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

RENATO BARTE,	)	Civil Action No. 95-1049
	)	Labor Case No. 94-1064
Appellant,	)	<b>DECISION AND ORDER</b>
vs.	)	
SAIPAN ICE, INC.	)	
Appellee	)	

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**PROCEDURAL BACKGROUND**

This matter comes before the Court pursuant to Appellant, Renato Barte's Complaint for Judicial Review of a decision entered by the Secretary of the Department of Labor in Labor Case No. 94-0464. Appellant amended the complaint he filed with the Labor Division on August 15, 1995 to include a claim against Appellee for overtime wages owed pursuant to three employment contracts. Appellant's total claim for overtime wages was \$45,135.20. Appellant also claimed liquidated damages in the amount of \$45,135.20, and attorney fees. On October 12, 1995, the Director of Labor Division, through a designated Hearing Officer, denied Appellant's claim for overtime wages, liquidated damages and

**FOR PUBLICATION**

1 attorney fees. *See* October 12, 1995 Administrative Order (“Administrative Order”). The Hearing  
2 Officer also denied Appellant transfer relief, ordered the Division of Immigration to begin immediate  
3 deportation proceedings against Appellant, ordered the Division of Labor to cancel Appellant’s  
4 Temporary Work Authorization, and enjoined the Division of Labor from issuing future Temporary Work  
5 Authorization for Appellant. *Id.*

6 Appellant appealed the Administrative Order to the Secretary of Labor and Immigration (“the  
7 Secretary”). The Secretary neither reviewed nor disturbed the Hearing Officer’s findings of fact but,  
8 citing 4 CMC§ 9223(b), affirmed the Administrative Order. *See* November 9, 1995 Administrative Order  
9 on Appeal (“Order on Appeal”). Appellant requested and was granted a stay of the Administrative  
10 Order, pending the outcome of this Court’s review of the same. *See* April 4, 1996 Order Granting Stay  
11 of Administrative Orders.

## 12 II. FACTS

13 Mr. Barte and Saipan Ice, Inc., entered into an employment contract approved by the Chief of  
14 Labor on December 2, 1991. October 12, 1995 Administrative Order at 3; Complainant’s Ex. A. Mr.  
15 Barte subsequently renewed his contract with Saipan Ice for two additional years after the first contract’s  
16 expiration. Administrative Order, pp. 6-7; Complainant’s Ex. B and C. Despite the facts that Mr. Barte  
17 was employed in a managerial position (Administrative Order at 4; Transcript of proceedings before  
18 Hearing Officer Mark D. Zachares, August 21 and 28, 1995; September 12, 13, 14 and 15, 1995, pp.  
19 340; 344 (hereinafter “TR”)<sup>1/</sup> and Saipan Ice never pays managerial employees overtime (Administrative  
20 Order at 3-4; TR at 547. *See also*, Order at 7; TR at 60), each of Mr. Barte’s contracts specified a  
21 monthly salary and 1.5 per \_\_\_\_\_ (Blank).<sup>2/</sup>

22 During the course of the three contracts Mr. Barte never questioned his hours of work and non-  
23 payment of overtime (Administrative Order at 7; TR at 345-48) although he was responsible, as a General  
24 \_\_\_\_\_

25 <sup>1/</sup> The Administrative Hearing Officer did not cite specific pages of the hearing transcript to support  
26 his factual findings. This Court has reviewed the transcript in its entirety and inserted the relevant page  
numbers.

27 <sup>2/</sup> Mr. Barte’s third contract specified a salary plus 1.5 per hour. Complainant’s Ex. C.

1 Manager, for approving and limiting other Saipan Ice employees' overtime hours. Administrative Order  
2 at 5; TR at 380-85. Mr. Barte first raised the issue of non-payment of overtime in an amended  
3 Complaint, filed on August 15, 1995. To support his claim for overtime, Mr. Barte computed all of his  
4 alleged overtime pay two weeks prior to his filing of a labor case and testified that the computations  
5 were the exact hours he worked dating back to the first day of his employment with Saipan Ice to his last.  
6 Administrative Order at 8; TR at 291-95.

7 The Hearing Officer determined that Mr. Barte was not a credible witness. Administrative Order  
8 at 19. The Hearing Officer further found that the contracts executed by Mr. Barte and Saipan Ice were  
9 form contracts obtained from the Department of Commerce and Labor (Administrative Order at 6; TR  
10 at 592-93) and contained the blank space (1.5 per \_\_\_\_ ) relating to overtime pay pursuant to the former  
11 CNMI Chief of Labor's unwritten but mandatory policy. Administrative Order at 7; TR at 496-98; 603.  
12 The Hearing Officer concluded that extrinsic evidence demonstrated that the contracts between Mr. Barte  
13 and Saipan Ice were orally modified (Administrative Order at 14); Mr. Barte's failure to make a  
14 reasonable attempt to mitigate his damages regarding his claim for overtime wages was a bar to his  
15 recovering damages (*Id.* at 15); and that Mr. Barte failed to prove his claim by a preponderance of the  
16 evidence. *Id.* at 16.<sup>3/</sup>

17 In reviewing the Administrative Order, the Secretary of Labor took no additional evidence and  
18 made no factual findings. Instead, the Secretary determined that the Hearing Officer's application of the  
19 doctrine of mitigation was a harmless error (Administrative Order at 3), and that the inclusion of Mr.  
20 Barte's job in the statutory exemptions itemized in 4 CMC §9223 made the oral modification of the  
21 employment contract and Mr. Barte's failure to prove his claim irrelevant.

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26 <sup>3/</sup> The Administrative Hearing Officer also concluded that Claimant, as a matter of law, was not  
27 entitled to transfer relief. Administrative Order at 18. The Secretary affirmed that denial as being within  
28 the Hearing Officer's discretion per 3 CMC §4444(e), and this Court has not been asked to disturb that  
finding.

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## II. ISSUES

1. Whether 4 CMC § 9223 prohibits the payment of overtime to employees who fall within its exemptions; and
2. Whether substantial evidence exists in the record to support the finding that Claimant failed to prove his claim by a preponderance of the evidence.

## II. ANALYSIS

### A. Standards of Review

The Administrative Procedure Act ("APA") sets forth the standards by which Commonwealth courts review the actions of administrative agencies. *See* 1 CMC §9112. More specifically, §9112(f)(2)(v) requires a reviewing court to set aside an agency action found to be "[u]nsupported by substantial evidence in a case subject to sections 9108 and 9109" of the APA. 1 CMC §9112(f)(2)(v).

Here, as required by the Non-Resident Workers Act ("NWA") (*See* 3 CMC §§ 4444(a)(3)(initial hearing), 4445(b)(4)(hearing on appeal)), the Division of Labor conducted hearings in this matter pursuant to §9109-9110 of the APA. Administrative Order, p.1. Because the NWA requires that administrative hearings be conducted pursuant to procedures set forth in §§ 9109 and 9110 of the APA, factual determinations by the Director of Labor must be reviewed under the "substantial evidence" standard of review. *See* *Limon v. Camacho*, No. 94-040 (N.M.I. August 5, 1996). Substantial evidence is "more than a scintilla," *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (internal quotations omitted), but less than a preponderance. *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n. 10 (9th Cir. 1975).

The Secretary of Labor's conclusions of law are reviewed by the appellate court *de novo*. *See* *Limon v. Camacho*, citing *In Re Hafadai Beach Hotel Extension*, No. 92-20, (N.M.I. October 6, 1993). *See also*, *United States v. Endicott*, 803 F.2d 506, 508 (9th Cir. 1986).

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**B. The Minimum Wage and Hour Act**

The Minimum Wage and Hour Act, 4 CMC §9211 et. seq., is modeled on the Fair Labor Standards Act of 1938 and expressly defines the minimum hourly wage that every employer in the Commonwealth must pay employees (§9221) and the maximum number of hours per week that Commonwealth employees may work at that wage (§9222). The Minimum Wage and Hour Act therefore insures that workers receive compensation at least as great as that fixed by the Act. *See, e.g. Williams v. Jacksonville Terminal Co.*, 315 U.S. 386, 62 S. Ct. 659 (1942). Except for the requirements of minimum wage and maximum hours, employers are free, in terms of the (Fair Labor Standards) Act, to negotiate compensation with their respective employees. *Id.* at 408; 672. *See also L. Metcalfe Walling v. A.H. Belo Corp.*, 316 U.S. 624, 72 S. Ct. 1223 (1942).

Contrary to the Secretary of Labor's conclusion, 4 CMC §9223 does not prohibit managerial employees from receiving payment for overtime hours worked. Instead, it itemizes particular employment situations that will likely be subject to alternative compensation arrangements between the employer and employee and exempts them from the minimum wage and maximum hour requirements contained in 4 CMC §§ 9221 and 9222. Insofar as an employment contract does not violate the wage and hour provisions, it is valid and binding on both parties. *Williams v. Jacksonville Terminal Co.*, 15 U.S. 386, 62 S. Ct. 659 (1942); *L. Metcalfe Walling v. A.H. Belo Corp.*, 316 U.S. 624, 72 S. Ct. 1 223 (1942). Here, since neither Mr. Barte nor Saipan Ice claims that any of their contracts violate §§ 9221 or 9222 of the Wage and Hour Act, the contracts are valid as written and binding on both parties.<sup>4/</sup>

**C. Burden of Proof**

The standard of proof in administrative adjudication is preponderance of the evidence. Koch, Administrative Law and Practice, §6.44, citing *Sea Island Broadcasting Corp. Of South Carolina v.*

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<sup>4/</sup> Although the Hearing Officer concluded that the blank provisions (1.5 per \_\_\_\_\_) contained in Mr. Barte's employment contracts were orally modified, this conclusion contradicts § 4437(d) of the Nonresident Worker Act (3 CMC§4411 et. seq.) and is therefore invalid.

1 *FCC*, 627 F.2d 240, 243 (D.C.Cir. 1980), cert. Denied 449 U.S.834, 101 S.Ct. 105, 66 L. Ed. 2d 39  
2 (1980). As the claimant, Mr. Barte had the burden of proving by a preponderance of the evidence that  
3 he performed work for which he was not properly compensated. *See, e.g. Ciemnoczowski v. D.O.*  
4 *Ordinance Corp.*, 119 F.Supp. 793 (D.C. Neb 1954)

5 To support his claim for overtime hours owed, Mr. Barte provided a self-prepared memorandum,  
6 created two weeks prior to the filing of his labor case, documenting his work hours for approximately  
7 three years. Mr. Barte asserts that he testified with great specificity about the hours he worked and how  
8 much overtime he was owed, and that his testimony was not disputed by any other witnesses.<sup>2/</sup> However,  
9 the witnesses called by Mr. Barte to corroborate his testimony could not clearly remember hours that Mr.  
10 Barte or they worked at Saipan Ice and therefore did not establish by a preponderance of the evidence  
11 that he worked overtime hours that he was not compensated for. *See generally*, TR 52-263; contra  
12 *Limon v. Camacho*. In addition, after observing his demeanor and weighing his reliability and ability  
13 to recall his work hours, the Hearing Officer determined that Mr. Barte's memorandum, and his  
14 testimony, were purely speculative. Administrative Order at 17. Based upon its review of the record  
15 from the August 21 and 28, 1995 and the September 12, 13, 14 and 15, 1995 hearings before the Hearing  
16 Officer in this matter, this Court finds substantial evidence to support that finding and concludes that Mr.  
17 Barte failed to demonstrate by a preponderance of the evidence that he performed work for which he was  
18 not properly compensated.

### 20 III. CONCLUSION

21 For the foregoing reasons, the Court concludes as follows:

- 22 1. The Administrative Hearing Officer correctly determined that Mr. Barte was required to prove his  
23 claim to overtime compensation by a preponderance of the evidence;

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24 <sup>2/</sup> Overlooking his burden of proof, Mr. Barte incorrectly asserts that 3 CMC §4439(c), which requires  
25 employers to keep weekly payroll records, places the burden of proving claims concerning time records  
26 on the employer. Reply Brief of Appellant, dated August 8, 1996, p.15. Mr. Barte also incorrectly  
27 applies the substantial evidence standard of review, arguing that the record does not contain substantial  
evidence showing that he did not work the overtime hours he claims. Appellant's Supplemental Brief,  
filed August 19, 1996, p.6.

1 2. Substantial evidence exists in the record of Labor case No. 94-1064 to support the Hearing Officer's  
2 finding that Mr. Barte did not prove by a preponderance of the evidence that he was not compensated  
3 for overtime hours worked at Saipan Ice; and

4 3. The Secretary of Labor's conclusion that 4 CMC §9223(b) prohibits the payment of overtime to  
5 employees who fall within its exceptions was incorrect.

6 Accordingly, it is hereby **ORDERED** that the denial of Appellant's claim to overtime wages.  
7 liquidated damages and attorney fees is **AFFIRMED**.

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10 **SO ORDERED** this 22 day of April 1997.

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EDWARD MANIBUSAN, Associate Judge