

Office of the Legislative Secretary
 Senator Tina Kiese Mufia Barnes
 Date 10-25-13
 Time 10:58 am
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CIVIL SERVICE COMMISSION
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 GOVERNMENT OF GUAM
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Attorneys for Employee
 Eleuterio J. Mesa

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Office of the Speaker
 Judith T. Won, Ph.D.

Date 10/25/2013
 Time 12:18 PM
 Received by [Signature]

BEFORE THE
 GUAM CIVIL SERVICE COMMISSION
 BOARD OF COMMISSIONERS

In the Matter of:

ELEUTERIO J. MESA,
 Employee,
 vs.
 DEPARTMENT OF EDUCATION,
 Management.

ADVERSE ACTION APPEAL
 CASE NO. 11-AA13T

DECISION AND JUDGMENT

2013 OCT 25 PM 12:45
 [Signature]

This matter came before the Commission¹ on Employee, Eleuterio J. Mesa's ("Employee" or "Mesa") appeal of the adverse action taken against him by the Department of Education ("Management"). On February 25, 2011 Employee was served with a Notice of Proposed Adverse Action. The Employee responded, contesting the proposed adverse action. On March 14, 2011 Management served Employee with a Final Notice of Adverse Action terminating him from his classified position of Principal of Untalan Middle School.

¹ Commissioner Lourdes Hongyee recused herself from this matter and did not participate in the hearing or in this Decision and Judgment.

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Subsequently, the Employee retired from the Government of Guam service on April 30, 2011. On April 1, 2011, Employee filed a timely notice of appeal of his termination.

On December 29, 2011 Management filed a motion to dismiss the appeal asserting that the Commission lacked jurisdiction in light of the fact that the Employee had retired. The motion was denied in a written Order dated March 6, 2012 in which the Commission held that, pursuant to 4 G.C.A. §4406, it had jurisdiction over the appeal notwithstanding the Employee's retirement. Thereafter the Commission heard various motions, and conducted an evidentiary hearing which spanned a period of 527 days.

The conclusion of the hearing on the merits of this appeal occurred on April 11, 2013. The Commissioners: having heard testimony from witnesses; having had the opportunity to question the witnesses; having had the opportunity to form opinions as to the credibility of the witnesses; having had the opportunity to review and consider the pleadings and exhibits submitted by the parties; having listened to the arguments of counsel; and having deliberated in open session at the close of evidence; voted on whether Management sustained its burden of proof on each of the charges in the Notice of Final Adverse Action and this Appeal as follows:

CHARGE NO.	CHARGE ²	MANAGEMENT	EMPLOYEE
1	Failure to Comply with IPE for Student With Disabilities	1	5
2	Discourteous Treatment of Parent	3	3

² The full description of the charges is set forth in the Final Notice of Adverse Action; an abbreviated description is used in this Decision and Judgment.

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CHARGE NO.	CHARGE ²	MANAGEMENT	EMPLOYEE
3	Failure to Have Written Procedure for How to React When No 1:1 Aide Available	1	5
4	Failure to Timely Notify Teachers of PTEP Evaluators	3	3
5	Improper Detailing of Clerk Typist to Secretary I Position	3	3
6	Failure to Ensure Assistant Principals Were Updated on School Operations	0	6
7	Failure to ensure school facility was clean	3	3
8	Failure to protect confidentiality of a student	1	5

This matter involved an appeal from an adverse action. In accordance with 4 G.C.A. § 4407(a), Management had the burden of showing by clear and convincing evidence that the action taken was correct. Pursuant to 4 G.C.A. § 4402, the vote of four Commissioners was required to sustain the adverse action. Because Management failed to obtain four votes necessary to meet its burden of proof, the adverse action against the Employee is revoked in accordance with CSC Rule 11.7.2.

On May 1, 2013 Management filed a Request for Clarification with the Commission seeking guidance on the duration of Mr. Mesa's reinstatement in light of his voluntary retirement from the Government of Guam after the issuance of the Final Notice of Adverse Action. The Commission held a hearing on the Request for Clarification on June 4, 2013.

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During that hearing, Management argued that Mr. Mesa's reinstatement should be effective only from the date of the now-revoked Final Adverse Action to the time he voluntarily severed his employment relationship with GDOE by retiring on April 30, 2011. Mr. Mesa asserted that his reinstatement should be effective from the date of the Final Adverse Action without regard to his retirement. The Commission, by unanimous vote, ruled that Mr. Mesa's reinstatement would be effective from the date of the Final Adverse Action, without regard to the date of Mr. Mesa's retirement.

The parties agreed that Mr. Mesa is not entitled to double pay, i.e. he must reimburse the Retirement Fund for all retirement pay received from the date of his retirement through the date of reinstatement. The parties further agreed that the amount of such reimbursement and the mechanics for how the reimbursement is to be made can be worked out among the Retirement Fund, Department of Education and Mr. Mesa according to established procedures covering this type of situation.

IT IS THEREFORE ORDERED:

1. That the Final Notice of Adverse Action issued on March 14, 2011 is hereby revoked and Employee shall forthwith be reinstated to the position of Principal of Untalan Middle School, which is the position he held immediately prior to the adverse action taken against him.
2. The Employee shall be restored all back pay and benefits from the date of his termination through the date he is reinstated, provided that the Employee shall reimburse the Government of Guam Retirement Fund for amounts due as a result of his reinstatement. The reimbursement of the Retirement Fund shall be

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made in a manner to be agreed upon between Management, Mr. Mesa, and the Retirement Fund.

- 3. In accordance with 4 G.C.A. § 4406.1, Employee is hereby awarded attorney's fees and costs in the amount of \$49,978.34, subject to the Employee or his counsel submitting a declaration of fees and expenses to Management, and if requested, to final approval of such fees and costs by the Commission.


IT SO ORDERED AND ADJUDGED this 27th ^{October} day of ~~September~~, 2013.



LUIS R. BAZA
Chairman




MANUEL R. PINAUIN
Vice Chairman



PRISCILLA T. TUNCAP
Commissioner

Not present

JOHN SMITH
Commissioner



DANIEL B. LEON GUERRERO
Commissioner



EDITH C. PANGELINAN
Commissioner

APPROVED AS TO FORM AND CONTENT:
Management Reserves the Right to Appeal


09.20.2013

REBECCA PEREZ