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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

JEFFREY LEON GUERRERO SANTOS,
Petitioner-Appellant,

v.

GOVERNMENT OF GUAM, CIVIL SERVICE COMMISSION,
Respondent-Appellee.

GUAM POLICE DEPARTMENT,
Real Party in Interest-Appellee.

Supreme Court Case No.: CVA11-018
Superior Court Case No.: SP0077-11

OPINION

Cite as: 2012 Guam 9

Appeal from the Superior Court of Guam
Argued and submitted on May 16, 2012
Dededo, Guam

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20122065

ORIGINAL

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

MARAMAN, J.:

[1] Petitioner-Appellant Jeffrey Leon Guerrero Santos appeals from the Superior Court's dismissal of his petition to review and reverse the administrative decision of Respondent-Appellee Civil Service Commission that it lacked subject matter jurisdiction over Santos' adverse action appeal. We affirm the Superior Court's dismissal of Santos' petition.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] Petitioner-Appellant Santos is a police officer who was reemployed into his classified government position in 2009. In November 2010, Real Party In Interest-Appellee Guam Police Department ("GPD") reassigned Santos to civilian duties because he had not completed psychological testing or a polygraph exam as part of the minimum qualifications of a police officer required by 10 GCA § 77114. In December 2010, Santos filed an appeal before Respondent-Appellee Civil Service Commission ("CSC") to reverse the reassignment as an adverse action imposed without notice. Santos thereafter successfully completed the testing and examination and was reassigned back to police officer duties.

[3] The CSC unanimously dismissed his appeal for lack of subject matter jurisdiction, holding that no adverse action was taken. Santos petitioned the Superior Court to review and reverse the CSC decision arguing that he suffered from an adverse action and the CSC decision violated Guam law. GPD filed a motion to dismiss the petition on the grounds that the Superior Court lacked subject matter jurisdiction and the appeal was moot. The CSC joined GPD's motion to dismiss. The Superior Court did not dismiss Santos' petition on the basis that the CSC lacked jurisdiction, but on the basis that his claim was moot. Santos timely appealed.

II. JURISDICTION

[4] This court has jurisdiction over an appeal from a final judgment of the Superior Court of Guam pursuant to 48 U.S.C.A. § 1424–1(a)(2) (Westlaw through Pub. L. 112–139 (2012)), 7 GCA §§ 3107(b) and 3108(a) (2005).

III. STANDARD OF REVIEW

[5] The jurisdiction of the Civil Service Commission is an issue of statutory interpretation reviewed by this court *de novo*. *Mesngon v. Gov't of Guam*, 2003 Guam 3 ¶ 8.

IV. ANALYSIS

A. The CSC Lacked Subject Matter Jurisdiction over Santos' Petition

[6] The CSC dismissed Santos' appeal for lack of subject matter jurisdiction, holding that no adverse action was taken when he was temporarily assigned to administrative and civilian duties. Record on Appeal ("RA"), tab 33 at 1-2 (Dec. & Order, Sept. 2, 2011). Santos petitioned the Superior Court to review and reverse the CSC decision dismissing his appeal for lack of jurisdiction. *Id.* at 2. GPD moved to dismiss Santos' petition arguing that the Superior Court lacked jurisdiction because there was no adverse action taken and the appeal was moot because Santos was reassigned to police officer duties. *Id.* The Superior Court did not grant GPD's motion on the grounds that the CSC lacked jurisdiction but held the appeal was moot because "the alleged adverse action has been reversed by GPD and neither the CSC nor the Superior Court can redress the alleged adverse action and grant Santos effectual relief." *Id.* at 3. On appeal, Santos argues that he may receive effective relief from the Superior Court because he suffered an adverse action which should have been reviewed by the CSC. *See* Appellant's Br. at 12-15 (Jan. 6, 2012). In response, the Government maintains that Officer Santos did not suffer

adverse action under 4 GCA § 4406. Appellee's Br. at 6 (Feb. 7, 2012).¹ Additionally, the Government argues that the Superior Court could have dismissed the petition for lack of standing. *Id.* at 22.

1. Santos Did Not Suffer Adverse Action Within the Meaning of 4 GCA § 4403

[7] Santos argues that the CSC is obligated to ensure that the removal of an employee from his position was justified and that proper procedure was followed, relying on our holding in *Blas v. Guam Customs & Quarantine Agency*. Appellant's Br. at 14-15; *see also Blas v. Guam Customs & Quarantine Agency*, 2000 Guam 12 ¶ 17 (holding that a member of the classified service subject to suspension, demotion, or dismissal is entitled to appeal to CSC). Santos claims that it is difficult to determine whether he was suspended, demoted, or temporarily dismissed because "the Management of GPD has left many questions unanswered." Appellant's Br. at 14. In response, the Government argues that Santos did not allege facts to suggest that he suffered from one of the three adverse personnel actions and therefore "the action taken by GPD to temporarily reassign Santos did not constitute an adverse action." Appellee's Br. at 11-12.

[8] Guam's statute concerning the CSC's duties 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." 4 GCA § 4403(b) (2005). Although the statute does not define suspension, demotion, or dismissal, the Department of Administration ("DOA") Personnel Rules and Regulations define these types of adverse action:

¹ GPD filed an opposition brief, and the CSC joined in the brief. GPD and CSC will be collectively referred to as "the Government."

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 of 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 any authorized cause of adverse action.

Dep't of Admin. R. & Regs. Rule 11.302 (1996). Rule 5 of the CSC Rules of Procedure for Adverse Action Appeals establishes an employee's right to appeal an adverse action if he "A) Is a permanent, classified Employee, and; B) Has successfully completed his . . . probationary period, and; C) Is subjected to a Final Adverse Action, and; D) Is entitled under his department's or agency's Personnel Rules to appeal to the CSC." CSC AA R. 5 (2010). Thus, the question turns to whether Santos was suspended, demoted, or dismissed and thus the subject of a Final Adverse Action.

[9] Santos claims the matter warrants CSC's review "[o]nce an employee has been removed from his position" and further claims that "there is a duty to determine if the removal of an Employee was free of personal or political consideration." Appellant's Br. at 15; *id.* (citing *Hauser v. Dep't of Law*, 97 F.3d 1152 (9th Cir. 1996)). The Government argues that a plain reading of *Blas* does not evince Santos' position that "an employee . . . subjected to any type of employment-related action not to his liking may appeal the matter as an adverse action." Appellee's Br. at 15. We analyzed 4 GCA § 4403 in *Blas*, noting that "[t]he CSC's duty is to ensure that any of the three specific personnel actions against a member of the classified service was justified and in accordance with the personnel laws and rules." *Blas*, 2000 Guam 12 ¶ 16.

More specifically, any employee who suffered from suspension, demotion, or dismissal is entitled to review by the CSC. *See id.*

[10] The legislature did not provide for a procedure for all types of reassignment; it only provided an appeal for an adverse action. Therefore, Santos' argument that *any* reassignment warrants review by the CSC fails. Title 4 GCA § 4403 explicitly lays out the types of adverse actions that are appealable, and reassignment is not one of them. Under Rule 11.302 of the DOA Personnel Rules and Regulations, reassignment is appealable if it is accompanied by "loss of pay as a disciplinary measure," or what is defined as "suspension." Dep't of Admin. R. & Regs. Rule 11.302(A). In its Decision and Judgment, the CSC found that Officer Santos "admittedly did not suffer a loss of pay as a result of Management's reassignment. Moreover, action was not taken against the employee for disciplinary reasons." RA, tab 3 ex. E at 2 (Pet. Review of CSC's Admin. Dec. & Order, Apr. 27, 2011). Santos did not suffer either a suspension or a demotion. No disciplinary action was taken against him. *See* Dep't of Admin. R. & Regs. Rule 11.302(B). He did not suffer from a loss of pay. Santos was also not dismissed, as he was not terminated from his position. *Id.* Thus, Santos did not suffer from an adverse action within the meaning of 4 GCA § 4403.

2. Issuance of Final Adverse Action Necessary

[11] Santos wants the opportunity to conduct discovery to "provide evidence that would show conformity with an adverse action." RA, tab 3 at 5 (Pet. Review of CSC's Admin. Dec. & Order); *see also* Appellant's Br. at 15-16. The Government argues that Santos did not allege facts to suggest that he suffered from adverse action and the trial court did not have jurisdiction over the matter. *See* Appellee's Br. at 11-12. Under Rule 5.3.1 of the CSC Rules of Procedure for Adverse Action Appeals, "[t]he Notice of Appeal shall be a brief, plain statement, either

typed or hand-written, stating why the Employee believes the adverse action should not have been taken against him.” CSC AA R. 5.3.1. The appeals procedure is premised on a final adverse action. The record shows that Santos did not in fact suffer from adverse action.

[12] The DOA Personnel Rules and Regulations and the CSC Rules of Procedure do not provide for a procedure to allege that a demotion, suspension, or dismissal occurred in the absence of an issuance of a Final Adverse Action. Even if Santos could somehow prove he suffered a demotion, suspension, or dismissal, the CSC does not have jurisdiction over the matter because Santos was not issued a Notice of Proposed or Final Adverse Action, as required under Rule 5 of the CSC Rules of Procedure for Adverse Action Appeals. *See* RA, tab 3, ex. E at 2 (Pet. Review of CSC’s Admin. Dec. & Order); CSC AA R. 5. Santos argues that *Blas* stands for the proposition that the CSC had jurisdiction to hear a case where there had been no Final Adverse Action issued. *See* Appellant’s Br. at 15. However, the issue in *Blas* was whether the CSC had jurisdiction over an adverse action when claimed by one who was not a permanent classified employee. *See Blas*, 2000 Guam 12 ¶ 5. Moreover, there was no dispute in *Blas* whether one of the three types of adverse action had occurred. *See id.* ¶ 16. Additionally, the CSC had reviewed the action “by way of an investigative hearing pursuant to its authority to administer the merit system and investigate personnel actions.” *Id.* ¶ 5. This was not the case here; no investigative hearing was conducted and no Final Adverse Action issued. Under CSC Rule 5, the CSC only has jurisdiction when a Final Adverse Action has been issued. CSC AA R. 5. Therefore, the CSC lacked jurisdiction to hear Santos’ appeal because he did not suffer from one of the three specific types of adverse action appealable under the Personnel Rules and he was

not issued a Final Adverse Action, as required by the CSC Rules of Procedure for Adverse Action Appeals.²

[13] The Superior Court dismissed Santos’ petition because the case was moot. RA, tab 33 at 3-4 (Dec. & Order, Sept. 2, 2011). We affirm the Superior Court’s dismissal on the grounds that the CSC lacked subject matter jurisdiction to hear Santos’ appeal.³ Thus, the Superior Court properly dismissed Santos’ petition.

V. CONCLUSION

[14] We **AFFIRM** the Superior Court’s dismissal of Santos’ petition. The CSC lacked subject matter jurisdiction over the action because there was no reviewable adverse action.

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

ROBERT J. TORRES
Associate Justice

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

KATHERINE A. MARAMAN
Associate Justice

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

F. PHILIP CARBULLIDO
Chief Justice

² Although we determine that Santos cannot appeal his temporary reassignment as an adverse action, he was not precluded from filing a grievance under the DOA Administrative Rules and Regulations Rule 12.505(B)(1). See Dep’t. of Admin. R. & Regs. Rule 12.505(B)(1). Thus, he had access to due process and review of GPD’s action.

³ “An appellate court may affirm the judgment of a lower court on any ground supported by the record” *People v. San Nicolas*, 2001 Guam 4 ¶ 29 (internal citation omitted).