



BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS



IN THE MATTER OF:

ERIC S.N. SANTOS,

Employee,

vs.

DEPARTMENT OF CORRECTIONS,

Management.

ADVERSE ACTION APPEAL
CASE NO.: 20-AA07T

DECISION AND JUDGMENT

This matter came before the Civil Service Commission (“CSC”) on January 9, 2024 and January 11, 2024, to hear Employee’s Motion to Dismiss for Lack of CSC Jurisdiction. Present for the Commission was Chairman Juan K. Calvo, Vice-Chairman Anthony P. Benavente, Commissioner Robert C. Taitano and Commissioner Francisco T. Guerrero.

Present at the hearing was Major Antone Aguon for Management, Graham Botha as Management’s council; Employee Eric Santos, and his lay representative Robert E. Koss.

DECISION AND JUDGMENT

Eric S.N. Santos vs. Department of Corrections
Adverse Action Appeal Case No.: 20-AA07T

1 **INTRODUCTION**

2 Employee appealed to the Commission his Final Notice of Adverse Action
3 terminating his employment for alleged disrespectful treatment of the public when
4 he entered into an argument with the owner of an auto shop during off duty hours.
5 The incident occurred on February 7, 2020, and the record reflects that
6 Management knew or should have known on February 11, 2020. The Final Notice
7 of Adverse Action dismissing the employee was taken on May 12, 2020 or 91 days
8 later.

9 **JURISDICTION**

10 Jurisdiction of the Civil Service Commission is based on the Organic Act
11 of Guam at 4 GCA, §4401 et seq. and relevant personnel rules and regulations.

12 **BURDEN OF PROOF**

13 The Commission determined the burden of proof for the Motion was that
14 the Employee had the burden of proof at a level of clear and convincing.

15 **FINDINGS OF FACT**

16 (1) February 24, 2020 Memorandum from Internal Affairs clearly states
17 that on February 11, 2020 the Department of Corrections Acting Director Joseph
18 Carbullido knew the facts or events which form the alleged basis for the adverse
19 action.

1 (2) The Final Notice of Adverse Action was served on the Employee
2 and made effective on May 12, 2020.

3 (3) 4 GCA, §4406(b) (b) Ninety (90)-Day Rule (in relevant part) states:

4 (1) Management shall give the employee in the classified service
5 notice and statement of the charges under this Section no later than: (A) ninety (90)
6 calendar days from the date in which management knew or should have known the
7 facts or events which form the alleged basis for the adverse action; or

8 (4) Any action brought by a government department, agency, or
9 instrumentality in violation of this Subsection is barred and any decision based
10 upon such action is void.

11 (4) Computation of time from February 11, 2020, the date management
12 knew or should have known, to May 12, 2020 is exactly 91 days.

13 RULING

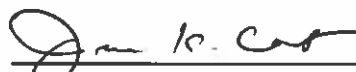
14 By a vote of 4 to 0, Employee prevailed as they proved, clearly and
15 convincingly, that Management failed to meet the 90-day time limitation imposed
16 by 4 GCA, §4406.

17 Responsive Final Notice of Adverse Action dismissing the Employee on
18 May 12, 2020 is null and void.

1 Employee shall be reinstated to his former position with accrued
2 seniority, full back pay, grating of increments and salary increases and benefits,
3 including but not limited to sick and annual leave accrual and government health
4 insurance contributions, government's share of retirement contributions and all
5 other.

6 Failure to adhere to a decision by the Commission to immediately
7 reinstate an Employee shall result in reduction in salary by 10% for the responsible
8 agency head and his deputy from the date of the decision until the date of
9 reinstatement in full compliance with the decision; as described in 4 GCA
10 §4406(h). Further, the Commission may bring an action in the Superior Court to
11 enforce the reinstatement of the Employee and impose any appropriate penalties
12 or remedies available at law or equity; as described in 4 GCA §4406(h).

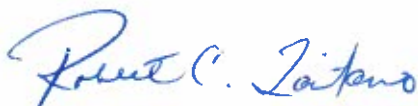
13 **SO ORDERED THIS 13th day of February, 2024.**

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16 **JUAN K. CALVO**
Chairperson

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16 **ANTHONY P. BENAVENTE**
Vice Chairperson

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18 **ROBERT C. TAITANO**
Commissioner

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18 **FRANCISCO T. GUERRERO**
Commissioner