

BEFORE THE  
GUAM CIVIL SERVICE COMMISSION  
BOARD OF COMMISSIONERS



IN THE MATTER OF:

ADVERSE ACTION APPEAL  
CASE NO. 15-AA16T

GABRIEL LAU,

Employee,

JUDGMENT OF DISMISSAL

vs.

DEPARTMENT OF EDUCATION,

Management.

2016 FEB 15 PM 12:45

I. INTRODUCTION

On Thursday, January 14, 2016 the above referenced adverse action appeal came before the Civil Service Commission of Guam on Management's Motion to dismiss for untimeliness, lack of standing and lack of subject matter jurisdiction. Mr. Gabriel Lau, the appellant appeared with his Lay Representative Mandy Ho Yin-Man at this hearing and Mr. Robert E. Koss, Lay Representative of the Department of Education and Mr. Christopher Anderson, Deputy Superintendent of Assessment and Accountability (acting) appeared on behalf of Management.

II. JURISDICTION

The Civil Service Commission has jurisdiction to hear adverse action appeals from employees in the classified service pursuant to the Organic Act of Guam, Title 4 of the Guam Code Annotated §4401, et seq., and the Department of Education's Personnel Rules and Regulations.

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Office of Senator Tina Mura Bener

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Office of the Speaker  
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Judgment of Dismissal  
Gabriel Lau vs. DOE  
Case No. 15-AA16T

ce 2/12/16  
INITIAL DATE

1:40 p

Date: 2/12/16  
Time: 1:55 pm  
Received By: [Signature]

### III. FACTUAL BACKGROUND

1. **August 11, 2008** Effective date of hire for Gabriel Lau to an *Original Probationary Appointment* in the position classification of Elementary School Teacher.
2. **November 25, 2008** Employee was notified in writing by the Superintendent of his termination during his original probationary period for unsatisfactory service effective at the close of business on November 26, 2008.
3. **November 26, 2008** Effective date of Termination of full time, probationary employee Gabriel Lau pursuant to DOE PRR 904.602 D and 904.902 B.
4. **August 25, 2015** Mr. Gabriel Lau filed an Adverse Action Appeal with the Civil Service Commission of Guam, Ref. Case No. 15-AA16T, six years and 10 months after his dismissal. The contents of Mr. Lau's adverse action appeal to the Commission reflect that Mr. Lau was appealing his non-selection to a math teaching position at J.P. Torres Alternative School on August 13, 2015.


### IV. FINDINGS


1. On August 25, 2015, Gabriel Lau filed an adverse action appeal for his non-selection to a Math Teaching position at J.P. Torres Alternative School on August 13, 2015.
2. The Civil Service Commission's adverse action appeal procedures are not the appropriate vehicle for addressing complaints pertaining to the non-selection of an applicant.
3. Gabriel Lau was released during his probationary appointment by the DOE on November 26, 2008 and pursuant to 4 GCA 4406 and the Personnel Rules of the Department of Education, Mr. Gabriel Lau is not a classified employee with appeal rights to the Commission pursuant to Title 4 of the Guam Code Annotated §4401, et seq., and the Department of Education's Personnel Rules and Regulations.

**V. HOLDINGS**

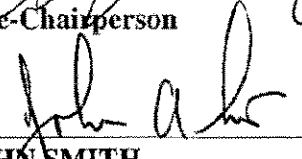
The Civil Service Commission, by a unanimous vote of 6-0 rules in favor of managements Motion to dismiss Mr. Lau’s adverse action appeal for lack of standing and for the Commission’s lack of subject matter jurisdiction.

SO ORDERED and ADJUDGED this 1<sup>th</sup> day of February, 2016.

  
EDITH PANGELINAN  
Chairperson

  
DANIEL LEON GUERRERO  
Vice-Chairperson

  
PRISCILLA T. TUNCAP  
Commissioner

  
JOHN SMITH  
Commissioner

  
LOURDES HONGYEE  
Commissioner

Not Present  
CATHERINE GAYLE  
Commissioner