



NMI SETTLEMENT FUND

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**APPEAL
BEFORE THE NMI SETTLEMENT FUND
HEARING OFFICER**

**IN RE ADMINISTRATIVE APPEAL
OF**

ROSA A. CAMACHO,

Appellant.

NMISF Case No. 16-002

**EXCEPTIONS DECISION RE:
LIMITED DECISION AND ORDER
ON THE EFFECT OF OVERTIME
ON RETIREMENT BENEFITS**

On October 20, 2023, the Hearing Officer issued a decision entitled “Limited Decision and Order on the Effect of Overtime on Retirement Benefits” (“Decision”) in this matter. The parties jointly requested an extension of time to file Exceptions to the Decision to November 10, 2023, which was granted. The NMISF filed a transcript of the September 22, 2023 Hearing (“Transcript”), which was also made part of the administrative record.

Rule 6.7 of the NMISF Appeal Rules and Procedures (“NMISF Rules”)¹ provides that:

c) Within 14 days from the date the Hearing Officer issues his or her order or decision, the parties are entitled to submit for the Hearing Officer’s consideration, exceptions to the order or decision. The Hearing Officer shall issue a decision on the exceptions within thirty (30) days of the filing of the exceptions.

The NMISF filed Exceptions on November 10, 2023. The Hearing Officer held a status conference on November 14, 2023. Mrs. Camacho appeared with Attorney Jeanne H. Rayphand

¹ See ECF Document 731-14 in *Johnson v. Torres*, Civ. Case. No. 09-00023, United States District Court for the Northern Mariana Islands (Hon. Frances M. Tydingco-Gatewood, Designated Judge, Rule 4, Rule 6) (filed Nov. 13, 2015).

of the Northern Marianas Protection & Advocacy Systems, Inc. (“NMPASI”), and the Trustee of the NMISF, Attorney Joyce C.H. Tang (“Trustee”), appeared by NMISF in-house counsel, Attorney Nicole M. Torres-Ripple (singly a “Party,” all together with Mrs. Camacho, the “Parties”). The Parties, after discussion with the Hearing Officer, agreed that no further papers would be submitted regarding the Exceptions, and the Hearing Officer would resolve the filed Exceptions without further oral argument. Under Rule 6.7(d), the Hearing Officer shall show the ruling or decision on each exception.

SUMMARY OF EXCEPTIONS

The Hearing Officer’s Decision found that overtime (“OT”) should not have been included in the calculation of Mrs. Camacho’s post-retirement benefits. The Hearing Officer also found that Mrs. Camacho should not be recouped or required to reimburse the NMISF for any monies due to any readjustment of her benefits based on the expiration of the statute of limitations and the unfairness of requiring payment after such a large amount of elapsed time. The Hearing Officer finally found that the NMISF should properly adjust Mrs. Camacho’s benefit payments to reflect the correct calculation going forward from the date of the Decision.

The Exceptions raised by the NMISF center on the finding that the NMISF was barred from recouping the overpayment. In particular, NMISF argues: 1. The statute of limitations defense did not bar NMISF from recoupment under (a) the plain language of 1 CMC § 8390 and (b) the continuing claim doctrine; 2. Mrs. Camacho’s motion for stay tolled the NMISF’s adjustment and recoupment; and 3. The equitable doctrine of fairness should not have been considered *sua sponte*. These points will be addressed in order as presented by NMISF.

LEGAL STANDARD FOR CONSIDERATION OF EXCEPTIONS

The NMISF sets forth the legal standard for setting aside an administrative decision “if the decision results in clear error or manifest injustice,” citing generally *Baldwin v. United States*,

823 F. Supp. 2d 1087, 1097 n.11 (D. N. Mar. I. 2011), as “(acknowledging the standard for a motion for reconsideration of judgments: a court may grant a motion ‘on the basis of new evidence, an intervening change in controlling law, or clear error or manifest injustice’).” NMISF Exceptions, p. 2.

The Hearing Officer is appointed under the NMISF Rules, and the Rules provide for exceptions in a way that most appears to mirror a reconsideration motion before a court after a final judgment under Rule 59(e) or 60.² Given that the main difference between Rule 59(e) and 60 is not substantive- but mainly timing- it is not necessary to further parse the differences. See *Martinez v. United States*, No. CR 04-415 PA, 2018 WL 5801581, at *1 (C.D. Cal. June 8, 2018)(citing *Am. Ironworks & Erectors, Inc. v. N. Am. Const. Corp.*, 248 F.3d 892, 898–99 (9th Cir. 2001)). The NMISF Rules do not elaborate on the specifics involved in the consideration by the Hearing Officer of exceptions. That said, because the structure of the NMISF Rules were developed as part of a federal proceeding, the Hearing Officer agrees with the NMISF position citing federal precedent for guidance.³

Generally, the grounds to grant a Rule 59(e) motion are: “(1) if such motion is necessary to correct manifest errors of law or fact upon which the judgment rests; (2) if such motion is necessary to present newly discovered or previously unavailable evidence; (3) if such motion is necessary to prevent manifest injustice; or (4) if the amendment is justified by an intervening

² Courts also have the inherent power “to reconsider, rescind, or modify” their interlocutory orders, consistent with the Federal Rules of Civil Procedure Rule 54(b). *Baldwin v. U.S.*, 823 F.Supp.2d 1087, 1099 (D.N.Mar.I., 2011). See, *Pacific Rim Land Development, LLC v. Imperial Pacific International (CNMI), LLC*, 2022 WL 3587012, at *3 (D.N.Mar.I., 2022). Here, however, there would be no further proceedings outside of exceptions or an appeal to the Arbitrator, and so by its nature, the Hearing Officer’s consideration of exceptions appears more like a regular motion to reconsider a judgment. NMISF Rule 6.7(e), 7.

³ CNMI precedent, however, recognizes a substantially similar standard. See, e.g., *Triple J Saipan, Inc. v. Muna*, 2019 MP 8, ¶ 33. (“Justifiable grounds for reconsideration include an intervening change in the controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.”) (quote and citation omitted).

change in controlling law.” *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011)(quotations and citation omitted).

EXCEPTIONS

1(a). Section 8390 of the Retirement Fund Act Expressly Requires the Settlement Fund to Recoup Overpayments.

It appears there may have been a misapprehension of the holding in the Decision. The holding was not that the NMISF cannot collect or recoup under 1 CMC § 8390. Rather, the Hearing Officer held that it would be unfair to allow the NMISF to recoup in this case. Put differently, Mrs. Camacho asked for equitable (fairness) relief, and it was granted. Against this backdrop, the NMISF argues that it, generally, must recover under the law.

The Hearing Officer generally agrees and found that the Trustee “recovers overpayments administratively through an adjustment to future payments. 1 CMC 8390(a). In other words, the NMISF cannot continue to overpay going forward.” Decision, p. 27. There is no question that the NMISF has the right to collect or recoup as a general matter under 1 CMC § 8390. But there are instances in the CNMI where the courts, confronted with similar anomalous facts, invoke fairness to overcome the legal or general rule.

Looking at CNMI caselaw that dealt with unfairness, there is precedent under the statutory scheme for the courts to consider unfairness, despite the requirement of 1 CMC § 8390. The Decision holding is extremely narrow: in this particular case, the amount of time that passed, even considering the stay, resulted in unfairness. Decision, p. 24-28. The Decision cites *Bd. of Trustees of N. Mariana Islands Ret. Fund v. Ada*, 2012 MP 10, for the statute of limitations discussion. *Ada* was also cited to show CNMI precedent that, even if unfairness were found, the NMISF still had to collect under 1 CMC § 8390. The NMISF could not continue to pay a wrong

amount.⁴ Nothing about the Decision affects the NMISF's right under the statute generally to adjust and recoup.

1(b). The Continuing Claims Doctrine Applies.

The NMISF argues that it makes periodic payments, and this invokes the Continuing Claims Doctrine. This was argued previously and the continuing claims doctrine was addressed specifically in the Decision, p. 27, Footnote 14.⁵ The Hearing Officer fully reviewed the record and understands NMISF's argument that each payment for benefits was made on an installment basis. But "if there was only a single alleged wrong, even though the wrong caused later adverse effects, the continuing claim doctrine is not applicable." *Winnemucca Indian Colony v. United States*, 167 Fed. Cl. 396, 418 (2023), citing *Hart v. United States*, 910 F.2d 815 (Fed. Cir. 1990)(quotation and punctuation omitted). While each installment could be characterized as an

⁴ *Bd. of Trustees of N. Mariana Islands Ret. Fund v. Ada*, 2012 MP 10, ¶ 28 (N. Mar. I. Aug. 30, 2012) ("Because all parties acted in good faith, principles of reasonableness and fairness dictate that they are now prohibited from 'invok[ing] the aid of the courts to undo what they themselves had done.' (citations omitted) (internal quotations omitted). Stripping Fund members of their previously received bonuses at this late date would place those members in the untenable position of paying back funds which they received in good faith and upon which they may have reasonably relied. Moreover, recouping the bonuses from Fund members who in all likelihood have spent the money, relied on this income for their livelihood, were not complicit in the pay out of the funds, and relied in good faith on the validity of the enacted statute, would be unreasonable and unfair. This Court accordingly holds that the 3% bonus is void prospectively only and is not void ab initio. This holding permits Fund members who previously received the 3% bonus to retain it. However, persons who have not yet received the bonus, including Ada, are barred from receiving the bonus in the future.") The issue in *Ada* was that a member received a benefit that they should not have received, and it was received in good faith. Whether the mistake was due to an unconstitutional law or a misapplication in good faith of a constitutional law, the result is the same. In addition, while 1 CMC § 8390 was not cited specifically, the issue was whether the NMIRF could "recoup." *Ada*, 2012 MP 10, ¶ 20. (See Exceptions page 3, Fn. 2).

⁵ In *Bay Area Laundry & Dry Cleaning Pension Tr. Fund v. Ferbar Corp. of California*, 522 U.S. 192 (1997), cited by the NMISF (See Exceptions p. 5), the Court considered a federal statute that required employers who withdrew from underfunded multiemployer pension plans to continue to pay a withdrawal liability. *Bay Area Laundry*, 522 U.S. 192, 196. When the employer, Ferbar, withdrew from a pension plan that was created on behalf of laundry workers, it still had to pay going forward an amount under the statute called a "withdrawal liability." *Id.* In analyzing when the limitations period began to run, the court enunciated its precedent, that the statute of limitations would normally start to run when a plaintiff had a "complete and present cause of action," or was capable of filing suit and obtaining relief. *Id.* at 195. But in *Bay Area*, the federal statute created an installment obligation, so that each payment the employer was supposed to make to the pension fund started a new statute of limitations running. In other words, the pension fund was the "plaintiff" that was owed each installment that the employer did not pay on behalf of the beneficiaries of the pension fund. This situation where an employer knowingly withdrew from a pension fund and then did not remit statutorily required payments is different than the one here. In reviewing precedent in the CNMI, a jurisdiction that has its own interpretations and legal holdings, the Hearing Officer found support for the Decision.

independent and distinct event (as argued by the NMISF), they all might flow from the overtime issue as a single wrong. See “Report on CNMI Agencies’ Implementation of Audit Recommendations, As of December 31, 2012,” Report No. TR-12-02 (Pai, M., July 10, 2013), p. 66-67 (Attorney General stated that retirees should be advised of their right to appeal or the collection process must be undertaken). See Decision, p. 13. The Hearing Officer did not believe there was enough information to make that determination. Rather, due to the extraordinary time frames in this particular matter for this particular appeal, and given the circumstances of this appellant, applying the doctrine of fairness was appropriate and the discrete details of whether there could have been a continuing claim in this matter were not determined. See Decision, p. 27, Footnote 14.

2. Appellant’s Motion for Stay Tolloed Any Adjustment and/or Recoupment of Benefits in Favor of the Settlement Fund.

The NMISF states that the Hearing Officer misinterpreted Rule 5 of the NMISF Rules, citing to Rule 5(a), which reads: “The filing of the motion for stay shall automatically stay the decision until the motion is decided.” The Rules also state that “A stay of the decision requires ‘a showing of good cause, which shall consider the likelihood that the movant will prevail on the merits, the relative harm to each party interested in the proceeding, and the public interest if the stay is granted.’” Exceptions p. 8, Rule 5(c). Here, there was already a finding of good cause by NMISF on Mrs. Camacho’s behalf when it granted the stay, based on Mrs. Camacho’s declaration that she was “65 years, unemployed, and has serious health issues” and her joint marital tax return for 2016 showing a total income derived only from pensions, annuities and social security benefits. See Decision, p. 6. The Decision acknowledges and finds that Mrs. Camacho cannot rely on laches during the stay because she was aware of the dispute, yet still withheld the disputed amount for another seven years. Decision, p. 27. But at some point, even assuming no one was at fault (see Exceptions p. 9, FN6), the Hearing Officer did not believe it was fair, in this particular

case, to make Mrs. Camacho wait this length of time, even if she knew she were operating on a stay for seven years.

3. The Hearing Officer's Sue Sponte Application of Fairness Was Clearly Erroneous.

The equitable doctrine of fairness was not considered *sua sponte* but invoked after a review of Mrs. Camacho's papers. Mrs. Camacho's main brief, filed August 10, 2022, on page 4 (III), argued that "even if there were a mistake resulting in overpayment of benefits - which is disputed - it would be unjust to require repayment under the circumstances of this case." On page 15, Mrs. Camacho argues it would be "unjust to require Retiree to refund the alleged overpayment," and also cited to the Restatement (3d) of Restitution and Unjust Enrichment. In Mrs. Camacho's Summary Brief, filed August 13, 2023, par. 4 states that "Requiring payment would be unjust."

The word "unjust" was interpreted by the Hearing Officer to be synonymous with "unfair" as used by the CNMI judiciary in *Bd. of Trustees of N. Mariana Islands Ret. Fund v. Ada*, 2012 MP 10, ¶ 28. This interpretation is consonant with Black's Law Dictionary (11th ed. 2019) (UNJUST, "Contrary to justice; not fair or reasonable."). The Hearing Officer thus examined CNMI case law because the issue was appropriately raised by Mrs. Camacho. The Hearing Officer also raised the issue at the hearing and asked the NMISF if it believed that the Hearing Officer could make a finding about fairness. See Transcript, p. 46-49. The Hearing Officer did not have the benefit of the Transcript until after the Decision was issued, but it appeared that the NMISF would have liked to further address the fairness argument. The Hearing Officer offered the Parties the ability to further brief the fairness issue for the exceptions on November 14, 2023, but the Parties chose instead to move forward with no further briefing or argument.

Clearly, there is a legal disagreement about whether the *Ada* and *Cody* cases are distinguishable or how they should have been referenced or applied. The Hearing Officer read from *Ada* that the party to be charged with running of time should be the NMISF because it is

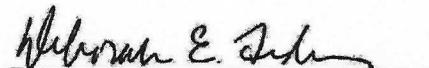
the claimant seeking to recoup. *Bd. of Trustees of N. Mariana Islands Ret. Fund v. Ada*, 2012 MP 10. See Decision, p. 26. The NMISF in its Exceptions argues that Mrs. Camacho “knew or should have known OT could not be used to compute benefits...” but the Hearing Officer did not believe it was appropriate to find that the burden of interpretation of a long-fought provision in good faith should be on an appellant/beneficiary. See *Bd. of Trustees of N. Mariana Islands Ret. Fund v. Ada*, 2012 MP 10, ¶ 28.

Cody was referenced in part because the Hearing Officer found it meaningful that the CNMI Supreme Court did not wish the NMISF’s predecessor to use an “indefinite timeframe to bury unfavorable claims in the administrative process and to stay the proceedings for an indefinite time.” *Cody v. N. Mar. I. Retirement Fund*, 2011 MP 16, ¶ 17. Decision, p. 29. This provided some direction to the Hearing Officer regarding how the CNMI courts may have considered approaching an appellant/beneficiary that time may disadvantage. But this in no way lays down any kind of rule. To the contrary, this Decision was made based on the specific facts presented in this case.

CONCLUSION

The Hearing Officer does not believe there are “manifest errors of law or fact,” “previously unavailable evidence” or a “manifest injustice” that have occurred or need to be corrected due to this Decision, which is narrowly tailored to this particular appellant. Accordingly, the motion for Exceptions is denied.

DATED: December 11, 2023


Deborah E. Fisher
Hearing Officer