

BEFORE THE 2007 JUDICIAL COUNCIL OF GUAM
RESOLUTION NO. JC 07-030

**RELATIVE TO ADOPTION OF ADMINISTRATIVE HEARING
OFFICER'S DECISION AND ORDER DENYING APPEAL OF
EMPLOYEE AMANDO D. QUTORIANO**

WHEREAS, classified employee Amando D. Qutoriano ("Qutoriano") submitted a formal request for back pay to the Administrator of the Courts ("AOC") on October 3, 2005 claiming that he was entitled to higher pay based on the work he performed during an approximate two-and-one-half year period from October 1, 2002 to April 5, 2005 when he held the position of, and was paid as, a Deputy Clerk I in the Courts & Ministerial Division of the Superior Court of Guam; and

WHEREAS, Qutoriano's request was denied on October 24, 2005 by the Acting Administrator of the Courts; and

WHEREAS, Qutoriano submitted his request for review of the AOC's decision to the Judicial Council on October 25, 2005; and

WHEREAS, this was not an appeal of an Adverse Action decision nor an appeal of a grievance decision and therefore the Judicial Council's Rules of Procedure for Appeals of Adverse Actions and Grievances did not expressly apply to the matter. Thus no mechanism was in place whereby such a matter could be referred to an AHO for a decision which would automatically be considered the Council's "final" decision. As such the Judicial Council instead assigned the matter to an AHO to conduct a hearing and provide a recommendation to the Council for its consideration; and

WHEREAS, the AHO conducted a full evidentiary hearing on February 19, 23 & 27, 2007 and issued a Decision and Order on November 5, 2007 (attached Hereto as Exhibit A) affirming the AOC's decision and denying Qutoriano's request for additional compensation from October 1, 2002 to April 5, 2005; and

WHEREAS, the Council has fully considered the AHO's Decision and Order and the AHO's recommendations and conclusions contained therein;

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NOW THEREFORE BE IT RESOLVED, that the Decision and Order issued by the Administrative Hearing Officer on November 5, 2007 in the Appeal of Amando D. Quitoriano is hereby **APPROVED AND ADOPTED** by this Council. Mr. Quitoriano shall have the right to appeal this matter to the Superior Court of Guam within 30 days of this Resolution's adoption through petition for judicial review pursuant to *Edward G. Perez vs. Judicial Council of Guam and Superior Court of Guam*, 2002 Guam 12 at ¶ 12.

DULY ADOPTED this 21st day of December, 2007 at a duly noticed meeting of the Judicial Council of Guam.



F. PHILIP CARBULLIDO, Chairman

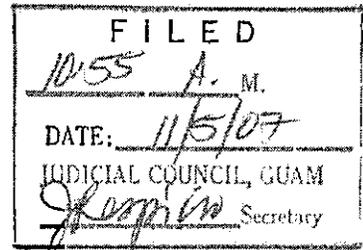
Date: 2-06-08

ATTEST:



JOLEEN F. RESPICIO, Secretary

Date: 2-6-08



IN THE SUPREME COURT OF GUAM

BEFORE THE ADMINISTRATIVE HEARING OFFICER

IN RE: GRIEVANCE APPEAL)	
)	
OF)	DECISION AND ORDER
)	REGARDING APPELLANT'S
AMANDO D. QUITORIANO,)	REQUEST FOR COMPENSATION
)	
Appellant.)	
_____)	

I. INTRODUCTION:

This matter came on for an Evidentiary Hearing on the 19th, 23rd, and 27th day of February, 2007, in the Supreme Court of Guam pursuant to Appellant's Appeal and Grievance before the Administrative Hearing Officer, CYNTHIA V. ECUBE, ESQ. ("AHO"). Present at the hearing was the Appellant, AMANDO D. QUITORIANO, appearing *Pro Se*, and BRUCE BRADLEY, ESQ., appearing on behalf of the Appellee, the Guam Judiciary.

Upon hearing and having heard all the testimony and evidence presented by the Parties' and witnesses, and having considered all arguments presented by the Parties, together with reviewing all the pleadings, records, and exhibits submitted in support therein; The Hearing Officer hereby issues its decision as follows:

II. ISSUES PRESENTED FOR APPEAL:

The primary issue for appeal before the Administrative Hearing Officer is whether Appellee failed to properly compensate Appellant ("Amando Quitoriano") for work performed outside the

scope of his duties and functions as a Deputy Clerk I commencing the period between October 2002 to April 2005 while Appellant was employed with the Superior Court of Guam.

III. FACTUAL AND PROCEDURAL HISTORY:

On or about October 25, 2005, Amando D. Quitariano ("Appellant") filed an appeal¹ before the Judicial Counsel arising out of a grievance alleging as follows:

- A. Commencing between the periods of October 2002 to April 5, 2005, Appellant² was appointed as "team leader" and was assigned and tasked with the responsibility by his supervisor, Ms. Jenbel Manibusan, to train and supervise Data Entry Clerks, Deputy Clerk Assistants, Deputy Clerk I, and Deputy Clerk II individuals employed with the Traffic Bureau within the Superior Court of Guam;
- B. That the assignment and/or appointment as "team leader" made by Appellant's supervisor exceeded the scope and duties of Appellant as a Deputy Clerk 1; and
- C. That as a result of his performance as "team leader" for his division, Appellant was not justifiably compensated for his performance during this period.

Appellant Quitariano's appeal arises out of his correspondences to the Administrator of the Courts on August 1, 2005, and October 3, 2005, concerning the issue of compensation. In its response to the complaint, on October 24, 2005, the Judiciary replied by denying Appellant's claim for additional compensation on the following grounds:

¹ Appellant served his Appeal for Reconsideration upon the Chairman of the Judicial Counsel, Chief Justice F. Philip Carbulido.

² Appellant alleges that the time that he was delegated by his supervisor, Jenbel Manibusan, he was a Deputy Clerk I.

1. There was no official documentation pursuant to 9.31 of the Judiciary's Personnel Rules and Regulations approving Appellant's "detailed appointment" and increase of compensation.
2. Appellant's argument as "team leader" is not a recognized official classification of title for purposes of compensation. The term "team leader" is commonly used in the courts which refers to the assignment of personnel in each Judicial team.
3. That Appellant was properly compensated as a result of Appellant's outstanding performance based upon the performance appraisal conducted, and that Appellant was promoted to Deputy Clerk II, effective on April 1, 2005³.

Appellant now brings this grievance action before the Judicial Council seeking proper compensation for duties and functions he performed, that were outside the scope of a Deputy Clerk I. Appellee, however, disputes, that Appellant Quitariano is entitled to additional compensation on several grounds. First, Appellant's appeal was untimely filed since Appellant did not raise the issue of additional compensation until three (3) months after the promotion to Deputy Clerk II, and that Appellant's performance as a Deputy Clerk I for the months commencing October 2002 to April 5, 2005 are consistent with the job scope and duties as a Deputy Clerk I for the Courts.

IV. LEGAL DISCUSSION AND ANALYSIS

The requirements for the Superior Court of Guam's Job Standard's position as Deputy Clerk

³ The Judiciary also indicated in its response that Appellant did not comply with the informal Grievance Procedure as provided in 10.20 of the Personnel Rules and Regulations, and, that Issues related to classification are exempted from the grievance procedures under Rule 10.05.05. (Note: The Judiciary, however, in the same response, commended Appellant for his dedication and outstanding performance in his employment with the Courts.)

I, provides in whole part:

“This is entry level court ministerial work. Serving in the capacity of a deputized clerk, an employee of this class performs manual and automated tasks involving the administrative functions of all casework requirements received in, created by, and processed through the Courts & Ministerial Division. At this level, work is performed under less supervision but is closely reviewed to ensure conformance to established court rules and procedures.

ILLUSTRATIVE EXAMPLES OF WORK: (Any one position may not include all the duties listed, nor do the examples cover all the duties which may be preformed.) Performs intake tasks; receives and reviews legal documents for adherence to legal requirements, proper format and accuracy; distributes case file to other court officials for next appropriate action. Receives through mail and over the counter tickets and court papers and documents; stamps received filing and documents; determines general case category and makes docket entries; enters case intake information; Writes and prepares chits for fee payments; sets marriage appointments; answers inquiries and furnishes information by reviewing court records. Inserts all jacketed documents into case files; prepares out-cards for documents requiring judge’s signature; processes clients during arraignments or ordered release conditions; Retrieves files from Calendar Unit and process for Marshall service; process files retrieved from Judge’s chambers, conform documents and distribute accordingly.

Performs citation processing; assess fines; data entries of all information regarding traffic, litter, boating and handicap citations; processes notices, warrants and bails.

DEPUTY CLERK I; PAY GRADE: I

Process the intake and disposition of all small claims cases; prepares judgments; enters disposition. Prepares and sets calendar dates for various court proceedings; stamps file; certifies and seals documents.

Adheres to and complies with all promulgated policies, standards and codes of ethical conduct. Performs other related duties as required.

MINIMUM KNOWLEDGE, ABILITIES AND SKILLS:

Knowledge of general office practice and procedures.

Knowledge of business English, spelling, punctuation and grammar.

Ability to learn and apply applicable laws, standard operating policies and procedures.

Ability to organize and type reports, correspondence and other court documents in proper format and style and makes moderate changes involved.

Ability to maintain records and prepare routine reports.

Ability to use and operate standard office equipment to accomplish assignments.

Ability to work effectively with officials, the public and employees.

Ability to communicate effectively, orally and in writing.

Skill in the operation of a typewriter.

MINIMUM EXPERIENCE AND TRAINING:

Graduation from high school or G. E. D. equivalent, plus four (4) years of work experience in office clerical of which two (2) years must be in legal or courts and ministerial work.⁴

The burden of proof in establishing that Appellant Quitoriano is entitled to additional

⁴ Please refer to the Superior Court of Guam Job Standard listed with the Human Resources Division of the Judiciary. The position of Deputy Clerk I is a classified position with the Court.

compensation rests with Appellant to demonstrate that he performed certain duties and functions outside the scope of a Deputy Clerk I with the Superior Court of Guam during the period of October 2002 to April 5, 2005.

Appellant argues that during the period in dispute, Appellant was performing those duties beyond Deputy Clerk I, and in some cases, those duties of a Deputy Clerk II and III. In support of his position for additional compensation, Appellant presented testimony of court personnel and himself during the evidentiary hearing. Appellant first argues that because he was "detailed" as a "team leader" for the Small Claims Division for the period commencing October 2002 to April 5, 2005, he should have received additional compensation since those who were appointed as "team leaders"⁵ were employees who generally held the position as a Deputy Clerk III. According to testimony presented by the Appellant's witness, Chief Deputy Clerk Jessica Cruz, Ms. Cruz testified that during a meeting involving herself, Appellant, and her immediate supervisor, Richard Martinez⁶ on October 4, 2004⁷, she recalled that Mr. Martinez was upset and stated that he would have never allowed a Deputy Clerk I to be a "team leader". Mr. Martinez stated during the meeting that they messed up because only a Deputy Clerk III can be a "team leader", according to Ms. Cruz. See

⁵ A team leader as defined by Appellee is commonly used by the Court by managers, division heads or supervisors to acknowledge who are going to monitor or oversee functions or duties. See Transcript of Hearing dated February 23, 2007, regarding testimony of Barbara Perez at Page 17; Lines 16 - 23; Further, a team leader assigned in the Traffic Division of the Court is a "senior clerk [who is] to supervise lower titles like data entries, clerk assistants, or new incoming employees". See Transcript of Hearing dated February 27, 2007, regarding Testimony of Jenbel V. Manibusan at Page 36; Lines 1-3.

⁶ Richard Martinez' position as this time was Clerk for the Superior Court of Guam. (Note: Mr. Martinez did not testify at these proceedings.)

⁷ Notes of the meeting on October 4, 2004 were documented by the witness, Chief Deputy Clerk Jessica Cruz, and were marked and admitted into evidence as Appellant's Exhibit "A".

Transcript of Hearing on February 19, 2007, at Page 30; Lines 24 - 25; Page 31; Lines 1 -2.

Appellee, however, disputes Appellant's argument that the appointment and/or detail of Appellant as "team leader" for the division justifies an increase in compensation. The Standard Operating Procedure (SOP) regarding Detail Appointment provides strict guidelines in addressing an appointment of an employee of the Court to a higher position.⁸ Section I, Paragraph 9.31 of the SOP provides in part that:

"Detail: No employee shall be temporarily assigned or detailed to a position nor shall the employee assume the duties and responsibilities of a position other than the one to which he has been appointed for a period in excess of one hundred and twenty (120) days." Additionally, Section VIII, Paragraph 1 provides that " Any detail assignment requires the completion and submission of Form #HR01-2001 to the Human Resources Division. This form requires the administrative clearance from the Human Resources Administrator and approval from the Administrative Director prior to the effective date of assignment/ appointment."

Although Appellant argues that he was "detailed" as "team leader", there was, however, no evidence presented on the record at the evidentiary hearing that an appointment and/or detail of Appellant was made as provided in Paragraph 9.31 of the SOP. During its cross-examination of Appellant's witness, Jessica Cruz, Appellee elicited further testimony from Ms. Cruz that there was no documentation of Detail Form prepared for Appellant. According to Ms. Cruz, a Detail Form was not done for Appellant, nor did she ever see documentation reflecting that Appellant was detailed to a position outside of his current position as Deputy Clerk I. The witness further testified that if

⁸ As defined in the SOP, the definition of a "Detail Assignment" relates to an employee who has been assigned to assume the duties and responsibilities of a higher position classification, which is also categorized as a temporary promotion.

Mr. Martinez had seen any documentation concerning a detail assignment, he would have disapproved it. See Transcript of Hearing dated February 19, 2007, regarding Testimony of Jessica Cruz at Page 33; Lines 11, 14.

The second argument Appellant raises during the hearing is his contention that he performed numerous functions that involved duties or responsibilities of a Deputy Clerk II and III. In support of this position at the hearing, Appellant presented documentation of his Performance Appraisal which was admitted into evidence and marked as Appellant's Exhibit D.⁹ Appellant argues that based upon his results of the Performance Appraisal, he was recognized by management as a "team leader" who "supervises" Deputy Clerk Assistants and Data Entry Clerks. Appellant's rebuttal witness, Jenbel V. Manibusan, testified that Appellant Quitariano assisted in training Deputy Clerk II employees, running the Traffic Courtroom, attended highway safety meetings, prepared SOPs, and handled payroll. The witness further stated that Appellant did these responsibilities very well, and that these were the type of responsibilities that were assigned to a highly qualified Clerk I. See Transcript of Hearing dated February 27, 2007, regarding Testimony of Jenbel V. Manibusan at Page 38; Lines 6 - 25. As a result of his performance, Manibusan testified that she recommended a desk audit be performed for purposes of his promotion. See Transcript of Hearing dated February 27, 2007, regarding Testimony of Jenbel V. Manibusan at Page 31; Lines 17 - 21.

Appellee, on the other hand, presented evidence during the hearing that Appellant's

⁹ Appellant's Exhibit "D" was prepared on September 15, 2003, and covers the period between 9/17/02 to 9/17/03 for the C & M Division/Traffic Violations Bureau Section. The evaluation was prepared by Appellant's Supervisor at the time, Jenbel V. Manibusan, and approved by Richard Martinez (Division Head), the Administrator of the Court, Anthony P. Sanchez, and Appellant Amando Quitariano.

"supervisory" duties involved operational supervision and not "management" supervision of employees in the Court. Appellee presented testimony by its witness, Barbara Perez, Human Resources Administrator¹⁰. During her testimony, the witness testified that Appellant Quitoriano is a highly qualified employee of the Superior Court and has received "glowing performances" as an employee. As a result of his performance, Appellant has been promoted a few times in the Court. Upon review of Appellant's record and files, as a Deputy Clerk I, Appellant performed some supervision of others which included monitoring of other Deputy Clerk I and other lower level staff. The witness categorized and defined two types of "supervision". One type of supervision involved operational supervision. This form of supervision involved monitoring the operations of the division and keeping an eye on things. The other form of supervision involved management supervision, which involved undertaking performance evaluations of the employees, conducting disciplinary actions against employees and scheduling leave for employees. Although Appellant did do some supervision of employees, the type of supervision performed involved operational supervision. Based upon the testimony presented by Ms. Perez and further review of the file, no evidence was presented on the record that Appellant performed management supervision duties, such as performance evaluations or taking disciplinary action against employees. See Transcript of Hearing dated February 23, 2007, regarding Testimony of Barbara Perez at Page 9; Lines 7- 25; Page 10; Lines 1-25; Page 11; Lines 1-12.

Another issue presented by Appellant during the hearing related to Appellant performing

¹⁰ As Human Resources Administrator, Ms. Perez provides counseling and advise to employees regarding the Court's policies and procedures. See Transcript of Hearing dated February 23, 2007, regarding Testimony of Barbara Perez at Page 6.

duties and functions outside of a Deputy Clerk I's job description. Appellant's witness, Deputy Clerk I, Rose Salas, testified that Amando Quitariano took the initiative to prepare a Standard Operating Procedure for the Division relating to the disposition of cases. See Transcript of Hearing dated February 19, 2007 regarding Testimony of Rose Salas at Page 59; Lines 1-15. The witness testified that the SOP drafted by Appellant was used as a useful guide in the Division. See Appellant's SOP which is marked and admitted into evidence as Appellant's Exhibit C. Ms. Salas also testified that while she was working with Appellant at that time, she observed Appellant taking over certain responsibilities and duties of a Deputy Clerk III employee, Ms. Balajadia, after she was transferred to another division of the Court. The witness further recalled Appellant attending highway safety meetings, DMR meetings regarding the assessment relating to the improvement of the Court's computer system, and preparing accountability reports for the division. These were duties that were not normal duties of a Deputy Clerk I. Moreover, Ms. Salas further testified that Appellant was a model employee and made himself available to help everyone. See Transcript of Hearing dated February 19, 2007, regarding Testimony of Rose Salas at Pages 68; Lines 12-15; Page 69; Lines 1 -5.

Appellant further argued at the hearing that as a Deputy Clerk I, he was tasked to train other employees that were higher level clerks. Testimony and evidence by the witnesses, however, was presented during the hearing establishing that a Deputy Clerk I employee could be tasked to cross train Deputy Clerk II or III employees, and that cross training of these higher level clerks are duties within the scope of a Deputy Clerk I's responsibilities. See Transcript of Hearing dated February 27, 2007, regarding Testimony of Jenbel V. Manibusan at Page 22; Lines 8 - 26, and Page 34; Lines 7 -9. Perez also testified that Appellant supervised Data Entry Clerks and Deputy Clerk Assistants. In some cases, Appellant would cross train and supervise Deputy Clerk IIs and IIIs, if they were new,

to show them the ropes. See Transcript of Hearing dated February 23, 2007, regarding Testimony of Barbara Perez at Page 16, Lines 24 -25; Page 17; Lines 1-9.

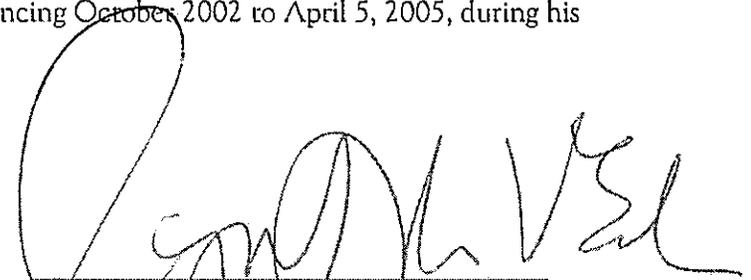
Throughout the hearing, Appellee did not dispute Appellant's position that he was a highly qualified employee who did an exceptional job as a Deputy Clerk I, however, Appellee presented evidence that his exceptional performance and assignment as "team leader" was consistent with the role and duties as a Deputy Clerk I. Appellant's supervisor, Jenbel V. Manibusan testified that the responsibilities and duties performed by Appellant during the period in question were within the scope of the duties of a Deputy Clerk I. See Transcript of Hearing dated February 27, 2007, regarding Testimony of Jenbel V. Manibusan at Page 40; Line 22; See Also Page 44; Lines 3 - 6. Ms. Perez also testified concurring that all the duties and functions performed by Appellant Quitariano were within the scope of the duties of a Deputy Clerk I. See Transcript of hearing dated February 23, 2007, regarding Testimony of Barbara Perez at Page 24; Line 24 - 25; Page 25; Line 1; Page 26; Lines 15 - 24. Although Appellant's performance was exemplary, it did not merit additional compensation according to Manibusan; See Transcript of Hearing dated February 27, 2007, regarding Testimony of Jenbel V. Manibusan at Page 43; Lines 27 - 28; Page 44; Lines 1-2. Any request for additional compensation involves the performance of a desk audit of the employee's duties and functions. A desk audit involves a request by the employee to have the Human Resources Division review and evaluate the duties performed by the employee in order to determine whether the employee is performing certain tasks and functions that they are not being appropriately compensated. Although Appellant did not specifically request a "desk audit" by Human Resources during the 2 ½ period in dispute, Perez testified that a review of his files and evaluation results concluded that Appellant was performing those duties within the scope of a Deputy Clerk I's

position. See Transcript of Hearing dated February 23, 2007, regarding Testimony of Barbara Perez at Page 23; Lines 2 - 25; Page 2; 1-19.

V. FINDINGS AND CONCLUSIONS

Based upon the evidence and testimony presented at the hearings, the AHO finds that Appellant fails to demonstrate in his grievance action that he was entitled to receive additional compensation for the period commencing October 2002 to April 5, 2005 while employed with the Court as a Deputy Clerk I. There was no evidence presented on the record that Appellant was detailed in a position higher than the classification as a Deputy Clerk I as required under 9.31 of the SOP. Additionally, the AHO finds that as "team leader", Appellant Quitoriano was tasked to perform functions and duties that included supervision of lower clerk staff, cross training of Deputy Clerk IIs and IIIs, drafted SOPs, attended certain safety meetings, and properly guided and assisted fellow court colleagues in the performance of their duties, however, AHO concludes that these duties performed by Appellant were clearly within the scope of his responsibilities as a Deputy Clerk I. Although the AHO clearly recognizes, acknowledges, and commends Appellant for his exemplary employment record, his outstanding performance and contributions as a Deputy Clerk I with the Courts, the AHO further finds that Appellant's performance was properly addressed as a result of his promotion to the position as a Deputy Clerk II in April of 2005. Therefore, Appellant's request for additional compensation for the period commencing October 2002 to April 5, 2005, during his position as a Deputy Clerk I is denied.

Dated this 5th day of November, 2007.



CYNTHIA V. ECUBE
Administrative Hearing Officer