BEFORE THE GUAM CIVIL SERVICE COMMISSION

BOARD OF COMMISSIONERS

IN THE MATTER OF:

DAVID ALVAREZ,

Employee,

vs.

DEPARTMENT OF CORRECTIONS,

Management.

ADVERSE ACTION APPEAL
CASE NO. 13-AA16T

DECISION AND ORDER

This case came before the Civil Service Commission at its regularly scheduled meeting on November 12, 2015, at its office located at Suite 6A, Phase II, Sinajana Complex, 777 Route 4, Sinajana, GU 96910.

Although Mr. Walter Alvarez, the representative of the estate of the Employee, who died July 25, 2014, received personal notice of this hearing upon Management's Motion to Dismiss, he was not present. Present for Management was Assistant Attorney General Monty R. May.

I. ISSUE

The Employee died on July 25, 2014, Under CSC AA R. 12.1, the appeal was stayed for six months in order for the Estate of the Employee to apply to this Commission to continue the appeal. Given that fifteen months elapsed since the date of the death of the Employee, and that the Estate has not filed an application to continue the appeal, the issue is whether to grant Management's motion to dismiss the appeal.

II.
HOLDING

The Civil Service Commission holds that under CSC AA R. 12.1 it has authority to dismiss an appeal of a deceased Employee if more that six months have elapsed since the date of the Employee's death and his Estate has not applied to the Commission for the appeal to continue.

III.
FINDINGS

1. By a Final Notice of Adverse Action Management terminated Employee May 2, 2013.
2. Employee filed a timely Notice of Appeal with Civil Service Commission.
3. Employee died on July 25, 2014.
4. On July 16, 2015 Management moved to dismiss the appeal on the grounds that the Estate had not filed an application to continue the appeal.
5. Thereafter Walter Alvarez, the brother of Michael Alvarez, and administrator of his brother's Estate, appeared on July 28, 2015, and August 31, 2015 and requested continuances to allow time to retain counsel and/or prepare an application to continue the case. The appeal was continued.
6. Mr. Walter Alvarez, neither *in propria persona* nor through legal counsel, has filed an application to continue the appeal, nor has he filed an Opposition to the Motion to Dismiss.
7. Rule 9.6 states: "The CSC may dismiss an appeal if the Employee is not present for the hearing on the merits or motion hearing, unless the Employee has a reasonable excuse." Neither Mr. Walter Alvarez nor a representative appeared at the hearing. Thus, we have basis to dismiss the appeal on these grounds as well. At the hearing, Management asked to also dismiss for lack of presence.

IV.
JURISDICTION

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

V.
CONCLUSION

By a vote of 6-0, the Commission grants Management's Motion to Dismiss. This appeal shall be and hereby is dismissed.

SO ADJUDGED THIS 26th day of January 2016.

EDITH C. PANGELINAN
Chairperson

DANIEL LEON GUERRERO
Vice-Chairperson

PRISCILLA T. TUNCAP
Commissioner

JOHN SMITH
Commissioner

LOU HONGYEE
Commissioner

CATHERINE GAYLE
Commissioner