

1 American Construction, Inc. as a heavy equipment operator on or about August 28, 1989. He worked
2 for American Construction for approximately three years until on or about May 8, 1992, the date Mr.
3 Salgado's employment contract expired. American Construction elected not to renew Mr. Salgado's
4 contract.

5 Prior to the expiration of his contract, Mr. Salgado filed a *pro se* complaint with the CNMI
6 Department of Labor and Immigration ("Labor Department") alleging various labor violations. Later,
7 on May 12, 1992, Mr. Salgado, through his attorney, Joe Hill, filed a formal amended complaint with
8 the CNMI Department of Labor alleging, *inter alia*, the non-payment of wages. American
9 Construction filed its answer on June 2, 1992.

10 On several occasions Mr. Salgado's counsel filed written requests for a hearing date; the last
11 request being made on May 18, 1993. The Labor Department failed to schedule a hearing, or
12 advance the case in any way. The record does indicate, however, that an informal "good faith"
13 settlement conference was scheduled, but that American Construction failed to attend. On January
14 13, 1993, American Construction filed a motion for summary judgment in the labor proceedings.

15 On November 1, 1993, approximately eighteen months following the expiration of his
16 employment contract with American Construction, Mr. Salgado suffered a heart attack. He was
17 treated at the Commonwealth Health Center ("CHC"), where he remained until he was transferred
18 to a hospital in Manila on December 17, 1993. At the request of CHC, American Construction paid
19 the repatriation costs for Mr. Salgado. On or about February 6, 1994, Mr. Salgado died in the
20 Phillipines.

21 In February 1994, Petitioners received a hospital bill from CHC for Mr. Salgado's medical
22 expenses for \$28,256.01. On March 10, 1994, American Construction filed a request for a
23 declaratory ruling pursuant to the Administrative Procedures Act, 1 CMC § 9107, seeking a release
24 from Mr. Salgado's medical expenses. On April 5, 1994, Hearing Officer Vicente C. Seman issued
25 a written Order, requesting additional briefing and rescheduling the hearing from April 8, 1994, to
26 April 22, 1994. The record does not indicate, however, that the April 22, 1994, hearing ever took
27 place.

1 On October 16, 1995, Hearing Office Supervisor Linn H. Asper, entered a written Order
2 denying American Construction's Petition for Declaratory Ruling. In his opinion, Supervisor Asper
3 concluded that American Construction was liable for Mr. Salgado's medical expenses. In so ruling,
4 Supervisor Asper made the following determinations:

- 5 (1) That American Construction's "medical responsibility to [Mr. Salgado] did not
6 end thirty days after termination because there was a pending labor case and
7 because complainant was allowed to remain in the Commonwealth" [Opinion
8 at 2:12-15];
- 9 (2) "That the labor claim time limits of 3 CMC 4434(g) have been extended by case law
10 and practice beyond the thirty days stated in that section," [Opinion at 2:9-11] and that;
11 pursuant to the opinion rendered in Office of Attorney General v. Jimenez, 3 CR 827
12 (D.N.M.I. 1989) Mr. Salgado had not been terminated because, citing from Jimenez,
13 "the cancellation of respondents' Nonresident Worker's Certificates was a prerequisite
14 to having their employment terminated. A hearing was necessary to determine their
15 employment status. Since no hearing occurred in this instance, as a matter of law, the
16 workers had not been terminated," [Opinion at 2:16-21] and;
- 17 (3) That because American Construction did "little or nothing to advance this labor
18 case" it is not reasonable to transfer [American Construction's]
19 responsibilities" to Mr. Salgado or CHC. [Opinion at 4:5-7.]

20 III. ISSUES

- 21 1. When an employee's contract for employment has expired but that employee has filed
22 a complaint with the Chief of Labor, must a Labor Department hearing take place
23 before that employee can be deemed "terminated?"
- 24 2. Is an employer liable for an employee's medical expenses following the completion of
25 the employment contract and the expiration of the thirty day period set forth in 3 CMC
26 4447(b)?

1 3. Does an employer have an affirmative obligation to advance a labor complaint such that
2 a failure to do so constitutes a waiver of the employer's rights to have a Labor
3 Department hearing within the thirty day period under 3 CMC 4447(b)?

4 IV. STANDARD OF REVIEW

5 A. Standard for Judicial Review of Labor Findings Under the Nonresident Workers Act.

6 The Commonwealth Administrative Procedure Act ("APA"), sets forth standards by which
7 Commonwealth courts review the actions of administrative agencies. See 1 CMC § 9112. Among
8 these standards, § 9112(f)(2) requires a reviewing court to:

9 Hold unlawful and set aside agency action, findings, and conclusions
10 found to be:

11 (I) Arbitrary, capricious, an abuse of discretion, or
12 not otherwise in accordance with law;

13 * * *

14 In making the foregoing determination, the court shall review the whole
15 record or those parts of it cited by a party, and due account shall be
16 taken of the rule of prejudicial error.

17 Conclusions of law are reviewed by the appellate court de novo. United States v. Endicott,
18 803 F.2d 506, 508 (9th Cir. 1986).

19 V. ANALYSIS

20 A. When an employee's contract for employment has expired but that employee has filed
21 a complaint with the Chief of Labor, must a Labor Department hearing take place
22 before that employee can be deemed "terminated?"

23 In his Order, Supervisor Asper made the following statements:

24 In Attorney General vs. Jimenez, [3 CR 827, 836 (D.N.M.I. 1989)]
25 the court stated "The cancellation of the respondents Nonresident
26 Worker's Certificates was a prerequisite to having their employment
27 terminated. A hearing was necessary to determine their employment
28 status. Since no hearing occurred in this instance, as a matter of law

1 conduct a hearing to determine Mr. Salgado's employment contract status because his employment
2 contract with American Construction had expired: Mr. Salgado was therefore effectively terminated
3 on May 8, 1992, the date his employment contract with American Construction expired.

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5 B. Is an employer liable for an employee's medical expenses following the completion of
6 the employment contract and the expiration of the 30 day time period set forth in 3
7 CMC § 4447(b)?

8 In his Order, Supervisor Asper made the following statements:

9 CHC and complainant are correct in stating that the labor claim
10 time limits of 3 CMC 4434(g) have been extended by case law and
11 practice beyond thirty days stated in that section. Thus [American
12 Construction's] medical responsibility to [Mr. Salgado] did not end
13 thirty days after termination because there was a pending labor case and
14 because [Mr. Salgado] was allowed to remain in the Commonwealth.
15 . . . On the other hand, because of governmental delays in processing
16 labor cases, it is not fair to make an employer financially responsible
17 for a former employee indefinitely. It can be imagined that if labor
18 cases are delayed long enough every holdover worker will age and
19 become sick at some point, subjecting employers for whom they have
20 not worked for years to responsibility for medical payments. Obviously
21 there must be some end to the responsibility even if the government
22 fails to bring a labor case to a close.

23 What is needed in a case such as this is a determination of a
24 "reasonable" time for extension of medical responsibility.

25 Opinion at 2:9-3:7.

26 The parties to this case have not presented, nor has the Court been able to find, any statutory
27 support for Supervisor Asper's position that the statutory time periods imposed by the Nonresident
28 Worker's Act upon the Labor Department should be replaced with a "reasonable time period."
Additionally, the Court has found no authority for the proposition that the custom and practice of the
Labor Department in failing, for whatever reason, to have timely hearings circumvents the time
periods clearly mandated by statute. The Court finds that Supervisor Asper's findings are contrary
to the provisions of the Nonresident Worker's Act, and are thus subject to this Court's review under
§ 9112(f)(2)(I) as not being in "accordance with the law".

1 Pursuant to 3 CMC § 4434(f) the nonresident worker must file a complaint with the Chief of
2 Labor no later than 30 days after the violation is alleged to have occurred. Furthermore, the time
3 periods in which the Chief of Labor must conduct hearings and issue written orders on timely filed
4 labor grievances are not set forth in § 4434(g) as Supervisor Asper found. Rather, as the CNMI
5 Supreme Court has found:

6 [O]nce a non-resident employee files his or her labor complaint with the Chief of
7 Labor, the Chief of Labor or his designee must investigate the complaint and issue a
8 written determination within 30 days of the filing of the complaint. 3 CMC § 4447(b).
9 An appeal from such a written determination is to be made to the Director within 15
10 days of the written determination. 3 CMC § 4447 (a). The Director or his designee
11 must render a decision no longer than 15 working days from the date of appeal. 3
12 CMC § 4447(b). An appeal to the Superior Court must then be made within 15 days
13 of the Director's decision. 3 CMC § 4446.

14 Attorney General v Deala, 3 NMI 110, 119 (1992).

15 Thus, by combining the time periods of §§ 4434(f) (30 days from date of violation), 4447(b)
16 (30 days for written report) 4447(a) (15 days to appeal) and 4447(b)(15 working days - or 21 actual
17 days - for the Director to issue a decision), the Labor Department decision must be final no later than
18 96 days, excluding holidays, after the alleged labor violation took place.

19 It is undisputed that Petitioners, pursuant to the requirements of the Nonresident Worker's Act,
20 assumed responsibility for Mr. Salgado's medical coverage while he was an employee of Petitioners.^{2/}
21 Consequently, the Court finds that it was reasonably foreseeable for Petitioners, and any employer
22 entering into such an agreement, to expect to assume responsibility for a nonresident worker's medical
23 coverage while that employee pursues a complaint with the Labor Department. The Court further
24 finds that, pursuant to 3 CMC §§ 4434(f) and 4447(b), an employer is responsible for a nonresident
25 worker's medical expenses for up to 96 days after the date the employment contract has expired when,

26 ^{2/} Pursuant to 3 CMC § 4437(c), an employment contract entered into with a nonresident worker
27 shall provide that "the employer is responsible and liable for the insurance or payment of all medical
28 expenses of the nonresident worker." (emphasis added). The 1989 form for the Employer's
Nonresident Worker Agreement provides:

(6) That I [the employer] accept full responsibility and will pay all expenses for the
prompt return of nonresident workers to their original point of hire . . . , and guarantee
that their stay will result in no expense to the government.

An agreement containing this language was signed by Petitioners with regard to Mr. Salgado on
March 25, 1989.

1 upon expiration of the employment contract, the employee files a complaint with the Chief of Labor
2 for alleged labor violations. Because Mr. Salgado's medical bills were incurred approximately
3 eighteen months after the expiration of his employment contract, unless Petitioners have waived their
4 contractual rights, Petitioners have no obligation to pay these bills.^{3/}

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6 C. Does an employer have an affirmative obligation to advance a labor complaint such that
7 a failure to do so constitutes a waiver of the employer's rights to have a Labor
8 Department hearing within the thirty day period under 3 CMC 4447(b)?

9 Supervisor Asper concluded that the determination of reasonable time "should turn on the
10 reasons that the labor case is unresolved." Opinion 3:6-7. He further reasoned:

11 Only by trying to move a case forward can complainant show that he is not
12 trying to obtain medical benefits and Commonwealth residence status that he is not
13 entitled to. Only by trying to move a case forward can a respondent end its
14 responsibility to the worker and the government.

15 Applying the above standard to the present case, it is apparent that respondent
16 did little or nothing to advance this labor case. Respondent even failed to appear at the
17 good faith attempt at resolution of the case. . . . No other pleadings or requests in the
18 case file indicate that respondent was actively pursuing resolution of the claims before
19 the complainant became ill. In this circumstance it is not reasonable to transfer
20 respondent's responsibilities to the complainant or CHC.

21 Opinion 3:20-4:7.

22 Again, none of the parties have cited, nor has the Court been able to find, cases which stand
23 for the proposition that a defendant in an administrative hearing or a trial proceeding has an
24 affirmative obligation to advance a case. In fact, as set forth *infra*, case law holds to the contrary of

25 ^{3/} Mr. Salgado died before he had the opportunity to file a civil action in this matter. However,
26 under CNMI law, a nonresident worker who has filed a civil action against his or her employer is
27 entitled to remain in the CNMI while that case is pending. See, Sirilan et. Al. V. Castro, et. al., 1
28 CR 311 (NMI 1982).

29 The issue of whether a former employer is liable for medical coverage of the former employee
30 during the pendency of a civil action is unclear. If the former employee is able to secure temporary
31 work while pursuing a civil case, it seems clear that the temporary employer is obligated to provide
32 medical coverage. The issue of who is responsible for the medical coverage of a former employee
33 who is unemployed and who is pursuing a civil labor case is an issue not before the Court at this time
34 but may be a subject which should be addressed by the CNMI Legislature.

1 Supervisor Asper’s rationale. Consequently, the Court again finds that Supervisor Asper’s findings
2 are contrary to the provisions of the Nonresident Worker’s Act, and are subject to this Court’s review
3 under § 9112(f)(2)(I) as not being “in accordance with the law.”

4 In Attorney General v. Deala, *supra*, the CNMI Supreme Court was faced with a similar
5 argument. In Deala, the Attorney General argued that the worker had an affirmative obligation to
6 monitor the progress of his claim with the Labor Department. The Supreme Court disagreed and
7 held:

8 The Attorney General’s argument that Deala abandoned his claim because he did not
9 diligently pursue his claim is not a valid argument. The statute does not allow the
10 Director to disregard the requirement that he issue a written decision. All that the
11 statute requires of Deala is that he file his complaint with Labor. He did this. The
12 statute does not state that he has to check Labor periodically on the status of his claim.
13 The Court has not been advised by the parties of a Labor regulation requiring
14 adversaries in a labor dispute to check Labor periodically on the status of their case.

15 Deala at 118-119.

16 This Court agrees. Accordingly, the Court finds that Petitioners had no affirmative obligation
17 to follow the progress of Mr. Salgado’s complaint with the Labor Department. Petitioners’ actions
18 or inaction had no impact on the Labor Department’s failure to comply with the statutory time period
19 requirements imposed upon it by 3 CMC § 4447(b).

20 **VI. CONCLUSION**

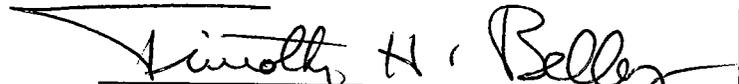
21 Accordingly, it is hereby **ORDERED** that:

- 22 1. Petitioners’ request for a declaratory ruling that they are not liable for medical
23 expenses incurred by Mr. Salgado during his hospitalization at CHC, which occurred
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during the approximate period of November 1, 1993, through December 17, 1993, is
GRANTED.^{4/}

So ORDERED this 02 day of December, 1996.


TIMOTHY H. BELLAS, Associate Judge

^{4/} This Order does not prevent CHC, or any other claimant, from seeking full or partial recovery, by attaching any funds granted to the Salgado estate following a favorable ruling from the Labor Department on any claims against the employer.