

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

MARSHA JAGRUP,

Petitioner,

v.

**JUAN F. LUIS HOSPITAL & MEDICAL CENTER
and COMMISSIONER OF THE VIRGIN ISLANDS
DEPARTMENT OF LABOR,**

Respondents.

CASE NO. SX-16-CV-068

**PETITION FOR
JUDICIAL REVIEW**

MEMORANDUM OPINION

MOLLOY, Judge.

THIS MATTER comes before the Court on a Motion to Dismiss filed on May 2, 2017, by Respondent, Government of the Virgin Islands – Department of Labor (“DOL”). The DOL seeks a dismissal of the petition due to Petitioner’s failure to prosecute pursuant to Federal Rules of Civil Procedure 41(b). Petitioner, Marsha Jagrup (“Jagrup”), filed a response on May 11, 2017. For the reasons stated below, the Court will deny the motion to dismiss without prejudice.

I. PROCEDURAL BACKGROUND

On February 12, 2016, Jagrup filed a Petition for Judicial Review requesting that the Court review the DOL’s decision to deny her unemployment benefits in the matter styled *Marsha Jagrup v. JFLH*, Appeal No. 003-02-2016. On March 23, 2016, Respondent Juan F. Luis Hospital & Medical Center (“JFL”) filed a Motion to Dismiss for Lack of Jurisdiction due to Jagrup’s counsel’s failure to attach an attorney’s certificate in compliance with Rule 15 of the Rules of the Superior Court. After receiving an extension, Jagrup filed a response to JFL

motion on May 2, 2016. On May 26, 2016, the Court issued an Order denying JFL's motion based on the Virgin Islands Supreme Court's decision in *Bryan v. Ponce*, 51 V.I. 239 (V.I. 2009), ruling that "Superior Court Rule 15(a)'s attorney certificate requirement is superfluous given the applicability of Federal Rule 11(b) to pleadings, motions and other papers filed in the Superior Court of the Virgin Islands." *Id.* at 250. Consequently, "the failure to file an attorney's certificate shall not prevent the maintenance of any petition for writ of review in the Superior Court duly signed, given the requirements imposed by Federal Rule of Civil Procedure 11." *Id.*

After disposing of JFL's dismissal motion, the Court issued another Order granting Jagrup's request that the Court review the DOL's decision. *See* Order Granting Petition for Judicial Review dated May 26, 2016. In that same Order, the Court established a briefing schedule whereby the Commissioner of the DOL would file and serve a certified copy of the record of the proceedings on or before July 1, 2016. Thereafter, Petitioner would file and serve Petitioner's Brief within thirty (30) days after the filing and service of the certified copy of the record of the proceedings. JFL and the DOL would then have thirty (30) days to file and serve Respondents' Brief. The Order contains a statement that "if Petitioner fails to file a brief within the time provided in this Order, or within the time extended by the Court, the respondents may move for dismissal of the petition." *Id.* at 3.

The DOL now moves for a dismissal of the petition due to Jagrup's failure to take any action since the filing and service of the certified record of the unemployment benefit proceedings that occurred before the Department of Labor.

II. DISCUSSION

On May 2, 2017, DOL filed the instant motion to dismiss requesting that the Court dismiss the petition due to Jagrup's failure to prosecute. DOL cites to Federal Rules of Civil Procedure 41(b) in support of its motion. However, on January 18, 2017, the Supreme Court of the Virgin Islands promulgated the Virgin Islands Rules of Civil Procedure. These rules officially went into effect on March 31, 2017. *See In re: Adoption of the V.I. Rules of Civil Procedure*, Promulgation No. 2017-001, 2017 V.I. Supreme LEXIS 22 (V.I. Apr. 3, 2017). Pursuant to Rule 1, "[t]hese rules govern the practice and procedure in all civil actions and proceedings in the Superior Court of the Virgin Islands . . . except as otherwise stated in these rules, or other rules promulgated by the Supreme Court, and except as otherwise provided by law." V.I. R. Civ. P. 1. Accordingly, unless an exception applies, as of March 31, 2017, the Federal Rules of Civil Procedure no longer serve as the operative rules of procedure for matters pending in the Superior Court.

DOL argues that the Court should dismiss Jagrup's petition because she has failed to take any action in this case since the filing of the certified record of the proceedings. Specifically, DOL contends that "a complete copy of the record including transcripts were served upon Petitioner on March 27, 2017 and the certified mail receipt was signed by the Petitioner on March 31, 2017." DOL's Mot. to Dismiss at 1. The DOL further stated that "[t]here has been no action taken by the Petitioner since the filings." *Id.* The DOL makes no other arguments in support of its motion to dismiss.

A motion to dismiss for failure to prosecute is governed by Rule 41(b) of the Virgin Islands Rules of Civil Procedure. This rule provides that "[i]f the plaintiff fails to prosecute or

to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it.” V.I. R. Civ. P. 41(b). Before the Court can dismiss a case for failure to prosecute, the Court must consider the following six factors: (1) the extent of the party’s personal responsibility; (2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a history of dilatoriness; 4) whether the conduct of the party or the attorney was willful or in bad faith; and (5) the effectiveness of other sanctions other than dismissal, which entails an analysis of alternative sanctions; and (6) the meritoriness of the claim or defense. *Halliday v. Footlocker Specialty, Inc.*, 53 V.I. 505 (V.I. 2010). “Although a trial court is not required to find that all the factors weigh in favor of dismissal to warrant dismissal of the claim, the court must explicitly consider all six factors, balance them, and make express findings.” *Molloy v. Independence Blue Cross*, 56 V.I. 155, 186 (V.I. 2012). Moreover, “the Superior Court may not dismiss an action for failure to prosecute unless these six factors strongly weigh in favor of dismissal as a sanction.” *Id.* at 511. *Halliday*, 53 V.I. at 511.

Here, the DOL premises its motion to dismiss on the basis that Jagrup has not taken any action since the filing of the record of proceedings. This Court’s May 26, 2016 Order clearly directed Jagrup to file her Petitioner’s Brief within thirty days of filing and service of the certified record of the proceedings. Jagrup does not dispute that she was served with a copy of the record of the proceedings on March 27, 2017. Thus, Jagrup was required to file a Petitioner’s Brief on or about April 26, 2017. Jagrup did not do so. While the Order does indicate that DOL may move for a dismissal of the petition if Jagrup failed to file a brief within the time provided, a party’s failure to comply with scheduling orders is but one factor in the

Halliday six factor test. DOL does not indicate how it was prejudiced by Jagrup's failure to comply with the briefing schedule. More importantly, the DOL submitted no arguments on any of the other *Halliday* factors. Undoubtedly, it is a litigant's responsibility to submit legal arguments in support of its position. DOL's failure to submit legal arguments on the remaining *Halliday* factors precludes this Court from fully adjudicating DOL's request to have the petition dismissed for failure to prosecute. The Court will decline to *sua sponte* review the record to determine whether the DOL is entitled to its requested judicial relief. Accordingly, the Court will summarily deny DOL's motion.

Notwithstanding this Court's decision to deny the DOL's motion to dismiss, the Court will require Jagrup to show cause why it should extend the time for her to file a brief in support of her petition for judicial review. Despite being served with a copy of the record of proceedings, Jagrup has yet to file a Petitioner's brief as directed by the Court's May 26, 2016 Order. It appears that Jagrup is under the mistaken belief that JFL's Motion to Dismiss for Lack of Subject Matter Jurisdiction, filed on March 23, 2016, is still outstanding. *See* Pet.'s Response at 2 ("DOL moved to dismiss claiming former counsel failed to attach a declaration of counsel. Petitioner promptly responded to that motion to dismiss. Defendant has chosen not to oppose Petitioner's request for judicial review on the merits and therefore, there has been no action for Petitioner to take, other than to await the decision of this Court regarding her Petition for Judicial Review.") This Court, however, has in fact ruled on JFL's dismissal motion. *See* Order dated May 26, 2016. Furthermore, as noted above, the Court issued an Order granting the petition for judicial review and issued a briefing schedule. Thus, it is unclear to the Court why Jagrup maintains that she is under no obligation to move this case

forward. Nonetheless, the Court will require Jagrup to show cause why it should permit her an extension to file her brief notwithstanding her noncompliance with this Court's scheduling order.

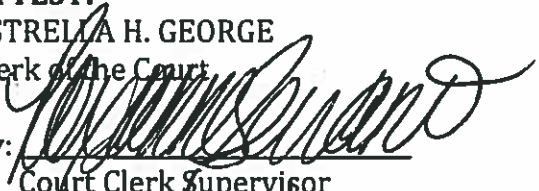
III. CONCLUSION

For the reasons stated above, the Court will deny DOL's motion to dismiss for failure to prosecute. The Court, however, will direct Jagrup to show cause why the Court should extend the time for her to file a brief in support of her petition for judicial review. An appropriate order follows.

Date: June 20, 2017

ATTEST:

ESTRELLA H. GEORGE
Clerk of the Court

By: 

Court Clerk Supervisor

Dated: 6/21/17

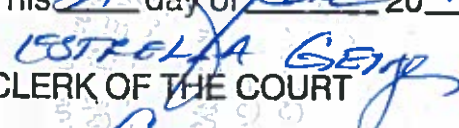


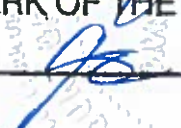
ROBERT A. MOLLOY

Judge of the Superior Court

CERTIFIED TO BE A TRUE COPY

This 21 day of June 20 17


CLERK OF THE COURT

By  Court Clerk