IN THE SUPREME COURT OF GUAM

RICARDO C. BLAS
Petitioner-Appellee/Cross-Appellant

vs.

GUAM CUSTOMS & QUARANTINE AGENCY, GOVERNMENT OF GUAM
Respondent-Appellant/Cross-Appellee

RICARDO C. BLAS
Petitioner-Appellee/Cross-Appellant

vs.

GUAM CIVIL SERVICE COMMISSION, GOVERNMENT OF GUAM, and
Respondent-Appellant/Cross-Appellee

GUAM CUSTOMS & QUARANTINE AGENCY, GOVERNMENT OF GUAM,
Real Party in Interest.

Supreme Court Case No. CVA98-028
Superior Court Case Nos. SP0159-95 and SP0048-96

OPINION

Filed: April 5, 2000

Cite as: 2000 Guam 12

Appeal from the Superior Court of Guam
Argued and submitted on August 12, 1999
Hagåtña, Guam

Appearing for the Petitioner-Appellee/
Cross-Appellant:
G. Patrick Civille, Esq.
Ching Civille Calvo & Tang
A Professional Corporation
Suite 400, GCIC Bldg.
414 W. Soledad Ave.
Hagåtña, Guam 96910

Appearing for the Respondents-Appellants/
Cross-Appellees:
Jocelyn M. Roden, Esq.
Assistant Attorney General
Office of the Attorney General
Suite 2-200E Judicial Ctr. Bldg.
120 W. O'Brien Dr.
Hagåtña, Guam 96910

BEFORE: PETER C. SIGUENZA, Chief Justice (Acting)[1], ALBERTO C. LAMORENA, III, Designated Justice, and J. BRADLEY KLEMM, Justice *Pro Tempore*.

SIGUENZA, C.J.:

[1] Two separate Petitions for Judicial Review of decisions of the Civil Service Commission were filed by Ricardo Blas (hereinafter "Blas"). After evidentiary hearings and argument on the matter were conducted, the Superior Court of Guam issued its Decision and Order from which the parties appeal. Upon consideration of the law and facts of the case, we find that (1) Blas' claim was an adverse action appealable to the Civil Service Commission, (2) that he was a permanent classified employee entitled to such an appeal, (3) that the Civil Service Commission erred in reconsidering its prior decision on the matter, and (4) that Blas is entitled to the award of attorney's fees. Therefore, we reverse in part and affirm in part the decision of the lower court.

FACTS

[2] In February 1975, Ricardo C. Blas was selected for the classified position of Customs and Quarantine Officer I with the Customs Division of the Department of Commerce, a Government of Guam agency. In that same year, Blas completed his probationary period and became a permanent classified employee of the government of Guam.

[3] In October 1994, the Customs Division was separated from the Department of Commerce and became the Customs and Quarantine Agency, Government of Guam (hereinafter "Customs"). The first Acting Director of the agency was Joe Diego (hereinafter "Diego"), who had served in that capacity from

[1]The Chief Justice recused himself from deciding this matter. Justice Siguenza, as the senior member of the panel, was designated as the Acting Chief Justice.

October 1, 1994 through December 31, 1994. Immediately upon his appointment, Diego began the recruitment and selection process for the position of Chief Customs Officer.[2] In accordance with Department of Administration (hereinafter "DOA") procedures, the position of Chief Customs Officer was announced, applications accepted, and a list of eligible candidates was compiled. The list of eligible candidates contained four names including Blas and another Customs Officer, Peter San Nicolas (hereinafter "San Nicolas"). On December 29, 1994 interviews for the position were conducted and on the following day Blas was selected to fill the position.

[4] However, on January 3, 1995, incoming Acting Director John Quinata (hereinafter "Quinata") gave Blas a letter advising him that he was being terminated from the position of Chief Customs Officer and reinstated to his former position as Customs Officer Supervisor. On January 23, 1995, Blas filed a Notice of Appeal with the Civil Service Commission (hereinafter "CSC") claiming that his termination and reinstatement to a lesser position constituted an adverse action. Customs objected to the appeal arguing

---

[2] The statute provides:

> There is hereby established within the government of Guam, the Customs and Quarantine Agency (the Agency). The Director of the Agency, who is the head of the Agency, shall be appointed by the Governor with the advice and consent of the Legislature. The senior ranking classified Customs & Quarantine Officer within the Agency shall act as the Deputy Director of the Agency with all the powers of such a deputy but without additional compensation. The compensation of the Director of the Agency and of such Director's personal secretary shall be set by the Civil Service Commission.
>
> SOURCE: Added by P.L. 22-112:2 (4/11/94). Amended by P.L. 23-3:1. (3/30/95).
>
> NOTES, REFERENCES, AND ANNOTATIONS
>
> COMMENT: The amendment made to this section changed the words, "senior classified employee" to "senior ranking classified Customs & Quarantine Officer" to make sure that the Deputy Director was always such an Officer and not, by reason of time in service, another employee of the agency who was not a sworn officer.

Title 5 GCA § 3127 (1996) and Comments.

that, as a promotional probationary employee, Blas did not have appeal rights.

[5] On April 27, 1995, the CSC held a Preliminary Hearing and ruled that it lacked jurisdiction to hear the matter as an adverse action ostensibly because Blas was not a permanent classified employee.[3] However, the CSC decided that it could hear the matter by way of an investigative hearing pursuant to its authority to administer the merit system and investigate personnel actions. The CSC issued a written Ruling and Order memorializing this order on May 4, 1995.

[6] On May 18 and 19, 1995, the CSC conducted an Investigative Hearing and received the testimony of five witnesses, including the Director of DOA, the Administrative Officer, the outgoing and incoming Directors of Customs, and San Nicolas. The CSC issued its Decision and Order on May 25, 1995, and made several findings as it related to the announcement for Chief Customs Officer, the recruitment process and the subsequent appointment of Blas. The CSC had concluded that Blas' appointment was proper and that there were no legal, factual, or equitable grounds to justify rescinding the appointment.

[7] On June 2, 1995, Blas filed a Petition for Judicial Review, SP0159-95, asking the court to vacate and set aside the CSC's ruling of May 4, 1995. On June 26, 1995, Customs filed a Petition for Writ of Review, SP0182-95, seeking review of the CSC's ruling of May 25, 1995.

[8] On July 25, 1995, Customs filed a Request for Reconsideration of the CSC's May 25, 1995 Decision and Order. On September 7, 1995, the CSC ruled that reasonable and compelling grounds existed to grant the request; and on January 11, 1996, the CSC conducted a hearing on Customs' Request for Reconsideration. Two witnesses testified at the hearing, San Nicolas and Quinata. On February 13, 1996, the CSC reconsidered its May 25, 1995 decision and issued an Amended Decision and Order

---

[3]This was the lower court's conclusion and neither party has disputed the contention that the CSC declined to entertain the adverse action on that basis.

which ordered that all candidates on the certified eligibility list be re-interviewed and that if no selection was made from that list, Customs could re-announce the position of Chief Customs Officer in accordance with the current eligibility requirements.[4]

[9] On February 28, 1996, Blas filed a Petition for Writ of Review, SP0048-96, to set aside the CSC's decision of February 13, 1996. On March 2, 1996, Blas filed his own motion for reconsideration to the CSC of its Amended Decision and Order. This motion was denied by the CSC.

[10] The Superior Court cases were consolidated for purposes of briefing and the lower court issued its Decision and Order on October 27, 1998. The lower court held that (1) the CSC was correct in determining that Blas could not pursue the matter as an adverse action appeal; (2) that the matter was properly handled as a CSC investigation of a personnel action; (3) that Blas was a permanent classified employee and not an original probationary employee and therefore entitled to job protection rights including the CSC investigation; (4) that the CSC exceeded its jurisdiction in granting Customs' motion for reconsideration; and (5) that Blas was entitled to an award of attorneys' fees and reinstatement to the position of Chief Customs Officer.

[11] Customs, Appellant and Cross-Appellee herein, filed the instant appeal challenging the lower court's Judgment on Petitioner's Petition for Judicial Review and Petition for Writ of Review. Blas, Appellee and Cross-Appellant herein, challenges the lower court's determination that the CSC lacked jurisdiction to entertain the matter as an appeal of an adverse action.

//

//

---

[4]*See* Note 2, *supra*. It appears that Blas would not qualify for the position of Chief Customs Officer under the current eligibility requirements.

DISCUSSION

[12] Jurisdiction of this court is not in dispute and is obtained pursuant to Title 7 GCA §§ 3107 and 3108 (1994). The parties have framed and alleged the issues on appeal involving the interpretation of statutes. Issues of statutory interpretation are reviewed *de novo. People v. Quichocho*, 1997 Guam 13, ¶ 3. In addition, an agency's interpretation of a statute is a question of law reviewed *de novo. Ada v. Guam Telephone Authority*, 1999 Guam 10, ¶ 10 (citing *Conlon v. United States Dep't of Labor*, 76 F.3d 271, 274 (9th Cir. 1996)). In reviewing an agency's construction of a statute, the court must reject those constructions that are contrary to clear congressional intent or frustrate the policy that Congress sought to implement. *Id*. (citing *Chevron, U.S.A., Inc. v. Natural Resources Defense Council*, *Inc*., 467 U.S. 837, 843 n.9, 104 S.Ct. 2778, 2781 (1984); *Trustees of the Cal. State Univ. v. Riley*, 74 F. 3d 960, 963 (9th Cir. 1996); *Citizens for Clean Air v. EPA*, 959 F. 2d 839, 844 (9th Cir. 1992)). However, if a statute is silent or ambiguous on a particular point, the court may defer to the agency's interpretation; but that review is limited to whether the agency's conclusion is based on a permissible construction of the statute. *Id*. (citations omitted).

I.

[13] We first address the issue on cross-appeal -- whether the trial court erred in finding that the CSC lacked jurisdiction to entertain Blas' claim as an adverse action. There are identified three types of adverse actions that the CSC has a statutorily prescribed duty to address: "It shall hear appeals from the adverse actions taken to suspend, demote or dismiss an employee from the classified service if such right of appeal to the Commission is established in the personnel rules governing the employee." Title 4 GCA § 4403(b)

(1996). There is a general framework of procedures for the CSC to follow as it pertains to the disposition of an adverse action:

> **§ 4406. Adverse Action Procedures and Appeals.**
>
> An employee in the classified service who is dismissed, demoted, or suspended shall be given immediate notice of the action, together with a specific statement of the charges upon which such action is based in the manner required by Article 2 of this Chapter. Copies thereof shall be filed with the Civil Service Commission and, if applicable, with the government entity charged with hearing his appeal under the personnel rules governing his appointment not later than the working day next following the effective date of the action. In no event may an employee in the classified service be given the notice and statement of the charges required by this Section after the sixtieth (60) day after management knew or should have known the facts or events which form the alleged basis for such action. Any action brought by management in violation of this Section is barred and any decision based on such action is void.
>
> While an employee's appeal is pending, he may be suspended by the department, instrumentality or agency. The Civil Service Commission or appropriate entity may order the employee reinstated to active duty during pendency of the appeal.
>
> The employee within twenty (20) days of effective date of the action, may appeal to the Commission or appropriate entity by filing his written answer to the charges against him. The Commission or appropriate entity shall then set the matter for hearing as expeditiously as possible. The employee or his representative shall be given the opportunity to inspect any documents relevant to the action which would be admissible in evidence at the hearing, and to depose, interview or direct written interrogatories to other employees having knowledge of the acts or omissions upon which the dismissal, demotion or suspension is based. The Commission or appropriate entity may sustain, modify or revoke the action taken. The decision of the Commission or appropriate entity shall be final but subject to judicial review.

Title 4 GCA § 4406 (1996).

[14] Although Guam law has no statutory definition of an adverse action; there are rules that have been promulgated that provide the criteria upon which an adverse action must be predicated. Specifically, the rules of procedure for the CSC and the Rules and Regulations of the Department of Administration provide:

> A department /agency head may remove an employee for such misconduct which affects the efficiency of the service. The authorized causes for adverse actions include but are not limited to the following:
>
> A. Fraud in securing appointment;
> B. Refusal, failure or inability to perform prescribed duties and responsibilities;
> C. Insubordination;
> D. Intoxication while on duty; unauthorized use of alcohol, narcotics, and/or dangerous drugs while on duty or while on the premises of any department or agency;
> E. Unauthorized absence;
> F. Conviction of a felony or a serious misdemeanor;
> G. Discourteous treatment to the public or other employees;
> H. Political activity prohibited by law;
> I. Misuse or theft of government property;
> J. Refusal to take and subscribe to any oath or affirmation which is required by law in connection with employment;
> K. Acts prohibited by Section 9102, 4 GCA relating to strikes against the government;
> L. Other misconduct which impairs the efficiency of the services either on or off duty which is of such nature as to bring discredit to the department or agency;
> M. Other misconduct not specifically listed which impairs the efficiency of the service.

Department of Administration Personnel Rules and Regulations, Rule 11D.3; CSC 105.

[15] As with all cases of statutory interpretation, we begin with the statute itself. A plain reading of 4 GCA § 4403(b) unambiguously provides that the CSC entertain an appeal of an adverse action; that is, either a dismissal, demotion or suspension, of a person who is in the classified service. This provision, read together with the authorized causes for adverse actions, could lead to the conclusion that any demotion, suspension, or dismissal not predicated upon any of the proscribed actions of the employee is improper.[5] The CSC may then set aside and declare null and void any personnel action that was taken without compliance with the personnel laws or rules. *See* Title 4 GCA § 4403(d) (1996).

---

[5]It should be noted that bases for an adverse action include, but are not limited by, the enumerated items. *See* Rule 11D.3.

[16] In this case, the position of the CSC was that because there was no malfeasance or incompetence by Blas, there was no basis for an adverse action to be appealed[6]. We cannot agree. The CSC's duty is to ensure that any of the three specific personnel actions against a member of the classified service was justified and in accordance with the personnel laws and rules. An employee in the classified service is afforded certain job protections, not the least of which is the CSC's review of management's imposition of an adverse action on the basis of discipline or, in the case of an employee's termination, for cause. If indeed Blas is a member of the protected classified service then the personnel action such as the one that occurred here, characterized either as a dismissal or demotion from the position of Chief Customs Officer, should not be beyond the reach of the body tasked with the duty to ensure compliance with the protections afforded to members of the classified service. The clear legislative policy reflected in the Civil Service Laws would be frustrated if the court were to find that Blas' suspension, demotion or dismissal for reasons other than discipline or cause would be beyond the review of the CSC.

[17] Thus, we agree with Blas that his situation, although not brought about by malfeasance or incompetence on the job, should nonetheless have been considered an adverse action for which he should have been entitled to appeal to the CSC. Therefore, contrary to the lower court's decision, we hold that a member of the classified service against whom management has taken the personnel action of suspension, demotion or dismissal is entitled to appeal the action to the CSC as an adverse action even if the action was not predicated upon some malfeasance or incompetence on the job by the employee.

//

//

---

[6]The parties agreed that the personnel action upon Blas was not the result of some malfeasance or incompetence or some other fault of Blas.

II.

[18] We now turn to what seems to be the dispositive issue of this case: whether Blas was a member of the classified service and, therefore, entitled to appeal the adverse action. *See* Exec. Order No. 83-25 Attachment § 14.14. The CSC had determined that Blas' adverse action appeal was not proper because his elevation to Chief Customs Officer was a probationary promotional appointment. *See* Appellee's Excerpts of Record 28 (Decision and Order, Civil Service Comm'n, dated 5/4/95). Customs argues that the Adverse Action Rules and Regulations do not apply to probationary employees serving an original appointment. It contends that Blas was originally appointed to the position of Chief Customs Officer and was on probation at the time he was removed from that office. Blas counters that he was promoted to the position of Chief Customs Officer, rather than originally appointed, and that any probationary period he may have been subject to was completed back in 1975 (when he had initially entered government service).

[19] Thus, the question becomes whether Blas' assumption of the position of Chief Customs Officer was an original appointment, promotion, or a promotion with a term of probation. This is so because the parties' dispute centers upon a specific statute which provides, in relevant part:

> § 4106. Personnel Rules.
>
> The personnel rules provided for in § 4105 of this Chapter shall provide procedures for their employment of persons on the basis of merit, and shall include an orderly and systematic method of recruitment and the establishment of qualified lists for employment purposes. They shall provide for a *probationary period of not less than three (3) nor more than twelve (12) months for all original appointments*, during which time the employee may be dismissed at any time without right of appeal and without right of being given reasons or charges in writing.

Title 4 GCA § 4106 (1996) (emphasis added).

//

[20] Similar to the adverse action issue above, there does not appear to be a definition, statutory or otherwise, for the term "original appointment". However, we are convinced that the term, as used in the statute, and in the entire scheme of the personnel laws of the government of Guam, refers to an employee who first enters government service.

[21] First, the lower court had determined that the plain meaning and common usage of the terms led it to conclude that this provision was directed towards those individuals first entering government service. We agree with the lower court; and this rationale is not the only one upon which we can find that original appointment pertains to such a circumstance.

[22] An employee who has successfully completed his probationary term upon entrance into the government of Guam is afforded the job protections of the personnel laws and rules, i.e., he or she attains permanent status into the classified service. The statute itself prescribes that, unless and until the time the employee completes his or her probationary term, he or she can be dismissed at any time without the right of appeal nor of the right to be given reasons or charges in writing. A probationary employee may be dismissed without a hearing or judicially cognizable good cause. *See Swift v. County of Placer*, 200 Cal. Rptr. 181 (Cal. Ct. App.1984).

[23] However, a permanent employee who experiences an upward movement to a position with a higher maximum salary within the government of Guam does not lose the protections of his or her permanent status. It is true that the personnel rules do articulate that there may be circumstances when a period of probation may be required as part of a promotion. *See* Department of Administration Personnel Rules and Regulations Rule 7.50. However, even in the situation where the promoted employee fails to satisfy a probationary period, he or she still enjoys job protection rights. *See* Department of Administration

Personnel Rules and Regulations Rule 14.02.

[24] The protections that the civil service laws afford a member of the classified service would disappear if we accept Customs' view that Blas' assumption of the position of Chief Customs Officer was an original appointment rather than a promotion. There would be no incentive for a permanent member of the classified service to accept a movement to a position with a higher maximum salary when the due process of the personnel laws would disappear and he could be terminated at the whim and caprice of management. Such a construction would lead to absurd and illogical results and would be in contravention of the primary purpose of the civil service laws which is to provide due process protection to members of the classified service of the government of Guam.

[25] In addition, in the case of *Rasmussen v. Board of Supervisors of Erie County*, 25 N.Y.S. 2d 322, 323 (N.Y. Sup. Ct. 1941), the court there was faced with a statute similar to 4 GCA § 4106. The statute in that case provided that "[e]very original appointment to or employment in any position in the classified service shall be for a probationary term of three months. . ." *Id.* There the court observed a clear distinction between an "appointment" and a "promotion" in the state's civil service law after a review of many of the sections of the Civil Service Law. *Id.* The court reasoned that the fact that the law makes so many provisions for "appointment," "employment" or "promotion" indicates that the legislature, in limiting probationary terms to appointments or employments, intentionally excluded promotions from a probationary term. *Id.* at 839. Similarly, in this case, nowhere in the text of the statute above is there a mandatory imposition of the probationary term upon a promotion.

//

//

[26] Moreover, the CSC itself determined that Blas' assumption of the Chief Customs Officer position was a promotion. Within the current record, the court below had found that there was no probationary requirement in the Personnel Action form nor in the Job Announcement. After our own review of the record, we agree with the trial court's findings.

[27] Finally, Customs' reliance *Swift v. County of Placer*, 200 Cal. Rptr. 181 (Cal. Ct. App. 1984) is misplaced. In *Swift*, the employee was hired as a correctional officer with the Placer County Sheriff's Department. His hiring included a six month probationary period which he completed. Almost a year after his initial hiring, he was hired from an open eligible hiring list and appointed a deputy sheriff. He was informed that he was subject to a twelve month probationary term; however, eleven months into his new position he received Notice of Rejection during Probation. The employee argued that he had already completed his probationary requirements and was entitled to an administrative hearing as a result of obtaining permanent status. The court proceeded to divine the legislative intent of the statutes that had imposed the probationary period at issue and decided that the legislature had intended that all employees who are working as peace officers were required to serve the twelve month probation. *Id.* at 184-185. The court held that Swift's initial employment as a correctional officer did not serve to lessen the probationary period of twelve months because a correctional officer is not a peace officer. *Id.* Thus, being a newly hired peace officer, he had to serve a twelve month probation; and as a probationary employee he could be dismissed without cause and without the administrative remedies available to permanent employees so long as the rejection was not premised on a violation of his constitutional or other basic rights. *Id.* at 185.

//

//

[28] As distinguished with this case, Swift was not promoted to his position. Swift had assumed a position for which there had been a statutorily prescribed probationary period for a specific job function. Blas, on the other hand, had no such probationary impediment to the position he had competed for nor did the Job Announcement or Personnel Action forms inform him that he would be on probation.

[29] A new Department of Administration Rule now specifically and clearly includes a requirement of a new probationary period for a permanent employee who is promoted. *See* Department of Administration Personnel Rules and Regulations Rule 4.602(c)(1)(a) (Eff. Apr. 1, 1997). Thus, if there had been any doubt as to whether or not a term of probation is included with a promotion, such was removed by the promulgation of the new rule. However, a rule with such clarity was not in effect at the time of this case; nor does it affect our holding that such an employee still retains the due process rights afforded by the personnel laws.

[30] Therefore, we hold that Blas was promoted to the position of Chief Customs Officer without a probation limitation and, that as a permanent member of the classified service, the administrative remedies outlined throughout should have been available to him. In addition, we find that the hearings conducted by the CSC, albeit termed an investigative hearing, allowed the parties to fully address all the issues relevant to the personnel action against Blas.

III.

[31] The CSC had initially determined that Blas' appointment was proper and that there had been no legitimate grounds for rescinding his appointment. Then, upon motion for and reconsideration of its order, the CSC essentially reversed itself. Our review of the record leads us to determine that the CSC acted

improperly.

[32] The Ninth Circuit Court of Appeals has observed that "It has been uniformly held that rehearings before administrative bodies are addressed to their own discretion. Only a showing of the clearest abuse of discretion can sustain an exception to that rule." *Reese Sales Co. v. Hardin*, 458 F.2d 183, 186 (9th Cir. 1972) (citations omitted). After a survey of Guam statutes, ordinances, or rules, no such authority exists that either permits or restricts the CSC to rehear its final decision. However, the Appellate Division, in the case of *Guam Department of Public Safety v. Guam Civil Service Commission Board*, 1982 WL 30789 (D. Guam App. Sept. 8, 1982), had occasion to consider the issue of whether the CSC had the power to rehear its final decision in an employee's case. The court promulgated a three-part inquiry before the power of administrative reconsideration can be exercised. The court held that (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. *Id.* at *2.

[33] The Appellate Division placed great reliance on a case decided by the Supreme Court of New Jersey. *See Handlon v. Town of Belleville*, 71 A.2d 624 (N.J. 1950). There the court observed:

> 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 denial to such tribunals of the authority to correct error and injustice [sic] and to revise its judgments for good and sufficient cause would run counter to the public interest. The function cannot be denied except by legislative fiat; and there is none such here. The power of correction and revision, the better to serve the statutory policy, is of the very nature of such governmental agencies. It 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. at 627-628. (emphasis added). We herewith adopt the three-part inquiry and rationale as articulated by the Appellate Division as the test for whether the CSC should grant a motion to reconsider a final

decision and apply it to the instant case.

[34] In this case, Customs argues that good cause for the CSC's reconsideration of its May 25, 1995 decision was that it misapprehended a point of law in regards to the rights, under the Merit Promotion Rule 10b, of San Nicolas, a competing candidate for the position of Chief Customs Officer. Moreover, Customs argues that the CSC's decision to reconsider its prior decision was reasonable under the circumstances and that Customs' request for reconsideration was timely made.

[35] Examining the decision which was overturned, the CSC had made detailed findings after evidentiary hearings were conducted on the matter. The Decision and Order included a great deal of discussion as it pertained to the circumstances of San Nicolas and his failure to interview for the position of Chief Customs Officer. *See* Appellee's Excerpts of Record 28, Exhibit 10, Civil Service Commission Decision and Order, May 25, 1995. Customs argues a misapprehension of the facts and law; yet, this contention is difficult to believe when what is exceedingly evident is that a great deal of time had been spent discussing the situation of San Nicolas and the propriety of then-director Diego's decision to proceed with filling the position of Chief Customs Officer. In stark contrast to the Decision and Order of May 25, 1995, the CSC's Amended Decision and Order of February 13, 1996, provides no justification other than the conclusory statement that it found San Nicolas was unfairly denied the right to be interviewed and that he was deprived of an equal employment opportunity. *See* Appellant's Excerpts of Record 28.[7]

[36] Finally, we cannot agree that Customs' motion for reconsideration was timely made. Customs' cites as authority the case of *Argonaut Insurance Co. v. Workmen's Compensation Appeals Board*, 55 Cal. Rptr. 810 (Cal. Ct. App. 1967), for the proposition that sixty days is a reasonable time within which to

[7]In addition, the record does not indicate that San Nicolas himself had filed for some review with the CSC. There was no outstanding complaint that was advanced by San Nicolas before the CSC.

bring its motion for reconsideration before the CSC. However, an important factual distinction exists between that case and the present one. In *Argonaut*, there was a specific period of time within which to make a motion for reconsideration. *Id.* at 813. The court there found that the Workmen's Compensation Board still retained jurisdiction to re-open the case, by virtue of the fact that statute allowed the Board to maintain jurisdiction for five years after the date of injury, as opposed to a reconsideration of its order, a motion for which must be brought within sixty days of the rendition of decision. *Id.* at 814-815. Here, there is no statutory authority delimiting the period of time within which to bring a Motion to Reconsider let alone the re-opening of the matter after a final decision has been rendered. Thus, rather than support Customs' contention that its motion was diligently made, the *Argonaut* case merely implies that treatment of the matter was a re-opening of the case, rather than a reconsideration of its decision, and that because of the agency's five year jurisdiction in such cases the motion to re-open the case was diligently made. To the contrary, we hold that the nearly sixty day delay in filing its Motion for Reconsideration is indicative that the motion was not diligently made.

IV.

[37] Guam law provides for the recovery of reasonable attorneys fees to an employee who retains an attorney to represent him in an adverse action. The specific statute provides, in relevant part:

> § 4406.1. Attorney Fees and Costs on Appeal.
>
> If an employee in the classified service retains an attorney to represent him or her before the Civil Service Commission or other applicable administrative body to challenge an adverse action brought against the employee, and the employee prevails in whole or in part before the Civil Service Commission or other applicable administrative body by either receiving a favorable decision from the Commission or body or a withdrawal of the adverse action by the department, agency or instrumentality that brought the adverse

> action, the employee shall be awarded and paid costs, if any, and reasonable attorney's fees because of such attorney representation from funds of the department, agency or instrumentality in which the employee was employed.

Title 4 GCA § 4406.1 (1996).

[38] Because we find that Blas' claim was the appeal of an adverse action and that he ultimately prevails, we hold that he is entitled to recoup attorneys fees as ordered by the court below.

CONCLUSION

[39] Based on the foregoing, we **REVERSE** that part of the trial court's decision and order finding that Blas was not entitled to prosecute his claim as an adverse action appeal to the Civil Service Commission, and **AFFIRM** the decision in all other respects.

ALBERTO C. LAMORENA, III
Designated Justice

J. BRADLEY KLEMM
Justice Pro Tempore

PETER C. SIGUENZA
Chief Justice
(Acting)