

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

MERCHANTS MARKET, LLC,	)	
	)	
Petitioner,	)	
	)	
vs.	)	CASE NO. ST-16-CV-340
	)	
JUAN R. CRISTOBAL and GOVERNMENT OF	)	
THE VIRGIN ISLANDS,	)	
	)	
Respondents.	)	

MEMORANDUM OPINION

Pending before the Court is Petitioner Merchants Market, LLC,'s appeal of a final order issued by the Commissioner for the Department of Labor. For the following reasons, the Commissioner's order will be reversed, and this case will be remanded for further proceedings consistent with this Opinion.

FACTUAL AND PROCEDURAL HISTORY

Petitioner hired Respondent Juan Cristobal on January 13, 2006, and terminated him on September 16, 2015, for acts of insubordination.¹ Cristobal filed a wrongful discharge action on October 6, 2015, and an ALJ for the Department of Labor scheduled a pre-hearing conference on December 29, 2015.² A representative for Petitioner did not

¹ Petitioner alleges that Cristobal threatened his superiors and used verbally abusive language. See motion to reconsider, at page 2.

² The order for the pre-hearing conference stated that "pre-hearing conference will convene, if necessary, at the conclusion of the Preliminary Hearing, and will address 1) Identification of documentary or other physical evidence, disposing of questions of authenticity; 2) Stipulations of the admission of evidentiary documents to avoid necessary proof; 3) Stipulations to facts that are not contested by the parties; 4) Identification of witnesses and reduction of number, if warranted; 5) Simplification and reduction of issues, if relevant; 6) Consideration of any other matters that will aid in the expeditious conduct of the hearing."

appear at the pre-hearing conference, and the ALJ entered a default judgment against Petitioner on December 30, 2015. Petitioner filed a motion to reconsider and vacate the default judgment on January 7, 2016, which the Commissioner of Labor denied in a final order dated May 18, 2016.

Petitioner filed a Petition for Writ of Review with this Court on June 16, 2016, which this Court granted on June 20, 2016.

STANDARD

The Appellate Division of the Superior Court has jurisdiction over this matter pursuant to 24 V.I.C. § 70, which establishes that:

Any person aggrieved by a final order of the Commissioner granting or denying in whole or in part the relief sought may obtain a review of such order by filing in the Superior Court or the District Court, within 30 days of its issuance, a written petition praying that such decision of the Commissioner be modified or set aside.

The Court reviews the Commissioner's factual determinations under the "substantial evidence rule"³ and legal findings are "afforded plenary review."⁴ In addition, the Court

³ 24 V.I.C. § 70(b). See also *Tip Top Constr. v. Dep't of Prop. & Procurement*, 1999 V.I. LEXIS 23, *14-15, 41 V.I. 72, 80, 1999 WL 603818 (V.I. Terr. Ct. 1999) ("When authorized to do so, the Court reviews administrative determinations under the substantial evidence rule. Under th[is] rule, a decision by an administrative agency or by an administrator, will not be set aside if it is based upon such relevant evidence as a reasonable mind might accept as adequate to support a conclusion"); see also *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (Substantial evidence has been defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion"); *Villafane v. Bryan*, 2001 V.I. LEXIS 8, *13, 43 V.I. 149, 156, 2001 WL 883557 (V.I. Terr. Ct. 2001) ("the court's task is to determine ... whether the agency's findings are supported by substantial evidence on the record"); *Perry v. Government Employees Service Commission*, 1981 U.S. Dist. LEXIS 9338, 18 V.I. 524 (D.C.V.I. 1981); *Port Norris Exp. Co., Inc. v. I.C.C.*, 697 F. 2d 497 (3rd Cir. 1982) (the possibility of drawing two inconsistent conclusions does not prevent an administrative agency's findings from being supported by substantial evidence).

⁴ See *Bryan v. Fawkes*, 61 V.I. 201, 226, 2014 V.I. Supreme LEXIS 42, *36 (V.I. 2014) ("when reviewing a territorial administrative agency's decision, 'we exercise plenary review over any issue of law'" (quoting *Prosser v. Public Servs. Comm'n of the U.S.V.I.*, 56 V.I. 391, 401 (V.I. 2012))). See also *Williams-Jackson v. Pub. Emps. Relations Bd.*, 52 V.I. 445, 450 (V.I. 2009); *V.I. Pub. Servs. Comm'n v. V.I. Water & Power Auth.*, 49 V.I. 478, 483 (V.I. 2008) (applying plenary standard of review to resolve jurisdictional dispute between

examines whether the hearing officer “abused his discretion and acted arbitrarily and capriciously.”⁵

ANALYSIS

In denying Petitioner’s motion, the Commissioner relied on 24 V.I. Rules and Regulations § 77-71, which provides that:

within seven (7) days of service of the recommended order or the Commissioner’s final order ... any party aggrieved thereby may petition the Commissioner for reconsideration. ... The Commissioner may designate the Hearing Officer who presided over the hearing or another Hearing Officer to review the Motion for Reconsideration. Motions for Reconsideration will be considered only where based on 1) newly discovered evidence which in the exercise of due diligence could not have been discovered prior to the hearing and which is not merely cumulative and which would probably lead to judgment in the movant’s favor or 2) other extraordinary circumstances justifying relief from operation of judgment.

The Commissioner concluded that Petitioner did not present any new evidence justifying relief from judgment and that Petitioner’s failure to appear “was the result of simple negligence ... devoid of any ‘extraordinary circumstances.’”⁶

The Court finds that 24 V.I. R&R § 77-71 is ill suited to address a request to vacate a default judgment. For instance, 24 V.I. R&R § 77-71 considers motions “based on ... newly discovered evidence which in the exercise of due diligence could not have been discovered prior to the hearing.” However, a party seeking relief from default judgment has not had the opportunity to present any evidence at a hearing.

two Virgin Islands administrative agencies). “Plenary review means applying the same legal standard as the trial court to the same record.” *Henry v. Denney*, 55 V.I. 986, 991 (V.I. 2011).

⁵ *Gov’t of the V.I. v. Mt Retailers*, 1995 V.I. LEXIS 6, *24, 31 V.I. 62, 76 (V.I. Terr. Ct. 1995) (the “Court can set aside the Order if the Hearing Officer has abused his discretion and acted arbitrarily and capriciously”).

⁶ Order of the Commissioner, at page 2.

For this reason, a motion for reconsideration and a motion for relief from default judgment are evaluated under different standards in judicial proceedings. For example, under LRCi 7.3, “a motion to reconsider shall be based on: (1) intervening change in controlling law; (2) availability of new evidence, or; (3) the need to correct clear error or prevent manifest injustice.” Conversely, a default judgment may be set aside under Fed. R. Civ. P. 60(b).⁷ In “determining whether to vacate a default judgment under Rule 60(b), the court must consider whether vacating the judgment will prejudice the plaintiff, whether the defendant has a meritorious defense, and whether the default judgment was a result of the defendant's culpable or inexcusable conduct.”⁸

To be sure, the “Federal Rules of Civil Procedure do not apply to administrative proceedings.”⁹ However, as a general rule, administrative proceedings must be conducted so as to achieve “substantial justice.”¹⁰

⁷ Fed. R. Civ. P. 55(c).

⁸ *Malpere v. Malpere*, 2004 V.I. LEXIS 16, *6, 46 V.I. 118, 123, 2004 WL 3104826 (V.I. Terr. Ct. 2004). See also *Spencer v. Navarro*, 2009 V.I. Supreme LEXIS 25, *3.

⁹ *Kelley v. Gov't of the Virgin Islands*, 59 V.I. 742, 745-746, 2013 V.I. Supreme LEXIS 59, *6-8, 2013 WL 5211949 (VI. 2013).

¹⁰ See, e.g., *King v. Industrial Comm'n*, 771 P.2d 891, 894, 1989 Ariz. App. LEXIS 95, *8-9 (Ariz. Ct. App. 1989) (“Although the administrative law judge is not bound by the rules that govern judicial proceedings, administrative proceedings must be conducted so as to achieve substantial justice”); *1411 North State Condo. Ass'n v. Ill. Prop. Tax Appeal Bd.*, 2016 IL App (1st) 143757, P1, 2016 Ill. App. LEXIS 899, *1 (Ill. App. Ct. 1st Dist. 2016) (“The Illinois Property Tax Appeal Board Rules expressly require that each hearing shall be conducted in a manner best calculated to conform to substantial justice”); *Rivera v. Workers' Comp. Appeals Bd.*, 190 Cal. App. 3d 1452, 1456, 236 Cal. Rptr. 28, 30-31, 1987 Cal. App. LEXIS 1554, *8-9, (Cal. App. 2d Dist. 1987) (“The California Constitution ... mandates that the Board, in determining disputes, ... shall accomplish substantial justice in all cases expeditiously ... and without incumbrance of any character ...”); *Y Downtown, Inc. v. Westport Conservation Comm'n*, 2010 Conn. Super. LEXIS 1876, *5-6, 2010 WL 3259888 (Conn. Super. Ct. July 20, 2010) (“our courts have given administrative agencies great latitude. Although the requirements of substantial justice must be followed, strict and technical rules of procedure need not be enforced”); *Cedar Rapids Human Rights Com. v. Cedar Rapids Community School Dist.*, 222 N.W.2d 391, 402, 1974 Iowa Sup. LEXIS 1129, *33 (Iowa 1974) (“administrative bodies are required to adopt a procedure which accords with substantial justice and affords the parties a fair opportunity to be apprised of what they are to meet, but the same accuracy of procedure is not required as in courts of records. Other courts have stated the hearing must be conducted in such a way so as to

The Supreme Court of the Virgin Islands has discussed the doctrine of substantial justice in the context of reviewing a motion to set aside a default judgment. In *Spencer v. Navarro*, the small claims court had considered only one prong of the three factor test to set aside a default judgment under Fed. R. Civ. P. 60(b). While noting that “the tripartite test” serves “more as a guideline” for the small claims court, “rather than a strict rule of law,” the Supreme Court noted that “substantial justice contemplates more than the interests of the defendant in asserting her defense at a trial on the merits ... [and] substantial justice also contemplates the plaintiff’s interests.”¹¹ The Supreme Court also stated that “the preference is to decide cases on their merits,...any doubts should be resolved in favor of this preference, and...the goal of the Small Claims Division is to deliver substantial justice.”¹²

This Court construes *Spencer v. Navarro* to import that the tripartite test is a vital tool for the small claims court to achieve substantial justice in a small claims proceeding. Moreover, while the entire tripartite test may be a “guideline,” two of the three factors of the test – whether vacating the judgment will prejudice the plaintiff and whether the defendant has a meritorious defense—must be considered by the small claims court.

safeguard the rights of interested parties”); *SAIF Corp. v. Mir Iliaifar (In re Mir Iliaifar)* 174 P.3d 1055, 1057-1058, 2007 Ore. App. LEXIS 1823, *7-8 (Or. Ct. App. 2007) (“unless the Workers’ Compensation Law or the rules of procedure established by the board provide otherwise, the ALJ is not bound by rules of evidence and ‘may conduct the hearing in any manner that will achieve substantial justice’”); *Maddocks v. Contributory Retirement Appeal Board*, 340 N.E.2d 503, 509, 1976 Mass. LEXIS 853, *18 (Mass. 1976) (“We have held in several cases that unless the admission or exclusion of evidence at an administrative hearing resulted in a denial of substantial justice, a party claiming to be aggrieved by such action has no valid complaint”).

¹¹ *Spencer v. Navarro*, 2009 V.I. Supreme LEXIS 25, *8-9, 2009 WL 1078144 (VI. 2009).

¹² *Id.*

Given that substantial justice should be effectuated both in a small claims proceeding and in an administrative proceeding, this Court finds reason to extend the logic and holding of *Spencer v. Navarro* to apply to administrative proceedings.

Moreover, this Court will go a step further. Considering the wide spread use and approval of the tripartite test in judicial proceedings,¹³ there is not a reasonable basis to reduce the test to a two factor test. Whether the default judgment was a result of the defendant's culpable or inexcusable conduct is an important issue for the administrative judge to consider to achieve substantial justice. Consequently, the Court concludes that an ALJ must conduct an analysis using the tripartite test when reviewing a motion to set aside a default judgment in an administrative proceeding.

The Commissioner's final order touches on the third prong of the tripartite test, concluding that Petitioner's failure to appear amounted to simple negligence. However, it remains to be determined whether Petitioner's negligence, or neglect, was excusable. Moreover, the Commissioner must also make findings of fact concerning whether Petitioner has a meritorious defense and whether Respondent Cristobal would be prejudiced if the default judgment is vacated. And, when weighing these factors, the Commissioner must keep in mind that "the preference is to decide cases on their merits [and] any doubts should be resolved in favor of this preference."

¹³ The tripartite test is the standard in federal proceedings and has been adopted in many states. See, e.g., *Jones v. Nat'l Warranty Serv.*, 2013 Kan. App. Unpub. LEXIS 664, *4, 303 P.3d 1278, 2013 WL 3867863 (Kan. Ct. App. 2013); *Christiana Mall, LLC v. Emory Hill & Co.*, 90 A.3d 1087, 1091, 2014 Del. LEXIS 175, *10 (Del. 2014); *McClurg v. Deaton*, 380 S.C. 563, 574, 671 S.E.2d 87, 93, 2008 S.C. App. LEXIS 218, *14 (S.C. Ct. App. 2008); *Bowers v. Gutterguard of Tenn., Inc.*, 2003 Tenn. App. LEXIS 971, *1, 2003 WL 22994302 (Tenn. Ct. App. Dec. 17, 2003).

As a result, the Commissioner's final order will be reversed, and this matter will be remanded for further proceedings consistent with this Opinion.

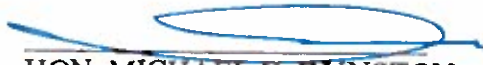
An Order consistent with this Opinion shall follow.

Dated: March 24, 2017

ATTEST: Estrella George
Clerk of Court

by Donna D. Donovan
Donna D. Donovan
Court Clerk Supervisor

3/28/2017


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

A CERTIFIED TRUE COPY
DATE 3/29/2017
ESTRELLA H. GEORGE
CLERK OF THE COURT
Latoya A. Camacho
BY: LATOYA A. CAMACHO
COURT CLERK II