BEFORE THE GUAM CIVIL SERVICE COMMISSION

BOARD OF COMMISSIONERS

33-15-0046

ADVERSE ACTION APPEAL CASE NO. 09-AA29S

IN THE MATTER OF:

JAMES C. TOVES,

Employee,

vs.

DEPARTMENT OF PUBLIC WORKS,

Management.

DECISION AND JUDGMENT

This case came before the Civil Service Commission at its regularly scheduled meeting on May 1, 2014, at 5:45 p.m., at its office located in Sinajana, Guam.

James C. Toves ("Employee") was not present. Employee's lay representative, David Babauta, from Guam Federation of Teachers, was present at the motion hearing. Present for Management was Director Carl Dominguez. Donna Lawrence, Esq., from the Attorney General's Office, was present and represented Management.

I. ISSUE

a) Did Management meet its burden of proof such that its Motion to Dismiss Employee's Adverse Action Appeal for Failure to Prosecute should be granted?

b) Should Employee's Lay Representative's Motion to Withdraw As Representative be Granted?

II.
HOLDING

After considering the motion documents submitted, Employee's failure to appear at the hearing, the lack of a filed Response by Employee or his representative to Management's Motion to Dismiss Adverse Action Appeal, and the arguments by the parties and the respective motions filed, the CSC grants Management's Motion to Dismiss the Adverse Action appeal with prejudice by a vote of 6-0, and also grants GFT's Motion to Withdraw As Representative by a vote of 6-0.

III.
BACKGROUND

Management filed its Motion to Dismiss the Employee's Adverse Action Appeal for Failure to Prosecute on or about April 1, 2014. Employee's lay representative, GFT, was served with the Motion to Dismiss the adverse action appeal. Neither Employee nor his lay representative filed a response to the Motion to Dismiss his appeal at any time.

Employee failed to appear at the hearing despite being provided notice of the hearing by his lay representative. Employee's appeal was filed in 2009, and Employee has failed to prosecute his adverse action appeal. As indicated in Management's Motion to Dismiss, Employee was suspended for fifteen (15) days, effective June 30, 2009, as a result of his conduct on May 7, 2009. Employee appealed his suspension on July 17, 2009. He subsequently resigned from DPW effective November 23, 2009.

Employee's lay representative filed a joint Motion to Withdraw as Representative for Employee, along with three other employees in CSC AA appeal Nos: AA25S, AA26S, and AA27S on April 1, 2014. All employees were involved in the same alleged misconduct that occurred on May 7, 2009.

GFT's representative indicated that all Employees in those cases, including Employee in this case, have failed to communicate with him despite attempts to contact the Employees via

certified mail as recently as January 2014. As part of its motion, GFT attached the letters to this Employee as well as the certified mail receipt.

IV.
JURISDICTION

The jurisdiction of the Civil Service Commission is based upon the Organic Act of Guam, 4 G.C.A. Section § 4401 et. seq. and the personnel rules and regulations.

V.
CONCLUSION

By a vote of 6-0, the Commission finds that Management met its burden of proof relating to its Motion to Dismiss Employee's Adverse Action appeal with prejudice. GFT's Motion to Withdraw is also granted by a vote of 6-0.

IT IS SO ORDERED THIS 8th DAY OF January 2015.

LUIS R. BAZA
Chairman

MANUEL R. PINAUIN
Vice-Chairman

PRISCILLA T. TUNCAP
Commissioner

JOHN SMITH
Commissioner

LOURDES HONGYEE
Commissioner

DANIEL D. LEON GUERRERO
Commissioner

EDITH C. PANGELINAN
Commissioner