



BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS



IN THE MATTER OF:

JOSEPH V.C. CRUZ, II,

Employee,

vs.

DEPARTMENT OF CORRECTIONS,

Management.

ADVERSE ACTION APPEAL
CASE NO.: 21-AA03T

DECISION AND ORDER

This matter came before the Civil Service Commission (Commission) for a zoom motion hearing on September 7, 2021, at 9:00 a.m. at the Commission's regular scheduled meeting. Present for Management was Assistant Attorney General Donna Lawrence and Director Joseph Carbullido.

Robert Koss with the Guam Federation of Teachers (GFT) was present on

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1 behalf of Employee, who was also present for the motion hearing. Present
2 for the Commission were Chairman Juan K. Calvo, Vice Chairman John
3 Smith, Commissioner Priscilla T. Tuncap, Commission Emilia F. Rice, and
4 Commissioner Robert C. Taitano.

5 *Jurisdiction*

6 The Commission has jurisdiction to hear adverse action appeals filed
7 by classified employees under 4 GCA, § 4403 (b) involving suspensions,
8 demotions, and terminations of classified employees. The Commission has
9 jurisdiction to hear this adverse action appeal. As set forth below,
10 Employee's two (2) motions to void were denied.

11 *Facts*

12 Employee was personally served with a Notice of Proposed Adverse
13 Action on February 19, 2021. Employee responded to the proposed adverse
14 action on March 2, 2021. Management personally served Employee with a
15 Notice of Final Adverse Action on March 4, 2021 dismissing him from
16 employment. After March 4, 2021, Management issued a request for

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1 personnel action dismissing employee with an effective date of March 4,
2 2021. Employee filed an appeal with the Commission on March 9, 2021.

3 Employee, through the GFT, thereafter filed and served two motions
4 on May 11, 2021: (1) Employee's Motion to Void for Violation of 4 GCA, §
5 4201 and, (2) Employee's Motion to Void for Violation of Personnel Rule
6 11.301, "the 60-Day Rule." Management filed its opposition to both motions
7 on June 2, 2021.

8 *Discussion*

9 At the hearing, both parties referenced a prior Commission Decision
10 and Order recently signed on June 3, 2021, by the Commission in *Lisa*
11 *Mosher v. Department of Education (21-AA02T)* where the Commission
12 denied a similar motion filed by the GFT similar to the second motion filed in
13 this appeal. In that case, the Commission voted 6 to 0 to deny Employee's
14 motion regarding a violation of the sixty (60)-day rule.

15 GFT requested a stay in this appeal to await a decision from the
16 Superior Court in the *Mosher* case. This housekeeping request from
17 Employee orally made at the motion hearing was denied. The Commission
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1 agreed to move forward with the Employee's two motions previously
2 scheduled to be heard on July 27, 2021.

3 ***Burden of Proof***

4 The burden of proof as to pre-hearing motions is a preponderance of
5 the evidence.

6 ***Rulings by Commissioners***

7 After reviewing the filings in this case, the record, and after hearing the
8 arguments of the parties and asking questions of the respective parties, the
9 Commission voted on Employee's two (2) motions as set forth below.

10 (1) As to Employee's first motion to void for violation of 4 GCA, §
11 4201, the Commissioners voted 5 to 0 to deny Employee's motion. Having
12 failed to obtain four (4) affirmative votes in support of his motion pursuant to
13 4 GCA, § 4402, Employee's motion to void was denied.

14 (2) As to Employee's second motion to void for violation of Personnel
15 Rule 11.301 ("the 60-Day Rule"), the Commission voted 4 to 1 to deny
16 Employee's motion to void. Having failed to obtain four (4) affirmative

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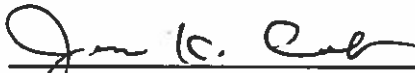
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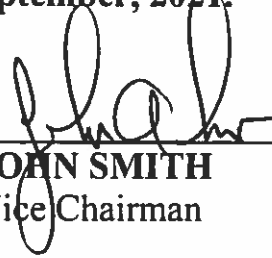
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1 votes in support of his motion pursuant to 4 GCA, § 4402, Employee's
2 motion to void was denied.

3 **SO ORDERED** this 28th day of September, 2021.

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5 **JUAN K. CALVO**
Chairman



JOHN SMITH
Vice Chairman

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7 **PRISCILLA T. TUNCAP**
8 Commissioner



EMILIA F. RICE
Commissioner

9 (absent)

10 **ANTHONY P. BENAVENTE**
Commissioner

(absent)

11 **ROBERT C. TAITANO**
Commissioner

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