



BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS



IN THE MATTER OF:

KEN J. NANGAUTA,

Employee,

vs.

DEPARTMENT OF EDUCATION,
Management.

ADVERSE ACTION APPEAL
CASE NO. 13-AA29T

DECISION & JUDGMENT

I. INTRODUCTION

This matter came before the Civil Service Commission of Guam for Motion Hearing on Thursday, June 25, 2015. Employee representative, David Babauta of Guam Federation of Teachers Union Lay Representative filed a motion to withdraw as the employee's Representative and Management filed its motion to dismiss for failure to prosecute. Neither the Appellant Employee nor his representative was present at the motion hearing. Robert E. Koss, Lay Representative of the Department of Education appeared on behalf of Management.

II. JURISDICTION

The jurisdiction of the Civil Service Commission is based upon the Organic Act of Guam, 4 G.C.A., 4401 *et seq.*, and the Guam Personnel Rules and Regulations.

III. FACTUAL BACKGROUND

1. This matter arises from the Adverse Action taken by the Department of Education against Mr. Ken J. Nangauta on September 13, 2013 that dismissed the Employee from his position in the Department of Education.

- 1 2. Nangauta timely appealed his Final Notice of Adverse Action to the Civil Service
2 Commission on October 2, 2013.
- 3 3. On June 18, 2014 Ken Nangauta plead guilty to Conspiracy to Distribute
4 Methamphetamine in the US. District Court of Guam and was adjudged Guilty of such
5 offense and subsequently sentenced to serve a term of thirty-seven (37) months in the
6 Bureau of Prisons.
- 7 4. Employee is currently incarcerated and a term of thirty-seven (37) months would
8 continue to have him incarcerated until 2017.
- 9 5. On June 4, 2015, David Babauta filed a motion to withdraw as Employee's
10 representative, premised upon his inability to communicate with the employee due to the
11 Employee's incarceration by federal authorities.
- 12 6. Due to a death in his family, David Babauta, Employee's representative was unable to
13 attend the scheduled motion hearing on June 25, 2015. Employee was incarcerated and
14 also not in attendance.
- 15 7. Employee did not file an Opposition to the Motion to Dismiss.

16 **IV. FINDINGS**

- 17 1. The Commissioners agreed by unanimous decision that it would rule on the written
18 Motion to Dismiss before it without hearing oral arguments by the parties pursuant to 9.1
19 of the CSC Rules of Procedure for Adverse Action Appeals. We are not required to hear
20 oral argument on a motion under the Rules. In addition to finding oral argument
21 unnecessary to adjudicate this matter, ruling on the motion without oral argument
22 assuages the fact that Employee had no counsel present at the hearing.
- 23 2. Management's motion to dismiss was founded on two bases:

24 First, that the Employee is incapable of prosecuting his claim because he is
25 incarcerated and serving a term of thirty-seven (37) months in the Bureau of Federal
Prisons.

Second, that the Employee is not entitled to the remedy he seeks or reinstatement in
the classified employment of the DOE pursuant to 4 GCA §4203 that prohibits the
appointment or retention to any position in the Government of Guam by a person
habitually using narcotic or other mind-altering drugs unlawfully.

1 3. CSC Rules of Procedures for Adverse Action Appeals 9.6 states that the CSC may
2 dismiss an appeal if the Employee is not present for the hearing on the merits or motion
hearing, unless the Employee has a reasonable excuse.

3 4. We need not fashion a blanket rule at this time that any incarceration for any reason
4 automatically fails to be a reasonable excuse for failure to prosecute an adverse action.
5 We can, however, consider the factors in this case: a) Employee has pled guilty and been
6 sentenced, rather than merely standing accused; b) the Employee has been incarcerated
7 for a serious felony crime; c) the jurisdiction incarcerating Employee is the federal
8 system, a reasonable system with no accusation of fraud in the proceedings against
9 employee; d) the criminalization of methamphetamine distribution does not offend our
10 public policy; e) the sentence imposed is of a length that would severely extend the
11 duration of this case; and, f) the conviction of the crime renders Employee unfit for
12 reinstatement pursuant to Guam law (4 GCA §4203). In consideration of these applicable
13 factors, Employee's failure to prosecute his case does not have a reasonable excuse.

14 **V. CONCLUSION**

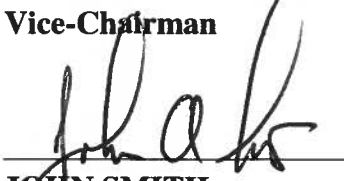
15 For the forgoing reasons, the Civil Service Commission of Guam, by a vote of 7-0, rules
16 in favor of management's motion to dismiss Employee's case with prejudice.

17 SO ADJUDGED THIS 30th day of July 2015.

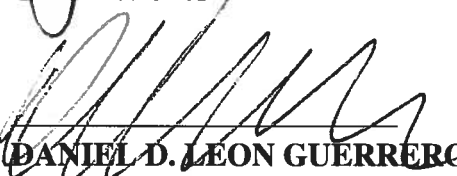
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19 **LUIS R. BAZA**
20 **Chairman**

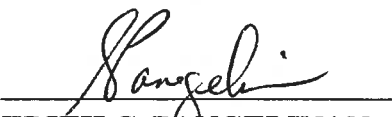
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22 **MANUEL R. PINAUIIN**
23 **Vice-Chairman**

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25 **PRISCILLA T. TUNCAP**
Commissioner

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27 **JOHN SMITH**
28 **Commissioner**

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30 **LOU HONGYEE**
31 **Commissioner**

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33 **DANIEL D. LEON GUERRERO**
34 **Commissioner**

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36 **EDITH C. PANGELINAN**
37 **Commissioner**