IN THE SUPREME COURT OF GUAM

IN THE MATTER OF
DEPARTMENT OF AGRICULTURE,
Petitioner-Appellant,

v.

CIVIL SERVICE COMMISSION,
Respondent-Appellee,

PATRICIA ROJAS,
Real Party in Interest-Appellee.

Supreme Court Case No.: CVA05-008
Superior Court Case No.: SP0168-03

AMENDED OPINION ON REHEARING

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Appeal from the Superior Court of Guam
Argued and submitted on February 20, 2006
Rehearing Petition submitted February 14, 2008
Hagåtña, Guam

For Petitioner-Appellant:
James T. Mitchell, *Esq.* (briefed)
Joseph Guthrie, *Esq.* (argued)
Assistant Attorneys General
Office of the Attorney General
287 West O'Brien Drive
Hagåtña, Guam 96910

For Respondent-Appellee:
Robert H. Kono, *Esq.*
Civil Service Commission
2nd Floor, Hakubotan Bldg.
Tamuning, Guam 96911

For Real Party in Interest-Appellee:
Anthony C. Perez, *Esq.* (briefed)
Delia Lujan, *Esq.* (argued)
Lujan Aguigui & Perez, LLP
Pacific News Bldg. Suite 300
238 Archbishop Flores Street
Hagåtña, Guam 96910

BEFORE: ROBERT J. TORRES, Chief Justice;[1] F. PHILIP CARBULLIDO, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.[2]

TORRES, CJ.:

[1] This appeal arises from the termination from employment of Real Party in Interest-Appellee Patricia Rojas by Petitioner-Appellant Department of Agriculture ("Agriculture") for alleged insubordination and failure of good behavior. The notice of adverse action from Agriculture informed Rojas she would have twenty days to appeal to Respondent-Appellee Civil Service Commission ("CSC"). Three months after the time to appeal had expired, Rojas attempted to appeal to the CSC, which dismissed the case for Rojas' failure to timely file the appeal. More than two years later, Rojas sought reconsideration of the dismissal. The CSC granted Rojas' motion for reconsideration, issuing a judgment that did not articulate the reason that reconsideration of the untimely appeal was justified. The judgment held that Agriculture had failed to demonstrate Rojas was insubordinate or did not show good behavior, but left unanswered the question of Rojas' damages, stating the issue would be taken up at a later hearing. When the CSC subsequently issued a resolution stating it did not have authority to determine the issue of damages, Agriculture filed a Petition for a Writ of Mandamus in the Superior Court, requesting that the CSC decision be vacated. The Petition was denied, and Agriculture appealed to this court.

[1] The original opinion in this case was issued when Associate Justice Carbullido was serving as Chief Justice, and Chief Justice Robert Torres was an Associate Justice.

[2] Associate Justice Frances Tydingco-Gatewood heard oral argument in this case. Prior to issuance of this Opinion, she was sworn in as Chief Judge of the U.S. District Court of Guam. Justice Katherine A. Maraman was appointed to the panel on rehearing.

[2] We hold that the Superior Court erred when it determined that Agriculture had failed to meet a statutory requirement of mandamus relief, the requirement of demonstrating the absence of adequate legal remedy. Agriculture successfully met this requirement for mandamus relief because the CSC judgment failed to resolve the issue of Rojas' damages, so appeal of the judgment would not have afforded a plain, speedy, and adequate legal remedy. Furthermore, the CSC abused its discretion in granting a motion for reconsideration without stating a reasoned basis for reconsidering an appeal that was untimely filed. We reverse the denial of the writ of mandamus and remand for further proceedings consistent with this opinion.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] This case arose nearly fifteen years ago, when Petitioner-Appellant Agriculture took adverse employment action against Real Party in Interest Rojas for alleged insubordination and failure of good behavior, the details of which are not relevant to this inquiry. RA at 33 (Not. of Final Adverse Action, Aug. 24, 1995). On August 25, 1995, Agriculture personally served a notice of final adverse action which informed Rojas that she would have twenty days from the action's effective date to appeal to Respondent-Appellee CSC. RA at 33 (Not. of Final Adverse Action). Four months later, in December, Rojas attempted to appeal the adverse action to the CSC, requesting that they consider the untimely appeal because, she contended, she had lacked notice of the twenty-day appeals period. RA at 41, Ex. 3 (Not. of Appeal, Dec. 21, 1995). The CSC dismissed Rojas' appeal with prejudice on February 11, 1999, "for failure of Appellant to file her Notice of Appeal within the time prescribed by 4 GCA § 4406," which provides that such an appeal must be brought within twenty days of notice of the action. RA at 42, Ex. 4 (Dec. and Order, Feb. 11, 1999).

[4] More than two years after CSC dismissed Rojas' appeal with prejudice, Rojas filed a motion for reconsideration alleging that the CSC had failed to apprise her of the dismissal of her appeal, precluding her exercise of her right to seek reconsideration of its decision. RA at 43, Ex. 5 (Appellant's Mot. for Recons. to Appeal, Aug. 9, 2001). The CSC granted Rojas' motion, in a decision that did not articulate the reason that reconsideration was warranted. RA at 45 (Dec. and Order, Adverse Action Appeal Case No. CY95-AA37, Oct. 25, 2001). Upon hearing the merits of Rojas' argument, the CSC ultimately issued a new judgment. RA at 47 (Dec. and J., Adverse Action Appeal Case No. CY95-AA37, Mar. 18, 2003). In this "Judgment," the CSC reversed itself, finding this time that Agriculture had failed to prove Rojas' insubordination by a preponderance of the evidence. This Judgment, like the Decision and Order granting the motion to reconsider, included no analysis to support the CSC's assertion of jurisdiction after the deadline for appeal had expired.

[5] The Judgment stated that the parties along with CSC's legal counsel would meet to discuss damages "that [would] be presented to the Commission for its discretion at its next regular meeting." Petitioner-Appellant's Excerpts of Record ("ER"), Tab 3, Ex 7 (Dec. and J., Mar.-18, 2003). However, although the parties' meeting on damages took place as ordered, months passed without the CSC resolving the issue. ER, Tab 1 at 3 (Pet. Writ Mand., Jul. 16, 2003). During this time period, the CSC formally adopted a resolution stating that it no longer would award back pay and attorneys' fees to employees who prevail in adverse action appeals. ER, Tab 18, Ex C (CSC Resolution No. 2003-006, May 15, 2003), cited in Petitioner-Appellant's

Brief at 32 (Jun. 13, 2005).[3] Instead, the CSC would instruct the employee to file a government claim for the amount the CSC considered due to the employee. *Id.*[4] After learning of the Resolution, Agriculture sought mandamus relief from the Superior Court, arguing that the CSC abused its discretion when it issued a final judgment while outstanding issues (namely the determination of damages) remained unresolved.

[6[Specifically, Agriculture asked the court to issue a writ "commanding the Commission to vacate its March 18, 2003 Decision and Order or show cause why it has not done so." ER, Tab 1 at 4 (Pet. Writ Mand.). The Superior Court denied Agriculture's writ petition, finding that the CSC Judgment was final when a document labeled "Judgment" and signed by a quorum of commissioners was issued, and, therefore, the 30-day period during which Agriculture could appeal the Judgment had expired. ER, Tab 31 (Dec. and Order, Feb. 13, 2004). The Superior Court denied Agriculture's subsequent motion for reconsideration. ER, Tab 44 at 4 (Dec. and Order, Jan. 14, 2005). Agriculture timely appealed the denial of the writ of mandamus to this court. *See* ER, Tab 48 (J., Mar. 9, 2005). Real Party in Interest Rojas and Appellee CSC ("Respondents") filed a joint brief in response.

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[3] The Resolution stated:

> [A]fter a decision is made regarding an adverse action appeal that is presented before the body in favor, in whole or in part, for the employee, *the Civil Service Commission will not determine the monetary compensation for the employee* or the attorney fees that are to be awarded.

CSC Resolution No. 2003-006, May 15, 2003 (emphasis added).

[4] On appeal of the denial of the writ petition, CSC conceded in its joint brief with Rojas that "[i]t has come to the attention of the CSC that Public Law 22-25 provides that the CSC may award attorney fees. As such, the previous resolution which stated that monetary award amounts must go through the Government Claims Act was rescinded by the CSC." Joint Brief at 19 (Aug. 12, 2005).

II. JURISDICTION

[7] We have jurisdiction to review a petition for writ of mandamus. 7 GCA § 3107 (2005); *see also* 48 U.S.C.A. § 1424-1(a)(2) (Westlaw 2008) (granting jurisdiction to consider appeals from a final judgment).

III. STANDARD OF REVIEW

[8] The Superior Court's decision to deny a writ of mandamus will not be reversed absent a finding of abuse of discretion. *See Carlson v. Perez*, 2007 Guam 6 ¶ 15 (citing *Haeuser v. Dep't of Law*, 97 F.3d 1152, 1154 (9th Cir. 1996)). However, the trial court's decision regarding whether the requirements of mandamus relief have been met is a question of law which this court reviews *de novo*. *See id.* ¶ 16; *Bank of Guam v. Reidy*, 2001 Guam 14 ¶ 12 ("Whether [a party] has satisfied the elements for *mandamus* is a question of law reviewed *de novo*.").

IV. DISCUSSION

[9] A writ of mandamus "may be issued . . . to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station . . . ." 7 GCA § 31202 (2005). Generally, a writ of mandamus "is ordered where the respondent has a clear, present and ministerial duty to act, and the petitioner has a clear, present and beneficial right to performance of that duty." *Holmes v. Terr. Land Use Comm'n*, 1998 Guam 8 ¶ 11 (citing *State Bd. of Educ. v. Honig*, 16 Cal. Rptr. 2d 727, 741 (Ct. App. 1993)). The issuance of a writ of mandamus is an extraordinary remedy. *A.B. Won Pat Guam Int'l Airport Auth. v. Moylan*, 2005 Guam 5 ¶ 10 (quoting *Guam Publ'ns, Inc. v. Super. Ct.*, 1996 Guam 6 ¶ 10). It is granted "in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law." 7 GCA § 31203 (2005); *see also People v. Super. Ct. (Laxamana)*, 2001 Guam 26 ¶ 12. Although the decision of

whether to issue an extraordinary writ lies within the discretion of the court, 7 GCA § 31401 (2005), whether a party has satisfied the elements for mandamus is a question of law reviewed *de novo*. *Carlson,* 2007 Guam 6 ¶ 16; *Reidy,* 2001 Guam 14 ¶ 12.

[10] Here, Agriculture sought a writ of mandamus to compel the CSC to fulfill its statutory function of determining the issue of damages in the adverse employment action brought by Rojas. Agriculture filed a verified petition in the Superior Court and is a beneficially interested party because it "has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large." *Laxamana,* 2001 Guam 26 ¶ 24 (quoting *Cartsen v. Psychology Examining Comm.*, 614 P.2d 276, 278 (Cal. 1980)). Agriculture's interest or right in the proceeding is rooted in the CSC Judgment, which concluded that Agriculture had failed to justify its termination of Rojas and further ordered Agriculture to meet with Rojas and CSC representatives to discuss damages suffered by Rojas. Our analysis below centers on whether Agriculture met the statutory requirement of showing there was no plain, speedy, and adequate remedy in the ordinary course of law.

A. Judicial Review of the Judgment did not Afford a Plain, Speedy, and Adequate Remedy at Law

[11] Agriculture contends that it did not have an adequate remedy by which to appeal the issue of CSC's claimed lack of authority to award damages in Rojas' appeal. Appellant's Brief at 9, 12-16 (June 13, 2005). Agriculture asserts a writ was necessary because the CSC Judgment was not truly a final judgment, the jurisdictional prerequisites for judicial review had not yet been achieved, and therefore there was no plain, speedy and adequate remedy at law to force the CSC

to determine damages. ER, Tab 3 at 3 (Mem. P. & A. in Support of Writ Mand., July 16, 2003).[5] We apply *de novo* review below to determine whether Agriculture successfully satisfied the elements for mandamus by demonstrating the absence of a plain, speedy, and adequate remedy in the ordinary course of law.

[12] As the Superior Court itself recognized, the "crux" of Agriculture's petition was "that the CSC abused its discretion by issuing what was purported to be a final judgment but in fact was not a final judgment." ER, Tab 31 at 4 (Dec. and Order, Feb. 13, 2004). In denying Agriculture's writ petition, the Superior Court found that Agriculture had failed to satisfy the elements of mandamus relief because an adequate remedy at law had been available to Agriculture: judicial appeal of the Judgment pursuant to the right of judicial review provided by 4 GCA § 4406. This case presents an issue of first impression: whether a CSC decision that purports to be a final judgment but fails to determine the question of an employee's damages is a "final judgment" triggering the 30-day deadline for seeking judicial review.

[13] Interpretation of what constitutes a final judgment giving rise to the appeals period is a challenge, because the exercise of this right of judicial review has developed on Guam in an "*ad hoc* manner." *Carlson*, 2007 Guam 6 ¶ 61. The right to judicial review is itself provided by statute which established that the CSC's decision shall be final but "subject to judicial review." 4 GCA § 4406 (2005). However, because the statute is silent on the procedures for obtaining review, the court has been obliged to impose a judicially-created limitations period requiring a

[5] Specifically, Agriculture argued:

> Appeal was never an option. A petition for writ of mandamus was the only option for Agriculture. Had Agriculture not filed the petition, the damages issue would go unresolved into perpetuity with damages accruing against Agriculture all along. This is prejudice to Agriculture in a way not correctable on appeal.

Appellant's Br. at 16.

CSC decision to be appealed within 30 days. *Carlson*, 2007 Guam 6 ¶ 61 (citing *Univ. of Guam v. Guam Civil Serv. Comm'n (Matheny)*, No. CV-94-00018A, 1995 WL 222212, at *1, *3 (D. Guam App. Div. Feb. 10, 1995)). The Appellate Division first articulated the 30-day rule in 1992 in an unpublished opinion, *Tyndzik v. Guerrero*, which found authority to judicially adopt a rule from section 187 of the Guam Code of Civil Procedure (now 7 GCA § 7117).[6] Nos. CV-92-00023A & CV-92-00031A, 1992 WL 245889, at *1 (D. Guam App. Div. Sept. 11, 1992), *reaff'd in Matheny*, 1995 WL 222212, at *3.

[14] The CSC later adopted the 30-day rule through the rule-making process of the Administrative Adjudications Law. *See* CSC Rule 11.7.8, Rules of Procedure for Adverse Action Appeals, effective Mar. 5, 2002. However, this rule was adopted after the events in question in this case. Therefore, we are guided neither by the language of Rule 11.7.8 nor by general principles usually used in interpreting a statute. Instead, we are influenced by the Guam Rules of Civil Procedure, which establish that a judgment is not final if "fewer than all the claims" have been adjudicated. *See* Guam R. Civ. P. 54(b) (modeled on Fed. R. Civ. P. 54(b)).

[15] Other jurisdictions have found that a decision awarding but not quantifying damages normally is not final because it leaves a question that is not collateral to the merits to be resolved in the district court. *See, e.g., Prod. & Maint. Employees' Local 504 v. Roadmaster Corp.*, 954 F.2d 1397, 1401 (7th Cir. 1992); *Robinson v. Ariyoshi*, 658 P.2d 287, 296 (Haw. 1982) (finality,

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[6] Guam's code provides:

> When jurisdiction is by law conferred on a court or judicial officer, all the means necessary to carry it into effect are also given; and in the exercise of this jurisdiction, if the course of the proceeding be not specifically pointed out by law or by rules of procedure adopted by the Supreme Court, any suitable process or mode of proceedings may be adopted which may appear most conformable to the spirit of this Title.

7 GCA § 7117 (1996).

for bar and merger purposes, is lacking if the amount of damages, or the form or scope of other relief, remains to be determined).

[16] Applying these principles, we find that here the action presented a claim for damages that the "Judgment" failed to determine. The judgment suggested that after a meeting to determine damages, a subsequent decision or order would be forthcoming. However, none materialized, and the damages claim was left unresolved. Under these circumstances, the judgment left a question not collateral to the merits to be resolved by the CSC, and the judgment was not a final judgment for purposes of starting the 30-day time period for appeal of the damages issue. We conclude mandamus relief is warranted because a petition for judicial review of a non-final CSC judgment did not provide Agriculture with an adequate remedy at law by which to compel CSC to award damages in this case.

B. CSC's Change in Policy does not Preclude Mandamus Relief

[17] CSC now reports mandamus relief is no longer necessary, for it has once more changed its position, rescinding the resolution in which it denied its authority to award damages. "Therefore, it is the position of the CSC on appeal that it does have the power to award backpay, and the CSC's Judgment in no way evidences a disavowal of its power to award backpay." Joint Brief of Real Party in Interest-Appellee Patricia Rojas and Respondent-Appellee Civil Service Commission ("Jt. Br.") at 24-25 (Aug. 12, 2005), referring to CSC Resolution No. 2003-006.[7]

[7] In arguments to the Superior Court, the CSC contended it lacked authority to determine damages in light of *Mariano v. Guam Civil Serv. Comm'n Bd. (Desoto)*, No. 81-0052A, Not reported in F. Supp., 1983 WL 30227 (D. Guam App. Div. 1983). In Resolution No. 2003-006, the CSC characterized that decision as holding that such damages could only be "effectuated pursuant to the provisions of the Government Claims Act." ER, Tab 18 at 9-10 (Civil Service Commission Resolution No. 2003-006, May 15, 2003). However, that case involved a grievance by an employee who had not been terminated "but merely was not being compensated for his services." *Desoto*, 1983 WL 30227, at *1. Nothing in the *Mariano* ruling purported to extend the Government Claims Act requirement to an appeal by a classified employee from an alleged wrongful termination under 4 GCA § 4406. Indeed, this court has

However, no showing has been made in the record before us that back pay has in fact been awarded or determined in Rojas' case. Therefore, CSC's change in position does not affect our finding above that Agriculture lacks an adequate remedy in the ordinary course of law by which to contest CSC's failure to award back pay. This is precisely the kind of case for which a writ of mandamus is designed.

C. Administrative Exhaustion

[18] CSC and Rojas further contend that if Agriculture was dissatisfied with the CSC judgment, it should have exhausted administrative remedies by filing a motion to reconsider or amend. Jt. Br. at 9. However, respondents have provided no authority demonstrating that filing a motion to reconsider is required in order to exhaust administrative remedies. *See Holmes*, 1998 Guam 8 (mandamus petition denied where petitioner sought writ to challenge a zoning change granted by the Territorial Planning Commission without first following procedures provided by the Administrative Adjudication Act by which a person may petition the agency to promulgate, amend or repeal an administrative rule); *Perez v. Jud. Council of Guam*, 2002 Guam 12 ¶ 13 (mandamus petition denied where petitioner failed to pursue statutory right to judicial review); *Yi v. Civil Serv. Comm'n*, SP0077-02 (Super. Ct. Guam, July 18, 2003) (stating that administrative remedy of appeal to the CSC must be taken pursuant to 4 GCA § 4406 before a petitioner can seek judicial review from the court). None of the cases stand for the proposition that Agriculture

not expressly determined whether the Government Claims Act applies to awards of back pay, or to awards that result from personnel (merit system) actions generally. *See Limtiaco v. Guam Fire Dep't*, 2007 Guam 10 ¶ 40 (finding that the Organic Act's directive to set up a merit system was not meant to be frustrated by the additional requirements of compliance with the Government Claims Act, and consequently the Government Claims Act is not applicable to administrative and judicial lawsuits involving the merit system).

Furthermore, the CSC neglected to cite to a Ninth Circuit decision directly on point that held the Commission had the power to award back pay in an appeal of an adverse action case, *Guam Power Auth. v. Civil Serv. Comm'n* (*Guerrero*), 967 F.2d 586 (9th Cir. 1992).

was required to seek reconsideration or amendment from the CSC; they instead stand for the proposition that an adverse employment decision has to be appealed to the CSC before judicial review of the decision is available—a requirement that was satisfied here.

[19] Respondents further argue that even if the Judgment was not final for purposes of appeal, Agriculture should have sought reconsideration. Jt. Br. at 11. However, Respondents have presented no statute or case law indicating that a party, after bringing an appeal to the CSC, must additionally seek reconsideration or amendment from the CSC before exercising its right of judicial review. Moreover, even if the requirement of administrative exhaustion extended so far as to require a party to seek reconsideration, an exception exists where the administrative agency has made it clear it would be futile to pursue the administrative process to conclusion. *Alta Loma Sch. Dist. v. San Bernardino County Comm. on Sch. Dist. Reorganization*, 177 Cal. Rptr. 506, 513 (Ct. App. 1981). Agriculture's decision not to seek reconsideration from the CSC would be excusable under this doctrine. Where, as here, the CSC has stated a definite opinion or policy contrary to Agriculture's position with respect to the Commission's ability to award damages, requiring Agriculture to seek reconsideration from the CSC would require them to "pump oil from a dry hole." *Ogo Assocs. v. City of Torrance*, 112 Cal. Rptr. 761, 763 (Ct. App. 1974). We therefore decline to impose that requirement here to preclude mandamus relief.

D. CSC's Jurisdiction to Grant Reconsideration

[20] Having found above that a petition for judicial review did not provide Agriculture with an adequate legal remedy to raise its arguments concerning the CSC's responsibility to resolve the question of damages, including back pay, we ordinarily would reverse and direct the Superior Court to issue an alternative writ of mandamus to the CSC. The writ would order the CSC to

vacate the "Judgment" and instead issue a Judgment that is a final adjudication of the merits of the case (that is, a Judgment that determines the question of Rojas' damages) or show cause why it should not. However, Agriculture raises a threshold jurisdictional matter that may make such proceedings unnecessary.

[21] Agriculture argues that the CSC erred in granting Rojas' motion for reconsideration more than two years after it issued its judgment because the CSC lacked subject matter jurisdiction over the case, and reconsideration was not appropriate because Rojas did not bring the motion with reasonable diligence. Appellant's Br. at 5. Although these were not the grounds of Agriculture's arguments to the Superior Court in support of its writ petition, Agriculture correctly contends the question of subject matter jurisdiction may be raised at any time. *See, e.g.*, *Gushi Bros. Co. v. Bank of Guam*, 28 F.3d 1535, 1538 (9th Cir. 1994).

[22] In the order granting Rojas' Petition for Rehearing, we considered whether the general rule that subject matter jurisdiction may be raised at any time permits the court to consider jurisdictional arguments raised in a writ petition filed after a jurisdictional appeals deadline had elapsed. Because Guam's mandamus statute is rooted in California statutory law, *see Holmes*, 1998 Guam 8 ¶ 6, we looked to California cases to determine that where an appeal lies, the timely filing of a notice of appeal is generally a jurisdictional requirement. *See Hollister Convalescent Hosp., Inc. v. Rico*, 542 P.2d 1349 (Cal. 1975). However, California courts have also created exceptions to this rule in light of special circumstances. *See Adoption of Alexander S.*, 750 P.2d 778, 783 (Cal. 1998) (acknowledging writ relief may be granted even after an appeals deadline has elapsed where there exist special circumstances constituting an excuse for failure to employ the legal remedy); *Grinbaum v. Super. Ct.*, 221 P. 635 (Cal. 1923) (failure to

timely appeal may be excused where petitioner lacked notice of court's action for which writ relief was sought). Regardless, here the thirty-day appeals period for review of the Judgment has not elapsed, for it has not yet even begun because of the CSC's refusal to determine Rojas' damages. We will therefore consider Agriculture's contention, raised for the first time on appeal of the denial of the writ petition, that the CSC lacked subject matter jurisdiction to grant Rojas' motion for reconsideration.[8]

[23] Agriculture contends that the CSC lacked jurisdiction at the outset to consider an appeal filed outside the twenty-day statutory period provided by 4 GCA § 4406. According to 4 GCA § 4406, a classified employee subject to an adverse action has the right to appeal to the CSC as follows:

> The employee within twenty (20) days of effective date of the action, may appeal to the Commission or appropriate entity by filing that person's written answer to the charges against the employee, regardless whether the employee has tendered any resignations, which shall have no effect upon the employee's appeal rights.

4 GCA § 4406.

[24] The Joint Brief, the Judgment, and Rojas' original motion for reconsideration do not address the jurisdictional question of how the CSC could grant reconsideration of an appeal originally dismissed with prejudice for having been filed outside the statutory time period.[9] Even assuming reconsideration was sought by Rojas with reasonable diligence, careful scrutiny

[8] Because of our finding that the elapse of the twenty-day statutory deadline for appeal to the CSC barred CSC's assertion of jurisdiction, we need not address Agriculture's secondary contention, that Rojas divested the CSC of jurisdiction when she filed a letter of resignation on October 17, 2005. Appellant's Br. at 6.

[9] In opposition, CSC and Rojas argue that administrative reconsideration was appropriate because Rojas was never notified by the CSC of its decision to dismiss her appeal with prejudice. Therefore, Rojas had no way of knowing when the time period for filing a motion for reconsideration or petition for judicial review would have begun; her delay in filing a motion for reconsideration should be excused, for it was not her fault. Jt. Brief at 5. This argument does not address the jurisdictional defect caused by Rojas' original failure to bring the appeal to the CSC within the twenty-day period.

of the Joint Brief reveals no response to Agriculture's contention that the CSC lacked jurisdiction at the outset due to Rojas' failure to file her appeal with the CSC until December 19, 1995, after a delay of more than the twenty days prescribed by 4 GCA § 4406. Appellant's Br. at 6, citing *Mem. in Support of Writ of Mand.*, Ex. 3. We have not overlooked Rojas' arguments that such information is not in the record because Agriculture "never challenged the CSC's good cause to reconsider or Rojas' justification for failing to timely file an appeal." Petition for Rehearing at 12 (Feb. 14, 2008). However, Agriculture's failure to have done so does not constitute waiver. *See Gushi Bros. Co.*, 28 F.3d at 1538. Subject matter jurisdiction can be raised at any time, and if necessary, by the court. *Id.*

[25] Certainly, when an appeal of a Superior Court decision is taken as of right to the Supreme Court, the time limit for filing a notice of appeal is an "absolute requirement" from which this court "has no discretion to digress. . . . [A] timely notice of appeal is 'mandatory and jurisdictional.'" *Gill v. Siegel*, 2000 Guam 10 ¶ 5 (quoting *United States v. Robinson*, 361 U.S. 220, 224 (1960)). The United States Supreme Court has determined that federal courts have no discretion to digress from this requirement in civil cases. *Bowles v. Russell*, 551 U.S. 205, 214 (2007). The lack of jurisdiction resulting from the failure to timely appeal, "in its most fundamental or strict sense[,] means an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties." *Abelleira v. Dist. Ct. App.*, 109 P.2d 942, 947 (Cal. 1941) (citation omitted).

[26] Further, this general rule has been held applicable in the administrative contexts. *See, e.g., Dumberth v. Unemployment Comp. Bd. of Review*, 837 A.2d 678, 681 (Pa. Commw. Ct. 2003) ("Appeal periods, even at the administrative level, are jurisdictional and may not be

extended as a matter of grace or indulgence; otherwise, there would be no finality to judicial action."); *Ko'olau Agric. Co., Ltd. v. Comm'n on Water Res. Mgmt.*, 868 P.2d 455 (Haw. 1994) (agricultural firm appealed decision of commission on water resource management to designate certain aquifer systems as ground water management areas; state supreme court dismissed appeal because the notice of appeal was not timely filed).

[27] Here, Rojas neglected to submit her original notice of appeal to the CSC within the twenty days allowed by statute. The service of the Notice of Final Adverse Action on August 25, 1995, triggered the twenty-day period for filing an appeal; thus, Rojas should have filed her appeal with the CSC by September 14, 1995, twenty calendar days after receiving the notice. 4 GCA § 4406; 2 Guam Admin. R. & Regs. § 1110.6(c) (1975).[10] Further, when Rojas filed her appeal with the CSC on December 21, 1995, the CSC rules which were in effect did not include a provision to excuse late filings.

[28] The record reveals no reasoned basis for the CSC's assertion of jurisdiction foreclosed by the expiration of the statutory appeals deadline. No Guam statute expressly provides the CSC with authority and procedures for reconsidering its own decisions. This court has attempted to fill the void by articulating a three-part test for the reasonable exercise of the CSC's inherent power to grant a motion to reconsider a final decision, articulated in *Blas v. Guam Customs & Quarantine Agency*:

> [B]efore the power of administrative reconsideration can be exercised. . . . (1) there must be good cause shown; (2) it must be reasonably exercised; and (3) the petition seeking its exercise must be made with reasonable diligence."

[10] Although section 4406 does not specify that calendar days be used, prior administrative rules and regulations state: "An appeal must be submitted within twenty (20) calendar days after receipt of the department's final notice of adverse action." 2 GAR § 1110.6(c).

2000 Guam 12 ¶ 32 (citing *Guam Dep't of Pub. Safety v. Guam Civil Serv. Comm'n Bd.*, No. 810033A, 1982 WL 30789, at *2 (D. Guam App. Div. Sept. 8, 1982)).

[29] Recognizing that the CSC is not a court of general jurisdiction but rather a tribunal established pursuant to the Organic Act, 48 U.S.C. § 1421 *et seq.*, to administer the Government of Guam's merit system, we observed in *Blas* that "[t]he denial to such tribunals of the authority to correct error and in justice [sic] and to revise its judgments for good and sufficient cause would run counter to the public interest." *Blas*, 2000 Guam 12 ¶ 33 (quoting *Handlon v. Town of Belleville*, 71 A.2d 624, 627-28 (N.J. 1950)) (alteration in original). However, we also quoted a New Jersey Supreme Court case that explained that the power of administrative reconsideration may not be exercised without a reasoned basis:

> Barring statutory regulation, the power [of reconsideration] may be invoked by administrative agencies to serve the ends of essential justice and the policy of the law. But there must be reasonable diligence. . . . The power of correction and revision . . . . involves the exercise of a sound discretion, controlled by the statutory considerations and the dictates of justice; *the action taken must rest on reasonable grounds and be in no sense arbitrary.*

Id. ¶ 33 (quoting *Handlon*, 71 A.2d at 627-28) (emphasis added).

[30] Our statement of the law in *Blas* established that the CSC's grant of a motion to reconsider a decision must rest on reasonable grounds. On rehearing, Rojas contends that it would be error for us to apply the *Blas* analysis, because Agriculture only challenged below whether Rojas brought the motion with reasonable diligence, not whether there was good cause shown or whether CSC's exercise of the power of administrative reconsideration was reasonably exercised, and therefore the record on appeal does not address these issues. Pet. Reh'g at 12; Appellant's Br. at 7. However, Agriculture did contend that the CSC abused its authority by granting a motion for reconsideration without meeting the requirements set forth by the three-

part test outlined in *Blas*. ER, Tab 39 at 12 (Mem. P.& A. [in Opp. to Mot. for Recons.], Feb. 24, 2005). Further, the record directly reveals that the CSC decision to grant reconsideration failed to articulate a reasoned basis for doing so. *See* RA at 45 (Dec. & Order, Adverse Action Appeal Case No. CY95-AA37).

[31] We explicitly hold here that where the CSC exercises its power to reconsider a final decision without articulating in its decision a reasoned basis for doing so, the exercise is inherently arbitrary and capricious. Consequently, a judgment made pursuant to such an arbitrary exercise of power is reversible as an abuse of discretion. We admonish the CSC to include a reasoned analysis of its jurisdictional basis in the future whenever it grants a motion for reconsideration. Such an analysis will facilitate judicial review, should a judgment be appealed to the Superior Court via the petition for judicial review afforded by 4 GCA § 4406.

[32] If the CSC judgment is void for lack of a reasoned basis for asserting jurisdiction, the Superior Court's jurisdiction is limited to reversing the CSC's void act. *See Griset v. Fair Political Practices Comm'n*, 23 P.3d 43, 51 (Cal. 2001) ("When . . . there is an appeal from a void judgment, the reviewing court's jurisdiction is limited to reversing the trial court's void acts.").

[33] However, because we have not before expressly required the CSC to articulate the justification for its exercise of administrative reconsideration in any decision or order granting such a motion, we instruct the Superior Court to issue an alternative writ of mandamus to the CSC. The mandate shall order the CSC to vacate its judgment on the grounds that Rojas' failure to file the appeal within the twenty-day period provided by statute was a bar to the CSC's jurisdiction, or to show cause why it was not a bar. In the event that the CSC can demonstrate a

reasoned basis for asserting jurisdiction over Rojas' appeal filed more than three months after the statutory deadline, we instruct the Superior Court to issue a second writ of mandamus, ordering the CSC to address the question of Rojas' damages within a reasonable time period to be set by the Superior Court.

V. CONCLUSION

[34] The Superior Court erred when it determined that Agriculture had an adequate remedy by which to contest CSC's refusal to award back pay and other damages. We reverse the denial of the writ of mandamus, finding that Agriculture lacked an adequate legal remedy and fulfilled the statutory requirements for a writ of mandamus. We also consider the issue, raised for the first time on appeal, of CSC's subject matter jurisdiction to reconsider a case initially dismissed due to Rojas' failure to timely appeal the adverse employment action to the CSC. We can ascertain from the record no reasoned basis for the CSC's assertion of jurisdiction to reconsider an appeal that was not initially timely filed. Therefore, the CSC's reconsideration of Rojas' appeal was an abuse of discretion. We instruct the Superior Court to order the CSC to vacate the Judgment or demonstrate its jurisdictional basis for granting the motion for reconsideration. If a basis for jurisdiction can be shown, we instruct the court to order the CSC to issue a new judgment that finally determines the question of Rojas' damages.

Original Signed By: F. Philip Carbullido
F. PHILIP CARBULLIDO
Associate Justice

Original Signed By: Katherine A. Maraman
KATHERINE A. MARAMAN
Associate Justice

Original Signed By: Robert J. Torres
ROBERT J. TORRES
Chief Justice