficient to support the decision at the time it was made.” *Id.*

2 Factual determinations from administrative hearings are reviewed under the substantial evidence
3 standard of review. 1 CMC § 9112(f)(2)(v); *see Limon v. Camacho*, 1996 MP 18 ¶ 22; *Barte v. Saipan*
4 *Ice, Inc.*, 1997 MP 17. In applying the substantial evidence standard, a court must determine whether
5 agency action was reasonable based on the information before the agency, however, the reviewing court
6 is to uphold the agency determination even if supported by something less than the weight of evidence
7 if the agency’s conclusions are reasonable. *In re Hafadai Beach Hotel Extension*, 4 NMI 37, 44 (1993).

8 Issues of law arising from administrative hearings are reviewed *de novo*. *Tenorio v. Superior*
9 *Court*, 1 NMI 4, 9 (1989).

10 In making the determination, the court is confined to “the record or those parts of it cited by a
11 party.” 1 CMC § 9112(f)(2)(vi); *see also* 3 CMC § 4949(2) (“Judicial review shall be confined to the
12 record”). What constitutes the record on review is laid out in 1 CMC § 9109(j).

13 In judicial review of agency action, a petitioner seeking an order setting aside an agency
14 decision bears the burden of proof. *In re Hafadai Beach Hotel Extension*, 4 NMI at 45.

15
16 **V. DISCUSSION**

17 **A. The AHO’s Decision to Apply the Commonwealth Employment Act of 2007 Was Not Improper**

18 Petitioner asserts the AHO erred in applying Public Law (“PL”) 15-108 to this case.

19 The bond in question was issued by Petitioner on December 17, 2007 and all other relevant
20 events occurred in 2008 or beyond. PL 15-108 enacted the Commonwealth Employment Act of 2007
21 which was approved on November 9, 2007. While PL 15-108's effective date was January 1, 2008, the
22 Court finds Petitioner has not met their burden in demonstrating why it is improper for this matter to be
23 decided under the Commonwealth Employment Act of 2007. The provisions of the Nonresident
24 Workers Act, the predecessor to the Commonwealth Employment Act of 2007, contained substantially
25 similar sections as applicable to this case.

26 Petitioner cites the Contracts Clause, Article I § 10 of the United States Constitution, which
27 prohibits substantial impairment of a contractual relationship, however Petitioner has not shown why
28 the outcome of this case would differ regardless of which version of the code is applied.

1 The doctrine of harmless error is applicable to review of administrative decisions. *See Camacho*
2 *v. Northern Marianas Retirement Fund*, 1 NMI 362, 376 (1990); *In re San Nicolas*, 1 NMI 329 (1990).
3 It is always incumbent upon an aggrieved party to demonstrate the prejudicial effect of procedural
4 irregularities in administrative proceedings. *Camacho*, 1 NMI at 376. Petitioner has not asserted any
5 prejudice and has not shown why application of PL 15-108 substantially impairs a contractual right
6 versus the application of the Nonresident Workers Act.

7 Thus, the DOL did not act improperly by applying PL 15-108 as the applicable law.³

8 **B. The DOL Has Authority to Determine the Issues of Liability and Damages under the Bond**

9 Petitioners next assert that the DOL lacked jurisdiction and authority to determine issues of
10 liability and damages under the subject bond.

11 Bonding requirements are set out as a prerequisite to entry by a foreign worker in 3 CMC § 4924
12 which states:

13 The Administrative Hearing Office shall have original jurisdiction
14 to resolve all actions involving alleged violations of the labor and
15 wage laws of the Commonwealth, including but not limited to any
16 violation of this chapter and regulations promulgated thereunder.
17 The Commonwealth Superior Court shall have concurrent jurisdiction
18 to resolve all labor and wage violations that are criminal in nature.

19 The Superior Court faced with similar questions regarding the DOL's authority over bonding
20 issues found the "authority for the enforcement of bond obligations has been legislatively vested with
21 the Director of Labor and that procedures regarding the issuance, content, and enforcement of such
22 bonds are supplied by an extensive statutory and regulatory scheme." *Smith & Williams v. Royal*
23 *Crown Ins. Co.*, Small Claims Nos. 06-0676, 06-1677, 06-0678 (N.M.I. Super. Ct. Feb. 5 2007)
(Findings of Fact and Conclusions of Law); *See also Ren Zhou v. Oceania Ins. Copr., et al.*, Small
24 Claim Nos. 08-0452 *et seq.*, (N.M.I. Super. Ct. Feb. 5 2009) (Order Granting Motion to Dismiss).

25 Bonding requirements are set forth by the Commonwealth Employment Act of 2007 and the
26 DOL has power pursuant to 3 CMC § 4942 to resolve all actions and violations involving labor and
27 wage laws. As such, the DOL has been legislatively vested with the power of bond issuance, content,

28 ³ All statutory references in this Order are to the Commonwealth Employment Act of 2007 unless otherwise noted.

1 and enforcement.

2 The DOL, thus, had the legislative authority to hear the bonding case and decide the issues of
3 liability and damages as it did.

4 **C. Conclusions Reached by the AHO Were Not Improper and Were Supported by Substantial
5 Evidence**

6 *1. The bond award was proper to compensate wages owed by Xuan for failure to provide work*

7 Petitioner asserts its bond only covered wages for hours worked and not wages owed by Xuan
8 as a result of a failure to provide work by Cui.

9 The bond in question guaranteed 1) three months pay; 2) the employer's obligations to pay the
10 employees medical expenses; and 3) repatriation air fare. The AHO, in accordance with the language
11 of the bond awarded Cui with \$1,846.00 for unpaid wages in its November 25, 2009 Administrative
12 Order re Notice of Claim. Cui, here, had an employment contract, and after his injury, was not allowed
13 to work pursuant to the contract. By failing to provide work to Cui, Xuan breached the employment
14 contract.

15 The AHO examined the bond language and determined the bond covered lost wages of all
16 manner, including wages owed as a result of an employer's failure to provide work in breach of the
17 employment contract. Petitioner has supplied no authority as to why the obligation to pay wages under
18 a duly approved employment contract is not included in the term "pay," a term Petitioner itself included
19 in the language of the bond.

20 The AHO's determination that the bond covered all wages owed is not improper and is supported
21 by substantial evidence.

22 *2. The award of medical expenses was not improper*

23 Petitioner asserts that the award of medical expenses was improper because Cui received a
24 restitution award in a criminal case, which should have been offset from the medical expenses awarded.

25 Cui was criminally assaulted (which was the cause of him leaving work) and received
26 \$10,000.00 restitution award in connection with the resulting criminal case. At the initial labor case Cui
27 was awarded \$33,334.27 in medical expenses from Xuan.

28 The AHO examined the restitution award and determined that it was silent on the nature of the

1 restitution and whether it was awarded for a specific type of damage. Weighing the evidence before it,
2 the AHO found that regardless of the purpose of the restitution, with \$33,334.27 owed to Cui in medical
3 expenses there would still be over \$23,000 owed to Cui even if the restitution award should be offset.
4 The AHO's decision to award the medical expenses of \$3,000 to be paid to the Commonwealth Health
5 Center by Petitioner under the bond was supported by substantial evidence and was not improper.

6 **D. Petitioner Was Not Denied its Right to Due Process**

7 *1. There was nothing improper about the AHO who heard the labor case and the bonding case*

8 Petitioner asserts its rights to due process were violated because 1) the same AHO presided over
9 the administrative hearings deciding both the labor case (Labor Case No. 08-189[T]) between Cui and
10 Xuan and the subsequent bonding case (Bonding Case No. 09-021); and 2) there is an inherent conflict
11 with the AHO hearing the case, who is an agent of the DOL and an obligee under the bond against
12 Petitioner.

13 First, Petitioner argues it is improper that the AHO sat on the labor case between Cui and Xuan
14 and then subsequently sat on the bonding case. Petitioner, however, has not met its burden and has
15 cited no authority as to why any due process violation results from the fact that the AHO sat on both the
16 labor case between and the subsequent bonding case. The only link between the cases is the contingent
17 connection in that Xuan would need to be first found liable to Cui in order for it to later be able to not
18 pay the damages due to Cui, causing the bond to come due. Petitioner was not a named party in the
19 labor case and the later bonding case was in no way an appellate review of the former labor case. This
20 link is too tenuous to raise due process concerns for the Court.

21 Second, Petitioner has not alleged why the AHO cannot properly sit on a bonding case. As noted
22 above the DOL has been legislatively vested with the power of bond issuance, content, and enforcement.
23 Petitioner argues that the DOL is the obligee of the bond and thus inherently conflicted, however, the
24 bonding requirement is in place to protect the employee in the event that the employer defaults on its
25 obligations. *See* PL 15-108 § 2 (Findings and Purpose). Petitioner's argument is flawed in that the
26 obligee of the bond is in fact the employee who benefits from the proceeds of the bond as here, where
27 Xuan, as the employer, failed to pay Cui, its employee.

28 With regards to both due process claims, Petitioner has failed to allege any prejudice. As noted

1 above, the doctrine of harmless error is applicable to review of administrative decisions. *See Camacho*
2 *v. Northern Marianas Retirement Fund*, 1 NMI 362, 376 (1990); *In re San Nicolas*, 1 NMI 329 (1990).
3 It is always incumbent upon an aggrieved party to demonstrate the prejudicial effect of procedural
4 irregularities in administrative proceedings. *Camacho*, 1 NMI at 376. Petitioner, instead, makes weak
5 arguments attempting to challenge the DOL administrative proceedings with little or no support.

6 Petitioners due process rights were not violated by the AHO sitting on either the labor case or
7 bonding case.

8 2. *Notice was not deficient and did not violate due process*

9 Petitioner next asserts the notice given violated 1 § CMC 9109(a)(1) which requires that
10 “[p]ersons entitled to notice of an agency hearing shall be timely informed of: The time, place, and
11 nature of the hearing. . . .” As a result, Petitioner claims its due process rights have been violated.

12 “In an administrative proceeding where a person's life, liberty, or property is at stake, Article I,
13 § 5 of the Commonwealth Constitution requires, at a minimum, that the person be accorded meaningful
14 notice and a meaningful opportunity to a hearing, appropriate to the nature of the case.” *In Office of the*
15 *Attorney General v. Deala*, 3 NMI 110, 116 (1992); *see also* 1 § CMC 9108(a) (“[A]ll parties shall be
16 afforded an opportunity for a hearing after reasonable notice.”). Claims stemming from unpaid wages
17 in an employment case are a property interest for the purposes of due process. *See Office of the AG v.*
18 *Rivera*, 3 NMI 436, 445 (1993).

19 Specifically with regards to notice:

20 Service of process for any notice of any kind required for any
21 proceeding conducted by the Administrative Hearing Office may be
22 by personal service, by first class mail, postage prepaid, to the foreign
23 national worker at the address supplied with the complaint or any
24 written update provided to the Department, and to the employer at the
25 address supplied with the application for the approved employment
26 contract or any written update provided to the Department, or by
27 publication in any English-language newspaper of general circulation
28 in the Commonwealth, at the discretion of the Administrative
Hearing Office.

3 CMC § 4945 (emphasis added).

The labor case was filed by Cui against Xuan on September 10, 2008. Notice of Filing of
Complaint was personally served upon Petitioner on October 15, 2008 notifying it of the complaint and

1 advising it that the schedule of hearings will be posted on the DOL's website.

2 Petitioner also raises constitutional concerns with the notice provided. *Mullane v. Central*
3 *Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) allows for a standard of notice that is "reasonably
4 certain to inform those affected." *Id.* at 315. Similarly, 3 CMC Section 4945 allows for the discretion
5 of the AHO in giving notice. Here, Petitioner held a bond that could have been called into question
6 depending on the outcome of the labor case, and thus Petitioner had a contingent interest in the labor
7 case. Petitioner was promptly noticed through personal service of the labor case brought by Cui against
8 Xuan. The notice comported with 1 § CMC 9109(a)(1) in that it provided information regarding the
9 nature of the case and hearing schedule. The notice was further reasonable given Petitioner's experience
10 in dealing with the DOL on bonding matters and given the fact that its rights at the time of the labor case
11 were contingent on an award to Cui and Xuan's subsequent failure to pay any such award in the future.

12 The Administrative Order issued April 14, 2009 stated that "[pursuant] to Bond No. 44510,
13 [Petitioner] may be held responsible for the wage award and medical expenses to the limits of the bond,
14 plus a repatriation ticket, if [Xuan] fails to pay the award. . ." which further put Petitioner on notice of
15 its obligations under the bond.

16 Moreover, Petitioner was given notice on May 5, 2009 and afforded the opportunity to be heard
17 on the bonding issue once Xuan failed to pay the judgment to Cui and the petitioner's obligations under
18 the bond became due. This resulted in Petitioner submitting briefing and having the AHO make a
19 reasoned determination through his November 25, 2009 Administrative Order re Notice of Claim.

20 Therefore, the due process rights of Petitioner were not violated as the notice given by the DOL
21 was not improper.

22 23 **VI. CONCLUSION**

24 For the foregoing reasons, the Court hereby **AFFIRMS** the Secretary of Labor's Order on
25 Appeal.

1 So ORDERED this 10th day of May, 2012.

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David A. Wiseman, Associate Judge