



BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS



IN THE MATTER OF:

BENJAMIN D. CRUZ,

Employee,

vs.

**DEPARTMENT OF PUBLIC
WORKS,**

Management.

**ADVERSE ACTION APPEAL
CASE NO. 09-AA25S**

DECISION AND JUDGMENT

This case came before the Civil Service Commission at its regularly scheduled meeting on May 8, 2014, at 5:45 p.m., at its office located in Sinajana, Guam.

Benjamin Cruz ("Employee") was not present. Employee's lay representative, David Babauta from Guam Federation of Teachers, was present at the motion hearing. Present for Management was Director Carl Dominguez. Donna Lawrence, Esq., from the Attorney General's Office, was present and represented Management.

I.
ISSUE

- a) Did Management meet its burden of proof such that its Motion to Dismiss Employee's Adverse Action Appeal for Failure to Prosecute should be granted?
- b) Should Employee's Lay Representative's Motion to Withdraw As Representative be Granted?

ORIGINAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

II. HOLDING

After considering the motion documents submitted, Employee's failure to appear at the hearing, the lack of a filed Response by Employee or his representative to Management's Motion to Dismiss Adverse Action Appeal, and the arguments by the parties and the respective motions filed, the CSC grants Management's Motion to Dismiss the Adverse Action appeal with prejudice by a vote of 6-0, and also grants GFT's Motion to Withdraw As Representative by a vote of 6-0.

The Commission also discussed that it previously heard the case of Anthony Tenorio v. DPW (09-AA26S) and James Toves v DPW (09-AA29S) on May 1, 2014, and that these bus drivers' appeals and hearings concern the same circumstances. CSC rules to dismiss the adverse action appeals of these two cases for failure to prosecute at the motion hearing on May 1, 2014, based on the same facts and circumstances as set forth in this case.

III. BACKGROUND

Management filed its Motion to Dismiss the Employee's Adverse Action Appeal for Failure to Prosecute on or about April 7, 2014. Employee's lay representative, GFT, was served with the Motion to Dismiss the adverse action appeal. Neither Employee nor his lay representative filed a response to the Motion to Dismiss his appeal at any time.

Employee failed to appear at the hearing despite being provided notice of the hearing by his lay representative. Employee's appeal was filed in 2009, and Employee has failed to prosecute his adverse action appeal. As indicated in Management's Motion to Dismiss, Employee was suspended for one (1) day, effective June 30, 2009. Employee appealed his suspension on July 17, 2009. He subsequently resigned from DPW effective May 4, 2012.

Employee's lay representative filed a joint Motion to Withdraw as Representative for Employee, along with three other employees in CSC AA appeal Nos: AA26S, AA27S, and

1 AA29S on April 1, 2014. All employees were involved in the same alleged misconduct that
2 occurred on May 7, 2009.

3 GFT's representative indicated that all Employees in those cases, including Employee in
4 this case, have failed to communicate with him despite attempts to contact the Employees via
5 certified mail as recently as January 2014. As part of its motion, GFT attached the letters to this
6 Employee as well as the certified mail receipt.

7 IV.
8 JURISDICTION

9 The jurisdiction of the Civil Service Commission is based upon the Organic Act of
10 Guam, 4 G.C.A. Section § 4401 et. seq. and the personnel rules and regulations.

11 V.
12 CONCLUSION

13 By a vote of 6-0, the Commission finds that Management met its burden of proof relating
14 to its Motion to Dismiss Employee's Adverse Action appeal with prejudice. GFT's Motion to
15 Withdraw is also granted by a vote of 6-0.

16 IT IS SO ORDERED THIS 8th DAY OF January 2015.

17 Luis R. Baza
18 LUIS R. BAZA
19 Chairman

20 Priscilla T. TunCap
21 PRISCILLA T. TUNCAP
22 Commissioner

23 Lourdes Hongyee
24 LOURDES HONGYEE
25 Commissioner

Edith C. Pangelinan
EDITH C. PANGELINAN
Commissioner

Manuel R. Pinauin
MANUEL R. PINAUIN
Vice-Chairman

John Smith
JOHN SMITH
Commissioner

Daniel B. Leon Guerrero
DANIEL B. LEON GUERRERO
Commissioner