IN THE SUPREME COURT OF GUAM

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

vs.

CIVIL SERVICE COMMISSION,
Respondent-Appellee,

PATRICIA ROJAS,
Real Party in Interest-Appellee.

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

OPINION

Cite as: 2007 Guam 21

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

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice, FRANCES M. TYDINGCO-GATEWOOD, Associate Justice[1], ROBERT J. TORRES, JR., Associate Justice.

TORRES, J.:

[1] This appeal arises from the termination of Real Party in Interest-Appellee Patricia Rojas by Petitioner-Appellant Department of Agriculture ("DOA"), for insubordination and for failure of good behavior. Rojas appealed the adverse action to Respondent-Appellee Civil Service Commission ("CSC"), which dismissed Rojas' case for her failure to timely file the appeal. Rojas subsequently sought reconsideration of the dismissal, and the Commission ruled in her favor in a judgment stating that DOA had failed to demonstrate that Rojas was insubordinate and that she did not show good behavior. DOA then filed a Petition for a Writ of Mandamus in the Superior Court, requesting that the CSC decision be vacated. The Petition was denied, and DOA appealed to this court.

[2] We hold that the Superior Court abused its discretion in denying mandamus relief. The CSC properly dismissed Rojas' appeal for failure to meet the statutory deadline of 4 GCA § 4406. Applying the three-prong test in *Blas v. Guam Customs & Quarantine Agency*, 2000 Guam 12, reveals that the CSC did not show good cause for reconsideration or the reasonable exercise of reconsideration, and Rojas did not show reasonable diligence in bringing the request for reconsideration. We hold that the CSC erred in reconsidering its initial dismissal, and therefore, its subsequent judgment in Rojas' favor must be vacated. Accordingly, we reverse and remand.

I.

[3] Patricia Rojas, a DOA employee, experienced a work-related injury on or about February 28, 1995. She did not inform her supervisor of her injury until April 11, 1995. At the time she received the injury, Rojas was two to three months pregnant, and after the February 28, 1995 incident, she

[1] Associate Justice Frances M. 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.

experienced pain in her shoulders. She received treatment for the pain at the Guam Memorial Hospital emergency room and saw Dr. Soriano and another doctor sometime in April to May 1995. No x-rays were taken because she was pregnant. When Rojas informed Dr. Soriano that she was coughing up blood, he advised her to obtain a tuberculosis test, which she took on July 22, 1995. She returned to work on July 24, 1995 with a work leave form signed by Dr. Parent. That same day, DOA ordered her to see Dr. Holland to verify her illness. Rojas did not see Dr. Holland; she saw Dr. Parent to obtain the results of her tuberculosis test, which were negative.

[4] On August 4, 1995, DOA served upon Rojas a Proposed Notice of Adverse Action. Rojas was served with a Notice of Final Adverse Action on August 25, 1995, which terminated her for insubordination, for failure to comply with the order to see Dr. Holland on July 24, 1995; and for failure of good behavior in refusing to accept or acknowledge letters scheduling her appointment with Dr. Holland. Rojas submitted her resignation from DOA on October 17, 1995. She then filed an appeal with the CSC on December 21, 1995.

[5] More than three years later, on February 11, 1999, the CSC issued a Decision and Order ("the CSC Order") dismissing Rojas' appeal due to her failure to timely file the appeal pursuant to 4 GCA § 4406.[2] Rojas maintains that she never received notice from the CSC that it had dismissed her appeal, and on August 9, 2001, she filed her Appellant's Motion for Reconsideration to Appeal ("Motion for Reconsideration"). The CSC granted her motion,[3] and conducted hearings on April 30, 2002 and May 2, 2002. The CSC ultimately ruled in her favor, stating in its Decision and Judgment

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[2] According to 4 GCA § 4406 (2005), 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.

[3] Apparently, the CSC granted Rojas' Motion for Reconsideration at a hearing on September 20, 2001, during which Rojas, her counsel and a DOA representative were present. *See* Mot. for Jud. Notice, or in the Alternative, to Supplement Supplemental Excerpts of Record, Ex. 4 (Dec. 21, 2006).

("the CSC Judgment") that:

> a. That Patricia Rojas had a legitimate reason for not going to see the Department of Agriculture's ordered Doctor before seeing Public Health and Social Services Doctors, to determine the possibility if she had T.B. and that such testing and results are important . . . .
>
> b. That an employee in good standing for years when ordered to do two (2) things at once as one can only do one at a time by starting with the most serious of her medical concerns.
>
> c. That based on the foregoing, Department of Agriculture failed to meet its burden in their [sic] termination of Patricia Rojas.

Appellant's Excerpts of Record ("ER"), Tab 3 (CSC Decision & Judgment). The CSC Judgment also ordered that Rojas, "Management," presumably of DOA, and CSC legal counsel meet after the hearings, on May 9, 2002 to discuss the issue of damages. Apparently, the parties met but did not reach an agreement on the damages issue. The CSC Judgment was not filed until March 18, 2003.

[6] Four months later, DOA filed the instant Petition at the Superior Court, requesting that the Superior Court order the CSC to vacate the CSC Judgment. The Petition was denied, and DOA sought reconsideration pursuant to Rule 59(e) of the Guam Rules of Civil Procedure, which was also denied. DOA then timely appealed to this court.

II.

[7] This court has jurisdiction over this appeal from a final judgment. 48 U.S.C. § 1424-1(a)(2) (West, Westlaw through Pub.L. 110-133 (2007)); 7 GCA §§ 3107, 3108(a) (2005); *Lizama v. Dep't of Pub. Works*, 2005 Guam 12 ¶ 11; *Pac. Rock Corp. v. Perez*, 2005 Guam 15 ¶ 14. In addition, this court "ha[s] jurisdiction to review a petition for writ of mandate." *Bank of Guam v. Reidy*, 2001 Guam 14 ¶ 10 (citing 7 GCA § 3107 (1994)).

III.

[8] A trial court's decision to deny a writ of mandamus is reviewed for an abuse of discretion. *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 Carlson*, 2007 Guam 6 ¶ 16; *Reidy*, 2001 Guam 14 ¶ 12 ("Whether [a party] has satisfied the elements for *mandamus* is a question of law reviewed *de novo*."). Moreover, DOA contends that the CSC lacked jurisdiction to hear the Motion for Reconsideration, and "[t]he issue of whether the CSC has jurisdiction is a matter of statutory interpretation, and, therefore, our review is *de novo*." *Mesngon v. Gov't of Guam*, 2003 Guam 3 ¶ 8 (citing *Univ. of Guam v. Civil Serv. Comm'n (Foley)*, 2002 Guam 4 ¶ 5).

IV.

[9] DOA challenges the trial court's determination that the CSC Judgment was final and reviewable, arguing that the CSC lacked jurisdiction to hear Rojas' Motion for Reconsideration. DOA also contends that the trial court erred in denying the Petition, because the facts of the case satisfied the requirements for issuance of this writ. In a joint brief, the CSC and Rojas disagree in both respects and argue the trial court should be affirmed.

A. The CSC's Reconsideration of its Order

[10] In concluding that the CSC Judgment was final and therefore subject to judicial review, the trial court implicitly found that the CSC had jurisdiction to rule on Rojas' Motion for Reconsideration. On appeal, DOA contends the CSC did not have jurisdiction to hear the reconsideration motion. The CSC and Rojas maintain the trial court was correct.

[11] We have recognized that "[a]fter a survey of Guam statutes, ordinances, or rules, no such authority exists that either permits or restricts the CSC to rehear its final decision." *Blas v. Guam Customs & Quarantine Agency*, 2000 Guam 12 ¶ 32. The CSC, however, "has the inherent or implied authority to rehear its final decisions" although "such power is by no means unlimited." *Guam Dep't of Pub. Safety v. Guam Civil Serv. Comm'n ("DPS")*, D.C. Civ. App. No. 810033A, 1982 WL 30789 at *2 (D. Guam App. Div. Sept. 8, 1982). To determine when, and under what circumstances, the CSC may reconsider a prior decision, we use a three-part test initially articulated by the Appellate Division in *DPS*, and later adopted by this court in *Blas*. *Blas*, 2000 Guam 12 ¶ 33

("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 . . . ."). We stated that "before 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." *Id.* ¶ 32 (citing *DPS*, 1982 WL 30789 at *2). *See also Duvin v. State, Dep't of Treas.*, 386 A.2d 842, 844 (N.J. 1978) ("Of course the power [of reconsideration] should be invoked only for good cause shown. Also, it must be exercised reasonably, and application seeking its exercise must be made with reasonable diligence.").

[12] It is not abundantly clear whether courts require that all three prongs be satisfied. In one case, the court remanded a case for the specific purpose of reconsidering its prior decision, and with instructions to determine whether there was good cause for a retiree to reopen his original pension application to allow him to claim accidental disability retirement instead of early retirement, and whether his request was made with reasonable diligence. "If the Board determines that good cause has been shown and that respondent has acted with reasonable diligence, it should permit respondent to file his application for accidental disability retirement benefits and consider it on the merits." *Duvin*, 386 A.2d at 844. The *Duvin* court, however, did not articulate the outcome if, for example, the board determined there was good cause but a lack of reasonable diligence. In *Blas*, we analyzed all three requirements; similarly, here, we will use a balancing test to analyze and weigh the considerations presented by all three prongs.

[13] Before applying the three-part test under *Blas* to determine whether the CSC should have granted Rojas' Motion for Reconsideration, it is helpful to review the decision that was reconsidered by the CSC, their order that dismissed Rojas' appeal.

[14] Rojas was required to appeal her termination by "filing [a] written answer to the charges" with the CSC "within twenty (20) days of effective date of the action." 4 GCA § 4406 (2005). DOA served Rojas with a Notice of Final Adverse Action on August 25, 1995. Record on Appeal ("RA"),

Tab 3, Ex. 2. Rojas, however, did not file her Notice of Appeal with the CSC until December 21, 1995 – undisputedly beyond the twenty-day deadline set forth in section 4406.[4] In the CSC Order, Rojas' violation of this twenty-day filing date was cited as the reason for dismissal: "**IT IS THEREFORE, ORDERED,** the above-entitled matter be **DISMISSED WITH PREJUDICE** for failure of Appellant to file her Notice of Appeal within the time prescribed by 4 G.C.A. Section 4406." RA, Tab 3, Ex. 4 (CSC Decision and Order).

[15] The CSC correctly concluded that, based on Rojas' failure to meet the statutory filing deadline of 4 GCA § 4406, it did not have jurisdiction and dismissed Rojas' appeal. *See, e.g.*, *Rowe v. Dep't of Employment & Econ. Dev.*, 704 N.W.2d 191, 195-96 (Minn. Ct. App. 2005) (strictly construing the statutes governing an agency's authority to review its decisions, and holding that "[t]he 30-day statutory time period [to appeal] is 'absolute and unambiguous' and must be strictly construed. When a decision becomes final, the department is deprived of jurisdiction to conduct further review.") (citations omitted). We now apply the *Blas* test to determine if reconsideration by the CSC was warranted.

1. Good cause and request for judicial notice

[16] The first prong in *Blas* requires this court to examine whether there was "good cause shown" for the CSC to reconsider its initial and legally sound dismissal of Rojas' appeal. *Blas*, 2000 Guam 12 ¶ 32. Rojas argues here that reconsideration of the dismissal was proper, despite her failure to comply with 4 GCA § 4406, because there were compelling reasons for her failure to timely appeal to the CSC.[5] In order for Rojas to introduce evidence of these compelling reasons, however, this

[4] The service of the Notice of Final Adverse Action on August 25, 1995 triggers 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. Although 4 GCA § 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 Guam Admin. R. and Regs. § 1110.6(c) (1975).

[5] While neither directly cited by the parties nor specifically argued here, Rojas' efforts to introduce "compelling reasons" in her Motion for Reconsideration likely arises from an attempt to trigger Rule 5.2.1 of the CSC Rules of

court must grant her request to take judicial notice of certain documents,[6] or alternatively, her request to supplement prior filings in this appeal. DOA filed a motion in opposition, requesting that the court strike her motion for judicial notice and the attached exhibits, and further, impose the sanction of granting the relief DOA requested in the appeal.

[17] Rojas' request for judicial notice relates to four documents: (1) Appellant's Opposition to Appellee's Motion to dismiss filed by Rojas on July 24, 1998 ("the Opposition"); (2) the CSC Order dismissing her appeal; (3) the Motion for Reconsideration; and (4) a CSC Decision and Order dated October 25, 2001 which granted the Motion for Reconsideration. *See* note 3, *supra.* Mot. for Judicial Notice, or in the Alternative, to Supplement Supplemental Excerpts of Record, p. 1 (Dec. 21, 2006).

[18] Judicial notice is governed by Rule 201 of the Guam Rules of Evidence (GRE), and may be taken during appeal. GRE 201(f) ("Judicial notice may be taken at any stage of the proceeding."); *People v. Diaz*, 2007 Guam 3 ¶ 60 (recognizing that judicial notice may be taken during appeal). "We must first determine whether or not the kinds of facts [Rojas] would like this court to take judicial notice of are appropriate under Rule 201." *Diaz*, 2007 Guam 3 ¶ 61. The "judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." GRE 201(b).

[19] As to the CSC orders (documents #2 and #4), taking judicial notice is not necessary. These orders were exhibits to a memorandum filed by DOA in the Superior Court; therefore, they are

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Procedure for Adverse Actions Appeals, which allows the CSC to "excuse the filing of a Notice of Appeal beyond the twenty (20) day period if the Employee proves a compelling reason for his failure to timely file." However, Rule 5.2.1 does not apply to Rojas' case, as it was not in effect in 1995 when Rojas filed her appeal with the CSC on December 21, 1995. Moreover, the CSC rules which were in effect in 1995 did not include a similar provision to excuse late filings. *See infra*, part IV.A.2 (discussing CSC rules in effect in 1995).

[6] Although not articulated in Rojas' motion, we recognize that her request invokes discretionary judicial notice pursuant to Rule 201(c) of the Guam Rules of Evidence.

already included in the Record on Appeal. Judicial Notice of the Motion for Reconsideration (document #3) is also unnecessary. This motion, like the CSC orders, was an exhibit to the DOA memorandum, and is already part of the Record on Appeal. Moreover, Rojas had included this motion in the Supplemental Excerpts of Record filed with her appellate brief. Rojas' request for judicial notice as to these three documents is moot, and therefore, denied. The request for judicial notice as to the Opposition (document #4), however, requires further examination.

[20] Rojas does not contend, and we do not believe, that the facts of the Opposition are "generally known within the territorial jurisdiction" of the Superior Court. GRE 201(b)(1). There are any number of adverse action cases filed by classified Government of Guam employees at the CSC, and Rojas does not argue that her case gained any publicity or notoriety that would make the facts contained in the Opposition "generally known" on Guam. Moreover, although the Opposition was apparently submitted during CSC proceedings and was made a part of the CSC's records, this document was never made part of the Superior Court's mandamus proceeding. Furthermore, the facts contained within the Opposition are not "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned" as required by GRE 201(b)(2). Rojas argues that the Opposition is a public record as it is part of the CSC records, and the CSC is a governmental administrative agency. Yet, even if the Opposition was available from the CSCs' records, nothing in Rojas' motion to this court or the Opposition itself, shows that the Opposition was, in fact, acquired directly from the CSC's records. Applying GRE 201(b), we do not believe that the facts contained within the Opposition are either "generally known within the territorial jurisdiction of the trial court" or "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." *See In re Marquam Inv. Corp.*, 942 F.2d 1462, 1467 (9th Cir. 1991) ("We may not take judicial notice of facts which are not 'capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.'") (quoting Fed. R. Evid. 201(b)(2)). The facts contained within the Opposition are not the type of facts

of which we would take judicial notice.

[21] Several other factors counsel against taking judicial notice of the Opposition. This document is not merely a document relevant to the litigation; it purportedly contains the reason for Rojas' failure to timely file her Motion for Reconsideration, "the failure of which is construed by Petitioner-Appellant as a defect in jurisdiction." Mot. for Judicial Notice, or in the Alternative, to Supplement Supplemental Excerpts of Record, p. 4 (Dec. 21, 2006). Introducing the Opposition, via the request for judicial notice, necessarily introduces a factual dispute at the appellate stage. Even more troubling is that the Opposition was not a part of the trial court's proceedings, and thus, is not included as part of the Record on Appeal. We acknowledge that "appellate courts are reluctant to take judicial notice of evidence when the trial court was not afforded the opportunity to examine and take into consideration that evidence." *Tran v. Fiorenza*, 934 S.W.2d 740,742 (Tex. Ct. App. 1996). Clearly, the trial court should have been given the opportunity to examine and consider the reason, purportedly contained within the Opposition, that Rojas did not timely appeal to the CSC. Yet, the absence of the Opposition from the Record on Appeal raises doubt whether the Opposition was presented to and considered by the trial court. "Courts have tended to apply Rule 201(b) stringently – and well they might, for accepting disputed evidence not tested in the crucible of trial is a sharp departure from standard practice." *Lussier v. Runyon*, 50 F.3d 1103, 1114 (1st Cir. 1995). *Cf. White v. La. Pub. Serv. Comm'n*, 250 So. 2d 368, 374 (La. 1971) ("[N]ew facts are not ordinarily received by courts for an independent determination on purely administrative adjudications."). Accordingly, we decline to exercise our jurisdiction to take judicial notice of the Opposition.[7]

[22] In *Blas*, we rejected the argument that there was good cause based on a misapprehension of facts and law because this contention was not supported by the record. *Blas*, 2000 Guam 12 ¶ 35.

[7] Rojas does not specify whether she is requesting that the court take either discretionary or mandatory judicial notice pursuant to GRE 201, but she makes no argument that this court *must* take judicial notice. Furthermore, Rojas has not satisfied the requirements of mandatory judicial notice, as she has not "supplied [the court] with the necessary information." GRE 201(d); *see also Diaz*, 2007 Guam 3 ¶¶ 62-63.

Here, the record is also devoid of any good cause for reconsideration, and neither Rojas nor the CSC present any justification for the CSC's decision to revisit its initial dismissal of the case. Good cause has been found by other courts where "fraud or other overreaching is suspected" in the decision of the agency, and reconsideration has been permitted on the basis of such grounds. *Aronson v. Brookline Rent Control Bd.*, 477 N.E.2d 182, 185 (Mass. App. Ct. 1985) (holding that an agency could reopen its adjudicatory proceedings to reconsider its prior decisions, "in order to determine whether the [plaintiff had] procured those decisions by misrepresentation or fraud"); *see also Baggett Transp. Co. v. United States*, 206 F. Supp. 835, 842 (D.C. Ala. 1962) ("[W]e agree that the Commission has inherent power to amend any order infected by or to change any certificate procured by fraud . . . ."); *Knestis v. Unemployment Comp. & Placement Div.*, 134 P.2d 76, 78 (Wash. 1943) (stating that "the department can not set aside its own judgment after time for appeal therefrom has expired . . . except upon the broad equitable principle of vitiating fraud").

[23] Good cause also "derive[d] from the fact that when [a teacher had] applied for a disability pension, she was unable to make an informed choice among her retirement options."[8] *Steinmann v. Dep't of Treas.*, 562 A.2d 791, 797 (N.J. 1989). The New Jersey Supreme Court found that "the facts of this record demonstrate 'good cause' to permit Mrs. Steinmann to change her pension designation . . . ." *Id.* at 797. In another case, although not expressly described as good cause, the Rhode Island Supreme Court held a hearings committee had "the inherent power, and in fact the obligation, in the performance of its duty, to reconvene for the purpose of considering the recently available testimony." *In re Denisewich,* 643 A.2d 1194, 1198 (R.I. 1994). In *Denisewich*, a hearings committee found a state trooper not guilty of departmental charges. *Id.* at 1195-96. The trooper's

[8] *Steinmann v. Dep't of Treas.*, 562 A.2d 791, 797 (N.J. 1989) involved a teacher who was eligible for early retirement based on her years in service, as well as for disability retirement due to a job-related injury. *Id.* at 791. The teacher chose disability retirement, but had not been informed of the possibility that her disability pension benefits, reduced by her worker's compensation award, could be less than her early retirement pension. *Id.* Her request to change her pension designation (from disability retirement to early retirement) was denied by the board governing teacher pensions. *Id.*

grand jury testimony, given under grant of immunity, was not considered as it was not available at the time the committee had deliberated. *Id.* The court held that "[a]t such a reconvening, the committee, subject to its discretion, would be in a position to evaluate whether its original determination was proper or was flawed in light of the evidence now made available for its consideration." *Id.* at 1198.

[24] Unlike these cases, there is no indication in the record of this case to explain the CSC's reconsideration of its initial dismissal – no fraud, lack of informed consent, or newly available evidence. *See Anchor Cas. Co. v. Bongards Co-op. Creamery Ass'n*, 91 N.W.2d 122, 126 (Minn. 1958) ("Where through fraud, mistake, or misconception of facts the commissioner enters an order which he promptly recognizes may be in error, there is no good reason why, on discovering the error, he should not, after due and prompt notice to the interested parties, correct it."). What the record clearly reflects is that the CSC dismissed the appeal because, by Rojas' failure to comply with the statutory deadline set forth in 4 GCA § 4406, the CSC lacked jurisdiction to hear her appeal. Under these circumstances, we hold that there was no good cause for the CSC to reconsider its decision, and thus, next examine the second prong of the *Blas* test. Although Petitioner has not shown good cause, the *Blas* test is a balancing test and we therefore proceed to examine the second and third prongs.

2. Reasonable exercise of administrative reconsideration

[25] Next, we must consider whether the power of reconsideration was "reasonably exercised" by the CSC. *Blas*, 2000 Guam 12 ¶ 32. In *Blas*, we concluded that it was not reasonable for the CSC to reconsider its initial decision, which was based on its "detailed findings after evidentiary hearings were conducted." *Id.* ¶ 35. We rejected the contention that there was "a misapprehension of the facts and law" as to the initial decision, because the record indicated "that a great deal of time had been spent discussing the situation . . . ." *Id.* "In stark contrast . . . the CSC's Amended Decision and Order . . . provides no justification other than the conclusory statement that it found

[the eligible candidate competing against Blas] was unfairly denied the right to be interviewed and that he was deprived of an equal employment opportunity." *Id.* In sum, we found it unreasonable to exercise reconsideration when doing so contradicted the record. Similarly in the case at bar, the CSC Judgment provides no justification for reconsidering its initial – and legally supported – dismissal of Rojas' appeal. The CSC reiterated the reasons offered by DOA in terminating Rojas in the first place, finding: "That Patricia Rojas had a legitimate reason for not going to see the [DOA's] ordered Doctor" and "[T]hat an employee in good standing for years when ordered to do two (2) things at once as one can only do one at a time by starting with the most serious of her medical concerns." Appellant's ER, Tab 3 (CSC Judgment). The CSC Judgment does not address the failure of Rojas to timely file her appeal, or the fact that the her appeal had been dismissed pursuant to 4 GCA § 4406.

[26] We could, relying on *Blas*, similarly find here that due to the lack of justification, the exercise of reconsideration was unreasonable. But, in order to assist in future applications of the *Blas* test, we look to other jurisdictions to determine how other courts have interpreted when agencies have "reasonably exercised" the power of reconsideration. Authority from other jurisdictions have focused on the timing of the agency's reconsideration when examining the reasonableness of the agency's decision to reconsider. Courts have held that reconsideration was unreasonable if the time in which to appeal the agency decision had expired. For example, the exercise of reconsideration was not reasonable in *Prieto v. United States*, 655 F. Supp. 1187 (D.C. Cir. 1987), where the court articulated several reasons to reject reconsideration, including the fact that the "time for filing an appeal of the decision . . . had long since run out." *Id.* at 1192. A Minnesota appellate court found that the "implied power to correct an erroneous decision arguably exists" for the time period that a party would have to appeal such decision. *Rowe*, 704 N.W.2d at 195; *see also Knestis*, 134 P.2d at 78 (stating that "the department can not set aside its own judgment after time for appeal therefrom has expired . . . except upon the broad equitable principle of vitiating

fraud"). The Oklahoma Supreme Court held that an agency could "rehear the matter and make a new order upon evidence proper to a consideration of the matter at that time and enter a corrected order" if such rehearing occurred "within a reasonable length of time" and did not "prejudice any party in his right of appeal." *Southwestern Bell Tel. Co. v. State*, 71 P.2d 747, 750 (Okla. 1937). One court held that reconsideration must be exercised before an appeal from the original order has been filed, or before the original order has become final by lapse of time to file a timely notice of appeal. *Reich v. Dep't of Health*, 868 So. 2d 1275, 1276 (Fla. Dist. Ct. App. 2004).

[27] From these cases, we conclude that the exercise of reconsideration is reasonable if it occurs during the time period that an appeal of the initial decision may be filed, and clearly, if it occurs before an appeal of the decision is actually filed. It would be unreasonable to reconsider the CSC Order dismissing Rojas' appeal if the time for appealing the CSC Order expired. We must decide, therefore, when the time for appealing CSC Order expired. This inquiry requires that we apply Civil Service Commission Rules of Procedure for Adverse Action Appeals that were in effect at the time the CSC Order was issued, on February 11, 1999. The parties and the trial court refer to and discuss specific versions of Rules 11.7.6 and 11.7.7 of the Civil Service Commission Rules of Procedure for Adverse Action Appeals, which were approved by the CSC and became effective only on March 5, 2002.[9] Appellant's Brief, Addendum (Memorandum of 11/9/04). The version preceding the 2002

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[9] The 2002 version of the CSC Rules provided:

> **Rule 11.7.7 RECONSIDERATION OR AMENDMENT (Time to seek Judicial Review)**
> A party may move the Commission to reconsider or amend its judgment by filing a motion with the Commission within ten (10) days of entry of the judgment.
> The filing of a motion to reconsider or amend does not effect [sic] the time limit imposed by law to file a Petition for Judicial Review with the Superior Court of Guam.
> If a motion to reconsider is not decided within thirty (30) days of the entry of a judgment, the motion is denied.
>
> **Rule 11.7.8 JUDICIAL REVIEW**
> Judicial review of the judgment of the CSC may be had by filing appropriate pleadings with the Superior Court of Guam within thirty (30) days after the last day on which reconsideration can be granted.

Appellant's Brief, Addendum.

rules went into effect on November 4, 1999.[10] Neither the 2002 version or the predecessor version were in effect at the time the CSC Order was issued on February 11, 1999. We believe it was error for the trial court to rely on the thirty-day deadline, found in both the 2002 rules and predecessor versions, and apply this deadline retroactively to Rojas' motion.[11]

[28] The CSC rules which were in effect at the time Rojas filed for reconsideration, and which apply to this case, state as follows:[12]

> CSC-500 ***COMPLIANCE***
>
> The decision of the Commission is final, but subject to judicial review. Compliance with any order specified in the decision is required by law. The department or agency head to whom an order is directed, must report, within 10 working days after receipt of the decision, that he has carried the order into effect, or he has taken action to have the decision reviewed by the Superior Court.

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[10] The 1999 version of the CSC Rules provided:

> **Rule 11.7.7 RECONSIDERATION**
> The CSC may reconsider its judgment on its own motion or petition of any party. The authority of the CSC to reconsider expires thirty (30) days after its judgment is signed by a majority of the Commissioners.
>
> **Rule 11.7.8 JUDICIAL REVIEW**
> Judicial review of the judgment of the CSC may be had by filing appropriate pleadings with the Superior Court of Guam within thirty (30) days after the last day on which reconsideration can be granted.

[11] Rule 1 of the 2002 version of the CSC Rules of Procedure for Adverse Action Appeals states: "These rules are effective March 05, 2002[.]" Appellant's Brief, Addendum. The preceding version of the CSC rules went into effect on November 4, 1999. Based on the trial court's finding that "the DOA waited until after the applicable time limitations for both reconsideration and *judicial review* had expired before filing its Petition for Writ of Mandamus," Appellant's ER, Tab 18 (Decision and Order, Feb. 13, 2004) (emphasis added), it seems clear that the court relied on either the 2002 version or the predecessor version of the CSC Rules. In doing so, the trial court applied the rules retroactively to Rojas' motion. *See Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) ("Retroactivity is not favored in the law. Thus, congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result."). Nothing in the 2002 CSC rules lead us to believe that they were to be construed as having retroactive effect. Furthermore, "a strong presumption exists against the retroactive application of regulations." *Sweet v. Sheahan*, 235 F.3d 80, 88 (2d Cir. 2000).

[12] This version of the Civil Service Commission Hearing Procedures for Adverse Action Appeals (Covering Suspensions, Demotions, Dismissals) was in effect after 1996 and before 1999, and it is included as Appendix A to the Department of Administration Rules, which were adopted by Executive Order No. 96-24 on October 1, 1996. Exec. Order No. 96-24 (Oct. 1, 1996).

Civil Serv. Comm'n Rules of Procedure for Adverse Action Appeals Rule CSC-500. Rule CSC-500, in essence, allowed DOA ten working days to seek review of the CSC Order of dismissal of February 11, 1999. Notably, CSC-500 does not provide a deadline for an employee to seek review. We have acknowledged the "judicially-created rule that a CSC decision had to be appealed within 30 days of its issuance."[13] *Carlson*, 2007 Guam 6 ¶ 62; *accord Perez v. Judicial Council*, 2002 Guam 12 ¶¶ 11-12. The CSC, however, apparently granted Rojas' Motion for Reconsideration at a hearing on September 20, 2001, more than two years after the dismissal of Rojas' appeal. *See* Mot. for Judicial Notice, or in the Alternative, to Supplement Supplemental Excerpts of Record, Ex. 4 (Dec. 21, 2006). Hearings on the motion were conducted on April 30, 2002 and May 2, 2002; however, the CSC Judgment was not issued until March 18, 2003. It cannot be disputed that reconsideration by the CSC in this case occurred far beyond the ten days provided by CSC-500, or the thirty days established by the Appellate Division. *See Tyndzik v. Guerrero*, CV-92-00023A & CV-92-00031A, 1992 WL 245889 (D. Guam App. Div. Sept. 11, 1992) (holding that the court had authority to adopt a judicially created rule that a CSC decision had to be appealed within 30 days of its issuance, but refusing to retroactively apply such deadline to the case); *Univ. of Guam v. Guam Civil Serv. Comm'n (Matheny)*, CV-94-00018A, 1995 WL 222212, at *3 (D. Guam App. Div. Feb. 10, 1995) (holding that because 4 GCA § 4406 was "silent on the procedures for obtaining review" that the court could impose a judicially created statute of limitations for appeal of a CSC decision). Furthermore, even recognizing that CSC-500 does not specify the time period for an employee to file an appeal, it was not reasonable for the CSC to reconsider, more than two years later, a decision that was correctly made and in accordance with Guam law. This is especially so when good cause has not been shown to justify reconsideration. We find no authority, statutory or otherwise, that

[13] The thirty-day deadline was articulated by the Appellate Division in *Tyndzik v. Guerrero*, CV-92-00023A & CV-92-00031A, 1992 WL 245889 (D. Guam App. Div. Sept. 11, 1992) and reaffirmed in *University of Guam v. Guam Civil Service Commission (Matheny)*, CV-94-00018A, 1995 WL 222212 (D. Guam App. Div. Feb. 10, 1995). This thirty-day deadline was later officially promulgated by the CSC as Rule 11.7.8.

allows an agency to reassert jurisdiction over a properly dismissed case in the guise of granting a motion for reconsideration. We hold that it was not reasonable for the CSC to exercise reconsideration in this case.

3. Reasonable diligence in making the petition

[29] The final *Blas* inquiry requires that we examine whether Rojas' Motion for Reconsideration was "made with reasonable diligence." 2000 Guam 12 ¶ 32. Reasonableness may be measured by compliance with the applicable CSC rules that establish a specific time period for requesting reconsideration. A petitioner's failure to comply with the deadline would show lack of diligence; compliance with the deadline would show diligence. We have not articulated a specific time that would show diligence, or lack of diligence, although we acknowledged in *Blas* that "that the nearly sixty day delay in filing [the] Motion for Reconsideration is indicative that the motion was not diligently made." 2000 Guam 12 ¶ 36. However, we did not in *Blas*, and do not in this case, establish sixty days as the bright line rule regarding reasonable diligence. There has been some reluctance to define "reasonable diligence" that would support reconsideration. One court stated simply that "sound public policy in support of finality in administrative decisions requires that a request for reconvening or reconsideration of a committee's decision must be made within a reasonable time after the issuance of the committee's decision." *In re Denisewich*, 643 A.2d at 1198. We agree that "it may be desirable to prescribe reasonable time limits for reopening" and thus reconsideration of decisions. *Aronson*, 477 N.E.2d at 187. *See also Handlon v. Town of Belleville*, 71 A.2d 624, 627 (N.J. 1950) ("[T]he 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."). Courts, however, have been reluctant to specify the length of time that could, or should, be considered reasonable. The New Jersey Supreme Court concluded that merely looking at the time period was insufficient to determine reasonableness:

> There is emphasis in the cases on the requirement that such [request for reconsideration] must be taken within a reasonable time or with reasonable diligence. *But what is a reasonable time must perforce depend on the interplay with the time element of a number of other attendant factors*, such as the particular occasion for administrative reexamination of the matter, the fraud or illegality in the original action and any contribution thereto or participation therein by the beneficiary of the original action, as well as the extent of any reliance or justified change of position by parties affected by the action.

Ruvoldt v. Nolan, 305 A.2d 434, 441 (N.J. 1973) (emphasis added). Here, Rojas maintains that she acted with reasonable diligence in seeking reconsideration, explaining that she was unsuccessful in obtaining information from the CSC about her appeal and furthermore, that the CSC never notified her that it had dismissed her appeal. Yet even considering these "attendant factors," Rojas was not prevented from filing a motion for reconsideration even without having heard from the CSC regarding her appeal, based on the presumption that her appeal had been dismissed. Eventually, this is exactly what Rojas did. Rojas did not show reasonable diligence in seeking reconsideration.

[30] After applying the *Blas* factors, we hold that the CSC erred in reconsidering its dismissal of Rojas' appeal. First, the record contains no showing of good cause, such as fraud, misconception of facts or law or mistake, that would support reconsideration. Second, the CSC reconsidered its dismissal four years after its initial decision, undisputedly beyond any time period allowable for appeal. The exercise of reconsideration was not reasonable under the circumstances. Third, Rojas did not show reasonable diligence in seeking reconsideration, as she waited more than two years after her appeal was dismissed before she filed her reconsideration motion. Since Petitioner did not satisfy any of the prongs in the *Blas* test, we need not address under which circumstances the balancing of the three elements will weigh in favor of reconsideration.

[31] Our conclusion that the CSC erred in reconsidering its dismissal is further supported by the fundamental policy reasons supporting an administrative agency's authority to reconsider its past decisions, which are "to serve the ends of essential justice and the policy of law." *Handlon*, 71 A.2d at 627. "The power of correction and revision [is meant] to serve the statutory policy . . . . " *Id.* at

627-28. Our holding that the CSC lacked jurisdiction to hear her motion to reconsider does not constitute a "denial . . . of the authority [of an agency] to correct error and injustice [sic] and to revise its judgments for good and sufficient cause . . . ." *Id.* at 627. The error in the CSC's reconsideration is, however, compounded by the fact that the CSC's initial decision to dismiss was in accordance with Guam law, since Rojas undisputedly missed the deadline when she filed her appeal on December 21, 1995.

[32] The public policy supporting the finality of administrative adjudication is also important. Federal courts have recognized that "[t]he policy considerations which underlie res judicata – finality to litigation, prevention of needless litigation, avoidance of unnecessary burdens of time and expense – are as relevant to the administrative process as to the judicial." *Painters Dist. Council No. 38 v. Edgewood Contracting Co.*, 416 F.2d 1081, 1084 (5th Cir. 1969); *accord Castillo v. RR Ret. Bd.*, 725 F.2d 1012, 1014 (5th Cir. 1984); *see also United States v. Penn. Env'tl. H'rg Bd.*, 584 F.2d 1273, 1276 n.15 (3rd Cir. 1978). We acknowledge the important policy of the finality of a judgment, even as to an agency's reconsideration of its own decision. Accordingly the trial court abused its discretion when it failed to recognize the CSC's improper reconsideration of the dismissal of Rojas' appeal and denied DOA's Petition for a Writ of Mandamus.

B. Letter of resignation

[33] DOA alternatively argues that the CSC had no jurisdiction to hear Rojas' Motion for Reconsideration because she had submitted a letter of resignation on October 17, 1995. DOA relies on *Mesngon v. Government of Guam*, 2003 Guam 3, to assert that Rojas' letter of resignation essentially divested the CSC of its jurisdiction to reconsider. Although we conclude above that the CSC did not have jurisdiction, we wish to clarify that our holding is not controlled by *Mesngon.*

[34] In *Mesngon,* a University of Guam ("UOG") employee submitted a letter purporting to retire, rather than face adverse action proceedings. *Id.* ¶ 3. The employee later changed his mind and decided not to retire, and UOG initiated adverse action proceedings and ultimately dismissed him.

Id. ¶¶ 4-5. The employee appealed to the CSC. *Id.* ¶ 5. The CSC found that the employee's letter was essentially a resignation letter and dismissed his appeal for lack of jurisdiction. *Id.* ¶ 6. The employee then obtained judicial review in the Superior Court, which reversed the CSC's finding and held that the CSC had jurisdiction. *Id.* ¶ 7. UOG appealed. *Id.* This court held that the employee's letter was a valid resignation that could be enforced, and therefore, the CSC did not have jurisdiction to hear his appeal. *Id.* ¶ 28.

[35] Unlike *Mesngon*, where the issue was whether the employee's letter effected his resignation, the issue here is not whether Rojas' October 17, 1995 letter was an effective resignation. That Rojas had submitted such a letter is irrelevant to our holding, because it is undisputed that Rojas' termination was initiated by DOA through adverse action proceedings. The record reflects that Rojas' purported letter of resignation was submitted on October 17, 1995, two months *after* DOA had already terminated her by serving her with a Final Notice of Adverse Action. Rojas' letter of resignation did not effectuate her separation from DOA. In contrast, the employee's letter in *Mesngon* was determined to be a valid resignation letter that could be enforced against the employee; therefore, the letter in *Mesngon* did effectuate his separation from UOG. For these reasons, our holding that the CSC lacked jurisdiction to hear Rojas' motion is not based on *Mesngon*.

C. DOA's use of mandamus

[36] DOA defends its request for mandamus relief, arguing that such relief was proper and the Superior Court should have compelled the CSC to vacate the CSC Judgment issued pursuant to Rojas' Motion for Reconsideration, because the CSC lacked jurisdiction to hear the motion. Both Rojas and the CSC assert, on the other hand, that DOA should have filed a Petition for Judicial Review within thirty days from the CSC Judgment.[14] They further contend that DOA's decision not

[14] In *Carlson v. Perez*, 2007 Guam 6, we held that "the proper way for classified employees of the government of Guam or any of its instrumentalities, corporations or agencies to utilize the right of judicial review of CSC decisions is by filing a 'Petition for Judicial Review.'" *Id.* ¶ 65. The instant case is distinguishable from *Carlson*. In *Carlson*, we addressed the procedure by which the petitioners could obtain review of the CSC's determination that they were not

to do so constitutes a failure to exhaust administrative remedies; therefore, the "trial court did not abuse its discretion in denying [DOA's] request for the extraordinary relief of mandamus." Appellee's Brief, p. 9. We hold that in the instant case, mandamus relief was the proper method of obtaining review of the CSC Judgment, because the CSC acted in excess of its jurisdiction in reconsidering its initial dismissal of Rojas' appeal.

[37] DOA carries the burden of proving that the statutory requirements for mandamus have been satisfied.[15] *People v. Super. Ct. (Quint)*, 1997 Guam 7 ¶ 7 ("We require the petitioning party to bear the burden of justifying the issuance of a writ."). The relevant statutory provisions are that "[t]he writ must be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It must be issued on the verified petition of the party beneficially interested." 7 GCA § 31203 (2005); *see also* 7 GCA § 31202 (2005) (stating that 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 . . . ."). 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. Territorial Land Use Comm'n*, 1998 Guam 8 ¶ 11.

[38] DOA 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." *People v. Super. Ct.*

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classified Government of Guam employees. We held that the CSC's decision was to be heard, as a matter of right and not discretion, by filing a Petition for Judicial Review. *See id.* In contrast, the issue here is not the procedure for reviewing the merits of a CSC decision, but rather the jurisdiction of the CSC to grant Rojas' request for reconsideration in order to hear Rojas' appeal. Because DOA contends that the CSC lacked jurisdiction due to Rojas' failure to timely file her appeal, DOA requested the Superior Court issue a writ of mandamus that would order the CSC to vacate its judgment.

[15] In arguing that a writ of mandamus should have been issued, DOA primarily relied on five factors set forth by this court in *People v. Superior Court (Bruneman)*, 1998 Guam 24 ¶ 8. We have recognized, however, that while this test, developed in *Bauman v. United States*, 557 F.2d 650, 654-55 (9th Cir. 1977), "remain[s] relevant to a court's determination of mandamus . . . the two controlling factors [of a beneficially interested party and the lack of a plain, speedy, and adequate remedy in the course of law] are clearly dictated by statute." *People v. Super. Ct. (Laxamana)*, 2001 Guam 26 ¶ 23 n.3. Accordingly, we focus on the statutory requirements for mandamus set forth in 7 GCA § 31203.

(Laxamana), 2001 Guam 26 ¶ 24 (quoting *Cartsen v. Psychology Examining Comm.*, 614 P.2d 276, 278 (Cal. 1980) (internal quotation marks omitted)). DOA's interest or right in the proceeding is rooted in the CSC Judgment, which concluded that DOA had failed to justify its termination of Rojas and further ordered DOA to meet with Rojas and CSC representatives to discuss damages suffered by Rojas.

[39] We acknowledge that DOA could have requested judicial review in accordance with CSC Rule CSC-500, but did not do so within the thirty-day "judicially-created rule" announced in *Perez*, 2002 Guam 12 ¶¶ 11-12. *See supra*, Part IV.A.2, pp. 13-17. Furthermore, the time for appealing the CSC Judgment has expired, and courts have held that a party may not resort to extraordinary relief after having failed to timely appeal an otherwise appealable judgment. *In re Marriage of Patscheck*, 180 Cal. App. 3d 800, 804 (Ct. App. 1986) ("[A] writ petition should be entertained only where there is no adequate remedy by appeal and the remedy by appeal is not made inadequate by a party's having neglected to submit his notice of appeal for filing within the time allowed."). *See supra*, Part IV.A.3, pp. 17-19.

[40] Yet we have held that mandamus may also be issued when a court acts in excess of its jurisdiction. *Laxamana*, 2001 Guam 26 ¶ 15 n.2; *see also People v. Super. Ct. (Bruneman)*, 1998 Guam 24 ¶ 5 ("[C]ase law supports the issuance of a writ of mandamus in those situations where 'the trial court has acted in excess of its jurisdiction . . . .'") (quoting *People v. Super. Ct.*, 596 P.2d 691, 693 (Cal. 1979). We have stated that "[w]e will employ the writ in order to 'confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.'" *Quint*, 1997 Guam 7 ¶ 7 (quoting *Guam Publ'n, Inc. v. Super. Ct. (Bruneman)*, 1996 Guam 6 ¶ 10).

[41] The issue herein is the CSC's jurisdiction – or lack thereof – to reconsider its initial dismissal of Rojas' appeal, due to Rojas' failure to timely appeal in accordance with 4 GCA § 4406. The "[l]ack of jurisdiction 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. of Appeal*, 109 P.2d 942, 947 (Cal. 1941). Any subsequent action by the CSC – including its reconsideration of its initial dismissal – amounted to an act in excess of its jurisdiction. In such a situation, extraordinary writ relief may be sought, as a party may "employ a writ after the time for an appeal expired where the lower court acted in excess of its jurisdiction . . . . " *Mauro B. v. Super. Ct.*, 230 Cal. App. 3d 949, 954 (Ct. App. 1991); *see also Dikeman v. Snell*, 490 S.W.2d 183, 186 (Tex. 1973) (failure to pursue appeal does not bar application for writ of mandamus in appellate court). Because the CSC lacked authority to hear Rojas' Motion for Reconsideration, the CSC Judgment issued subsequent to the motion is void and of no effect. *See Varian Med. Sys. Inc. v. Delfino*, 106 P.3d 958, 969 (Cal. 2005) (stating that "any judgment or order rendered by a court lacking subject matter jurisdiction is 'void on its face.'") (ellipsis and citation omitted); *In re Marriage of Jackson*, 136 Cal. App. 4th 980, 989 (Ct. App. 2006) (holding that an order, which exceeded the trial court's jurisdiction was void and subject to collateral attack.); *see also 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."). *Cf. Pac. Rock v. Perez*, 2005 Guam 15 ¶ 30 ("The policy considerations supporting the finality of judgments, weighed against the doctrine of sovereign immunity – which we have held to be a [sic] unwaivable jurisdictional issue – compel us to agree with the Court that, where there exists a 'collision between the desirable principle that rights may be adequately vindicated through a single trial of an issue and the sovereign right of immunity from suit, . . . the doctrine of immunity should prevail.'") (citations omitted).

[42] The extraordinary relief for mandamus should have been granted and we hold that the trial court abused its discretion in denying DOA's request, and in implicitly finding that the CSC had jurisdiction to hear Rojas' Motion for Reconsideration. *See Underwood v. Guam Election Comm'n (Camacho)*, 2006 Guam 17 ¶ 12 ("The decision of whether to issue a writ of mandamus lies within

[42] The extraordinary relief for mandamus should have been granted and we hold that the trial court abused its discretion in denying DOA's request, and in implicitly finding that the CSC had jurisdiction to hear Rojas' Motion for Reconsideration. *See Underwood v. Guam Election Comm'n (Camacho)*, 2006 Guam 17 ¶ 12 ("The decision of whether to issue a writ of mandamus lies within the discretion of the court."). The CSC lacked jurisdiction to hear Rojas' appeal based on her failure to comply with the statutory deadline set forth in 4 GCA § 4406 and therefore, the court should have granted mandamus and ordered the CSC to vacate its judgment.

V.

[43] We hold that due to Rojas' failure to file her Notice of Appeal to the CSC within twenty (20) days, as set forth in 4 GCA § 4406, the CSC lacked jurisdiction to consider her Motion for Reconsideration. Using the three-prong test in *Blas*, 2000 Guam 12, the CSC improperly reconsidered its dismissal of Rojas' appeal and the CSC Judgment, issued pursuant to Rojas' motion, must be vacated. The trial court did not recognize the jurisdictional defect, and therefore, abused its discretion when it denied DOA's Petition for Writ of Mandamus. Accordingly, the trial court is **REVERSED,** and the case is **REMANDED** for entry of the writ of mandamus to vacate the CSC Decision and Judgment of March 18, 2003.

Robert J. Torres

ROBERT J. TORRES, JR.
Associate Justice

F. Philip Carbullido

F. PHILIP CARBULLIDO
Chief Justice