

BEFORE THE  
GUAM CIVIL SERVICE COMMISSION  
BOARD OF COMMISSIONERS



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IN THE MATTER OF:

DANIEL T.C. SANTOS,

Employee,

vs.

GUAM INTERNATIONAL AIRPORT  
AUTHORITY,

Management.

GRIEVANCE APPEAL  
CASE NO.: 16-GRE01

DECISION AND JUDGMENT

33-16-2171

Office of the Speaker

Judith T. Won Pat, Ed.D

Date: 11/4/16

Time: 10:41 a.m

Received By: [Signature]

THIS MATTER CAME before the Civil Service Commission ("Commission") for a Step 5 grievance appeal hearing on June 29, 2016. Present for Management, A.B. Won Pat International Airport Authority, Guam ("GIAA" or "Management") was Pedro Roy Martinez, along with GIAA legal counsel Genevieve P. Rapadas of Calvo Fisher & Jacob LLP. Present for the Grievant, Daniel T.C. Santos ("Mr. Santos"), with his lay representative Juan K. Calvo.

I. ISSUES PRESENTED

1. Whether the Commission has jurisdiction to hear Mr. Santos's basis for his grievance appeal that his "[t]ransfer and [d]emotion to Clerk III effective October 4, 2015, due to his medical condition was illegal and not in compliance with the Certified, Technical and Professional ("CTP") Rules and Regulations, Section 6.101.A.2" (E2 (Grievance Appeal, Step 5 at 2.).

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1 2. Whether the Decision of the Step 4 Grievance Review Board (“GRB”) should be upheld.

## 2 II. JURISDICTION AND STANDARD OF REVIEW

3 The Commission has jurisdiction over Step 5 grievance appeals pursuant to GIAA’s Personnel  
4 Rules & Regulations (“GIAA’s PR&R” or “GIAA PR&R”) § 12.900, et seq. “Upon the hearing of a  
5 grievance..., the burden of proof shall be upon the employee to show that the action of the Government  
6 was improper.” 4 G.C.A. § 4407(b). Pursuant to the PR&R § 12.901A.6, the Commission may review  
7 the record of the Grievance Review Board (“GRB”) to determine if its decision was “unjust,  
8 inequitable, or not in accord with the facts.” *See also, Peredo v. Dept. of Admin.*, Grievance Appeal  
9 Case No. 0308-GRE-06 at 2 (Civil Serv. Comm’n June 24, 2004), (“Grievant bears the burden of proof  
10 by a preponderance of the evidence to prove to the Commission that the decision of the Grievance  
11 Review Board was unjust, inequitable, or not in accordance with the facts.”)

## 12 III. BACKGROUND FACTS

13  
14 On September 24, 2015, Management notified Mr. Santos of his reassignment from an Airport  
15 Police Officer I to a Clerk III position, effective the same day. (E96.). On Sept. 30, 2015, Mr. Santos  
16 wrote a letter to GIAA’s Executive Manager stating that he “found major issues” with respect to the  
17 reassignment and that it violated Rules 6.001.C, 6.101, and 4.501 of the GIAA Personnel Rules &  
18 Regulations (“GIAA PR&R”). (E91-92.). On October 27, <sup>2015</sup>~~2016~~, Mr. Santos submitted a request to the  
19 Commission for post-audit investigation relative to his reassignment. (*See* E106-108.). (*Santos v.*  
20 *Guam International Airport Authority*, 15-PA06, Judgment of Dismissal (Civil Service Commission  
21 Feb. 11, 2016)). On January 5, 2016, the Commission adopted the recommendations of the  
22 Commission’s staff report and found that it would not proceed with an investigation of the matter and  
23 dismissed Mr. Santos’s post-audit investigation request. (*Id.*).

24 On January 6, 2016, Mr. Santos verbally informed Noel Dela Cruz, Supervisor, Airport Police  
25

1 Office II, of the results of his post-audit investigation and then filed a Step 2 grievance form on  
2 on January 8, 2016, (E102-104.) The grievance review initiated by Mr. Santos proceeded through Steps  
3 2, 3, and 4 of the grievance review process. (E102-104; E19-101; E12-18.). The Grievance Review  
4 Board ("GRB"), at the fourth level, determined that:

5 "Upon careful review of pertinent documents noting the timelines summarized [in the  
6 report], the [GRB] ascertained that the grievant Daniel T.C. Santos failed to comply  
7 with the grievance procedures as outlined in Chapter 12 of GIAA's Personnel Rules  
8 and Regulations ("Rules")."

- 9
1. Rule 12.504.B.1 – An employee may present a grievance to his supervisor  
10 concerning a continuing practice or condition at any time. Grievances concerning  
11 a particular act or occurrence must be presented **within 15 calendar days** of that  
12 action or occurrence.

13 Daniel T.C. Santos initiated Step 1 – Informal Grievance Procedure on January 6,  
14 2016, for an action dated September 24, 2015, thus rendering his grievance  
15 untimely.

2. Rule 12.601.B.4 – The grievance presented in Step 2 must be submitted to the  
16 person who is the next higher supervisor than the immediate supervisor **within 5**  
17 **calendar days** after the receipt of the answer in Step 1, or **after the answer was**  
18 **due.**

19 Daniel T.C. Santos filed Step 1 beyond the time limit, thus rendering his grievance  
20 filed under Step 2 – Formal Grievance Procedure – Next Administrative Level  
21 untimely.

3. Rule 12.701.A.4 – An employee is entitled to present a grievance under Step 3 if  
22 he has submitted to the Executive Manager **within 5 calendar days** after receipt of  
23 the answer in Step 2 or **after the answer was due.**

24 Daniel T.C. Santos filed Step 1 and Step 2 beyond the time limit, thus rendering his  
25 grievance filed under Step 3 – Formal Grievance Procedure – Executive Manager  
untimely. Having determined that Daniel T.C. Santos failed to comply with the  
rules, which at the minimum should have been adhered to, the Grievance Review  
Board has adequate ground not to proceed and therefore, not take further action  
with the review of the actual grievance. (E14-15.).

On January 8, 2016, Mr. Santos filed his Notice of Appeal of the GRB's decision.

1 On April 21, 2016, GIAA filed an objection to the consideration and hearing of the third claim  
2 (“Appeal No. 3”) raised in Mr. Santos’s grievance appeal. On April 27, 2016, Mr. Santos filed a  
3 response to GIAA’s objection.

#### 4 IV. FINDINGS AND ANALYSIS

##### 5 A. The Commission Sustains Management’s Objection That It Does Not 6 Have Jurisdiction To Hear The Merits Of Mr. Santos’s Grievance Appeal

7 On April 21, 2016, GIAA filed an objection to the consideration, and hearing of the third claim  
8 (“Appeal No. 3”) raised in Mr. Santos’s grievance appeal. In his Grievance Appeal, Mr. Santos argued  
9 that his “[t]ransfer and [d]emotion to Clerk III effective October 4, 2015, due to his medical condition,  
10 was illegal, and not in compliance with the Certified, Technical and Professional (“CTP”) Rules and  
11 Regulations, Section 6.101.A.2.” (E2 (Grievance Appeal, Step 5 at 2). In its objection, GIAA argued  
12 that this issue was never addressed or determined by the GRB in its denial of Mr. Santos’s Step 4  
13 grievance, and that the GRB denied Mr. Santos’s grievance on the ground that Mr. Santos failed to file  
14 a timely grievance in violation of the grievance procedures set forth in GIAA’s Personnel Rules and  
15 Regulations.

16 Under Rule G19 of the Rules of Procedure for Grievance Appeals, the jurisdiction of the Civil  
17 Service Commission (“CSC”) in a grievance hearing is limited to “mak[ing] a ruling on whether to  
18 accept or reject the Grievance Review Board’s recommendation and findings, in whole or in part.”  
19 “Upon the hearing of any grievance appeal, the burden of proof shall be upon the employee to show  
20 that the action of the Government was improper (e.g., unjust, inequitable, or not in accord with the  
21 facts or law).” Rules of Procedure for Grievance Appeals Rule G18; *see also Garrido v. Dep’t of*  
22 *Corrections*, 9802-GRE-03 at 2 ¶3 (Civil Serv. Comm’n April 6, 1999); (“[g]rievant bears the burden  
23 of proof by a preponderance of the evidence to prove to the Commission **that the decision of the**  
24 **Grievance Review Board** was unjust, inequitable, or not in accordance with the facts.”) (emphasis

1 added). Because the GRB has not reviewed or determined the merits of Mr. Santos's third claim  
2 regarding the legality of the transfer and demotion of Mr. Santos, the Commission has no authority or  
3 jurisdiction to hear this particular claim, and Mr. Santos has not yet exhausted his administrative  
4 remedies with respect to that claim. (See M60-M76.). See also, e.g., *Torre v. Guam Police Dep't*,  
5 CY87-GA02 at 4 ¶2 (Civil Serv. Comm'n Aug. 10, 1987); (“[i]f a grievant disputes the decision of the  
6 Grievance Review Board, grievant may then appeal to the Commission, but the decision of the  
7 Grievance Board is an adjudication of the decision of the appointing authority which in the first place  
8 is what inspired the grievance. Upon appeal to the Commission, the grievant may simultaneously attack  
9 the decision of the Board, and the appointing authority with the hope that the grievance would be  
10 resolved in his favor.”)

11 Based on the foregoing, the Commission agrees with GIAA, and finds that it does not have  
12 jurisdiction to hear Mr. Santos's grievance Appeal No. 3 and sustains GIAA's objection.

13 **B. The Decision Of The Grievance Review Board Was Nor Unjust, Inequitable,  
14 Or Not In Accordance With The Facts And Should Therefore Be Upheld**

15 Mr. Santos' Grievance Was Untimely And He Is Barred Relief under the Grievance  
16 Procedures.

17 Rule § 12.505B.1 of the PR&R states that, “[g]rievances concerning a particular act or  
18 occurrence must be presented within 15 calendar days of that action or occurrence.” The act or  
19 occurrence of which Santos complains in the Grievance Memo, i.e., the Notice of Personnel Action of  
20 his Reassignment, occurred on September 24, 2015. (M66 (GIAA PR&R § 12.505B.1). Rule 12.505(C)  
21 further provides, “[A]n employee may present a grievance under the informal procedure either orally  
22 or in writing . A grievance may not be rejected in the informal procedure for any reason. If the grievance  
23 is not timely or consists of a matter not covered under the grievance system, the employee should be  
24 so advised, but he must be allowed to submit his grievance under the formal procedures if he insists.”  
25 (M66 (GIAA PR&R 12.505(C) & 12.505(D)). Step 1 requires that an employee, (a) present a grievance  
to his supervisor; and, (b) present that grievance within 15 calendar

1 days of that action or occurrence. (*Id.* (GIAAPR&R § 12.505B.1.). The immediate supervisor must  
2 then render a decision within 10 calendar days of the presentation of the grievance. (*Id.* (GIAAPR&R  
3 § 12.505(C)).

4 Under Section 12.601, an employee is entitled to present a grievance under Step 2 if: (a) he  
5 completes the informal procedures; (b) the Grievance is not satisfactorily resolved at informal level, or  
6 (c) the supervisor fails to render a decision within 10 days of grievance. (M66-67 (GIAA PR&R  
7 12.601(A)). The grievance presented in Step 2 must, “be submitted to the person who is the next higher  
8 supervisor than the immediate supervisor within five (5) calendar days after the receipt of the answer  
9 in Step 1, or after the answer was due.” (M67 (GIAA PR&R 12.601B.4).)

10 The Supreme Court of Guam in *Guam Fed'n of Teacher v. Gov't of Guam*, 2013 Guam 14, in  
11 interpreting the Department of Education’s rules and regulations, which are similar if not identical to  
12 GIAA PR&R explicitly stated:

13 “DOE's Rules and Regulations also outline a strict and carefully-drawn  
14 multi-step grievance procedure. Step 1 mandates use of an informal  
15 procedure at the outset. See DOE R. & Regs. 909.505(E). Only after taking  
16 Step 1, and meeting with an unsatisfactory resolution, or no resolution,  
17 within ten days of the informal presentation of the grievance may a  
18 disgruntled employee proceed to Step 2, and file a formal grievance. DOE  
19 R. & Regs. 909.601. In turn, Step 2 must be similarly exhausted before an  
20 employee is entitled to take Step 3. DOE R. and Regs. 909.701. Only after  
21 Step 3 does Step 4 avail itself to the grieving employee, and equip the CSC  
22 with appellate jurisdiction.” 2013 Guam 14 ¶ 60.

23 In seeking review of the GRB decision, Mr. Santos contends that “Management’s decision not  
24 to hear the formal grievance appeal that I filed at Step 2, Step 3, and Step 4 because of an alleged  
25 untimely filing was not factual and not justified in accordance with the Grievance Appeal Procedures;  
and secondly, Management willfully ignored the recommendation and decision by the Civil Service  
Commission (“CSC”) on January 05, 2016, to allow me the option to move my case through the

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grievance appeal process and not through post-audit that I initially requested on October 27, 2015.”

(E1.) The Commission does not agree.

On September 24, 2015, Management notified Mr. Santos of his reassignment to the Clerk III position. The first time that Mr. Santos presented a formal grievance was three-and-a-half months later on January 6, 2016 during which time, Mr. Santos verbally informed Noel Dela Cruz of the results of his post-audit investigation, and then filed a Step 2 grievance form on January 8, 2016. (E102-104.) Three-and-a-half months later is well outside the 15 days required under Rules 12.505(B)(1), and 12.601 of GIAA’s PR&R, and is therefore untimely.

If Mr. Santos met the informal grievance requirement under Step 1 by submitting a letter on September 30, then he was required to file a formal grievance in accordance with Step 2. Rule 12.601 requires Mr. Santos to present a Step 2 grievance within 15 calendar days after presenting his purported informal grievance. That is, if an informal grievance is not acted upon at Step 1 within 10 calendar days of presentation of that grievance, an employee is entitled to present a formal grievance. GIAA’s failure to respond within the deadlines imposed by GIAA’s PR&R effectively constitutes a denial. (See M64 (GIAA PR&R 12.407(B), (“[f]ailure by management to render a decision to the employee within the allotted time at any step constitutes denial, and the employee may then proceed to the next step of the grievance procedures.”). And thus, the employee must present an informal grievance within (five) 5 calendar days from when the response is due, which would have been sometime around October 15, (M67 (GIAA PR&R 12.601(B)). However, Mr. Santos did not file a Step 2 grievance until January 6, 2016 – which is two-and-a half months after the deadline. This is clearly untimely.

Similarly, the Commission in *Quitugua v. Dep’t of Education*, 11-GRE-07, Decision & Judgment (Civil Serv. Comm’n Sept. 18, 2012), directly addressed the issue of timeliness. The Commission stated:

“The Department of Education’s Personnel Rules and Regulations (“DOE

1 PRR”) sets a timeline of fifteen (15) days in which to file a grievance. See  
2 DOE PRR 909.505 Part B. Mr. Quitugua is grieving a work assignment  
3 which directed him to work at Juan M. Guerrero Elementary School; the  
4 memorandum in which this assignment was made was dated December 14,  
5 2010. (See Motion to Dismiss for Lack of Jurisdiction at M-5.) Mr.  
6 Quitugua did not file step 1 of his grievance until June 22, 2011. (See *Id.* at  
7 M-6.) Thus, Mr. Quitugua’s grievance was not filed until 189 days after the  
8 assignment to Juan M. Guerrero Elementary School, or 174 days too late  
9 under the Department of Education’s applicable grievance rules. Further, it  
10 is undisputed that there was no agreement between the Department of  
11 Education and Mr. Quitugua to extend any time periods as DOE’s PRR  
12 allows. Thus, the Commission is without jurisdiction over this grievance  
13 appeal.” *Quitugua*, 11-GRE-07, Decision & Judgment, at 2.

14 The Commission also addressed the issue of timeliness in a grievance appeal filed by Mr. Santos  
15 himself in 2010, Case No. 10-GRE-23, against GIAA. In the Commission’s decision and judgment  
16 dismissing Mr. Santos’s grievance appeal, the Commission found by a vote of 6-0 on April 5, 2011,  
17 that by filing a grievance appeal nearly nine (9) months after the filing deadline by GIAA’s PR&R,  
18 “Santos’ grievance was untimely, and Santos is barred from any relief via the grievance procedures.”  
19 *Santos v. A.B. Won Pat International Airport Authority, Guam*, Grievance Appeal Case No. 10-GRE-  
20 23, at 6, Decision & Judgment (Civil Service Comm’n Apr. 5, 2011.) Mr. Santos has again failed to  
21 follow the grievance procedures.

22 In his notice of appeal and at the hearing, Mr. Santos grossly relies upon and overstates the  
23 language in this Commission’s Judgment of Dismissal of Mr. Santos’s post-audit request, Post Audit  
24 Case No. 15-PA06, signed February 11, 2016. In its judgment of dismissal, this Commission stated,  
25 “Mr. Santos could file an Equal Employment Opportunity complaint or a grievance appeal to possibly  
effectuate an alternative outcome.” (Judgment of Dismissal, Feb. 11, 2016). While Mr. Santos is  
correct that the Commission issued a “recommendation,” the Commission made no findings as to the  
appropriateness or merit of those proceedings, nor did the Commission have any jurisdiction to make  
such findings in light of the nature of the proceeding requested by Mr. Santos. The Commission’s  
language was merely suggestive, and should be construed as such in light of the fact that those



1 statements were not made on a full record, and certainly not a directive to Management about what was  
2 proper or improper. Simply put, the Commission's "recommendation" regarding the proper channels  
3 for redress does not excuse Mr. Santos from following those channels properly. Therefore, Mr. Santos's  
4 reliance upon the language in the judgment of dismissal is misplaced.

5 Contrary to Mr. Santos's arguments, the filing of the post-audit request did not toll the deadlines  
6 for the filing of the grievance, and Mr. Santos has not cited authority providing as such. Nor was there  
7 any agreement by the parties that the post-audit request would toll those same deadlines, or to extend  
8 any time periods.

9 Accordingly, Mr. Santos's grievance was untimely, has failed to exhaust his administrative  
10 remedies, and is therefore barred from any relief via the grievance procedures. The GRB's decision  
11 which found that Mr. Santos' grievance was time-barred was not unjust, or inequitable, and was not in  
12 accordance with the facts and is therefore affirmed.

### 13 **C. The GRB Did Not Fail To Comply With The Hearing Requirements**

14 Mr. Santos has also failed to meet his burden with respect to his argument (Appeal No. 1 (E1))  
15 that the GRB's failure to provide Mr. Santos a hearing at Step 4 violated GIAA Rule 12.802.c. Mr.  
16 Santos argued that the GRB's February 25, 2016 meeting, and discussion of Mr. Santos's grievance  
17 appeal without his knowledge or presence violated his "due process or right to fair trial". (E1.).  
18 However, there is nothing under Section 12.700, Step 4 that requires GRB to provide a hearing to Mr.  
19 Santos.

20 The Grievance Review Board's duties/obligations under 12.802C, D & E are:

- 21 a. The Grievance Review Board shall conduct its meetings and hearing during  
22 working hours;

- 1 b. If personnel is called to attend, they shall do so without loss of salary or leave;
- 2
- 3 c. Hearings shall be informal and technical rules of evidence shall not apply;
- 4 d. Proceedings of the investigation shall be recorded in summary and shall contain
- 5 all pertinent facts brought out during the investigation;
- 6 e. Must conduct its investigation within 20 calendar days of appointment and shall
- 7 render its written decision to the employee and the EM on that 20<sup>th</sup> day or
- 8 sooner.
- 9 f. The Grievance Review Board shall maintain an employee grievance file which
- 10 shall contain (1) all documents, or (2) information pertinent to the grievant.
- 11 [M70-71 (GIAA PR&R 12.802).]

12 There is nothing in the GIAA PR&R, and Mr. Santos has cited to none that requires that he be

13 present, or be informed of any hearing by the Grievance Review Board. The GIAA PR&R simply state

14 that if any personnel is called, they shall do so without loss of salary or leave. This appeal basis fails.<sup>1</sup>

#### 15 **V. HOLDING**

16 By a vote of 5-0, the Commission sustains Management's objection that the Commission does

17 not have jurisdiction to hear Mr. Santos's Grievance Appeal No. 3, and that the Commission's

18 jurisdiction is to determine the timeliness of Mr. Santos's grievance appeal.

19 By a vote of 3-2 in favor of GIAA, the Commission ratifies the findings and recommendations

20 of the Step 4 Grievance Review Board.

#### 21 **VI. CONCLUSION**

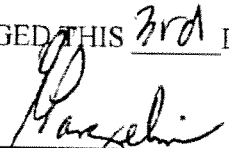
22 Because Santos has failed to demonstrate by a preponderance of the evidence that the decision

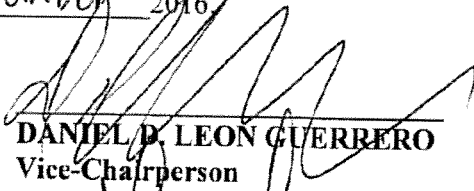
23 of the Grievance Review Board was unjust, inequitable, or not in accord with the facts, the

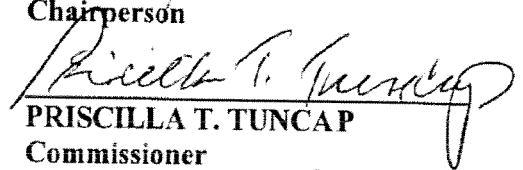
24 Commission hereby ratifies the findings and recommendations of the Step 4 Grievance Review Board.

25 <sup>1</sup> At the June 29, 2016 hearing, Mr. Santos made a similar argument with respect to Step 3 of the grievance procedures, that he was not informed or present at the grievance committee's meetings and that a hearing was not conducted. As with Step 4, there are no requirements that Mr. Santos be present or informed of Grievance Committee's meetings or that a hearing be conducted. (See M67-71 (GIAA PR&R 12.700 & 12.800, *et seq.*.)

SO ADJUDGED THIS 3rd DAY OF November 2016

  
EDITH PANGELINAN  
Chairperson

  
DANIEL D. LEON GUERRERO  
Vice-Chairperson

  
PRISCILLA T. TUNCAP  
Commissioner

  
JOHN SMITH  
Commissioner

  
LOURDES HONGYEE  
Commissioner

  
CATHERINE CAYLE  
Commissioner

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