



BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS



IN THE MATTER OF:

GABRIEL LAU,

Employee,

vs.

DEPARTMENT OF EDUCATION ,

Management.

ADVERSE ACTION APPEAL
CASE NO. 15-AA16T

JUDGMENT OF DISMISSAL

I. INTRODUCTION

On Thursday, January 14, 2016 the above referenced adverse action appeal came before the Civil Service Commission of Guam on Management's Motion to dismiss for untimeliness, lack of standing and lack of subject matter jurisdiction. Mr. Gabriel Lau, the appellant appeared with his Lay Representative Mandy Ho Yin-Man at this hearing and Mr. Robert E. Koss, Lay Representative of the Department of Education and Mr. Christopher Anderson, Deputy Superintendent of Assessment and Accountability (acting) appeared on behalf of Management.

II. JURISDICTION

The Civil Service Commission has jurisdiction to hear adverse action appeals from employees in the classified service pursuant to the Organic Act of Guam, Title 4 of the Guam Code Annotated §4401, *et seq.*, and the Department of Education's Personnel Rules and Regulations.

ORIGINAL

1 **III. FACTUAL BACKGROUND**

- 2 **1. August 11, 2008** Effective date of hire for Gabriel Lau to an *Original Probationary*
3 *Appointment* in the position classification of Elementary School Teacher.
- 4 **2. November 25, 2008** Employee was notified in writing by the Superintendent of his
5 termination during his original probationary period for unsatisfactory service effective at
6 the close of business on November 26, 2008.
- 7 **3. November 26, 2008** Effective date of Termination of full time, probationary employee
8 Gabriel Lau pursuant to DOE PRR 904.602 D and 904.902 B.
- 9 **4. August 25, 2015** Mr. Gabriel Lau filed an Adverse Action Appeal with the Civil Service
10 Commission of Guam, Ref. Case No. 15-AA16T, six years and 10 months after his
11 dismissal. The contents of Mr. Lau's adverse action appeal to the Commission reflect
12 that Mr. Lau was appealing his non-selection to a math teaching position at J.P. Torres
13 Alternative School on August 13, 2015.


13 **IV. FINDINGS**

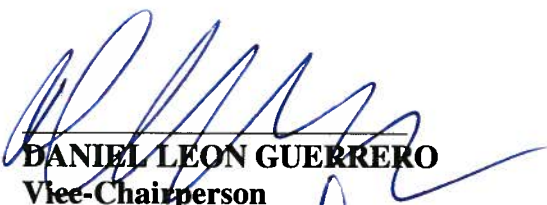
- 14 **1.** On August 25, 2015, Gabriel Lau filed an adverse action appeal for his non-selection to a
15 Math Teaching position at J.P. Torres Alternative School on August 13, 2015.
- 16 **2.** The Civil Service Commission's adverse action appeal procedures are not the appropriate
17 vehicle for addressing complaints pertaining to the non-selection of an applicant.
- 18 **3.** Gabriel Lau was released during his probationary appointment by the DOE on November
19 26, 2008 and pursuant to 4 GCA 4406 and the Personnel Rules of the Department of
20 Education, Mr. Gabriel Lau is not a classified employee with appeal rights to the
21 Commission pursuant to Title 4 of the Guam Code Annotated §4401, et seq., and the
22 Department of Education's Personnel Rules and Regulations.
- 23
24

V. HOLDINGS

The Civil Service Commission, by a unanimous vote of 6-0 rules in favor of managements Motion to dismiss Mr. Lau’s adverse action appeal for lack of standing and for the Commission’s lack of subject matter jurisdiction.

SO ORDERED and ADJUDGED this 1th day of February, 2016.


EDITH PANGELINAN
Chairperson


DANIEL LEON GUERRERO
Vice-Chairperson


PRISCILLA T. TUNCAP
Commissioner


JOHN SMITH
Commissioner


LOURDES HONGYEE
Commissioner


CATHERINE GAYLE
Commissioner