BEFORE THE
GUAM CIVIL SERVICE COMMISSION

BOARD OF COMMISSIONERS

IN THE MATTER OF:	**GRIEVANCE APPEAL CASE NO. 14-GRE-60**
KIN FERNANDEZ,	
Employee,	**JUDGMENT OF DISMISSAL**
vs.	
DEPARTMENT OF EDUCATION,	
Management.	

2017 JAN -6 AM 11:07

Speaker Benjamin J.F. Cruz

JAN 06 2017

Time: 10:24 [] AM [] PM File No. #34-17-00

Received By

I.
INTRODUCTION

On Thursday, December 11, 2014 the above referenced grievance appeal came before the Civil Service Commission of Guam on Management's Motion to Dismiss for lack of subject matter jurisdiction. Mr. Kin Fernandez, the grievant employee appeared Pro Se at this hearing and Mr. Robert E. Koss, Lay Representative of the Department of Education and Ms. Yolanda Gabriel, Associate Superintendent of Special Education appeared on behalf of Management.

RECEIVED
2017 JAN -6 AM 11:07
Office of the Legislative Secretary
1-6-17 @ 9:55am

II.
JURISDICTION

The jurisdiction of the Civil Service Commission is based upon the Organic Act of Guam, 4 GCA §§ 4401, *et seq.*, and the Guam DOE Personnel Rules and Regulations.

///

///

ORIGINAL

III.

FACTUAL BACKGROUND

1. On May 2, 2013 Kin Fernandez filed a request for investigation pursuant to the Commission's authority found at 4 GCA 4403(d). The Employee contends therein that there had been violations of policies governing hiring, promotion, and pay classification with regard to Assistant Principals in DOE. The Commission assigned Case No. 13-PA-02.

2. On June 27, 2013 by a vote of 6-0, the Commission made the determination that there was sufficient cause to proceed with an investigation of the complaints raised by Mr. Kin Fernandez.

3. On October 22, 2013 Maria Masnayon, Personnel Management Analyst III and Roland Fejarang, Personnel Management Administrator, both of whom are employees of the Commission presented the Post Audit Investigative Report to the Commissioners at hearing indicating that appropriate policies had been properly followed and that the pay calculations were correct.

4. On October 22, 2013 following the presentation of the report, the Commissioners adopted the recommendations of the report, that is, no further action would be taken with regard to Fernandez's complaint because no discrepancies had been uncovered and no evidence of non-compliance with rule or law had been found.

5. On April 1, 2014 the Commission signed its Final Judgment (adopting Post Audit Investigative Report Recommendations). Thus it was determined that the matter (Case No. 13-PA-02) was finally adjudged or closed.

6. On April 22, 2014 Kin Fernandez initiated a grievance on substantially the same basis as his post audit complaint (CSC Case No. 13-PA-02) but relied on two additional memorandums (new information) for repeating the complaint using the grievance procedures.

7. On June 11, 2014 at Step 2 of the grievance procedure, Mr. Robert Malay informed Kin Fernandez that this matter was investigated and finally adjudged by the Commission on April 1st, 2014 and that DOE is guided by its disposition of the matter.

8. § 4403. Duties of the Commission. (in relevant part)
   The Commission has the following duties, powers and responsibilities:
   (c) To hear appeals of ... grievance complaints ... from the classified service if such right of appeal to the Commission is established in the personnel rules governing the employee.

9. DOE Personnel Rules and Regulations 909.301 General Exclusions

   The following actions are not covered by these grievance procedures:

   A. Disqualification of an applicant
   B. Disqualification of an eligible

C. Examination ratings
D. Removal during original probationary period
E. Appeals from classification determinations
F. Appeals of adverse personnel actions
G. Allegations or complaints of discrimination
H. Appeals of performance evaluations

IV.

ANALYSIS

Management contended that the Employee's grievance was improper because the Employee is appealing his classification and compensation and that this grievance was substantially similar to the same matter that had previously been disposed by the Commission through its Post Audit Procedures, CSC Case No. 13-PA-02 and that the principles of collateral estoppels or *res judicata* apply. Management further asserted that the appropriate procedures available to the employee was either to seek the Commission's reconsideration of its decision or judicial review of the Commission's decision for the post audit investigation where it found no violation of any law or rule.

The Department of Education Personnel Rules and Regulations specifically exclude complaints pertaining to position classification and compensation from being brought in the form of a grievance. Thus it appears that this grievance is an appeal of the classification and compensation determination and is impermissible under the DOE rules. Therefore, the subject matter is beyond the jurisdiction of the Commission.

V.

FINDINGS

After a careful review of the written motion and after hearing oral arguments of the parties, the Commission determined that the grievance was not covered by the Department's Personnel Rules and Regulations.

VI. HOLDINGS

The Civil Service Commission, by a unanimous vote of 6-0 dismisses the Employee's grievance for lack of subject matter jurisdiction.

SO ADJUDGED THIS 5th day of January 2017.

EDITH PANGELINAN
Chairperson

MICHAEL TOPASNA
Commissioner

PRISCILLA T. TUNCAP
Commissioner

JOHN SMITH
Commissioner

LOURDES HONGYEE
Commissioner

not present
CATHERINE GAYLE
Commissioner