STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: May 5, 2017]

LUIS SANCHEZ,	:	
Plaintiff,	:	
v.	:	**C.A. No. PC-15-5087**
STATE OF RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING DIVISION OF LABOR STANDARDS,	:	
Defendant.	:	

DECISION

TAFT-CARTER, J. Before the Court is Plaintiff Luis Sanchez's (Plaintiff or Sanchez) appeal from an order of the State of Rhode Island Department of Labor and Training (DLT) dismissing his claim for overtime pay. Jurisdiction is pursuant to G.L. 1956 § 42-35-15. For the reasons set forth herein, this Court affirms the DLT's decision.

I

Facts and Travel

Plaintiff was employed as a cook at Aurora Restaurant (Aurora or restaurant) from November 10, 2014 to February 11, 2015, receiving $400 weekly. Department of Labor and Training Division of Labor Standards Claim No. LS: 15-65, October 19, 2015 Order (Order). Plaintiff asserts that he worked fifteen hours a day, seven days a week during that period. Compl. ¶¶ 2-3. On February 24, 2015, Sanchez filed a complaint with the DLT's Division of

Labor Standards, alleging that he was owed $8800.[1] See id. at ¶ 5; Non-Payment of Wages Compl. Form. On October 15, 2015, pursuant to G.L. 1956 § 28-14-19, a DLT authorized representative (hearing officer) conducted a hearing on Sanchez's claim against Aurora. See Order; see also § 28-14-19(c) (setting forth hearing procedure).

During the hearing, Sanchez received the assistance of a Spanish interpreter, the Labor Standards examiner in his case. See Tr. 3:4-7. Sanchez, representing himself, testified as to the aforementioned start and end dates, hours per day worked, and weekly pay. Id. at 4:21-6:12. He also confirmed his contention that he was owed $8800,[2] offering documentation of his hours in the form of his personal notes. See id. at 8:3-10, 9:20-10:8, 11:4-18; Pet'r's Ex. 2 (Notebook). However, Sanchez could not articulate how he calculated or arrived at that monetary figure. See Tr. 8:10-12:11. It was then that the hearing officer realized the true nature of Sanchez's claim and allowed him to amend his complaint. Id. at 12:12-14, 14:4-20. Sanchez sought overtime pay—time and one-half—for every hour per week over forty that he worked at Aurora. See id. at 23:7-10, 35:17-36:12; see also § 28-12-4.1 (providing overtime pay rates).

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[1] Although Sanchez initially indicated that he was complaining of the nonpayment of wages—as opposed to overtime pay—the DLT hearing officer, upon learning of the true nature of Sanchez's claim, allowed him to "amend" his complaint. See Tr. 12:12-14, 14:4-20, Oct. 15, 2015 (Tr.); Non-Payment of Wages Complaint Form (which was submitted at the DLT hearing as Pet.'s Ex. 1, but was inadvertently not included in the certified record transmitted to this Court and is therefore attached as an exhibit to Def.'s Mem.). Despite objecting strenuously, the attorney for Aurora declined the opportunity afforded him by the hearing officer to continue the hearing to a later date so as to prepare for the amended complaint. See Tr. 14:20-24, 16:7-11, 17:3-9, 18:2-19:6.

[2] The Non-Payment of Wages Complaint Form shows that Sanchez was employed by Aurora from March 2013 to June 2013 and from November 2014 to February 2015. In said complaint, Sanchez broke down the $8800 he claimed to have been owed as comprising $6400 from the 2013 stint and $2400 from the 2014-2015 period. However, this bifurcation was never discussed at the DLT hearing; rather, even though Sanchez acknowledged his prior employment at the restaurant, he only claimed the full $8800 as a result of his work there from November 2014 to February 2015. See Tr. 4:21-6:2, 8:3-6.

The fifteen-hour days that Sanchez said he normally worked amounted to 105 hours total each week, or sixty-five hours of overtime. See Tr. 23:3-10, 31:2-17, 35:20-36:12. Sanchez also claimed to have worked twenty-four hours per day the week of December 17, 2014 to December 24, 2014. Id. at 21:10-22:8; see also Notebook. Despite first asserting that he never left the restaurant that week, Sanchez then clarified that he would go home to shower, which would take an hour at most. Tr. 22:5-23:2. Sanchez testified that he did not sleep at all for those seven days. Id. at 24:5-10.

During cross-examination, Aurora's attorney questioned the contents of Sanchez's notes. Although Sanchez said that he included the start and end times of his work shifts in his notes, he had to clarify that he memorialized only the total hours each day. See id. at 24:23-26:5; Notebook. When Sanchez wrote the hours down in his notebook was also examined. See Tr. 24:11-22, 26:10-28:11. Furthermore, the attorney for the restaurant asked why Sanchez would go to work at 7:00 a.m. if Aurora did not open until lunch and why his notes reflect that he worked every day in December 2014 even though the restaurant was closed at least three days during a snowstorm. See id. at 28:12-29:22, 31:18-32:7; Notebook.

The hearing officer then offered Sanchez the opportunity to testify further, which Sanchez declined. Tr. 32:19-33:1. At that point, Aurora's attorney moved for a "directed verdict," calling into question the veracity of Sanchez's testimony and documentary evidence. See id. at 33:2-33:14. In agreement, the hearing officer found Sanchez's testimony regarding the hours he worked—especially twenty-four hours for seven straight days—"not very credible, to say the least." Id. at 36:22; see also id. at 36:23-37:7. The hearing officer also gave weight to the fact that Sanchez did not keep track of when he entered and exited the restaurant, instead offering only the blanket assertion that he generally worked fifteen hours per day. See id. at

36:12-17. After continuing to discuss the lack of credibility in Sanchez's testimony, the hearing officer concluded: "So taking everything in light at this time, I don't believe that [Sanchez] has presented a prima facie case, and for that reason, I'm going to grant the motion to dismiss this case as it stands right now, and this matter is concluded." Id. at 37:7-12.

On October 19, 2015, the hearing officer entered an order to that effect. See Order. Stated therein, the hearing officer made the following findings:

> "[Sanchez] was employed by [Aurora] for the period from November 10, 2014 through February 11, 2015 and was paid a salary of $400.00 per week. [Sanchez] was unable to demonstrate by credible evidence that he worked any overtime hours and was due any additional salary. Considering all of the evidence most favorable to [Sanchez], it is apparent that [Sanchez] failed to meet his burden of proof and present a prima faci[e] case." Id.

Accordingly, the hearing officer dismissed Sanchez's complaint. Id.; see also § 28-14-19(c) (mandating that the hearing officer, within thirty days of the close of the hearing, enter an order which "shall dismiss the complaint or direct payment of any wages and/or benefits found to be due"). On November 19, 2015, Plaintiff appealed the Order to this Court. See Compl.

II

Standard of Review

The Rhode Island Administrative Procedures Act (APA), §§ 42-35-1 et seq. governs Superior Court review of an administrative agency's decision. Rivera v. Emps.' Ret. Sys. of R.I., 70 A.3d 905, 909 (R.I. 2013). Section 42-35-15(g) of the APA provides as follows:

> "The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
> "(1) In violation of constitutional or statutory provisions;
> "(2) In excess of the statutory authority of the agency;

> "(3) Made upon unlawful procedure;
> "(4) Affected by other error or law;
> "(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

Thus, "[w]hen reviewing an agency decision pursuant to § 42-35-15, [this] Court sits as an appellate court with a limited scope of review." Mine Safety Appliances Co. v. Berry, 620 A.2d 1255, 1259 (R.I. 1993).

When performing such function, the Court "is limited to 'an examination of the certified record to determine if there is any legally competent evidence therein to support the agency's decision.'" Johnston Ambulatory Surgical Assocs., Ltd. v. Nolan, 755 A.2d 799, 804-05 (R.I. 2000) (quoting Barrington Sch. Comm. v. R.I. State Labor Relations Bd., 608 A.2d 1126, 1138 (R.I. 1992)); see also Town of Burrillville v. R.I. State Labor Relations Bd., 921 A.2d 113, 118 (R.I. 2007) ("Legally competent evidence (sometimes referred to as 'substantial evidence') has been defined as 'relevant evidence that a reasonable mind might accept as adequate to support a conclusion[; it] means an amount more than a scintilla but less than a preponderance.'" (alteration in original) (quoting Ctr. for Behavioral Health, R.I., Inc. v. Barros, 710 A.2d 680, 684 (R.I. 1998))). In that sense, "factual findings of an administrative agency are afforded great deference[.]" Rossi v. Emps.' Ret. Sys. of R.I., 895 A.2d 106, 110 (R.I. 2006). The Court may "reverse factual conclusions of administrative agencies only when they are totally devoid of competent evidentiary support in the record." Milardo v. Coastal Res. Mgmt. Council, 434 A.2d 266, 272 (R.I. 1981).

Moreover, the Court "will neither weigh the evidence nor pass upon the credibility of witnesses nor substitute its findings of fact for those made at the administrative level." E. Grossman & Sons, Inc. v. Rocha, 118 R.I. 276, 285, 373 A.2d 496, 501 (1977); see also Guarino

v. Dep't of Soc. Welfare, 122 R.I. 583, 588, 410 A.2d 425, 428 (1980) ("In respect to [factual] questions, when more than one inference is possible, the [C]ourt may not substitute its judgment for that of the agency and must affirm the decision of the agency unless its findings are 'clearly erroneous.'" (citing § 42-35-15(g))). "In essence, if 'competent evidence exists in the record, [this] Court is required to uphold the agency's conclusions.'" Auto Body Ass'n of R.I. v. State Dep't of Bus. Regulation, 996 A.2d 91, 95 (R.I. 2010) (quoting R.I. Pub. Telecomms. Auth. v. R.I. State Labor Relations Bd., 650 A.2d 479, 485 (R.I. 1994)).

III

Analysis

Here, Plaintiff argues that the hearing officer erred in finding that Sanchez's testimony was not credible and in granting Aurora's motion for a directed verdict. Plaintiff further asserts that the hearing officer did not develop sufficient findings of fact to enable this Court to review the record. Finally, Plaintiff contends that he was denied a full and fair hearing—and therefore, due process—because of inadequate translation by the interpreter. For these reasons, Plaintiff claims that his substantial rights have been prejudiced, necessitating that this Court remand the case to the DLT or reverse or modify the Order.

Contrarily, the DLT argues that there is ample evidence in the record—and sufficient findings for review by this Court—supporting the hearing officer's credibility determination and that it was proper for the hearing officer to grant Aurora's motion for a directed verdict in accordance therewith. Therefore, the DLT avers, this Court cannot substitute its judgment for that of the hearing officer on such a question of fact. As for Plaintiff's due process argument, the DLT counters that Sanchez did, in fact, receive a competent translation and, thus, a full and fair hearing. Accordingly, the DLT maintains that Plaintiff's appeal must be denied.

A

Directed Verdict

Plaintiff claims that the hearing officer, in ruling on Aurora's motion for a directed verdict, should have considered the evidence in the light most favorable to Sanchez, without evaluating Sanchez's credibility, and drawn from the record all reasonable inferences that support Sanchez's claim. See DeChristofaro v. Machala, 685 A.2d 258, 262 (R.I. 1996) (citing Hoffman v. McLaughlin Corp., 675 A.2d 404, 405 (R.I. 1996)). Therefore, according to Plaintiff, the hearing officer erred when he decided to grant the motion and dismiss the case based upon his evaluation of Sanchez's credibility.

Plaintiff seems to be relying on Rule 50 of the Superior Court Rules of Civil Procedure (Rule 50), which governs a motion for a directed verdict—also known as a motion for judgment as a matter of law—in a jury trial.[3] The standard of review on such a motion is well-settled. This Court must examine

> "the evidence in the light most favorable to the nonmoving party, without weighing the evidence or evaluating the credibility of witnesses, and draw from the record all reasonable inferences that support the position of the nonmoving party. . . . If, after such a review, there remain factual issues upon which reasonable persons might draw different conclusions, the motion for [judgment as a matter of law] must be denied, and the issues must be submitted to the jury for determination." Oliveira v. Jacobson, 846 A.2d 822,

[3] It provides:

> "If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue." Super. R. Civ. P. 50(a).

> 829 (R.I. 2004) (alteration in original) (quoting Estate of Fontes v. Salomone, 824 A.2d 433, 437 (R.I. 2003)).

Rule 52 of the Superior Court Rules of Civil Procedure (Rule 52), on the other hand, governs a motion for judgment as a matter of law in a non-jury trial.[4] "In a trial without a jury, . . . a trial justice is not required to view the evidence in the light most beneficial to the nonmoving party when considering a motion for judgment as a matter of law." Cathay Cathay, Inc. v. Vindalu, LLC, 962 A.2d 740, 745 (R.I. 2009) (citing Broadley v. State, 939 A.2d 1016, 1020 (R.I. 2008)). Thus, Plaintiff misconstrues the Superior Court Rules of Civil Procedure regarding a motion for a directed verdict. In contrast to a motion for a directed verdict in a jury trial, in a non-jury trial "a trial justice must assess the credibility of witnesses and weigh the evidence presented by the nonmoving party." Id. at 745; see also Oliveira, 846 A.2d at 829.

Notwithstanding, our Supreme Court has "decline[d] to hold that the Superior Court Rules of Civil Procedure automatically apply to an administrative hearing . . . ." Town of Richmond v. R.I. Dep't of Envtl. Mgmt., 941 A.2d 151, 157-58 (R.I. 2008). An administrative hearing would involve Rule 52 rather than Rule 50, pertaining to jury trials, if these rules of procedure applied. See Carbone v. Planning Bd. of Appeal of S. Kingstown, 702 A.2d 386, 388-89 (R.I. 1997) (addressing the applicability of certain Superior Court Rules of Civil Procedure to appeals from administrative agencies).

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[4] It sets forth in pertinent part as follows:

> "If during a trial without a jury a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the court may decline to render any judgment until the close of all the evidence. Such a judgment shall be supported by findings of fact and conclusions of law . . . ." Super. R. Civ. P. 52(c).

Here, the hearing officer evaluated Sanchez's credibility and weighed Sanchez's documentary evidence, determining that Sanchez's testimony was not credible and that Sanchez's notes were of minimal value. See Tr. 36:12-37:13; Order; see also Notebook. When reviewing an agency's decision under § 42-35-15(g), this Court "will neither weigh the evidence nor pass upon the credibility of witnesses nor substitute its findings of fact for those made at the administrative level." E. Grossman & Sons, Inc., 118 R.I. at 285, 373 A.2d at 501.

Therefore, even if Rule 52, under which the hearing officer can assess credibility and weigh evidence, were applicable to the DLT hearing, it would be appropriate for the hearing officer to assess Sanchez's credibility and weigh the documentary evidence. See Cathay Cathay, Inc., 962 A.2d at 745. Here, in the administrative proceeding, the hearing officer was required neither to view the evidence in the light most favorable to Sanchez nor to draw all reasonable inferences in Sanchez's favor. See id. Accordingly, the Order was not made upon unlawful procedure, affected by other error or law, clearly erroneous in view of the evidence in the record, or characterized by abuse of discretion as a result of the hearing officer's credibility determination and dismissal of Sanchez's claim. See § 42-35-15(g). Plaintiff's substantial rights have not been prejudiced on this ground. See id.

B

Findings of Fact

Any final order of an administrative agency must be in writing or verbalized in the record of the hearing and "shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings." Sec. 42-35-12. "An administrative decision that fails to include findings of fact required by statute cannot be upheld." Sakonnet

Rogers, Inc. v. Coastal Res. Mgmt. Council, 536 A.2d 893, 896-97 (R.I. 1988) (citing East Greenwich Yacht Club v. Coastal Res. Mgmt. Council, 118 R.I. 559, 569, 376 A.2d 682, 687 (1977)). This is so because "[t]he absence of required findings makes judicial review impossible . . . ." East Greenwich Yacht Club, 118 R.I. at 569, 376 A.2d at 687.

In the instant case, the hearing officer included the requisite factual findings in the Order. Namely, the hearing officer found that "[Sanchez] was employed by [Aurora] for the period from November 10, 2014 through February 11, 2015 and was paid a salary of $400.00 per week." Order. Thereafter, the hearing officer concluded that "[Sanchez] was unable to demonstrate by credible evidence that he worked any overtime hours and was due any additional salary. Considering all of the evidence most favorable to [Sanchez], it is apparent that [Sanchez] failed to meet his burden of proof and present a prima faci[e] case." Id. Thus, the period of employment and weekly salary which the hearing officer found to be facts were the only findings he needed to make before determining that Sanchez's testimony was not credible regarding the rest of the facts he alleged. At the very least, the hearing officer's findings amount to an accompanying "concise and explicit statement of the underlying facts supporting the findings." Sec. 42-35-12.

The Order is clearly susceptible to judicial review by this Court. See East Greenwich Yacht Club, 118 R.I. at 569, 376 A.2d at 687. The Order is not "[a]rbitrary or capricious or characterized by abuse of discretion" for want of findings of fact, and accordingly, it does not prejudice substantial rights of Plaintiff. Sec. 42-35-15(g)(6). Remand of the case to the DLT for further proceedings and findings is neither necessary nor appropriate. See § 42-35-15(g).

C

Due Process

Plaintiff argues that he was not afforded the opportunity to be heard as a result of inadequate translation by the interpreter provided to him by the DLT. With proper interpretation, Plaintiff asserts that he would have been able to present his case more clearly by better explaining his record-keeping of the hours he worked and his responsibilities at the restaurant.

"Certainly, a fair trial in a fair tribunal is a basic requirement of due process." Davis v. Wood, 427 A.2d 332, 336 (R.I. 1981) (citing In re Murchison, 349 U.S. 133, 136 (1955)). Our Supreme Court has said that "[t]his requirement is as applicable to administrative agencies as it is to the courts." Id. at 336-37 (citing Withrow v. Larkin, 421 U.S. 35 (1975); La Petite Auberge, Inc. v. R.I. Comm'n for Human Rights, 419 A.2d 274 (R.I. 1980)).

Rhode Island Supreme Court cases addressing the requirement of due process in administrative hearings largely deal with the necessity of the agency being fair and unbiased by not prejudging a matter before it and rendering an impartial decision. See, e.g., Champlin's Realty Assocs. v. Tikoian, 989 A.2d 427, 443-44 (R.I. 2010); In re Comm'n on Judicial Tenure and Discipline, 916 A.2d 746, 750-51 (R.I. 2007); Davis, 427 A.2d at 336-37; La Petite Auberge, Inc., 419 A.2d at 283-85. "Obviously, the Due Process Clause of the Fourteenth Amendment guarantees that a person shall not be tried before an administrative tribunal that is biased or otherwise indisposed from rendering a fair and impartial decision." La Petite Auberge, Inc., 419 A.2d at 283.

Moreover, "It is long-settled that a competent translation is fundamental to a full and fair hearing." Perez-Lastor v. I.N.S., 208 F.3d 773, 778 (9th Cir. 2000). In support of his argument that he was denied a fair hearing, Plaintiff brings to the Court's attention cases concerning the

due process rights of aliens to a full and fair hearing—requiring a competent translation—in asylum, deportation, or removal proceedings. See id. at 777-78; Amadou v. I.N.S., 226 F.3d 724, 726 (6th Cir. 2000); Augustin v. Sava, 735 F.2d 32, 38 (2d Cir. 1984); see also Hartooni v. I.N.S., 21 F.3d 336, 339-40 (9th Cir. 1994) ("A person who faces deportation is entitled under our constitution to a full and fair deportation hearing. The right of a person facing deportation to participate meaningfully in the deportation proceedings by having them competently translated into a language he or she can understand is fundamental." (Internal citations omitted)).

In order for Plaintiff to have been deprived of a full and fair hearing, he must demonstrate that the interpreter's translation was incompetent and that he was thereby prejudiced. See Hartooni, 21 F.3d at 340 (citing United States v. Nicholas-Armenta, 763 F.2d 1089, 1091 (9th Cir. 1985)). Plaintiff references two exchanges as exhibiting the inadequacy of the interpreter's translation. First, when the hearing officer explained to Sanchez his right to appeal the decision, the following dialogue took place:

> "[Aurora's Attorney]: If I can just object for purposes of clarification. I believe you said that this could be appealed to Superior Court.
> "[Hearing Officer]: Superior Court.
> "[Aurora's Attorney]: [The interpreter] said Supreme Court.[5]
> "[Hearing Officer]: Supreme Court – Superior Court. Okay. All right." Tr. 3:12-19.

Shortly thereafter, another discussion centered on the translator occurred:

> "[Hearing Officer]: And how many hours a week did he work?
> "[Sanchez]: Fifteen hours per day.
> "[Aurora's Attorney]: I am just going to object to the clarification.
> "[Interpreter]: I'm just telling Mr. [Sanchez] that you say, how many hours per week, because he was telling you, 15 hours per day.

[5] It is apparent from the record that the attorney for the restaurant spoke Spanish.

> "[Aurora's Attorney]: I'm just going to object to – I'm going to request that you instruct the interpreter to only interpret the questions and not direct the witness at all." Id. at 6:10-21.

In determining whether a translation was incompetent, the Ninth Circuit has looked to three types of evidence: "First, direct evidence of incorrectly translated words is persuasive evidence of an incompetent translation. Second, unresponsive answers by the witness provide circumstantial evidence of translation problems. A third indicator of an incompetent translation is the witness's expression of difficulty understanding what is said to him." Perez-Lastor, 208 F.3d at 778 (internal citations omitted). All three types of evidence are present here.

First, the fact that the attorney for the restaurant spoke Spanish made it possible to evaluate the accuracy of the translation as it happened. Not only did the interpreter say "Supreme Court" when the hearing officer said "Superior Court," but Aurora's attorney objected to the translation at another point as well. See Tr. 13:17-14:3. Second, Sanchez gave unresponsive answers at various points. See id. at 19:7-23, 20:15-21:2. Finally, Sanchez once expressed difficulty understanding the question asked of him. See id. at 11:21-12:1.

Nevertheless, Plaintiff has not demonstrated prejudice resulting from the incompetent translation. An incompetent translation causes prejudice when it "'potentially . . . affect[s] the outcome of the proceedings.'" Hartooni, 21 F.3d at 340 (quoting Barraza Rivera v. I.N.S., 913 F.2d 1443, 1448 (9th Cir. 1990)). "[T]he standard is whether 'a better translation would have made a difference in the outcome of the hearing.'" Perez-Lastor, 208 F.3d at 780 (quoting Acewicz v. I.N.S., 984 F.2d 1056, 1063 (9th Cir. 1993)).

Courts have recognized that "an adverse credibility finding may result from a faulty translation." Id. at 781; see also Amadou, 226 F.3d at 727-28. Here, however, the hearing officer's determination that Sanchez lacked credibility was not the result of any ostensible lack

of understanding stemming from the incompetent translation. The record evidences that the hearing officer found Sanchez's testimony not credible because of Sanchez's assertion that he worked twenty-four-hour days for one week straight without sleeping. See Tr. 36:18-37:7; Order ("[Sanchez] was unable to demonstrate by credible evidence that he worked any overtime hours and was due any additional salary."). Thus, any deficiencies in the interpreter's translation did not prejudice Sanchez as the hearing officer still would have dismissed the claim; "'a better translation would [not] have made a difference in the outcome of the hearing.'" Perez-Lastor, 208 F.3d at 780 (quoting Acewicz, 984 F.2d at 1063). As such, the Order was not made upon unlawful procedure, and Plaintiff's substantial rights have not been prejudiced in this respect. See § 42-35-15(g).

Additionally, Plaintiff argues that the hearing officer denied Sanchez his due process by not allowing him the opportunity to call additional witnesses or offer additional evidence.[6] The Court disagrees. At the close of Sanchez's testimony and cross-examination by Aurora's attorney, the hearing officer asked if Sanchez had anything further to say in support of his claim. He did not. There was no indication whatsoever that Sanchez had more witnesses or evidence to offer. After all, "It is the opportunity to exercise a right, and not [Sanchez's] actual implementation of that right, that constitutes due process." Craig v. Pare, 497 A.2d 316, 320-21 (R.I. 1985) (citing Yakus v. United States, 321 U.S. 414, 444 (1944)). The hearing officer gave Sanchez the chance to continue presenting his case, and he simply declined.

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[6] With respect to evidence to be presented at an agency hearing, § 42-35-10 provides in pertinent part that "[i]rrelevant, immaterial, or unduly repetitious evidence shall be excluded." Thus, it is well-settled that a hearing officer "has discretion to limit the testimony received at an administrative hearing . . . ." Duckworth v. United States ex rel. Locke, 705 F. Supp. 2d 30, 48 (D.D.C. 2010).

IV

Conclusion

After review of the entire record, this Court finds that the Order was not made upon unlawful procedure, affected by other error or law, clearly erroneous, or arbitrary or capricious or characterized by abuse of discretion. Furthermore, substantial rights of Plaintiff were not prejudiced. Accordingly, this Court affirms the Order.

Counsel shall submit an appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Luis Sanchez v. State of Rhode Island Department of Labor and Training Division of Labor Standards
CASE NO:	C.A. No. PC-15-5087
COURT:	Providence County Superior Court
DATE DECISION FILED:	May 5, 2017
JUSTICE/MAGISTRATE:	Taft-Carter, J.

ATTORNEYS:

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