33-16-1242
Office of the Speaker
Judith T. Won Pat, Ed.D.
Date: 01-15-16
Time: 10:44 AM
Received By:

BEFORE THE GUAM CIVIL SERVICE COMMISSION

BOARD OF COMMISSIONERS

IN THE MATTER OF:

JEFFREY Q. CRUZ

Employee,

vs.

PORT AUTHORITY OF GUAM,

Management.

ADVERSE ACTION APPEAL
CASE NO. 13-AA06T

DECISION AND JUDGMENT

1-15-16
10:24 a.m.

2016 JAN 15 AM 10:18

This matter came before the Civil Service Commission (the "Commission") on the Port Authority of Guam Management's ("Management") Motion to Dismiss Employee Jeffrey Q. Cruz's ("Employee") adverse action appeal during its regularly scheduled meeting on September 3, 2013. Present for Management was its General Manager Joanne Brown and counsel of record, John R. B. Bell, Esq., of The Law Offices of Phillips & Bordallo, P.C. Also present were Employee and his Representative, David C. Babauta, from the Guam Federation of Teachers.

I.
ISSUE

Should the Commission grant Management's Motion to Dismiss Employee's Appeal for Lack of Jurisdiction?

II.
HOLDING

Management demonsrated by a preponderance of the evidence that its motion should be granted. By a vote of 4-3, Management's Motion to Dismiss is granted.

COPY

ORIGINAL

III.
FACTS

On October 31, 2011, despite not meeting the minimum requirements for the position, Cruz was hired at the Port Authority of Guam as a Cargo Checker via Personnel Action No. 19-12. Cruz did not possess the required experience or education to meet the minimal qualifications for the position of Cargo Checker described in Job Announcement No. 32-11.

On or about November 14, 2011, Cruz began occupying the position of Cargo Checker. On May 10, 2012, Management requested that the Commission conduct a post-audit investigation of Cruz's recruitment action, pursuant to 4 G.C.A. § 4403(d). On October 16, 2012, the Commission unanimously found Cruz's appointment violated the merit system. Thus, Cruz's employment was rendered null and void.

The Commission declined Management's request to retain Cruz as a Cargo Checker. Instead, the Commission provided Management 90 days to determine how to proceed with Cruz in light of the fact that his employment as a Cargo Checker was null and void as a violation of the merit system.

After the 90 days elapsed, Management appeared at a public hearing before the Commission on January 15, 2013. PAG elected to defer to the Commission's earlier determination that Cruz's initial appointment violated the merit system. The Commission unanimously upheld its previous determination that Personnel Action No. 19-12, Cruz's initial appointment as a Cargo Checker, was null and void as a violation of the merit system.

On January 17, 2013, Management informed Cruz that, as a result of the Commission's determination, Management was cancelling Personnel Action No. 19-12, his initial appointment to the position of Cargo Checker. Management did not issue Cruz either a proposed or a final adverse action, nor was Cruz in any way disciplined for any action on his part. On January 24, 2013, Cruz filed with the Commission a Letter of Appeal of Final Adverse Action wherein Cruz stated, "the decision to void my employment should be overturned."

On March 26, 2013, the Commission unanimously issued a Final Decision and Judgment indicating that on October 16, 2012, the Commission unanimously found that Personnel Action No. 19-12, Cruz's initial probationary appointment, was "null for failure to conform to the Port Authority's personnel rules." The Commission further noted in this Final Decision and Judgment that on January 15, 2013, it simply "reaffirmed its determination that Personnel Action No. 19-12 was issued in violation of the Port Authority's Personnel Rules and that the same were thus declared null and void."

At the September 3, 2013 motion hearing, Management denied taking adverse action against Cruz and argued Cruz did not have standing to appeal because 1) he did not duly compete for his position as required, 2) the Commission had previously declared his employment null and void based on his failure to compete as required, and 3) Cruz was not issued a disciplinary Final Notice of Adverse Action.

Cruz responded that Management had made him a permanent classified employee with full appeal rights before improperly terminating his employment on January 17, 2013, more than 60 days from the time Management became aware that he was not qualified for his position.

Management replied that, as a result of the Commission previously declaring his hiring null and void, Cruz did not have standing before the Commission at the time he appealed. Management further responded that Cruz should have either appealed or asked the Commission to reverse its "null and void" ruling rather than seeking reinstatement by the Commission on the false premise that Management issued an untimely adverse action against him.

IV.
JURISDICTION

The jurisdiction of the Commission is based upon the Organic Act of Guam, 4 G.C.A. § 4401 *et seq.*, and the Port Authority of Guam's Personnel Rules and Regulations.

V.
FINDINGS

1. By a preponderance of the evidence, Management successfully established that Cruz lacked standing for an adverse action appeal before the Commission.
2. A majority of Commissioners agreed that, in light of the Commission previously ruling his employment null and void, the Commission could not reinstate Cruz via the Commission's adverse action appeal authority.

VI.
CONCLUSION

By a vote of 4-3, Management proved by a preponderance of the evidence that its Motion to Dismiss Employee's Appeal for Lack of Jurisdiction is appropriate. The matter is dismissed.

So Ordered this 14th day of January, 2016, *nunc pro tunc* to September 3, 2013

EDITH PANGELINAN
Chairperson

not present
DANIEL D. LEON GUERRERO
Vice-Chairperson

PRISCILLA T. TUNCAP
Commissioner

JOHN SMITH
Commissioner

LOURDES HONGYEE
Commissioner

CATHERINE GAYLE
Commissioner