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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

PORT AUTHORITY OF GUAM,
Petitioner-Appellee,

v.

CIVIL SERVICE COMMISSION,
Respondent,

KEVIN J.T. SUSUICO,
Real Party in Interest-Appellant.

Supreme Court Case No.: CVA14-021
Superior Court Case No.: SP0121-13

OPINION

Cite as: 2015 Guam 14

Appeal from the Superior Court of Guam
Argued and submitted on October 27, 2014
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Presiding Justice; KATHERINE A. MARAMAN, Associate Justice; JOHN A. MANGLONA, Justice *Pro Tempore*.¹

MARAMAN, J.:

[1] Petitioner-Appellee Port Authority of Guam (“Port Authority”) cancelled² the employment of Real Party in Interest-Appellant Kevin J.T. Susuico pursuant to a decision by the Civil Service Commission (“the CSC”) that Susuico’s hiring was null and void. Susuico appealed the cancellation of his employment to the CSC, which voided the cancellation on a procedural ground. Port Authority sought judicial review of the CSC’s decision. The trial court held that the CSC lacked jurisdiction to consider Susuico’s appeal, finding that Susuico was not hired through the competitive hiring process and, thus, was not a classified employee. Susuico appeals from that judgment. We reverse the judgment of the trial court and hold that Susuico was a permanent, classified employee, that Susuico was subjected to a final adverse action, and that the CSC had jurisdiction over Susuico’s appeal.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] On September 8, 2011, Susuico applied for an Accountant II position with Port Authority. On October 14, 2011, Port Authority offered the Accountant II position to Susuico, and Susuico began his employment with Port Authority on October 24, 2011. Susuico was selected from a certification list of eligibles. On April 27, 2012, Susuico received a satisfactory rating on his probationary employee performance evaluation report and was given a permanent

¹ Pursuant to 7 GCA § 6106, Chief Justice Robert J. Torres recused himself from this matter. On June 30, 2014, pursuant to 7 GCA §§ 6108(a) and 3109(f), Presiding Justice F. Philip Carbullido appointed the Honorable John A. Manglona as Justice *Pro Tempore* in this matter.

² Cancelling resulted in the termination of Susuico’s employment.

appointment as a classified employee for the Accountant II position. On December 18, 2012, Susuico received a satisfactory rating on his annual employee performance evaluation report.

[3] On May 10, 2012, Port Authority requested the CSC to conduct a Post-Audit investigation of the recruitment actions regarding certain employees, including Susuico. At a meeting on October 16, 2012, the CSC reported that Susuico did not meet the minimum requirements for the Accountant II position because he did not submit a college transcript demonstrating that he possessed the equivalent number of accounting credits comparable to an accounting degree and the required 24 semester credit hours of accounting/auditing subjects required of the position announcement. At that same meeting, the CSC ordered Port Authority to report in 90 days how it intended to resolve the issues regarding Susuico's hiring.

[4] At a follow-up meeting on January 15, 2013, Port Authority acknowledged that it would defer to the CSC regarding the issues raised at the October 16, 2012 meeting. The CSC reaffirmed its determination that Susuico's initial appointment as an Accountant II was issued in violation of Port Authority's personnel rules, and, thus, Susuico's appointment was declared null and void.

[5] On January 17, 2013, Port Authority cancelled the personnel action appointing Susuico. Port Authority issued a Notification of Personnel Action to Susuico stating that Susuico's employment was cancelled effective January 23, 2013, pursuant to the CSC's January 15, 2013 ruling.

[6] On February 11, 2013, Susuico filed an adverse action appeal to the CSC. Susuico moved to void his cancellation, arguing that the cancellation was in violation of the "sixty-day

rule” pursuant to 4 GCA § 4406.³ Record on Appeal (“RA”), tab 15 at 28-33 (Certification of R., Dec. 20, 2013). In opposition, Port Authority argued that the CSC lacked jurisdiction to hear Susuico’s appeal.

[7] On July 30, 2013, the CSC ordered that it had jurisdiction to hear Susuico’s appeal and that the cancellation violated the 60-day rule. Accordingly, the CSC ordered Port Authority to reinstate Susuico to the Accountant II position.

[8] On August 29, 2013, Port Authority filed a Petition for Judicial Review appealing the CSC’s decision to the Superior Court of Guam. On May 16, 2014, the trial court vacated the CSC’s decision and held that the CSC did not have jurisdiction to hear Susuico’s adverse action appeal under 4 GCA § 4403(b).⁴ The trial court found that the CSC’s initial determination that Susuico’s hiring did not conform to Port Authority’s personnel rules and the CSC’s voiding of Susuico’s hiring “necessitated a finding by the CSC that Susuico was not hired through the competitive hiring procedures of the personnel rules of the Port Authority.” RA, tab 23 at 7 (Dec. & Order, May 16, 2014). The trial court also pointed out that under 4 GCA § 4403(b), the:

³ Title 4 GCA § 4406 provides:

In no event may an employee in the classified service be given notice and statement of the charges required by this Section after the sixtieth (60th) 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 upon such action is void.

4 GCA § 4406 (as amended by Guam Pub. L. 30-112:3 (Mar. 12, 2010)).

⁴ Title 4 GCA § 4403(b) provides:

[The CSC] 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; however, it may not hear any appeal of an action taken to suspend, demote or dismiss an employee of the government of Guam who has not been hired through the competitive hiring procedures of the personnel rules of the government of Guam, as such personnel rules required at the time of the hiring of the employee, nor any unclassified employee[.]

4 GCA § 4403(b) (as repealed and reenacted by Guam Pub. L. 30-112:2 (Mar. 12, 2010)).

[CSC] may not hear any appeal of an action taken to suspend, demote or dismiss an employee of the government of Guam who has not been hired through the competitive hiring procedures of the personnel rules of the government of Guam, as such personnel rules required at the time of the hiring of the employee

Id. at 6. Accordingly, the trial court held that the CSC exceeded its statutory authority by hearing Susuico's adverse action appeal when it lacked jurisdiction to do so.

[9] On June 12, 2014, Susuico timely filed this instant appeal.

II. JURISDICTION

[10] This court has jurisdiction over an appeal from a final judgment of the Superior Court pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 113-296 (2014)) and 7 GCA §§ 3107 and 3108(a) (2005).

III. STANDARD OF REVIEW

[11] "Whether a lower tribunal has jurisdiction is a question of law reviewed *de novo*." *Guam Fed'n of Teachers v. Gov't of Guam*, 2013 Guam 14 ¶ 24. The interpretation of a statute is a question of law reviewed *de novo*. See *Apana v. Rosario*, 2000 Guam 7 ¶ 9. Therefore, where jurisdiction depends on statute, review of the lower tribunal's interpretation of that statute is reviewed *de novo*. See *Mesngon v. Gov't of Guam*, 2003 Guam 3 ¶ 8 ("The issue of whether the CSC has jurisdiction is a matter of statutory interpretation, and, therefore, our review is *de novo*.").

IV. ANALYSIS

[12] The issue before this court is whether the CSC had jurisdiction to entertain Susuico's appeal. In addressing this issue, this court must determine whether the CSC had jurisdiction pursuant to either 4 GCA § 4403(b) or 4 GCA § 4403(d). "[A]n adverse action is one in which an agency demotes, suspends or dismisses a classified employee, while a personnel action lies

outside of those parameters.” *Guam Mem’l Hosp. Auth. v. Civil Serv. Comm’n*, 2014 Guam 27 ¶ 32; see also *Guam Fed’n of Teachers*, 2013 Guam 14 ¶¶ 52-56; *Santos v. Gov’t of Guam*, 2012 Guam 9 ¶¶ 7-10. This court has held:

A plain reading of 4 GCA § 4403 reflects that the CSC has the power, duty and responsibility to hear appeals from adverse actions taken to suspend, demote or dismiss an employee from the classified service pursuant to section 4403(b), while section 4403(d) gives the CSC the discretion to investigate and set aside other personnel actions.

Guam Mem’l Hosp., 2014 Guam 27 ¶ 32. In *Guam Memorial Hospital*, this court held that the adverse action appeal of a classified employee who was dismissed was properly governed by 4 GCA § 4403(b), not section 4403(d). See *id.* Thus, if Susuico were appealing a decision by the Port Authority to cancel his employment, the applicable subsection would be section 4403(b) and that subsection could grant the CSC jurisdiction over Susuico’s appeal, provided that Susuico met all the requirements for an adverse action appeal. On the other hand, if the appeal were regarding an action taken by the CSC pursuant to its powers to investigate and set aside other personnel actions, the applicable subsection would be section 4403(d).

A. Applicability of 4 GCA § 4403(d)

[13] The issue of whether 4 GCA § 4403(d) grants the CSC jurisdiction over Susuico’s appeal is a matter of statutory interpretation.⁵ “In cases involving statutory construction, the plain language of a statute must be the starting point.” *Aguon v. Gutierrez*, 2002 Guam 14 ¶ 6 (quoting *Pangelinan v. Gutierrez*, 2000 Guam 11 ¶ 23) (citing *Am. Tobacco Co. v. Patterson*, 456 U.S. 63, 68 (1982)). In looking at the statute’s language, the court’s task is to determine whether the statutory language is “plain and unambiguous.” *Id.* (quoting *Robinson v. Shell Oil*

⁵ In *Guam Federation of Teachers*, this court interpreted a prior version of 4 GCA § 4403(d). 2013 Guam 14 ¶¶ 63-72. However, section 4403(d) was repealed and reenacted by Guam Public Law 29-002:VI:27 (May 18, 2007).

Co., 519 U.S. 337, 340 (1997)). “The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which the language is used, and the broader context of the statute as a whole.” *Id.* (quoting *Robinson*, 519 U.S. at 341). The Guam statute provides:

The Commission may investigate and set aside and declare null and void any personnel action of an employee in the classified service if the Commission finds after conducting the necessary investigation that the personnel action was taken in violation of personnel laws or rules; provided, however, that this Section shall not be deemed to permit appeals by employees from adverse actions not covered in Subsection (b) above. The agency head shall cooperate and assist with the Commission's investigation. Prior to declaring any personnel action null and void, the Commission shall provide written notice of the alleged violation to the agency head. The agency head shall respond within ten (10) calendar days after receipt of the notice to the Commission's proposed action. All actions taken by the Commission pursuant to this Section shall be taken within one hundred eighty (180) calendar days after the personnel action or complaint is filed with the Commission. The Civil Service Commission shall submit a copy of its final decision to *I Liheslatura* by the next working day. The Commission shall adopt rules and regulations to effectuate this Section, including the requirement of a written complaint to initiate any investigation. The Commission's decision shall be final but subject to judicial review[.]

4 GCA § 4403(d) (as repealed and reenacted by Guam Pub. L. 30-112:2 (Mar. 12, 2010)). The plain language of the statute gives the CSC discretion to investigate and set aside personnel actions that were taken in violation of personnel laws or rules. *See Guam Mem'l Hosp. Auth.*, 2014 Guam 27 ¶ 32. Under Guam's statutory scheme, a personnel action includes the appointment of an employee. *See* 4 GCA § 4101(a) (as amended by Guam Pub. L. 29-019:VI:67 (Sept. 29, 2007)) (“All personnel actions, including appointments and promotions, shall be based, insofar as practicable, on competitive practical tests and evaluations.”). Moreover, the statute prescribes that CSC decisions are final, but subject to judicial review.

[14] More than 180 days after it received the action from Port Authority, the CSC, purportedly acting within its investigatory powers under section 4403(d), declared Susuico's employment

null and void after finding that Susuico was unqualified for his position. RA, tab 17 at 124-25 (Certification of Transcription, Dec. 20, 2013). The CSC gave Port Authority 90 days to respond to its decision. *Id.* at 219, 226. In January 2013, apparently after no response from Port Authority, the CSC reaffirmed its October 2012 decision. *Id.* at 124-25. Port Authority eventually adopted the CSC's decision and issued a notice of personnel action to Susuico, cancelling his employment as of January 23, 2013. *Id.* at 56, 63.

[15] In the instant case, Susuico appeals Port Authority's action of terminating his employment, rather than the CSC's action of nullifying and voiding his initial hiring.⁶ Thus, since Susuico is not appealing a section 4403(d) decision, section 4403(d) is inapplicable in determining whether the CSC has jurisdiction over Susuico's appeal. Accordingly, section 4403(d) did not give the CSC jurisdiction to hear Susuico's appeal.

B. Applicability of 4 GCA § 4403(b)

[16] Title 4 GCA § 4403(b) provides that the CSC "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[.]" *See Blas v. Guam Customs & Quarantine Agency*, 2000 Guam 12 ¶ 13 (quoting 4 GCA § 4403(b) (1996)). In *Blas*, this court held 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. *Id.* ¶ 17. Under Civil Service Commission Rules of Procedure for Adverse Action Appeals ("CSC Rules") Rule 5, a person

⁶ Susuico did seek revocation of the CSC's nullification before the CSC. RA, tab 15 at 52-55 (Certification of R.). The CSC found its jurisdiction to act under 4 GCA § 4403(b) and did not address Susuico's section 4403(d) claim. RA, tab 15 at 2-6 (Certification of R.). Susuico did not raise his section 4403(d) claim in either the Superior Court or this court.

may appeal an adverse action to the CSC if the person (1) is a permanent, classified employee; (2) has successfully completed his probationary period; (3) is subjected to a Final Adverse Action; and (4) is entitled under his department's or agency's Personnel Rules to appeal to the CSC. *See* 4 GCA §§ 4403(b), 4406. Each element is considered in turn.

1. Permanent, Classified Employee

[17] In order for the CSC to have jurisdiction under section 4403(b), the first element requires that a person be a permanent, classified employee.

[18] The Superior Court held that Susuico was not a classified employee because Susuico was not hired through the competitive hiring procedures of the personnel rules of Port Authority. RA, tab 23, at 5-7 (Dec. & Order). The Superior Court reasoned that since the CSC found that Susuico's hiring was null and void for failure to conform to the Port Authority's personnel rules, Susuico must not have been hired through the competitive hiring procedures, and further, Susuico was never a classified employee. *Id.* at 7. The Superior Court stated that an individual who has been hired in a defective manner cannot be said to have been hired through the competitive hiring procedures of the personnel rules of the Port Authority, especially in light of the fact that the hiring itself was voided. *Id.* We disagree.

[19] Title 4 GCA § 4403(b) provides:

[The CSC] 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; however, it may not hear any appeal of an action taken to suspend, demote or dismiss an employee of the government of Guam who has not been hired through the competitive hiring procedures of the personnel rules of the government of Guam, as such personnel rules required at the time of the hiring of the employee, nor any unclassified employee[.]

4 GCA § 4403(b). Under 4 GCA § 4102, government employees (except for academic personnel of the Guam Community College and the University of Guam) are either classified or

unclassified. 4 GCA § 4102 (2005). This court has held that “[u]nder Guam’s merit system, if one is hired by competing with other eligible persons for a position, that person has been hired as a classified employee, (unless hired in the excepted service as specified in 4 GCA § 4102).”⁷ *Carlson v. Perez*, 2007 Guam 6 ¶ 32; *see also Univ. of Guam v. Guam Civil Serv. Comm’n*, 2002 Guam 4 ¶ 8 (“Employees hired under the merit system are known generally as ‘classified employees.’”). Additionally, “[a]n 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.” *Blas*, 2000 Guam 12 ¶ 22; *see also* Port Authority R. & Regs. 4.901 (“A permanent appointment is granted to an employee after successfully completing a probationary period in the permanent position.”).

[20] At the time of Susuico’s initial hiring, his employment was administered through the competitive hiring process, and subsequently, he purportedly became a classified employee. The Accountant II job position was formally announced. RA, tab 15 at 92 (Certification of R.). Susuico submitted an application for that position. *Id.* at 65-82. He was selected from a

⁷ Under 4 GCA § 4102(a), the following positions are unclassified:

(1) elective officials; (2) judges; (3) Superior Court marshal, chief clerk, chief probation officer and court administrator of the Superior Court; (4) heads of agencies and instrumentalities and not more than one (1) secretary for each such officer; (5) the first assistant, by whatever title denominated, to the heads of agencies and instrumentalities stated in paragraph (4) of this Subsection; (6) persons employed on a temporary basis; (7) members of boards and commission; (8) executive director of the Commissioner’s Council; (9) all offices and employment in the Executive Branch whose appointment are required to be confirmed by the Guam Legislature; (10) all offices and employment made, by law, to be at the pleasure of any board, commission or officer; (11) all legislative employees; (12) members of the Guam Gaming Commission; (13) physicians and health care administrators employed at the Guam Memorial Hospital Authority; (14) [w]ith the exception of civilian non-uniformed positions, all positions in the Department of Military Affairs, including the Executive Secretary and Executive Services Coordinator[;] (15) employees of the office of the Governor and Lieutenant Governor including off-island offices and Government House, as authorized in the applicable appropriation law[;] (16) Property Management Officer at the Department of Corrections[;] (17) persons employed on a seasonal basis.

4 GCA § 4102(a). Section 4102(b) provides that all other positions in the Government of Guam are classified. 4 GCA § 4102(b).

certification of eligibles after being rated and ranked. *Id.* at 64, 92. Susuico was formally offered the Accountant II position and was hired. *Id.* at 64, 93. Moreover, he completed his probationary period and became a permanent, classified employee by receiving a satisfactory rating on his probationary employee performance evaluation report. *Id.* at 83-87. Thus, regardless of the CSC's action of nulling and voiding his employment, Susuico was a permanent, classified employee.

2. Successful Completion of Probationary Period

[21] The second element requires that an appellant successfully complete his or her probationary period of employment. As discussed in part IV.B.1 above, Susuico successfully completed his probationary period by receiving a satisfactory rating on his probationary employee performance evaluation report and became a permanent employee. *Id.* at 83-87. Moreover, Susuico received a satisfactory rating on his annual employee performance evaluation report. *Id.* at 88-91.

3. Subjected to Final Adverse Action

[22] The third element requires that an appellant be subjected to a Final Adverse Action. Guam's statute regarding the CSC's duties provides that the CSC shall hear appeals from the adverse actions taken to suspend, demote, or dismiss an employee. 4 GCA § 4403(b); *see also Santos*, 2012 Guam 9 ¶ 8. Although the statute does not define suspension, demotion, or dismissal, the Port Authority Personnel Rules and Regulations ("Port Authority Rules") define these types of adverse actions:

11.302 Definition

A. Suspension: The temporary removal of an employee from his position with loss of pay as a disciplinary measure.

B. Demotion: The involuntary reduction in status of an employee for disciplinary reasons from a position which he occupies in a specific class, to a position in

another class, where the maximum rate if [sic] pay is less than the maximum rate of pay for the class which he had held, or a reduction to a lower salary step in the same class.

C. Dismissal: The termination of an employee for authorized cause for adverse action.

Port Authority R. & Regs. 11.302. Susuico was neither suspended nor demoted. Thus, the analysis turns to whether Susuico's employment was terminated.

[23] Title 4 GCA § 4202(a) defines "termination of employment" as the "ending of an employee's status as an employee with the government when the act is initiated by the [g]overnment." 4 GCA § 4202(a) (2005). Moreover, the Port Authority Rules provide that "[a]n employee must be given final notice and statement of the charges . . . no later than sixty days after management knew, or should have known the facts or events which form the alleged basis for the adverse action." Port Authority R. & Regs. 11.301A.

[24] In the instant case, pursuant to the CSC's decision to null and void Susuico's hiring, Port Authority issued a Notification of Personnel Action to Susuico stating that Susuico's hiring was "cancel[led] in its entirety." RA, tab 15 at 63 (Certification of R.). Although Port Authority never formally issued a "Final Notice of Adverse Action," the notification of personnel action cancelling Susuico's hiring was tantamount to a final adverse action due to its effect of terminating Susuico's employment. Thus, Susuico was subjected to a final adverse action.

4. Entitled Under Department's Personnel Rules to Appeal to the CSC

[25] The fourth element requires that a person be entitled under his department's personnel rules to appeal to the CSC. The Port Authority Rules provide that the hearing procedures for adverse action appeals adopted by the CSC shall be applicable for all adverse action appeals proceedings. Port Authority R. & Regs. 11.312. Thus, employees of Port Authority may appeal

adverse actions to the CSC. *See* 4 GCA § 4406 (establishing rules for adverse action procedures and appeals).

[26] Thus, all elements for adverse action appeals have been satisfied. Accordingly, we find the trial court erred in finding that the CSC lacked jurisdiction over Susuico's adverse action appeal. Susuico's remaining arguments were not considered by the trial court, and thus, those issues are not properly before this court.

V. CONCLUSION

[27] We hold that Susuico was a permanent, classified employee at the time of his termination, that Susuico was subjected to a final adverse action, and that the CSC had jurisdiction to hear the appeal of Susuico's termination.

[28] For the foregoing reasons, the trial court's judgment is **REVERSED**, and the case is **REMANDED** for proceedings not inconsistent with this opinion.

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

KATHERINE A. MARAMAN
Associate Justice

Original Signed: **John A. Manglona**
By

JOHN A. MANGLONA
Justice *Pro Tempore*

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

F. PHILIP CARBULLIDO
Associate Justice

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

APR 27 2015

By: **Charlene T. Santos**
Deputy Clerk
Supreme Court of Guam