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



IN THE MATTER OF:
MICHAEL SAN AGUSTIN,

Employee,
vs.
VETERANS AFFAIRS OFFICE,

Management.

**ADVERSE ACTION APPEAL
CASE NO.: 21-AA13T

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 Commission on
4 May 10, 2021.

5 3) Employee attended the first zoom status call in this case on May 24, 2021.

6 4) Employee did not attend the zoom status calls noticed and held on
7 June 22, 2021, at 2 pm and July 7, 2021, at 2:00 p.m.

8 5) Employee failed to attend the zoom motion hearing on September 2, 2021,
9 at 9:00 a.m. despite notice to him of this hearing by CSC staff and Management's
10 counsel.

11 6) Employee did not file any written request to continue any of the status call
12 conferences or the motion hearing on September 2, 2021 at any time.

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

20 **DECISION AND JUDGMENT**

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Adverse Action Appeal CSC Case No.: 21-AA13T

1 8) Employee has not communicated with Management’s counsel at any time
2 since he filed his appeal. As indicated in its Motion to Dismiss (“MTD”), Employee
3 did not respond to Management’s emails on July 1, 2021 and July 7, 2021, and did
4 not return calls made to him on July 7, 2021 before the 2:00 p.m. status call.
5 Management advised Employee via email and in its draft Case Management
6 statement emailed to Employee on July 1, 2021, and its email to Employee on July
7 7, 2021, that his presence at the July 7, 2021 conference was required and that if he
8 did not appear, Management would file a motion to dismiss his appeal. Employee
9 did not respond to Management’s emails on or before July 7, 2021, and he did not
10 appear for the status call on July 7, 2021, at 2:00 p.m.

11 9) Employee failed to file a Case Management Statement and failed to
12 communicate with Management regarding the draft statement emailed to Employee
13 on July 1, 2021. Management filed and served the Case Management Statement on
14 July 7, 2021, and emailed this filed Case Management Statement to Employee on
15 July 7, 2021, on or about at 12:22 p.m. The filed Case Management Statement
16 reminded Employee of the requirement for him to attend the July 7, 2021, status
17 call at 2:00 p.m.

18 10) Management’s counsel emailed Employee on September 1, 2021, and
19 September 2, 2021, reminding him of the zoom motion hearing on September 2,

20 **DECISION AND JUDGMENT**

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

6 11) Management's motion to dismiss filed on July 23, 2021 and Declaration
7 of Mailing, show notice to Employee of the zoom status calls on June 22, 2021, and
8 July 7, 2021, and notice of the motion hearing date of September 2, 2021, as well
9 as Employee's deadline of August 11, 2021, to oppose the motion to dismiss.

10 12) Employee did not file any opposition to Management's Motion to
11 Dismiss his appeal with prejudice based on his failure to prosecute his appeal,
12 failure to attend prior status calls, his failure to file a CMS and his failure to
13 communicate with Management. Employee then failed to attend the motion
14 hearing on September 2, 2021, as required by CSC adverse action rules of
15 procedure. Employee did not file a motion to excuse his attendance or to continue
16 the motion hearing and he did not communicate any such request to continue to
17 Management at any time.

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20 **DECISION AND JUDGMENT**

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1 Discussion

2 CSC Adverse Action, Rule 9 and 9.6 allows the CSC to dismiss an appeal if the
3 Employee is not present for scheduling hearings. Employee was not present for the
4 scheduled status call conferences on June 22, 2021, and July 7, 2021, and he was
5 not present for the zoom motion hearing on September 2, 2021, at 9:00 a.m. CSC
6 staff indicated on the record at the motion hearing that Employee was aware of the
7 motion hearing and received notice of the prior status calls.

8 Ruling by Commissioners

9 After review of the file, Management's Motion to Dismiss and
10 Declaration of Mailing, and hearing the arguments of counsel and information
11 submitted to the Commissioners by CSC staff Vickilynn Sablan, the
12 Commissioners voted 5 to 0 to dismiss Employee's adverse action appeal with
13 prejudice.

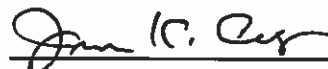
14 The Commission finds that Employee was aware of the prior status calls
15 and the motion hearing and failed to prosecute his appeal which he filed on May
16 10, 2021. Employee failed to attend two (2) status conferences, failed to file a Case
17 Management Statement, and failed to communicate with CSC and Management to
18 prosecute his appeal. He did not oppose the Motion to Dismiss and failed to appear
19 at the motion hearing on September 2, 2021.

20 **DECISION AND JUDGMENT**

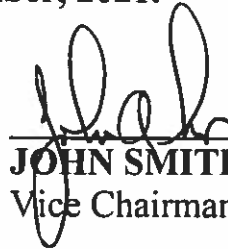
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1 The Commission grants Management's Motion to Dismiss Employee's
2 appeal with prejudice for the reasons set forth in its motion, the representations by
3 CSC staff as to communications with Employee after inquiry by the Commission,
4 and as set forth in the record. The Commission directs Management's counsel to
5 prepare the proposed Decision and Judgment.

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

7 

8 **JUAN K. CALVO**
Chairman

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10 **JOHN SMITH**
Vice Chairman

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12 **PRISCILLA T. TUNCAP**
Commissioner

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14 **EMILIA F. RICE**
Commissioner

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16 **ANTHONY P. BENAVENTE**
Commissioner

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18 **ROBERT C. TAITANO**
Commissioner