FOR PUBLICATION

IN THE SUPREME COURT OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN THE MATTER OF PACIFIC SAIPAN TECHNICAL CONTRACTORS, Petitioner/Appellant, v. ATAUR RAHMAN and ABDUL WAHAD, Defendants/Appellees.	**APPEAL NO. 99-008** **CIVIL ACTION NO. 99-0143** **OPINION**

Argued and Submitted May 8, 2000

Counsel for Appellant: Steven Pixley (argued)
Saipan

Counsel for Appellees: Andrew Clayton
Assistant Attorney General
Saipan

BEFORE: DEMAPAN, Chief Justice, CASTRO, Associate Justice, and BELLAS, Justice *Pro Tem*.

CASTRO, Associate Justice:

Pacific Saipan Technical Contractors ("Pacific Saipan") appeals from the Superior Court's April 30, 1999 order dismissing for lack of jurisdiction its petition for judicial review from a decision of the Secretary of Labor. The Superior Court found that Pacific Saipan failed to file its petition within the 15-day period allotted by 3 CMC § 4446. We have jurisdiction pursuant to Article IV, Section 3 of the Commonwealth Constitution, as amended.[1] We reverse and remand.

ISSUE PRESENTED AND STANDARD OF REVIEW

The issue on appeal is whether 3 CMC § 4446, which provides a 15-day period to appeal for

[1] N.M.I. Const. art. IV, § 3 was amended by the passage of Legislative Initiative 10-3, ratified by the voters on November 1, 1997 and certified by the Board of Elections on December 13, 1997.

judicial review from a "final action" of the Department of Labor and Immigration ("DOLI"), is unconstitutionally vague as to when the 15-day period begins to run. We review dismissals for lack of jurisdiction, made pursuant to Com. R. Civ. P. 12(b)(1), *de novo*. *See Rivera v. Guerrero*, 4 N.M.I. 79, 81 (1993).

FACTUAL AND PROCEDURAL BACKGROUND

This case arises from an order issued by the Division of Labor of DOLI entitled ADMINISTRATIVE ORDER: APPEAL in Labor Case No. 98-526, *Pacific Saipan Technical Contractors, Inc. v. Ataur Rahman and Md. Abdul Wahab*. The order is dated February 18, 2000 and was signed by both the Secretary of Labor and a Hearing Officer. Pacific Saipan, however, claims that DOLI did not fax the order until February 22, 1999, four days later. On March 8, 1999, Pacific Saipan filed its Petition for Judicial Review with the Superior Court.

Ataur Rahman and Abdul Wahab ("Rahman and Wahab" or "Appellees") moved to dismiss the petition for lack of jurisdiction on March 30, 1999. The Superior Court found that the Petition for Judicial Review was filed 18 days after the final agency action by the Secretary of Labor and was therefore untimely under 3 CMC § 4446. Accordingly, the court dismissed the petition for lack of subject matter jurisdiction. *See Pacific Saipan Technical Contractors v. Rahman*, Civ. No. 99-0143 (N.M.I. Super. Ct. Apr. 30, 1999) (Order: Dismissing Petition for Lack of Jurisdiction). Pacific Saipan timely appealed.

Sometime after this appeal was filed, Rahman and Wahab's original counsel, Pam Brown, withdrew as counsel, and Assistant Attorney General, Andrew Clayton, substituted in. As an assistant attorney general, Mr. Clayton represents DOLI in all legal matters. Pacific Saipan's original counsel, William Campbell, also withdrew as counsel, and attorney Steven Pixley entered an appearance for the limited purpose of arguing the case.

ANALYSIS

Before turning to the merits of this appeal, a few preliminary matters require mention.

I. Government Counsel Should Not Represent Private Parties

Although this case involves a dispute between private parties originating from a complaint filed with DOLI, counsel for Rahman and Wahab is none other than an assistant attorney general who regularly represents DOLI in legal matters. Ordinarily, the Attorney General's Office (AGO) is limited to acting as counsel to departments, agencies, and instrumentalities of the Commonwealth. *See* 1 CMC § 2153(h). The AGO, however, claims that it may represent private parties in limited instances; for example, to help a non-resident worker collect unpaid damages from employers who have failed to pay as ordered by DOLI's Hearing Office. We consider and reject this argument in the context of this case.

Under the Nonresident Workers Act, at the request of the Secretary, "the Attorney General may institute a civil action in any court of record having jurisdiction for a temporary restraining order, injunction, or other appropriate remedy to enforce any provision of this chapter, or any rule, regulation, or order issued under this chapter." 3 CMC § 4447. While this provision appears to allow the AGO to bring a lawsuit on behalf of a nonresident worker if the purpose would be to enforce a provision of the Act, that is not the situation before this Court. In the case at bar, the AGO did not institute the civil action below to enforce the Act. Rather, the AGO has stepped in to act as counsel for private parties already involved in a pending action.

At oral argument, the AGO maintained that its presence in this case is justified because the case involves interpretation of a statute which DOLI uses every day. While this Court does not question the AGO's interest in the statute's interpretation, we fail to see why the AGO felt it necessary to represent private parties in order to express its views about the statute. The more appropriate course would have been for the AGO to have moved to intervene on behalf of the Commonwealth government. There is no reason for the AGO to be acting as counsel to private parties when it could achieve the same purpose by representing the government.

In the interest of judicial economy, the Court will allow the AGO's participation in this appeal. In the future, if the AGO represents private parties without moving for leave of the Court prior to undertaking such representation, the Court will impose appropriate sanctions.

II. Pacific Saipan Failed to Provide an Adequate Record

The record on appeal is noticeably lacking in this matter. Not only is there no transcript of the proceedings below, but no excerpts of record whatsoever were provided to the Court. As the appellant, Pacific Saipan was required to order within 10 days after filing the notice of appeal a transcript of such parts of the proceedings as appellant deemed necessary. *See* Com. R. App. P. 10(b)(1). Alternatively, if no parts of the transcript were to be ordered, appellant was required to file a statement to that effect within the same period of time. *See id.* Here, Pacific Saipan did neither. Further, Pacific Saipan failed to file a Statement of Issues as required by Rule 10(b)(3):

> Unless the entire transcript is to be included, the appellant shall, within the 10 days as provided in (b)(1) above, file a statement of the issues the appellant intends to present on appeal and shall serve on the appellee a copy of the order of the transcript and of the statement.

Com. R. App. P. 10(b)(3). Thus, while it was not absolutely incumbent upon Pacific Saipan to order a transcript, once Pacific Saipan decided not to order a transcript it should have filed a statement of the issues it intended to present on appeal. The statement of issues would have provided the appellees the opportunity to order the transcript if they deemed it necessary. Pacific Saipan, however, claims that its violation of Rule 10(b)(3) is harmless error.

Regardless of whether the transcript or the statement of issues would have been helpful, Pacific Saipan still had the duty to provide an adequate record for review. It is the responsibility of appellant's counsel to ensure that the excerpts of record are sufficient for consideration and determination of the issues on appeal. *See In re Estate of Deleon Castro*, 4 N.M.I. 102, 108 n.19 (1994). Here, Pacific Saipan failed to provide any excerpts of record, in defiance of Rule 30 of the Appellate Rules which states that "[a]t the time the appellant's brief is filed, the appellant *shall* file five copies of the excerpts of record . . . ." Com. R. App. P. 30(a) (emphasis added). At oral argument, the Court obtained for the first time from Appellees' counsel a copy of the administrative decision issued by the Secretary of DOLI.

Notwithstanding Pacific Saipan's failure to provide a complete record, we do not find that dismissal is appropriate. While this Court does not take procedural violations lightly, we must also consider the strong interest in reaching the merits of each appeal. If no constitutional issue were

presented, we would not hesitate to dismiss this appeal for failure to provide an adequate record. However, due to the importance of the constitutional issue before us, we are convinced that we should proceed to consider this case on its merits.

III. Appeal from the Nonresident Workers Act Must Be Initiated Within 15 Days

A court has no jurisdiction to review administrative decisions unless timely appealed during the administrative process. *See Rivera v. Guerrero*, 4 N.M.I. 79, 82 (1993). The Nonresident Workers Act provides a 15-day period to petition for review of a final action by the Secretary of Labor. The Act states in relevant part:

> Judicial review of a final action of the director[2] is authorized after exhaustion of administrative remedies, and must be initiated within 15 days of the final action.

3 CMC § 4446.

Although not mentioned by the parties, this Court has previously addressed the statutory framework for appeals in the context of the Nonresident Workers Act, as follows:

> In employee grievance cases, the statute clearly states that once a non-resident employee files his or her labor complaint with the Chief of Labor, the Chief of Labor or his designee must investigate the complaint and issue a written determination within 30 days of the filing of the complaint. 3 CMC § 4447(b). An appeal from such a written determination is to be made to the Director within 15 days of the determination. 3 CMC § 4445(a). The Director or his designee must render a decision no longer than 15 working days from the date of the appeal. 3 CMC §4447(b). *An appeal to the Superior Court must then be made within 15 days of the Director's decision.* 3 CMC § 4446.

Office of the Attorney Gen. v. Deala, 3 N.M.I. 110, 119 (1992) (emphasis added). The *Deala* Court, however, did not elaborate on why it used the word "decision" interchangeably with the word "action" in its interpretation of Section 4446.

A. 3 CMC § 4446 Is Not Unconstitutionally Vague

A statute is unconstitutionally vague if persons of common intelligence must guess at its meaning or differ as to its application. *See Delta Sales Yard v. Potter*, 892 P.2d 297, 299 (Colo.

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[2] The reference to the "Director" of the Department of Commerce and Labor was changed to the "Secretary" of Labor pursuant to Executive Order 94-3 (effective August 23, 1994) which reorganized the executive branch and changed agency names and official titles.

1995); *United States v. Smith*, 759 F.2d 841, 847 n.4 (9th Cir. 1986). Here, when read alone, Section 4446 might be construed as ambiguous because the term "final action" is not defined therein. However, an established rule of statutory construction is that a statute must be read as a whole. *See* 2A NORMAN J. SINGER, SUTHERLAND STAT. CONST. § 46.05, at 103 (5th ed. 1992) (noting that each part or section of statute "should be construed in connection with every other part or section so as to produce a harmonious whole."). When we review the entire Act, the most logical construction is that a decision issued in writing by the Secretary of Labor is the "final action" for purposes of judicial review.

Section 4444(d) states that "[t]he agency shall upon concluding the hearing issue findings, decisions and orders within 10 days. Issuance of findings, orders and decisions upon hearing shall be pursuant to 1 CMC § 9110, but shall not be judicially reviewable until final." 3 CMC § 4444(d). A "decision" is therefore only one of the possible issuances from DOLI and does not become final until 15 days after its issuance if not appealed to the Secretary of Labor, *see* 3 CMC § 4445(a) ("If no appeal is made to the [Secretary] within 15 days of issuance of the original findings, orders or decisions shall be unreviewable administratively or judicially."), or if appealed, then upon the issuance of a written decision by the Secretary.

> Upon completion of review the [Secretary] shall confirm or modify the agency findings, order or decision in writing within 10 days. Any modification shall include supplemental findings. *The [Secretary's] decision shall constitute final action for purposes of judicial review.*

3 CMC § 4445(c) (emphasis added). The language of Section 4445(c) makes clear that the Secretary's decision is the "final action" of the agency. Accordingly, judicial review pursuant to Section 4446 must be initiated within 15 days of the Secretary's decision.

B. The 15-day Period Begins to Run When the Secretary's Decision Is Filed

We must still determine when the 15-day period specified in Section 4446 begins to run. The statute simply states that judicial review "must be initiated within 15 days of the final action" of the Secretary. 3 CMC § 4446. We have already determined that the Secretary's decision constitutes the final action. Without citing any authority, Pacific Saipan contends that the 15 days

does not begin to run until the parties are served, or alternatively, until the decision is sent to the parties by mail or fax. The interpretation most consistent with the language of the statute, however, is that the 15 days begins to run from the date of issuance of the Secretary's decision, i.e., the date the decision is entered or filed by DOLI.

Although Section 4446 does not specifically use the word "issuance," the most reasonable interpretation from a plain reading of the statute is that the date of the Secretary's decision is the date it is "issued." A basic rule of statutory interpretation is that when the statutory text is clear and unambiguous, courts must give effect to the literal meaning without consulting other indicia of intent or meaning. *See* 2A NORMAN J. SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 46.04, at 98 (5th ed. 1992). A plain reading of the statutory language, "within 15 days of the final action," where the "Secretary's decision" is synonymous with the "final action," indicates that the deadline begins to run from the issuance of the Secretary's decision.

The "issuance" of a decision is commonly construed as the date that the decision is filed with the clerk's office. *See Westside Hosp. v. Belshe*, 69 Cal. App. 4th 672, 677, 81 Cal. Rptr. 2d 768, 771 (Cal. Ct. App. 1999) ("As a general rule, 'issuance' of an administrative order means entry or filing, and not service or mailing, of an order."); *see also Stevedoring Servs. of Am. v. Director, Office of Workers' Compensation Programs*, 29 F.3d 513 (9th Cir. 1994) (noting that every circuit that has examined definition of "issuance" in 33 U.S.C. § 921(c) has determined that it means filing with Clerk of Workers' Compensation Board and nothing more); *Hervey v. Secretary of Health and Human Servs.*, 88 F.3d 1001 (Fed. Cir. 1996); *Pittston Stevedoring Corp. v. Dellaventura*, 544 F.2d 35 (2d Cir. 1976). In *Stevedoring Servs.*, 29 F.3d 513, the court was asked to determine the meaning of the word "issuance" as used in Section 921(c) of the Longshore and Harbor Workers Compensation Act, which provided that an aggrieved person could appeal a final order of the Workers Compensation Board by filing a petition within 60 days "following the issuance of such Board order." *Id.* at 515. Counsel for Stevedoring asserted that he did not receive a copy of the Board's decision until after the 60 days had passed. *See id.* In finding that "issuance" means filing with the Clerk of Workers' Compensation Board and nothing more, the court noted that the "policy requiring that appeals be timely taken is so strong that ministerial failures by a clerk cannot be

allowed to overcome it." *Id.* at 516 (quoting *Pittston Stevedoring,* 544 F.2d at 44).

Our conclusion that the deadline for appeals under Section 4446 begins to run upon the issuance of the Secretary's decision is further evidenced by Section 4446's lack of any reference to judicial review being initiated within 15 days of "receipt" of the Secretary's decision. *See Holzbau v. United States*, 866 F.2d 427 (Fed. Cir. 1989) (noting that 30-day appeal period under Equal Access to Justice Act runs from issuance of decision and had Congress intended to include "date of receipt" provision in EAJA, it could have done so); *Tielsch v. City of Anaheim*, 160 Cal. App. 3d 576, 206 Cal. Rptr. 740 (Cal. Ct. App. 1984) (concluding that if Legislature intended time for appeal from local agency action to run from date of service of notice instead of date of decision, it could have so provided). The issuance of a decision cannot be construed to mean receipt of such decision. *See Hervey v. Secretary of Health and Human Servs.*, 88 F.3d 1001 (Fed. Cir. 1996). In holding that the date of issuance of the special master's decision, for purposes of appeal under the National Childhood Vaccine Injury Act, was the date on which the decision was filed with clerk of Court of Federal Claims, not the date the decision was received by petitioners' counsel, the *Hervey* court reasoned as follows:

> The term "issuance" in section 12(e)(1) cannot be construed to mean "receipt." The pertinent common meaning of the verb "issue" is "to be given out officially, to be published," and its legal meaning is "to send out officially . . . to publish or utter." Both of those definitions denote promulgation of the decision by the decisionmaker, not its subsequent receipt by the parties. To be sure, the term "issuance," as used in section 12(e)(1), could be accorded several slightly different meanings. For example, it could be interpreted to mean rendition, to mean public announcement, or to mean formal filing with the clerk of the court. Rule 23 of the Vaccine Rules, R.Ct.Fed. Cl., Appendix J, interprets the term "issuance" to mean filing, so that the 30-day review period begins to run when the special master's decision is filed with the clerk of the Court of Federal Claims. *That interpretation is a reasonable one, and it has the virtue of providing an unambiguous and well-documented starting point for the 30-day period.*

Id. at 1002 (internal citations omitted) (emphasis added). The court further acknowledged that although the time consumed in delivering notice of a decision could result in the reduction of the amount of time provided to initiate an appeal, such a concern was not sufficient to overcome clear statutory language. *See id.* at 1003. Likewise in this case, concern that the time period for appeal might be reduced by the time consumed in delivering a decision must give way to the clear language of Section 4446. A plain reading of the Nonresident Workers Act as a whole leads to the

conclusion that an appeal to the Superior Court must be initiated within 15 days after the date of issuance of the Secretary's decision, not 15 days after receipt of the decision.

C. Date of Decision's Issuance Cannot Be Determined From the Record

Notwithstanding our conclusion that the deadline for appeal runs from the issuance of the Secretary's decision, we are unable to determine what that date was under the facts and record presented. Although the Administrative Hearing Office of DOLI has a date stamp for "filing" the decisions and orders issued by the office, it appears that in practice the office is not as rigorous as the courts about stamping each document.[3] The copy of the Secretary's decision submitted to this Court during oral argument does not bear any stamp by the Administrative Hearing Office. To add to the confusion, the decision bears two signatures but only one date. The decision was dated February 18, 1999 and was signed by then Hearing Officer, Herbert D. Soll, who appears to have been designated to consider the appeal,[4] and Secretary of Labor, Mark D. Zachares. We are unable to ascertain whether Soll and Zachares both signed the decision on February 18 or whether one signed on the 18th and the other signed on another date.

In any case, the record is devoid of any concrete evidence indicating the date of the decision's issuance. The date that the decision was supposedly signed, February 18, 1999, is not necessarily the date that it was issued. Without knowing the true date of issuance, this Court is unable to determine whether Pacific Saipan failed to file its appeal to the Superior Court within the 15-day appeal period. This determination is better left to the Superior Court as the finder of fact. We will therefore remand this matter for that purpose.

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[3] DOLI should review its practices to ensure that it is following its own rules and procedures. The Court strongly urges DOLI to consistently use its date stamp for filing all documents, especially decisions and orders, to ensure that due process is afforded to all litigants. DOLI must be more exacting in its practices if the public is to have any confidence in that department.

[4] Under the Nonresident Workers Act, the Secretary may designate another to render a decision on an appeal made to him. *See* 3 CMC § 4447(b) ("Any appeal from the determination [by the hearing officer] shall be made under 3 CMC § 4445; provided, that the [Secretary] *or his designee* shall not take longer than 15 working days to render a decision on any appeal that is made to him.") (emphasis added).

CONCLUSION

For the foregoing reasons, we hereby **REVERSE** the Superior Court's April 30, 1999 order dismissing Pacific Saipan's petition for judicial review and **REMAND** this matter to the Superior Court to determine the date the Secretary of Labor issued his decision. If the court finds that the decision was issued after February 18, 1999,[5] then the petition for judicial review filed on March 8, 1999 would have been timely, and the court should proceed to consider the case on the merits. If, however, the court determines that February 18, 1999 was the date of issuance, then the dismissal of the petition for judicial review should stand for lack of jurisdiction.

DATED this 17 day of October, 2000.

MIGUEL S. DEMAPAN, Chief Justice

ALEXANDRO C. CASTRO, Associate Justice

TIMOTHY H. BELLAS, Justice *Pro Tem*

[5] For example, if the decision was issued on February 22, 1999, the day that it was faxed to the parties, then the petition for judicial review would have been timely. Even if it had been issued on February 19, 1999, one day after the date written on the decision, the appeal would have been timely since the last day of the 15-day appeal period would have been March 6, 1999, which was a Saturday. The time for appeal would therefore have been extended to Monday, March 8, 1999.

IN THE SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN THE MATTER OF: PACIFIC SAIPAN TECHNICAL CONTRACTORS, Petitioner/Appellant, -v- ATAUR RAHMAN and ABDUL WAHAD, Defendants/Appellees.	**Appeal No. 99-008** **Civil Action No. 99-0143** **JUDGMENT**

Pursuant to Rule 36 of the Rules of Appellate Procedure, the opinion of this Court has been issued and judgment is hereby entered. Parties are herewith served with a copy of this Court's opinion which **REVERSED** the Superior Court's April 30, 1999 order dismissing Pacific Saipan's petition for judicial review and **REMANDED** with further instruction.

Entered this 17th day of October, 2000.

CRISPIN M. KAIPAT
Clerk of Court

By: _____
Charlene Teregeyo
Deputy Clerk