



BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS



IN THE MATTER OF:

CRAIG J. CRUZ,

Employee,

vs.

DEPARTMENT OF EDUCATION,

Management.

ADVERSE ACTION APPEAL

CASE NO. 14-AA11T

DECISION AND JUDGMENT

I. INTRODUCTION

This matter came before the Civil Service Commission of Guam for Motion Hearing on Tuesday October 21, 2014 for Failure to Prosecute. Neither the appellant nor any representative appeared on behalf of the Employee and there was no showing of good cause to excuse his absence.

Robert E. Koss, Lay Representative of the Department of Education and Mr. Joseph Sanchez, Deputy Superintendent of Curriculum and Instructional Improvement appeared on behalf of Management.

At hearing, Management moved the Commission to dismiss the case for the failure of the Employee to prosecute his appeal based on his repeated failure to attend scheduled status calls and the motion hearing or in the alternative, notify the Commission of a reason he was unable to do so.

II. JURISDICTION

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

ORIGINAL

III. FACTUAL BACKGROUND

1. Employee was issued a Final Notice of Adverse Action on April 11, 2014 notifying him of his dismissal from his classified position as a School Bus Driver for Individuals with Disabilities in the Department of Education on that basis set forth specifically therein; and,
2. Employee filed an Appeal of the Final Notice of Adverse Action with the Civil Service Commission of Guam on April 30, 2014. Upon receipt of the Appeal, the Civil Service Commission set the matter for a Status Call Conference on May 20, 2014 and provided notice to the Employee.
3. May 20, 2014, Employee appeared *Pro Se* before the Commission at Status Call and Lay Representative Robert Koss entered his appearance on behalf of Management for the Department of Education. Employee requested for a two week continuance to obtain representation. The Commission granted the Employee's request for continuance and provided the Employee with a copy of the Commission's Rules and for Adverse Action Appeal procedures. Employee was verbally informed and further provided written notice of the scheduled June 10, 2014 Status Call Hearing.
4. On June 10, 2014, Lay Representative Robert Koss, appeared on behalf of Management at the second status call. Neither the Employee nor any representative appeared at this status call and no notification or explanation was provided to the Commission or Management justifying the absence of the Employee. Commission scheduled a third status call for June 24, 2014 and provided written notice to the Employee.
5. On June 24, 2014, Lay Representative Robert Koss, appeared on behalf of Management at the third status call. Neither the Employee nor any representative appeared at this status call and no notification or explanation was provided to the Commission or Management justifying the absence of the Employee. Commission scheduled a fourth status call for August 12, 2014 and provided written notice to the Employee.
6. On August 12, 2014, Lay Representative Robert Koss, appeared on behalf of Management at this forth status call. Neither the Employee nor any representative appeared on his behalf at this status call and no notification or explanation was provided to the Commission or Management justifying the absence of the Employee.
7. At the August 12, 2014 status call, Management requested for a motion hearing and the instant matter was scheduled for October 21, 2014. Written notification was provided to the parties.
8. For the period of May 21, 2014 to October 21, 2014 or for six (6) months the Employee has not communicated to Management or the Commission, has not attended three consecutive scheduled status call hearings and has not entered a Representative into the record that could act and appear in his behalf. Further, the Employee has not informed the Commission of any good reason why he was unable to do so.
9. Employee received a certified mail notice of management's motion to dismiss as evidenced by the USPS return receipt bearing his signature.
10. Tuesday, October 21, 2014 this matter was heard by the Civil Service Commission Board based Management's Motion to Dismiss for failure to prosecute. Neither the Employee nor any representative appeared on his behalf at the scheduled Motion Hearing and no written opposition to the motion was entered into the record by the employee or any representative on his behalf.

11. CSC Rule 9.6 provides that the Commissioners may dismiss an appeal if the Employee is not present at a motion or merit hearing. No reasonable explanation has been provided to the Commission to reasonably excuse the absence of the Employee at the hearing.

IV. FINDINGS

1. Employee was absent from three consecutive status calls and the Motion Hearing without a showing of good cause and stands in violation of CSC Rules of Procedure 9.6 for adverse action hearings. Employee has consistently failed to communicate with Management or the Staff of the CSC.
2. The Commission has provided the Employee a reasonable opportunity to prosecute his claim or inform the Commission of some reason why he was unable to so.
3. The Commission has a need to manage its docket.
4. The Commission finds that the failure to abide by a scheduling order and failure to appear, in most instances, delays the timely resolution of the appeal and provides grounds for a dismissal for failure to prosecute and abide by the CSC Rules 9.5 and 9.6 for Adverse Action Appeals.

V. HOLDINGS

The Civil Service Commission, by a unanimous vote of 7-0, rules that based on the evidence presented at hearing, Management has met its burden of proof and dismisses the above referenced matter with prejudice.

IT IS SO ORDERED THIS 11th DAY OF DECEMBER 2014.

NOT PRESENT

LUIS R. BAZA
Chairman

PRISCILLA T. TUNCAF
Commissioner

LOU HONGYEE
Commissioner

EDITH C. PANGELINAN
Commissioner

MANUEL R. PINAUI
Vice-Chairman

JOHN SMITH
Commissioner

DANIEL D. LEON GUERRERO
Commissioner