

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21



**BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS**



IN THE MATTER OF:

GERALD BORJA,

Employee,

vs.

VETERANS AFFAIRS OFFICE,

Management.

**ADVERSE ACTION APPEAL
CASE NO.: 21-AA14T**

DECISION AND JUDGMENT

This matter came before the Civil Service Commission (CSC) at a motion hearing on September 2, 2021, regarding Management’s timely Motion to Dismiss Employee’s Appeal with prejudice filed on July 23, 2021. Management filed a Declaration of Mailing on July 28, 2021. Employee did not file an opposition to Management’s Motion to Dismiss by August 11, 2021 or at any time.

1 criminal statutes and Guam's Drug Free Workplace Policy, Executive Orders and
2 departmental rules.

3 2) Employee filed an adverse action appeal with the CSC on May 10, 2021.

4 3) Employee did not attend the first zoom status call in this case on May 24,
5 2021.

6 4) Employee attended a zoom status call on June 2, 2021, but failed to attend
7 all further status calls thereafter on June 16, 2021, June 30, 2021, and July 14, 2021.

8 5) Employee failed to attend the motion hearing on September 2, 2021, at
9 9:00 a.m.

10 6) Employee did not file any written request to continue any status call
11 conferences or the motion hearing.

12 7) CSC staff communicated with Employee and provided him with all notices
13 and zoom links for the status call conferences and the motion hearings for which he
14 failed to attend. CSC staff spoke with Employee who communicated he was aware
15 of the status calls and motion hearing on September 2, 2021. Management's counsel
16 also emailed Employee with the CSC notices and zoom links. These representations
17 as to communications and notice to Employee were also set forth in Management's
18 Motion to Dismiss filed on July 23, 2021.

19
20 **DECISION AND JUDGMENT**

Gerald Borja vs. Veterans Affairs Office

Adverse Action Appeal CSC Case No.: 21-AA14T

1 8) Employee has not communicated with Management’s counsel at any time
2 since his filed his appeal. As indicated in its Motion to Dismiss (“MTD”) and on the
3 record, Employee did not respond to Management’s emails July 1, 2021, July 12,
4 2021, or July 13, 2021 confirming the July 14, 2021, status call and reminding him
5 his presence was required at the July 14, 2021, status call.

6 9) Employee failed to file a Case Management Statement and failed to
7 communicate with Management regarding the draft statement emailed to Employee
8 on July 1, 2021. Management filed and served the Case Management Statement on
9 July 13, 2021, which also reminded Employee of the requirement for him to attend
10 the July 14, 2021, status call.

11 10) Employee was advised that if he did not attend the July 14, 2021, status
12 call, Management would request a motion hearing date and would file a motion to
13 dismiss his appeal. Even after these reminders by Management’s counsel, in addition
14 to that of CSC staff, Employee failed to appear at the status call on July 14, 2021, or
15 to communicate with Management to request a continuance.

16 11) Management’s counsel emailed Employee on September 1, 2021, and
17 September 2, 2021, reminding him of the zoom motion hearing on September 2,
18 2021. Employee did not respond to these emails and failed to attend the motion
19

20 **DECISION AND JUDGMENT**

21 *Gerald Borja vs. Veterans Affairs Office*

Adverse Action Appeal CSC Case No.: 21-AA14T

1 hearing. Employee did not file or serve a written request or motion to continue the
2 September 2, 2021, hearing at any time as required by CSC's adverse action rules or
3 communicate any request to Management to continue the motion hearing date at any
4 time.

5 12) Management's motion to dismiss filed on July 23, 2021, shows notice to
6 Employee of the zoom status calls on June 16, 2021, June 30, 2021, and July 14,
7 2021, as well as the motion hearing date of September 2, 2021, and Employee's
8 deadline of August 11, 2021, to oppose the motion to dismiss.

9 13) Employee did not file any opposition to Management's Motion to Dismiss
10 his appeal with prejudice based on his failure to prosecute his appeal, attend prior
11 status calls, file a Case Management Statement and communicate with Management.
12 Employee then failed to attend the motion hearing.

14 Discussion

15 CSC Adverse Action Rule 9 and 9.6 allows the CSC to dismiss an appeal if
16 the Employee is not present for scheduling hearings. Employee was not present for
17 the scheduled status call conferences on May 24, 2021, June 16, 2021, June 30,
18 2021, July 14, 2021, and he was not present for the zoom motion hearing on
19 September 2, 2021, at 9:00 a.m.

1 CSC staff indicated on the record at the motion hearing that Employee was
2 aware of the motion hearing and that staff contacted Employee again on the morning
3 of September 2, 2021, prior to the hearing. At that time, Mr. Borja asked staff to
4 communicate a request to the Commissioners for a two (2) week continuance. No
5 reason was stated for the request to continue. He was advised by CSC staff to appear
6 for the motion hearing and failed to appear.

7 CSC staff indicated Employee also acknowledged receiving the notices of the
8 hearing and acknowledged receiving an email from Assistant Attorney General
9 Lawrence regarding the motion hearing.

10 Employee did not offer any reasonable excuse to CSC staff as to why he was
11 unable to attend the motion hearing on September 2, 2021. CSC staff apprised the
12 Commissioners at the motion hearing of Employee's oral request to continue the
13 motion hearing for two (2) weeks.

14 Employee directed the request to CSC staff only after he was called to remind
15 him of the motion hearing. Employee did not initiate the call to CSC staff and did
16 not email or otherwise communicate a joint request to CSC and Management at any
17 time.

18 //

19 //

20 **DECISION AND JUDGMENT**

Gerald Borja vs. Veterans Affairs Office

Adverse Action Appeal CSC Case No.: 21-AA14T

1 **Ruling by Commissioners**

2 *1) Commissions' Vote to Deny Employee's Oral Ex-Parte Request*

3 *September 2, 2021:*

4 a) The Commission voted 4 to 1 to deny Employee's oral ex-parte request
5 to CSC staff to continue the motion hearing on September 2, 2021, for two (2) weeks.

6 b) The record supports the Commissioners' findings that Employee was
7 properly noticed for the zoom motion hearing, that he failed to appear at the motion
8 hearing or to appear and request a continuance and offer a reason for that request,
9 there was no emergency presented by Employee, he failed to communicate a request
10 to continue the motion hearing to Management and to obtain a stipulation to continue
11 the hearing from Management, and there was no reasonable excuse provided by
12 Employee in his ex-parte request to CSC staff requesting to continue the properly
13 noticed and scheduled motion hearing.

14 *2) Commissions' Vote Granting Management's Motion to Dismiss Appeal*

15 a) After review of the file, Management's Motion to Dismiss and Declaration
16 of Mailing, and hearing the arguments of counsel and information submitted to the
17 Commissioners by CSC staff Cynthia Camacho and Maria Masnayan, the
18 Commissioners voted 4 to 1 to dismiss Employee's adverse action appeal with
19 prejudice.

20 **DECISION AND JUDGMENT**

21 *Gerald Borja vs. Veterans Affairs Office*

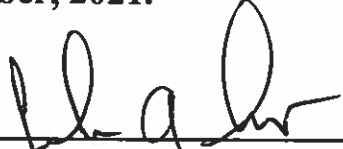
Adverse Action Appeal CSC Case No.: 21-AA14T

1 b) The Commission finds that Employee was aware of the prior status calls
2 and the motion hearing and has failed to prosecute his appeal since he filed his appeal
3 on May 10, 2021. Employee has failed to attend four of five status conferences on
4 which the Motion to Dismiss his appeal was based, and thereafter he failed to oppose
5 the motion to dismiss and appear at the motion hearing on September 2, 2021.

6 c) Management's Motion to Dismiss Employee's appeal with prejudice is
7 granted for the reasons set forth in its motion, the representations as to
8 communications made by CSC staff with Employee at the motion hearing and based
9 on the record as of the time of the hearing. The Commission directs Management's
10 counsel to prepare the proposed Decision and Judgment.


11 **SO ORDERED this 28th of September, 2021.**

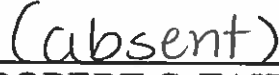
12 
13 **JUAN K. CALVO**
Chairman

12 
13 **JOHN SMITH**
Vice Chairman

14 
15 **PRISCILLA T. TUNCAP**
16 Commissioner

14 
15 **EMILIA F. RICE**
16 Commissioner

17 
18 **ANTHONY P. BENAVENTE**
Commissioner

17 
18 **ROBERT C. TAITANO**
Commissioner