

FILED

2015 JUL 22 PM 4: 28

SUPREME COURT  
OF GUAM

**IN THE SUPREME COURT OF GUAM**

**GUAM HOUSING CORPORATION,**  
Petitioner-Appellant,

v.

**GUAM CIVIL SERVICE COMMISSION,**  
Respondent-Appellee,

and

**JOHN E. POTTER,**  
Real Party in Interest-Appellee.

Supreme Court Case No.: CVA14-024  
Superior Court Case No.: SP0119-13

**OPINION**

**Cite as: 2015 Guam 22**

Appeal from the Superior Court of Guam  
Argued and submitted on February 23, 2015  
Hagåtña, Guam

Appearing for Petitioner-Appellant:

Thomas J. Fisher, *Esq.*

Fisher & Assocs.

167 E. Marine Corps. Dr., Ste. 101

Hagåtña, GU 96910

Appearing for Real Party in Interest-Appellee:

Daniel S. Somerfleck, *Esq.*

Somerfleck & Assocs., PLLC

Nelson Bldg.

866 Rte. 7, Ste. 102

Maina, GU 96932

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

**CARBULLIDO, J.:**

[1] Petitioner-Appellant Guam Housing Corporation (“GHC”) terminated Real Party in Interest-Appellee John E. Potter for misconduct. Potter appealed his termination to the Guam Civil Service Commission (“CSC”). The CSC voided GHC’s action due to deficiencies in the final notice of adverse action. The GHC appealed. For the reasons herein, we affirm the Superior Court’s decision upholding the CSC’s decision to void GHC’s adverse action and to reinstate Potter.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

[2] Potter was employed as a Senior Tenant Relations Advisor by GHC from April 1994 to his termination in February 2013 as a result of an adverse action.

[3] GHC served Potter with a Notice of Proposed Adverse Action stating that Potter was in violation of the Guam Housing Corporation Personnel Rules and Regulations (“Personnel Rules”). The Notice alleged that Potter had committed the following rule violations: (1) discourteous treatment to the public or other employees, (2) acts of prohibited discrimination to include sexual harassment, and (3) other misconduct specifically listed. Additionally, there was an attached letter from the President of GHC stating that “[t]his tenant has reported to me that, on or about September 2010, while meeting at our office to discuss rental issues, you hugged her and touched her inappropriately.” Record on Appeal (“RA”), tab 2, Ex. A at 17 (Letter from Martin C. Benavente, Pres., Guam Hous. Corp. to John Potter, Sr., Jan. 24, 2013).

[4] GHC issued a Final Notice of Adverse Action terminating Potter and alleging the same rule violations listed in the Notice of Proposed Adverse Action. The Final Notice, however, did

not include any factual findings or the letter containing the quoted allegation. Potter filed a timely appeal to this adverse action with the CSC. Potter then filed a Motion to Revoke for Procedural Defect arguing that he was not provided the required factual notice of the allegations against him. After a hearing on this motion, with counsel for GHC and Potter present, the CSC issued a unanimous decision voiding the adverse action in favor of Potter for failure to provide Potter notice of the factual basis for the Final Adverse Action. In its Decision and Judgment, the CSC ordered that Potter be reinstated and awarded him back pay, benefits, reasonable attorney's fees and costs.

[5] GHC filed its Petition for Judicial Review with the Superior Court. The Superior Court held that the CSC did not exceed its jurisdiction and regularly pursued its authority pursuant to 7 GCA §§ 31102 and 31108 in voiding the adverse action based on the deficiency of the Final Notice.<sup>1</sup>

[6] GHC disagreed and timely filed its appeal.

## II. JURISDICTION

[7] This court has jurisdiction over appeals from a final judgment of the Superior Court of Guam. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 114-25 (2015)); 7 GCA §§ 3107, 3108(a) (2005); *see also* 7 GCA §§ 25101, 25102 (2005).

## III. STANDARD OF REVIEW

[8] The jurisdiction of the CSC is reviewed *de novo* as a matter of statutory interpretation. *Mesngon v. Gov't of Guam*, 2003 Guam 3 ¶ 8; *Univ. of Guam v. Civil Serv. Comm'n (Foley)*, 2002 Guam 4 ¶ 5. Statutory interpretation always begins with the language of the statute. *Aguon*

---

<sup>1</sup> It should be noted that the Superior Court cited 7 GCA §§ 33102 and 33108; however, the appropriate statutes are 7 GCA §§ 31102 and 31108.

*v. Gutierrez*, 2002 Guam 14 ¶ 6. The plain meaning will prevail where there is no clearly stated legislative intent to the contrary. *Sumitomo Constr. Co. v. Gov't of Guam*, 2001 Guam 23 ¶ 17.

[9] When reviewing the question of whether the CSC regularly pursued its authority in voiding the adverse action, the substantial evidence standard is applied. *Guam Mem'l Hosp. Auth. v. Civil Serv. Comm'n (Chaco)*, 2015 Guam 18 ¶ 15 (citing *Dickinson v. Zurko*, 527 U.S. 150, 164 (1999)).

#### IV. ANALYSIS

##### A. The Jurisdiction of the CSC

[10] GHC first argues that the Superior Court erred in finding that the CSC did not exceed its jurisdiction when it revoked GHC's adverse action terminating Potter. Appellant's Br. at 9-15 (Oct. 31, 2014).

[11] Title 4 GCA § 4403(b) grants the CSC appellate jurisdiction over adverse actions involving classified employees. See *Guam Fed'n of Teachers v. Gov't of Guam*, 2013 Guam 14 ¶ 68; see also *Chaco*, 2015 Guam 18 ¶ 32 (“[T]he CSC has the power, duty and responsibility to hear appeals from adverse actions taken to suspend, demote or dismiss an employee from the classified service pursuant to section 4403(b), while section 4403(d) gives the CSC the discretion to investigate and set aside other personnel actions.”).

[12] It is undisputed that this case centers on an adverse action involving the termination of a classified employee. See Appellant's Br. at 4; Real Party in Interest-Appellee's Br. at 2 (Dec. 1, 2014). Therefore, the CSC had jurisdiction with respect to this appeal pursuant to 4 GCA § 4403(b). Appellant's Br. at 4, 15 (citing *Santos v. Gov't of Guam*, 2012 Guam 9).

[13] GHC maintains that because the CSC's Decision and Judgment stated that the CSC did not have jurisdiction, it did not have jurisdiction to revoke the adverse action. Appellant's Br. at

12-14. The CSC declared that “[b]ecause the Notice of Final Adverse Action fails to provide the Employee notice of the factual basis for the Final Adverse Action the Commission is without jurisdiction and the adverse action must be voided.” RA, tab 2 at Ex. E (Dec. & Judgment, July 30, 2013). GHC asserts that this statement is a clear finding of a lack of jurisdiction over the adverse action, which would deprive the CSC the power to revoke the adverse action. Appellant’s Br. at 14. This would imply that the CSC may voluntarily forfeit jurisdiction where it is clearly granted jurisdiction by statute.

[14] GHC further argues that pursuant to the deference found in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984), a court should defer to the findings of an agency. Appellant’s Br. at 13-14. GHC argues that the court should defer to the CSC’s statement regarding its lack of jurisdiction due to a procedural defect and not impute a different understanding of the statement, as GHC claims the lower court did. *Id.*; *see also Chevron*, 467 U.S. at 842-43. However, GHC fails to address that deference is only given to an agency’s findings where there is no statute that directly speaks to the issue or where such statute is ambiguous. *See* Appellant’s Br. at 13-14; *Chevron*, 467 U.S. at 842-43. Title 4 GCA § 4403(b) unambiguously gives the CSC appellate jurisdiction over adverse actions involving classified employees, and as pointed out by Potter, “[i]f the personnel action appeal alleges a notice of final adverse action and that the employee is a classified employee, jurisdiction vests.” Real Party in Interest-Appellee’s Br. at 8 (quoting Appellant’s Br. at 15); *see also Santos*, 2012 Guam 9 ¶ 9.

[15] The Superior Court, in affirming the CSC’s judgment, stated that “[a]lthough it must be noted that the CSC’s conclusion that it was ‘without jurisdiction’ was inartfully [sic] stated, the court is unconvinced that the CSC made a sweeping conclusion that it lacked jurisdiction over

the matter.” RA, tab 18 at 6 (Dec. & Order on Guam Hous. Corp.’s Pet. for Review, July 16, 2014). The decision of the Superior Court considered not only the judgment issued by the CSC, but also transcripts from the hearing of the CSC addressing the adverse action appeal. *Id.* The transcripts do not imply that there was a jurisdictional issue over the subject matter involved, only that there was an inability to proceed given a procedural defect in the form of insufficient notice. Transcripts (“Tr.”), vol. 1 at 18-22 (Hr’g Opp’n to Emp.’s Mot. to Revoke for Procedural Defect, May 28, 2013). The Superior Court acted properly in not applying a simple reading to an improperly worded statement in the CSC’s decision, and instead reconciled the CSC’s actions in accordance with its decision as a whole and the applicable statutes.

[16] The CSC was mistaken in its choice of words regarding jurisdiction, but it is clear that the CSC unambiguously had jurisdiction over the adverse action appeal filed by GHC against Potter under 4 GCA § 4403(b), and the CSC’s actions reflect that it exercised such jurisdiction.

#### **B. The CSC’s Authority to Revoke the Adverse Action**

[17] GHC next argues that the CSC did not have the authority to revoke the adverse action it had imposed upon Potter without first holding a merits hearing. Appellant’s Br. at 15-20.

[18] Title 4 GCA § 4406 gives the CSC the power to revoke action taken in an adverse action proceeding. Further, the “trial court is required to sustain the CSC’s decision if supported by substantial evidence.” *Chaco*, 2015 Guam 18 ¶ 38; *see also Dickinson*, 527 U.S. at 164.

[19] “[S]ubstantial evidence is defined as ‘such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’” *Guam Waterworks Auth. v. Civil Serv. Comm’n*, 2014 Guam 35 ¶ 5 (quoting *Bondoc v. Worker’s Comp. Comm’n*, 2000 Guam 6 ¶ 6). This court has found this standard to be “extremely deferential” and allows for a reversal only when the “evidence presented would *compel* a reasonable factfinder to reach a contrary result.” *Chaco*,

2015 Guam 18 ¶ 16 (quoting *Monjaraz-Munoz v. INS*, 327 F.3d 892, 895 (9th Cir. 2003), amended by 339 F.3d 1012 (9th Cir. 2003)).

[20] GHC agrees that it is the CSC's "duty to ensure that specific personnel actions against a member of the classified service are justified and in accordance with the personnel laws and rules." Appellant's Br. at 15 (citing *Blas v. Guam Customs & Quarantine Agency*, 2000 Guam 12). GHC argues that the CSC failed its duty by not holding a hearing on the merits of the adverse action appeal. Appellant's Br. at 15. GHC cites the Amended Adverse Action Appeal Rules of Procedure ("AAAARP") Rules 9, 9.5 and 11 and maintains the CSC failed to follow the procedures that allow for a dismissal and revocation of an adverse action by failing to dismiss without first conducting a hearing on the merits. *Id.* at 16-17. However, AAAARP Rule 9.5 specifically states that "[m]otions to dismiss an adverse action appeal may be made on the bases of lack of jurisdiction, untimely filing of the appeal, untimely filing of the adverse actions, *procedural defects in the proceeding* or other significant reasons." Am. Adverse Action Appeal R. P. 9.5 (emphasis added). Further, GHC fails to address AAAARP Rule 11.7.4, which specifically authorizes the CSC to void or revoke an adverse action based on a procedural defect "as it considers fair and equitable under the facts and circumstances of the action." Am. Adverse Action Appeal R. P. 11.7.4.

[21] The Decision and Judgment of the CSC was based on a hearing on Potter's motion to dismiss for a "procedural defection" that asserted a failure of management to meet the notice requirements of 4 GCA § 4406 and GHC's Personnel Rules Sections 11.306 and 11.311 in the Final Notice of Adverse Action. Tr., vol. 1 at 9-10 (Hr'g Opp'n to Emp.'s Mot. to Revoke for Procedural Defect). In the hearing, the CSC Commissioners discuss the lack of factual support in GHC's Final Notice of Adverse Action and how the lack of factual support does not afford the



employee the opportunity to defend himself in an appeal. *Id.* at 17-22. GHC's Personnel Rules Section 11.311 requires the notice to "state the specific facts found upon which such action is based." GHC Pers. R. & Regs. 11.311. The lack of facts supporting the allegations in the Final Notice of Adverse Action is the basis for its decision that the notice was not procedurally compliant. RA, tab 2 at Ex. E (Dec. & Judgment).

[22] GHC does not dispute that the notice provided violated GHC's Personnel Rules Sections 11.306 and 11.311 and 4 GCA § 4406, but takes issue with a revocation prior to a merits hearing. Appellant's Br. at 17. A plain meaning interpretation of AAAARP Rules 9.5, 11.7.4 and 4 GCA § 4406 allows the CSC to dismiss an adverse action for non-compliance with procedural requirements. Further, none of these rules require a merits hearing prior to dismissal for procedural defects. Therefore, if factually-specific notice is required, failure to provide the required notice would be a procedural defect subject to revocation before a hearing on the merits.

[23] GHC cites AAAARP Rule 11.5.1 and argues that this rule, titled "Limitation in the Scope of Hearings on the Merits," requires a merits hearing while simultaneously reviewing the procedural requirements. *See* Appellant's Br. at 16. First of all, nothing in the language of AAAARP Rule 11.5.1 requires a merits hearing prior to dismissing for a procedural defect. Further, this interpretation does not take into account Rules 9.5 and 11.7.4, which allow for a dismissal for a procedural defect with no mention of a required merits hearing. Rule 11.5.1 is simply a limitation on what issues may be discussed during the hearing on the merits, and allows for a hearing of potential procedural defects while hearing the appeal on the merits. The hearing-on-the-merits stage, however, was never reached in this case.

[24] Based on the foregoing, it is clear that the CSC's decision is supported by "such relevant evidence as 'a reasonable mind might accept as adequate to support a conclusion.'" *Chaco*, 2015

Guam 18 ¶ 15 (quoting *NLRB v. Int'l Bhd. of Elec. Workers, Local 48*, 345 F.3d 1049, 1054 (9th Cir. 2003)). A hearing was held and a conclusion was reached after debate on the adequacy and procedural compliance of the notice given. Tr., vol. 1 at 17-22 (Hr'g Opp'n to Emp.'s Mot. to Revoke for Procedural Defect). The CSC's decision was based on a unanimous vote with substantial evidence supporting its conclusion. RA, tab 2 at Ex. E (Dec. & Judgment).

[25] Because the CSC's decision was supported by substantial evidence, the Superior Court's decision that the CSC "properly concluded that the GHC failed to provide adequate notice to Employee," was correct, as was their finding that there is "no indication that the CSC failed to 'regularly pursue' its authority" in revoking the adverse action against Potter. RA, tab 18 at 5, 7 (Dec. & Order on Guam Hous. Corp.'s Pet. for Review).

### **C. Attorney's Fees**

[26] In his opening brief, Potter made a request for attorney's fees pursuant to 4 GCA § 4406.1. Real Party in Interest-Appellee's Br. at 9. As we have previously held, an employee who ultimately prevails in an adverse action appeal "is entitled to [the] attorney's fees and costs that [he or] she incurred while prosecuting this appeal under section 4406.1 both at the Superior Court and Supreme Court." *Chaco*, 2015 Guam 18 ¶ 48. Therefore, because Potter has prevailed in this appeal and made a timely request per Guam Rules of Appellate Procedure Rule 13(k), he is entitled to recover attorney's fees and costs he incurred at the Superior Court and the Supreme Court during the adverse action appeal.

## **V. CONCLUSION**

[27] The CSC had jurisdiction over this adverse action and acted properly in voiding GHC's adverse action and reinstating Potter due to GHC's violation of the notice requirements to terminate a classified employee. Accordingly, the Superior Court's decision to uphold the

CSC's Decision and Judgment is **AFFIRMED**. We **REMAND** to the Superior Court for a determination of the award of attorney's fees and costs to which Potter is entitled.

Original Signed: **F. Philip Carbullido**  
By

Original Signed: **Katherine A. Maraman**  
By

---

F. PHILIP CARBULLIDO  
Associate Justice

---

KATHERINE A. MARAMAN  
Associate Justice

Original Signed: **Robert J. Torres**  
By

---

ROBERT J. TORRES  
Chief Justice

I do hereby certify that the foregoing  
is a full true and correct copy of the  
original on file in the office of the  
clerk of the Supreme Court of Guam.

JUL 22 2015

By: Charlene I. Santos  
Deputy Clerk  
Supreme Court of Guam