



Filed

Supreme Court of Guam, Clerk of Court

IN THE SUPREME COURT OF GUAM

ERIC SANTOS,
Petitioner-Appellant,

v.

GUAM CIVIL SERVICE COMMISSION,
Respondent-Appellee,

and

DEPARTMENT OF CORRECTIONS,
GOVERNMENT OF GUAM,
Real Party in Interest-Appellee.

Supreme Court Case No.: CVA18-006
Superior Court Case No.: SP0142-16

OPINION

Cite as: 2019 Guam 22

Appeal from the Superior Court of Guam
Argued and submitted on October 15, 2018
Hagåtña, Guam

E-Received

12/2/2019 10:34:01 AM

Appearing for Petitioner-Appellant:

Joshua D. Walsh, *Esq.*
Civille & Tang, PLLC
330 Hernan Cortez Ave., Ste. 200
Hagåtña, GU 96910

Appearing for Respondent-Appellee:

Frederick J. Horecky, *Esq.*
Law Office of Frederick J. Horecky
643 Chalan San Antonio, Ste. 102B
Tamuning, GU 96913

Appearing for Real Party in Interest-
Appellee:

David J. Highsmith, *Esq.*
Assistant Attorney General
Office of the Attorney General
Litigation Division
590 S. Marine Corps Dr., Ste. 802
Tamuning, GU 96913

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

MARAMAN, C.J.:

[1] The Department of Corrections (“DOC”) suspended Petitioner-Appellant Eric Santos from his employment for engaging in a confrontation with members of the public and for conduct towards a former girlfriend. Both incidents occurred while Santos was off duty. He was also disciplined for failing to cooperate with an internal investigation into the incidents. Santos sought judicial review of the Civil Service Commission’s (“CSC”) Decision and Order upholding a twenty-day suspension; the Superior Court upheld the CSC’s action. Finding no error, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] The DOC employed Santos as a Corrections Officer I. While he was off duty, Santos attended a public sporting event, where an individual named Shaolin Tereas started a verbal exchange with him. Following the exchange, Santos left the sporting event and called a fellow corrections officer on the phone to obtain Shaolin’s telephone number. After speaking on the telephone, Santos and Shaolin agreed to meet at a quarry to “settle their differences.” Record on Appeal (“RA”), tab 31 at 3 (Dec. & Order, Dec. 6, 2017).

[3] Santos and at least one other person drove to the quarry knowing that a fight might ensue. After arriving at the quarry, Santos encountered Jeffrey Tereas—the quarry manager and Shaolin’s older brother. Jeffrey was waiting at the gates of the quarry because he had sent Shaolin and other quarry workers, who had congregated to meet Santos, back to work. When confronting Jeffrey at the quarry gates, Santos “used foul and abusive language that could have led to a fight.” RA, tab 2 at Ex. A (Pet. Jud. Rev., Aug. 15, 2016); RA, tab 31 at 3 (Dec. &

Order). Jeffrey told Santos to leave the quarry property and called the Guam Police Department; thereafter, Santos left. There was no physical violence or property damage. Jeffrey also reported the incident to the police and DOC.

[4] In an unrelated incident a few days later, the police arrested Santos for harassing a former girlfriend as part of a custody dispute. Santos's former girlfriend obtained an order of protection against him. Later, she submitted an affidavit withdrawing her complaint.

[5] DOC's Internal Affairs officers investigated both incidents and wrote a report that formed the basis of the adverse action. Santos refused to cooperate with the investigation. The DOC Director found that Santos had been discourteous to the public and had engaged in miscellaneous misconduct detrimental to the service; he suspended Santos for 30 days.

[6] The CSC upheld the adverse action but reduced the suspension from 30 to 20 days. In the portion of its Decision and Judgment discussing Santos's actions towards his former girlfriend, the CSC cited only the order of protection, not the underlying facts. On a Petition for Judicial Review, the Superior Court upheld the CSC's decision. Santos timely appealed to this court.

II. JURISDICTION

[7] This court has jurisdiction over appeals from final judgments of the Superior Court. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 116-68 (2019)); 7 GCA §§ 3107, 3108(a) (2005);.

III. STANDARD OF REVIEW

[8] On judicial review of a decision of the CSC, our review of the factual determinations is limited to determining whether the CSC's decision was supported by substantial evidence. *See Port Transp., Stevedore, & Terminal Emps. v. Guam Civil Serv. Comm'n (Port Auth. of Guam)*,

2018 Guam 18 ¶¶ 5-6; *Guam Hous. Corp. v. Guam Civil Serv. Comm'n (Potter)*, 2015 Guam 22 ¶ 9; *Guam Mem'l Hosp. Auth. v. Civil Serv. Comm'n (Chaco)*, 2015 Guam 18 ¶¶ 15-16. However, questions of law are reviewed *de novo*. *Chaco*, 2015 Guam 18 ¶ 17; *see also Guam Waterworks Auth. v. Civil Serv. Comm'n (Mesngon)*, 2014 Guam 35 ¶ 5; *Fagan v. Dell'Isola*, 2006 Guam 11 ¶ 13.

[9] Our review requires us to consider the standard of review that applies to finding a “rational nexus” between a peace officer’s off-duty misconduct and his or her employment. Other courts have taken various approaches. *Compare Brown v. Dep't of Navy*, 229 F.3d 1356, 1358-59 (Fed. Cir. 2000) (applying substantial evidence standard), and *Collingsworth Gen. Hosp. v. Hunnicutt*, 988 S.W.2d 706, 708 (Tex. 1998) (same), with *Utah Dep't of Corr. v. Despain*, 824 P.2d 439, 446 & n.16 (Utah Ct. App. 1991) (applying *de novo* standard because employee’s position “requires high morals, control, and discipline” and collecting cases), *Warren v. N.C. Dep't of Crime Control & Pub. Safety, N.C. Highway Patrol*, 726 S.E.2d 920, 923 (N.C. Ct. App. 2012) (“Whether conduct constitutes just cause for the disciplinary action taken is a question of law we review *de novo*.”), and *Millsap v. Cedar Rapids Civil Serv. Comm'n*, 249 N.W.2d 679, 683, 686-87 (Iowa 1977) (applying *de novo* standard of review) (“It is well established that the image presented by police personnel to the general public is vitally important to the police mission.”). However, we look first to Guam law.

[10] The Guam Legislature has specifically authorized government employers to regulate the off-duty conduct of peace officers because of the moral and ethical standards and conduct expected of peace officers. *See* 4 GCA § 4122(a) (Supp. 2006). Based on this statute and recognizing the high morals and ethics expected of Guam peace officers, we conclude that *de novo* review is the appropriate standard in determining whether the regulation of a peace

officer's off-duty conduct is employment related.¹ We apply the substantial evidence standard to determine whether an agency's decision should be upheld—including the factual finding of whether a peace officer violated a departmental regulation. *See* 5 GCA § 9240 (2005); *Chaco*, 2015 Guam 18 ¶¶ 15-16.

[11] The CSC's decision to consider evidence is an interpretation of a procedural regulation, which we review *de novo*. *Port Transp.*, 2018 Guam 18 ¶ 28; *see also State v. Valle*, 298 P.3d 1237, 1240 (Or. Ct. App. 2013) (in banc) (“Whether evidence is relevant is a question of law, which we review for errors of law.”).

IV. ANALYSIS

[12] Generally, “[a]n employment, having no specified term, may be terminated at the will of either party, on notice to the other.” 18 GCA § 55404 (2005); *see also Quijano v. Atkins-Kroll, Inc.*, 2008 Guam 14 ¶ 7. However, based on a mandate in the Organic Act, *see* 48 U.S.C.A. § 1422c(a) (Westlaw through Pub. L. 116-68 (2019)), Guam enacted a comprehensive statute creating a merit system for government employment and providing employment protections for workers in government service, *see* 4 GCA §§ 4101-4708 (2005).

[13] Employers are generally free to discipline or terminate employees for any misconduct—on or off duty. *See, e.g., Eilers v. Civil Serv. Comm'n of City of Burlington*, 544 N.W.2d 463, 466 (Iowa Ct. App. 1995). This at-will employment principle is not absolute, however, in government employment. Several competing factors—typically of constitutional magnitude—sometimes prevent government employers from imposing discipline for certain off-duty conduct. *See, e.g., United States v. Nat'l Treasury Emps. Union*, 513 U.S. 454, 457 (1995) (holding that federal law prohibiting federal employees from accepting compensation for speeches and

¹ We offer no opinion on the appropriate standard of review in cases involving government employees who are not employed as peace officers.

writings violates First Amendment); *Connell v. Higginbotham*, 403 U.S. 207, 209 (1971) (per curiam) (requiring due process hearing or inquiry before dismissing public employee for refusal to sign loyalty oath). Nevertheless, courts in many jurisdictions uphold discipline of government employees when the conduct supporting the discipline “directly bears upon an employee’s fitness to perform the profession,” *Bisch v. Las Vegas Metro. Police Dep’t*, 302 P.3d 1108, 1115 (Nev. 2013) (en banc), or there is a “rational nexus” between the employee’s off-duty conduct and employment, *Golden v. Bd. of Educ. of Cty. of Harrison*, 285 S.E.2d 665, 668 (W. Va. 1981); cf. *In re Grievance of Hurlburt*, 2003 VT 2, ¶ 21, 175 Vt. 40, 820 A.2d 186 (finding nexus between employment and off-duty assault on a subordinate). Such discipline does not generally implicate issues of constitutional magnitude.

[14] For such limitations on discipline of government employees in Guam, we look first to Title 4, Chapter 4 of the Guam Code Annotated, entitled, “Personnel Policy and the Civil Service Commission.” See 4 GCA §§ 4101-4708. Generally, we construe Chapter 4 no broader than dictated by the text. See, e.g., *Carlson v. Perez*, 2007 Guam 6 ¶¶ 47-72 (strictly applying merit protections in holding that classified employees could not seek mandamus relief); cf. *Rowe v. Dep’t of Emp’t & Econ. Dev.*, 704 N.W.2d 191, 195-96 (Minn. Ct. App. 2005) (strictly construing certain procedural rules applying to unemployment proceedings). With these principles in mind, we turn to whether the government acted properly when it disciplined Santos.

A. The Government of Guam May Regulate a Peace Officer’s Off-duty Conduct

[15] For peace officers of the executive branch in Guam, the Legislature has directed the Director of Administration and the Peace Officer Standards and Training Commission to create standards for on- and off-duty conduct. 4 GCA § 4122. Under the statute, the Director of Administration must develop personnel rules and regulations for peace officers of the executive

branch, and such rules must be “construed to reflect the moral and ethical standards and conduct expected of peace officers *both on and off duty*.” *Id.* (emphasis added). This statute unambiguously establishes the government’s right and ability to regulate a peace officer’s off-duty conduct. *Cf. Port Transp.*, 2018 Guam 18 ¶¶ 10, 13.

[16] Santos was employed as a Corrections Officer I within DOC. Correction Officers are “peace officers” as defined by Guam’s statutes. *See* 17 GCA § 51101(b)(4) (as moved and renumbered by Guam Pub. L. 31-099:16 (Sept. 30, 2011)); 8 GCA § 5.55(d) (as amended by Guam Pub. L. 30-153:2 (July 2, 2010)). As a peace officer is expected to reflect “moral and ethical standards and conduct,” 4 GCA § 4122, the government can regulate Santos’s off-duty conduct provided the regulation relates to Santos’s employment or moral and ethical standards. *See Despain*, 824 P.2d at 446 (finding that government employer can impose discipline for off-duty conduct “where the position requires high morals, control, and discipline and the off-duty conduct is in violation of specific employment policies”).

[17] The Final Notice of Adverse Action against Santos charged three policy violations: (1) refusal or failure to perform prescribed duties and responsibilities; (2) discourteous treatment to the public or other employees; and (3) other misconduct not specifically listed. *See* Dep’t of Admin. (“DOA”) Pers. R. & Regs. § 3.000 (“Employees shall be courteous and helpful to clients and members of the public.”); DOA Pers. R. & Regs. § 11.303 (specifying “Authorized Causes for Adverse Action”); DOA Pers. R. & Regs. § 11.402 (specifying on- and off-duty offenses of “fighting,” “concealment of material fact in connection with any official record,” and “refusal to testify in an inquiry, investigation or other official proceeding”). These charges were supported by detailed factual allegations. Broadly, these allegations focus on three incidents: the fight at the quarry, the order of protection obtained by Santos’s former girlfriend, and his failure to

cooperate in the investigation of the incidents.² Santos does not challenge the factual determinations made by the CSC or the Superior Court that underlie these charges but focuses on whether his misconduct is employment related. In reviewing his challenges, we find Santos's misconduct sufficiently related to his employment as a peace officer.

[18] First, part of the allegations against Santos involves on-duty conduct. One of the charges against Santos was that he failed to cooperate in the internal investigation and misled the investigators. A peace officer's failure or refusal to cooperate with a departmental investigation is on-duty misconduct and forms a valid basis for discipline. *See, e.g., Debnam v. N.C. Dep't of Corr.*, 432 S.E.2d 324, 383-84 (N.C. 1993); *Hughes v. Dep't of Pub. Safety, Office of State Police*, 453 So. 2d 620, 623 (La. Ct. App. 1984); *Nicodem v. Commonwealth, Pa. State Police*, 406 A.2d 255, 241 (Pa. Commw. Ct. 1979). The record supports that Santos was uncooperative when he failed to provide information to investigators. Therefore, one of the bases for the adverse action involved on-duty misconduct.

[19] Second, regarding Santos's off-duty conduct, we also find the regulation of that conduct to be employment related. Even where there are restrictions on a government employer's ability to regulate off-duty conduct, if a public employee's off-duty incidents of misconduct "impair public service or cause discredit to his agency," then the employee can be properly subject to discipline. *See Blake v. State Pers. Bd.*, 102 Cal. Rptr. 50, 57 (Ct. App. 1972). Peace officers must meet high moral and ethical standards—both on and off duty. *See* 4 GCA § 4122. We further observe that a peace officer's discourteous treatment of others impairs public service and

² None of these incidents raises any constitutional constraint on discipline. *See, e.g., United States v. Nat'l Treasury Emps. Union*, 513 U.S. 454, 457 (1995); *Connell v. Higginbotham*, 403 U.S. 207, 209 (1971) (per curiam). Further, while it is unclear from the briefing on appeal whether Santos is challenging the incident with his former girlfriend and the resulting order of protection as a valid basis for his suspension, we read his *pro se* Petition for Judicial Review and the CSC's reference to the order of protection as raising the issue. Therefore, we will address the issue to provide a complete review for Santos.

can discredit his or her agency no matter when the discourteous treatment occurs.

[20] Here, Santos's quarry altercation violated a valid employment regulation related to the treatment of the public. *See* DOA Pers. R. & Regs. § 11.303(H). He engaged in a verbal altercation and continued to pursue a member of the public to continue the verbal fight, knowing it could result in a physical altercation. In continuing to escalate the altercation, Santos involved a fellow officer in obtaining Shaolin's phone number. This same analysis applies to Santos's conduct towards his former girlfriend, which resulted in an order of protection against him. The conduct in both instances violated established work-related regulations, which was compounded by Santos's refusal to participate in the internal investigation—an on-duty responsibility. Both the Government of Guam and DOC management have a significant interest in ensuring officers act in a safe and courteous manner. Santos's conduct challenges this interest and violates the trust given to him as a peace officer.

[21] The public safety concerns with a peace officer's off-duty altercations and orders of protection also dictate in favor of regulating such conduct. While the appointing agency and the CSC can consider an individual officer's unique circumstances in imposing discipline or tailoring an appropriate sanction, *see* 4 GCA § 4406(d) (as amended by Guam Pub. L. 30-112:3 (Mar. 12, 2010)), we hesitate to overturn discretionary decisions by the executive branch related to discipline against a peace officer for immoral or unethical conduct simply because the officer's conduct occurs off duty, *cf. Perez v. Civil Serv. Comm'n (Guam Dep't of Educ.)*, 2018 Guam 25 ¶ 25 (deferring to CSC's holistic approach to determining reasonableness of agency's adverse action). The Legislature has required regulating peace officer conduct, *see* 4 GCA § 4122, the Personnel Rules regulate such conduct, *see* DOA Pers. R. & Regs. §§ 3.000, 11.303, and public policy and safety support the need for such regulation. Santos's off-duty conduct was

employment related and supported the Department of Corrections imposing discipline and taking an adverse action. Based on his violations of departmental regulations, we conclude that Santos was disciplined for employment-related misconduct when a final notice of adverse action was issued against him for the quarry incident, his conduct towards a former girlfriend that resulted in an order of protection against him, and his failure to cooperate with the internal investigation.

[22] In summary, we find that for peace officers in Guam, violating a valid regulation—even while off duty—bears a rational nexus to their employment because such violation bears on the high morals and ethics expected of them. Santos was disciplined for two off-duty incidents: one involving a verbal altercation with a member of the public and another involving an order of protection obtained by a former girlfriend. He was also disciplined for on-duty misconduct related to his failure to cooperate in an internal investigation. Therefore, on this basis, we find no error in the Superior Court's judgment upholding the CSC's decision.

B. The Civil Service Commission Did Not Err in Relying on Certain Documents and Testimony

[23] Santos also challenges the CSC's reliance on certain documents and testimony he believes were irrelevant. In hearing an evidentiary challenge under its procedures, the CSC, like other adjudicatory agencies, must "determine what evidence should, in 'fairness,' be admitted." *Lucas v. Murray City Civil Serv. Comm'n*, 949 P.2d 746, 756 (Utah Ct. App. 1997) (quoting *Tolman v. Salt Lake Cty. Att'y*, 818 P.2d 23, 31 (Utah Ct. App. 1991)). "The evidence must be legally relevant, in that it has 'some probative weight and reliability.'" *Id.* (quoting *Tolman*, 818 P.2d at 31). In Guam, admission of evidence before the CSC is governed by the CSC's rules. While the Guam Rules of Evidence are not specifically applicable to CSC proceedings, *see* Civil Serv. Comm'n R. Proc. Adverse Action Appeals 11.2.5 ("CSC AA Rule"); 5 GCA § 9226 (2005), the CSC rules provide for excluding irrelevant, unduly repetitious, or untimely filed

evidence, *see* CSC AA Rule 11.2.5; *Port Transp.*, 2018 Guam 18 ¶ 29. Relevant evidence is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Guam R. Evid. 401. As the terms are the same, we interpret the term “relevant” in the CSC’s rules consistent with the Guam Rules of Evidence. *See* Guam R. Evid. 401; *cf.* *Macris v. Richardson*, 2010 Guam 6 ¶ 16 (discussing interpretation of similarly worded statutes).

[24] Santos challenges several items referenced or reviewed by the CSC as irrelevant and improperly considered. His specific challenges are: (1) testimony by DOC Internal Affairs Investigator Samuel Donato that “[a]s an employee, there were incidents that happened with Mr. Santos,” CSC Bd. of Comm’rs Meeting Transcripts (“CSC Tr.”) at 74:11-14 (Apr. 26, 2016); Appellant’s Br. a 10 (June 27, 2018); (2) a reference by CSC Commissioner Hongyee to a complaint of harassment against Santos from November 11, 2011, CSC Tr. at 10:6-8 (May 5, 2016); Appellant’s Br. at 10; (3) statements by CSC Commissioner Tuncap that “[e]mployee’s history of employment is very bleak” and that Santos needed an additional six months after initial hire to earn permanent appointment, CSC Tr. at 21:5-10 (May 5, 2016); Appellant’s Br. at 10-11; (4) a statement by CSC Commissioner Tuncap that she found Santos’s “language and conduct towards the mother of his child was [sic] insulting . . . ,” CSC Tr. at 11:24-12:1 (May 5, 2016); Appellant’s Br. at 11; (5) a citation by CSC Commissioner Tuncap to a uniform violation from early in Santos’s career, CSC Tr. at 12:8-12 (May 5, 2016); Appellant’s Br. at 11; (6) inquiries from CSC Commissioner Tuncap regarding how much time Santos spent with his daughter and whether he took her to the library, CSC Tr. at 88:14-15 (Apr. 28, 2016); Appellant’s Br. at 11; (7) an inquiry made by CSC Commissioner Tuncap into Santos’s commendations or recognitions, CSC Tr. at 88:14-15 (Apr. 28, 2016); Appellant’s Br. at 11; (8)

an inquiry by CSC Commissioner Tuncap into Santos's divorce and child custody matters, CSC Tr. at 88:14-15 (Apr. 28, 2016); Appellant's Br. at 11; (9) statements by CSC Commissioner Leon Guerrero regarding profane text messages Santos exchanged with his former girlfriend, CSC Tr. at 5:13-17 (May 5, 2016); Appellant's Br. at 11; (10) a statement by CSC Commissioner Pangelinan that she supported suspension "because of the many infractions that occurred for the short period of time that Mr. Santos was with DOC . . . ," CSC Tr. at 22:17-21 (May 5, 2016); Appellant's Br. at 11; and (11) documents listed in Management's Exhibit List, RA, tab 24 at 4-13 (Submission of Mgmt.'s Exs. & Witness List, June 2, 2017); Appellant's Br. at 11-12.

[25] Broadly speaking, we can break these different statements and references into two categories. First, there are those related to Santos's employment history and other conduct—*i.e.*, challenges 1, 3, 5, 7, and 10. Second, there are those statements and pieces of evidence that relate to Santos's treatment of his former girlfriend during a custody dispute and the resulting order of protection—*i.e.*, challenges 2, 4, 6, 8, and 9. We will also separately address Santos's challenge to Management's Exhibit List.

1. Santos waived judicial review of the CSC's statements and references about his employment history and other conduct by failing to raise the issue either before the CSC or in his Petition for Judicial Review

[26] A party waives issues not raised in his or her petition for review, *Univ. of Guam v. Guam Civil Serv. Comm'n (Foley)*, 2002 Guam 4 ¶ 20; *cf. Babauta v. Babauta*, 2013 Guam 17 ¶ 23, and the Superior Court often cannot review such issues, *see, e.g., Teleguam Holdings LLC v. Guam*, 2018 Guam 5 ¶¶ 19-22. A party's failure to raise an evidentiary issue before the factfinder generally bars that party from complaining about any such issues in subsequent litigation. *See, e.g., Mack v. Davis*, 2013 Guam 13 ¶¶ 41-42. Similarly, failing to object in an

administrative agency proceeding typically bars judicial review. *See Fed. Power Comm'n v. Colo. Interstate Gas Co.*, 348 U.S. 492, 498 n.4 (1955); *see also Lebajo v. Dep't of Pub. Aid*, 569 N.E.2d 70, 74 (Ill. App. Ct. 1990) (“[I]f an argument is not presented in an administrative hearing, it is waived and may not be raised for the first time before the trial court on administrative review.” (citation omitted)).

[27] We conclude that Santos waived his objections to the challenges raised in his appellate brief that relate to his employment history and conduct. A careful review and search of the record reveals no contemporaneous objections were lodged with the CSC regarding challenges 1, 3, 5, 7, and 10. *See supra* Part B. Additionally, in his Petition for Judicial Review, Santos challenges only the “nexus” between his employment and “off-duty conduct” or, separately, “evidence of a TRO as to a girlfriend.” RA, tab 2 at 2 (Pet. Jud. Rev.). Challenges 1, 3, 5, 7, and 10 all relate to employment and do not fall within the claims of error raised in the Petition for Judicial Review. Because these issues were not properly raised below, we cannot review them for the first time on appeal. *See Hemlani v. Hemlani*, 2015 Guam 16 ¶ 34; *Tanaguchi-Ruth + Assocs. v. MDI Guam Corp.*, 2005 Guam 7 ¶ 78. Thus, the arguments concerning challenges 1, 3, 5, 7, and 10 are waived.

2. The Civil Service Commission’s references to the order of protection and to Santos’s conduct towards his former girlfriend were relevant because the order of protection formed part of the basis of the final adverse action

[28] In his Petition for Judicial Review, Santos complained that the CSC erred in hearing evidence related to the order of protection obtained against him by a former girlfriend. RA, tab 2 at 2 (Pet. Jud. Rev.). It is apparent from the record that these statements and references were made because the CSC had to consider the factual charges against Santos presented in the final notice of adverse action. The order of protection and surrounding conduct towards the former

girlfriend relate to this case because they formed one of the bases of the adverse action. While the objection was properly noted in the Petition for Judicial Review and was raised in the CSC as part of the challenge to the final notice of adverse action, the challenged evidence and comments are relevant and not improper as they relate to a stated basis of the adverse action. *See* Guam R. Evid. 401; *see also* *Port Transp.*, 2018 Guam 18 ¶ 29. Facts related to Santos's relationship with his former girlfriend and custody of their child, particularly those in challenges 2, 4, 6, 8, and 9, *see supra* Part B, fall within the scope of the charges in the Final Notice of Adverse Action. The CSC did not err in considering them.

3. Santos was given sufficient notice of the documents in Management's Exhibit List and does not adequately show prejudice

[29] Finally, Santos states that "the CSC considered a plethora of prejudicial material regarding Mr. Santos wholly unrelated to the specific nature of the adverse action taken against him for off-duty conduct." Appellant's Br. at 11-12. He continues that "[t]he record reveals no opportunity for Mr. Santos to have had notice that these extraneous matters would have been an active part of his adverse action appeal." *Id.* at 12.

[30] We first find that Santos's arguments about notice lack merit. The record shows that Management's Exhibit List was filed with the CSC on April 9, 2013, and served on Santos's attorney. Santos's hearing before the CSC did not begin until April 21, 2016. While there appears to have been some discussion before the CSC regarding whether Santos's former attorney provided his new attorney with these records, Santos's attorney at the CSC admitted that the documents were served on Santos's former attorney. Santos had the documents for three years before the hearing, which is sufficient notice that they were an active part of the adverse action appeal. *Cf. Link v. Wabash R.R. Co.*, 370 U.S. 626, 634 (1962) ("[E]ach party is deemed

bound by the acts of his lawyer-agent and is considered to have ‘notice of all facts, notice of which can be charged upon the attorney.’” (quoting *Smith v. Ayer*, 101 U.S. 320, 326 (1879))).

[31] Next, assuming some documents were improper, Santos has not adequately demonstrated how the exhibits submitted by management prejudiced him. First, Santos’s appellate brief fails to explain how the exhibits prejudiced him. See 7 GCA § 15802 (2005) (“No judgment, decision or decree shall be reversed or affected by reason of any error, ruling, instruction, or defect, unless it shall appear from the record that such error, ruling, instruction, or defect was prejudicial”); *Fenwick v. Watabe Guam, Inc.*, 2009 Guam 1 ¶ 34 (explaining that appellants bear burden of proving prejudicial error); see also *Guam Top Builders, Inc. v. Tanota Partners*, 2012 Guam 12 ¶ 78 (“[T]he failure to adequately brief an issue may be treated as a waiver of the issue on appeal.”). Next, it does not appear that the CSC relied on any documents that may be arguably considered irrelevant when it issued its written decision and judgment. The CSC’s facts and conclusions reference only the conduct in the Final Notice of Adverse Action. The CSC also entertained Santos’s objection to at least one document he considered improper and required management’s counsel to “move on.” See CSC Tr. at 42-43 (Apr. 28, 2016). Finally, our review is for substantial evidence. *Port Transp.*, 2018 Guam 18 ¶¶ 5-6. Santos does not challenge that there was substantial evidence supporting the CSC’s decision and the Final Notice of Adverse Action. Without such a successful challenge, the outcome of Santos’s case would be the same, and there is no prejudice. Cf. *Fenwick*, 2009 Guam 1 ¶ 42 (explaining that prejudice is shown when “a different outcome would have been probable” without the error). We find no reversible error in the submission of Management’s Exhibit List.

//

//

V. CONCLUSION

[32] We **AFFIRM** the Judgment of the Superior Court.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
ROBERT J. TORRES
Associate Justice

/s/
KATHERINE A. MARAMAN
Chief Justice