

BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS



IN THE MATTER OF:

ADVERSE ACTION APPEAL
CASE NOS. 13-AA34T

STEPHEN D.M. SCROGGS

Employee,

DECISION AND JUDGMENT

vs.

33-16-1318
Office of the Speaker
Judith T. Won P.H.D. Ed.D

GUAM WATERWORKS AUTHORITY,

Management.

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Office of the Legislative Secretary
Director The Hon. M.A. Burgos
Case No. 13-16-1318

An appeal on this matter was heard by the Civil Service Commission ("Commission") at a regularly scheduled meeting on June 17, 2014 at the Commission's office located at suite 6A, 777 Route 4, Sinajana, GU 96910 at or about 5:45 p.m. The hearing was primarily related to Management's Motion to Dismiss for Lack of Jurisdiction. Present at the hearing was the Employee Mr. Steven D.M. Scroggs ("Employee") and his counsel of record Mr. Jeffrey Bell of the Torres Law Group. Present for Management of the Guam Waterworks Authority ("GWA") was counsel for Management Mr. Samuel J. Taylor and the acting GWA General Manager, Mr. Thomas Cruz. There following three (3) matters were pending before the Commission at the hearing.

1. Management's timely filed Motion to Dismiss for Lack of Jurisdiction that was based upon Management's argument that the Employee was a probationary employee and as such, the Civil Service Commission lacked the jurisdiction to hear the Employee's appeal.

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ORIGINAL

1 2. Employee's Motion to Revoke Employee's Dismissal for Procedural Defects and
2 Violation of Discovery Order. The basic grounds set forth in the Employee's
3 Motion were that GWA had allegedly violated a discovery order issued by the
4 Commission's Administrative Director.

5 3. GWA's Motion to Review the Commission's Discovery Order on the grounds that
6 the discovery sought by the Employee was irrelevant to the proceedings.

7 Ultimately, the Commission determined that Management's position in its Motion to
8 Dismiss was meritorious and holds that the Commission lacked jurisdiction to hear the matter
9 on the grounds that the Employee was terminated during his probationary term. It is therefore
10 Ordered, Adjudged and Decreed by the Guam Civil Service Commission that the above-
11 referenced appeal by Employee be dismissed in its entirety based upon the findings set forth
12 below.

13 **I. ISSUE**

14 Was the Employee terminated during his initial probationary term?

15 **II. HOLDING**

16 Pursuant to Civil Service Commission Rule 9.5, a Motion to Dismiss may be made on
17 the grounds the CSC lacks jurisdiction along with other procedural defects. It is well
18 established that the CSC only has jurisdiction to hear appeals of adverse actions filed by
19 classified employees. AG of Guam v. Perez, 2008 Guam 16 at ¶4; see also Mesngon v. Gov't
20 of Guam, 2003 Guam 3. An employee who has successfully completed his probationary term
21 is afforded the job protections of the personnel laws and rules, i.e., he or she attains permanent
22 status into the classified service. Bias v. Guam Customs and Quarantine Agency, 2000 Guam
23 12 at ¶22. However, unless, and until, the time the employee completes his or her probationary
24 term, that employee can be dismissed at any time without the right of appeal and without being
25 given any notice of the reasons. Id. Finally, a probationary employee may be dismissed

1 without a hearing or judicially cognizable good cause. Id. In sum, if the Employee is within
2 their probationary period, that Employee may be dismissed at any time without notice, without
3 cause and without recourse to the Civil Service Commission. Id.

4 GWA Personnel Rule 4.602(D)(1), states in relevant part that “[o]riginal and new
5 probationary periods will be a six months.” There are exceptions to this requirement under
6 Rule 4.602(D)(1) but none are applicable to the Employee’s case. Under GWA Personnel Rule
7 4.602(D)(3), initial six month probationary terms may be extended out to a maximum of 12
8 months by providing written notice to employee of the extension prior to the expiration of the
9 probationary term.

10 By a vote of 6 to 0, the Commission found that the Employee was terminated by GWA
11 during his initial probationary term, and as such, the Commission lacked the jurisdiction to
12 hear the Employee’s appeal. The Commission therefore orders that the appeal of Employee be
13 dismissed with prejudice in its entirety.

14 **III. FACTS**

- 15 1. On November 27, 2012, Mr. Stephen D.M. Scroggs (“Employee”) was hired
16 as a Trades Helper by the Guam Waterworks Authority.
- 17 2. On May 24, 2013, the GWA General Manager properly extended out the
18 Employee’s original probationary term as authorized by GWA Personnel
19 Rule 4.602(D)(3) and the Employee received written notice of the extension.
- 20 3. On November 14, 2013, and prior to the expiration of his initial
21 probationary term, the Employee was provided notice that he was dismissed
22 from employment with GWA.
- 23 4. On December 10, 2013, the Employee filed an appeal with the Commission
24 seeking review of GWA’s decision to terminate him.
- 25 5. On April 15, 2014, the Employee served a discovery request on GWA.
6. On April 16, 2014, GWA filed an objection with the Commission regarding
Employee’s Discovery Request. The basis for Management’s objection was
that the discovery sought by Employee was irrelevant under 4 G.C.A. §
4406.

- 1 7. The Employee took the discovery matter to the Director of the Commission,
and the Director signed a Discovery Order on April 30, 2014.
- 2 8. As provided under CSC rules, GWA filed a timely Motion to Review
3 Discovery Order on May 1, 2014.
- 4 9. Management filed a Motion to Dismiss for Lack of Jurisdiction on May 7,
2014 and the Employee filed a timely response.
- 5 10. The Employee filed a Motion to Revoke Employee's Dismissal for
6 Procedural Defects and Violation of Discovery Order on May 8, 2014 and
7 GWA filed a timely response.

8 **IV. THE JURISDICTION OF THE CIVIL SERVICE COMMISSION**

9 The jurisdiction of the Civil Service Commission is based upon the Organic Act of
10 Guam, Guam statutes as set forth in 4 G.C.A. § 4401 et seq. and GWA's Personnel Rules and
11 Regulations. In this case, the Commission lacks jurisdiction to hear this matter since the
12 Commission's jurisdiction over employee appeals is limited to classified employees only and
13 in this case, the Employee was determined to not be a classified employee.

14 **V. FINDINGS**

15 The following constitutes the judgment of the Guam Civil Service Commission:

- 16 1. The Employee's mandatory initial six month probationary term was properly
extended to period of one year.
- 17 2. The Employee was terminated during the initial probationary term.
- 18 3. Since the Employee was still within his probationary term when he was
19 dismissed from GWA, the Commission lacked jurisdiction to hear the
Employee's appeal as provided under Guam law and numerous Supreme Court
20 of Guam decisions.
- 21 4. The Employee's Motion was moot given the fact that GWA had properly filed
22 objections to both the original discovery request and the Discovery Order signed
by the CSC Director, and until the CSC had ruled on GWA's Motion GWA was
23 not in fact in violation of the CSC rules or Guam law regarding discovery.
- 24 5. Given the fact that GWA had not violated the Discovery Order, GWA was
25 permitted to attach relevant exhibits to its Motion to Dismiss.

- 1 6. The Commission used the documents provided by GWA with its motion to
- 2 make the determination that the Employee was terminated while he was still
- 3 within his probationary term.
- 4 7. In light of the CSC's findings, conclusions and decision herein, the Employee's
- 5 Motion to Dismiss is moot in its entirety.
- 6 8. Employee shall not receive any back pay, attorney fees or other damages.


VI. CONCLUSION

The appeal of Employee in its entirety is dismissed with prejudice on the grounds that management sustained its burden of proof relative to showing that the Employee was terminated during his probationary term which thereby deprives the Civil Service Commission of any jurisdiction to hear the Employee's appeal.

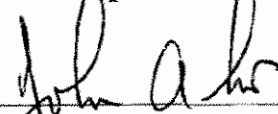
The employee has the right to appeal the decision of this Commission to the Superior Court of Guam within thirty (30) days after the last day on which the reconsideration can be granted.

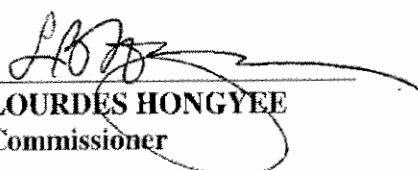
SO ORDERED this 28th day of January, 2016 as determined by a vote of 6 to 0 on June 17, 2014.

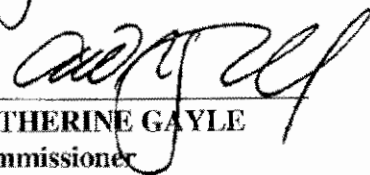

EDITH PANGELINAN
Chairperson


DANIEL D. LEON GUERRERO
Vice-Chairperson

Not present
PRISCILLA T. TUNCAP
Commissioner


JOHN SMITH
Commissioner


LOURDES HONGYEE
Commissioner


CATHERINE GAYLE
Commissioner