Speaker's Office <speaker@guamlegislature.org>

M&C Fwd: Civil Service Commission Judgments

1 message

Speaker's Office <speaker@guamlegislature.org>
To: Clerks Office <clerks@guamlegislature.org>
Cc: Rennae Meno <rennae@guamlegislature.org>
Bcc: Tina Muna Barnes <tinamunabarnes@gmail.com>

Wed, Jul 24, 2019 at 9:08 AM

07-20-19	6:51 AM	07-19-19	Civil Service Commission Judgments for July 18, 2019.*	Guam Civil Service Commission	35GL-19-0780

35GL-19-0780
Speaker Tina Rose Muña Barnes

JUL 23 2019
Time 8:00 (X)AM ( )PM
Received By: Matt

Sinseru yan Minagâhet,

Office of the Speaker • Tina Rose Muña Barnes
Committee on Public Accountability, Human Resources & the Guam Buildup

35th Guam Legislature
I Mina'trentai Singko na Liheslaturan Guåhan

Guam Congress Building | 163 Chalan Santo Papa | Hagatna, GU 96910
T: (671) 477-2520/1
speaker@guamlegislature.org

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Gumai pribilehu yan konfedensia este siha na mensåhi. Solo espesiåtmente para hågu ma entensioña pat ma aturisa para unrisibi. Sen prubidu kumu ti un ma aturisa para manribisa, na'setbe, pat mandespåtcha. Yanggen lachi rinisibu-mu nu este na mensåhi , put fåbot ago' guatu gi I numa'huyong gi as speaker@guamlegislature.org yan despues destrosa todu siha I kopian mensåhi. Si Yu'os ma'åse'.

---------- Forwarded message ---------
From: **Office of Senator Shelton Guam Legislature** <officeofsenatorshelton@guamlegislature.org>
Date: Sat, Jul 20, 2019 at 6:51 AM
Subject: Fwd: Civil Service Commission Judgments
To: Speaker's Office <speaker@guamlegislature.org>

2019 JUL 24 AM 9:20

Good morning Speaker Barnes:

Forwarding for your information.

Regards.

Evelyn Claros
Administrative Officer
Office of Senator Amanda L. Shelton

---------- Forwarded message ---------
From: **Susan Corbin** <susan.corbin@csc.guam.gov>
Date: Fri, Jul 19, 2019 at 10:54 AM
Subject: Civil Service Commission Judgments
To: Office of Senator Shelton Guam Legislature <officeofsenatorshelton@guamlegislature.org>

Hafa Adai Senator Shelton: Please find attached judgments executed by the Civil Service Commission in its meeting of July 18, 2019. This is mandated under 4 GCA, Section 4403. Thank you.

Si Yu'os Ma'åsé
Susan Corbin
Legal Secretary
Civil Service Commission
Tel: 647-1855

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Name
Title

Office of the People • Senator Amanda L. Shelton
Legislative Secretary & Chairwoman of the Committee
on Higher Education and the Advancement of Women,
Youth and Senior Citizens
35th Guam Legislature
I Mina'trentai Singko na Liheslaturan Guåhan

Tel: (671) 969-2574
Email: officeofsenatorshelton@guamlegislature.org

Civil Service Commission Judgments-July-18-2019.pdf
329K

0780

BEFORE THE
GUAM CIVIL SERVICE COMMISSION

BOARD OF COMMISSIONERS

IN THE MATTER OF:

EDDIE CASTRO,

Employee,

vs.

PORT AUTHORITY OF GUAM,

Management.

ADVERSE ACTION APPEAL
CASE NO.: 13-AA13T SP

DECISION AND JUDGMENT

INTRODUCTION

This matter came before the Commission April 4, 2019, on remand from the Superior Court of Guam SP0072-16. Commissioners present were Luis R. Baza, Lourdes Hongyee, John Smith, and Priscilla T. Tuncap. Also present were Eddie Castro with his attorney, William Pole, and Attorney Michael Phillips representing Port Authority of Guam (Port).

BACKGROUND

Eddie Castro (Castro) was terminated April 5, 2013 for refusal or failure to perform prescribed duties and responsibilities, falsification of records, and insubordination. He filed his appeal to the Commission. The Commission following a hearing on the merits modified the termination to a demotion to the position of "guard." The position of "guard" does not exist at the Port Authority of Guam (Port). The matter was appealed to the Superior Court

which remanded the case back to the Commission to determine (1) whether the Commission shall uphold its modification of the Port's adverse action despite that the position of "guard" does not exist, and (2) based on its decision on REMAND whether to proceed with the modification. The Commission shall further determine whether Castro has prevailed for the purposes of awarding attorney fees.

CONCLUSION

After hearing arguments from the parties, and discussion, the Commission voted 4 to 0 to modify its prior ruling from demotion to termination. The termination of the employee by the Port is affirmed.

SO ADJUDGED THIS 18th **day of** July **2019.**

LUIS R. BAZA
Chairperson

JUAN K. CALVO
Vice-Chairperson

PRISCILLA T. TUNCAP
Commissioner

JOHN SMITH
Commissioner

CATHERINE GAYLE
Commissioner

BEFORE THE
GUAM CIVIL SERVICE COMMISSION

BOARD OF COMMISSIONERS

IN THE MATTER OF:

CIVIL SERVICE COMMISSION,

Employee,

vs.

GUAM VISITORS BUREAU,

Management.

POST AUDIT
CASE NO.: 15-PA-03 SP

ORDER AFTER HEARING

This matter came before the Commission for a Post Audit Investigation Report May 28, 2019. Commissioners present were Luis R. Baza, Juan K. Calvo, John Smith, and Catherine Gayle. Present for the Guam Visitors Bureau (GVB) were President Pilar Laguana, and Attorney Thomas Fisher.

CSC staff read the Investigation report into the record. Staff found multiple administrative errors in GVB's process of determining the salary of GVB employee Rose Cunliffe including the fact that GVB does not have a written resolution to formalize their vote to adopt the "Government of Guam Competitive Wage Act of 2011,"as required by law, 12 GCA, §910 (See pages 5 and 6 of the investigation report.)

CSC staff concluded that Ms. Cunliffe's salary increments from October 1, 2010 through 2015, were implemented consistent with the Guam Competitive Wage Act of 2011 Hay Plan schedule and applicable rules. Staff recommended that the GVB Board formalize the decision by resolution *nunc pro tunc* to approve the funding and implementation of the Government of Guam Competitive Wage Act of 2011, pursuant to its vote on December 9, 2010.

The Commission voted 4-0 to adopt the recommendations of the Staff.

SO ORDERED THIS 18th day of July 2019.

LUIS R. BAZA
Chairperson

JUAN K. CALVO
Vice-Chairperson

PRISCILLA T. TUNCAP
Commissioner

JOHN SMITH
Commissioner

CATHERINE GAYLE
Commissioner

BEFORE THE
GUAM CIVIL SERVICE COMMISSION

BOARD OF COMMISSIONERS

IN THE MATTER OF:

GERRY J. HOCOG,

Employee,

vs.

DEPARTMENT OF CORRECTIONS,

Management.

ADVERSE ACTION APPEAL
CASE NO.: 17-AA21T

JUDGMENT OF DISMISSAL

The Civil Service Commission hereby dismisses the above captioned case with prejudice pursuant to the signed MOTION TO DISMISS, attached hereto.

SO ADJUDGED THIS 18th **day of** July **2019.**

LUIS R. BAZA
Chairperson

JUAN K. CALVO
Vice-Chairperson

PRISCILLA T. TUNCAP
Commissioner

JOHN SMITH
Commissioner

CATHERINE GAYLE
Commissioner

JOAQUIN C. ARRIOLA, JR., ESQ.
ARRIOLA LAW FIRM
259 MARTYR STREET, SUITE 201
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Counsel for Plaintiff
GERRY J. HOCOG

CIVIL SERVICE COMMISSION
RECEIVED
9:58 AM
JUL 10 2019
19-0570
GOVERNMENT OF GUAM

BEFORE THE
GUAM CIVIL SERVICE COMMISSION

IN THE MATTER OF:	ADVERSE ACTION APPEAL CASE NO. 17-AA21T
GERRY J. HOCOG, Employee,	**MOTION TO DISMISS**
vs.	
DEPARTMENT OF CORRECTIONS, Management.	

Plaintiff, GERRY J. HOCOG, by and through undersigned counsel of record, and pursuant to Rule CSC-300A (1) of Civil Service Commission Hearing Procedures for Adverse Action Appeals, and hereby Moves to Dismiss the above captioned appeal.

Dated in Hagatna, Guam: 7/10/19.

ARRIOLA LAW FIRM
Counsel for GERRY J. HOCOG

JOAQUIN C. ARRIOLA, JR.

ARRIOLA LAW FIRM HAGÅTÑA, GUAM 96910

BEFORE THE
GUAM CIVIL SERVICE COMMISSION

BOARD OF COMMISSIONERS

IN THE MATTER OF: **CEFGRINO NEDEDOG SUCALDITO,** **Employee,** **vs.** **DEPARTMENT OF EDUCATION,** **Management.**	**ADVERSE ACTION APPEAL** **CASE NO.: 18-AA11T** **JUDGMENT OF DISMISSAL**

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

SO ADJUDGED THIS 18th **day of** July **2019.**

LUIS R. BAZA
Chairperson

JUAN K. CALVO
Vice-Chairperson

PRISCILLA T. TUNCAP
Commissioner

JOHN SMITH
Commissioner

CATHERINE GAYLE
Commissioner

Daniel R. Del Priore, Lay Representative
Guam Federation of Teachers
P.O. Box 2301
Hagatna, Guam 96910
Ph. (671) 735-4390 Fax (671) 734-8085
Email daniel@gftunion.com

CIVIL SERVICE COMMISSION
RECEIVED
19-0545
JUL 01 2019
2:40 P.M.
GOVERNMENT OF GUAM

BEFORE THE CIVIL SERVICE COMMISSION OF GUAM

IN THE MATTER OF:

CEFGRINO NEDEDOG SUCALDITO Employee, vs. DEPARTMENT OF EDUCATION, Management.	Adverse Action Appeal CSC Case No: 18-AA11T **WITHDRAWAL OF ADVERSE ACTION APPEAL**

To: The Executive Director of the Civil Service Commission of Guam and opposing management representative of record.

Comes now, the Employee in the above captioned and numbered Adverse Action Appeal Case, and hereby withdraws his Adverse Action Appeal CSC Case No. 18 -AA11T.

Respectfully submitted this 21st day of June 2019

Cefgrino N. Sucaldito

Cefgrino Nededog Sucaldito

EMPLOYEE

Acknowledged:

Daniel R. Del Priore

Daniel R. Del Priore

Lay Representative

For The Employee

BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS

IN THE MATTER OF:	GRIEVANCE APPEAL CASES NO.: 18-GRE04
CLARICE PEREDO, Employees, vs. GUAM BEHAVIORIAL HEALTH & WELLNESS CENTER, Management.	DECISION AND ORDER

This matter came on to be heard before the Civil Service Commission (CSC) the 25th day of April 2019. Present for the hearing were Employee, Clarice Peredo, appearing with her representative, Robert Koss, and also present, were Donna Lawrence Assistant Attorney General, and Theresa Arriola, representing Guam Behavioral and Health and Wellness Center.

Attorney Lawrence argued that the grievance should be dismissed because the Employee's complaint involves pay, not the conditions of employment. Commissioner Gayle pointed out that Personnel Rules and Regulatios, Section 12.1 provides:

> "A grievance is any question or complaint filed by a permanent employee alleging that there has been a misinterpretation, misapplication or violation of personnel statue, rule, regulation or written policy which directly affect the employee…"

Employee here complains that Management violated 4 GCA, §2108 and the Personnel Rules and Regulations, §4.502 (A) which requires that she be hired back at not less than the same salary she earned at her former position.

Mr. Koss did not file a brief in opposition to Management's motion but stated he believed the issue was resolved against Employee because of the Superior Court's decision in Juanita Aguon vs. Department of Corrections which involved a similar set of facts.

The Commissioners voted 3 to 2 in favor of Management's Motion to Dismiss, lacking four (4) affirmative votes, Management's Motion to Dismiss failed.

Attorney Lawrence then moved to void the Decision and Order signed on October 25, 2018 (with respect to a vote taken on July 3, 2018) for failure to comply with the Open Government Law. After a discussion, the Commission voted 5 to 0 that the Commission did not violate the Open Government Law, and therefore the Motion to Void Decision is denied.

SO ORDERED THIS 18th DAY OF July, 2019

LUIS R. BAZA
Chairperson

JUAN K. CALVO
Vice-Chairperson

PRISCILLA T. TUNCAP
Commissioner

JOHN SMITH
Commissioner

CATHERINE GAYLE
Commissioner

BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS

IN THE MATTER OF:	GRIEVANCE APPEAL CASES NO.: 19-GRE02; 19-GRE03; 19-GRE04; 19-GRE05
CECIL SULLA, CHRISTOPHER DAWSON, ANTHONY CHACO, ANTHONY DEMAPAN, Employees, vs. GUAM POLICE DEPARTMENT, Management.	DECISION AND ORDER

I. INTRODUCTION

This matter came before the Commission May 9, 2019 on Management's Motion to Dismiss. Commissioners present were Luis R. Baza, Priscilla T. Tuncap, John Smith, Catherine Gayle, Julie L. Quinata, and John K. Calvo. Also present were Daniel Del Priore representing the Employees, and Ronald Taitano, representing the Guam Police Department (GPD).

Management moved to dismiss the Grievance on the basis that the Civil Service Commission lacked jurisdiction over the matter because Employees' complaints relate to

the rating of applicants, and therefore, is excluded as a Grievance under Chapter 12 of Department Administration Rules and Regulations (DOA PR&R).

II. JURISDICTION

The jurisdiction of the Guam Civil Service Commission is based upon the Organic Act of Guam, Title 4 Guam Code Annotated (GCA) § 4403 and relevant DOA PR&R.

III. RELEVANT FACTS

Employees complained that they were not given an opportunity to compete for a new Lieutenant, and Police Officer II positions. When the recruitment of USERRA became effective the applicants (USERRA) were on active duty with the military, and were therefore, protected by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). The law requires that a service member receive a missed promotion upon reemployment if there is a reasonable certainty that the promotion would have been granted. The application of USERRA in this case was applied to the previous rating which granted them rights to the promotion.

IV. ANALYSIS

The basis of Employees' grievance is that the application of USERRA in this case placed them too low in the examination ratings to qualify for an interview. Department of Administration, Personnel Rules and Regulations, Section 12.301, C., specifically excludes actions based on "examination ratings" from being defined as a grievance. Employees with complaints regarding examination ratings are not categorically eligible for access to the grievance procedures.

IV. CONCLUSION

Accordingly, the Commission, after due deliberation, determined by a vote of 5 to 1 (Commissioner Tuncap dissenting), that it did not have jurisdiction over the Employees' grievance. Motion to dismiss is granted.

SO ADJUDGED THIS 18th day of July, 2019.

LUIS R. BAZA
Chairperson

JUAN K. CALVO
Vice-Chairperson

PRISCILLA T. TUNCAP
Commissioner

JOHN SMITH
Commissioner

CATHERINE GAYLE
Commissioner

BEFORE THE
GUAM CIVIL SERVICE COMMISSION

BOARD OF COMMISSIONERS

IN THE MATTER OF:

CIVIL SERVICE COMMISSION,

Employee,

vs.

GUAM WATERWORKS AUTHORITY,

Management.

POST AUDIT APPEAL
CASE NO.: 19-PA05

ORDER AFTER HEARING

This matter came before the Commission July 2, 2019, for a Post Audit Staff Assessment Report. Present for the hearing were Commissioners Luis R. Baza, John Smith, Priscilla T. Tuncap, Catherine Gayle, and Juan K. Calvo. Also present were Personnel Management Administrator Roland P. Fejarang, and Personnel Management Analyst III, Maria Masnayon.

John K. Blas (Blas), an employee of the Guam Waterworks Authority (GWA) filed a complaint requesting a Post Audit Review by the Civil Service Commission of GWA's promotional process for the Operations and Maintenance Manager position. Blas alleges that the employee selected and promoted did not meet the minimum qualifications for the position.

The Commission voted 5 to 0 to adopt the recommendation of the staff to proceed forward with an investigation to determine if GWA adhered to the merit system, and its rules in the selection process.

SO ORDERED THIS 18th **day of** July **2019.**

LUIS R. BAZA
Chairperson

JUAN K. CALVO
Vice-Chairperson

PRISCILLA T. TUNCAP
Commissioner

JOHN SMITH
Commissioner

CATHERINE GAYLE
Commissioner