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BENJAMIN CRUZ <speaker@senatorbjcruz.com>

MC Fwd: Civil Service Commission Decisions for Messages and Communication

BENJAMIN CRUZ <speaker@senatorbjcruz.com> Tue, Nov 14, 2017 at 2:13 PM
To: 34th Guam Legislature Clerks <clerks@guamlegislature.org>
Cc: Rennae Meno <rennae@guamlegislature.org>

11/14/2017	11/14/2017	Civil Service Commission*Office of the Legislative Secretary Senator Régine Biscoe Lee *.	Civil Service Commission Decisions*	34-17-1222

---------- Forwarded message ----------
From: **Joaquin Taitague** <taitaguej.rbl@gmail.com>
Date: Tue, Nov 14, 2017 at 2:03 PM
Subject: Civil Service Commission Decisions for Messages and Communication
To: speaker@senatorbjcruz.com

Hafa Adai,

Please see attached Civil Service Commission Decisions from The Office of Senator Régine Biscoe Lee which were received on November 14, 2017 at 1:06 p.m. for Messages and Communications.

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Si Yu'os Ma'ase
Joaquin Taitague
Legislative Assistant
Office of Senator Régine Biscoe Lee

Tel: 472-3455

GL# 34-17-1222
Speaker Benjamin J.F. Cruz

NOV 14 2017
Time: 213 [ ] AM [ ] PM File No.
Received By

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OFFICE OF SPEAKER BENJAMIN J.F. CRUZ

Committee on Appropriations and Adjudication

I Mina'trentai Kuattro na Liheslaturan Guahan

Guam Congress Building | 163 Chalan Santo Papa | Hagatna, GU 96910

T: (671) 477-2520/1 | F: (671) 477-2522 | www.senatorbjcruz.com

5 attachments

- **LEILANI GUERRERO 17-GRE07.pdf** 76K
- **ELEUTERIO J. MESA 17-GRE13.pdf** 179K
- **ELEUTERIO J. MESA 17-GRE02.pdf** 131K
- **JASEN M. DODD 17-PA03.pdf** 52K
- **JOHN D. SANTOS 17-WB01.pdf** 65K

2017 NOV 14 PM 2:26 VF

1222

BEFORE THE
GUAM CIVIL SERVICE COMMISSION

BOARD OF COMMISSIONERS

IN THE MATTER OF: **ELEUTERIO J. MESA,** **Employee,** **vs.** **DEPARTMENT OF EDUCATION,** **Management.**	**GRIEVANCE APPEAL** **CASE NO. 17-GRE02** **DECISION AND JUDGMENT**

I.

INTRODUCTION

The above-captioned matter came before the Civil Service Commission (the "Commission" or "CSC") during the October 5, 2017 Hearing on the Merits regarding Employee Eleuterio Mesa's Grievance Appeal. Employee was present *pro se*. Guam Department of Education ("GDOE") Lay Representative Phyllis Blas was present for Management. The Commission heard Oral Arguments from both parties, and by a vote of 5-0, finds in favor of Management.

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II.

JURISDICTION

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

III.

FINDING OF FACTS

1) Employee is a Principal for the Guam Department of Education.

2) On August 22, 2016, Acting Superintendent Joseph L.M. Sanchez appointed Employee to the position of Assistant Superintendent of Vocational Technical Education.

3) On November 3, 2016, reports of sexual harassment and harassment with a student allegedly involving Employee were received at the office of Acting Superintendent Sanchez.

4) On the same date, November 3, 2016, Acting Superintendent Sanchez rescinded the appointment of Employee to the position of Assistant Superintendent of Vocational Technical Education.

5) Also on the same date, November 3, 2016, Employee was placed on administrative leave because of the harassment reports that had been received.

6) On December 1, 2016, Employee was transferred to the GDOE Division of Assessment and Accountability under the supervision of Acting Deputy Superintendent of Assessment and Accountability Christopher Anderson.

7) On December 23, 2016, Employee initiated a Step 1 Grievance in this matter.

8) Employee's Step 1 Grievance included the following:

a. Employee claimed a hostile working environment, retaliation, intimidation, and harassment supposedly involving Acting Deputy Anderson;

b. Employee sought an apology from Acting Deputy Anderson;

c. Employee sought immediate removal from an alleged hostile working environment;

d. Employee sought reinstatement to the position of Assistant Superintendent of Vocational Technical Education with back pay.

9) On January 3, 2017, Acting Deputy Anderson responded to Employee's Step 1 Grievance as follows:

a. Acting Deputy Anderson provided an apology to Employee;

b. Acting Deputy Anderson provided a response to Employee's claims including the claim of an alleged hostile working environment.

10) On January 9, 2017, Employee submitted his Step II Grievance to Acting Superintendent Sanchez.

11) On January 17, 2017, Acting Superintendent Sanchez transferred Employee from the GDOE Division of Assessment and Accountability under the supervision of Acting Deputy Anderson and appointed Employee as Principal of Astumbo Middle School.

12) On February 15, 2017, the Grievance Committee in this matter found that the position of Assistant Superintendent of Vocational Technical Education was a temporary position, among other Grievance Committee findings.

13) On February 27, 2017, Employee submitted his Step IV Grievance to the Guam Civil Service Commission.

14) At the time that Employee submitted his Step IV Grievance to the Commission, the relief requested by Employee involving an apology from Acting Deputy Anderson and removal from an alleged hostile environment had already been addressed and resolved.

15) The only relief requested by Employee that was outstanding at the time that Employee submitted his Step IV Grievance was Employee's request regarding the position of Assistant Superintendent of Vocational Technical Education with back pay.

IV.

DISCUSSION

Prior to the October 5, 2017 Hearing on the Merits, Management had provided Employee with two of the remedies requested in his Step 1 Grievance: (1) an apology from Acting Deputy Anderson as Employee's immediate supervisor; and (2) transfer from the GDOE Division of Assessment and Accountability, which Employee claimed to be an alleged hostile working environment.

The only relief requested by Employee that remained outstanding involved the position of Assistant Superintendent of Vocational Technical Education with back pay.

As discussed above, the Commission finds that, on February 15, 2017, the Grievance Committee in this matter found that the position of Assistant Superintendent of Vocational Technical Education was a temporary position.

The Commission agrees with this finding made by the Grievance Committee; that this was a temporary position.

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During the October 5 Hearing on the Merits, Management asserted that GDOE Acting Superintendent Sanchez had the authority to appoint and transfer Employee as Management had done in this matter, consistent with Title 17 Guam Code Annotated § 3103(e) and Guam Education Board Policy 210.3.

The Commission also agrees that Management had this authority.

V.

CONCLUSION

Accordingly, the Commission after due deliberation determined by a majority vote of 5-0 that GDOE had the authority to appoint and transfer Employee as GDOE had done in this matter, and therefore, Employee should not be returned to the position of Assistant Superintendent of Vocational Technical Education with back pay. The Commission therefore finds for Management.

SO ADJUDGED this 7TH day of ~~October~~ November XXXXX 2017.

EDITH PANGELINAN
Chairperson

LOURDES HONGYEE
Vice-Chairperson

PRISCILLA T. TUNCAP
Commissioner

JOHN SMITH
Commissioner

CATHERINE GAYLE
Commissioner

MICHAEL G. TOPASNA
Commissioner

BEFORE THE
GUAM CIVIL SERVICE COMMISSION

BOARD OF COMMISSIONERS

IN THE MATTER OF: **ELEUTERIO J. MESA,** **Employee,** **vs.** **DEPARTMENT OF EDUCATION,** **Management.**	**GRIEVANCE APPEAL** **CASE NO. 17-GRE13** **JUDGMENT OF DISMISSAL**

The Civil Service Commission hereby dismisses the above captioned case with prejudice pursuant to the Motion to Dismiss Appeal, attached hereto.

SO ADJUDGED THIS 7th DAY OF November 2017.

EDITH PANGELINAN
Chairperson

LOURDES HONGYEE
Vice-Chairperson

PRISCILLA T. TUNCAP
Commissioner

JOHN SMITH
Commissioner

CATHERINE GAYLE
Commissioner

MICHAEL G. TOPASNA
Commissioner

Phyllis M.B. Blas,
Lay Representative
DEPARTMENT OF EDUCATION
Jon J.P. Fernandez
Superintendent of Education
500 Mariner Avenue
Barrigada, Guam, 96913
P: 300-1535
Email: pmbblas@gdoe.net

CIVIL SERVICE COMMISSION
17-0747
RECEIVED
AUG 29 2017
GOVERNMENT OF GUAM

Before The Civil Service Commission
Government of Guam

IN THE MATTER OF:	**CSC CASE NO. 17-GRE13**
ELEUTERIO J MESA, Employee,	**MOTION TO DISMISS**
vs.	
DEPARTMENT OF EDUCATION, Management.	

TO: The Civil Service Commission of Guam and Employee

I. INTRODUCTION

COMES NOW, the Department of Education (DOE or Management), by and through Phyllis Blas, Lay Representative, and hereby submits this Motion to Dismiss as follows:

II. PROCEDURAL BACKGROUND

The above-captioned matter (17-GRE13) arises from the findings related to a Grievance Appeal submitted by Employee Eleuterio J. Mesa to the DOE Superintendent of Education on May 30, 2017. Mesa elevated the appeal to the Civil Service Commission (CSC) at the Step 4 level on June 28, 2017. DOE now moves to dismiss Mesa's appeal because it is substantially

similar to Mesa's prior appeal (17-GRE05) which was dismissed with prejudice on May 11, 2017.

III. DISCUSSION

Management brings this motion to dismiss Mesa's appeal (17-GRE13) on the basis that Mesa's prior appeal (17-GRE05) was dismissed with prejudice on May 11, 2017.

CSC Rule G15.4, "Motions to Dismiss," states:

> *"An Employee may dismiss his appeal with prejudice by filing a written motion to dismiss which must be signed by the Employee and his representative or attorney, if any."*

Mesa submitted his "Withdrawal of Step 4 Grievance" to the CSC on April 25, 2017.

The Judgement of Dismissal with Prejudice was adjudged by the CSC on May 11, 2017.

Mesa filed the above-captioned matter (17-GRE13) on June 28, 2017.

The above-captioned matter (17-GRE13) and Mesa's dismissed appeal (17-GRE05) are substantially similar.

Mesa should not be allowed to re-file basically the same Grievance Appeal.

1. Management contends that the basis for both the above-captioned matter (17-GRE13) and Mesa's prior appeal (17-GRE05) is the same: Mesa wants back pay based on the status of J.P. Torres.

The Subject of the 17-GRE13 Step 1 Grievance is "high school principal pay."

The 17-GRE13 Step 1 Grievance also discusses the status of J.P. Torres.

Specifically, in the 17-GRE13 Step 1 Grievance dated April 28, 2017, Mesa states: "On April 14, 2017, 1:54 PM, I inquired with Antonette Muna Santos (Administrator for Personnel Services Division) regarding Superintendent Fernandez's conversion of J.P. Torres Alternative School to J.P. Torres Alternative High School."

Presumably, based on this inquiry about J.P. Torres' status, Mesa claims that he should receive a high school principal's pay.

Specifically, in an e-mail to Santos dated April 14, 2017, Mesa states: "As we were discussing the settlement of my CSC cases last year, I did mention to Mr. Fernandez that I must be paid a high school principal's pay for the school year 2015-2016." *See* Attachment 01 to Mesa's 17-GRE13 Step 1 Grievance.

This claim in the 17-GRE13 Grievance (for high school principal pay based on J.P. Torres' "conversion") was already made in the 17-GRE05 Step 1 Grievance dated January 31, 2017, filed three months earlier.

Specifically, the third paragraph of the 17-GRE05 Step 1 Grievance states: "While I was discussing with Superintendent Fernandez about my demotion and termination back pay, I proposed to be paid as a high school principal for school year 2015-2016. To date, I never got a feedback on the issue."

In addition, Mesa already mentioned the "conversion" of J.P. Torres in the 17-GRE05 Step 1 Grievance, which he connected to his claim of "Demotion of HS [high school] Principal to MS [middle school] Principal," the title of his 17-GRE05 Step 1 Grievance.

Specifically, the first paragraph of the 17-GRE05 Step 1 Grievance states: "During the summer of 2015, JP Torres Alternative School was converted to JP Torres Alternative High School."

Furthermore, the remedy that Mesa seeks in 17-GRE13 is exactly the same as the remedy he already sought in 17-GRE05.

Specifically, in the 17-GRE13 Grievance, Mesa asks for, "2. Back pay as a High School Principal from August 2015 to the Present."

This is the same relief sought in the 17-GRE05 Grievance, where Mesa previously asked for, "3. Because Superintendent Fernandez converted JP Torres Alternative School to JP Torres Alternative High School Principal [sic], it is only right that I be given a high school principal's pay from August 2015 to the present."

On April 24, 2017, Mesa wrote a Memorandum to the Executive Director of the CSC, Peter S. Calvo, informing the CSC that effective immediately his 17-GRE05 Grievance would be withdrawn.

Mesa's 17-GRE05 Grievance was later dismissed with prejudice per the CSC's Judgment of Dismissal on May 11, 2017.

Despite this, Mesa submitted his 17-GRE13 Step 1 Grievance, repeating his claim for high school principal pay based on J.P. Torres' status on April 28, 2017.

The CSC should not allow Mesa to re-file basically the same Grievance that he already voluntarily dismissed with prejudice.

2. Management contends that numerous Exhibits provided in Mesa's already dismissed 17-GRE05 Grievance were also resubmitted in support of his 17-GRE13 Grievance.

In addition to having the same basis as his 17-GRE05 Grievance (described above), Mesa's 17-GRE13 Grievance is also supported by the same documents that were already submitted with the earlier 17-GRE05 Grievance.

Specifically, the following 45 documents were resubmitted again as supporting documents for Mesa's 17-GRE13 Grievance which is based on the same claims as the 17-GRE05 Grievance:

1. JP Torres Project Narrative Page 1 of 14
2. JP Torres Project Narrative Page 2 of 14
3. Cover Page J.P. Torres Alternative School Student Handbook
4. Meet our Faculty and Staff
5. School Year Calendar 2015-2016
6. Design and Criteria
7. Curriculum, Grade Level Determination and Graduation Requirements
8. DOE's Service Learning Program: Professional Development; Exit Procedures
9. Behavior Code of Conduct, Discipline Procedures, Class Discipline
10. Parental/Legal Guardian Rights or Grievances: Special Education
11. Electronic Devices, Visitor's Policy, Physical Restraint, Corporal Punishment
12. Fire Drill, Earth Quake
13. Emergency Drills, Parent Information, Release of Students
14. Orientation Acknowledgements
15. School Directory, Assignments and Numbers (2015-16)
16. Continuation of School Directory
17. School Directory, (2016-2017)
18. School Directory, (2016-2017) Continued
19. School Directory, (2016-2017) Continued
20. GDOE SY15-16 August 19, 2015 Daily Bussing Issues
21. August 20, 2015 e-mail, Sophie Duenas to E. Mesa answered by Joe Sanchez
22. August 19, 2015 e-mail, E. Mesa to Naomi Uncangco re: Bulletin Board

23. Contractual Agreement for Participation (J.P. Torres Letterhead)

24. August 18, 2015 e-mail, Ref Okkodo High School Credit Recovery

25. August 13, 2015 e-mail, Bus Pick-up time for JP Torres Alternative High School

26. August 17, 2015 e-mail, to Erika Cruz Re: Teacher and Student Status

27. August 21, 2015, e-mail, High School Course Directory (Sylvia Calvo and Sophia Duenas)

28. GDOE PRR 909.800 Step 4 – Appeal to the Civil Service Commission

29. GDOE PRR 909.500 Step 1 – Informal Grievance Procedure

30. News Article "A new start at JP Torres" 9/27/15

31. News Article "A new start at JP Torres" 9/27/15 (Continuation of Above)

32. News Article "Alternative School holds Ribbon Cutting" 9/29/15

33. Picture with "JP Torres Alternative High School" on Front of Building

34. Letter "Detail Assignment" dated August 18, 2016

35. Letter "Administrative Leave" dated November 3, 2016

36. Letter "Assignment" dated November 30, 2016

37. Letter " School Assignment to Astumbo Middle" January 2017

38. Letter "Notice of Proposed Adverse Action" dated July 25, 2016

39. Letter "Notice of Proposed Adverse Action" dated July 25, 2016, Page 2

40. Letter "Notice of Proposed Adverse Action" dated July 25, 2016, Page 3

41. Letter "Notice of Proposed Adverse Action" dated July 22, 2016, Page 2

42. Letter "Notice of Proposed Adverse Action" dated July 22, 2016, Page 3

43. Letter "Notice of Proposed Adverse Action" dated July 26, 2016

44. Letter "Notice of Proposed Adverse Action" dated July 26, 2016, Page 2

45. Letter "Notice of Proposed Adverse Action" dated July 26, 2016, Page 3

As seen above, Mesa's use of the same documents to support both his 17-GRE05 Grievance and the 17-GRE13 Grievance demonstrates again that he has filed basically the same thing.

The CSC should not allow Mesa to do this.

IV. RELIEF

For the forgoing reasons, the Department of Education finds that a dismissal of this Employee's Grievance Appeal is fully warranted in this instance and hereby respectfully requests that the Commissioners enter a decision and order in the record dismissing this case with prejudice.

Submitted this 29th day of August 2017 by:

Phyllis Blas,
Lay Representative for Management

BEFORE THE
GUAM CIVIL SERVICE COMMISSION

BOARD OF COMMISSIONERS

IN THE MATTER OF:

JASEN M. DODD,

Employee,

vs.

GUAM POLICE DEPARTMENT,

Management.

POST AUDIT
CASE NO. 17-PA03

ORDER AFTER HEARING

This matter came first before the Board of Commissioners on October 19, 2017, for the presentation of an initial Post Audit Staff Assessment Report. Employee Jasen M. Dodd, Police Officer II for the Guam Police Department ("GPD"), had filed a Post Audit Complaint on September 21, 2017, alleging Improper Hiring Practices. The Personnel Management Administrator, Roland Fejarang, and the Personnel Management Analyst II, Cynthia Camacho presented the Post Audit Assessment Report. Also present were the six (6) members of the Board of Commissioners: Chairperson Edith Pangelinan, Vice-Chairperson Lourdes Hongyee, Commissioner Priscilla Tuncap, Commissioner John Smith, Commissioner Catherine Gayle, and Commissioner Michael Topasna.

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The CSC Board of Commissioners hereby voted 6-0 in favor of proceeding with an investigation.

IT IS SO ORDERED THIS 7TH DAY OF NOVEMBER 2017.

EDITH PANGELINAN
Chairperson

LOURDES HONGYEE
Vice-Chairperson

PRISCILLA T. TUNCAP
Commissioner

JOHN SMITH
Commissioner

CATHERINE GAYLE
Commissioner

MICHAEL G. TOPASNA
Commissioner

BEFORE THE
GUAM CIVIL SERVICE COMMISSION

BOARD OF COMMISSIONERS

IN THE MATTER OF:

JOHN D. SANTOS,

Employee,

vs.

GUAM FIRE DEPARTMENT,

Management.

PUBLIC EMPLOYEE PROTECTION ACT COMPLAINT CASE NO. 17-WB01

ORDER AFTER HEARING

This matter came first before the Board of Commissioners on October 26, 2017, for the presentation of an initial Staff Assessment Report. Employee John D. Santos, Fire Service Specialist for the Guam Fire Department ("GFD"), filed a Whistleblower Complaint on September 07, 2017, alleging Government Corruption. Present at the Assessment Hearing were Employee and his counsel, Lay Representative Robert Koss, of the Guam Federation of Teachers, and Deputy Fire Chief, Joey San Nicolas, for GFD.

At the Assessment Hearing, CSC's Vickilynn Sablan, presented the view of the Staff that sufficient grounds appeared to warrant the Commission's approval for an official investigation to be conducted.

With a vote of 5-0, the Board of Commissioners approved the staff's recommendation to conduct an investigation.

CONCLUSION

By a vote of 5-0, the Commission orders as follows:

1) Pursuant to 4 GCA § 4504(a) and Rules for Public Employee Protection Act (aka "Whistleblower") Complaints Rule 7, the staff of the Commission is hereby authorized to undertake further investigation into the matters raised by Employee's Whistleblower Complaint;
2) The staff of the Commission shall begin their investigation immediately as no "stay" is in place;
3) GFD shall immediately and fully cooperate with all requests by the staff related to the investigation into Employee's Whistleblower Complaint;
4) Pursuant to the Rules for Whistleblower Complaints Rule 7.1, unreasonable delay or refusal to cooperate with Commission staff in this investigation will be cause to determine that a violation did take place; and,

IT IS SO ORDERED THIS 7th DAY OF November 2017.

EDITH PANGELINAN
Chairperson

LOURDES HONGYEE
Vice-Chairperson

PRISCILLA T. TUNCAP
Commissioner

JOHN SMITH
Commissioner

CATHERINE GAYLE
Commissioner

MICHAEL G. TOPASNA
Commissioner

BEFORE THE
GUAM CIVIL SERVICE COMMISSION

BOARD OF COMMISSIONERS

IN THE MATTER OF: **LEILANI GUERRERO,** **Employee,** **vs.** **DEPARTMENT OF EDUCATION,** **Management.**	**GRIEVANCE APPEAL** **CASE NO. 17-GRE07** **JUDGMENT OF DISMISSAL**

The Civil Service Commission hereby dismisses the above captioned case with prejudice pursuant to the signed Employees' Withdrawal of Grievance Appeal, attached hereto.

SO ADJUDGED THIS 7th DAY OF November 2017.

EDITH PANGELINAN
Chairperson

LOURDES HONGYEE
Vice-Chairperson

PRISCILLA T. TUNCAP
Commissioner

JOHN SMITH
Commissioner

CATHERINE GAYLE
Commissioner

MICHAEL G. TOPASNA
Commissioner

Guam Federation of Teachers
P.O. Box 2301
Hagåtña, Guam 96910 • USA
(671) 735-4390 • (671) 734-8085

Representative for Employees

CIVIL SERVICE COMMISSION
1:53 pm
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GOVERNMENT OF GUAM

BEFORE THE CIVIL SERVICE COMMISSION
GOVERNMENT OF GUAM

IN THE MATTER OF:	
Leilani P. Guerrero, Jamie L.M. Zapanta and Mellisa B. Terlaje	**CSC Grievance Appeal Case No. 17-GRE07**
EMPLOYEES	**WITHDRAWL OF GRIEVANCE APPEAL**
vs.	
Guam Department of Education	
MANAGEMENT	

TO: THE CIVIL SERVICE COMMISION OF GUAM:

Comes now Daniel R. Del Priore, Field Representative with The Guam Federation of Teachers,(GFT); AFT Local 1581, AFL-CIO, and herewith files the Withdrawal of the above captioned and numbered Grievance Appeal on behalf of the Employees; who signify their consent by their signatures herein below.

The Withdrawal is premised upon the fact that Management is now taking positive steps to address the concerns raised in the Grievance Appeal. The Employees are desirous of working with Management for the betterment and welfare of the students. The Employees understand that if their Grievance concerns are not suitable addressed and the Grievance issues continue, that they may again seek the Grievance process to remedy the unresolved issues.

Respectfully submitted this 16th Day of October, 2017; by Daniel R. Del Priore, Representative for Employees.

Daniel R. Del Priore

Daniel R. Del Priore

Employees' Representative

We the Employees in the above captioned and numbered Grievance Appeal hereby confirm our desire to withdrawal our Grievance Appeal herein as submitted by Daniel R. Del Priore our Representative in the subject Grievance Appeal.

Leilani P. Guerrero

~~Jaime~~ L.M. Zapanta
JAMIE Z

~~Mellisa~~ B. Terlaje
MELISSA TMD