

CIVIL SERVICE COMMISSION
GOVERNMENT OF GUAM
AGANA, GUAM

CSC 85-001

RELATIVE TO THE HEARING PROCEDURES FOR ADVERSE ACTION APPEALS
COVERING SUSPENSIONS, DEMOTIONS, AND DISMISSALS

BE IT RESOLVED BY THE CIVIL SERVICE COMMISSION:

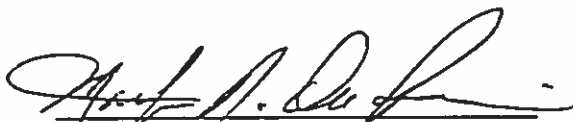
WHEREAS, Section 4401, Title 4, of the Guam Code Annotated empowers the Civil Service Commission to adopt rules to govern its procedures;

WHEREAS, Section 4403, Title 4, of the Guam Code Annotated provides that the Civil Service Commission shall hear appeals from adverse actions taken to suspend, demote, or dismiss an employee from the classified service;


WHEREAS, the establishment of procedures to govern the hearing of adverse action appeals is essential to an orderly proceeding and an equitable decision;

RESOLVED, that the Civil Service Commission hereby attest and adopt the attached hearing procedures for adverse action appeals.


DULY AND REGULARLY ADOPTED ON THE 9th of APRIL,
1985.




MARITZA R. DEL PRIORE
Chairperson




ANTONIO B. PEREZ
Vice-Chairperson



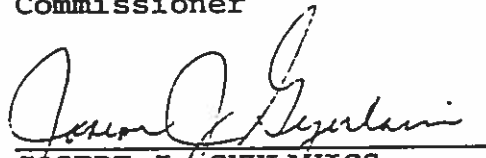
EDUARDO F. DELA PENA
Commissioner



VIVIAN Q. IGNACIO
Commissioner



JOHN D. ISHMAEL
Commissioner



JOSEPH J. GYULAVICS
Commissioner

JOISE TAN
Commissioner

CIVIL SERVICE COMMISSION
GOVERNMENT OF GUAM

HEARING PROCEDURES FOR ADVERSE ACTION APPEALS
(COVERING SUSPENSIONS, DEMOTIONS, DISMISSALS)

CSC-100 A. RIGHT TO APPEAL:

1. Any person in the classified service holding a permanent appointment and who is subject to an adverse action by management, except one who is exempted by law from the jurisdiction of the Civil Service Commission, is entitled to appeal an adverse action to the Civil Service Commission. A person who has been appointed to a permanent position and who has satisfactorily completed his probationary period holds a permanent appointment.
2. A contract employee occupying a permanent position in the classified service is entitled to appeal an adverse action to the Civil Service Commission during the term of his contract. Non-renewal of the contract by the Government of Guam is not appealable.

B. CONTENTS OF APPEAL:

An appeal shall be in writing and shall set forth the answer to the charges and the grounds for appeal. An appeal may be amended within 15 days after filing. A person who is the subject of an adverse action and who files an appeal on his own behalf or through a representative is the appellant.

C. TIME LIMIT FOR FILING APPEAL:

An appeal must be submitted within 20 calendar days from the effective date of the action.

D. RIGHTS IN PURSUIT OF APPEAL:

An appellant shall:

1. Be assured freedom from restraint, interference, coercion, discrimination, or reprisal.

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2. Have the right to be accompanied, represented and advised by a representative.
3. Be assured a reasonable amount of official time to prepare his case if he is on duty status.

CSC-200 A. ENTITLEMENT:

An appellant who files an appeal in accordance with these rules is entitled to a hearing on his appeal before the Civil Service Commission. Except in the case of an emergency, or death, incapacitation, or absence from the island of the appellant, the appellant shall be personally present at the hearing of his appeal. The term "emergency" means an occurrence of a serious nature demanding immediate attention. The term "absence from the island" covers off-island emergencies, relocation, situations in which the appellant was not notified of the hearing date before leaving the island, and situations in which the appellant was excused by the Commission for off-island purposes.

B. PLACE AND TIME OF HEARING:

The Commission shall set the place, date, and time of hearing as expeditiously as possible.

C. CONDUCT OF HEARING:

1. The hearing is open to the public.
2. The hearing will be conducted so as to bring out pertinent facts, including the production of certain records.
3. Decisions on the admissibility of testimony or other evidence are made by the presiding officer of the Commission after consulting with the Commission's legal counsel. When a member objects to a decision of the presiding officer, the objection shall only be sustained by not less than 4 concurring votes.
4. Testimony is under oath or affirmation.
5. Each party shall have the right to call, examine, or cross-examine witnesses, and introduce exhibits. Either party may be called and examined by the Commission. Any

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member of the Commission may direct relevant questions at a witness after examination of the witness has been completed by both parties; except that questions may be asked during examination to clarify a response by a witness.

6. Rules of evidence shall not be applied. The only grounds for excluding any proffered evidence are that the evidence is irrelevant or unduly repetitious. If any evidence is ruled inadmissible by the presiding officer, the grounds shall be stated for the record.
7. The order of presentation in the hearing shall be as follows:
 - a. Opening statement of management.
 - b. Opening statement of appellant.
 - c. Presentation by management of evidence in support of the charges.
 - d. Presentation by the appellant of such evidence in defense or rebuttal.
 - e. Closing statement of management.
 - f. Closing statement of appellant.
8. Preliminary motions and issues shall be disposed of prior to the hearing on the merits.

D. BURDEN OF PROOF:

Management shall have the burden of proof by a preponderance of the evidence. In cases involving charges which could be a crime if the person was charged in a criminal action, the Commission shall determine the matter based upon substantial evidence.

E. WITNESSES:

1. Both parties are entitled to produce witnesses. The department or agency head or his designee shall be in attendance without subpoena. Except as otherwise provided in Rule CSC-200 A., the appellant shall be in attendance without subpoena.

CSC-200)

2. The Commission may call additional witnesses as it may deem necessary and require the production of documents.
3. The Chairperson of the Civil Service Commission or the Executive Director, upon his own initiative, upon the request of any member of the Commission, or upon the request of any party before the Commission, may summon in writing any person to attend a meeting of the Commission as a witness and, in a proper case, to bring with him any book, record or paper which may be deemed material as evidence in the case. The fees for such attendance shall be the same as the fees of witnesses before the Superior Court, except that if the witness is a government employee no witness fee shall be given. The subpoena shall issue in the name of the Civil Service Commission, and shall be directed to the person and served in the same manner as subpoenas to appear and testify before the court. If any person summoned to testify shall refuse or neglect to obey said subpoena, upon petition, the court may compel the attendance of such person before the Commission, or punish said person for contempt in the same manner provided by law for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the Superior Court.
4. An employee is considered to be on duty status during the time he is made available as a witness. Such employee is entitled to compensatory time-off if he serves during his normal non-working hours. The Civil Service Commission shall furnish the head of the department or agency in which the witness is employed, a certificate showing the time devoted to the hearing. "Employee" in this section does not include the parties to the appeal or their representatives.
5. The Commission shall ensure that all witnesses are treated with courtesy and respect while giving testimony at the hearing.
6. The government shall assure witnesses freedom from restraint, interference, coercion, discrimination, or reprisal in presenting testimony.

(CSC-200) F. RECORD OF HEARING:

1. The hearing may be tape recorded by the Commission. The Commission's recordings, testimonies and exhibits admitted during the hearing, together with all pleadings and papers filed by the parties, shall constitute the official record.
2. Filming, video taping, or recording of the hearing or other proceedings before the Commission by any of the parties shall be permitted only upon written request and prior approval by the Commission, with notice to the other parties in the case.
3. Transcripts of the hearing may be made available upon request and at a cost of \$1.00 per page. Additional copies may be provided for \$.50 per page. These charges do not apply to the Government of Guam.

CSC-300 A. TERMINATION OF APPEAL:

The Civil Service Commission may terminate an employee's appeal:

1. At the appellant's request.
2. When an appellant fails to furnish required information necessary to proceed with the appeal.
3. When, without reasonable justification or excuse, an appellant fails to personally appear for the hearing.

B. DEATH OF APPELLANT:

When an appeal has been filed properly before the death of the appellant, the Commission shall process it to completion and adjudicate it. The Commission may include in its decision retroactive compensation and benefits to which the deceased employee would have been entitled to at the time of death.

CSC-400 A. SCOPE OF HEARING:

The scope of the appeal hearing shall be limited

(CSC-400)

to:

1. The issues in dispute;
2. A review of compliance with procedural requirements for effecting an adverse action.

B. DECISION:

1. The Commission shall decide the appeal on the basis of the evidence presented.
2. Except as provided in paragraph 4 below, if management proves the charges against the appellant, the Commission shall sustain the adverse action.
3. If management fails to prove the charges, the Commission shall dismiss the adverse action with prejudice.
4. If management proves the charges, but the Commission finds that, because of the appellant's past record, the gravity of the offense, or the facts and circumstances of the case, the adverse action be modified, it may modify the adverse action accordingly. The reasons for such modification shall be stated, in sufficient detail, in the decision of the Commission. Any compensation or benefits due as a result of the modification shall be restored to the appellant.
5. If the Commission finds that the adverse action was substantially procedurally defective because not in conformity with the applicable rules and regulations for adverse actions, it shall dismiss the adverse action, with or without prejudice, as it considers fair and equitable under the facts and circumstances of the case. The Commission shall be satisfied that procedural requirements have been met before proceeding with the hearing on the merits.
6. The Commission shall issue a written decision within 30 days after the hearing is completed and provide copies thereof to the parties. If the adverse action is sustained, the effective date of the action shall stand as issued by the department or agency head.

- (CSC-400) 7. If the adverse action is revoked by the Commission, all compensation and other benefits which would have accrued to the appellant from the effective date of the decision shall be restored to the appellant.

CSC-500 COMPLIANCE:

The decision of the Commission is final but subject to judicial review. Compliance with any order specified in the decision is required by law. The department or agency head to whom an order is directed, must report, within 10 working days after receipt of the decision, that he has carried the order into effect or he has taken action to have the decision reviewed by the Superior Court.

CSC-600 AMENDMENT AND SUPPLEMENTAL POLICIES

These procedures and guidelines may be amended by the Commission as the need arises or may be amended or supplemented by other written appeal policies of the Commission.

CIVIL SERVICE COMMISSION
(KUMISION I SETBISION SIBIT)

APR 12 1985

MEMORANDUM:

To: Attorney General
From: Executive Director, Civil Service Commission
Subject: Amendments to Procedural Rules for Civil Service
Commission Adverse Action Hearing

This is in reference to your memorandum of February 28, 1985, on the above subject.

Your suggested amendments to the Commission's Procedural Rules have been taken into consideration and approved by the Board.

Attached herewith is a copy of the approved Rules as revised.

We wish to thank you for your continuing assistance and especially to Mr. Don Paillette who helped us during the discussion of the proposed amendments.


J.C. BORJA

Attachment

cc: CSC Adverse Action Hearing Procedures ✓
Chrono

JCBORJA:esa
4/12/85

CIVIL SERVICE COMMISSION
(KUMISION I SETBISION SIBIT)

APR 15 1985

MEMORANDUM:

To: The Governor

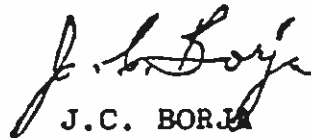
From: Executive Director, Civil Service Commission

Subject: Executive Order 84-33, Regarding the Role
of the Civil Service Commission in Adverse
Action Appeals

Pursuant to Order No. 1 of Executive Order 84-33, the Civil Service Commission with the assistance of the Office of the Attorney General reviewed and made the necessary amendments to its Procedural Rules on Adverse Action Appeals.

The amendments and revisions were approved by the Board on April 9, 1985.

Attached herewith is a copy of the approved Rules as adopted by Resolution CSC 85-001 of the Board.


J.C. BORJA

Attachment

✓ cc: CSC Adverse Action Procedures
Chrono

JCBORJA:esa
4/12/85