IN THE SUPREME COURT OF GUAM

GUAM WATERWORKS AUTHORITY,
Petitioner-Appellant,

v.

CIVIL SERVICE COMMISSION,
Respondent-Appellee,

and

DANIEL L. MESNGON,
Real Party in Interest-Appellee.

Supreme Court Case No.: CVA14-001
Superior Court Case No.: SP0002-13

OPINION

Cite as: 2014 Guam 35

Appeal from the Superior Court of Guam
Argued and submitted on August 8, 2014
Hagåtña, Guam

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

CARBULLIDO, J.:

[1] This appeal involves the issue of whether the trial court applied the correct standard of review in dismissing Petitioner-Appellant Guam Waterworks Authority's ("GWA") Petition for Judicial Review of the Respondent-Appellee Civil Service Commission's ("the CSC") final decision. GWA sought judicial review of the CSC's exercise of jurisdiction over the adverse action appeal filed by Real Party in Interest-Appellee Daniel L. Mesngon ("Mesngon"), who GWA claims is not a classified employee because he was terminated during his mandatory six-month probationary period. For the reasons set forth below, we reverse.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] On March 7, 2011, Mesngon was hired by GWA as a Safety Inspector II and was subsequently terminated on September 6, 2011. Mesngon then filed an adverse action appeal with the CSC, which GWA moved to dismiss on the basis that the CSC lacked jurisdiction. Specifically, GWA argued that Mesngon did not satisfy the mandatory six-month probationary period required under GWA's Certified Technical and Professional Personnel Rules and Regulations ("CTP Rules"), which is necessary to attain classified status. "It is undisputed that Mesngon would be characterized as a classified employee subject to civil service protection after a six-month probationary period." Record on Appeal ("RA"), tab 12 at 5 (Dec. & Order, Dec. 12, 2013). A hearing before the CSC was held on June 21, 2012, after which the CSC issued a decision in favor of Mesngon finding that he had completed his six-month probationary period and that his termination was void.

[3] GWA then filed a Petition for Judicial Review with the trial court, Superior Court Case No. SP0002-13. After a hearing, the trial court dismissed the Petition on the ground that the relief requested was outside the standard to which the court must adhere. The decision was entered onto the docket, and this appeal followed.

II. JURISDICTION

[4] This court has jurisdiction over this appeal pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw current through Pub. L. 113-180 (2014)), and 7 GCA §§ 3107(b) and 3108(a) (2005).

III. STANDARD OF REVIEW

[5] We examine whether the trial court properly determined that the CSC's decision was in accordance with the law and supported by substantial evidence. *Guam Mem'l Hosp. v. Civil Serv. Comm'n (Chaco)*, 2014 Guam 27 ¶ 15; *see also* 5 GCA § 92450 (2005); *Fagan v. Dell'Isola*, 2006 Guam 11 ¶ 13. "In so doing, we will review all conclusions of law *de novo*, and will hold unlawful and set aside any agency action, findings and conclusions found to be irrational, or otherwise not in accordance with law or unsupported by substantial evidence in a case." *Fagan*, 2006 Guam 11 ¶ 13 (citing *Kalama Servs., Inc. v. Dir., Office of Workers' Comp. Programs*, 354 F.3d 1085, 1090 (9th Cir. 2004)). "[S]ubstantial evidence is defined as 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Id.* ¶ 12 (quoting *Bondoc v. Worker's Comp. Comm'n*, 2000 Guam 6 ¶ 6). "Our inquiry in effect mirrors the review which should be conducted by the trial court." *Id.*

[6] As explained below, because the ultimate issue in this case is whether the CSC has jurisdiction, the issue "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. ANALYSIS

A. Whether the Trial Court Applied the Appropriate Standard of Review

[7] The trial court in this case applied the wrong standard of review. It applied the standard set forth in 7 GCA § 31108 (2005), which states: "The review upon this writ cannot be extended further than to determine whether the inferior tribunal, board, or officer has regularly pursued the authority of such tribunal, board, or officer." RA, tab 12, at 4 (Dec. & Order) (quoting 7 GCA § 31108). Based on this standard, the trial court concluded that:

> The type of review sought by GWA here -- a *de novo* appellate review, such as is appropriate for writs of mandamus per 5 GCA §§ 9240 and 9241 -- exceeds the authority afforded to this Court. Because GWA requests relief outside of the standard to which this Court must adhere, the petition will be dismissed.

Id. at 5.[1] As a result, the trial court refused to address the issue of whether the CSC had jurisdiction to entertain Mesngon's adverse action appeal.

[8] In a recent opinion, *Guam Memorial Hospital v. Civil Service Commission (Chaco)*, we held that the trial court, when reviewing a Petition for Judicial Review of a CSC final decision, is obligated to follow the standard of review set forth under section 9240 of the Administration Adjudication Law ("AAL"). 2014 Guam 27 ¶ 15. Section 9240 provides: "Judicial review may be had of any agency decision by any party affected adversely by it. If the agency decision is not in accordance with law or not supported by substantial evidence, the court shall order the agency to take action according to law or the evidence." 5 GCA § 9240 (2005). Questions of law are reviewed *de novo*. *Fagan*, 2006 Guam 11 ¶ 10 (citing *Nissan Motor Corp. in Guam v. Sea Star Grp. Inc.*, 2002 Guam 5 ¶ 10).

[1] Instead of addressing whether the trial court applied the correct standard of review, the parties focused debate on whether a question of law or fact is raised by the issue of the CSC's jurisdiction over Mesngon's adverse action appeal.

[9] Thus, if the trial court had properly applied the section 9240 standard of the AAL, it would have conducted a *de novo* review of the CSC's conclusions of law and would be required to affirm the CSC's findings of fact, and any conclusions resulting therefrom, if supported by substantial evidence. *See id.* ¶ 11. "This is because a reviewing body 'may not substitute its views for those of the [agency], but instead must accept the [agency's] findings unless they are contrary to law, irrational, or unsupported by substantial evidence.'" *Id.* (alterations in original) (quoting *Alcala v. Dir., Office of Workers Comp. Programs*, 141 F.3d 942, 944 (9th Cir. 1998)).

[10] Here, the issue of whether the CSC had jurisdiction over Mesngon's adverse action appeal is a question of law which the court should have reviewed *de novo*. *See Mesngon*, 2003 Guam 3 ¶ 8. Because the parties do not dispute Mesngon's March 7, 2011 hiring date and his September 6, 2011 termination date,[2] the trial court should have reviewed *de novo* whether the formula applied by the CSC in determining whether Mesngon was a classified employee was made "in accordance with the law." *See* 5 GCA § 9240. However, because the trial court applied a different and incorrect standard of review, it decided not to conduct a *de novo* review and dismissed the Petition. Therefore, the trial court erred by applying the incorrect standard of review. Our analysis, however, does not end here as we must next determine whether, based on the record on appeal, the CSC properly exercised jurisdiction over Mesngon's adverse action "in accordance with the law." *See id.*

B. Whether the CSC had Jurisdiction over Mesngon's Adverse Action Appeal

1. Applicable law

[11] In order to determine whether the CSC had jurisdiction over Mesngon's appeal, we must determine whether he was a classified employee at the time of his firing. In doing so, we must

[2] *See* Appellant's Br. at 7 (Mar. 17, 2014); Appellee's Br. at 3 (Apr. 16, 2014).

determine whether he satisfied the mandatory six-month probationary period under GWA's CTP Rules. *See* CTP Rule 4.A.3.12.2, Guam Pub. L. 28-159:4 (Jan. 4, 2007);[3] *see also* CTP Rule 6.1, P.L. 28-159:6.[4] GWA's CTP Rules governing the six-month probationary period, however, do not provide a formula that could be used to determine the final date of the six-month period.

[12] GWA argues that the formula provided in 1 GCA § 709 should be applied. Appellant's Br. at 8-9 (citing 1 GCA § 709; *Paulino v. Civil Serv. Comm'n*, SP0076-00 (Dec. & Order, Jan. 12, 2001)). Section 709 provides: "The time within which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday or holiday, and then it also is excluded." 1 GCA § 709 (2005). Mesngon, however, maintains that section 709 should not apply because the calculation for the six-month period should include the date of hire, as well as the termination date. *See* Appellee's Br. at 9-10.

[13] Since the GWA CTP Rules offer no computation formula for the six-month probationary period, the formula provided under section 709 should be applied. *See Guam Resorts, Inc. v. G.C. Corp.*, 2012 Guam 13 ¶ 15 ("As a rule of statutory construction, a statute should be construed in such a way that 'no clause, sentence, or word shall be superfluous, void, or insignificant.'" (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001))). The section 709 formula is identical to the time computation formula set forth in Guam Rules of Civil Procedure ("GRCP") Rule 6,[5] as well as in Guam Rules of Appellate Procedure ("GRAP") Rule 11(a).[6]

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[3] CTP Rule 4.A.3.12.2 defines "permanent appointment" as "an appointment granted to a classified employee in a permanent position, subject to satisfactory completion of a probationary period on an initial recruitment." CTP Rule 4.A.3.12.2.

[4] CTP Rule 6.1 provides in relevant part: "Certified, Technical, or Professional Employees in the classified service shall serve a probationary period of six (6) months. An extension of up to six (6) additional months may be granted." CTP Rule 6.1.

[5] GRCP 6 provides in relevant part:

> (a) Computation. *In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default from which the*

[14] Section 709 is derived from Rule 12 of the California Code of Civil Procedure. To illustrate how the section 709 formula is applied, we turn to the California Court of Appeals decision in *Wixted v. Fletcher*, 13 Cal. Rptr. 734 (Dist. Ct. App. 1961), which applied an identical computation formula. The court applied the Rule 12 computation to determine whether the plaintiff in that case had filed his personal injury complaint within the one-year statute of limitations period. *Id.* at 735. The court stated:

> In California we have a general time computation statute: "The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded." ([California] Code of Civil Procedure, § 12).

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designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the Superior Court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule and in Rule 77(c), "legal holiday" includes New Year's Day, Memorial Day, Independence Day, Liberation Day, Labor Day, Veterans' Day, Thanksgiving Day, Christmas Day, and any other holiday appointed as a holiday by the President or Congress of the United States, by the laws of Guam, or by the Governor of Guam.

Guam R. Civ. P. 6(a) (emphasis added).

[6] GRAP 11(a) provides in relevant part:

> (a) Computing Time. The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.
>
> (1) Period Stated in Days or a Longer Unit. When the period is stated in days or a longer unit of time:
>
> (A) exclude the day of the act, event, or default that begins the period;
>
> (B) exclude intermediate Saturdays, Sundays and legal holidays when the period is less than eleven (11) days, unless stated in calendar days; and
>
> (C) include the last day of the period unless it is a Saturday, Sunday, or legal holiday, in which case the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

Guam R. App. P. 11(a).

Id. (footnote omitted). The injury allegedly occurred on February 5, 1959, and the complaint was filed on February 5, 1960. *Id.* at 706. The court, after applying Rule 12, held that the complaint was filed within the statute of limitation period. *Id.*

[15] Like the court in *Wixted*, the court in *Hampton v. University of Maryland at Baltimore*, 674 A.2d 145 (Md. App. 1996), applied a computation rule similar to Guam's section 709. Maryland's version stated in relevant part:

> In computing any period of time prescribed or allowed by any applicable statute, the day of the act, event, or default, after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless: (1) It is a Sunday or a legal holiday, in which event the period runs until the end of the next day, which is neither a Sunday or a holiday[.]

Id. at 149 (quoting Maryland Code Art. 94, § 2).[7] The University of Maryland at Baltimore ("UMAB") hired appellant on September 21, 1993. *Id.* at 146. "At that time, appellant began a six-month probationary period." *Id.* "UMAB notified appellant, on March 21, 1994, that her initial probationary period was being extended for an additional six months." *Id.* "On June 20, 1994, appellant was notified that her employment was being terminated." *Id.* Appellant appealed UMAB's decision, contending "that her probation ended on Sunday, March 20, 1994,

[7] The *Hampton* court also examined the Maryland Supreme Court case of *Yingling v. Smith*, 269 A.2d 612 (1970), stating:

> In *Yingling*, "[t]he narrow legal question presented [to the Court of Appeals] . . . [was] whether or not a bill of complaint filed September 20, 1968, satisfies the statutory requirement of 'filing within six calendar months after' the appointment of an executor on March 19, 1968." 259 Md. at 261, 269 A.2d 612. Applying [Maryland Code] Art. 94, § 2, the Court excluded March 19, 1968, the day the executor was appointed, from the measuring of the prescribed period because the day of the event that triggers the statutory period is "not to be included." The Court held "that a calendar month is the period of time running from the beginning of a certain numbered day up to, *but not including*, the corresponding numbered day of the next month." *Id.* at 263, 269 A.2d 612. Using this formula, the Court held that the six-month limitations period ran from March 20, 1968 through September 19, 1968. *Id.*

Hampton, 674 A.2d at 149.

and, therefore, when she was terminated, on June 20, 1994, she was no longer a probationary employee and could only be terminated for cause." *Id.* at 149. The court held:

> Applying [Maryland Code] Art. 94, § 2 and *Yingling* to the case *sub judice*, we hold that, because appellant was hired by UMAB on September 21, 1993, her initial six-month probationary period commenced on the next full day, September 22, 1993, and ended, therefore, on March 21, 1994, which is the day her probation was extended. Under this statute, therefore, when UMAB extended appellant's probation on March 21, 1994, it did so properly.

Id. at 149-50.

[16] For the reasons set forth above, the section 709 computation formula is the formula that should have been used by the trial court in reviewing whether the CSC correctly determined that Mesngon had completed his six-month probationary period. The section 709 computation formula should be computed in the same manner as applied in *Wixted* and *Hampton*.

2. Application of the section 709 computation formula

[17] Now that we have determined that the section 709 computation formula applies when computing the mandatory six-month probationary period, we must resolve whether the CSC's decision was in accordance with the formula. *See Fagan*, 2006 Guam 11 ¶ 42.

[18] In conducting a *de novo* review of the trial court's review of the legal conclusions of the CSC's decision, we must determine whether the trial court's decision is in accordance with the law. *See id.* ¶ 43. Because the trial court did not examine whether the CSC had applied the proper computation formula, we are left with having to review the record on appeal.

[19] Our review of the record reveals that, had the trial court reviewed *de novo* the CSC's decision, the trial court would have held that the CSC decision was not in accordance with the law. There is nothing in the record to show that the CSC applied the section 709 computation formula. The CSC's decision does not offer much of an explanation as to the type of formula it

applied. *See* RA, tab 9, Ex. A at 10 (CSC Dec. & J., Dec. 14, 2012) ("Based upon the Employee starting employment on March 7, 2011 and termination being on September 6, 2011 effective at the 'Close of Business 06 September 2011', the Employee had completed his probationary period.").

[20] Applying the section 709 formula to the undisputed facts reveals that Mesngon, who was terminated on September 6, 2011, was terminated during his six-month probationary period. Specifically, because Mesngon was hired on March 7, 2011, the six-month probationary period started on the next day, March 8, 2011, and would have ended on September 7, 2011, six months later. Mesngon therefore was not a classified employee under GWA's CTP Rules at the time of his September 6 termination and was not entitled to civil service protection. Thus, the trial court should have found that the CSC did not have jurisdiction.

[21] Therefore, since neither the CSC nor the trial court applied the law today as we have clarified it, we hold that the decision was not made "in accordance with the law."

V. CONCLUSION

[22] For the foregoing reasons, we hold that the trial court erred in dismissing GWA's Petition because it failed to review *de novo* whether the CSC had applied the proper computation formula. Further, we hold that the section 709 computation formula is the applicable formula in this case and, applying that formula, we conclude that the CSC did not have jurisdiction over

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Mesngon's adverse action appeal because he was not a classified employee at the time of his termination. Accordingly, we **REVERSE** the trial court's decision and **REMAND** this case to the trial court with instructions to vacate its decision and remand the matter to the CSC for a hearing not inconsistent with this opinion.

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

F. PHILIP CARBULLIDO
Associate Justice

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

KATHERINE A. MARAMAN
Associate Justice

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

ROBERT J. TORRES
Chief Justice