Gmail

BENJAMIN CRUZ <speaker@senatorbjcruz.com>

MC Fwd: Civil Service Commission Judgments; Meeting of May 29, 2018

1 message

BENJAMIN CRUZ <speaker@senatorbjcruz.com> Wed, May 30, 2018 at 4:45 PM
To: 34th Guam Legislature Clerks <clerks@guamlegislature.org>
Cc: Rennae Meno <rennae@guamlegislature.org>

05/30/18	05/30/18	Civil Service Commission-Office of the Legislative Secretary Senator Régine Biscoe Lee	Civil Service Commission Judgments; Meeting of May 29, 2018*	34-18-1939

---------- Forwarded message ----------
From: **Edward Pocaigue** <epocaigue@senatorbjcruz.com>
Date: Wed, May 30, 2018 at 4:42 PM
Subject: Fwd: Civil Service Commission Judgments; Meeting of May 29, 2018
To: BENJAMIN CRUZ <speaker@senatorbjcruz.com>

GL#34-18-1939
Speaker Benjamin J.F. Cruz

MAY 30 2018
Time. 445 [ ] AM [ ] PM File No.
Received By

---------- Forwarded message ----------
From: **Jean Cordero** <jean@guamlegislature.org>
Date: Wed, May 30, 2018 at 4:36 PM
Subject: Fwd: Civil Service Commission Judgments; Meeting of May 29, 2018
To: Edward Pocaigue <epocaigue@senatorbjcruz.com>
Cc: Hermina Certeza <hermina.certeza@senatorbjcruz.com>, Carlo Branch <carlo.branch@senatorbjcruz.com>

For messages and communications please. Thank you!

---------- Forwarded message ----------
From: **Régine Biscoe Lee** <senatorbiscoelee@guamlegislature.org>
Date: Wed, May 30, 2018 at 4:30 PM
Subject: Fwd: Civil Service Commission Judgments; Meeting of May 29, 2018
To: Jean Cordero <jean@guamlegislature.org>

please process.

sym
*rbl
---------- Forwarded message ----------
From: **Susan Corbin** <susan.corbin@csc.guam.gov>
Date: Wed, May 30, 2018 at 4:03 PM
Subject: Civil Service Commission Judgments; Meeting of May 29, 2018
To: senatorbiscoelee@guamlegislature.org
Cc: James.servino@guamlegislature.org

Hafa Adai Senator: Please find attached the Judgments executed by the Civil Service Commission in its meeting of May 29, 2018, for your information.

Susan Corbin
Legal Secretary
Civil Service Commission
Tel: 647-1855

2018 MAY 30 PM 4:58

Office of the People
Senator Regine Biscoe Lee
Legislative Secretary of the 34th Legislature
office: 671-472-3455/6 | senatorbiscoelee@guamlegislature.org
Mina Trenta Kuattro Na Liheslaturan Guahan | 34th Guam Legislature

Jeanenne P. Cordero "Jean"
Office Manager
Office of Senator Regine Biscoe Lee
671-472-3455/6 (office)
671-486-6926 (cell)

Gi Minagâhet,

Ed Pocaigue

Asistånten Liheslatibu

epocaigue@senatorbjcruz.com

1939

http://www.senatorbjcruz.com

(671) 477-2520 (671) 477-2522 www.senatorbjcruz.com

Civil Service Commission Judgments of May 29. 2018 Meeting.pdf
373K

BEFORE THE
GUAM CIVIL SERVICE COMMISSION

BOARD OF COMMISSIONERS

IN THE MATTER OF: **ROBERT MIRANDA,** **Employee,** **vs.** **DEPARTMENT OF PARKS AND RECREATION,** **Management.**	**ADVERSE ACTION APPEAL** **CASE NO.: 17-AA01T** **DECISION AND ORDER**

This case came before the Civil Service Commission at its regularly scheduled meeting on April 27, 2017 at 5:45 p.m. upon the filing of four (4) motions by Employee, Employee's Motion to Void Serious Procedural Defect; Motion to Dismiss 2nd Charge: 4202.1; Failure to Report Criminal Charges or Conviction; Motion to Void for Lack of Jurisdiction; and Motion to Revoke for Failure of Progressive Discipline; all filed at the Civil Service Commission on March 16, 2017. Management filed its opposition to each of these motions.

At the April 27, 2017 motion hearing, Robert Miranda ("Employee"), and his lay Representative, Robert E. Koss were present. Also present at the hearing was Mr. William Reyes, Acting Director of the Department of Parks and Recreation, and Assistant Attorney General Debra B. Lefing, ("Management").

On this date, Employee withdrew his Motion to Revoke for Failure of Progressive Discipline and Motion to Dismiss 2nd Charge: 4202.1; Failure to Report Criminal Charges or Conviction.

I.

ISSUE

Did Employee meet his burden of proof relating to its Motion to Void for Serious Procedural Defect?

I. Did Employee meet his burden of proof relating to its Motion to Void for Lack of Jurisdiction?

II.

HOLDING

I. No. Employee did not meet his burden of proof relating to his Motion to Void for Serious Procedural Defect.

II. No. Employee did not meet his burden of proof relating to his Motion to Void for Lack of Jurisdiction.

III.

JURISDICTION

The jurisdiction of the Civil Service Commission is based upon the Organic Act of Guam, 4 G.C.A. Section 4401 et.seq., and the Department of Administration Personnel Rules and Regulations.

//

//

//

IV.

FACTS

A Notice of Proposed Adverse Action was served on Employee on January 12, 2017 and a Final Notice of Adverse Action dated January 26, 2017 was received by Employee on January 26, 2017. The Final Notice dismissed Employee from his position as a Lifeguard effective January 26, 2017 at 5:00 p.m. Employee was terminated by Department of Parks and Recreation effective January 26, 2017 at 5:00 p.m. based on unlawful use, possession, or sale of illicit drugs, failure to comply with the Drug-Free Workplace Program, and other misconduct. This matter was appealed to the Civil Service Commission on January 27, 2017 by Employee.

The Employee was terminated for violation of 4 GCA Section 4202.1, failure to report criminal charges to Employer, unlawful use of illicit drugs, violation of failure to comply with drug-free workplace program, and criminal conduct adversely affecting the employee/employer relations (on/off duty). The Final Notice of Adverse Action included an Internal Memorandum of Record which was signed, and attested to be true and correct by Employee on January 11, 2017.

V.

FINDING AND CONCLUSION OF LAW

Based upon the pleadings filed, the arguments of Management's counsel, and Employee's lay representative, the Commission denied Employee's Motion to Void for Serious Procedural Defect and Motion to Void for Lack of Jurisdiction. Under Rule 9 of the Rules of Procedure for Adverse Actions Appeals, Employee "bears the burden of proof by a preponderance of the evidence." With regard to Employee's Motion to Void for Serious

Procedural Defect, the Commission found that Employee did not meet his burden of proof and that there was no serious procedural defect in the Notice of Proposed Adverse Action, and Final Notice of Adverse Action regarding the charge of "criminal conduct adversely affecting the employee/employer relationship (on/off duty)." With regard to Employee's Motion to Void for Lack of Jurisdiction, the Commission found that it had jurisdiction to hear the charge of Employee's failure to comply with the drug-free workplace program, and denied Employee's Motion to Void this charge.

VI.

CONCLUSION

WHEREFORE, on April 27, 2017, following due deliberation, based upon the determination of a majority votes by the Commission, the Commission enters the following Order:

(1) The Commission voted 6 to 0 to address the Employee's two motions at the Hearing on the Merits: (a) Motion to Dismiss 2ND Charge: 4202.1 Failure to Report Crimal [sic] Charges or Conviction; and, (b) Motion to Revoke for Failure of Progressive Discipline; and,

(2) The Commission voted 5 to 1 to dismiss Employee's two motions: (a) Motion to Void for Lack of Jurisdiction; and, (b) Motion to Void for Serious Procedural Defect.

SO ADJUDGED THIS 29 **day of** MAY **2018,** ***nunc pro tunc.***

EDITH PANGELINAN
Chairperson

(absent)
LOURDES HONGYEE
Vice Chairperson

PRISICILLA TUNCAP
Commissioner

CATHERINE GAYLE
Commissioner

JOHN SMITH
Commissioner

(Resigned as of January 5, 2018)
MICHAEL G. TOPASNA
Commissioner

BEFORE THE
GUAM CIVIL SERVICE COMMISSION

BOARD OF COMMISSIONERS

IN THE MATTER OF: **SHANE A. CRUZ,** **Employee,** **vs.** **DEPARTMENT OF CORRECTIONS,** **Management.**	**ADVERSE ACTION APPEAL** **CASE NO.: 17-AA19T** **JUDGMENT OF DISMISSAL**

The Civil Service Commission hereby dismisses the above captioned case with prejudice pursuant to the Dismissal of Appeal signed on May 15, 2018, attached hereto.

SO ADJUDGED THIS 29 day of MAY 2018.

EDITH PANGELINAN
Chairperson

(absent)
LOURDES HONGYEE
Vice-Chairperson

PRISCILLA T. TUNCAP
Commissioner

JOHN SMITH
Commissioner

CATHERINE GAYLE
Commissioner

Robert E. Koss, Lay Representative
Guam Federation of Teachers
P.O. Box 2301
Hagatna, Guam 96910
Ph. (671) 735-4390 Fax (671) 734-8085
Email rkoss@gftunion.com

CIVIL SERVICE COMMISSION
10:35 A
RECEIVED
18-0372
MAY 16 2018
PSC STAFF

BEFORE THE CIVIL SERVICE COMMISSION OF GUAM

SHANE A. CRUZ, Employee, vs. DEPARTMENT OF CORRECTIONS, Management.	ADVERSE ACTION APPEAL CSC Case No.: 17-AA19T **DISMISSAL OF APPEAL**

To: Peter S. Calvo, Executive Director of the Civil Service Commission of Guam

Comes now, Employee in the above captioned matter, hereby dismisses ADVERSE ACTION APPEAL, CSC Case No.17-AA19T.

Submitted this 15 day of May 2018 by:

SHANE A. CRUZ

BEFORE THE
GUAM CIVIL SERVICE COMMISSION

BOARD OF COMMISSIONERS

IN THE MATTER OF: **MARK P. ADA,** **Employee,** **vs.** **GUAM FIRE DEPARTMENT,** **Management.**	**ADVERSE ACTION APPEAL** **CASE NO.: 17-PA06** **JUDGMENT OF DISMISSAL**

The Civil Service Commission hereby dismisses the above captioned case with prejudice pursuant to the Dismissal of Post Audit Appeal signed on May 16, 2018, attached hereto.

SO ADJUDGED THIS 29 day of May 2018.

EDITH PANGELINAN
Chairperson

(absent)
LOURDES HONGYEE
Vice-Chairperson

PRISCILLA T. TUNCAP
Commissioner

JOHN SMITH
Commissioner

CATHERINE GAYLE
Commissioner

Robert E. Koss, Lay Representative
Guam Federation of Teachers
P.O. Box 2301
Hagatna, Guam 96910
Ph. (671) 735-4390 Fax (671) 734-8085
Email rkoss@gftunion.com

CIVIL SERVICE COMMISSION
2:27PM
RECEIVED
18-0373
MAY 16 2018
GOVERNMENT OF GUAM

BEFORE THE CIVIL SERVICE COMMISSION OF GUAM

MARK P. ADA, **Employee,** **vs.** **GUAM FIRE DEPARTMENT,** **Management.**	POST AUDIT APPEAL **CSC Case No. 17-PA06** **DISMISSAL OF POST AUDIT APPEAL**

Comes now, Employee in the above referenced matter hereby dismisses his Post Audit Appeal, CSC Case no. 17-PA06 with prejudice.

Submitted this 16th day of May 2018 by:

MARK P. ADA

BEFORE THE
GUAM CIVIL SERVICE COMMISSION

BOARD OF COMMISSIONERS

IN THE MATTER OF:

JONATHAN ESTEVES,

Employee,

vs.

DEPARTMENT OF PUBLIC WORKS,

Management.

ADVERSE ACTION APPEAL
CASE NO.: 17-AA14T

JUDGMENT OF DISMISSAL

The Civil Service Commission hereby dismisses the above captioned case with prejudice pursuant to the Stipulation of Settlement and Agreement signed on May 10th and 11th, 2018, attached hereto.

SO ADJUDGED THIS 29 day of May 2018.

EDITH PANGELINAN
Chairperson

(absent)
LOURDES HONGYEE
Vice-Chairperson

PRISCILLA T. TUNCAP
Commissioner

JOHN SMITH
Commissioner

CATHERINE GAYLE
Commissioner

05·11·18

Robert E. Koss, Lay Representative
Guam Federation of Teachers
P.O. Box 2301
Hagatna, Guam 96910
Ph. (671) 735-4390 Fax (671) 734-8085
Email rkoss@gftunion.com

Guam's Lo... n 1581
RECEIVED
By
Date 16 MAY 2018 11:05

CIVIL SERVICE COMMISSION
2:28 PM
RECEIVED
18-0374
MAY 16 2018
GOVERNMENT OF GUAM

BEFORE THE CIVIL SERVICE COMMISSION OF GUAM

JONATHAN ESTEVES, **Employee,** **vs.** **DEPARTMENT OF PUBLIC WORKS,** **Management.**	**ADVERSE ACTION APPEAL** **CSC Case No.: 17-AA14T** **STIPULATION OF SETTLEMENT**

To the Civil Service Commission of Guam and opposing Management Representative of record.

THIS STIPULATION OF SETTLEMENT AND AGREEMENT, is by and between **JONATHAN ESTEVES** (hereinafter "Employee") and **DEPARTMENT OF PUBLIC WORKS,** (hereinafter referred to as "Management") as follows:

RECITALS

A. The Employee commenced an Adverse Action Appeal in the Civil Service Commission on or about September 7, 2017. (Jonathan Esteves v. Department of Public Works, CSC Case No. 17-AA14T).

B. Said Appeal arose following the Employee's resignation from the Department of Public Works on August 29, 2017. In a motion submitted to the Civil Service Commission by Employee on or about October 26, 2017, Employee takes issue with the Department of Administration's inclusion of the following language in Employee's Notice of Personnel Action: "*Employee separation not in good standing.*" Employee contends that this language should not have been placed in the Notice of Personnel Action and that the use of this language therein is inconsistent with the Department of Administration's Personnel Rules and Regulations, Rule 13.004.

ORIGINAL

RECEIVED
05·11·18
OFFICE OF THE ATTORNEY GENERAL
SOLICITORS DIVISION

OFFICE OF THE ATTORNEY GENERAL OF GUAM
RECEIVED
Civil / Solicitor
MAY 11 2018
10:03

C. The parties desire to enter into this Settlement Agreement (hereinafter "Agreement") for this and all pending matters in order to provide for certain arrangements in full settlement and discharge of the Appeal in fair and equitable means and upon the terms and conditions set forth herein.

D. The terms and conditions of said Agreement shall become operative upon execution of this Agreement.

NOW THEREFORE, for and in consideration of the mutual promises set forth herein, the parties agree as follows:

1. Purpose of Agreement. Employee and Management acknowledge and agree that this Agreement is a Settlement and Compromise of CSC Case No. 17-AA14T. It is the intention of the parties by the execution of this Agreement to fully, finally and completely resolve all disputes between them regarding these matters, in the manner more specifically set forth in the terms of this Agreement that follow.

2. Employee's Obligation.

2.1 Employee agrees that he shall withdraw the Adverse Action Appeal from the Civil Service Commission and request that the Commission dismiss Appeal 17-AA14T with prejudice pursuant to the terms of this agreement.

3. **Management's Obligation.**

3.1 Management agrees that they will request the Department of Administration to amend the original personnel action no. A-248338 to remove the statement "*Employee separation not in good standing*" from personnel action no. A-248338.

3.2 Management agrees to submit this Settlement Agreement to the Department of Administration in support of this request to remove the statement "*Employee separation not in good standing*" from personnel action no. A-248338.

4. **Performance Accepted.** The parties agree and acknowledges: (a) that it accepts performance of its obligations specified in this Agreement as a full and complete compromise of matters involving disputed issues; (b) that the negotiations for this settlement (including all statements, admissions or communications by the parties of their attorneys or representative shall not be considered by any of said parties; (c) and that no past or present wrong doing on the part of the parties shall be implied by such negotiations.

5. Additional Documents. All parties agree to cooperate fully and execute any and all supplementary documents and take all additional actions that may be necessary as appropriate to give full force and effect to the basic terms and intent of this Agreement within thirty days of the effective date.

6. Independent Advice of Counsel. Each party represents and declares that it has received independent advice from its respective attorneys and representative with respect to the advisability of making the settlement provided for herein and with respect to the advisability of executing this Agreement. Each party further represents and declares that it has not relied upon any statement or representation by the other party or of any of its partners, agents, employees, or attorneys in executing this Agreement or in making the settlement provided for herein, except as expressly provided for herein.

7. Voluntary Agreement. Each party represents and declares that it has carefully read this Agreement, that is knows the contents of this Agreement, and that it has signed the same freely and voluntarily.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written by their respective names.

For Employee:	**For Management:**
Jonathan Esteves, Employee	**Glenn Leon Guerrero, Director**
Date: 5-10-18	**Date:** 5/11/18