



**CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS**



**BEFORE THE GUAM CIVIL SERVICE COMMISSION
GOVERNMENT OF GUAM**

IN THE MATTER OF:

JUAN P. SAN NICOLAS,

Employee,

vs.

GUAM FIRE DEPARTMENT (GFD),

Management.

**ADVERSE ACTION APPEAL
CASE NO.: 21-AA23T**

DECISION AND ORDER

This matter came before the Civil Service Commission (“CSC”) Board of Commissioners on December 5, 2023 and December 6, 2023 on five separate motions. The motions decided upon on December 5, 2023 were lack of subject matter jurisdiction, void adverse action, exclusion of Management’s witnesses and exhibits. And the motions decided upon on December 6, 2023 were exclusion of one specific witness and the reprimand of the same witness.

Commissioners present for all motions were Chairperson Juan K. Calvo, Vice-Chairperson Anthony P. Benavente, Commissioner Robert Taitano, and Commissioner Francisco T. Guerrero.

JUAN P. SAN NICOLAS (“Employee”) was present, also present was his attorney, Jacqueline Taitano Terlaje. The Guam Fire Department (“Management”) was represented by Deputy Attorney General D. Graham Botha.

1 The first motion was for lack of subject matter jurisdiction. This motion by Management
2 revolved around the late filing of the case. Management argued unsuccessfully that the case was
3 filed beyond the allotted time. The Commission noted that the Final Notice was not personally
4 served and the Commission determined, by a vote of four (4) to zero (0), that the case was cleared
5 to continue to the Hearing on the Merits.


6 The next motion was a motion to dismiss due to procedural defects. The first defect being
7 the lack of notice of rights. The second defect being the failure to personally serve the final notice.
8 Management argued that the Employee had moved off island and multiple steps were made to
9 ensure that Employee received the notice, including delivery to his attorney. For this reason, the
10 Commission determined, by a vote of three (3) to one (1), with Commissioner Guerrero dissenting,
11 that the case was cleared to continue to the Hearing on the Merits.


12 Employee's next motion was a motion to exclude Management's witnesses and exhibits
13 due to their late filing. The Commissioners discussed that the emailed documents were received
14 on the due date, in compliance with statute although not in compliance with the CSC Adverse
15 Action rules. The Commissioners determined, by a vote of four (4) to zero (0), that the documents
16 would be permitted.

17 On December 6, 2023 two motions relating to the misconduct of one specific witness. A
18 witness was discovered listening to a Board Hearing on their personal cell phone while in the CSC
19 lobby sequestered from the same hearing. A factual agreement between the parties allowed the
20 witness to be excused from the proceedings without harm to either party. The Commissioners
21 determined, by a vote of four (4) to zero (0), that the witness should be excluded from the
22 proceedings. Employee requested that the Commission reprimand the witness for the wrongful
23 conduct.

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2 The Commissioners voted, by a vote of four (4) to zero (0), that the Civil Service
3 Commission Executive Director should prepare a memorandum to the Fire Chief describing the
4 incident which occurred; noting that the Commission will not condone this type of practice.

5 **SO ORDERED THIS 18TH DAY OF April 2024.**

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9 **JUAN K. CALVO**
10 **Chairperson**

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12 **ANTHONY P. BENAVENTE**
13 **Vice-Chairperson**

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17 **ROBERT C. TAITANO**
18 **Commissioner**

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20 **FRANCISCO T. GUERRERO**
21 **Commissioner**