

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

ANTONIO A. SANTOS, on behalf of )  
SUSANA A. SANTOS, Deceased-Claimant )  
 )  
Appellant, )  
 )  
v. )  
 )  
PUBLIC SCHOOL SYSTEM, )  
 )  
Employer/Appellee, )  
 )  
and )  
 )  
WORKER'S COMPENSATION )  
COMMISSION, )  
 )  
Carrier/Appellee. )

Civil Action No. 94-680  
WCC Case No. SPN-92-071

**ORDER DENYING  
APPELLANT'S MOTION FOR  
SUMMARY JUDGMENT**

**I. PROCEDURAL BACKGROUND**

This matter came before the Court on March 4, 1998, at 9:00 a.m. in Courtroom D on Appellant's motion for summary judgment. Juan T. Lizama, Esq. appeared on behalf of Appellant. Sean Frink, Esq. appeared on behalf of the Employer/Appellee and Linda Wingenbach, Esq. appeared on behalf of the Carrier/Appellee. This Court, having reviewed the memoranda, declarations, and exhibits, having heard and considered the arguments of counsel, and being fully informed of the premises, now renders its decision.

[p. 2]

**II. FACTS**

On February 9, 1992, Susana A. Santos traveled to Tinian on behalf of the Public School System (hereinafter referred to as "PSS") to assist and participate in a series of workshops. While on Tinian, Ms. Santos and others went to a nightclub for socializing and dancing. After participating in one dance, Ms. Santos returned to her table feeling nauseous and subsequently collapsed to the

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floor. Ms. Santos could not be revived and was declared dead in the early morning hours of February 12, 1992.

In December 1992, Antonio A. Santos (hereinafter referred to as “Appellant”) filed a claim with the Worker’s Compensation Commission (hereinafter referred to as “Commission”) on behalf of his deceased wife.

In January 1993, Appellant, PS, and the Commission attended an informal conference with a hearing officer at which time the parties agreed that the 24-hour coverage rule did not apply to Appellant’s case.<sup>1</sup> The hearing officer recommended payment of compensation for the death of Ms. Santos and the Commission requested a formal hearing on the matter.

In October 1993, a formal hearing was held wherein Appellant again agreed that the 24-hour coverage rule was not at issue.<sup>2</sup> The hearing officer ruled that the death of Ms. Santos was not compensable as there was no causal relationship between her work and her death. The Commission subsequently affirmed the hearing officer’s decision in May 1994.

**[p. 3]** In June 1994, Appellant appealed the decision of the Commission to the Superior Court requesting that the Commission’s decision be vacated and remanded back to the agency.

Finally, on January 19, 1998, Appellant filed the instant motion for summary judgment.

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<sup>1</sup> See Memorandum of Conference, pg. 3, attached as Exhibit 5 to Complaint for Judicial Review, filed June 29, 1994.

The 24-hour coverage rule provides:

“Any employee who travels within or without the Commonwealth on behalf of his/her employer shall be entitled to compensation as provided by law in the same manner as an employee who is injured on the job in the Commonwealth. The employee’s coverage while on travel status is 24 hours each day. The Administrator shall determine any issue arising concerning the travel status of an employee, until he/she returns to his/her official duty station.”

Worker’s Compensation Commission Rules and Regulations (“WCCRR”) 3.102.

<sup>2</sup> See Verbatim Transcription of the Record of the Formal Hearing in the matter of Susana A. Santos v. WCC, WCC Case No. Gov-92-071, pg. 54 (filed in the CNMI Superior Court on July 15, 1994).

### III. ISSUES

1. Whether Appellant is now barred from raising an argument under the 24-hour rule?

### IV. ANALYSIS

#### A. Summary Judgment Standard

The standard for summary judgment is set forth in Rule 56 of the Commonwealth Rules of Civil Procedure. Rule 56(a) provides:

A party seeking to recover upon a claim . . . may . . . move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

Com. R. Civ. P. 56(a). Rule 56(c) continues:

The judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Com. R. Civ. P. 56(c). Once a movant for summary judgment has shown that no genuine issue of material fact exists, the burden shifts to the opponent to show that such an issue does exist. Riley v. Public School Sys., 4 N.M.I. 85, 89 (1994).

#### B. Issues Raised for the First Time on Appeal

Generally, an appellate court may not take into consideration arguments raised for the first time on appeal. Commonwealth v. Micronesian Insurance Underwriters, Inc., 3 CR 731, 738 (D.N.M.I. App.Div. 1989). This rule also applies to administrative tribunals. *See, i.e.*, Brown v. Civil Service Commission, 818 F.2d 706 (9<sup>th</sup> Cir.1987); Camacho v. Northern Marianas Retirement Fund, 1 N.M.I. 362 , 371-373 (1990).

There are three narrow exceptions to the general rule: (1) a new theory or issue arises because of a change in the law while the appeal was pending; (2) the issue is only one of law not relying on any factual record; or (3), plain error occurred and an injustice might otherwise result if the appellate [p. 4] court does not consider the issue. Brown, supra, 818 F.2d at 710; Castro v. Hotel Nikko Saipan, Inc., 4 N.M.I. 268, 276 (1995), *appeal dismissed*, 96 F.3d 1259 (9<sup>th</sup> Cir.1996).

None of these exceptions apply here. Appellant's argument is not based on new law.<sup>3</sup> Nor does the

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<sup>3</sup> Appellees do point out that a numbering change did occur in March 1992. Prior to this date, WCCRR 3.102 was 3.103.

resolution of the 24-hour rule in the context of this case present a pure question of law. Factual findings such as whether Ms. Santos was traveling at the time of her injuries would bear decisively on the application of WCCRR 3.102 (“The employees coverage *while on travel status* is 24 hours each day.”). As Respondent points out, if the issue had been raised below the Commission would have considered whether the potentially compensable injury was the cardiac arrest (which occurred while traveling) or the stress or heart disease that caused the injury (which occurred prior to traveling). When Appellant agreed that the 24-hour rule was not at issue, the travel status of Ms. Santos became immaterial. As such, the Commission made no finding as to whether Ms. Santos was injured while traveling and the parties were precluded from inquiring into the facts underlying the issue. Finally, Appellant stated on several occasions in the administrative proceedings that the 24-hour coverage rule was not at issue. As such, no fundamental injustice will result from this Court declining to decide a question not presented to the administrative tribunal below.

## V. CONCLUSION

For the reasons stated above, Appellant’s motion for summary judgment is **DENIED**.

So ORDERED this 1<sup>st</sup> day of June, 1998.

/s/ Timothy H. Bellas

TIMOTHY H. BELLAS, Associate Judge