



Filed

Supreme Court of Guam, Clerk of Court

IN THE SUPREME COURT OF GUAM

GUAM DEPARTMENT OF EDUCATION,
Petitioner-Appellee,

v.

CIVIL SERVICE COMMISSION,
Respondent-Appellee,

and

CAROL SOMERFLECK, et al.,
Real Parties in Interest-Appellants.

Supreme Court Case No. CVA18-014
Superior Court Case No. SP0051-14

OPINION

Cite as: 2019 Guam 21

Appeal from the Superior Court of Guam
Argued and submitted on February 21, 2019
Hagåtña, Guam

E-Received

11/13/2019 2:25:41 PM

Appearing for Real Parties in Interest-

Appellants:

Daniel S. Sommerfleck, *Esq.*
Sommerfleck & Associates, PLLC
Nelson Bldg.
866 Rte. 7, Ste. 102
Maina, GU 96932

Appearing for Petitioner-Appellee:

Jesse N. Nasis, *Esq.*
Guam Department of Education
501 Mariner Ave.
Barrigada, GU 96913

Appearing for Respondent-Appellee:

Eric D. Miller, *Esq.*
Guam Civil Service Commission
Bell Tower
710 W. Marine Corps Dr., Ste. 201
Hagåtña, GU 96910

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

TORRES, J.:

[1] The Real Parties in Interest-Appellants¹—a group of teachers (“Teachers”) employed by Petitioner-Appellee Guam Department of Education (“GDOE”)—appeal from a judgment of the Superior Court of Guam reversing a decision of the Civil Service Commission (“CSC”) awarding back pay and interest to the Teachers. We affirm the decision of the Superior Court but on grounds that differ from those relied upon below.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] This matter arises from a grievance filed with GDOE by the Teachers seeking back pay following a delay in the start of the 2003-2004 academic year. In *Guam Federation of Teachers v. Government of Guam (Taimanao)*, 2013 Guam 14, we held that the CSC lacked jurisdiction to hear the matter because it could not be characterized as a personnel action. *See* 2013 Guam 14 ¶¶ 63-71. We held the matter was a grievance and the CSC lacked appellate jurisdiction because administrative remedies had not been exhausted. *See id.* ¶¶ 31-33, 72. Following our decision in *Taimanao*, the Teachers filed their claims as a formal grievance in August 2013. After proceeding through Steps 1 through 4 of the grievance procedures, GDOE denied the Teachers’ grievance for its untimeliness since it was filed ten years after the delay of the 2003-2004 school year. The Teachers then took a grievance appeal to the CSC.

¹ The individuals named in the grievance are Carol T. Sommerfleck, Maybell A. Mendiola, Welma Quitugua, Barbara F. Salas, Anna B. Cepeda, Angella M.A. Lujan, Selina C. Castro, Lisa G. Villanueva, JoAnn T. Brown, Ignacia Maria C. Gumataotao, Dolores Cayanyan, and Neldie Pendon-Limtiaco. Record on Appeal (“RA”), tab 31 (Step 2 Grievance, Aug. 27, 2013).

[3] A grievance hearing took place before the CSC, but no transcript of that hearing is in the record before us.² The CSC granted relief to the Teachers in a decision and judgment, applying equitable estoppel to the timeliness issue and awarding back pay with 10% interest per annum for all unpaid wages. GDOE filed a Petition for Judicial Review. In a Decision and Order, the Superior Court reversed the CSC decision and judgment. The Superior Court did not address the timeliness of the grievance claim. Instead, the court based its holding on this court's discussion in *Taimanao*, where we stated that the aggrieved parties in that case could not have expected to work during the period that the 2003-2004 school year was delayed and thus were not furloughed. *See* 2013 Guam 14 ¶ 45. The Teachers appealed.

II. JURISDICTION

[4] This court has jurisdiction over an appeal from a final judgment of the Superior Court of Guam. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 116-66 (2019)); 7 GCA §§ 3107(b), 3108(a) (2005).

[5] A judgment must be “set forth on a separate document.” Guam R. Civ. P. 58(a)(1). If a judgment is not set forth on a separate document, the judgment becomes final after 150 days from its entry on the docket. Guam R. Civ. P. 58(b)(2)(B); *see also* Guam R. App. P. 4(a)(7)(B)(ii). The trial court did not set forth the judgment in a separate document, so the judgment was effectively entered 150 days after entry of the Decision and Order on the docket. *See* Record on Appeal (“RA”), tab 43 (Notice of Entry on Docket, Apr. 3, 2018). The Teachers’

² The transcript of the CSC grievance hearing was purportedly produced at a hearing before the Superior Court. In the Superior Court record, there is a reference to the transcript, but the transcript itself is not part of the record. *See* RA, tab 31, Ex. 5 at 1-3 (Decl. Jesse N. Nasis, Oct. 23, 2017); RA, tab 23 (Decl. Catherine T. Galsim, Aug. 9, 2017). As we recently noted—and once again make express—the entire record of proceedings before the CSC should be transferred to the Superior Court when a Petition for Judicial Review is litigated. *See Port Auth. of Guam v. Civil Serv. Comm'n (Guevara)*, 2018 Guam 1 ¶ 23 n.2.

early filing of their Notice of Appeal on May 2, 2018, is treated as filed on the date of and after the entry—in this case, 150 days after April 3, 2018, when the Decision and Order was entered on the docket. *See* Guam R. App. P. 4(a)(2); *Quijano v. Atkins-Kroll, Inc.*, 2008 Guam 14 ¶ 5 (“Rule 4(a)(2) of the Guam Rules of Appellate Procedure allow[s] a prematurely entered Notice of Appeal to refer to the subsequently entered judgment.”).

III. STANDARD OF REVIEW

[6] We review an agency decision to determine whether it is “in accordance with law” and “supported by substantial evidence.” *Fagan v. Dell’Isola*, 2006 Guam 11 ¶ 12; *see also* 5 GCA § 9240 (2005); *Guam Mem’l Hosp. Auth. v. Civil Serv. Comm’n (Chaco)*, 2015 Guam 18 ¶ 14.

IV. ANALYSIS

[7] Although the trial court did not base its holding on timeliness, we “may affirm the judgment of a lower court on any ground supported by the record.” *People v. San Nicolas*, 2001 Guam 4 ¶ 29. The U.S. Supreme Court has “stressed the distinction between jurisdictional prescriptions and nonjurisdictional claim-processing rules, which ‘seek to promote the orderly progress of litigation by requiring that the parties take certain procedural steps at certain specified times.’” *Fort Bend Cty. v. Davis*, -- U.S. --, 139 S. Ct. 1843, 1849 (2019) (quoting *Henderson v. Shinseki*, 562 U.S. 428, 435 (2011)). “A claim processing rule may be ‘mandatory’ in the sense that a court must enforce the rule if a party ‘properly raise[s]’ it.” *Id.* (alteration in original) (quoting *Eberhart v. United States*, 546 U.S. 12, 19 (2005) (per curiam)). However, unlike jurisdictional prescriptions, “an objection based on a mandatory claim-processing rule may be forfeited ‘if the party asserting the rule waits too long to raise the point.’” *Id.* (quoting *Eberhart*, 546 U.S. at 15).

[8] This matter involves a grievance filed under the GDOE Personnel Rules and Regulations. These rules and regulations provide a time prescription for procedural steps in an agency forum. *See* GDOE R. & Regs. 909.000-909.802 (1999); *see also Fort Bend*, -- U.S. at --, 139 S. Ct. at 1849-50. Accordingly, they are “within the claim-processing category.” *Fort Bend*, -- U.S. at -- 139 S. Ct. at 1850 n.6 (quoting *Hamer v. Neighborhood Hous. Servs. of Chi.*, -- U.S. --, 138 S. Ct. 13, 20 (2017)). The objection to the timeliness of the Teachers’ grievance was raised before the CSC and again on appeal at oral argument. Therefore, the objection has not been forfeited, and we will review the timeliness of the grievance.

A. The Teachers’ Grievance Was Not Timely Filed

[9] The Teachers’ grievance is governed by the procedures outlined in the GDOE Personnel Rules and Regulations. There are four steps under this procedure: Step 1 is the presentation of an informal grievance to the employee’s immediate supervisor; Step 2 is the filing of a formal grievance in writing to the next level supervisor; Step 3 is the presentation of the formal grievance to the Director of Education or Superintendent; and Step 4 is an appeal to the CSC. *See generally* GDOE R. & Regs. 909.501-909.802. An employee must complete each step, in order—i.e., an employee cannot file a formal grievance under Step 2 without first presenting an informal grievance under Step 1. *See generally id.* Under Step 1, an informal grievance “concerning a particular act or occurrence, must be presented within *15 calendar days of that action or occurrence.*” GDOE R. & Regs. 909.505(B)(1) (emphasis added).³ For purposes of

³ The GDOE Rules and Regulations further indicate:

A grievance may not be rejected in the informal procedure for any reason. If the grievance is *not timely* or consists of a matter not covered under the grievance system, the employee should be so advised, but he must be allowed to submit his grievance under the formal procedures if he insists.

GDOE R. & Regs. 909.505(D) (emphasis added).

filing an administrative claim, we treat a limitations period similar to a statute of limitations. *See Nickum v. City of Bainbridge Island*, 223 P.3d 1172, 1178 (Wash. Ct. App. 2009); *Prudential Ins. Co. of Am. v. Joyce Bldg. Realty Co.*, 65 N.E.2d 516, 519-20 (Ohio Ct. App. 1943); *see also Limtiaco v. Guam Fire Dep't*, 2007 Guam 10 ¶¶ 47, 56; *Guam Election Comm'n v. Responsible Choices for All Adults Coal.*, 2007 Guam 20 ¶ 40 (“The administrative rules and regulations are just as binding on the agency as statutes . . .”). A limitations period, such as that outlined in the GDOE Personnel Rules and Regulations, begins to run “either when the course of conduct is brought to an end . . . or when the employee is on notice that further efforts to end the unlawful conduct will be in vain.” *Limtiaco*, 2007 Guam 10 ¶ 54 (emphases omitted) (quoting *Richards v. CH2M Hill, Inc.*, 29 P.3d 175, 190 (Cal. 2001)).

[10] Here, the act or occurrence which gave rise to the grievance was non-payment for the delay of the school year. The delay occurred in August 2003. The Teachers filed their grievance in August 2013. The grievance was filed nearly ten years after the act or occurrence giving rise to the Teachers’ claim. GDOE properly denied the Teachers’ grievance for this very reason—i.e., its untimeliness. Because the Teachers failed to file within the limitations period outlined by the grievance procedures, the grievance is time-barred. We now review the CSC’s application of equitable estoppel to the timeliness issue.

B. The CSC’s Application of Equitable Estoppel is Not in Accordance with the Law, and the Record is Unsupported by Evidence of Reliance

[11] Our review of the CSC decision mirrors the review that should be conducted by the trial court. *Port Auth. of Guam v. Civil Serv. Comm'n (Susuico)*, 2019 Guam 15 ¶ 8 (citing *Fagan*, 2006 Guam 11 ¶ 12). “First, we determine whether the agency decision ‘was in accordance with law.’ Second, we determine whether the agency decision was ‘supported by substantial

evidence.”” *Fagan*, 2006 Guam 11 ¶ 12 (citations omitted). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Id.* (quoting *Bondoc v. Worker’s Comp. Comm’n*, 2000 Guam 6 ¶ 6).

[12] In its March 2014 Decision and Judgment, the CSC applied equitable estoppel to the Teachers’ claim. However, the CSC failed to analyze the elements of equitable estoppel and merely made a conclusory statement indicating this case is analogous to *Limtiaco v. Guam Fire Department*, 2007 Guam 10, and *Mariano v. Guam Civil Service Commission Board*, D.C. Civ. Appeal No. 810052A, 1983 WL 30227 (D. Guam App. Div. June 20, 1983). The trial court did not address the untimeliness of the Teachers’ grievance. At oral argument before this court, the Teachers argued that GDOE’s failure to pay was an ongoing violation and that the CSC decision, based on *Limtiaco* and equitable estoppel, was proper because the Teachers were assured they would be paid. GDOE argued that the record before this court does not address the timing issue, the CSC decision was improper because the fifteen-day limitations period was not met, and the intent behind *Limtiaco* and *Mariano* was not to allow parties to hold onto a claim for fifteen or sixteen years.

[13] Equitable estoppel is “‘designed to prevent a miscarriage of justice’ and ‘is to be used cautiously because it bars the normal assertion of rights otherwise present.’” *Mobil Oil Guam, Inc. v. Young Ha Lee*, 2004 Guam 9 ¶ 24 (quoting *Prof'l Credit Servs. of New Orleans, Inc. v. Skipper*, 543 So. 2d 498, 499 (La. Ct. App. 1989)). Exercising caution is especially important when applying the doctrine against a sovereign. *Mariano*, 1983 WL 30227, at *2. Estoppel may bar parties from asserting a claim or a defense, see *Mobil Oil*, 2004 Guam 9 ¶ 24, including a defense based upon timeliness, see *Limtiaco*, 2007 Guam 10 ¶ 56. The burden of establishing an

estoppel is upon the party seeking its application. *Mobil Oil*, 2004 Guam 9 ¶ 24. The elements of equitable estoppel are:

- (1) the party to be estopped must be apprised of the facts;
- (2) he must intend that his conduct will be acted upon, or act in such a manner that the party asserting the estoppel could reasonably believe that he intended his conduct to be acted upon;
- (3) the party asserting the estoppel must be ignorant of the true state of the facts; and
- (4) he must rely upon the conduct to his injury.

Limtiaco, 2007 Guam 10 ¶ 58 (quoting *Mobil Oil*, 2004 Guam 9 ¶ 24).

[14] “[R]eliance is an essential element of equitable estoppel” and “is a question of fact.” *Atkins, Kroll (Guam), Ltd. v. Cabrera*, 295 F.2d 21, 23 (9th Cir. 1961). “[T]he party claiming the estoppel ‘must rely upon [the opposing party’s] conduct to his prejudice or injury.’” *Id.* (quoting *Benson v. Andrews*, 292 P.2d 39, 48 (Cal. Dist. Ct. App. 1955)). The party claiming estoppel must have been “led to believe a particular thing and . . . acted on such belief,” where the opposing party’s conduct caused such belief. *Id.* The reliance must occur before the limitations period has come to an end. *See Lantzy v. Centex Homes*, 73 P.3d 517, 533-34 (Cal. 2003); *see also Gilmore v. M & B Realty Co.*, 895 So. 2d 200, 213-15 (Ala. 2004).

[15] In *Limtiaco*, the record contained uncontroverted evidence that an employee notified his supervisors of his grievance that his paycheck did not reflect the correct hourly wage immediately upon receiving the problematic paycheck. 2007 Guam 10 ¶¶ 52-53. The head of the department then promised to correct the amount when possible and put this promise in writing. *Id.* The record also contained evidence that the employee was “continually assured” by supervisors and the department that his pay would be adjusted. *Id.* ¶ 53. In *Mariano*, an

employee was advised that the department would “straighten out the pay problem.” 1983 WL 30227, at *1. In both cases, the employees relied on the statements made by their employers to the effect that neither employee pursued a formal grievance. See *Limtiaco*, 2007 Guam 10 ¶¶ 52-53; *Mariano*, 1983 WL 30227, at *2.

[16] The key issue is whether the Teachers relied on GDOE’s conduct to their detriment. Since reliance is a question of fact, *Atkins, Kroll (Guam)*, 295 F.2d at 23, we review the record for substantial evidence, *Chaco*, 2015 Guam 18 ¶ 15. Unlike in *Limtiaco* and *Mariano*, there is no evidence in the record before us that GDOE made any representations or assurances regarding pay to the Teachers during the fifteen days after the delay of the school year. The continued assurances made in *Limtiaco* and *Mariano* induced a lack of action on the part of the employees, causing the employees to halt a decision to proceed to the next step in the grievance procedures, and no formal grievance was ever filed. *Limtiaco*, 2007 Guam 10 ¶ 60; *Mariano*, 1983 WL 30227, at *2. Here, there is no evidence of statements or assurances that lulled the Teachers into a sense of security, and the Teachers proceeded through every step of the grievance procedures. There was nothing that the Teachers could have relied upon in deciding not to bring a grievance within the limitations period. Because the record contains no evidence of reliance, the CSC decision is not supported by substantial evidence and is not in accordance with the law. Therefore, the doctrine of equitable estoppel does not apply, and the grievance was not timely. Accordingly, we affirm the trial court’s order.

//

//

//

V. CONCLUSION

[17] We **AFFIRM** the trial court's Decision and Order dated April 2, 2018.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
ROBERT J. TORRES
Associate Justice

/s/
KATHERINE A. MARAMAN
Chief Justice