BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS

IN THE MATTER OF:
JOSEPH CRUZ II,
Employee,

vs.

DEPARTMENT OF CORRECTIONS,
Management.

ADVERSE ACTION APPEAL
CASE NO.: 21-AA03T

DECISION AND JUDGMENT

This matter came before the Commission May 10, 2022, on Employee’s Motion to Dismiss for violation of the 90-day Rule. Director Robert Camacho of the Department of Corrections, appeared for Management with his counsel Assistant Attorney General Donna Lawrence. Employee appeared with his Lay Representative, Robert Koss.

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Commissioners present were Chairman Juan K. Calvo, Commissioner Priscilla T. Tuncap, Commissioner John A. Smith, and Commissioner Robert Taitano.

**JURISDICTION**

The Civil Service Commission has jurisdiction to hear appeals from adverse actions. 4 GCA, §4403 (b).

**BACKGROUND**

March 4, 2021, Employee was served with a Final Notice of Adverse Action (FNAA) for unexcused absences on December 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 30, 31, 2020, and January 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, 2021. Employee moved to dismiss on the grounds that Management violated the 90-day Rule. Management moved to strike Employee’s Motion as untimely and asked for sanctions against Guam Federation of Teachers. The deadline for filing motions was May 12, 2021. Employee’s motion was filed April 14, 2022.
FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission found that Employee’s motion was untimely, but the underlying motion went to jurisdiction which can be raised at any time. Chairman Calvo stated that the Motion alleges that Management violated the law (90-day Rule) and therefore should be heard. The Commission voted 3 to 1 (Chairman) to strike the Motion as untimely. Motion to strike fails for lack of four (4) affirmative votes.

The December 2, and 3, 2020, absences were more than 90 days before the service of the FNAA and are, therefore, in violation of the 90-day Rule §4406 (b) which states, that Management shall give the Employee FNAA not later than ninety (90) calendar days from the date in which management knew or should have known the facts or events which form the basis for the adverse action.

The Commission voted 4 to 0 to grant Employee’s Motion to Dismiss. The Adverse Action is revoked. The Commission did not vote on Management’s Motion for Sanctions.

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Employee is reinstated immediately pending judicial review. Section 4406 (g), and is awarded back pay and benefits and attorney fees. Section 4406.1. Failure to adhere to this decision shall result in reduction in salary of ten percent (10%) for the Agency head and his deputy from the date of the decision until the date of reinstatement in full compliance with this decision. Section 4406 (h).

SO ORDERED this 9th day of June, 2022.

JUAN K. CALVO
Chairman

ANTHONY P. BENAVENTE
Vice Chairman

PRISCILLA T. TUNCAP
Commissioner

JOHN SMITH
Commissioner

ROBERT C. TAITANO
Commissioner

FRANCISCO T. GUERRERO
Commissioner

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