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SUPERIOR COURT
OF GUAM

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CLERK OF COURT

BY: _____

IN THE SUPERIOR COURT OF GUAM

DEPARTMENT OF PARKS and
RECREATION,

Petitioner,

vs.

CIVIL SERVICE COMMISSION,

Respondent,

LYNDA B. AGUON,

Real Party in Interest.

SUPERIOR COURT CASE NO. SP0046-20

DECISION AND ORDER RE PETITION
FOR JUDICIAL REVIEW

INTRODUCTION

This matter came before the Honorable John C. Terlaje on March 10, 2025, for a hearing on Agency-Petitioner Department of Parks and Recreation's ("DPR", "Petitioner", or "Management") Verified Petition for Judicial Review (the "Verified Petition") of a Decision and Judgment by the Guam Civil Service Commission ("CSC"). Present at the hearing were Chief Deputy Attorney General Joseph Guthrie representing DPR and Attorney Michael Phillips ("Phillips"), representing the Real Party in Interest, Lynda B. Aguon ("Ms. Aguon" or "Employee"). Administrative Counsel Katherine Nepton ("Nepton"), counsel for the CSC, notified the Court that she would be off-island for the hearing. The Court took the matter under advisement without argument.

1 Based upon the filings and applicable law, the Court hereby **DENIES** DPR's Petition and
2 **AFFIRMS** the CSC's February 11, 2020 Decision and Judgment, but remands this case to the
3 CSC for the purpose of determining damages. The Court also **GRANTS** Declaratory Judgment
4 invalidating any and all CSC policies not created using the methods required by the law, including
5 requiring DPR to call Ms. Aguon as its last witness and setting advance time limits on witness
6 and Employee testimony.
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8 **BACKGROUND**

9 Real Party in Interest, Lynda B. Aguon, was employed by the Department of Parks and
10 Recreation under the job title of Guam Historic Preservation Officer. Verified Petition for Writ
11 of Jud. Rev. at ¶¶ 4-5 (March 13, 2020). Ms. Aguon was served with a Notice of Proposed
12 Adverse Action on June 4, 2019. *Id.* at ¶ 6. On or about June 18, 2019, Ms. Aguon's employment
13 was terminated for alleged violations of Guam law and departmental policies. *Id.* at ¶ 7. Ms.
14 Aguon appealed this termination to the Guam Civil Service Commission on June 20, 2019. *Id.* at
15 ¶ 11.
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17 On December 31, 2019, Administrative Law Judge ("ALJ") Eric Miller issued his
18 Findings of Fact, Conclusions of Law, and Recommendations After Hearing on the Merits to
19 Aguon and DPR. (Verified Pet. Ex. 2). ALJ Miller concluded that "Management proved by clear
20 and convincing evidence...that Employee was insubordinate in refusing in her May 10, 2019
21 letter to follow the Director's orders, and by violating a written gag order while her investigation
22 was on-going." *Id.* at 7. Accordingly, ALJ Miller recommended that the adverse action be
23 affirmed. *Id.* The CSC held a hearing on January 14, 2020 to determine whether it would accept,
24 modify, or reject the ALJ's recommendation. The CSC voted 4-0 opposing rejection of the
25 recommendation; 3-1 to modify the recommendation; and 3-1 to accept the recommendation.
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1 (Verified Pet. Ex. 1). As four (4) commissioners did not affirm the termination, the CSC revoked
2 the adverse action, reinstated Aguon, and awarded her back pay, reasonable attorney's fees and
3 costs. *Id.* The CSC signed a Decision and Judgment in this case on February 11, 2020, and that
4 decision was served on the parties on February 12, 2020. Petitioner brought this issue before the
5 Court to request judicial review of this CSC decision, and to seek an immediate stay of execution
6 and enforcement of the CSC decision.
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8 DPR's Verified Petition for Judicial Review, filed on March 13, 2020, also included a
9 request for a declaratory judgment invalidating several CSC practices pursuant to the Court's
10 discretion in 5 GCA § 9303(c) and 5 GCA § 9309. Verified Petition at ¶ 69.

11 On July 3, 2024, the Court issued an Order for Further Briefing, asking the Petitioner to
12 brief which law they believe the CSC was in disagreement with and why, and asking the
13 Respondents to brief their opposition in light of changes to *Chevron* and judicial deference to
14 agencies. After receiving and reviewing their briefs, the Court now issues the following decision.
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16 DISCUSSION

17 The Court will first address whether the CSC's Decision and Judgment resulting in
18 reinstatement of Ms. Aguon was erroneous and should be vacated and/or remanded back to the
19 CSC for further proceedings. The second issue the Court will address is whether the informal
20 standing rules used by the CSC in this case were created incorrectly and are therefore
21 unenforceable. The Court will then briefly address the issues of reinstatement and damages. The
22 Court recognizes Petitioner brought up many points in its March 13, 2020 filing, but has chosen
23 to address only those which the Court believes to be most relevant at this time. The Court has
24 decided not to address Petitioner's prayer for relief points 15-18 because Petitioner failed to
25 establish sufficient facts and law to necessitate a review at this stage.
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1 **I. Standard of Judicial Review for CSC Decisions**

2 Judicial Review of a CSC determination by an Agency or employee is provided for in 4
3 G.C.A. § 4406(f), which states that the “government department, agency, instrumentality, or the
4 employee may petition the Superior Court for judicial review of an adverse action appeal only
5 after...the appeal has been heard by the Commission and a final written or oral decision has been
6 issued.” 5 G.C.A. § 9240 further states that “judicial review may be had of any agency decision
7 by any party affected adversely by it. If the agency decision is not in accordance with law or not
8 supported by substantial evidence, the court shall order the agency to take action according to law
9 or the evidence.”

11 Under 7 G.C.A. § 7117, when “jurisdiction is by law conferred on a court or judicial
12 officer, all the means necessary to carry it into effect are also given.” Guam courts have previously
13 determined the standard of review of CSC determinations to be that “[q]uestions of fact are
14 reviewed under the substantial evidence standard, while questions of law are reviewed de novo.”
15 *Port Auth. of Guam*, 2018 Guam 18 ¶ 5. In 2024, the U.S. Supreme Court overturned the *Chevron*
16 doctrine, which had given increased discretion to agency interpretation of statutes. *Loper Bright*
17 *Enterprises v. Raimondo*, 603 US 369 (2024). In *Loper*, the U.S. Supreme Court mandated that
18 courts should exercise independent judgment when deciding if an agency has acted within
19 statutory authority, and instructed that courts should not defer to agency interpretation just
20 because a statute is ambiguous. *Id.* Judges are to reach final determinations of interpreting
21 statutory authority be their own reasoning. *Id.* Therefore, this is the standard for interpretation
22 exercised by the Court in the following judgments.
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1 **II. Whether the CSC Erred in its February 11, 2020 Decision that Employee Prevailed**
2 **When the Required Votes Were Not Obtained in the January 14, 2020 Hearing**

3 The hearings for this adverse action began with Administrative Law Judge Miller, whose
4 role it is to assist the Commission with adjudicatory responsibilities. Under 4 GCA § 4405(c), the
5 ALJ has authority to handle hearings related to technical or procedural matters, preliminary
6 evidentiary motions, and any other matters deemed appropriate by the Commission, “including
7 full merit hearings.” All ALJ decisions are forwarded to the Commission, which has authority to
8 accept, reject, or modify the ALJ’s determinations in whole or part. 4 GCA § 4405(c)(2).
9

10 Under 4 GCA § 4402, the “affirmative vote of four (4) members shall be required for *any*
11 *action* of the Commission” (emphasis added). 4 GCA § 4407(a) states that “[u]pon the hearing of
12 any adverse action appeal, the burden of proof shall be upon the government to show clearly and
13 convincingly that the action of the Branch, department, agency or instrumentality was correct.”
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15 The Court has jurisdiction to conduct a judicial review of the CSC determination under 5
16 GCA § 9240, which states “[j]udicial review may be had of any agency decision by any party
17 affected adversely by it. If the agency decision is not in accordance with law or not supported by
18 substantial evidence, the court shall order the agency to take action according to law or the
19 evidence.”

20 The CSC reported in its February 12, 2020 Decision and Judgment that Chairman Calvo
21 asked if the Commissioners wished to reject the ALJ’s recommendations, and the Commissioners
22 voted 4 to 0 opposing rejection. CSC Decision and Judgment (Feb. 11, 2020) at p. 3. The CSC
23 further reported that the vote was 3 to 1 to modify the recommendation, with Commissioner
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1 Benavente dissenting, and 3 to 1 to accept the recommendation, with Chairman Calvo dissenting.¹
2 *Id.* In short, the CSC agreed not to reject the ALJ's recommendations, but could not agree to
3 accept them. In its Decision and Judgment, the CSC stated that "[m]anagement has the burden of
4 proof [under] 4 GCA § 4407" and "[m]anagement failed to get the affirmative vote of four (4)
5 Commissioners to affirm the termination," resulting in the Employee prevailing. CSC Decision
6 and Judgment (February 11, 2020). As a result, the CSC revoked the adverse action against Ms.
7 Aguon and ordered that she be reinstated and awarded back pay and attorney fees.
8

9 It is the opinion of this Court that the CSC appropriately applied the law and rules
10 governing the CSC in its determination to revoke the adverse action. The law is clear that an
11 affirmative vote from four Commissioners is required for the CSC to act, including to accept a
12 recommendation from the ALJ. Under 4 GCA § 4405(c)(2), all determinations from the ALJ must
13 be forwarded to the CSC to accept, reject, or modify. In this case, the CSC voted not to reject the
14 ALJ's recommendation, but did not properly vote to accept or modify it. The ALJ decision was
15 never accepted by the Commission, and therefore cannot be currently binding on the parties, as
16 is argued by DPR in its Petition. Verified Petition at ¶ 34.
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18 Petitioner DPR argues that the Commission's conclusion that Employee prevailed is
19 erroneous because "Petitioner was not required to get four (4) affirmative votes as the motion
20 hearing set on January 14, 2020...was for the Commission to take action or not as to the ALJ
21 decision which was read into the record and forwarded to the parties for review." *Id.* at ¶ 46. This
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23 ¹ Petitioner DPR has asserted that Commissioner Tuncap was never given an opportunity to vote on the
24 "rejection" vote. Verified Petition for Writ of Judicial Review (March 13, 2020) at ¶ 28. This is in
25 direct opposition to the events described by the CSC in its Decision and Judgment. As above,
26 "[q]uestions of fact are reviewed under the substantial evidence standard, while questions of law are
27 reviewed de novo." Whether Commissioner Tuncap voted is a question of fact. The Court has reviewed
the transcript of the CSC Hearing and does not believe there is substantial evidence to support DPR's set
of facts.

1 interpretation places particular emphasis on a fact that is ultimately inconsequential. 4 GCA §
2 4407(a) places the burden of proof in any adverse action appeal on “the government [Petitioner]
3 to show clearly and convincingly that the action of the Branch, department, agency or
4 instrumentality was correct.” ALJ Miller found that was that there was clear and convincing
5 evidence that Employee was insubordinate, which led him to recommend that the adverse action
6 be affirmed. By not acquiring four (4) affirmative votes accepting the ALJ’s recommendation to
7 affirm the adverse action, DPR effectively failed to get the affirmative vote of four
8 Commissioners to affirm the termination. Therefore, the Petition for Judicial Review is denied
9 and the CSC’s February 11, 2020 Decision and Judgment is affirmed.

11 **III. Whether the CSC’s Policies for Time Limits and Order of Witnesses Were**
12 **Improperly Created and are Unenforceable**

13 Petitioner DPR has requested the Court to invalidate various CSC practices pursuant to
14 the Court’s discretion in 5 GCA § 9303(c) and 5 GCA § 9309. According to Petitioner, the CSC
15 implemented new informal or standing rules during the hearing at issue in this case, including
16 requiring Petitioner to call the Employee as the last witness, and setting advance time limits on
17 witness and Employee testimony. Verified Petition ¶ 69. Petitioner DPR claims that these new
18 limitations “attempt to amend or otherwise contradict CSC’s rules” and fail to properly amend
19 existing rules under the rule-making provisions of the Administrative Adjudication Act (“AAL”).
20 *Id.* at ¶ 70. Petitioner filed several motions in August 2019 disputing the above-mentioned rules,
21 but, according to Plaintiff, the CSC did not issue a written order on these issues at any point. *Id.*
22 at ¶¶ 72-76.

24 In 5 GCA § 9309, the law gives the Superior Court authority to review the validity of any
25 rule upon petition for a declaratory judgment, “when it appears that the rule, or its threatened
26 application, interferes with or impairs, or threatens to interfere with or impair the legal rights or

1 privileges of the petitioner.” The Court may grant a declaratory judgment only after 1) the
2 petitioner requests the agency to pass upon the validity of the rule in question and 2) the agency
3 has so ruled or has failed to rule within ninety (90) days. If the Court finds that the rule violates
4 the law, exceeds the statutory authority of the agency, or was “was adopted without compliance
5 with statutory rule-making procedures”, the Court must declare it to be invalid. 5 GCA § 9309(b).
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7 It is the duty of every government agency with the power to “make, adopt, promulgate or
8 enforce” rules to prepare those rules and regulations according to specific standards outlined in 5
9 GCA § 9303. These standards include but are not limited to the rules: conforming to a standard
10 system, being filed with the Governor of Guam, being filed with the Attorney General of Guam,
11 and receiving approval. To date, the Court has seen no evidence that the CSC complied with these
12 standards when creating the informal or standing rules which were required of the parties in this
13 case. According to Petitioner DPR, the CSC required Petitioner to call Employee Ms. Aguon as
14 its last witness and set “advance” time limits on witness and Employee testimony. These
15 requirements are not found in the current version of the CSC’s Adverse Action rules. Therefore,
16 based on the information before the Court, it appears that these rules were adopted and
17 implemented “without compliance with statutory rule-making procedures.” Therefore, under 5
18 GCA § 9309(b), the Court is responsible to declare these rules to be invalid.
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20 The Court is at liberty to make this Declaratory Judgment because 1) Petitioner DPR has
21 already requested the CSC to evaluate the validity of the rules in question by setting forth its
22 concerns in its Motions filed on August 6, 2019 (Verified Pet. Ex. 4); and 2) the CSC has failed
23 to address the concerns raised in Petitioner’s Motions in any written order and it has been more
24 than ninety (90) days since Petitioner made its request.
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1 The Court understands that the CSC may have an interest in placing time limits or specific
2 orders on witness testimony in hearings, however, the Court wishes to reiterate that all
3 government agencies must comply with the rule-making procedures of the Administrative
4 Adjudication Act before attempting to adopt and implement new rules. Failing to do so may
5 endanger the due process rights of the parties involved, and has the potential to obstruct a just
6 result from taking place. As implemented in this case, these rules threaten to interfere with or
7 impair the legal rights or privileges of the Petitioner. Therefore, this Court **GRANTS** Petitioner's
8 request that this Court issue a declaratory ruling ordering that no CSC informal rule, practice, or
9 policy necessary to the adjudication of matters before the CSC be applied to CSC hearings other
10 than its current adverse action rules, unless those new rules, practices, or policies be created in
11 compliance with Guam's Administrative Adjudication Laws.
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13 **IV. Employee's Reinstatement and Damages**

14 **A. Reinstatement**

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16 Part of the relief sought by Petitioner in its Petition is that the reinstatement of the MS.
17 Aguon be delayed until this appeal has concluded. This decision resolves the appeal, and therefore
18 this Request for Stay of Execution is moot. Furthermore, under 4 GCA § 4406(g), "[w]here the
19 Commission has modified or revoked an adverse action in favor of the employee from the
20 classified service, the employee shall be reinstated immediately pursuant to the terms of the
21 decision until such time as the decision is overturned by judicial review." The Court sees no
22 reason to depart from the typical process of the law, particularly given the fact that this law applies
23 specifically to adverse actions under appeal, just like this one. The Employee is to be reinstated
24 immediately, as required by law.
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1 B. Damages

2 As part of its Decision and Judgment, the CSC ordered that Employee be reinstated, and
3 that she be awarded damages of backpay and reasonable attorney's fees. However, Petitioner
4 asserts and this Court agrees that the CSC failed to properly address the issue of the amount in
5 damages owed to the Employee. Verified Petition ¶ 54. According to Petitioner, the CSC set a
6 motion hearing for March 10, 2020, which did not go forward because there was not a quorum.
7 *Id.* at ¶ 55. Petitioner had anticipated that this hearing would include addressing setting an
8 evidentiary hearing to determine Employee's damages and fees. *Id.* However, to date, there has
9 not been a hearing to determine Employee's backpay, investigate her efforts toward her duty to
10 mitigate, or determine the amount of attorney's fees that should be awarded. *Id.* at ¶¶ 56-57.
11 Although this Court has chosen to affirm the determinations in the CSC's February 11, 2020
12 Decision and Judgment, the Court believes it is necessary to remand this case to the CSC for the
13 purpose of establishing damages, including backpay and attorney's fees. The CSC is ordered to
14 hold an evidentiary hearing to establish the exact amounts of Employee's damages and fees, with
15 that analysis including consideration of Employee's duty to mitigate.
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1 **CONCLUSION**

2 For the foregoing reasons, the Court hereby **DENIES** DPR's Petition and **AFFIRMS** the
3 CSC's February 11, 2020 Decision and Judgment, **GRANTS** Petitioner's requested Declaratory
4 Judgment, and **REMANDS** the case to the CSC for the purpose of determining exact damages
5 amounts.
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8 **SO ORDERED** this 4 | 9 | 25.

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12 **HONORABLE JOHN C. TERLAJE**
13 Judge, Superior Court of Guam
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18 **SERVICE VIA EMAIL**

I acknowledge that an electronic
copy of the original was e-mailed to:

19 *CIVIL 8005 Commission*
20 *AG'S - CIVIL LITIGATION*
21 *PHILIP S BORDANO*
22 *APP 6 9 2025 Time: 3:22 PM*

Edna M. Lopez
Deputy Clerk, Superior Court of Guam