



BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS



21-221

IN THE MATTER OF:

DEAN L.C. SANTOS,

Employee,

vs.

DEPARTMENT OF CORRECTIONS,

Management.

**ADVERSE ACTION APPEAL
CASE NO.: 20-AA09T**

DECISION AND JUDGMENT

This matter came before the Commission for a motion hearing on March 2, 2021, at 9:00 a.m., on Management’s Motion to Dismiss Employee’s Appeal for Lack of Subject Matter Jurisdiction filed on July 24, 2020. Present for Management at the motion hearing was AAG Donna Lawrence, and Deputy Director Robert Camacho. Employee, Dean L.C. Santos, appeared pro se.

Jurisdiction

The Commission found by a vote of 6 to 0 that it lacked jurisdiction to hear this matter under 4 GCA § 4403, 4 GCA § 4406, as well as the Department of

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1 Administration Personnel Rules and Regulations. The Commission's
2 grievance and adverse action rules of procedure also require dismissal of this
3 action. The Commission granted Management's motion to dismiss this appeal
4 for lack of jurisdiction with prejudice.

5 ***Background/Discussion***

6 As set forth in the attached exhibits to Management's Motion to Dismiss
7 filed on July 24, 2020, Employee was hired as a Corrections Officer I on
8 December 16, 2019. Employee was removed during his original six (6) month
9 probationary period on April 27, 2020, as authorized by 4 GCA § 4106(a)(1)
10 and DOA PR&R 4.602.

11 4 GCA § 4106(a)(1) allows for the dismissal of an employee during his
12 probationary period without right of appeal and without being given reasons or
13 charges in writing.

14 Employee was removed from his probationary appointment after he had
15 served more than ninety (90) days as authorized by DOA PR&R 4.602 (E).

16 Employee did not file or serve an adverse action appeal regarding his
17 removal during his probationary period. Had he filed an adverse action appeal,
18 however, CSC's Adverse Action Rules of Procedure and Chapter 11 of the
19 Department of Administration's Personnel Rules would not have provided
20 Employee with a right of appeal to the Commission, because DOA Personnel
21 Rules 11.000 (Coverage), 11.100 (B)(Scope) and 11.304 (B) (Employees
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1 Covered) specifically exclude employees serving an original probationary
2 period from coverage under Chapter 11 of DOA's adverse action rules.

3 Employee filed a **grievance** complaint on June 16, 2020, fifty (50) days
4 after he was removed from his probational appointment. Employee did not
5 serve Management with his grievance complaint.

6 Employee was not a permanent classified employee entitled to file any
7 appeal with the Commission pursuant to 4 GCA § 4403 (b) or (c) as there was
8 no right to appeal available to him under Chapter 11 or Chapter 12 of the
9 Department of Administration Personnel Rules and Regulations. Employee
10 did not meet the requirements to appeal to the Commission pursuant to the
11 Commission's grievance or adverse action rules of procedure, including CSC
12 AA Rule 5 (March 2010). Management timely filed and served its Motion to
13 Dismiss on Employee pursuant to the Commission's established deadline of
14 July 24, 2020. Employee did not file any opposition to Management's motion
15 by August 6, 2020, or as of the motion hearing held on March 2, 2021.

16 ***Ruling by Commissioners***

17 After review of the documents, including Management's Exhibits M1-
18 M12, and listening to the arguments of the parties, the Commission voted 6 to
19 0 to grant Management's motion to dismiss this appeal for lack of jurisdiction

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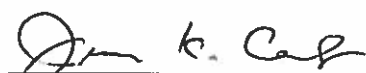
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1 with prejudice. The Commission found that Employee had no right to appeal
2 his dismissal during his original probationary period and had served more than
3 ninety days prior to his dismissal.

4 **SO ORDERED** this 15th of April, 2021.

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7 **JUAN K. CALVO**
Chairman

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10 **JOHN SMITH**
Vice-Chairman

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13 **PRISCILLA T. TUNCAP**
Commissioner

14 *(absent)*

15 **EMILIA F. RICE**
Commissioner

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18 **ANTHONY P. BENAVENTE**
Commissioner

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21 **ROBERT C. TAITANO**
Commissioner

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