

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



IN THE MATTER OF:

NICO A.C. FUJIKAWA,

Employee,

v.

GUAM VISITORS BUREAU,

Management.

**ADVERSE ACTION APPEAL
CASE NUMBER: 24-AA04T**

DECISION AND JUDGMENT

I. INTRODUCTION AND OVERVIEW

This matter came on to be heard before the Civil Service Commission (“Commission”) for Management’s Motion for to Dismiss Employee’s Appeal on December 10, 2024. This motion to dismiss is for lack of jurisdiction.

Commissioners present at the hearing were Chairman Juan K. Calvo, Vice Chairman Anthony P. Benavente, Commissioner Francisco T. Guerrero, Commissioner Cathy Catling, and Commissioner Rose A. Morales.

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1 Guam Visitors Bureau (“Management”) was present through Deputy
2 General Manager Gerry Perez and represented by Attorney Charles H. McDonald
3 II. Nico A.C. Fujikawa (“Employee”) was present and was represented by
4 Attorney Kristine Borja of the Law Office of Jacqueline T. Terlaje.

5 Employee filed an Adverse Action Appeal; that Appeal is hereby dismissed
6 because it was filed more than twenty (20) days after Management served its Final
7 Notice of Adverse Action (“FNAA”). There is no permissible excuse for the
8 untimely filing of an adverse action appeal. CSC AA. R. 5.2.1. An untimely
9 adverse action appeal is a violation of 4 GCA § 4406 (d) and leaves the
10 Commission without jurisdiction over it. *Dept. of Agriculture v. Civil Serv.*
11 *Comm’n*, 2009 Guam 19.

12 **II. LAW AND JURISDICTION**

13 Management must notify an employee of a final adverse action within
14 Ninety (90) days from the date Management knows, or should have known, of facts
15 or events which form the basis for an adverse action. 4 GCA § 4406.

16 Management must serve the FNAA personally to the Employee.
17 Department of Administration Personnel Rules and Regulations (“DOA PRR”)
18 11.311 A. If the Employee cannot be located, the FNAA shall be sent via certified
19 mail to Employee’s last known address. DOA PRR 11.311 B

1 Employees must file their adverse action appeal with the CSC within twenty
2 (20) days of receiving notice of the final adverse action. 4 GCA § 4406.

3 The Commission has authority to hear and decide adverse action appeals
4 pursuant to 4 GCA § 4406 (b). The Commission has no jurisdiction when an
5 Employee fails to timely file an adverse action. *Dept. of Agriculture v. Civil Serv.*
6 *Comm'n*, 2009 Guam 19.

7 **III. STANDARD OF REVIEW**

8 The moving party bears the burden of proof by a preponderance of the
9 evidence on a motion. CSC AA. R. 9. Motions to dismiss an adverse action appeal
10 for lack of jurisdiction are permitted pursuant to CSC AA R. 9.5.

11 **IV. FACTS IN SUPPORT OF MOTION**

12 Management stated that it was required to provide the FNAA to Fujikawa
13 by April 10, 2024 because of the ^{know} Ninceyt (90)-day rule, as required by DOA PRR
14 11.311. Management contends that service by certified mail was necessary
15 because Employee could not be found at GVB offices due to an unexcused absence
16 and Employee's willful evasion of service. Management provided Exhibit M-8 in
17 its Motion to Dismiss to prove that the ^{know} ~~NPAA~~ ^{NFAA} was sent by certified mail on April
18 10 at 4:41 p.m. Having served employee on April 10, Employee had to file his
19 appeal within twenty (20) days. Employee's appeal was filed on May 1, 2024,

20 **DECISION AND JUDGMENT**

21 *Nico A.C. Fujikawa v. Guam Visitors Bureau*
Adverse Action Appeal CSC Case Number: 24-AA04T

1 beyond the time allowed. Therefore, the Commission has no jurisdiction over
2 Employee's Appeal, requiring dismissal.

3 Employee agreed that the Ninety (90)-day rule applied but contested service
4 within the Ninety (90)-day timeframe as Management did not effect personal
5 service and was unreasonable in its efforts to personally serve him by April 10,
6 2024. Employee further contested that because of Management's efforts were not
7 sufficient to justify service by mail. The Civil Service Commission disagreed,
8 finding Management responded that it was reasonable to expect Employee to be at
9 work. Employee left work and could not be found when told of a time sensitive
10 letter that needed to be delivered to him. Employee had a duty to be at work like
11 all other employees and had knowledge that Management was to serve the FNAA
12 to him.

13 V. DELIBERATION

14 The Commission, after reviewing Management's motion and supporting
15 affidavits, finds that Management showed, by a preponderance of the evidence,
16 that the FNAA was served timely by certified mail to the Employee on April 10,
17 2024. The Commission also found, by a preponderance of the evidence, that
18 Employee untimely filed his Appeal. Since the Appeal was late it was untimely
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20 **DECISION AND JUDGMENT**

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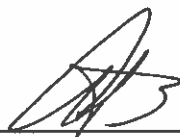
1 and the Commission lacks jurisdiction thus are barred from hearing Employee's
2 appeal.

3 **VI. CONCLUSION**

4 Accordingly, the Commission, after due deliberation, determines by a vote
5 of 5 to 0 that Management met its burden by a preponderance of the evidence that
6 it timely provided Final Notice of Adverse Action to Employee, but Employee
7 failed to timely file his Adverse Action Appeal. The Commission, therefore,
8 dismisses Employee's Adverse Action Appeal, Case Number 24-AA04T.

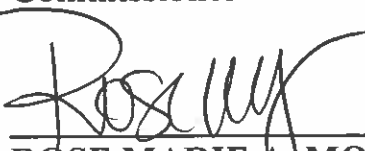
9 **SO ORDERED** this 14th day of January, 2025.

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12 **JUAN K. CALVO**
Chairperson

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12 **ANTHONY P. BENAVENTE**
Vice Chairperson

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14 **- ABSENT -**
15 **FRANCISCO T. GUERRERO**
Commissioner

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16 **CATHY O. CATLING**
Commissioner

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18 **ROSE MARIE A. MORALES**
Commissioner