

GOVERNMENT OF GUAM
OFFICE OF THE GOVERNOR
AGANA, GUAM

EXECUTIVE ORDER NO. 72-23

AMENDMENT TO EXECUTIVE ORDER NO. 72-19

RULES AND REGULATIONS REGARDING DEMOTION,
SUSPENSION, DISMISSAL AND APPEAL OF SUCH
ADVERSE ACTIONS TO THE CIVIL SERVICE
COMMISSION

By virtue of the authority vested in me by the Organic Act of Guam, I hereby approve the amendment of Section CSC-150 of Executive Order No. 72-19 to read as follows:

CSC-150: The Commission shall issue a written decision within 20 days after the hearing is completed and shall send copies thereof to the affected department or agency head, the appellant, the Director of Administration and the Governor.

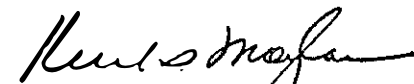
The affected department or agency head must report to the Commission, within seven calendar days after receipt of the decision, that it has implemented the decision.

The decision of the Commission is final and there is no further right of appeal. If the Commission revokes the adverse action taken, the employee's personnel records shall be cleared of all reference to the adverse action and all documents relating thereto shall be submitted to the Commission for disposal.

Signed and promulgated at Agana, Guam this 20th day of July, 1972.


Governor of Guam

COUNTERSIGNED:


Lieutenant Governor

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GOVERNMENT OF GUAM

RULES AND REGULATIONS RELATIVE TO DEMOTION, SUSPENSION, DISMISSAL AND
APPEAL OF SUCH ADVERSE ACTIONS

AS APPROVED AND PROMULGATED BY EXECUTIVE ORDER NO. _____

CSC-100 DEFINITIONS:

- (a) Suspension means either the temporary removal of an employee from his position with loss of pay as a disciplinary measure or his removal preliminary to investigation of charges pending demotion or dismissal.
- (b) Demotion means the involuntary reduction of an employee for cause 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 from which he was transferred, or a reduction to a lower salary increment in the same class.
- (c) Dismissal means the separation, discharge, or removal for cause of an employee from his position.

CSC-105 AUTHORIZED CAUSES FOR ADVERSE ACTION:

Each of the following shall constitute cause for adverse action against an employee:

- (1) Fraud in securing appointment;
- (2) Incompetence;
- (3) Inefficiency;
- (4) Inexcusable neglect of duty;
- (5) Insubordination;
- (6) Dishonesty;
- (7) Drunkenness on duty;
- (8) Intemperance;

- (9) Addiction to the use of narcotics or habit-forming drugs;
- (10) Inexcusable absence without leave;
- (11) Conviction of a felony or of a misdemeanor involving moral turpitude;
- (12) Discourteous treatment of the public or other employees;
- (13) Improper political activity;
- (14) Wilful disobedience;
- (15) Misuse of government property;
- (16) Refusal to take and subscribe any oath or affirmation which is required by law in connection with his employment; and
- (17) Other failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to his agency or his employment.

CSC-110 PROHIBITIONS:

- (a) A department may not take an adverse action against an employee covered by Section CSC-115 (a) except for such cause as will promote the efficiency of the service. Among the reasons that constitute such cause as will promote the efficiency of the service are the authorized causes for adverse action listed in Section CSC-115 of these rules.
- (b) A department may not take an adverse action against an employee covered by Section CSC-115 (a) that is based on discrimination because of race, color, religion, sex, or national origin, or for physical handicap with respect to any position the duties of which may be efficiently performed by a person with the physical handicap.

CSC-115 ADVERSE ACTION PROCEDURES:

(a) Employees covered:

All employees in the classified service of the Executive Branch of the Government of Guam except the following:

1. Regular contract employees whose contracts are not renewed upon expiration; and
2. Employees whose employment are temporary, seasonal, intermittent, part-time or only for a specific project.

(b) Adverse Actions Covered:

1. Dismissal;
2. Suspension; and
3. Demotion.

(c) Notice of Proposed Adverse Action:

An employee against whom adverse action is sought is entitled to immediate written notice stating any and all reasons, specifically and in detail, for the proposed action.

(d) Employee's Answer:

An employee is entitled to 20 days for answering charges and a notice of proposed adverse action and for furnishing affidavits in support of his answers. If the employee answers, the department shall consider his answer in reaching its decision. The employee is entitled to answer personally, or in writing, or both. The right to answer personally includes the right to answer orally in person by being given a reasonable opportunity to make any representations which the employee believes might sway the final decision on his case, but does not include the right to a trial or formal hearing with examination of witnesses. When the employee requests an opportunity to answer personally, the appointing authority shall make himself or representative(s) available to hear his answer.

(e) Duty Status During Notice Period:

Except as provided in Section CSC-115 (a), an employee against whom adverse action is proposed is entitled to be retained in an active duty status during the notice period. When circumstances are such that the retention of the employee in an active duty status in his position may result in damage to Government property or may be detrimental to the interests of the Government or injurious to the employee, his fellow workers, or the general public, the department may temporarily assign him to duties, in which these conditions will not exist or place him on leave with his consent.

(f) Suspension During Notice Period:

In an emergency case, when, because of the circumstances described in paragraph (e) of this Section, an employee cannot be kept in an active duty status during the notice period, the department may suspend him.

This suspension is a separate adverse action. An employee whose suspension under this paragraph is proposed is entitled to appeal to the Civil Service Commission.

(g) Notice of Adverse Decision:

The employee is entitled to notice of the department's decision at the earliest practicable date. The department shall deliver the notice of decision to the employee at or before the time the action will be made effective. The notice shall be in writing; be dated; inform the employee the specific statement of the charges upon which such action is based; inform the employee of his rights to appeal to the Civil Service Commission; and inform him of the time limit within which an appeal may be submitted as provided in Section CSC-130.3.

Copies of the Notice of Adverse Action shall be filed by the department with the Civil Service Commission not later than the working day next following the effective date of the action.

ADMINISTRATIVE APPEALS

This sets forth the regulations that will provide a simple, orderly method through which an employee may seek prompt administrative reconsideration of an adverse action against him.

CSC-120 DEFINITIONS:

- (a) Appeal means a request by an employee for reconsideration of an adverse action against him.
- (b) Appellate Decision means a decision made by the Civil Service Commission which completes action on the appeal at that level by sustaining the original decision, modifying the original decision by substituting a less severe action or revoking the original decision.
- (c) Original Adverse Action means an adverse action by an agency against an employee.
- (d) Days means calendar days.

CSC-125 ADVERSE ACTION COVERAGE:

1. Dismissal;
2. Suspension; and
3. Demotion.

THE APPEAL

CSC-130.1 RIGHT TO APPEAL

- (a) Any employee holding a permanent appointment in the classified service is entitled to appeal to the Civil Service Commission from an adverse action, covered by Section CSC-125. An employee who has been appointed to a permanent position and who shall have completed his probationary period holds a permanent appointment.
- (b) A regular contract employee occupying a permanent position in the classified service is entitled to appeal to the Civil Service Commission from adverse actions covered by Section CSC-125 during the term of his contract. Non-renewal of contract by the Government of Guam is not considered an adverse action and is not subject to appeal.
- (c) Probationary employees are entitled to appeal to the Civil Service Commission in writing from adverse action covered by Section CSC-125 only under the following grounds:
 - (1) On Discrimination. A probationary employee may appeal on the ground that the action was based on political reasons not required by statute, or resulted from discrimination because of sex, or marital status, or because of physical handicap. When an appeal is based on any of these grounds, the appellant shall submit an affidavit setting forth the facts and circumstances on which the appeal is based.
 - (2) On Improper Procedure: A probationary employee may appeal on the ground that his termination was not effective in accordance with the precedural requirements.
- (d) Temporary, intermittent, seasonal, or part-time employees are not entitled to appeal to the Civil Service Commission.

CSC-130.2 CONTENTS OF APPEAL:

An appeal shall be in writing; shall set forth clearly the basis of the appeal; and shall include the employee's request, if any, for a hearing when he is entitled to one.

CSC-130.3 TIME LIMIT FOR FILING APPEAL:

- (a) An employee may submit an appeal at any time after receipt of the notice of original action but not later than 20 calendar days after the date the employee receives the notice of adverse action.
- (b) The Civil Service Commission may extend the time limit not to exceed an additional 20 calendar days,
 - (1) when the employee shows that he was not notified of the time limit and was not otherwise aware of it, or that he was prevented by circumstances beyond his control from appeal within the time limit, or (2) for other reasons considered sufficient by the Commission.

CSC-130.4 PRESENTATION OF APPEAL:

- (a) An employee, in presenting his appeal, shall:
 - (1) Be assured freedom from restraint, interference, coercion, discrimination, or reprisal.
 - (2) Have the right to be accompanied, represented, and advised by a representative of his own choosing.
- (b) When the employee designates another employee of the department as his representative, the representative, who is presenting the appeal shall:
 - (1) Be assured freedom from restraint, interference, coercion, discrimination, or reprisal.

THE HEARING

CSC-135.1 RIGHT TO A HEARING:

(a) Entitlement:

An employee is entitled to a hearing on his appeal before the Civil Service Commission. The employee is entitled to appear at the hearing personally, or accompanied by or through his representative.

PLACE AND TIME OF HEARING

CSC-135.2 The Commission shall set the place, date and time of hearing as expeditiously as possible.

CONDUCT OF HEARING

- CSC-135.3 (a) The hearing is not open to the public. Attendance at the hearing is limited to persons determined by the Commission to have a direct connection with the appeal.
- (b) The hearing is conducted so as to bring out pertinent facts, including the production of pertinent records.
- (c) Rules of evidence are not applied strictly, but the Commission shall exclude irrelevant or unduly repetitious testimony.
- (d) Decisions on the admissibility of evidence or testimony are made by the presiding officer of the Commission without polling the Commission members, except that when a member objects to a decision of the presiding officer, a ruling on the admissibility of the evidence or testimony in question is by a majority vote of the Commission with minority views recorded.
- (e) Testimony is under oath or affirmation.
- (f) The presiding officer shall give the parties opportunities to cross-examine witnesses.

WITNESSES

- CSC-135.4 (a) Both parties are entitled to produce witnesses.
- (b) The department shall make its employees available as witnesses before the Civil Service Commission when (1) requested by the Commission after consideration of a request by the employees and (2) it is administratively practicable to comply with the request of the Commission. If the department determines that it is not administratively practicable to comply with the request of the Commission, it shall submit for inclusion in the employee appeal file its written reasons for the declination.

- (c) An employee is on duty status during the time he is made available as a witness. An employee who serves as a witness on days for which he would have been entitled to receive overtime compensation had he rendered service in his regular position is entitled to the overtime compensation he would have received on these days. The Civil Service Commission shall furnish the head of the department or agency in which he is employed a certificate or certificates showing the time devoted to the hearing.
- (d) The department shall assure witnesses freedom from restraint, interference, coercion, discrimination, or reprisal in presenting their testimony.

RECORD OF HEARING

- CSC-135.5
- (a) The Commission shall prepare a verbatim transcript or written summary of the hearing, including all pertinent documents submitted to and accepted by the Commission for its consideration. When the hearing is reported verbatim, the Commission shall make the transcript a part of the record of the proceedings. When the hearing is not reported verbatim, the Commission shall make a suitable summary of pertinent portions of the testimony. When agreed to in writing by the parties, the summary constitutes the report of the hearing and is made a part of the record of the proceedings. If the Commission and the parties fail to agree on the summary, the parties are entitled to submit written exceptions and the summary constitute the report of the hearing and are made a part of the record of the proceedings.
 - (b) The employee is entitled to be furnished a copy of the transcript or summary at or before the time he is furnished a copy of the report of the Commission.

TERMINATION OF APPEAL

- CSC-140
- The Civil Service Commission shall terminate an employee's appeal:
- (a) At the employee's request.

- (b) For failure to prosecute if the employee does not furnish required information and duly proceed with the advancement of his appeal. However, instead of terminating for failure to prosecute, the Commission may adjudicate the appeal if sufficient information for that purpose is available. The Commission may reopen a closed appeal under this paragraph only on a showing by the employee that circumstances beyond his control prevented him from prosecuting his appeal.

DEATH OF EMPLOYEE

- CSC-140.1 When an appeal is filed properly before the death of the employee, the Commission shall process it to completion and adjudicate it. The Commission may provide for amendment to show retroactive restoration and the employee's continuance on the rolls on active duty status to the date of death.

APPELLATE REVIEW

- CSC-145 The scope of the appellate review shall include, but shall not be limited to, (1) a review of the issues of fact, and (2) a review of compliance with procedural requirements for effecting the adverse action.

APPELLATE DECISION

- CSC-150 The Commission shall issue a written decision within 20 days after the hearing is completed and shall send copies thereof to the affected department or agency head, the appellant, the Director of Administration and the Governor. The Commission may sustain, modify or revoke the adverse action taken against the appellant. The decision of the Commission is final and there is no further right of appeal. If the Commission revokes the adverse action taken, the employee's personnel records shall be cleared of all reference to the adverse action and all documents relative thereto shall be submitted to the Commission for disposal.

GOVERNMENT OF GUAM

RULES AND REGULATIONS RELATIVE TO
DEMOTION, SUSPENSION, DISMISSAL
AND APPEAL OF SUCH ADVERSE ACTIONS

CSC-100 DEFINITIONS:

- (a) Suspension means either the temporary removal of an employee from his position with loss of pay as a disciplinary measure ~~or~~ his removal preliminary to investigation of charges pending demotion or dismissal.
- (b) Demotion means the involuntary reduction of an employee for cause 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 from which he was transferred, or a reduction to a lower salary increment in the same class.
- (c) Dismissal means the separation, discharge, removal for cause of an employee from his position.

CSC-105 AUTHORIZED CAUSES FOR ADVERSE ACTIONS:

Each of the following shall constitute cause for adverse action against an employee:

- (1) Fraud in securing appointment
- (2) Incompetence
- (3) Inefficiency
- (4) Inexcusable neglect of duty
- (5) Insubordination
- (6) Dishonesty
- (7) Drunkenness on duty
- (8) Intemperance
- (9) Addiction to the use of narcotics or habit-forming drugs

- (10) Inexcusable absence without leave
- (11) Conviction of a felony or of a misdemeanor involving moral turpitude
- (12) Discourteous treatment of the public or other employees
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- (14) Wilful disobedience
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- (16) Refusal to take and subscribe any oath or affirmation which is required by law in connection with his employment
- (17) Other failure of good behavior either during or outside of duty hours which is of such a nature that it cause discredit to his agency or his employment.

CSC-110 PROHIBITIONS:

- (a) A department may not take an adverse action against an employee covered by Section CSC-115 (a) except for such cause as will promote the efficiency of the service. Among the reasons that constitute such cause as will promote the efficiency of the service are the authorized causes for adverse action listed in Section CSC-105 of these rules.
- (b) A department may not take an adverse action against an employee covered by Section CSC-115 (a) that is based on discrimination because of race, color, religion, sex, or national origin, or for physical handicap with respect to any position the duties of which may be efficiently performed by a person with the physical handicap.

CSC-115 ADVERSE ACTION PROCEDURES:

(a) Employees covered:

All employees in the classified service of the Executive Branch of the Government of Guam except the following:

1. Regular contract employees whose contracts are not renewed upon expiration.
2. Employees whose employment are temporary, seasonal, intermittent, part-time or only for a specific project.

(b) Adverse Actions covered:

1. Dismissal
2. Suspension
3. Demotion

(c) Notice of Proposed Adverse Action:

An employee against whom adverse action is sought is entitled to immediate written notice stating any and all reasons, specifically and in detail, for the proposed action.

(d) Employee's Answer:

An employee is entitled to 20 days for answering charges and a notice of proposed adverse action and for furnishing affidavits in support of his answers. If the employee answers, the department shall consider his answer in reaching its decision. The employee is entitled to answer **personally** or in writing, or both. The right to answer personally includes the right to answer orally in person by being given a reasonable opportunity to make any representations which the employee believes might sway the final decision on his case, but does

not include the right to a trial or formal hearing with examination of witnesses. When the employee requests an opportunity to answer personally, the appointing authority shall make himself or representative(s) available to hear his answer.

(e) Duty Status During Notice Period:

Except as provided in Section CSC-115 (a), an employee against whom adverse action is proposed is entitled to be retained in an active duty status during the notice period. When circumstances are such that the retention of the employee in an active duty status in his position may result in damage to Government property or may be detrimental to the interests of the Government or injurious to the employee, his fellow workers, or the general public, the department may temporarily assign him to duties, in which these conditions will not exist or place him on leave with his consent.

(f) Suspension During Notice Period:

In an emergency case, when, because of the circumstances described in paragraph (c) of this Section, an employee cannot be kept in an active duty status during the notice period, the department may suspend him. This suspension is a separate adverse action. An employee whose suspension under this paragraph is proposed is entitled to appeal to the Civil Service Commission.

(g) Notice of Adverse Decision:

The employee is entitled to notice of the department's decision at the earliest practicable date. The department shall deliver the notice of decision to the employee at or before the time the action will be made effective. The notice shall be in writing, be dated, inform the employee the specific statement of the charges upon which such action is based, inform the employee of his rights to appeal to the Civil Service Commission, and inform him of the time limit within which an appeal may be submitted as provided in Section CSC-130.3

Copies of the Notice of Adverse Action shall be filed by the department with the Civil Service Commission not later than the working day next following the effective date of the action.

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This sets forth the regulations that will provide a simple, orderly method through which an employee may seek prompt administrative reconsideration of an adverse action against him.

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or revoking the original decision.

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CSC-125 ADVERSE ACTION COVERAGE:

- (1) Dismissal
- (2) Suspension
- (3) Demotion

THE APPEAL

SCS-130.1 RIGHT TO APPEAL

- (a) Any employee holding a permanent appointment in the classified service is entitled to appeal to the Civil Service Commission from an adverse action, covered by Section CSC-125. An employee who has been appointed to a permanent position and who shall have completed his probationary period holds a permanent appointment.
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employee shows that he was not notified of the time limit and was not otherwise aware of it, or that he was prevented by circumstances beyond his control from appeal within the time limit, or (2) for other reasons considered sufficient by the Commission.

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- (a) An employee, in presenting his appeal, shall:
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CSC-135.3

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- (a) The hearing is not open to the public. Attendance at the hearing is limited to persons determined by the Commission to have a direct connection with the appeal.
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- (c) Rules of evidence are not applied strictly, but the Commission shall exclude irrelevant or unduly repetitious testimony.
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