Office of the People
Senator Régine Biscoe Lee
Legislative Secretary
Date/Time: 5/24/17 @ 2:30pm
Initials:

GL#34-17-546

BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS

IN THE MATTER OF:	ADVERSE ACTION APEAL CASE NO.: **14-AA03T SP**
WILLIAM BISCHOFF, **Employee,** **vs.** **ATTORNEY GENERAL'S OFFICE,** **Management.**	**DECISION AND JUDGMENT**

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This matter came before the Civil Service Commission on February 2, 2017, on Management's motion to dismiss for lack of jurisdiction. Employee William Bischoff appeared *pro se*. This hearing having been rescheduled twice previously and Management's representative having been excused for good cause, present for Management was its attorney, Assistant General Marianne Woloschuk.

I.

PROCEDURAL BACKGROUND

This case is before us on remand from the Superior Court of Guam. On May 28, 2015, we issued a Decision and Judgment dismissing the case for lack of subject matter jurisdiction. Employee Bischoff had resigned from his position with the Attorney General's Office claiming

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he was constructively discharged. "Constructive discharge" is the term for when Management makes working conditions so intolerable that an employee is involuntarily forced to resign. Yet, at that point, the Commission had never recognized that our jurisdiction extended to constructive discharge claim. Thus, we dismissed Employee's case solely on the basis that he had resigned without receiving an official adverse action.

Bischoff timely filed a Petition for Judicial Review with the Superior Court of Guam. On July 29, 2016, the Court issued a Decision and Order finding "that the CSC has jurisdiction to address adverse action appeals based on constructive discharge." *Bischoff v. Civil Service Commission, Attorney General's Office*, SP 80-15, at 6. The Court remanded the case back to us for hearing with the instruction that "[t]he CSC has subject matter jurisdiction over constructive discharge claims." *Id* at 8. Therefore, we adopt the Court's reasoning that the CSC has jurisdiction over constructive discharge claims; however, that does not mean that Bischoff automatically prevails.

II.

ISSUE

Upon remand, Management filed a motion to dismiss for lack of jurisdiction. Bischoff first filed his Notice of Appeal on January 21, 2014. His last day of work was January 3, 2014. Yet, Bischoff had resigned from his position on November 9, 2013, where Management accepted it on November 21, 2013, and served its acceptance of the resignation on December 5, 2013. Therefore, Bischoff only meets the requirement of filing his Notice of Appeal in a timely manner if the 20 days is counted from his last day of work. If one of the earlier events is the trigger date,

then Bischoff's appeal must be dismissed. Thus, the issue before us is whether a resignation letter based upon constructive discharge is counted from the last day of work or, if earlier, the date of resignation or acceptance from Management.

III.

JURISDICTION

The jurisdiction of the Civil Service Commission is based upon the Organic Act of Guam, 4 GCA Section 4401 *et seq.*, and the personnel rules and regulations. The 20 day rule applied by 4 GCA Section 4406 is a jurisdictional rule.

IV.

HOLDING

After reviewing the pleadings and hearing the arguments of counsel, by a vote of 5-1, the Commission denies Employee's Adverse Action Appeal, because the Commission finds that it does not have jurisdiction to hear the issues in the Employee's Adverse Action Appeal. The issues raised in Employee's Adverse Action Appeal relate to a claim the Commission has no jurisdiction to hear and decide due to Employee's untimely filing of his Notice of Adverse Action Appeal.

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V.

FACTS

1. Employee resigned from his position at the Office of the Attorney General on November 9, 2013.
2. Management accepted his resignation on November 21, 2013, and served its acceptance of his resignation on Employee on December 5, 2013.
3. Employee's last day at work was January 3, 2014.
4. On January 21, 2014, Employee filed a Notice of Adverse Action Appeal, claiming that he had been constructively discharged from his employment.
5. Under 4 GCA § 4406 and Rule 5.2 of the Civil Service Commission Rules of procedure for Adverse Action Appeals, and employee has 20 days from the effective date of the adverse action to file his appeal.
6. The 20-day rule is jurisdictional.
7. According to case law, a cause of action for constructive discharge arises when an employee resigns because he considers that his conditions of employment have become intolerable.
8. In this case, Employee resigned due to allegedly intolerable working conditions on November 9, 2013, and filed his Notice of Adverse Action Appeal on January 21, 2014, beyond the 20 days allowable by law.
9. Because the Employee did not meet the 20-day rule, the Commission lacks jurisdiction over his Adverse Action Appeal.

VI.

DISCUSSION

4 GCA Section 4406 states in relevant part: "In the event an employee resigns before the issuance of the final notice of adverse action, the employee's twenty (20) day appeal period to the Commission shall begin to run at the time the employee submits the resignation. . . ." Although this language applies to a circumstance where an employee has already received a Notice of Proposed Adverse Action, there appears to be legislative intent that the 20 day period shall take effect under Guam law at the time an employee submits their resignation. Even where an Employee submits a letter of resignation to take effect at a later date, at the point the resignation is submitted, they are able to file a Notice of Appeal with the CSC that they have been constructively discharged.

In their last term, the Supreme Court of the United States addressed this precise question. In *Green v. Brennan*, 578 U.S. ___, 136 S.Ct. 1379 (2016), it states:

> Our decision that a resignation triggers the limitations period for a constructive-discharge claim raises the question of when precisely an employee resigns. Here, Green and the Government agree that an employee resigns when he gives his employer definite notice of his intent to resign. If an employee gives "two weeks' notice"---telling his employer he intends to leave after two more weeks of employment---the limitations period begins to run on the day he tells his employer, not his last day of work.

Thus, we find Bischoff resigned on November 9, 2013, more than twenty (20) days before the period allowed by 4 GCA § 4406, thereby depriving us of jurisdiction.

VII.

CONCLUSION

By a vote of 5-1, Employee's Adverse Action Appeal is dismissed for lack of jurisdiction.

SO ADJUDGED THIS 21st day of March 2017.

EDITH PANGELINAN
Chairperson

LOURDES HONGYEE
Vice-Chairperson

PRISCILLA T. TUNCAP
Commissioner

JOHN SMITH
Commissioner

CATHERINE GAYLE
Commissioner

MICHAEL G. TOPASNA
Commissioner