

FSM SUPREME COURT TRIAL DIVISION

JENAVIVE NETH, a minor through BURDENCIO	)	CIVIL ACTION NO. 2013-006
ANDREAS, next of kin,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
FEDERATED STATES OF MICRONESIA SOCIAL	)	
SECURITY ADMINISTRATION,	)	
	)	
Defendant.	)	
_____	)	

ORDER

Beauleen Carl-Worswick  
Associate Justice

Hearing: November 20, 2014  
Decided: January 23, 2015

APPEARANCES:

For the Plaintiff: Salomon M. Saimon, Esq.  
Micronesian Legal Services Corporation  
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Kolonias, Pohnpei FM 96941

For the Defendant: Stephen V. Finnen, Esq.  
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HEADNOTES

Administrative Law

A quorum is defined as the minimum number of members who must be present for a deliberative assembly to legally transact business. Neth v. FSM Social Sec. Admin., 19 FSM R. 639, 642 (Pon. 2015).

Administrative Law

The commonly recognized definition of a quorum is that it is such a number of a body as is competent to transact business in the absence of the other members. Neth v. FSM Social Sec. Admin., 19 FSM R. 639, 642 (Pon. 2015).

Separation of Powers – Legislative Powers

A majority of the Congress members constitutes a quorum for the transaction of business. Neth v. FSM Social Sec. Admin., 19 FSM R. 639, 642 (Pon. 2015).

Administrative Law; Social Security

When three of the five appointed Social Security Board members are present this constitutes a valid quorum or a simple majority, and when, in adding the *ex officio* administrator, four out of the six total members are in attendance, it gives the Board valid authority to transact business. Neth v. FSM Social Sec. Admin., 19 FSM R. 639, 643 (Pon. 2015).

Administrative Law; Social Security

The Social Security Board is competent to execute its duties and responsibilities with the absence of two of the total five members. Neth v. FSM Social Sec. Admin., 19 FSM R. 639, 643 (Pon. 2015).

Social Security

The FSM social security program's purpose is to provide a means whereby employees may be ensured a measure of financial security in their old age and be given an opportunity for leisure without hardship and complete loss of income, and, further, to provide survivors' insurance for wage earners and their dependents. It is funded by joint contributions from employers and employees. Neth v. FSM Social Sec. Admin., 19 FSM R. 639, 643 (Pon. 2015).

Social Security

Social Security's public purpose is to provide for retirees, their dependents, and their surviving spouses and dependents. Neth v. FSM Social Sec. Admin., 19 FSM R. 639, 643 (Pon. 2015).

Separation of Powers – Executive Powers; Separation of Powers – Legislative Powers; Social Security

The power to appoint and confirm members of the Social Security Board is vested in the national government's Executive and Legislative branches. To halt the Board's function when all vacancies are not filled would adversely affect the Social Security's function as a whole, and would be detrimental to the livelihood of social security benefit recipients. Neth v. FSM Social Sec. Admin., 19 FSM R. 639, 643 (Pon. 2015).

Administrative Law; Social Security

When three members are present along with the Administrator, the Social Security Board is competent to transact business. Neth v. FSM Social Sec. Admin., 19 FSM R. 639, 643 (Pon. 2015).

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## COURT'S OPINION

BEAULEEN CARL-WORSWICK, Associate Justice:

## I. BACKGROUND

A Summons and Petition to Appeal Final Decision of Board and Civil Rights Violations and Complaint for Declaratory Relief in this matter was filed on March 11, 2013 by the plaintiff, Jenavive Neth, a minor through Burdencio Andreas (collectively as Neth), through the Micronesian Legal Services Corporation (MLSC). On March 28, 2013, the defendant, Federated States of Micronesia Social Security Administration (FSMSSA), filed an Answer.

A Status Conference was held on October 1, 2013, where jurisdictional issues under 53 F.S.M.C. 708 were raised. FSMSSA questioned whether the court has the ability to hear legal claims prior to a final determination by the FSMSSA Board (Board). Plaintiff responded that the court has a narrow exception triggered by potential due process violations, specifically, that the delegation of the factual investigation to a subcommittee composed of only one or two persons could be resulting in

predetermination, thus, the court could find that requirements for subject matter jurisdiction were met, notwithstanding the absence of a final determination by the Board. As a result of the hearing, the court instructed the parties to brief the issue of jurisdiction.

On October 25, 2014, Neth filed a Brief on Board Meeting, requesting that this matter be remanded to the Board because of a lack of quorum when considering Neth's appeal. The FSMSSA filed an Opposition to Motion on November 1, 2013.

A hearing on the submissions by the parties was held on November 20, 2014. Salomon Saimon, Esq., appeared on behalf of Neth, and appearing on behalf of the FSMSSA was Steven V. Finnen, Esq. Neth was not present during the hearing. Based on the filings and the evidence as presented during the hearing, the court denies Neth's motion to remand.

## II. FACTS

Ati Neth, deceased, was a wage earner who made contributions to the FSMSSA. Neth applied to the FSMSSA to receive benefits as an adopted child of Ati Neth, but the application was denied. Neth filed an appeal to the Board for denial of benefits based on adoption.<sup>1</sup> A Board meeting was held on August 11, 2012 in Chuuk, where Chairman Rose Nakanaga established a sub-committee to hear Neth's appeal and make a recommendation to be considered for final determination by the Board. Board members Innocente Oneisom and Gillian Doone, along with FSMSSA Administrator Alexander Narruhn, were appointed as members of this sub-committee. Minutes of August 11, 2012 meeting, para. 4.

On December 18, 2012, Chairman Nakanaga, issued Board Resolution No. 2012-15, which, based on the findings and recommendation of the sub-committee, upheld the decision to deny Neth's claim.<sup>2</sup> The Summons and Petition in this action was subsequently filed on March 11, 2013.

On October 29, 2013, Neth submitted a brief, arguing that the Board lacked a quorum and authority to transact business in regards to the appeal. Neth cites New Process Steel L.P. v. National Labor Relations Bd., 560 U.S. 674, 130 S. Ct. 2635, 177 L. Ed. 2d 162 (2010), where the United States Supreme Court held that a delegee group of NLRB could not continue to exercise its delegated authority once the group's and the NLRB's membership fell to two, abrogating Northeastern Land Servs., Ltd. v. National Labor Relations Bd., 560 F. 3d 36 (1st Cir. 2009); Snell Island SNF LLC v. National Labor Relations Bd., 568 F.3d 410, 424 (2d Cir. 2009); Narricot Indus. L.P. v. National Labor Relations Bd., 587 F.3d 654 (4th Cir. 2009); Teamsters Local Union No. 523 v. National Labor Relations Bd., 590 F.3d 849 (10th Cir. 2009); Photo-Sonics, Inc. v. National Labor Relations Bd., 678 F.2d 121 (9th Cir. 1982). *Id.* FSMSSA filed its response on November 1, 2013, claiming that New Process Steel does not apply to the current matter because the facts are different.

## II. DISCUSSION

### *Quorum*

53 F.S.M.C. 701 establishes the Board for the FSMSSA, which comprises of a total of six (6) members. Specifically, this section states

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<sup>1</sup> No documents were submitted to the court regarding the legal adoption of the plaintiff by Ati Neth.

<sup>2</sup> The affidavit of Alexander Narruhn, attached to the defendant's brief, states that Narruhn did not vote on the final decision on the appeal because it was based on his original decision.

There is created a Federated States of Micronesia Social Security Board of *five members* nominated by the President and confirmed by the Congress of the Federated States of Micronesia to operate the Social Security Program authorized by this subtitle. Nominations to the Board shall take into account the need to have adequate geographical representation and to have representatives from public and private sector employers and employees. Members of the Board shall serve three year terms, and the Board shall provide for its own organization and procedure. Any vacancies on the Board shall be filled for the unexpired term only. Where a vacancy is for one year or less, it shall be filled by appointment by the President, otherwise vacancies shall be filled by nomination by the President and confirmation by the Congress. *The Social Security Administrator shall be an ex officio member of the Board.* Members of the Board who are not State or National Government employees shall be paid at the rate of \$30 per day and necessary travel expenses when actually attending meetings of the Board.

(emphasis added).

Because the definition of a quorum to transact business is not defined under Title 53, we look to other sources for guidance. A quorum is defined as "The minimum number of members (usu. a majority of all the members) who must be present for a deliberative assembly to legally transact business." BLACK'S LAW DICTIONARY 1284 (8th ed. 2004).

The commonly recognized definition of a quorum is that it is such a number of a body as is competent to transact business in the absence of the other members. Slush v. Patterson, 29 So. 2d 311, 311 (Miss. 1947); Hewes v. Langston, 853 So. 2d 1237, 1241 (Miss. 2003); Hagelstein v. Swift-Eckrich Div. of ConAgra, 597 N.W.2d 394, 401 (Neb. 1999).

In looking at authorities within the FSM, Rule 3 of the Official Rules and Procedure of the Congress of the FSM states "A majority of the Members shall constitute a quorum for the transaction of business."<sup>3</sup> This Rule is in accordance with FSM Const. art. IX, § 18, which states "A majority of the members is a quorum, but a smaller number may adjourn from day to day and compel the attendance of absent members." *Id.*

Here, the minutes of the Board meeting on August 11, 2012 shows that present were Chairman Rose Nakanaga, Vice Chairman Innocente Oneisom, Board member Gillian Doone and Administrator

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<sup>3</sup> Rule 3 in its entirety states:

QUORUM AND ATTENDANCE: A majority of the Members shall constitute a quorum for the transaction of business. A majority of less than a quorum shall have the power to compel the attendance of absent Members and to adjourn from day to day. For the opening day of session, at least one Member from each of the four States shall be included in the initial quorum unless sufficient notice was given to permit the attendance of the Members absent and they do not answer to the quorum count. The Speaker may declare the Congress adjourned if no quorum is present at the hour of opening. For purposes of ascertaining whether a quorum exists, the Speaker shall count the Member present. During a meeting of the Congress, any Member may call upon the Speaker to determine whether a quorum exists or not, and the Speaker shall so determine and announce his finding. A Member shall not be absent unless he has leave of the Speaker, subject to appeal to the Congress. The name of a Member not present to answer to a quorum count, and not excused by the Speaker, shall be noted on the Journal as absent.

Narruhn as an ex officio member.<sup>4</sup> Because three (3) of the five (5) appointed members under 53 F.S.M.C. 701 were present, this would constitute a valid quorum, or a simple majority, based on the authorities cited *supra*. In adding Narruhn, four (4) out of the six (6) total members were in attendance, which gives the Board valid authority to transact business on behalf of the FSMSSA.

In the U.S. authorities cited, a quorum is a number of the members present that is competent to transact business in the absence of other members. See Slush v. Patterson, 29 So. 2d 311, 311 (Miss. 1947); Hewes v. Langston, 853 So. 2d 1237, 1241 (Miss. 2003); Hagelstein v. Swift-Eckrich Div. of ConAgra, 597 N.W.2d 394, 401 (Neb. 1999). Here, a Board meeting was held where the Chairman created a subcommittee to consider Neth's appeal and make a recommendation. The subcommittee, after considering the appeal, made a recommendation to the Board, which resulted in a final determination upholding the decision to deny Neth's claim. There is no evidence that the configuration of the Board was not competent to execute the duties and responsibilities of the Board, with the absence of two (2) of the total five (5) members.

### *Public Policy*

During the hearing, the defendant argued that the Board transacted business without five (5) members as a matter of public policy in order to not disrupt the services that need to be provided to Social Security beneficiaries. Specifically, the three (3) members that were present were capable and competent to perform the functions of the Board to ensure that the FSMSSA's duty to the general public was not interrupted. The court finds this argument with merit.

The FSM social security program's purpose is to provide a means whereby employees may be ensured a measure of financial security in their old age and be given an opportunity for leisure without hardship and complete loss of income, and, further, to provide survivors' insurance for wage earners and their dependents. 53 F.S.M.C. 602. The program is funded by joint contributions from employers and employees. FSM Social Sec. Admin. v. Weilbacher, 7 FSM Intrm. 137, 141 (Pon. 1995). Social Security's lofty public purpose is to provide for retirees, their dependents, and their surviving spouses and dependents. In re Engichy, 12 FSM Intrm. 58, 65 (Chk. 2003).

Here, the power to appoint and confirm members of the Board is vested in the Executive and Legislative branches of the national government under 53 F.S.M.C. 701. During the period in question in this matter, there were two (2) vacancies waiting to undergo the appointment and confirmation process. The court realizes that this process may be lengthy, and there may be vacancies for extended periods of time. To halt the function of the Board when all vacancies are not filled would adversely affect the function of the FSMSSA as a whole, and would be detrimental to the livelihood of social security benefit recipients, the very same people this program was intended to serve and protect.

The outcome of this matter may have been different if there were three (3) vacancies, which would result in not having a quorum or simple majority. However, as supported by the facts in this case, the court's finds that the three (3) members present, along with the FSMSSA Administrator, were competent in transacting business of the Board.

### III. CONCLUSION

The plaintiff's request to remand this matter back to the FSM Social Security Board is DENIED.

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<sup>4</sup> Ex officio is defined as "By virtue or because of an office; by virtue of the authority implied by office." BLACK'S LAW DICTIONARY 616 (8th ed. 2004).

The parties shall submit a joint submission on a deadline for the completion of discovery, a deadline to submit pre-trial motions, and a preferred date for a hearing on pre-trial motions. A trial date, if necessary, will be set at a later date.

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CHUUK STATE SUPREME COURT TRIAL DIVISION

GARDENIA AISEK MACAYON,	)	CSSC CIVIL CASE NO. 178-2014
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
CHUUK STATE BOARD OF EDUCATION,	)	
JOHANNES BERDON, individually and in his	)	
official capacity as the Chairman of the Board of	)	
Education, ANTASIO BISEK, individually and in	)	
his official capacity as a member of the Board of	)	
Education, SAM BISALEN, individually and in his	)	
official capacity as a member of the Board of	)	
Education, ABRAHAM RAYPHAND, individually	)	
and in his official capacity as a member of the	)	
Board of Education, KIND KANTO, individually	)	
and in his official capacity as a member of the	)	
Board of Education, and IROMY BRUTON,	)	
individually and in her official capacity as a	)	
member of the Board of Education,	)	
	)	
Defendants.	)	
	)	

ORDER GRANTING PRELIMINARY INJUNCTION

Camillo Noket  
Chief Justice

Hearing: January 16, 2015  
Decided: January 26, 2015

APPEARANCES:

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