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**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.

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

4 **JURISDICTION**

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

7 **BACKGROUND**

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

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19 **DECISION AND JUDGMENT**

20 *Joseph Cruz II vs. Department of Corrections*  
Adverse Action Appeal CSC Case No.: 21-AA03T

1 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

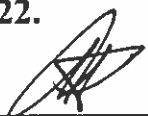
8 The December 2, and 3, 2020, absences were more than 90 days before the  
9 service of the FNAA and are, therefore, in violation of the 90-day Rule §4406 (b)  
10 which states, that Management shall give the Employee FNAA not later than ninety  
11 (90) calendar days from the date in which management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

13 The Commission voted 4 to 0 to grant Employee's Motion to Dismiss. The  
14 Adverse Action is revoked. The Commission did not vote on Management's Motion  
15 for Sanctions.  
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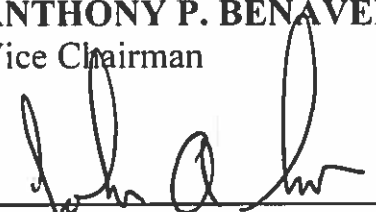
1 Employee is reinstated immediately pending judicial review. Section 4406  
2 (g), and is awarded back pay and benefits and attorney fees. Section 4406.1. Failure  
3 to adhere to this decision shall result in reduction in salary of ten percent  
4 (10%) for the Agency head and his deputy from the date of the decision until the  
5 date of reinstatement in full compliance with this decision. Section 4406 (h).  
6

7 **SO ORDERED** this 9<sup>th</sup> day of June, 2022.

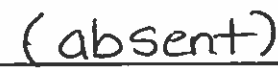
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9 **JUAN K. CALVO**  
10 Chairman

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12 **ANTHONY P. BENAVENTE**  
13 Vice Chairman

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15 **PRISCILLA T. TUNCAP**  
16 Commissioner

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18 **JOHN SMITH**  
19 Commissioner

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**ROBERT C. TAITANO**  
Commissioner

  
**FRANCISCO T. GUERRERO**  
Commissioner