

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
SAIPAN, TINIAN, ROTA and NORTHERN ISLANDS



COMMONWEALTH REGISTER

VOLUME 42
NUMBER 11
NOVEMBER 28, 2020

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COMMONWEALTH REGISTER

VOLUME 42
NUMBER 11
NOVEMBER 28, 2020
Addendum

TABLE OF CONTENTS

ADOPTED REGULATIONS

Public Notice and Certification of Adoption of the Amendments To the Board Seal Board of Professional Licensing	044416
Public Notice of Certification and Adoption of Regulations Division of Environmental Quality Bureau of Environmental and Coastal Quality	044419

PROPOSED REGULATIONS

Public Notice of Proposed Amendments to the Regulations Division of Customs Service Department of Finance	044422
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ORDERS

PUA Case No. 20-0020 Subject: Administrative Order In the Matter of: Realiza A. Abello v. CNMI Department of Labor, Division of Employment Services-PUA Department of Labor	044429
PUA Case No. 20-0023 Subject: Administrative Order In the Matter of: Adora Mae R. Aque v. CNMI Department of Labor, Division of Employment Services-PUA Department of Labor	044435
PUA Case No. 20-0024 Subject: Administrative Order In the Matter of: Norlita T. Ordonio v. CNMI Department of Labor, Division of Employment Services-PUA Department of Labor	044441

PUA Case No.	20-0025	
Subject:	Administrative Order	
In the Matter of:	Marilou D. Caspillo v. CNMI Department of Labor, Division of Employment Services-PUA	
Department of Labor		044448
PUA Case No.	20-0026	
Subject:	Administrative Order	
In the Matter of:	Jeanette I. Awas v. CNMI Department of Labor, Division of Employment Services-PUA	
Department of Labor		044455
PUA Case No.	20-0027	
Subject:	Administrative Order	
In the Matter of:	Ray L. Mailuyal v. CNMI Department of Labor, Division of Employment Services-PUA	
Department of Labor		044462
PUA Case No.	20-0028	
Subject:	Administrative Order	
In the Matter of:	Aleksandr Kochikyan v. CNMI Department of Labor, Division of Employment Service-PUA	
Department of Labor		044471
PUA Case No.	20-0029	
Subject:	Administrative Order	
In the Matter of:	Rosalinda T. Ramos v. CNMI Department of Labor, Division of Employment Services-PUA	
Department of Labor		044477
PUA Case No.	20-0031	
Subject:	Administrative Order	
In the Matter of:	Roselyn B. Bastareche v. CNMI Department of Labor, Division of Employment Services-PUA	
Department of Labor		044488
Number:	2020-005	
Subject:	Order Temporarily Suspending/Adjusting Minimum Bankroll Requirement and Suspending Commission Order 2019-002	
Authority:	P.L. 18-56 and 19-24), Regulations of the Commission, NMIAC Ch. 175-10.1	
Commonwealth Casino Commission		044489



Commonwealth of the Northern Mariana Islands
BOARD OF PROFESSIONAL LICENSING
P.O. Box 502078, Bldg., 1242 Pohnpei Court
Capitol Hill, Saipan, MP 96950
Tel No: (670) 664-4809 Fax: (670) 664-4814
Email: cnmi@cnmibpl-hcplb.net
Website: cnmibpl-hcplb.net



**PUBLIC NOTICE AND CERTIFICATION OF ADOPTION OF THE AMENDMENTS TO THE BOARD
OF PROFESSIONAL LICENSING REGULATIONS FOR BOARD SEAL**

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER AS PROPOSED AMENDMENTS TO
REGULATIONS
VOLUME 42, NUMBER 08, PP043962-043968 OF AUGUST 28, 2020

Board of Professional Licensing Board Seal

**ADOPTION OF THE AMENDMENTS TO THE REGULATIONS FOR ENGINEERS, ARCHITECTS,
LAND SURVEYORS AND LANDSCAPE ARCHITECTS:** The Board of Professional Licensing, hereby adopts
the attached regulation as permanent regulations, pursuant to the procedures of the Administrative Procedure Act, 1
CMC § 9104(a). The Board of Professional Licensing announced that it intended to adopt them as permanent and
now does so.

PRIOR PUBLICATION: The prior publication was as stated above. The Board of Professional Licensing adopted
the attached regulations as final as of the date of signing below.

MODIFICATIONS FROM PRIOR PUBLISHED PROPOSED REGULATIONS, IF ANY: None.

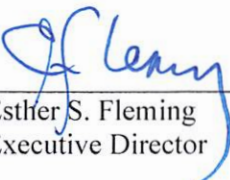
AUTHORITY: The Board of Professional Licensing has statutory power to promulgate and effect regulations
pursuant to 4 CMC §3101.

EFFECTIVE DATE: Pursuant to the APA, 1 CMC § 9105(b), these adopted amendments to the Regulations
for Board Seal are effective 10 days after compliance with the APA, 1 CMC §§9102 and 9104(a) or (b), which in this
instance, is 10 days after publication in the Commonwealth Register.

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC §9104(a) (2), the
agency received comments on the proposed amendments to the regulations for Board Seal. Upon this adoption of the
amendments, the agency if requested to do so by any interested person, within 30 days of adoption, will issue a
concise statement of the principal reasons for and against its adoption.

I DECLARE under penalty of perjury that the foregoing is true and correct copy and that this declaration was executed on the 24th day of November, 20 20, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and Ordered by:

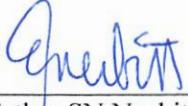


Esther S. Fleming
Executive Director

11/24/20

Date

Filed and Recorded by:



Esther SN Nesbitt
Commonwealth Register *rar*

11-25-2020

Date

§ 125-20.1-801 **Board Seal**

The official seal of the Board shall be a metal impression seal consisting of four symbols imposed inside the smaller circle representing the islands: a large latte stone with a star placed on the capstone; a Carolinian outrigger canoe; two fairy terns flying in pairs; and a Carolinian mwar. Imposed on the bottom portion of the small circle is the date the Board was established. In the outer annular space are the words “Board of Professional Licensing” and “Commonwealth of the Northern Mariana Islands.”





Ralph DLG. Torres
Governor

Arnold I. Palacios
Lt. Governor

Commonwealth of the Northern Mariana Islands
OFFICE OF THE GOVERNOR
Bureau of Environmental and Coastal Quality
DEQ: P.O. Box 501304, DCRM: P.O. Box 10007, Saipan, MP 96950-1304
DEQ Tel.: (670) 664-8500/01; Fax: (670) 664-8540
DCRM Tel.: (670) 664-8300; Fax: (670) 664-8315
www.deq.gov.mp and www.cnm.gov.mp



Eli D. Cabrera
Administrator

Jonathan I. Arriola
Director, DEQ

Janice Castro
Director, DCRM

**PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF REGULATIONS FOR
THE BUREAU OF ENVIRONMENTAL AND COASTAL QUALITY
DIVISION OF ENVIRONMENTAL QUALITY**

**PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER AS PROPOSED
AMENDMENTS TO THE PESTICIDE REGULATIONS
Volume 42, Number 09, pp 044073-044081, of September 28, 2020**

AMENDMENTS TO THE PESTICIDE REGULATIONS

ACTION TO ADOPT THESE PROPOSED RULES AND REGULATIONS: The Bureau of Environmental and Coastal Quality (BECQ) HEREBY ADOPTS AS PERMANENT amendments to NMIAC § 65-70-420(b) of the Division of Environmental Quality (DEQ) Pesticide Regulations pursuant to the procedures of the Administrative Procedure Act (APA), 1 CMC § 9104(a). I certify by signature below that as published, such adopted regulations are a true, complete, and correct copy of the referenced Proposed Regulations, and that they are being adopted without modification except as described herein.

PRIOR PUBLICATION: These regulations were published as Proposed Regulations in Volume 42, Number 09, pp 044073-044081 of the Commonwealth Register on September 28, 2020. BECQ adopted the attached regulations as final as of the date of signing below.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY: In NMIAC § 65-70-420(b)(6)(i), BECQ changed "private applicator" to "applicator" to broaden the applicability of the extension to include all applicators.

AUTHORITY: These amendments are promulgated under the authority of BECQ to issue regulations to establish and implement the programs over which BECQ has jurisdiction, including its regulation of pesticides. 2 CMC § 3122.

EFFECTIVE DATE: Pursuant to the APA, 1 CMC § 9105(b), these adopted amendments are effective 10 days after compliance with the APA, 1 CMC §§ 9102 and 9104(a) or (b), which in this instance is 10 days after publication in the Commonwealth Register.

COMMENTS AND AGENCY CONCISE STATEMENT: During the 30-day comment period, BECQ received no comments regarding the Proposed Regulations. Upon this adoption of the

amendments, BECQ will, if requested to do so by any interested person within 30 days of adoption, issue a concise statement of the principal reasons for and against its adoption.

I declare under penalty of perjury that the foregoing is true and correct and this declaration was executed on the ___ day of _____, 2020, at Saipan, Commonwealth of the Northern Mariana Islands.


Submitted by:



Eli D. Cabrera
Administrator, BECQ

11/13/2020
Date


Received by:



Ms. Mathilda A. Rosario
Special Assistant for Administration

11/24/2020
Date


Filed and Recorded by:



Ms. Esther SN. Nesbitt
Commonwealth Registrar

11/25/2020
Date

I certify, pursuant to 1 CMC § 2153(e) and 1 CMC § 9104(a)(3), that I have reviewed and approved the certified final regulations as to form and legal sufficiency and that the final regulations shall be published.



Mr. Edward Manibusan
Attorney General

11/24/2020
Date

§ 65-70-420 Application Forms, Duration, and Renewals

(a) Application for certification as a pesticide applicator or licensed dealer shall be made to the Director on a form provided for that purpose.

(b) Duration of Certification and Renewals.

(1) All certifications shall be valid for a period of three years from the date of issuance unless earlier suspended or revoked by the Director, except as set forth in section (b)(6) hereof.

(2) Application for renewal shall be made to the Director on a form provided for that purpose.

(3) Applicants may renew certification by attending continuing education (CE) units, relevant to the certification category, offered by any U.S. state or territory. However, renewals through classes may only be considered if the applicant takes CE units during the certification period in the same or similar category for which the renewal is sought.

(i) Commercial applicators must take a minimum of twelve continuing education units to renew his or her certification.

(ii) Private applicators must take a minimum of six continuing education units to renew his or her certification.

(4) In the event the applicator was not able to attend CE units, the applicant shall be required to pass another examination of the same type required for renewals of certifications to ensure the ability to meet the requirements of changing technology and to assure a continuing level of competency and ability to use pesticides safely and properly.

(5) In the event the applicator wishes to add or change his or her certification category, the applicant shall pass demonstrate competency in the new category.

(6) All certifications shall be treated as valid for a period of five years from the date of issuance unless earlier suspended or revoked by the Director, provided that all of the following conditions are satisfied:

(i) The applicator submits a written request to the Director to extend the duration of the applicator's certification. The request may be submitted after the date of expiration specified in the certification or as early as thirty (30) days prior to the date of expiration specified in the certification.

(ii) The Director determines, following a review of the applicator's compliance history, that no grounds for denial, suspension, or revocation of the certification exists under NMIAC § 65-70-435.

(iii) The applicator certifies in its request for extension that it has not violated and will not violate any applicable requirements of the Pesticide Regulations or the federal Pesticide Applicator Certification Rule, including but not limited to the prohibition on the application of pesticides after the date of expiration specified in the certification and until such time as the Director approves the applicator's requested extension.

This section (b)(6) shall remain in effect until repealed, but not later than December 31, 2021.



Department of Finance

P.O. Box 5234 CHRB

Saipan, MP 96950

Phone: (670) 664-1100 / Fax: (670) 664-1115



PUBLIC NOTICE OF PROPOSED AMENDMENTS TO REGULATIONS TO THE DEPARTMENT OF FINANCE, DIVISION OF CUSTOMS SERVICE

INTENDED ACTION TO ADOPT THESE PROPOSED AMENDED REGULATIONS:

The Department of Finance – Division of Customs Service intends to amend the Customs Service Regulations, pursuant to the procedures of the Administrative Procedure Act (APA), 1 CMC § 9104(a). If adopted, these amendments will become effective ten days after the publication of a Notice of Adoption in the Commonwealth Register. 1 CMC §9105(b)


AUTHORITY: These amendments are promulgated under the authority set forth in the Commonwealth Code, including but not limited to 1 CMC §2553, 1 CMC §2557, 1 CMC §252021, 1 CMC §1104, 1 CMC §1402, 4 CMC §1425 and §1820.

THE TERMS AND SUBSTANCE: The purpose of the amendments to Customs Service Regulations Chapter 70-10 is to establish policy and procedures to implement and provide uniform enforcement of the laws of the Commonwealth of the Northern Mariana Islands administered by Customs; to require Customs to control imports of all articles, wares, or merchandise for the assessment and collection of taxes; and for the interception of harmful elements and other contraband.


DIRECTIONS FOR FILING AND PUBLICATION: These proposed amended regulations shall be published in the Commonwealth Register in the section on Proposed and Newly Adopted Regulations (1 CMC § 9102(a)(1)) and posted in convenient places in the civic center and in local government offices in each senatorial district, both in English and in the principal vernacular. 1 CMC § 9104(a)(1)

TO PROVIDE COMMENTS: Interested parties may submit written comments on the proposed regulations to David Dlg. Atalig, Secretary of Finance, via US mail to the Dept. of Finance, P O Box 5234 CHRB, or via hand-delivery to the Office of the Secretary of Finance, Capitol Hill, Saipan, MP. Comments, data, views, or arguments are due within 30 days from the date of publication in this notice. 1 CMC § 9104(a)(2)


Department of Finance
P O Box 5234 CHRB Saipan, MP 96950
670-664-1100 info@dof.gov.mp


Submitted by: DAVID DLG. ATALIG
Secretary of Finance

11/6/2020
Date


Received by: MATHILDA. A. ROSARIO
Governor's Special Assistant
for Administration

11/12/2020
Date


File & Recorded by: ESTHER SN. NESBITT
~~Registrar Commonwealth~~
Commonwealth Registrar

11/25/20
Date

Pursuant to 1 CMC § 2153(e) and 1 CMC § 9104(a)(3) the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published, pursuant to 1 CMC § 2153(f).


EDWARD MANIBUSAN
Attorney General

11/29/2020
Date



Department of Finance

P.O. Box 5234 CHRB

Saipan, MP 96950

Phone: (670) 664-1100 / Fax: (670) 664-1115



NUTISIAN PUPBLIKU NI MANMAPROPONI NA REGULASION SIHA PARA I DIPATTAMENTON I FINANSIAT, DIBISION I CUSTOMS

NUTISIA PUT I AKSION NI MA'INTENSIONA: I Dipattamenton i Finansiat, Dibision i Customs (Customs) ma'apl'ueba i pupplikasion i tinattiyi na amendasion siha para iyo-niha Customs Service Regulations. Ma'intensiona para u ma'adapta esti siha na regulasion kumu petrnanienti, sigun para i Aktun Administrative Procedures, 1 CMC § 91 04(a). Kwnu rna' adapta, esti siha na regulasion siempre mu ifektibu gi Mlum dies (1 0) dihas dispues di pupplikasion nu i Nutisian i Adaptasion gi M.lum i Rehisl'an Commonwealth. (1 CMC § 9 105(b))

ATURIDAT: Esti na amendasion siha para u macho'gui gi papa' i aturidat ni mapega mona gi halum i Commonwealth Code iningklusi, lao ti chi-na para, 1 CMC § 2553, 1 CMC § 2557, 1 CMC § 25201, 4 CMC § 1 104, 4 CMC § 1402, 4 CMC § 1425 yan 4 CMC § 1 820.

I TEMA YAN SVST ANSIAN I P ALARRA SIHA: I intensiona i amendasion siha para i Customs Service Regulations Chapter 70-10 para u ma'estapblesi i policy yan i manera siha ni para u ma'implimenta ya mapribeni unifotmi na enforcement i lai I Commonwealth gi Sangkattan na Islas Marianas ni mamaneana gi Customs; manisisita i Customs para u gubietna i imports i todū articles, fektus, pat kosas para i ibaluasion yan kuleksion i tax siha; yan para i inturumpi i piligru na elements yan otu contraband.

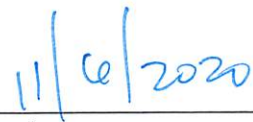
DIREKSION PARA V MAPO'LV YAN MAPUPBLIKA: Esti i manmaproponi na amend as ion siha debi na u mapupblika gi hruum i Rehistran i Commonwealth gi halum i seksiona ni maproponi yan nuebu na ma'adapta na regulasion siha (1 CMC § 91 02(a)(1)) yan u mapega gi hlllum i kumbinienti na lugat gi halum civic center yan gi hruum ufisinan gubietnarnentu siha gi halum distritun senadot, parehu Englis yan gi linguaahln natibu (1 CMC § 9 104(a)(1)).

UPINON SIHA: I manintirisao na petsona siha sina manna'halum tinigi' upinon ni manmaproponi na regulasion siha para i Sekriwian i Finansiat, David Dlg. Atalig, via U.S. mail para Dipattamenton i Finansiat, P.O. Box 5234 CHRB, Saipan, MP 96950, pat intrega halum gi Ufisinan i Sekretarian Finansiat. I upinon, data, views, pat agumentu siha nisisita u fanhruum gi halum trenta (30) dihas ni tinattitiyi gi fetchan kalendariu gi pupplikasion nu esti na nutisia. 1 CMC 91 04(a)(2).

Nina' halum as:




DAVID DLG. ATALIG
Sekritarian I Finansilt



Fetcha

Rinisibi as:

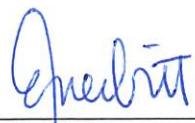


MATHILDA. A. ROSARIO
Ispisat Na Ayudanti Para
Atministrasion

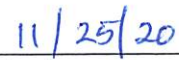


Fetcha

Pine'lu yan
Ninota as:



ESTHER SN. NESBITT
Rehistran Commonwealth



Fetcha

Sigun i 1 CMC § 2153(e) yan i 1 CMC § 9104(a)(3) i manmaproponi na regulasion siha ni manechettun guini ni manmaribisa yan manma'aprueba kumu fotma yan sufisienti ligat ginin i Abugadu Henerat CNMI yan debi na u mapupblika, 1 CMC § 2153(f).



EDWARD MANIBUSAN
Abugadu Henerat



Fetcha



Department of Finance

P.O. Box 5234 CHRB

Saipan, MP 96950

Phone: (670) 664-1100 / Fax: (670) 664-1115



ARONGORONGOL TOULAP REEL POMMWOL LIIWEL NGALI MWOGHUTUGHUTUL DEPAATTAMENTOOL FINANCE, DIVISION OF CUSTOMS

ARONGORONG REEL MANGEMANGIL MWOGHUT: Depattamentool Finance, Division of Customs (Customs) re atirow reel akkateewowul liiwel kka e amwirimwirtiwi ngali Mwoghutughutul Customs Service. Re mangemangil rebwe adoptaali mwoghutughut kkal bwe ebwe lleghlo, sangi Administrative Procedure Act, 1 CMC § 9 104(a). Ngare re adoptaali, ebwe bwungulo liiwel kkal llo1 seigh ráál mwiril aal akkateewow reel Notice of Adoption llo1 Commonwealth register. 1 CMC § 9105(b).

BWANGIL: Liiwel kkal nge aa ffil reel ffeerul faal bwangil iye ebwe mmwetelo mmwal llo1 Commonwealth Code ebwe bwal aschuulong, nge ese yoor pilil ngali, 1 CMC § 2553, 1 CMC § 2557, 1 CMC § 25201. 4 CMC § 1104, 4 CMC § 1402, 4 CMC § 1425 me 4 CMC § 1820.

KKAPASAL ME AWEEWEL: Bwulul liiweI ngali Customs Service Regulations Chapter 70-10 nge ebwe itittiw afal me mwoghut ngali peiragh me rebwe ayoora bwe ebwe weewelo enforcement reel alleghul Commonwealth me Teel Faluw kka Efang llo1 Marianas iye Customs re lemeli; re mwuschel bwe Customs rebwe lemeli kkosas ikka e toolong me faluw kka akkaaw reel alongal tappal kkosas, wares, ngare merchandise ngali assessment me collection reel tax; me bwal atippa mil kka e nngaw ngaliir aramas me akkaaw ikka esoor bwangil ngare e nngaw nge re bweibwoghlone.

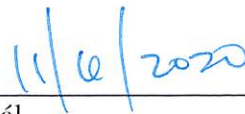
AFAL REEL AMMWELIL ME AKKATEEWOWUL: Pommwol liiwel kkal nge ebwe akkateewow llo1 Commonwealth Register loll talil pommwol me ffil mwoghutughut kka ra adoptaali (1 CMC § 9102(a)(1)) me ebwe apascheta llo1 civic center me llo1 gobetnamento llo1 senatorial district, fengal reel kkasal English me mwaliyaasch (1 CMC § 9 104(a) (1)).

FOOS: Scho kka re mwuschel isiisilong iischil mangemang wool pommwol mwoghutughut kka rebwe isch ngali David Dlg. Atalig, Sekkretoriyal Finance, via U. S. Mail ngali Depattamentool Finance, P. O. Box 5234, CHRB, Seipel, MP 96950, ngare bwughilo reel Bwulasiyol Sekkretoriyal Finance, Asungul, Seipel, MP, Isiisilongol mangemang, data, views, ngare angiingi ebwe toolong llo1 eliigh (30) ráál mwiril aal a kateewow arongorong yeel. 1 CMC § 9 104(a) (2).

Isaliyalong:



DAVID DLG. ATALIG
Sekretoriyal Finance



Ráál

Bwughiyal:




MATHILDA A. ROSARIO
Special Assistant ngali
Administration




Ráál

Ammwelil:



ESTHER SN. NESBITT
Commonwealth ~~Register~~
Registrar



Ráál

Sangi 1 CMC §2153 (e) me 1 CMC § 9104(a)(3) reel pommwol mwoghutughut ikka e appasch bwe ra takkal amwuri fischiiy me atirowa bwe aa ffil reel ffeerul me legal sufficiency sangi Soulemelemil Allegh Lapalapal CNMI me ebwe akkateewow. 1 CMC § 2153(f).



EDWARD MANIBUSAN
Soulemelemil Allegh Lapalap



Ráál

PROPOSED Amendments to § 70-10.1

§ 70-10.1-401 Passengers and Crew Members Destination and Disembarkation

(d) Northern Islands Destination. Carriers, crew members, passengers, baggage and cargo on international travel, as defined in this subchapter, destined for any islands north of Saipan are required to go through Customs Service inspection and clearance at the ~~authorized and designated ports of entry~~, Port of Saipan before continuing on the journey. After customs clearance in Saipan, the flight or voyage is classified domestic travel.

§ 70-10.1-520 Postal Inspection

(a) Pursuant to applicable U.S. Postal Service Regulations and/or memorandum agreement between U.S. Postal Service and the Commonwealth, mail and parcels arriving at the post office may be inspected by the Customs Service in order to detect goods, merchandise, or other commodities and to assess excise taxes; and to detect and intercept contraband; and to enforce other laws and regulations enforced at the ports of entry.

~~(b) Customs Service will request addressees of mail or their designated representatives to open their mail and parcels for inspection.~~

§ 70-10.1-605 Auction of Unclaimed Merchandise

The Service shall advertise to the public in a local newspaper once per week for three consecutive weeks that merchandise on which excise taxes remain unpaid will be sold at auction. Proceeds from the sale shall be distributed and applied as follows:

- (a) To reimburse the Service for advertising, storage and other related expenses.
- (b) To pay the excise tax liability.
- (c) To pay applicable penalty and interest charges imposed by law and this subchapter.
- (d) To pay ~~part, or all of~~ any other outstanding tax liabilities, fees, penalties, or interest.
- (e) To pay the owner or consignee any amount remaining which is over five dollars. Amounts of five dollars or less may be paid to the owner or consignee only upon written request by the owner or consignee.

§ 70-10.1-610 Abandoned Merchandise

(a) Voluntary Abandonment. A consignee or owner may voluntarily abandon merchandise by providing express written notice. Title in abandoned merchandise shall automatically vest in the CNMI. The Director may sell or destroy such merchandise. If the Director elects to sell the merchandise, the Service shall advertise to the public in a local newspaper once per week for three consecutive weeks the merchandise that will be sold at auction. The proceeds from the sale shall be distributed and applied as follows:

- (1) To reimburse the Service for advertising, storage and other related expenses.
- (2) To pay the excise tax liability.
- (3) To pay applicable penalty and interest charges imposed by law and this subchapter.
- (4) To pay any other outstanding tax liabilities, fees, penalties, or interest.
- (5) The remainder, if any, shall be deposited into the general fund of the CNMI.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



In Re Matter of:) PUA Case No. 20-0020
)
Realiza A. Abello)
)
Appellant,) ADMINISTRATIVE ORDER
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on October 20, 2020 at 1:30 p.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Appellant Realiza A. Abello ("Appellant") was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program ("Appellee" or "Department") was present and represented by PUA Supervisor Jake Maratita. There were no other witnesses who gave testimony at the hearing.

Exhibits:

1. Exhibit 1: Copy of Appellant's Employment Verification (dated July 6, 2020)
2. Exhibit 2: Copy of Appellant's Employment Verification (dated July 7, 2020)
3. Exhibit 3: Copy of Appellant's Separation Notice (dated July 6, 2020)
4. Exhibit 4: Copy of Appellant's Notice of Parole (dated June 29, 2020)
5. Exhibit 5: Copy of Appellant's CBP Form I-94 (valid between 10/29/19 to 6/29/20)
6. Exhibit 6: Copy of Appellant's four prior CBP I-94 Forms
7. Exhibit 7: Copy of Appellant's extension dated 9/24/18
8. Exhibit 8: Copy of Appellant's EAD cards (4)
9. Exhibit 9: Copy of Department's SAVE Results
10. Exhibit 10: Copy of Appellant's Notice (dated August 2, 2019)

1 For the reasons stated below, the Department's Determination dated September 8, 2020 is
2 **AFFIRMED**. Based on the claim filed, Appellant is not eligible for benefits for the period of
3 March 1, 2020 to December 26, 2020.

4 II. JURISDICTION

5 On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of
6 2020 was signed into law creating new temporary federal programs for unemployment benefits
7 called Pandemic Unemployment Assistance ("PUA")¹ and Federal Pandemic Unemployment
8 Compensation ("FPUC").² On March 29, 2020, the CNMI Government executed an agreement
9 with the US Secretary of Labor to operate the PUA and FPUC program in accordance to
10 applicable law.³ The CNMI Department of Labor is charged with the responsibility in
11 administering the above-mentioned programs in the CNMI. The CNMI Department of Labor
12 Administrative Hearing Office has been designated to preside over first level appeals of the
13 aforesaid programs. Upon review of the records and as further discussed below, the appeal was
14 is not timely filed. Accordingly, jurisdiction is not established.

15 III. PROCEDURAL HISTORY & ISSUE

16 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon
17 review of Appellant's application and supporting documents, the Department issued its initial
18 determination on September 2, 2020 with a mail date of September 8, 2020. The Department's
19 determination found the Appellant was not a U.S. Citizen, non-national citizen, or qualified alien
20 and denied benefits effective March 1, 2020 to December 26, 2020. Appellant filed the present
21 appeal on October 2, 2020. The issues on appeal are: (1) whether Appellant filed a timely appeal;
22 and (2) whether Appellant is a qualified alien eligible for PUA.⁴

23 ///

24 ///

25 ¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

26 ² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

27 ³ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI
Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state
law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

28 ⁴ During the Administrative Hearing, Appellant testified to potential overpayment issues. Since that issue was not
included in the Notice of Hearing, the undersigned declines to make any findings or conclusions with respect to
overpayments. However, this matter shall be referred to the Benefit Payment Control Unit for further investigation.

IV. FINDINGS OF FACT

In consideration of the evidence provided and credibility of witness testimony, the undersigned issues the following findings of fact:

1. Prior to the pandemic, Appellant was employed as a Security Officer at G4S ("Employer") and stationed to guard the World Resort. Appellant regularly worked 40 hours per week at a rate of \$7.25 per hour.⁵
2. Due to the economic impact of and financial difficulties of COVID-19, Employer suspended operations and reduced operations. As a result, Appellant's hours were reduced between the months of February to July 2020.⁶
3. Appellant applied for PUA claiming weeks from March 1, 2020 to present.
4. On September 2, 2020, the Department issued a determination with the mail date of September 8, 2010. The determination disqualified Appellant from PUA benefits because it deemed that Appellant was not a US citizen, non-citizen national, or qualified alien.
5. Appellant was informed she had 10 days to file an appeal.
6. The Determination improperly included instructions to file the appeal by emailing pua.documents@dol.guam.gov.
7. On September 10, 2020, Appellant emailed her appeal documents to Guam. On the same day, Guam Department of Labor instructed Appellant to file her appeal in the CNMI. On September 11, Appellant improperly emailed the wrong appeal form to the wrong email contact.
8. On or around September 18, Appellant visited PUA Headquarters in person and was given the correct Appeal form. This appeal form includes the instructions to file an appeal.
9. Appellant filed her appeal with the correct form at the correct office on October 2, 2020 –approximately 14 days after being given the correct form and instructions. Appellant indicated she chose to wait because she was preparing her documents for appeals.
10. Appellant contests the finding she is not a qualified alien and is seeking an appeal for the entire denial period on the Determination.

⁵ Exhibit 1.

⁶ Exhibits 1 through 3.

1 11. Application has a series of CBP Form 1-94 cards showing she was paroled in the U.S. on
2 for the following periods:⁷

- 3 a. November 4, 2011 through November 3, 2013;
4 b. October 16, 2013 through December 31, 2014;
5 c. January 28, 2015 through December 31, 2016;
6 d. January 17, 2017 through December 31, 2018; and
7 e. October 29, 2019 through June 29, 2020.

8 12. Additionally, USCIS granted an additional parole period of January 1, 2019 to June 29,
9 2019.⁸

10 13. Appellant was given prior employment authorizations with the Category C11. Appellant
11 has Employment Authorization Document ("EAD")⁹ cards valid for the following
12 periods:¹⁰

- 13 a. February 24, 2012 to November 3, 2013; and
14 b. February 25, 2014 to December 31, 2014.

15 14. In August of 2019, Appellant submitted an application for permanent residency to U.S.
16 Citizenship and Immigration Services (USCIS).¹¹ After submitting an application for
17 permanent residency to USCIS in 2019, Appellant's EAD Code changed to Category C09.
18 Appellant's most recent EAD cards with Category C09 are valid for the following time
19 periods:¹²

- 20 a. October 28, 2019 to October 27, 2020.
21 b. October 28, 2020 to October 27, 2021.

22 15. Appellant's application for permanent residency is either pending or under review.
23 Appellant is not currently a permanent resident.

24 16. On or around September 2, 2020, the Department entered Appellant's information into
25 the Systematic Alien Verification for Entitlements (SAVE) database maintained by
26 USCIS, Verification Division. This database is used to determine the alien status of PUA

27 ⁷ Exhibits 4-6.

28 ⁸ Exhibit 7.

⁹ An EAD is a work permit that allows noncitizens to work in the United States.

¹⁰ Exhibit 8.

¹¹ Exhibit 10.

¹² Exhibit 8.

1 applicants so only those entitled to benefits receive them. The SAVE results confirm that
2 Appellant has an EAD card with the Category C09.¹³

3 17. The Department issued a Determination disqualifying Appellant for PUA because she is
4 not a US Citizen, non-citizen national, or qualified alien.

5 18. Appellant appealed under the assumption she is a qualified alien.

6 19. Appellant is not a permanent resident, alien granted asylum, refugee, alien paroled into
7 the U.S. for at least one consecutive year during the pandemic assistance period, an alien
8 pending deportation or removal, an alien granted conditional entry, a Cuban or Haitian
9 entrant, or an alien battered or subject to extreme cruelty.

10 20. Appellant has no other documents to rebut the SAVE verification.

11 V. CONCLUSIONS OF LAW

12 In consideration of the above-stated findings and applicable law, the undersigned issues the
13 following conclusions of law:

14 1. Appellant did not file a timely appeal.

15 Generally, an appeal should be filed within ten days after the Notice of Determination was
16 issued or served to the claimant. However, the Department may extend the period to thirty days
17 by a showing of good cause.¹⁴ Good cause means: (1) illness or disability; (2) keeping an
18 appointment for a job interview; (3) attending a funeral of a family member; and (4) any other
19 reason which would prevent a reasonable person from complying as directed.¹⁵

20 Here, Appellant received the disqualifying determination on September 8, 2020. Appellant
21 mistakenly filed her appeal in Guam on September 10, 2020. This mistake was due to a technical
22 error by the Department's online portal which generated a determination using Guam's
23 Department of Labor letterhead and instructions. On September 10, 2020, Appellant was
24 instructed that she had to file her appeal with the CNMI Department of Labor. The next day,
25 Appellant submitted the wrong appeal form to the wrong email address, info@puamarianas.com.
26 Since Appellant did not get a response from said email address, Appellant personally visited the
27 PUA offices in Capital Hill. When Appellant visited the PUA Office on September 18, 2020,
28 Appellant was given the correct form. This form included the instructions for filing an appeal.

¹³ Exhibit 9.

¹⁴ HI. Rev. Statute § 383-38(a).

¹⁵ HAR § 12-5-81(j).

1 Despite having the correct form and instructions to file her appeal, Appellant did not file her
2 appeal for another 2 weeks—October 2, 2020.

3 Based on Appellant's testimony, the undersigned finds that Appellant did not have good cause
4 to file late. While the undersigned recognizes that Appellant experienced technical errors and was
5 given incorrect filing instructions—the correct filings instructions are posted on the Department's
6 website, published in the PUA Benefit Rights Handbook, and discussed in press releases. Further,
7 even after Appellant was given the correct information and instructions on September 18, 2020,
8 Appellant chose to wait another 12 days to file her appeal. Appellant indicated she chose to wait
9 because she had an appointment at PUA office on September 20, 2020 and needed to prepare her
10 documents. Appellant's reasons do not amount to "good cause" because the appointment is
11 irrelevant and Appellant should have had those documents readily available since she already
12 submitted those documents with her PUA Application.

13 The undersigned refuses to extend the filing deadline simply due to Appellant's inaction. For
14 failure to show good cause, Appellant's filing deadline remains at 10 days. Based on the
15 applicable timeline, Appellant's filing is untimely. Further, because Appellant's appeal is
16 untimely, the Department's Determination is final.

17 VI. ORDER

18 For the reasons stated above, it is ORDERED that:

- 19 1. The CNMI Department of Labor's Determination is **AFFIRMED**; and
- 20 2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of March 1,
21 2020 to December 26, 2020.

22 Instructions and appeal rights with respect to second level appeals are pending clarification
23 from U.S. Department of Labor. Until then, any party aggrieved by this Order may request a
24 second level appeal with a signed letter indicating why he or she disagrees with the decision. The
25 letter may be submitted to the Administrative Hearing Office in person (Building #1357, Mednilla
26 Ave) or electronically mailed to hearing@dol.gov.mp. Further action regarding second level
27 appeals will remain pending until further guidance from U.S. Department of Labor.

28 So ordered this 28th day of October, 2020.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



In Re Matter of:) PUA Case No. 20-0023
)
Adora Mae R. Aque)
)
Appellant,) ADMINISTRATIVE ORDER
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on October 22, 2020 at 2:00 p.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Appellant Adora Mae R. Aque ("Appellant") was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program ("Appellee" or "Department") was present and represented by PUA Supervisor Jake Maratita and Labor Certification Worker Dennis Cabrera. There were no other witnesses who gave testimony at the hearing.¹

Exhibits:

1. Exhibit 1: Copy of Appellant's (4) Certificate of Working Hours Reduction;
2. Exhibit 2: Copy of Appellant's Notice of Furlough (dated August 21, 2020);
3. Exhibit 3. Copy of Appellant's (5) CBP Form I-94;
4. Exhibit 4: Copy of Appellant's (7) EAD cards; and
5. Exhibit 5: Copy of Department's SAVE results.

For the reasons stated below, the Department's Determination dated October 6, 2020 is **AFFIRMED**. Based on the claim filed, Appellant is not eligible for benefits for the period of February 16, 2020 to December 26, 2020.

¹ Appellant's daughter Tinsneirull Relevante was present on the line but did not provide testimony.

II. JURISDICTION

On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of 2020 was signed into law creating new temporary federal programs for unemployment benefits called Pandemic Unemployment Assistance ("PUA")² and Federal Pandemic Unemployment Compensation ("FPUC").³ On March 29, 2020, the CNMI Government executed an agreement with the US Secretary of Labor to operate the PUA and FPUC program in accordance to applicable law.⁴ The CNMI Department of Labor is charged with the responsibility in administering the above-mentioned programs in the CNMI. The CNMI Department of Labor Administrative Hearing Office has been designated to preside over first level appeals of the aforesaid programs. Upon review of the record, the appeal was timely filed. Accordingly, jurisdiction is established.

III. PROCEDURAL HISTORY & ISSUE

Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon review of Appellant's application and supporting documents, the Department issued its initial determination on September 2, 2020 with a mail date of September 8, 2020. The Department's determination found the Appellant was not a U.S. Citizen, non-national citizen, or qualified alien and denied benefits effective March 1, 2020 to December 26, 2020. Appellant filed the present appeal on October 2, 2020. The issue on appeal is whether Appellant is a qualified alien eligible for PUA benefits.

IV. FINDINGS OF FACT

In consideration of the evidence provided and credibility of witness testimony, the undersigned issues the following findings of fact:

1. Prior to the pandemic, Appellant was employed as a Room Attendant at World Resort ("Employer"), located in Susupe, Saipan. Appellant regularly worked 40 hours per week at a rate of \$7.30 per hour.⁵

² See Section 2102 of the CARES Act of 2020, Public Law 116-136.

³ See Section 2104 of the CARES Act of 2020, Public Law 116-136.

⁴ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

⁵ Exhibit 1.

- 1 2. Due to the economic impact of and financial difficulties of COVID-19, Employer was
2 forced to reduce operations. As a result, Appellant's hours were significantly reduced and
3 eventually furloughed.⁶ From February 22, 2020 to March 20, 2020, Appellant's hours
4 were reduced to approximately 36-32 weekly hours. Effective March 21, 2020,
5 Appellant's hours were reduced to 20 weekly hours. Effective July 4, 2020, Appellant's
6 hours were reduced to 8 weekly hours. Due to the continued impact of business activity,
7 Appellant was placed on temporary furlough effective September 5, 2020.⁷ To date,
8 Appellant has not been recalled to the workforce.
- 9 3. On or around June of 2020, Appellant applied for PUA and claimed benefits from
10 February 16, 2020 to present.
- 11 4. On October 5, 2020, the Department issued a determination with the mail date of October
12 6, 2010. The determination disqualified Appellant from PUA benefits because it deemed
13 that Appellant was not a US citizen, non-citizen national, or qualified alien.
- 14 5. On October 7, 2020, Appellant filed her appeal at the CNMI Department of Labor,
15 Administrative Hearing Office. Appellant contests the finding she is not a qualified alien
16 and is seeking an appeal for the entire denial period on the Determination.
- 17 6. Application has a series of CBP Form 1-94 cards showing she was paroled in the U.S. on
18 for the following periods:⁸
 - 19 a. April 24, 2012 to December 31, 2012;
 - 20 b. December 3, 2012 to December 31, 2014;
 - 21 c. December 29, 2014 to December 29, 2016;
 - 22 d. January 9, 2017 to December 31, 2018; and
 - 23 e. October 29, 2019 to June 29, 2020.
- 24 7. Appellant was given prior employment authorizations with the Category C11. Appellant
25 has Employment Authorization Document ("EAD")⁹ cards valid for the following
26 periods:¹⁰
 - 27 a. March 6, 2013 to December 31, 2014

28 ⁶ Exhibit 1-2.

⁷ Exhibit 2.

⁸ Exhibit 3.

⁹ An EAD is a work permit that allows noncitizens to work in the United States.

¹⁰ Exhibit 4.

- b. March 4, 2015 to March 3, 2016;
- c. April 15, 2016 to December 29, 2016;
- d. May 9, 2017 to December 31, 2018;
- e. May 9, 2017 to June 29, 2019; and
- f. April 6, 2020 to June 29, 2020.

8. Appellant submitted an application to U.S. Citizenship and Immigration Services (USCIS) that triggered a change in Appellant's EAD Code changed to Category C09 with a validity period of May 8, 2020 to May 7, 2021.
9. On or around October 4, 2020, 2020, the Department entered Appellant's information into the Systematic Alien Verification for Entitlements (SAVE) database maintained by USCIS, Verification Division. This database is used to determine the alien status of PUA applicants so only those entitled to benefits receive them. The SAVE results confirm that Appellant has an EAD card with the Category C09.¹¹
10. Appellant is not a permanent resident, alien granted asylum, refugee, alien paroled into the U.S. for at least one consecutive year during the pandemic assistance period, an alien pending deportation or removal, an alien granted conditional entry, a Cuban or Haitian entrant, or an alien battered or subject to extreme cruelty.
11. Appellant has no other documents to rebut the SAVE verification.

V. CONCLUSIONS OF LAW

In consideration of the above-stated findings and applicable law, the undersigned issues the following conclusions of law:

1. Appellant is not a qualified alien eligible for PUA.

PUA and FPUC are federal public benefits as defined by 8 USC §1611(c). As a condition of eligibility for any federal public benefit, the claimant must be a "qualified alien" at the time relevant to the claim. 8 USC §1611(a). Pursuant to 8 USC §1641, the term "qualified alien" is:

1. An alien admitted for permanent residence under the Immigration and Nationality Act (INA);
2. An alien granted asylum under § 208 of the INA;
3. A refugee admitted to the US under § 207 of the INA;

¹¹ Exhibit 9.

4. An alien paroled into the US under § 212(d)(5) of the INA for at least one year;
5. An alien whose deportation is being withheld under § 243(h) of the INA ... or whose removal is being withheld under § 241 (b)(3) of the INA;
6. An alien granted conditional entry pursuant to § 203 (a)(7) of the INA;
7. An alien who is a Cuban or Haitian entrant as defined in § 501(e) of the Refugee Education Assistance Act of 1980; or
8. An alien who (or whose child or parent) has been battered or subject to extreme cruelty in the U.S. and otherwise satisfies the requirements of § 431(c) of the Act.

Here, Appellant argues she is a qualified alien because she is a Parolee with an EAD Category C11 since 2012. Category C11 is a USCIS EAD code used to denote an alien paroled in the United States in the public interest or temporarily for emergency reasons. Category C11 fits into the parolee provision of the Qualified Alien definition, provided the one-year requirement is met. Multiple time periods cannot be combined to meet the one-year requirement. The undersigned finds that Appellant has insufficient evidence to establish she is a qualified alien, as defined above.

Based on the evidence and testimony provided, Appellant was admitted into the U.S. as a parolee and granted employment authorization during multiple periods, dating back to 2012. However, there was a break or gap in her status as a parolee between December 31, 2018 and October 29, 2019. Considering this gap and the fact that multiple time periods cannot be aggregated, the Appellant has not yet satisfied the one year requirement.

Further, when Appellant submitted an application to U.S. Citizenship and Immigration Services (USCIS) that triggered a change in Appellant's EAD Code changed to Category C09 with a validity period of May 8, 2020 to May 7, 2021. Category C09 is a code that USCIS utilizes for applicants pending an adjustment in status. Category C09 does not satisfy any provision of the qualified alien definition.

Lastly, based on the testimony and exhibits provided, Appellant does not satisfy any other provision of the qualified alien definition. Specifically, when questioned with regards to each of the other provisions of the qualified alien statute, as listed above, Appellant stated she was not a permanent resident, alien granted asylum, refugee, an alien pending deportation or removal, an alien granted conditional entry, a Cuban or Haitian entrant, or an alien battered or subject to extreme cruelty.

1 Based on the evidence and testimony provided, Appellant does not meet the definition of a
2 qualified alien during the relevant time period. In conclusion, Appellant was not a qualified alien
3 eligible for PUA benefits.

4 **VI. ORDER**

5 For the reasons stated above, it is ORDERED that:

- 6 1. The CNMI Department of Labor's Determination is **AFFIRMED**; and
7 2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of February
8 16, 2020 to December 26, 2020.

9 Instructions and appeal rights with respect to second level appeals are pending clarification
10 from U.S. Department of Labor. Until then, any party aggrieved by this Order may request a
11 second level appeal with a signed letter indicating why he or she disagrees with the decision. The
12 letter may be submitted to the Administrative Hearing Office in person (Building #1357, Mednilla
13 Ave) or electronically mailed to hearing@dol.gov.mp. Further action regarding second level
14 appeals will remain pending until further guidance from U.S. Department of Labor.

15 So ordered this **28th** day of October, 2020.

16 /s/

17 **JACQUELINE A. NICOLAS**
18 Administrative Hearing Officer
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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re Matter of:) PUA Case No. 20-0024
)
Norlita T. Ordonio)
)
Appellant,) ADMINISTRATIVE ORDER
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on October 27, 2020 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Appellant Norlita T. Ordonio ("Appellant") was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program ("Appellee" or "Department") was present and represented by PUA Supervisor Jake Maratita. Additionally, Interpreter Arlene Rafanan assisted with the proceedings.

Witness:

1. Bonifacio Sagana, Worker Advocate

Exhibits:

1. Exhibit 1: Copy of Appellant's (5) CBP Form I-94; and
2. Exhibit 2: Copy of Appellant's (7) EAD cards.

For the reasons stated below, the Department's Determination dated October 8, 2020 is **MODIFIED**. Based on the claim filed, Appellant is not eligible for benefits for the period of March 15, 2020 to October 29, 2020.

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II. JURISDICTION

On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of 2020 was signed into law creating new temporary federal programs for unemployment benefits called Pandemic Unemployment Assistance ("PUA")¹ and Federal Pandemic Unemployment Compensation ("FPUC").² On March 29, 2020, the CNMI Government executed an agreement with the US Secretary of Labor to operate the PUA and FPUC program in accordance to applicable law.³ The CNMI Department of Labor is charged with the responsibility in administering the above-mentioned programs in the CNMI. The CNMI Department of Labor Administrative Hearing Office has been designated to preside over first level appeals of the aforesaid programs. Upon review of the record and filings, the appeal was timely filed. Accordingly, jurisdiction is established.

III. PROCEDURAL HISTORY & ISSUE

Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon review of Appellant's application and supporting documents, the Department issued its initial determination on October 2, 2020 with a mail date of October 6, 2020. The Department's determination found the Appellant was not a U.S. Citizen, non-national citizen, or qualified alien and denied benefits effective March 15, 2020 to December 26, 2020. Appellant filed the present appeal on October 8, 2020. The issue on appeal is whether Appellant is a qualified alien eligible for PUA benefits.

IV. FINDINGS OF FACT

In consideration of the evidence provided and credibility of witness testimony, the undersigned issues the following findings of fact:

1. Prior to the pandemic, Appellant was employed as a Food Assembler at LSG ("Employer"), located in Dan Dan, Saipan. Appellant regularly worked 40 hours per week at a rate of \$7.46 per hour.⁴

¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

³ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

⁴ Exhibit I.

- 1 2. Due to the economic impact of and financial difficulties of COVID-19, Employer was
2 forced to reduce operations. As a result, Appellant's hours were significantly reduced at
3 fluctuating rates, effective March 15, 2020. To date, Appellant has not returned to full
4 time work.
- 5 3. On or around the last week of June of 2020, Appellant applied for PUA and claimed
6 benefits from March 15, 2020 to present.
- 7 4. On October 2, 2020, the Department issued a determination with the mail date of October
8 6, 2010. The determination disqualified Appellant from PUA benefits because it deemed
9 that Appellant was not a US citizen, non-citizen national, or qualified alien.
- 10 5. On October 8, 2020, Appellant filed her appeal at the CNMI Department of Labor,
11 Administrative Hearing Office. Appellant contests the finding she is not a qualified alien
12 and is seeking an appeal for the entire denial period on the Determination.
- 13 6. Application has a series of CBP Form 1-94 cards showing she was paroled in the U.S. on
14 for the following periods:⁵
 - 15 a. April 13, 2012 to December 31, 2012;
 - 16 b. November 16, 2012 to December 31, 2014;
 - 17 c. November 15, 2014 to December 31, 2016;
 - 18 d. January 23, 2017 to December 31, 2018;
 - 19 e. October 29, 2019 to June 29, 2020.
- 20 7. Appellant was given prior employment authorizations with the Category C11. Appellant
21 has Employment Authorization Document ("EAD")⁶ cards valid for the following
22 periods:⁷
 - 23 a. October 25, 2012 to December 31, 2012;
 - 24 b. March 6, 2014 to December 31, 2014;
 - 25 c. January 16, 2016 to December 31, 2016;
 - 26 d. May 17, 2017 to December 31, 2018;
 - 27 e. May 17, 2017 to June 29, 2019;
 - 28 f. January 9, 2020 to June 29, 2020;

⁵ Exhibit 3.

⁶ An EAD is a work permit that allows noncitizens to work in the United States.

⁷ Exhibit 4.

8. Appellant has provided no other documents to account for the gaps in her parolee status.
9. Appellant's EAD was automatically extended to December 31, 2020.
10. In March 2020, Appellant submitted an application to U.S. Citizenship and Immigration Services (USCIS) for CNMI Long Term Resident status—distinct from the permanent residency status.
11. On or around October 8, 2020, the Department entered Appellant's information into the Systematic Alien Verification for Entitlements (SAVE) database maintained by USCIS, Verification Division. This database is used to determine the alien status of PUA applicants so only those entitled to benefits receive them. The SAVE results confirm that Appellant has a pending application with USCIS.
12. Appellant is not a permanent resident, alien granted asylum, refugee, alien paroled into the U.S. for at least one consecutive year during the pandemic assistance period, an alien pending deportation or removal, an alien granted conditional entry, a Cuban or Haitian entrant, or an alien battered or subject to extreme cruelty.

V. CONCLUSIONS OF LAW

In consideration of the above-stated findings and applicable law, the undersigned issues the following conclusions of law:

1. Appellant's employment was affected as a direct result of COVID-19.

Pursuant to Section 2102 of the CARES Act of 2020, Public Law 116-136, there are a number of requirements to meet the eligibility standard of PUA. First, the claimant cannot be qualified for regular unemployment, extended benefits under state or federal law, or pandemic emergency unemployment compensation (PEUC).⁸ Second, the claimant must show that he or she is able and available for work, as defined by Hawaii law, except they are unemployed, partially unemployed, or unable to work or unable for work due to at least one of the following COVID-19 reason identified in Section 2102 (a)(3)(A)(ii)(I) of the CARES Act:

- (a) The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- (b) A member of the individual's household has been diagnosed with COVID-19;
- (c) The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;

⁸ This is not at issue in this case.

- (d) A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
- (e) The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
- (f) The individual is unable to reach the place of employment because the individual has been advised by a health care provider to quarantine due to concerns related to COVID-19;
- (g) The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;
- (h) The individual has become the breadwinner or major support for a household because the health of the household has died as a direct result of COVID-19;
- (i) The individual has to quit his or her job as a direct result of COVID-19;
- (j) The individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or
- (k) The individual is an independent contractor who is unemployed (total or partial) or is unable or unavailable to work because of the COVID-19 public health emergency has severely limited his or her ability to continue performing the customary job.

Based on the evidence and testimony provided, it is clear that Appellant's employment was affected as a direct result of COVID-19. Due to the threat of COVID-19 and pursuant to the Governor's Executive Orders, there were closures of government offices, restrictions on private businesses, and an overall reduction in revenue from the immediate halt in tourism. At the end of March 2020, Employer had to reduce hours due to the lack of incoming flights that they serviced. As a result, Appellant's hours were significantly reduced at fluctuating rates, effective March 15, 2020. To date, Appellant has not returned to full time work. Accordingly, Appellant's employment was directly affected by a COVID-19 reason from March 15, 2020 to present.

2. Appellant is not a qualified alien eligible for PUA.

PUA and FPUC are federal public benefits as defined by 8 USC §1611(c). As a condition of eligibility for any federal public benefit, the claimant must be a "qualified alien" at the time relevant to the claim. 8 USC §1611(a). Pursuant to 8 USC §1641, the term "qualified alien" is:

1. An alien admitted for permanent residence under the Immigration and Nationality Act (INA);
2. An alien granted asylum under § 208 of the INA;
3. A refugee admitted to the US under § 207 of the INA;
4. An alien paroled into the US under § 212(d)(5) of the INA for at least one year;
5. An alien whose deportation is being withheld under § 243(h) of the INA ... or whose removal is being withheld under § 241 (b)(3) of the INA;

6. An alien granted conditional entry pursuant to § 203 (a)(7) of the INA;
7. An alien who is a Cuban or Haitian entrant as defined in § 501(e) of the Refugee Education Assistance Act of 1980; or
8. An alien who (or whose child or parent) has been battered or subject to extreme cruelty in the U.S. and otherwise satisfies the requirements of § 431(c) of the Act.

Here, Appellant argues she is a qualified alien because she is a Parolee with an EAD Category C11 since 2012. Category C11 is a USCIS EAD code used to denote an alien paroled in the United States in the public interest or temporarily for emergency reasons. Category C11 fits into the parolee provision of the Qualified Alien definition, provided the one-year requirement is met. Multiple time periods cannot be combined to meet the one-year requirement. The undersigned finds that Appellant has insufficient evidence to establish she is a qualified alien, as defined above.

Based on the evidence and testimony provided, Appellant was admitted into the U.S. as a parolee and granted employment authorization during multiple periods, dating back to 2012. However, there was a break or gap in her status as a parolee between December 31, 2018 and October 29, 2019. While Mr. Sagana testified that he is sure there is documentation to account for the gap, Mr. Sagana could not readily provide that document to the undersigned.⁹ Considering this gap and the fact that multiple time periods cannot be aggregated, the furthest the undersigned can go back to satisfy the one-year requirement is October 29, 2019. Since it has not been one year from October 29, 2019, Appellant has not yet satisfied the one-year requirement and was not a qualified alien at the time she is claiming benefits.

Lastly, based on the testimony and exhibits provided, Appellant does not satisfy any other provision of the qualified alien definition. Specifically, when questioned with regards to each of the other provisions of the qualified alien statute, as listed above, Appellant and Mr. Sagana stated she was not a permanent resident, alien granted asylum, refugee, an alien pending deportation or

⁹ A continuance was not warranted. First, Appellant had 19 days to prepare for this hearing and instructed to submit all relevant documents to the Administrative Hearing Office prior to the hearing. Second, a brief continuance was already granted during the hearings to allow Appellant to submit additional documents. At that time, she was again instructed to provide all relevant documents. Third, when a continuance was granted to submit additional documents, the document Appellant submitted was not what she purported it to be. Fourth, when laying the foundation of the admitted exhibits, Appellant attested that those were the only EAD or I-94 cards she had. Fifth, neither party was able to readily identify the document and it is uncertain whether such documentation exists.

1 removal, an alien granted conditional entry, a Cuban or Haitian entrant, or an alien battered or
2 subject to extreme cruelty.

3 Based on the evidence and testimony provided, Appellant does not meet the definition of a
4 qualified alien during the relevant time period. In conclusion, Appellant was not a qualified alien
5 eligible for PUA benefits.¹⁰

6 **VI. ORDER**

7 For the reasons stated above, it is ORDERED that:

- 8 1. The CNMI Department of Labor's Determination is **MODIFIED**; and
9 2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of March 15,
10 2020 to October 29, 2020.

11 Instructions and appeal rights with respect to second level appeals are pending clarification
12 from U.S. Department of Labor. Until then, any party aggrieved by this Order may request a
13 second level appeal with a signed letter indicating why he or she disagrees with the decision. The
14 letter may be submitted to the Administrative Hearing Office in person (Building #1357, Mednilla
15 Ave) or electronically mailed to hearing@dol.gov.mp. Further action regarding second level
16 appeals will remain pending until further guidance from U.S. Department of Labor.

17 So ordered this **28th** day of October, 2020.

18 /s/

19 **JACQUELINE A. NICOLAS**
20 Administrative Hearing Officer
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27 ¹⁰ Assuming that Appellant still meets all other requirements for PUA, Appellant is encouraged to reapply when she
28 meets the one-year requirement, after October 29, 2020. The Department is ordered to assist Appellant in renewing
her application.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



In Re Matter of:) PUA Case No. 20-0025
)
Marilou D. Caspillo)
)
Appellant,) ADMINISTRATIVE ORDER
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on October 27, 2020 at 1:30 p.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Appellant Marilou D. Caspillo ("Appellant") was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program ("Appellee" or "Department") was present and represented by PUA Supervisor Jake Maratita. Additionally, Interpreter Arlene Rafanan assisted with the proceedings. There were no other witnesses who gave testimony at the hearing.¹

Exhibits:

1. Exhibit 1: Copy of Appellant's Employment Certification (dated March 18, 2020)
2. Exhibit 2: Copy of Appellant's (5) CBP Form I-94;
3. Exhibit 3: Copy of Appellant's (7) EAD cards;
4. Exhibit 4: Copy of Department's SAVE results;
5. Exhibit 5: Copy of Appellant's Notice of Action (dated April 9, 2020); and
6. Exhibit 6: USCIS Press Release for Automatic Extension (dated June 17, 2020 and August 11, 2020).

¹ Appellant had family members (Noime Caspillo and Evelyn Angeles) present on the line, but neither individual provided testimony during the Hearing.

1 For the reasons stated below, the Department's Determination dated October 13, 2020 is
2 **MODIFIED**. Based on the claim filed, Appellant is not eligible for benefits for the period of
3 March 15, 2020 to October 29, 2020.

4 II. JURISDICTION

5 On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of
6 2020 was signed into law creating new temporary federal programs for unemployment benefits
7 called Pandemic Unemployment Assistance ("PUA")² and Federal Pandemic Unemployment
8 Compensation ("FPUC").³ On March 29, 2020, the CNMI Government executed an agreement
9 with the US Secretary of Labor to operate the PUA and FPUC program in accordance to
10 applicable law.⁴ The CNMI Department of Labor is charged with the responsibility in
11 administering the above-mentioned programs in the CNMI. The CNMI Department of Labor
12 Administrative Hearing Office has been designated to preside over first level appeals of the
13 aforesaid programs. Upon review of the record and filings, the appeal was timely filed.
14 Accordingly, jurisdiction is established.

15 III. PROCEDURAL HISTORY & ISSUE

16 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon
17 review of Appellant's application and supporting documents, the Department issued its initial
18 determination with a mail date of October 13, 2020. The Department's determination found the
19 Appellant was not a U.S. Citizen, non-national citizen, or qualified alien and denied benefits
20 effective March 15, 2020. Appellant filed the present appeal on October 14, 2020. The issue on
21 appeal is whether Appellant is a qualified alien eligible for PUA benefits.

22 IV. FINDINGS OF FACT

23 In consideration of the evidence provided and credibility of witness testimony, the
24 undersigned issues the following findings of fact:
25
26

27 ² See Section 2102 of the CARES Act of 2020, Public Law 116-136.

28 ³ See Section 2104 of the CARES Act of 2020, Public Law 116-136.

⁴ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

1. Prior to the pandemic, Appellant was employed as a Waitress at Mermaid Restaurant ("Employer"), located in Garapan, Saipan. Appellant regularly worked 42 hours per week at a rate of \$8.28 per hour.⁵
2. Due to the halt in tourism and economic impact of COVID-19, Employer was forced to close the business. As a result, effective March 20, 2020, Appellant was furloughed. To date, Appellant has not been recalled to the work force or otherwise returned to full time work.
3. On or around July of 2020, Appellant applied for PUA and claimed benefits from March 21, 2020 to July 18, 2020.
4. On October 13, 2020, the Department issued and/or mailed a determination disqualifying Appellant from PUA benefits because it deemed that Appellant was not a US citizen, non-citizen national, or qualified alien.
5. On October 14, 2020, Appellant filed her appeal at the CNMI Department of Labor, Administrative Hearing Office. Appellant contests the finding she is not a qualified alien and is seeking an appeal for the entire denial period on the Determination.
6. Application has a series of CBP Form I-94 cards showing she was paroled in the U.S. on for the following periods:⁶
 - a. April 2, 2012 to December 31, 2012;
 - b. June 27, 2013 to December 31, 2014;
 - c. April 28, 2015 to December 31, 2016;
 - d. January 4, 2017 to December 31, 2018; and
 - e. October 29, 2019 to June 29, 2020.
7. Appellant was given prior employment authorizations with the Category C11. Appellant has Employment Authorization Document ("EAD")⁷ cards valid for the following periods:⁸
 - a. June 9, 2014 to December 31, 2014;
 - b. December 19, 2015 to December 18, 2016;
 - c. January 16, 2016 to December 31, 2016;

⁵ Exhibit 1.

⁶ Exhibit 2.

⁷ An EAD is a work permit that allows noncitizens to work in the United States.

⁸ Exhibit 3.

1 d. May 25, 2017 to December 31, 2018;

2 e. May 25, 2017 to June 29, 2019; and

3 f. January 10, 2020 to June 29, 2020.

4 8. Appellant has provided no other documents to account for the gaps in her parolee status.

5 9. Appellant's EAD and parolee status was automatically extended to December 31, 2020.⁹

6 10. On or around April 2020, Appellant submitted an application to U.S. Citizenship and
7 Immigration Services (USCIS) for CNMI Long Term Resident status—distinct from the
8 permanent residency status.¹⁰

9 11. On or around October 8, 2020, the Department entered Appellant's information into the
10 Systematic Alien Verification for Entitlements (SAVE) database maintained by USCIS,
11 Verification Division. This database is used to determine the alien status of PUA
12 applicants so only those entitled to benefits receive them. The SAVE results confirm that
13 Appellant has a pending application with USCIS.¹¹

14 12. Appellant is not a permanent resident, alien granted asylum, refugee, alien paroled into
15 the U.S. for at least one consecutive year during the pandemic assistance period, an alien
16 pending deportation or removal, an alien granted conditional entry, a Cuban or Haitian
17 entrant, or an alien battered or subject to extreme cruelty.

18 V. CONCLUSIONS OF LAW

19 In consideration of the above-stated findings and applicable law, the undersigned issues the
20 following conclusions of law:

21 1. Appellant's employment was affected as a direct result of COVID-19.

22 Pursuant to Section 2102 of the CARES Act of 2020, Public Law 116-136, there are a number
23 of requirements to meet the eligibility standard of PUA. First, the claimant cannot be qualified
24 for regular unemployment, extended benefits under state or federal law, or pandemic emergency
25 unemployment compensation (PEUC).¹² Second, the claimant must show that he or she is able
26 and available for work, as defined by Hawaii law, except they are unemployed, partially

27 ⁹ Exhibit 5-6.

28 ¹⁰ Exhibit 5.

¹¹ Exhibit 4.

¹² This is not at issue in this case.

unemployed, or unable to work or unable for work due to at least one of the following COVID-19 reason identified in Section 2102 (a)(3)(A)(ii)(I) of the CARES Act:

- (a) The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- (b) A member of the individual's household has been diagnosed with COVID-19;
- (c) The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;
- (d) A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
- (e) The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
- (f) The individual is unable to reach the place of employment because the individual has been advised by a health care provider to quarantine due to concerns related to COVID-19;
- (g) The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;
- (h) The individual has become the breadwinner or major support for a household because the health of the household has died as a direct result of COVID-19;
- (i) The individual has to quit his or her job as a direct result of COVID-19;
- (j) The individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or
- (k) The individual is an independent contractor who is unemployed (total or partial) or is unable or unavailable to work because of the COVID-19 public health emergency has severely limited his or her ability to continue performing the customary job.

Based on the evidence and testimony provided, it is clear that Appellant's employment was affected as a direct result of COVID-19. Due to the threat of COVID-19 and pursuant to the Governor's Executive Orders, there were closures of government offices, restrictions on private businesses, and an overall reduction in revenue from the immediate halt in tourism. At the end of March 2020, Employer closed the business due to lack of customers and COVID-19 health concerns. Appellant's last day of work was March 15, 2020 and Appellant was placed on furlough effective March 20, 2020. To date, the Employer has not reopened the business. Accordingly, Appellant's employment was directly affected by a COVID-19 reason from March 15, 2020 to present.

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2. Appellant is not a qualified alien eligible for PUA.

PUA and FPUC are federal public benefits as defined by 8 USC §1611(c). As a condition of eligibility for any federal public benefit, the claimant must be a “qualified alien” at the time relevant to the claim. 8 USC §1611(a). Pursuant to 8 USC §1641, the term “qualified alien” is:

1. An alien admitted for permanent residence under the Immigration and Nationality Act (INA);
2. An alien granted asylum under § 208 of the INA;
3. A refugee admitted to the US under § 207 of the INA;
4. An alien paroled into the US under § 212(d)(5) of the INA for at least one year;
5. An alien whose deportation is being withheld under § 243(h) of the INA ... or whose removal is being withheld under § 241 (b)(3) of the INA;
6. An alien granted conditional entry pursuant to § 203 (a)(7) of the INA;
7. An alien who is a Cuban or Haitian entrant as defined in § 501(e) of the Refugee Education Assistance Act of 1980; or
8. An alien who (or whose child or parent) has been battered or subject to extreme cruelty in the U.S. and otherwise satisfies the requirements of § 431(c) of the Act.

Here, Appellant argues she is a qualified alien because she is a Parolee with an EAD Category C11 since 2012. Category C11 is a USCIS EAD code used to denote an alien paroled in the United States in the public interest or temporarily for emergency reasons. Category C11 fits into the parolee provision of the Qualified Alien definition, provided the one-year requirement is met. Multiple time periods cannot be combined to meet the one-year requirement. The undersigned finds that Appellant has insufficient evidence to establish she is a qualified alien, as defined above.

Based on the evidence and testimony provided, Appellant was admitted into the U.S. as a parolee and granted employment authorization during multiple periods, dating back to 2012. However, there was a break or gap in her status as a parolee between December 31, 2018 and October 29, 2019. When asked for additional documents to explain the gap in her parolee status, Appellant could not provide any explanation or documentation. Considering this gap and the fact that multiple time periods cannot be aggregated, the furthest the undersigned can go back to satisfy the one-year requirement is October 29, 2019. Since it has not been one year from October 29, 2019, Appellant has not yet satisfied the one-year requirement and is not a qualified alien.

Lastly, based on the testimony and exhibits provided, Appellant does not satisfy any other provision of the qualified alien definition. Specifically, when questioned with regards to each of

1 the other provisions of the qualified alien statute, as listed above, Appellant stated she was not a
2 permanent resident, alien granted asylum, refugee, an alien pending deportation or removal, an
3 alien granted conditional entry, a Cuban or Haitian entrant, or an alien battered or subject to
4 extreme cruelty.

5 Based on the evidence and testimony provided, Appellant does not meet the definition of a
6 qualified alien during the relevant time period. In conclusion, Appellant was not a qualified alien
7 eligible for PUA benefits.¹³

8 VI. ORDER

9 For the reasons stated above, it is ORDERED that:

- 10 1. The CNMI Department of Labor's Determination is **MODIFIED**; and
- 11 2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of March 15,
12 2020 to October 29, 2020.

13 Instructions and appeal rights with respect to second level appeals are pending clarification
14 from U.S. Department of Labor. Until then, any party aggrieved by this Order may request a
15 second level appeal with a signed letter indicating why he or she disagrees with the decision. The
16 letter may be submitted to the Administrative Hearing Office in person (Building #1357, Mednilla
17 Ave) or electronically mailed to hearing@dol.gov.mp. Further action regarding second level
18 appeals will remain pending until further guidance from U.S. Department of Labor.

19 So ordered this **28th** day of October, 2020.

20 /s/

21 **JACQUELINE A. NICOLAS**
22 Administrative Hearing Officer
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28 ¹³ Assuming that Appellant still meets all other requirements for PUA, Appellant is encouraged to reapply when she
meets the one-year requirement, after October 29, 2020. The Department in ordered to assist Appellant is renewing
her application.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



In Re Matter of:) PUA Case No. 20-0026
)
Jeanette I. Awas,)
)
Appellant,) ADMINISTRATIVE ORDER
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on November 5, 2020 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Appellant Jeanette I. Awas ("Appellant") was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program ("Appellee" or "Department") was present and represented by Labor Certification Worker, Dennis Cabrera. There were no other witnesses who gave testimony at the hearing.

Exhibits:

1. Exhibit 1: Copy of Appellant's Employment Certification (dated March 18, 2020 and April 11, 2020);
2. Exhibit 2: Copy of Appellant's Verification of Partial Unemployment Status Form (dated June 19, 2020);
3. Exhibit 3: Copy of Appellant's (5) CBP Form I-94);
4. Exhibit 4: Copy of Appellant's Notice of Parole (October 15, 2018 to June 29, 2019);
5. Exhibit 5: Copy of Appellant's Notice of Parole (October 29, 2019 to June 29, 2020);
6. Exhibit 6: Copy of Appellant's (3) EAD cards;
7. Exhibit 7: Copy of Department's SAVE results (3 pages);

1 8. Exhibit 8: USCIS Press Release for Automatic Extension (dated June 17, 2020 and
2 August 11, 2020).

3 For the reasons stated below, the Department's Determination dated October 20, 2020 is
4 **REVERSED**. Based on the claim filed, Appellant is not eligible for benefits effective March 22,
5 2020 to the date of this Order.

6 II. JURISDICTION

7 On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of
8 2020 was signed into law creating new temporary federal programs for unemployment benefits
9 called Pandemic Unemployment Assistance ("PUA")¹ and Federal Pandemic Unemployment
10 Compensation ("FPUC")². On March 29, 2020, the CNMI Government executed an agreement
11 with the US Secretary of Labor to operate the PUA and FPUC program in accordance to
12 applicable law.³ The CNMI Department of Labor is charged with the responsibility in
13 administering the above-mentioned programs in the CNMI. The CNMI Department of Labor
14 Administrative Hearing Office has been designated to preside over first level appeals of the
15 aforesaid programs. Upon review of the record and filings, the appeal was timely filed.
16 Accordingly, jurisdiction is established.

17 III. PROCEDURAL HISTORY & ISSUE

18 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon
19 review of Appellant's application and supporting documents, the Department issued its initial
20 determination with a mail date of October 20, 2020. The Department's determination found the
21 Appellant was not a U.S. Citizen, non-national citizen, or qualified alien and denied benefits
22 effective March 22, 2020. Appellant filed the present appeal on October 20, 2020. The issue on
23 appeal is whether Appellant is a qualified alien eligible for PUA benefits.

24 IV. FINDINGS OF FACT

25 In consideration of the evidence provided and credibility of witness testimony, the
26 undersigned issues the following findings of fact:

27 ¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

28 ² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

³ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

1. Prior to the pandemic, Appellant was employed as an Assistance Cook at Kinpachi Restaurant ("Employer"), located in Garapan, Saipan. Appellant regularly worked 72 to 80 hours biweekly at a rate of \$7.51 per hour.⁴
2. In compliance with executive orders and economic impact of COVID-19, employer closed effective March 24, 2020. As a result, Appellant was temporarily laid off due to the lack of work. The employer reopened the business on or around May 28, 2020. However, Appellant was not recalled until around September 15, 2020. Currently, Appellant is working at reduced hours of approximately 12 hours per week.⁵
3. On or around June 19, 2020, Appellant applied for PUA and claimed benefits from March 21, 2020 to July 18, 2020.
4. On October 20, 2020, the Department issued and/or mailed a determination disqualifying Appellant from PUA benefits because it deemed that Appellant was not a US citizen, non-citizen national, or qualified alien.
5. On October 20, 2020, Appellant filed her appeal at the CNMI Department of Labor, Administrative Hearing Office. Appellant contests the finding she is not a qualified alien and is seeking an appeal for the entire denial period on the Determination.
6. Application has a series of CBP Form 1-94 cards showing she was paroled in the U.S. on for the following periods:⁶
 - a. December 10, 2012 to December 9, 2013;
 - b. November 18, 2013 to December 31, 2014;
 - c. April 28, 2015 to December 31, 2015;
 - d. August 14, 2017 to October 14, 2018; and
 - e. October 29, 2019 to June 29, 2020;
7. To account for gap between the fourth and fifth parolee cards above, Appellant was granted an additional validity period of parole from October 15, 2018 to June 29, 2019.⁷ Also, the Notice of Parole indicates that on June 29, 2019, automatically extended Appellant's transitional parole through October 28, 2019.⁸

⁴ Exhibit 1.

⁵ Exhibit 2.

⁶ Exhibit 3.

⁷ Exhibit 4.

⁸ Exhibit 5.

1 8. Appellant was given prior employment authorizations with the Category C11. Appellant
2 has Employment Authorization Document ("EAD")⁹ cards valid for the following
3 periods:¹⁰

- 4 a. April 27, 2016 to October 14, 2016;
- 5 b. December 21, 2017 to June 29, 2019; and
- 6 c. January 14, 2020 to June 29, 2020.

7 9. Appellant's EAD and parolee status was automatically extended to December 31, 2020.¹¹

8 10. On or around October 29, 2020, the Department entered Appellant's information into the
9 Systematic Alien Verification for Entitlements (SAVE) database maintained by USCIS,
10 Verification Division. This database is used to determine the alien status of PUA
11 applicants so only those entitled to benefits receive them. The SAVE results confirm that
12 Appellant has a pending application with USCIS.¹²

13 V. CONCLUSIONS OF LAW

14 In consideration of the above-stated findings and applicable law, the undersigned issues the
15 following conclusions of law:

16 1. Appellant's employment was affected as a direct result of COVID-19.

17 Pursuant to Section 2102 of the CARES Act of 2020, Public Law 116-136, there are a number
18 of requirements to meet the eligibility standard of PUA. First, the claimant cannot be qualified
19 for regular unemployment, extended benefits under state or federal law, or pandemic emergency
20 unemployment compensation (PEUC).¹³ Second, the claimant must show that he or she is able
21 and available for work, as defined by Hawaii law, except they are unemployed, partially
22 unemployed, or unable to work or unable for work due to at least one of the following COVID-
23 19 reason identified in Section 2102 (a)(3)(A)(ii)(I) of the CARES Act:

- 24 (a) The individual has been diagnosed with COVID-19 or is experiencing symptoms of
25 COVID-19 and is seeking a medical diagnosis;
- 26 (b) A member of the individual's household has been diagnosed with COVID-19;
- 27 (c) The individual is providing care for a family member or a member of the individual's
28 household who has been diagnosed with COVID-19;

⁹ An EAD is a work permit that allows noncitizens to work in the United States.

¹⁰ Exhibit 6.

¹¹ Exhibit 8.

¹² Exhibit 7.

¹³ This is not at issue in this case.

- (d) A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
- (e) The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
- (f) The individual is unable to reach the place of employment because the individual has been advised by a health care provider to quarantine due to concerns related to COVID-19;
- (g) The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;
- (h) The individual has become the breadwinner or major support for a household because the health of the household has died as a direct result of COVID-19;
- (i) The individual has to quit his or her job as a direct result of COVID-19;
- (j) The individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or
- (k) The individual is an independent contractor who is unemployed (total or partial) or is unable or unavailable to work because of the COVID-19 public health emergency has severely limited his or her ability to continue performing the customary job.

Based on the evidence and testimony provided, it is clear that Appellant's employment was affected as a direct result of COVID-19. Due to the threat of COVID-19 and pursuant to the Governor's Executive Orders, there were closures of government offices, restrictions on private businesses, and an overall reduction in revenue from the immediate halt in tourism which prompted closures. At the end of March 2020, Employer closed the business due to lack of customers and COVID-19 health concerns. Appellant's last day of work was March 15, 2020 and Appellant was placed on furlough effective March 20, 2020. To date, the Employer has not reopened the business. Accordingly, Appellant's employment was directly affected by a COVID-19 reason from March 15, 2020 to present.

2. Appellant is a qualified alien eligible for PUA.

PUA and FPUC are federal public benefits as defined by 8 USC §1611(c). As a condition of eligibility for any federal public benefit, the claimant must be a "qualified alien" at the time relevant to the claim. 8 USC §1611(a). Pursuant to 8 USC §1641, the term "qualified alien" is:

1. An alien admitted for permanent residence under the Immigration and Nationality Act (INA);
2. An alien granted asylum under § 208 of the INA;
3. A refugee admitted to the US under § 207 of the INA;
4. An alien paroled into the US under § 212(d)(5) of the INA for at least one year;

5. An alien whose deportation is being withheld under § 243(h) of the INA ... or whose removal is being withheld under § 241 (b)(3) of the INA;
6. An alien granted conditional entry pursuant to § 203 (a)(7) of the INA;
7. An alien who is a Cuban or Haitian entrant as defined in § 501(e) of the Refugee Education Assistance Act of 1980; or
8. An alien who (or whose child or parent) has been battered or subject to extreme cruelty in the U.S. and otherwise satisfies the requirements of § 431(c) of the Act.

Here, Appellant argues she is a qualified alien because she is a Parolee with an EAD Category C11. Category C11 is a USCIS EAD code used to denote an alien paroled in the United States in the public interest or temporarily for emergency reasons. Category C11 fits into the parolee provision of the Qualified Alien definition, provided the one-year requirement is met. Multiple time periods cannot be combined to meet the one-year requirement.

Based on the evidence and testimony provided, the undersigned finds that the Appellant has sufficient evidence to establish her qualified alien status. First, the Appellant has had no gaps in her Parolee status since 2017.¹⁴ Specifically, Appellant's two most recent 1-94 cards show a validity period of: (a) August 14, 2017 to October 14, 2018; and (b) October 29, 2019 to June 29, 2020. To account for gap between October 14, 2019 and October 29, 2019, Appellant offered additional USCIS Notices into evidence. Based on the evidence presented, Appellant was granted an additional validity period of parole from October 15, 2018 to June 29, 2019.¹⁵ Also, the subsequent Notice of Parole indicates that on June 29, 2019, automatically extended Appellant's transitional parole through October 28, 2019.¹⁶ In conclusion, Appellant is an alien paroled into the U.S. under § 212(d)(5) of the INA for at least one year. Accordingly, Appellant was a qualified alien eligible for PUA benefits.

VI. ORDER

For the reasons stated above, it is ORDERED that:

1. The CNMI Department of Labor's Determination is **REVERSED**;
2. The Appellant is **ELIGIBLE** to receive PUA benefits effective March 22, 2020 to the date of this Order; and
3. The Department is **ORDERED** to recalculate Appellant's benefits and issue payment.

¹⁴ Exhibit 3-5.

¹⁵ Exhibit 4.

¹⁶ Exhibit 5.

1 Instructions and appeal rights with respect to second level appeals are pending clarification
2 from U.S. Department of Labor. Until then, any party aggrieved by this Order may request a
3 second level appeal with a signed letter indicating why he or she disagrees with the decision. The
4 letter may be submitted to the Administrative Hearing Office in person (Building #1357, Mednilla
5 Ave) or electronically mailed to hearing@dol.gov.mp. Further action regarding second level
6 appeals will remain pending until further guidance from U.S. Department of Labor.

7 So ordered this 5th day of November, 2020.

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9 /s/
10 JACQUELINE A. NICOLAS
11 Administrative Hearing Officer
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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re Matter of:) PUA Case No. 20-0027
)
Ray L. Mailuyal)
)
Appellant,) ADMINISTRATIVE ORDER
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on November 12, 2020 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Appellant Ray L. Mailuyal ("Appellant") was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program ("Appellee" or "Department") was present and represented by PUA Supervisor Sharon Palacios and PUA Coordinator Arlyn Arboleda. There were no other witnesses who gave testimony at the hearing.

Exhibits:

1. Exhibit 1: Appellant's Application Snapshot
2. Exhibit 2: Determination
3. Exhibit 3: Notice of Overpayment
4. Exhibit 4: Request to File an Appeal
5. Exhibit 5: Employment Certification
6. Exhibit 6: Doctor's Certification for Appellant's Mother
7. Exhibit 7: Copy of Appellant's Food Handler Certificate

For the reasons stated below, the Department's Determination dated October 20, 2020 and Department's Notice of Overpayment dated November 10, 2020 is **AFFIRMED**. Claimant is not eligible for benefits for the period of February 23, 2020 to December 26, 2020.

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II. JURISDICTION

On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of 2020 was signed into law creating new temporary federal programs for unemployment benefits called Pandemic Unemployment Assistance ("PUA")¹ and Federal Pandemic Unemployment Compensation ("FPUC").² On March 29, 2020, the CNMI Government executed an agreement with the US Secretary of Labor to operate the PUA and FPUC program in accordance to applicable law.³ The CNMI Department of Labor is charged with the responsibility in administering the above-mentioned programs in the CNMI. The CNMI Department of Labor Administrative Hearing Office has been designated to preside over first level appeals of the aforesaid programs.

Upon review of the records, the appeal was timely filed. Accordingly, jurisdiction is established.

III. PROCEDURAL HISTORY & ISSUES

Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon review of Appellant's application and supporting documents, the Department issued its disqualifying determination on October 20, 2020. The Department's determination found that Appellant was not eligible to receive PUA. The disqualification is effective February 23, 2020 to December 26, 2020. On September 31, 2020, Appellant filed a request to appeal the disqualifying determination. Subsequently, on November 10, 2020, the Department issued Appellant a notice of overpayment in the total amount of \$16,620 for weeks ending February 29, 2020 to August 8, 2020. As stated in the Amended Notice of Hearing issued November 9, 2020, the issues on appeal are: (1) whether Appellant is eligible for PUA; and (2) whether an overpayment occurred and funds should be returned.

IV. FINDINGS OF FACT

In consideration of the evidence provided and credibility of witness testimony, the undersigned issues the following findings of fact:

1. Appellant did not have a recent attachment to the CNMI workforce prior to the pandemic.

¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

³ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

2. Prior to the pandemic, Appellant was employed as a Sales Representative for American Chocolate Factory ("Employer"). While the company is located in Guam, Appellant worked in Saipan, selling merchandise at various locations, such as DFS, Joeten Hafa Adai, and ABC Store. Appellant worked as a Sales Representative for Employer from August 19, 2019 to approximately December 2019. Appellant worked approximately 20 hours per week for \$8.00 per hour plus commission.⁴
3. In December of 2019, Appellant voluntarily resigned. Appellant resigned because of underperformance issues and disagreements regarding merchandise. Additionally, Appellant resigned to focus on caring for his ill mother.
4. Appellant's mother got sick in 2015 and Appellant is her primary caregiver. Appellant approximates that he is responsible for 75% of his mother's care and his mother requires assistance with day to day tasks as she cannot lift, stand or walk for a long period of time, or prepare her own food.
5. Appellant has not returned to the workforce since his employment with Employer.
6. Appellant has not looked for other work due to the fear of contracting COVID-19 and the need to care for his mother.
7. Since December 2019, Appellant has turned down work because he was asked to work nights and be available for overtime.
8. Appellant is not an independent contractor. Appellant does not have a business license.
9. Appellant does odd jobs at other's homes like yardwork or cleaning to make spare income. Appellant works sporadically and estimates making \$100 a month.
10. Appellant has a food handler's certificate but was not working as a food handler this year. Appellant's food handler certificate expired in August 2020.⁵
11. Appellant received a total of \$16,620 in unemployment assistance.⁶ Specifically, Appellant received \$7,440 in PUA benefits and \$9,180 in FPUC benefits for the work weeks ending February 29, 2020 through August 8, 2020. Due to the backlog in processing, Appellant received a lump sum direct deposit of \$16,620 on August 27, 2020.
12. Appellant incorrectly received the above-mentioned benefits due to the false, inaccurate, and/or incorrect answers he submitted and self-certified on the PUA/FPUC application.

⁴ Exhibit 5

⁵ Exhibit 7.

⁶ Exhibit 3.

1 Specifically, on his initial application, Appellant claimed he was scheduled to commence
2 but did not have a legitimate or bona fide job offer. Additionally, on his initial application,
3 Appellant claimed that his employment was affected by COVID-19 in February 24, 2020,
4 however, Appellant was unemployed for a non-COVID-19 reason since December 2019.

5 13. Appellant used a significant portion of this money for the following reasons:

- 6 a. \$7,000 on a down payment on a new truck;
- 7 b. \$1,000 for car insurance;
- 8 c. \$600 for vehicle accessories;
- 9 d. \$100 on utilities;
- 10 e. \$200 for phone bill and internet;
- 11 f. \$100 for gas;
- 12 g. \$500 for miscellaneous household needs;
- 13 h. \$1,000 to give to his sister; and
- 14 i. \$200 to pay his mom's credit.

15 14. Appellant could not specify exactly how he spent the money, but testified that only \$3,000
16 is remaining in the bank.

17 15. Appellant admits that, prior to receiving PUA, regular necessary expenses like utilities
18 and gas were typically covered by his mother's social security benefits. Additionally,
19 Appellant admits that Appellant does not owe any payments for the home and relies on
20 other public assistance, like food stamps, to cover other needs.

21 16. After interviewing Appellant, the PUA Coordinator disqualified Appellant and issued a
22 determination disqualifying Appellant from PUA benefits. The Determination was
23 issued/mailed on October 20, 2020 for work weeks between February 23, 2020 to
24 December 26, 2020.⁷

25 17. Additionally, the PUA Coordinator referred the matter to the Department's PUA Benefit
26 Payment Control Unit ("BPC") to conduct a targeted audit of Appellant's PUA claim.
27 After conducting an additional investigation, BPC issued a Notice of Overpayment on
28 November 10, 2020. The Notice of Overpayment states that Appellant is overpaid \$9,180
in PUA and \$7,440 in FPC—a total of \$16,620 for weeks ending February 29, 2020 to
August 8, 2020.⁸

⁷ Exhibit 2.

⁸ Exhibit 3.

V. CONCLUSIONS OF LAW

In consideration of the above-stated findings and applicable law, the undersigned issues the following conclusions of law:

1. Appellant's employment was not affected as a direct result of COVID-19.

Pursuant to Section 2102 of the CARES Act of 2020, Public Law 116-136, there are a number of requirements to meet the eligibility standard of PUA. First, the claimant cannot be qualified for regular unemployment, extended benefits under state or federal law, or pandemic emergency unemployment compensation (PEUC).⁹ Second, the claimant must attest¹⁰ that he or she is able and available for work, as defined by Hawaii law, except they are unemployed, partially unemployed, or unable to work or unavailable for work as a direct result¹¹ of a COVID-19 reason identified in Section 2102 (a)(3)(A)(ii)(I) of the CARES Act:

- (a) The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- (b) A member of the individual's household has been diagnosed with COVID-19;
- (c) The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;
- (d) A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
- (e) The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
- (f) The individual is unable to reach the place of employment because the individual has been advised by a health care provider to quarantine due to concerns related to COVID-19;
- (g) The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;
- (h) The individual has become the breadwinner or major support for a household because the health of the household has died as a direct result of COVID-19;
- (i) The individual has to quit his or her job as a direct result of COVID-19;
- (j) The individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or
- (k) The individual is an independent contractor who is unemployed (total or partial) or is unable or unavailable to work because of the COVID-19 public health emergency has severely limited his or her ability to continue performing the customary job.

⁹ This is not at issue in this case.

¹⁰ The PUA program relies on self-certifications and self-reporting under penalty of perjury.

¹¹ Pursuant to 20 CFR § 625.5, unemployment is considered a "direct result" of the pandemic where the employment is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events precipitated or exacerbated by the pandemic.

1 Here, Appellant submitted a claim for PUA self-certifying that he was scheduled to commence
2 employment and his employment was affected as of February 24, 2020. However, based on the
3 testimony provided, the undersigned finds that those statements were a bold mischaracterization
4 of Appellant's employment situation.

5 Appellant was not scheduled to commence employment. Based on the testimony provided,
6 Appellant stated that on the day he resigned, his supervisor, Michelle Mochandani, promised him
7 a job to begin sometime in February or March of 2020. The position was "like a warehouse man"
8 but there were no other specifics provided. For instance, the availability of the position, the
9 position title, amount of pay, start date, job duties were all vague and preliminary, at best. Further,
10 there was no application, interview, or written job offer to support Appellant's position. Lastly,
11 despite the fact that Appellant believed he was scheduled to start in February or March of 2020,
12 he had not spoken to said supervisor about that position until last month, approximately. Appellant
13 agreed that he mischaracterized that information on his application.

14 Appellant stated his employment was first affected by COVID-19 on February 24, 2020.
15 However, Appellant resigned for Employer due to performance and personal reasons unrelated to
16 COVID-19 prior to the pandemic. Appellant had no other employment or attachment to the
17 workforce during this time. While Appellant argued that he was looking for work as an
18 independent contractor with a food handler's license—Appellant was not actually working.
19 Looking for work is not a qualifying reasons under the CARES Act.

20 Lastly, when asked about each of the other COVID-19 qualifying reasons listed under the
21 CARES Act, Appellant responded in the negative. In conclusion, Appellant's employment was
22 not affected as a direct result of a COVID-19 reason. Accordingly, Appellant is ineligible for
23 PUA and/or FPUC benefits during the claimed weeks.

24 **2. Appellant is not able and available to work.**

25 A claimant must be able to work and be available for work to be eligible for benefits. "An
26 individual shall be deemed able to work if the individual has the physical and mental ability to
27 perform the usual duties of the individual's customary occupation or other work for which is the
28 individual is reasonably fitted by training and experience."¹² "An individual shall be deemed
available for work only if the individual is ready and willing to accept employment for which the

¹² HAR § 12-5-35(a)(1).

1 individual is reasonably fitted by training and experience. The individual must intend and wish to
2 work, and there must be no undue restrictions either self-imposed or created by force of
3 circumstances which prevent the individual from accepting employment.”¹³ If a claimant is not
4 physically able or available for work, he or she may be disqualified for PUA, unless the reason
5 he or she is unable or unavailable is directly related to a COVID-19 reason.

6 Based on Appellant’s testimony and exhibits provided, the undersigned finds that Appellant
7 is not able and available to work. Specifically, Appellant is deemed the primary care giver for his
8 mother, who is recovering from a stroke and being treated for diabetes. Appellant testified to
9 provided approximately 75% of her care, which includes: (1) driving her to and from her doctor’s
10 appointments and multiple, regular, dialysis treatments throughout the week; and (2) supervising
11 her in the home because she cannot stand, walk, or lift. Appellant states he is willing to take on
12 side jobs, but has declined work due to the available hours requiring nights and overtime.
13 Additionally, Appellant states he is willing to work but one of the reasons he resigned his other
14 job was to focus on his mother’s care. Based on Appellant’s testimony, that Appellant has a
15 number of restrictions or obligations that would prevent him from working. Further, based on
16 these limitations, Appellant is not truly able and available to work.

17 **3. An overpayment occurred and Appellant is required to pay the amount back.**

18 Notably, PUA benefits were designed to be a critical lifeline for qualifying individuals facing
19 a financial crisis amidst a pandemic. PUA is not an excuse to refuse suitable work. PUA is not a
20 license to make irresponsible purchases. PUA is not free or unencumbered money. Issues of
21 fraud¹⁴ and overpayments are of great consequence that jeopardizes the integrity of the program
22 and availability of funds for eligible or qualified individuals. For those reasons, waivers are
23 granted under very specific situations.

24 PUA and FPUC overpayments are treated differently. The CNMI has no authority to waive
25 repayment of PUA overpayments. The Appellant must pay back this amount. In cases of FPUC
26 overpayments, the CNMI may waive repayment if is the payment was made without fault on the
27 part of the individual and such repayment would be contrary to equity and good conscience.¹⁵

28 ¹³ HAR § 12-5-35(a)(2) and (b).

¹⁴ This office has no jurisdiction to make findings or conclusions as to federal offenses, like fraud. Issues of fraud
are escalated to the US Department of Labor, Office of the Inspector General and prosecuted in federal court.

¹⁵ Section 2104(f)(2) of the CARES Act of 2020, Public Law 116-136; See UIPI, 16-20.

1 Based on federal guidance, “contrary to equity and good conscience” is tantamount to placing an
2 individual below the poverty line and taking away basic necessities to live.

3 Considering that Appellant’s employment was not affected as a direct result of COVID-19,
4 the \$7,440 in PUA benefits and \$9,180 in FPUC benefits received by Appellant is an
5 overpayment.¹⁶

6 The undersigned finds that a waiver of FPUC overpayments is not appropriate because it
7 occurred due to Appellant’s fault. Here, the Department testified to conduct various webinars on
8 submitting an application, issued a number of press released regarding information on PUA, and
9 published a benefit rights handbook –which claimants such as Appellant are responsible for
10 reading in order to provide informed answers. Appellant must be held accountable for the
11 inaccurate, incomplete, or uninformed answers he submitted under penalty of perjury. Ultimately,
12 the Appellant cannot feign ignorance, render self-certifications meaningless, or shift the burden
13 on the Department to ensure he is providing complete and accurate information. For these reasons,
14 the undersigned must assign fault on the Appellant. Accordingly, Appellant is not entitled to a
15 waiver.

16 The undersigned further finds that repayment would not be contrary to equity and good
17 conscience. Based on the testimony provided, Appellant is able to immediately pay back the
18 remaining \$3,000 and amenable to a monthly payment plan of \$100. The repayment plan is
19 reasonable for the following reasons. First, Appellant has a very small amount of monthly bills
20 or expenses. Specifically, Appellant’s mother’s social security income has been covering most of
21 the bills, Appellant does not pay for the home he resides in, and Appellant relies on family and
22 other public assistance for other needs. Second, the undersigned does not find the new car to be a
23 necessary expense. Specifically, Appellant was able to take his mother to regular doctor’s
24 appointments prior to receiving PUA and there is public assistance for transportation. Moreover,
25 even if a personal car was more convenient, Appellant does not need a new car or expensive car
26 to accomplish his necessary travel. Accordingly, requiring Appellant to return the overpayment
27 is not contrary to equity and good conscience.

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¹⁶ See Notice of Overpayment, issued September 10, 2020.

VI. CONCLUSION

For the reasons stated above, it is ORDERED that:

1. The CNMI Department of Labor's Determination is **AFFIRMED**;
2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of February 23, 2020 to December 26, 2020;
3. The CNMI Department of Labor's Notice of Overpayment is **AFFIRMED**;
4. Appellant shall promptly submit to a repayment plan, with the Benefit Payment Control Unit. Appellant shall repay the remaining \$3,000 in his possession on or before November 13, 2020. Additionally, Appellant shall pay monthly installments of, at least, \$100.00 by the first of each month, beginning December 1, 2020, until the entire overpayment is completely repaid.
5. Further, along with his monthly payment, Appellant shall submit monthly bank statements to the CNMI Department of Labor Benefit Payment Control Unit ("BPC"). In the event, Appellant's employment status or situation has changed, BPC may adjust the repayment plan, as needed.
6. The CNMI Department of Labor Benefit Payment Control Unit shall notify the CNMI Department of Finance of this overpayment in federal funds. Where possible, BPC shall collect any of Appellant's tax rebates, tax refunds, stimulus checks, federal funds, or wages to satisfy this debt; and
7. The CNMI Department of Labor Benefit Payment Control Unit shall refer this matter to U.S. Department of Labor, Office of the Inspector General to allow investigation and potential prosecution of fraud.

Instructions and appeal rights with respect to second level appeals are pending clarification from U.S. Department of Labor. Until then, any party aggrieved by this Order may request a second level appeal with a signed letter indicating why he or she disagrees with the decision. The letter may be submitted to the Administrative Hearing Office in person (Building #1357, Mednilla Ave) or electronically mailed to hearing@dol.gov.mp. Further action regarding second level appeals will remain pending until further guidance from U.S. Department of Labor.

So ordered this **12th** day of November, 2020.

/s/

JACQUELINE A. NICOLAS
Administrative Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



In Re Matter of:) PUA Case No. 20-0028
)
Aleksandr Kochikyan)
)
Appellant,) ADMINISTRATIVE ORDER
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on November 12, 2020 at 1:30 pm at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held online. Appellant Aleksandr Kochikyan ("Appellant") was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program ("Appellee" or "Department") was present and represented by Director of Employment Services, Eugene Tebuteb and Labor Certification Worker Dennis Cabrera. There were no other witnesses who gave testimony at the hearing.

Exhibits:

1. Exhibit 1: Appellant's Application Snapshot
2. Exhibit 2: Determination
3. Exhibit 3: Request to File an Appeal with Letter
4. Exhibit 4: Separation Notice

For the reasons stated below, the Department's Determination dated October 20, 2020 is **AFFIRMED**. Claimant is not eligible for benefits for the period of March 20, 2020 to December 26, 2020.

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II. JURISDICTION

On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of 2020 was signed into law creating new temporary federal programs for unemployment benefits called Pandemic Unemployment Assistance ("PUA")¹ and Federal Pandemic Unemployment Compensation ("FPUC").² On March 29, 2020, the CNMI Government executed an agreement with the US Secretary of Labor to operate the PUA and FPUC program in accordance to applicable law.³ The CNMI Department of Labor is charged with the responsibility in administering the above-mentioned programs in the CNMI. The CNMI Department of Labor Administrative Hearing Office has been designated to preside over first level appeals of the aforesaid programs.

Upon review of the records, the appeal was timely filed. Accordingly, jurisdiction is established.

III. PROCEDURAL HISTORY & ISSUE

Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon review of Appellant's application and supporting documents, the Department issued and mailed its disqualifying determination on October 20, 2020. The Department's determination found that Appellant was not eligible to receive PUA effective March 20, 2020 to December 26, 2020. On October 22, 2020, Appellant filed a request to appeal the disqualifying determination. As stated in Notice of Hearing, the issue on appeal is whether Appellant is eligible for PUA.

IV. FINDINGS OF FACT

In consideration of the evidence provided and credibility of witness testimony, the undersigned issues the following findings of fact:

1. Prior to the pandemic, Appellant was employed as a Pilot for Star Marianas Air, Inc. ("Employer"). Appellant was stationed in Saipan, but flying within the Marianas.

¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

³ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

Appellant worked for Employer from May 22, 2019 to approximately March 17, 2020.

Appellant worked 40 hours per week for the hourly rate of \$14.42.⁴

2. Due to the reduction of available flights during the pandemic, Employer had to reduce operations. Employer gave Appellant the choice to resign or be fired.⁵ In order to avoid a termination in his employment record, Appellant chose to resign, effective March 17, 2020.
3. Due to lack of available work, Appellant departed the CNMI on March 20, 2020. Appellant relocated to Glendale, California to live with family. As of the date of the Hearing, Appellant has not returned to the CNMI.
4. On October 20, 2020, the Department disqualified Appellant from receiving PUA benefits for effective March 20, 2020 to December 26, 2020.⁶ The Determination was based on the fact that Appellant was not considered "able" and "available" to work in the CNMI since he is living in California.
5. Appellant found other work and stopped claiming benefits at the end of August 2020.
6. Recently, Appellant began preliminary discussions to return to work for Employer. A job offer was not finalized. As of the date of the hearing, Appellant was not recalled to work.
7. Appellant is willing to return to the CNMI when a job offer from Employer is finalized.

V. CONCLUSIONS OF LAW

In consideration of the above-stated findings and applicable law, the undersigned issues the following conclusions of law:

1. Appellant's employment was affected as a direct result of COVID-19.

Pursuant to Section 2102 of the CARES Act of 2020, Public Law 116-136, there are a number of requirements to meet the eligibility standard of PUA. First, the claimant cannot be qualified for regular unemployment, extended benefits under state or federal law, or pandemic emergency unemployment compensation (PEUC).⁷ Second, the claimant must attest⁸ that he or she is able and available for work, as defined by Hawaii law, except they are unemployed, partially

⁴ Exhibit 4.

⁵ Aside from Appellant's testimony, there is no proof that Appellant would have been fired if he did not resign. Additionally, it is unknown whether the PUA Coordinator in this case investigated this issue with the employer as the PUA Coordinator was not present to testify.

⁶ Exhibit 2

⁷ This is not at issue in this case.

⁸ The PUA program relies on self-certifications and self-reporting under penalty of perjury.

1 unemployed, or unable to work or unavailable for work as a direct result⁹ of a COVID-19 reason
2 identified in Section 2102 (a)(3)(A)(ii)(I) of the CARES Act:

- 3 (a) The individual has been diagnosed with COVID-19 or is experiencing symptoms of
4 COVID-19 and is seeking a medical diagnosis;
5 (b) A member of the individual's household has been diagnosed with COVID-19;
6 (c) The individual is providing care for a family member or a member of the individual's
7 household who has been diagnosed with COVID-19;
8 (d) A child or other person in the household for which the individual has primary
9 caregiving responsibility is unable to attend school or another facility that is closed as
10 a direct result of the COVID-19 public health emergency and such school or facility
11 care is required for the individual to work;
12 (e) The individual is unable to reach the place of employment because of a quarantine
13 imposed as a direct result of the COVID-19 public health emergency;
14 (f) The individual is unable to reach the place of employment because the individual has
15 been advised by a health care provider to quarantine due to concerns related to
16 COVID-19;
17 (g) The individual was scheduled to commence employment and does not have a job or is
18 unable to reach the job as a direct result of the COVID-19 public health emergency;
19 (h) The individual has become the breadwinner or major support for a household because
20 the health of the household has died as a direct result of COVID-19;
21 (i) The individual has to quit his or her job as a direct result of COVID-19;
22 (j) The individual's place of employment is closed as a direct result of the COVID-19
23 public health emergency; or
24 (k) The individual is an independent contractor who is unemployed (total or partial) or is
25 unable or unavailable to work because of the COVID-19 public health emergency has
26 severely limited his or her ability to continue performing the customary job.

18 Here, Appellant submitted a claim for PUA self-certifying that he had to quit his job as a
19 direct result of COVID-19. While Appellant's Separation Notice indicated he voluntarily
20 resigned, Appellant testified that Employer was reducing operations due to the lack of available
21 work. Appellant further testified that if he had not quit, he would have been otherwise terminated
22 due to the ongoing reductions in operation.

23 The undersigned finds Appellant's testimony is credible. Generally, the CNMI was heavily
24 impacted by the threat of COVID-19. Due to the threat of COVID-19 and pursuant to the
25 Governor's Executive Orders, there were closures of government offices, restrictions on private
26 businesses, and an overall reduction in revenue from the immediate halt in tourism. Further, the

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28 ⁹ Pursuant to 20 CFR § 625.5, unemployment is considered a "direct result" of the pandemic where the employment
is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events
precipitated or exacerbated by the pandemic.

undersigned recognizes that lack of available flights and limitations on domestic travel during this time. Accordingly, based on Appellant's testimony, the undersigned finds Appellant's employment was affected as a direct result of COVID-19.

2. Appellant was not able and available to work in the CNMI, effective March 20, 2020.

A claimant must be able to work and be available for work to be eligible for benefits. "An individual shall be deemed able and available for work...if the individual is able and available for suitable work during the customary work week of the individual's customary occupation which falls within the week for which a claim is filed."¹⁰ "An individual shall be deemed *able* to work if the individual has the physical and mental ability to perform the usual duties of the individual's customary occupation or other work for which the individual is reasonably fitted by training and experience."¹¹ "An individual shall be deemed *available* for work only if the individual is ready and willing to accept employment for which the individual is reasonably fitted by training and experience. The individual must intend and wish to work, and there must be no undue restrictions either self-imposed or created by force of circumstances which prevent the individual from accepting employment."¹² In determining whether an individual is able and available, it is proper to consider the individual's geographical location at the time benefits are claimed.¹³ If a claimant is not physically able or available for work, he or she may be disqualified for PUA, unless the reason he or she is unable or unavailable is directly related to a COVID-19 reason, such as illness and orders to quarantine.

As a preliminary matter, the undersigned recognizes Appellant's willingness to return to and work in the CNMI. The undersigned further recognizes Appellant's argument that availability should take into consideration a reasonable time frame. For instance, while Appellant is not presently able and available to work in the CNMI because he is in California, he can be available in as soon as a week or two.

Ultimately, the undersigned is not persuaded by Appellant's arguments. First, his willingness to return to the CNMI in the future is irrelevant because the time period in question is the work

¹⁰ HAR § 12-5-35(a)

¹¹ HAR § 12-5-35(a)(1) (emphasis added).

¹² HAR § 12-5-35(a)(2) and (b) (emphasis added).

¹³ See HAR § 12-5-3(b) ("The geographical extent of such area is limited to the area in which the individual lives and within which the individual reasonably can be expected to commute to work.")

1 weeks in which Appellant claimed benefits, from March 20, 2020 to the end of August. Second,
2 any consideration to time does not change the fact that Appellant was not actually able or available
3 to work in the CNMI during the claimed weeks because he relocated to California on March 17,
4 2020. Lastly, Appellant's physical location in California unduly restricts Appellant's availability
5 and ability to work as a pilot flying domestic flights within the CNMI. This restriction cannot be
6 lifted until Appellant returns to the CNMI. Accordingly, the undersigned finds that Appellant was
not "able and available" to work in the CNMI, as defined by law, effective March 17, 2020.

7 VI. CONCLUSION

8 For the reasons stated above, it is ORDERED that:

- 9 1. The CNMI Department of Labor's Determination is **AFFIRMED**; and
10 2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of March 20,
11 2020 to December 26, 2020.

12 Instructions and appeal rights with respect to second level appeals are pending clarification
13 from U.S. Department of Labor. Until then, any party aggrieved by this Order may request a
14 second level appeal with a signed letter indicating why he or she disagrees with the decision. The
15 letter may be submitted to the Administrative Hearing Office in person (Building #1357, Mednilla
16 Ave) or electronically mailed to hearing@dol.gov.mp. Further action regarding second level
17 appeals will remain pending until further guidance from U.S. Department of Labor.

18 So ordered this **16th** day of November, 2020.

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20 /s/
21 **JACQUELINE A. NICOLAS**
22 Administrative Hearing Officer
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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



In Re Matter of:) PUA Case No. 20-0029
)
Rosalinda T. Ramos)
)
Appellant,) ADMINISTRATIVE ORDER
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on November 17, 2020 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held online. Appellant Rosalinda T. Ramos ("Appellant") was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program ("Appellee" or "Department") was present and represented by Labor Certification Worker Dennis Cabrera and PUA Coordinator Zachary Taitano. The Department's Enforcement, Compliance, and Monitoring Section ("Enforcement") was also present and represented by Acting Director Jeffrey Camacho. There were no other witnesses who gave testimony at the hearing.

Exhibits:

1. Exhibit 1: Appellant's Application Snapshot;
2. Exhibit 2: Determination (mail date October 13, 2020);
3. Exhibit 3: Request to File an Appeal and Letter (filed October 26, 2020);
4. Exhibit 4: Employment Certification (dated May 28, 2020);
5. Exhibit 5: Furlough Notification (dated August 21, 2020);
6. Exhibit 6: (5) CBP Form I-94 and (5) EAD Cards;
7. Exhibit 7: USCIS Receipt Notice of Action for I-130 Petition (dated July 22, 2020);

8. Exhibit 8: USCIS Receipt Notice of Action for I-765 Application (dated July 22, 2020);
9. Exhibit 9: USCIS Receipt Notice of Action for I-485 Application (dated July 22, 2020);
10. Exhibit 10: USCIS Approval Notice for I-765 Application (dated April 23, 2020);
11. Exhibit 11: USCIS Notice re: Limited Parole to Depart the United States and Extension of Employment Authorization (dated January 9, 2019);
12. Exhibit 12: USCIS Notice of Parole (dated October 24, 2019);
13. Exhibit 13: Department's SAVE Verification (initiated August 26, 2020); and
14. Exhibit 14: Department's SAVE Verification (initiated November 15, 2020).

For the reasons stated below, the Department's Determination dated October 13, 2020 is **REVERSED**. Claimant is not eligible for benefits for the period of April 23, 2020 to June 29, 2020.

II. JURISDICTION

On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of 2020 was signed into law creating new temporary federal programs for unemployment benefits called Pandemic Unemployment Assistance ("PUA")¹ and Federal Pandemic Unemployment Compensation ("FPUC").² On March 29, 2020, the CNMI Government executed an agreement with the US Secretary of Labor to operate the PUA and FPUC program in accordance to applicable law.³ The CNMI Department of Labor is charged with the responsibility in administering the above-mentioned programs in the CNMI. The CNMI Department of Labor Administrative Hearing Office has been designated to preside over first level appeals of the aforesaid programs.

Upon review of the records, the appeal was timely filed. Accordingly, jurisdiction is established.

¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

³ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

III. PROCEDURAL HISTORY & ISSUE

Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon review of Appellant's application and supporting documents, the Department issued a disqualifying determination on October 8, 2020 with the mail date of October 13, 2020. The Department's determination found that Appellant was not eligible to receive PUA effective February 16, 2020 to December 26, 2020 because the Department found that Appellant was not a qualified alien. On October 26, 2020, Appellant filed a request to appeal the disqualifying determination. As stated in Notice of Hearing, the issues on appeal are: (1) whether the Appeal is timely filed; and (2) whether Appellant is a qualified alien eligible for PUA.

IV. FINDINGS OF FACT

In consideration of the evidence provided and credibility of witness testimony, the undersigned issues the following findings of fact:

1. Prior to the pandemic, Appellant was employed as a Housekeeping Attendant at World Resort ("Employer"), located in Susupe, Saipan. Appellant worked for Employer from April 23, 2017 to present. Prior to COVID-19, Appellant generally worked 40 hours per week for the hourly rate of \$7.30.⁴
2. On July 24, 2020, Appellant filed an application to claim PUA and FPUC benefits.⁵ In the application, Appellant certified under penalty of perjury that her employment was affected as a direct result of COVID-19 since February 22, 2020, when her hours were reduced and her place of employment closed.
3. Due to the reduction in tourism during the pandemic, Employer had to reduce operations and eventually closed to the public.
 - a. Effective February 22, 2020, Appellant's hours were reduced to 25 hours a week.
 - b. Between the months of March to May 2020, Appellant's hours were further reduced to 20 hours a week.
 - c. Appellant resumed her customary 40 hours a week from May 9, 2020 to June 9, 2020.
 - d. Between June 9 to September 4, 2020, Appellant's hours were again reduced to a total of 8 hours per week.

⁴ Exhibit 4.

⁵ Exhibit 1.

- 1 e. Ultimately, on September 5, 2020, Appellant was placed on a temporary furlough
2 until, at least, December 31, 2020.⁶
- 3 4. Appellant has not found other work or otherwise recalled back into the workforce.
- 4 5. On October 8, 2020, the Department disqualified Appellant from receiving PUA benefits
5 effective February 16, 2020 to December 26, 2020.⁷ The Determination found that the
6 Appellant was not a U.S. Citizen, Non-citizen National, or Qualified Alien eligible for
7 PUA.
- 8 6. On October 26, 2020, Appellant filed the present Appeal claiming to be a qualified alien.⁸
9 In support of her Appeal, Appellant filed a number of documents related to her
10 immigration status and employment authorizations.
- 11 7. Appellant has a series of CBP Form I-94 cards showing she was paroled into the U.S. for
12 the following periods:⁹
- 13 a. November 13, 2012 to November 13, 2013
- 14 b. October 10, 2013 to December 31, 2014
- 15 c. December 17, 2014 to December 17, 2016
- 16 d. December 8, 2016 to December 31, 2018
- 17 e. October 29, 2019 to June 29, 2020
- 18 8. To account for gaps between the fourth and fifth parolee cards above, Appellant had two
19 additional notices from USCIS.¹⁰ First, Appellant was granted an additional validity
20 period of parole from January 1, 2019 to June 29, 2019.¹¹ Second, on June 29, 2019,
21 USCIS automatically extended her transitional parole through October 28, 2019.¹²
- 22 9. Applicant's Parolee Status expired and was not extended beyond June 29, 2020.
- 23 10. Appellant was given prior employment authorizations with the Category C11. Appellant
24 has Employment Authorization Document ("EAD")¹³ cards valid for the following
25 periods:¹⁴

26 ⁶ Exhibit 5.

27 ⁷ Exhibit 2.

28 ⁸ Exhibit 3.

⁹ Exhibit 6.

¹⁰ Exhibit 11-12.

¹¹ Exhibit 11.

¹² Exhibit 12.

¹³ An EAD is a work permit that allows noncitizens to work in the United States.

¹⁴ Exhibit 6.

- a. July 17, 2013 to July 16, 2013;
- b. August 20, 2015 to December 17, 2016;
- c. March 29, 2017 to December 31, 2018;
- d. March 29, 2017 to June 29, 2019; and
- e. April 23, 2020 to June 29, 2020.¹⁵

11. In June of 2020, Appellant submitted an I-130, Petition for Alien Relative and I-485, Application to Register Permanent Residence or Adjust Status.¹⁶ Additionally, at that same time, Appellant submitted the I-765 Application for Employment Authorization.¹⁷ The above stated petitions and applications to U.S. Citizenship and Immigration Services (USCIS) triggered a change in Appellant's EAD Code to Category C09.¹⁸

12. On or around August 26, 2020, the Department entered Appellant's information into the Systematic Alien Verification for Entitlements (SAVE) database maintained by USCIS, Verification Division. This database is used to determine the alien status of PUA applicants so only those entitled to benefits receive them. These SAVE results confirm that Appellant has a pending I-485 and I-765 Application with USCIS and was not authorized to work after her C11 EAD expired in June 29, 2020.¹⁹

13. On or around November 15, 2020, the Department conducted a second SAVE verification and found that Appellant's work authorization was granted under Category C09, effective October 22, 2020 to October 21, 2021.²⁰

14. Appellant is not a permanent resident, alien granted asylum, refugee, an alien pending deportation or removal, an alien granted conditional entry, a Cuban or Haitian entrant, or an alien battered or subject to extreme cruelty.

V. CONCLUSIONS OF LAW

In consideration of the above-stated findings and applicable law, the undersigned issues the following conclusions of law:

///

¹⁵ See also Exhibit 10.

¹⁶ Exhibit 7 and 9.

¹⁷ Exhibit 8.

¹⁸ See Exhibit 8.

¹⁹ Exhibit 13.

²⁰ Exhibit 14.

1. This appeal is timely filed.

Generally, an appeal should be filed within ten days after the Notice of Determination was issued or served to the claimant. However, the Department may extend the period to thirty days by a showing of good cause.²¹ Good cause means: (1) illness or disability; (2) keeping an appointment for a job interview; (3) attending a funeral of a family member; and (4) any other reason which would prevent a reasonable person from complying as directed.²²

Here, Appellant electronically received the disqualifying determination on October 8, 2020. The Appellant did not file her Appeal until October 26, 2020 – approximately 18 days after receiving the determination. Although the Appeal was filed beyond the ten-day deadline, the undersigned recognizes that this is due to the faulty instructions included on the determination. Specifically, the determination incorrectly indicated that the deadline was October 27, 2020 and that an appellant can file to Guam Department of Labor. However, despite the technical errors and inconsistent filing instructions, the undersigned finds that Appellant acted diligently to pursue this appeal. Based on above, there is good cause to extend the filing period to 30 days from the day Appellant received the determination. Accordingly, Appellant's filing is timely.

2. Appellant is a qualified alien eligible for PUA up until June 29, 2020.

PUA and FPUC are federal public benefits as defined by 8 USC §1611(c). As a condition of eligibility for any federal public benefit, the claimant must be a "qualified alien" at the time relevant to the claim. 8 USC §1611(a). Pursuant to 8 USC §1641, the term "qualified alien" is:

1. An alien admitted for permanent residence under the Immigration and Nationality Act (INA);
2. An alien granted asylum under § 208 of the INA;
3. A refugee admitted to the US under § 207 of the INA;
4. An alien paroled into the US under § 212(d)(5) of the INA for at least one year;
5. An alien whose deportation is being withheld under § 243(h) of the INA ... or whose removal is being withheld under § 241 (b)(3) of the INA;
6. An alien granted conditional entry pursuant to § 203 (a)(7) of the INA;
7. An alien who is a Cuban or Haitian entrant as defined in § 501(e) of the Refugee Education Assistance Act of 1980; or
8. An alien who (or whose child or parent) has been battered or subject to extreme cruelty in the U.S. and otherwise satisfies the requirements of § 431(c) of the Act.

²¹ HI. Rev. Statute § 383-38(a).

²² HAR § 12-5-81(j).

1 Here, Appellant argues she is a qualified alien because she is a Parolee with an EAD Category
2 C11. Category C11 is a USCIS EAD code used to denote an alien paroled in the United States in
3 the public interest or temporarily for emergency reasons. Category C11 fits into the parolee
4 provision of the Qualified Alien definition, provided the one-year requirement is met. Multiple
5 time periods cannot be combined to meet the one-year requirement.

6 Based on the evidence and testimony provided, the undersigned finds that the Appellant has
7 sufficient evidence to establish her qualified alien status. Here, the Appellant has demonstrated
8 an uninterrupted Parolee Status dating back to October 2016. Specifically, Appellant provided a
9 Parolee Card with the validity dates of December 8, 2016 to December 31, 2018.²³ Next,
10 Appellant provided a notice from USCIS showing an additional validity period from January 1,
11 2019 to June 29, 2019.²⁴ A second notice from USCIS shows that the additional validity period
12 was extended through October 28, 2019.²⁵ Lastly, Appellant provided her last Parolee Card with
13 the validity dates of October 29, 2019 to June 29, 2020.²⁶ In consideration of the above showing,
14 Appellant is an alien paroled into the U.S. under § 212(d)(5) of the INA for at least one year.
15 Appellant has retained this parolee status until June 29, 2020.²⁷ Accordingly, Appellant was a
16 qualified alien eligible for PUA benefits.

17 **3. Appellant was not able and available to work in the CNMI outside of the relevant
18 employment authorization period.**

19 A claimant must be able to work and be available for work to be eligible for benefits. "An
20 individual shall be deemed able and available for work...if the individual is able and available for
21 suitable work during the customary work week of the individual's customary occupation which
22 falls *within the week for which a claim is filed*."²⁸ "An individual shall be deemed *able* to work
23 if the individual has the physical and mental ability to perform the usual duties of the individual's
24 customary occupation or other work for which is the individual is reasonably fitted by training
25

26 ²³ Exhibit 6.

27 ²⁴ Exhibit 11.

28 ²⁵ Exhibit 12.

²⁶ Exhibit 6.

²⁷ After her Parolee status expired, Appellant did not seek and was not granted any additional extensions of her Parolee status. Instead, Appellant pursued permanent residency.

²⁸ HAR § 12-5-35(a) (emphasis added).

1 and experience.”²⁹ “An individual shall be deemed *available* for work only if the individual is
2 ready and willing to accept employment for which the individual is reasonably fitted by training
3 and experience. The individual must intend and wish to work, and there must be no undue
4 restrictions either self-imposed or created by force of circumstances which prevent the individual
5 from accepting employment.”³⁰ For qualified aliens, the inquiry of whether an individual is “able
6 and available” also hinges on whether they are authorized to work during the weeks claimed.

7 As a preliminary matter, the undersigned recognizes Appellant’s willingness to return to work
8 in the CNMI. Aside from having employment authorization, Appellant is ready and prepared to
9 return to the workforce without restrictions or other obligations preventing her from doing so.
10 However, the limitations on Appellant’s employment authorization seriously restrict her ability
11 to work in the CNMI—as well as her ability to claim PUA benefits. PUA benefits cannot be
12 distributed or paid out for any time period is not legally authorized to work.³¹

13 Here, the pandemic assistance period is February 2, 2020 to December 26, 2020. During this
14 assistance period, Appellant has shown to meet the qualified alien definition from February 2,
15 2020 to June 29, 2020. However, this period is further limited by the Appellant’s ability to work
16 while maintaining the qualified alien status. Here, Appellant was a Parolee until June 29, 2020
17 with employment authorization from April 23, 2020 to June 29, 2020.³² Accordingly, Appellant
18 only satisfies the “able and available” requirements for weeks between April 23, 2020 and June
19 29, 2020.

20 The Department conducted a SAVE Verification in October that showed that Appellant was
21 not authorized to work after June 29, 2019.³³ A second SAVE verification demonstrates
22 employment authorization was subsequently granted based on Category C09.³⁴ To be clear, the
23 employment authorization granted under C09 would not make Appellant eligible for benefits after
24 the June 29, 2020 date because she is no longer a qualified alien at that time. Notably, category
25 C09 is a code that USCIS utilizes for applicants pending an adjustment in status. While Appellant
26 may have submitted an application for permanent residence, the application for permanent

27 ²⁹ HAR § 12-5-35(a)(1) (emphasis added).

28 ³⁰ HAR § 12-5-35(a)(2) and (b) (emphasis added).

³¹ Appellant admits to working for Employer without valid employment authorization.

³² Exhibit 10.

³³ Exhibit 13.

³⁴ See Exhibit 14.

1 residency has not been approved. Therefore, this additional employment authorization would not
2 affect the outcome of Appellant's appeal. In conclusion, based on Appellant's relevant
3 employment authorization, Appellant would only be "able and available" to work from April 23,
4 2020 to June 29, 2020.

5 **4. Appellant's employment was affected as a direct result of COVID-19.**

6 Pursuant to Section 2102 of the CARES Act of 2020, Public Law 116-136, there are a number
7 of requirements to meet the eligibility standard of PUA. First, the claimant cannot be qualified
8 for regular unemployment, extended benefits under state or federal law, or pandemic emergency
9 unemployment compensation (PEUC).³⁵ Second, the claimant must attest³⁶ that he or she is able
10 and available for work, as defined by Hawaii law, except they are unemployed, partially
11 unemployed, or unable to work or unavailable for work as a direct result³⁷ of a COVID-19 reason
12 identified in Section 2102 (a)(3)(A)(ii)(I) of the CARES Act:

- 13 (a) The individual has been diagnosed with COVID-19 or is experiencing symptoms of
14 COVID-19 and is seeking a medical diagnosis;
- 15 (b) A member of the individual's household has been diagnosed with COVID-19;
- 16 (c) The individual is providing care for a family member or a member of the individual's
17 household who has been diagnosed with COVID-19;
- 18 (d) A child or other person in the household for which the individual has primary
19 caregiving responsibility is unable to attend school or another facility that is closed as
20 a direct result of the COVID-19 public health emergency and such school or facility
21 care is required for the individual to work;
- 22 (e) The individual is unable to reach the place of employment because of a quarantine
23 imposed as a direct result of the COVID-19 public health emergency;
- 24 (f) The individual is unable to reach the place of employment because the individual has
25 been advised by a health care provider to quarantine due to concerns related to
26 COVID-19;
- 27 (g) The individual was scheduled to commence employment and does not have a job or is
28 unable to reach the job as a direct result of the COVID-19 public health emergency;
- (h) The individual has become the breadwinner or major support for a household because
the health of the household has died as a direct result of COVID-19;
- (i) The individual has to quit his or her job as a direct result of COVID-19;
- (j) The individual's place of employment is closed as a direct result of the COVID-19
public health emergency; or

35 This is not at issue in this case.

36 The PUA program relies on self-certifications and self-reporting under penalty of perjury.

37 Pursuant to 20 CFR § 625.5, unemployment is considered a "direct result" of the pandemic where the employment is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events precipitated or exacerbated by the pandemic.

1 (k) The individual is an independent contractor who is unemployed (total or partial) or is
2 unable or unavailable to work because of the COVID-19 public health emergency has
severely limited his or her ability to continue performing the customary job.

3 Here, Appellant submitted a claim for PUA self-certifying that her hours were reduced and
4 the place of business closed. Appellant's evidence and testimony corroborate the answers in her
5 PUA/FPUC application.

6 Based on the evidence and testimony provided, it is clear that the Appellant's employment
7 was affected as a direct result of COVID-19. Due to the threat of COVID-19 and pursuant to the
8 Governor's Executive Orders, there were a reduction of incoming flights and tourists, closures of
9 government offices, and restrictions on private businesses. The immediate halt in tourism caused
10 a dramatic decline in revenue across the private and public sectors in the CNMI. In particular, the
11 hotel and hospitality industry had to reduce operations, furlough staff, and close to the public.

12 As a result, Appellant's work hours were significant reduced at fluctuating rates between
13 February and September. Specifically, effective February 22, 2020, Appellant's hours were
14 reduced to 25 hours a week. Between the months of March to May 2020, Appellant's hours were
15 further reduced to 20 hours a week. Appellant resumed her customary 40 hours a week from May
16 9, 2020 to June 9, 2020. Between June 9 to September 4, 2020, Appellant's hours were again
17 reduced to a total of 8 hours per week. Ultimately, on September 5, 2020, Appellant was placed
18 on a temporary furlough until, at least, December 31, 2020.³⁸ To date, Appellant has not been
19 recalled to the workforce or found suitable work. Accordingly, the undersigned finds Appellant's
20 employment was affected as a direct result of COVID-19 from February to September—except
21 for the time she returned to worked with her customary 40 hours a week from May 9, 2020 to
22 June 9, 2020.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

³⁸ Exhibit 5.

VI. CONCLUSION

For the reasons stated above, it is ORDERED that:

1. The CNMI Department of Labor's Determination is **REVERSED**;
2. The Appellant is **ELIGIBLE** to receive PUA benefits for the weeks of April 23, 2020 to May 9, 2020 and June 9, 2020 to June 29, 2020.³⁹

Instructions and appeal rights with respect to second level appeals are pending clarification from U.S. Department of Labor. Until then, any party aggrieved by this Order may request a second level appeal with a signed letter indicating why he or she disagrees with the decision. The letter may be submitted to the Administrative Hearing Office in person (Building #1357, Mednilla Ave) or electronically mailed to hearing@dol.gov.mp. Further action regarding second level appeals will remain pending until further guidance from U.S. Department of Labor.

So ordered this **18th** day of November, 2020.

/s/

JACQUELINE A. NICOLAS
Administrative Hearing Officer

³⁹ The weekly benefit amount for the eligibility period shall take into account and subtract any partial income earned during said weeks, in accordance with applicable law.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



In Re Matter of:) PUA Case No. 20-0031
Roselyn B. Bastareche)
Appellant,) ADMINISTRATIVE ORDER
v.)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
Appellee.)

Pursuant to Appellant's appeal of the Department's determination denying Pandemic Unemployment Assistance benefits, this matter was scheduled for an Administrative Hearing on December 1, 2020 at 1:30 p.m. before the undersigned. Subsequently, Appellant filed a written request for cancel or withdraw said Appeal.

Accordingly, this appeal is hereby **DISMISSED**. The Administrative Hearing scheduled for December 1, 2020 at 1:30 p.m. is **VACATED**.

So ordered this **19th** day of November, 2020.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer



COMMONWEALTH CASINO COMMISSION
Commonwealth of the Northern Mariana Islands
Unit 13 & 14, Springs Plaza, Chalan Pale Arnold, Gualo Rai
P.O. Box 500237, Saipan, MP 96950
Telephone: +1 (670) 233-1857/58
Facsimile: +1 (670) 233-1856
Website: www.cnmicasinocommission.com
E-mail: info@cnmicasinocommission.com



COMMISSION ORDER NO: 2020-005

Order Temporarily Suspending/Adjusting Minimum Bankroll Requirement And Suspending Commission Order 2019-002

For good cause determined at the November 24, 2020 public meeting of the Commonwealth Casino Commission, which was duly publicly noticed, and based on the authority granted by the laws of the Commonwealth (including but not limited to Public Laws 18-56 and 19-24) and the Regulations of the Commonwealth Casino Commission, NMIAC Chapter 175-10.1, the Commonwealth Casino Commission hereby finds and **ORDERS AS FOLLOWS:**

1. WHEREAS, Public Law 18-56, 4 CMC §2314(b)(2), authorizes the Commission to promulgate regulations as may be necessary to properly supervise, monitor and investigate to ensure the suitability and compliance with the legal, statutory and contractual obligations of owners, operators, and employees of casinos; and
2. WHEREAS, based in part on the foregoing authority, the Commission enacted Section 175-10.1-560 of the CNMI Casino Regulations dealing with the minimum bankroll which the casino licensee must maintain; and
3. WHEREAS, Regulation 175-10.1-560 was suspended in part, and the minimum bankroll reduced by prior action of the Commission in Commission Orders 2018-001 and 2019-002; and
4. WHEREAS, the Commission received a letter, dated November 11, 2020, from the casino licensee requesting, due to the closure of the casino gaming operations for pandemic-related reasons, permission to move the funds offsite to another banking location; and
5. WHEREAS, the November 11, 2020 letter also stated that IPI was aware it "may not begin live gaming operations until such time as [it] replenish[es] the cage vault at Imperial Palace Resort with sufficient cash to meet the Minimum Bankroll Requirement and upon CCC approval"; and
6. WHEREAS, the Commission interprets the November 11, 2020 letter as a request to suspend the minimum bankroll requirements of Regulation 175-10.1-560(b); alternatively, the Commission interprets the letter as a request to amend the bankroll requirement of Regulation 175-10.1-560(a) to equal zero; and

7. WHEREAS, Section 175-10.1-025 allows the Commission, for good cause, to suspend any provision of the Regulations, and Regulation 175-10.1-560(a) allows the Commission to set any formula it deems prudent. During its November 24, 2020 meeting, the Commission approved the Casino Licensee's request to temporarily suspend Regulation 175-10.1-560(b) subject to findings by the Executive Director or, alternatively, temporarily adopting a new bankroll formula which equals zero, exclusive of the working capital portion of the minimum bankroll formula ordered by Commission Order 2020-003 subject to findings by the Executive Director.

NOW, THEREFORE,

8. IT IS HEREBY ORDERED that Commission Order 2019-002 is suspended and the Casino Licensee's request to temporarily suspend Regulation 175-10.1-560(b) subject to findings by the Executive Director is Granted; or, alternatively, the new bankroll formula required by 175-10.1-560(a) equals zero, exclusive of the working capital portion of the minimum bankroll formula ordered by Commission Order 2020-003, subject to findings by the Executive Director; and

9. IT IS HEREBY FURTHER ORDERED that the working capital portion of the minimum bankroll formula ordered by Commission Order 2020-003 remains unaffected by this Order; and

10. IT IS HEREBY FURTHER ORDERED that the casino licensee's parent company shall guarantee in writing the payment of all its gambling debts in the CNMI without reservations or limitations in an amount and form acceptable to the Executive Director; and

11. IT IS HEREBY FURTHER ORDERED that no gaming shall take place until the Commission supersedes this Order with a new bankroll formula; and

12. IT IS HEREBY FURTHER ORDERED that this Order does not excuse any noncompliance with Regulation 175-10.1-560 which may have occurred prior to the date this Order becomes effective; and

13. IT IS HEREBY FURTHER ORDERED that the Chairman or the Executive Director shall take steps necessary to ensure that this Order is published in the Commonwealth Register, and this Order is to take effect ten days after its publication in the Commonwealth Register and shall remain in effect until it is repealed or replaced by subsequent Order of the Commission.

SO ORDERED this 24th day of November, 2020.

Signature: 
EDWARD DELEON GUERRERO
CHAIRMAN