



Updates in Jurisprudence REGION VI IN FOCUS

Glyzelle Dianne “Chikki” DJ. Ybiernas
Attorney IV, Legal Services Division

Celiz, Nathaniel Jan G.

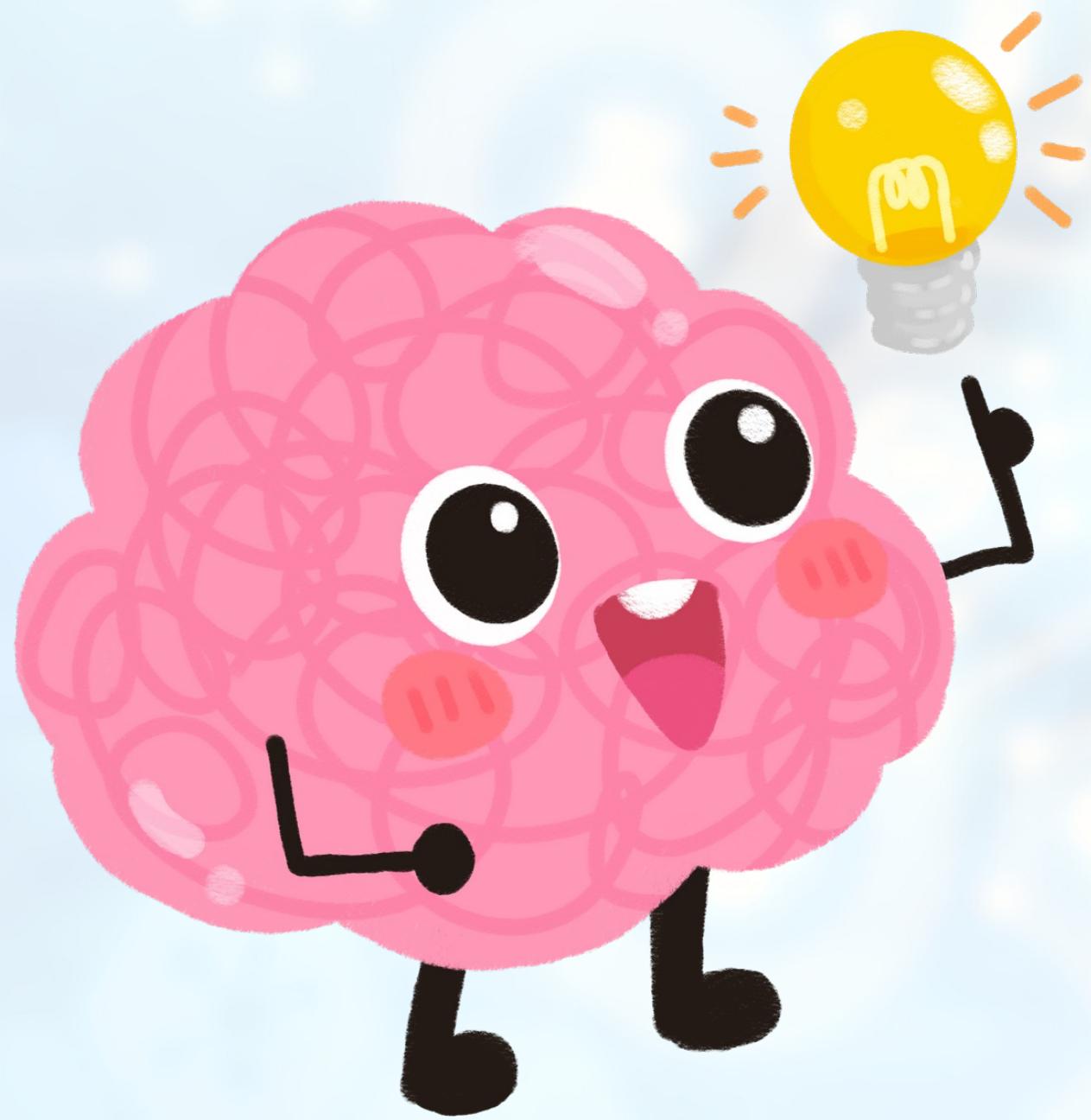
Resolution No. 1500400, March 25, 2015

- **Celiz, Records Officer IV of the City Government of Sipalay, Negros Occidental sought the opinion of the Commission regarding his study leave.**
- **On May 6, 2014, Celiz applied for study leave without pay for six (6) months to take the bar examinations. It was approved by the mayor.**



Celiz, Nathaniel Jan G.

Resolution No. 1500400, March 25, 2015



- **After his leave, he came to know of the provision of the Omnibus Rules on Leave that a study leave is a time off work with pay.**
- He then **appealed that his application for study leave be approved with pay, with the assurance that he will comply with the service obligation.**

Celiz, Nathaniel Jan G.

Resolution No. 1500400, March 25, 2015

- The mayor approved his request and they executed a Memorandum of Agreement.
- However, the HRMO refused to sign the certification portion of his application.
- Celiz sought the opinion of COA but the latter declined to give its opinion, invoking its Circular prohibiting it from conducting pre-audit activities.



Celiz, Nathaniel Jan G.

Resolution No. 1500400, March 25, 2015

- Celiz then wrote to CSC RO VI requesting for an opinion on the matter. CSC RO VI rendered an opinion stating that "the City Mayor is vested with the authority to act on applications for leave of his appointees. On the grant of study leave, the same is subject to the discretion of the City Mayor and compliance by the applicant of the requisites of Section 68 of the Omnibus Rules on Leave."
- Despite this, the HRMO refused to sign and told Celiz to ask the Commission for an opinion.

Celiz, Nathaniel Jan G.

Resolution No. 1500400, March 25, 2015

ISSUE

Whether or not the request of Celiz for the payment of his salaries and other benefits during the period of his study leave should be granted?



Celiz, Nathaniel Jan G.

Resolution No. 1500400, March 25, 2015

- **Section 445 of the Local Government Code of 1991**
 - **Vesting the City Mayor the authority to act on applications for leave of his/her appointees**
 - **Consequently, the City Mayor may request for the assistance of the HRMO in the assessment of the applicant's compliance with the requirements.**



Celiz, Nathaniel Jan G.

Resolution No. 1500400, March 25, 2015

In CSC Resolution No. 020711 dated May 16, 20022, the Commission ruled in this wise:

"It has to be emphasized that the grant of study leave is subject to the discretion of the head of agency based on the dictates of the exigencies of the service. *Privilegia resipriunt largan interpretationen volurnati consonant concedenti. Privileges are to be interpreted in accordance with the will of him who grants them.*

Hence, still of paramount consideration in the approval of applications for availment of study leave is the greater interest of the service to be determined with the circumspection by the head of agency concerned."



Celiz, Nathaniel Jan G.

Resolution No. 1500400, March 25, 2015



Considering that Celiz meets all the requirements for study leave prescribed the Omnibus Rules on Leave and the fact that the City Mayor approved his application for study leave with pay embodied in a Memorandum of Agreement which impliedly superseded the former agreement relative to Celiz' application for study leave without pay, the payment of his salaries and other benefits during the period of his study leave is inevitable.

Celiz, Nathaniel Jan G.

Resolution No. 1500400, March 25, 2015

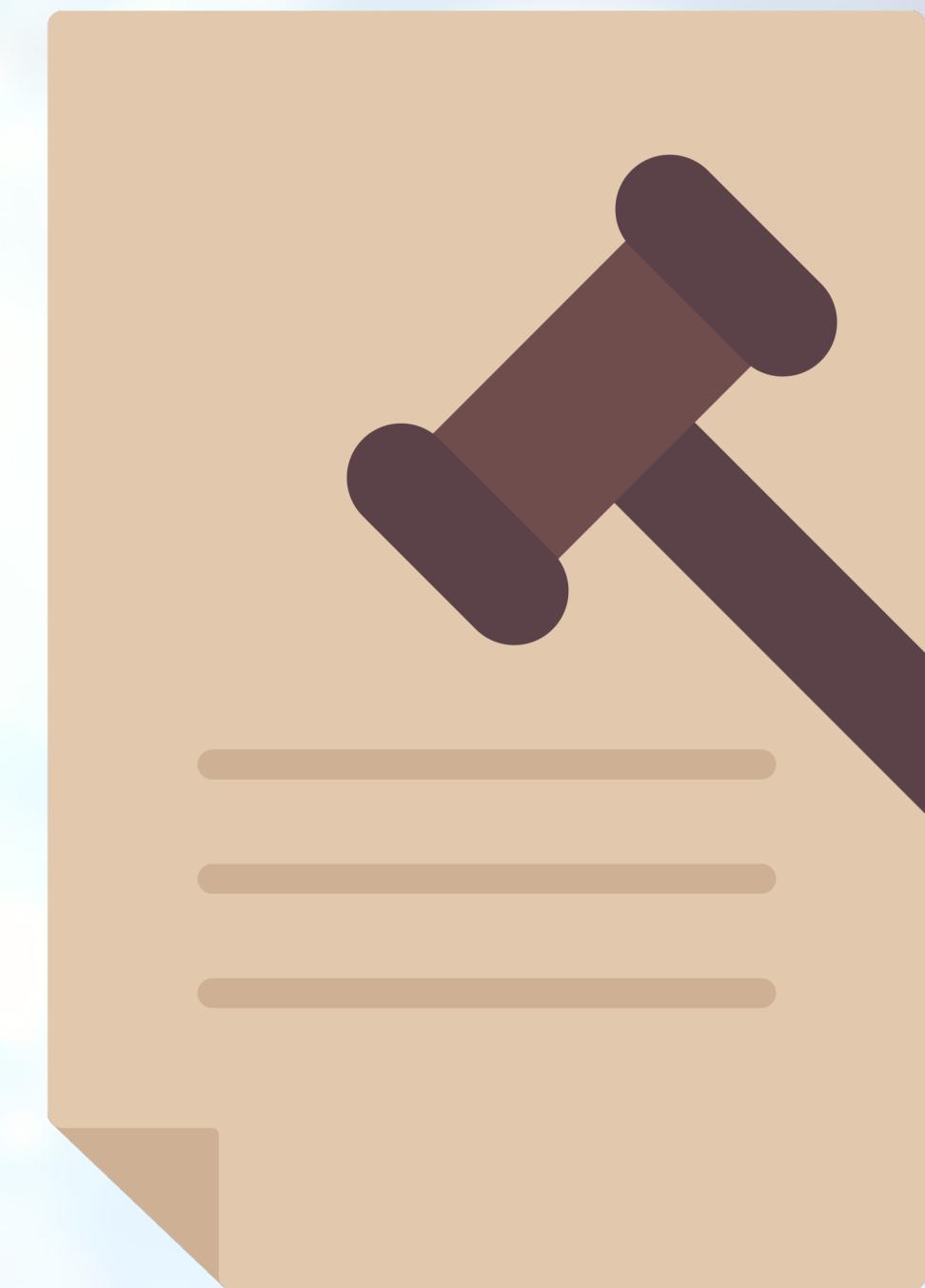
It is immaterial whether the application for study leave was approved on appeal after the leave was consummated. As long the application was approved by the Head of Agency, said approval can be applied retroactively since the same is beneficial to both the agency and the concerned employee.



Cabahug, Agustin Jr. C.

Decision No. 190534 dated December 11, 2019

Mr. A, Supervising Administrative Officer in West Visayas State University, filed an Appeal from the Resolution of WVSU which found him guilty of the offense of Sexual Harassment and imposed upon him the penalty of suspension of three (3) months and one (1) day.



Cabahug, Agustin Jr. C.

Decision No. 190534 dated December 11, 2019



- Cheryll, a job order personnel assigned at the Office of WVSU President, filed a Letter Complaint.
- According to Cheryll, after a Christmas party with the job order workers of the University, she boarded a taxi with Mr. A and other companions. When their companions got off the taxi, Mr. A transferred to the backseat and sat beside Cheryll. He then put his left arm around her shoulder and his right arm grabbed her right arm tightly squeezing it, while whispering slowly, "*Chin, please, please.*" She thought Mr. A was not feeling well, so she asked "*What happened to you, sir?*" but he continued, "*Please, please Chin. I have long wanted you... please, please let me.*"

Cabahug, Agustin Jr. C.

Decision No. 190534 dated December 11, 2019

- Cheryll replied, “*Sir, I have high regard to you, do not just force it.*” Still, Mr. A insisted and continued to hold him tight, saying “*Chin, please, please, this will be quick.*”
- Cheryll then felt nervous and she was shaking. She told Mr. A, “*Sir, even if I am a Job Order Worker and you will not renew my appointment next year, it is alright with me. Even if my husband is not here, I won't do anything like this.*”



Cabahug, Agustin Jr. C.

Decision No. 190534 dated December 11, 2019



- Mr. A insisted that Cheryll should not call him Sir and told the taxi driver to bring them to a lodging house. Cheryll objected and asked the driver to return her to where she was picked up. The taxi driver brought them there and she alighted. When she alighted, Mr. A also went down from the taxi. Cheryll then hurriedly rode another taxi and went home.

Cabahug, Agustin Jr. C.

Decision No. 190534 dated December 11, 2019

- Acting on the complaint, the CODI required Mr. A to submit his answer. Mr. A submitted his counter-affidavit, including affidavits of his witnesses and other documents pertinent to his defense. Preliminary investigation was conducted and the CODI came up with a finding of existence of a prima facie case. A formal charge was then issued and hearings were conducted. After, the CODI submitted its Investigation Report and the CODI Chairman appeared before the Board of Regents to discuss the investigation report.
- The Board of Regents found Mr. A guilty and imposed upon him the penalty of suspension of three (3) months and one (1) day.
- Mr. A filed a Motion for Reconsideration but the same was denied. Hence, he filed an Appeal before the Commission.



Cabahug, Agustin Jr. C.

Decision No. 190534 dated December 11, 2019

**The fact that the party
of the job order workers
took place outside of
the university premises
is immaterial.**



Cabahug, Agustin Jr. C.

Decision No. 190534 dated December 11, 2019

Mr. A attended the party as an official of WVSU and the party is work related as it is a result of work relations.



Cabahug, Agustin Jr. C.

Decision No. 190534 dated December 11, 2019

Mr. A argued that Cheryll did not cause a commotion or call the attention of taxi driver, which he alleges, is contrary to ordinary human conduct and experience. The CSC countered that different people react to similar situations dissimilarly.



Cabahug, Agustin Jr. C.

Decision No. 190534 dated December 11, 2019

Mr. A also questioned the text messages presented by Cheryll. According to him, they lacked authentication. However, Cheryll alleges that the text message was not the only basis of the decision. The Commission maintained that testimonies of Cheryll and her witnesses were crucial in the determination in the finding of WVSU.



Cabahug, Agustin Jr. C.

Decision No. 190534 dated December 11, 2019

Mr. A also questioned the penalty of suspension for three (3) months and one (1) day. He alleges that since the mitigating circumstance of length of service was considered, the proper penalty should have been one (1) day to two (2) months. Also, he argued that WVSU failed to consider the mitigating circumstance of “first offense.”

The CSC ruled that his length of service should instead be an aggravating circumstance, such that despite his 28 years of government service and being fully aware of sexual harassment laws, he has not learned to respect the rights of women and has disregarded sexual harassment laws which he is supposed to implement. The penalty therefore should be in the maximum, which is suspension of six (6) months.



Cabahug, Agustin Jr. C.

Decision No. 190534 dated December 11, 2019

Mr. A also argued that his reassignment to another office in WVSU is without legal basis.

The CSC countered that reassignment is one of the allowed personnel movements, as long as it did not involve reduction in his rank, status, or salary.

Lastly, Mr. A argued that he be allowed to pay a fine in place of the penalty of suspension. The CSC ruled that this is discretionary on the part of the disciplining authority.



Sampulna, Jim O.

Resolution No. 1900689 dated June 18, 2019

- The Regional Director of DENR Region VI requests the Commission to **exempt lawyers of said office from the use of bundy clock/biometrics.**
- He cited that the Commission, in CSC Resolution No. 001897 dated August 21, 2000, has allowed lawyers of the Legal Service Division of the DENR Central Office to be exempted from bundy clock/biometrics considering the “special nature” of their functions which necessitates a different and more exacting work hours to address the various demands of the Department.



Sampulna, Jim O.

Resolution No. 1900689 dated June 18, 2019



- **According to him, the lawyers in the RO are in the same situation and even stated that their work are even more complex considering that they have to attend court hearings, conduct investigation, mediation, attend meetings, etc. all throughout the region.**

Sampulna, Jim O.

Resolution No. 1900689 dated June 18, 2019



Section 2, Rule XVIII, Omnibus Rules Implementing Book V, E.O. 292, which requires the department or agency a daily recording of attendance of its officials and employees. The pertinent portions thereof read as follows:

“Section 2. Each head of department or agency shall require daily records of attendance of all the officers and employees under him including those serving in the field or on the water to be kept on the proper form and whenever possible, registered on the bundy clock.”

Sampulna, Jim O.

Resolution No. 1900689 dated June 18, 2019

CSC Memorandum Circular No. 21, s. 1991, specifically provides as follows:

ATTENDANCE

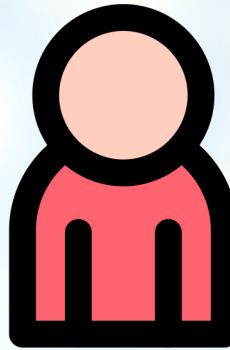
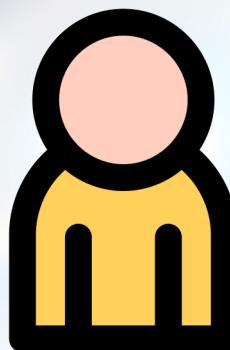
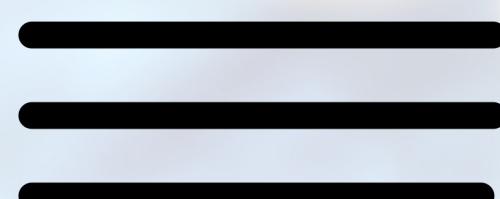
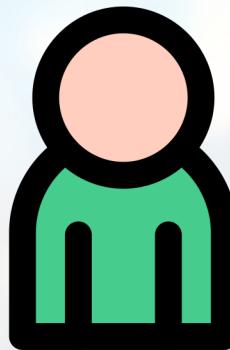
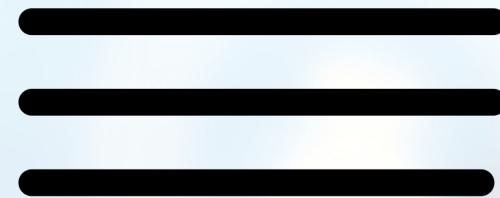


"C. Use of Bundy Clocks and Other records of Attendance

- 1. All officers and employees shall record their daily attendance on the proper form or, whenever possible, have them registered on the bundy clock. Any other means of recording attendance may be allowed provided their respective names and signatures as well as the time of their arrival to and departure from the office are indicated, subject to verification xxx. The Record of Attendance which shall be kept in a conspicuous place, shall be in the custody of a responsible officer who shall monitor arrival and departure of officials and employees."**

Sampulna, Jim O.

Resolution No. 1900689 dated June 18, 2019



- **Officials and employees of every government agency are required to have a daily recording of their attendance. The maintenance of a daily time record for officials and employees need not be accomplished exclusively through the use of a bundy clock.**
- **Other means of attendance may be allowed, provided the same shall be subject to verification. However, in allowing other modes of attendance monitoring, it must be based on reason and practicality.**

Sampulna, Jim O.

Resolution No. 1900689 dated June 18, 2019

- Data gathered from the conduct of validation yields that 50-70% of the duties and responsibilities of the DENR RO VI lawyers involve paper works such as, preparation of opinions, briefs, pleadings, memoranda and conduct of research.
- 30.13% to 54.17% of their time are spent in the office performing office-related functions, based on Certified True Copies of Position Description Forms, 2018 Travel Orders, and 2018 Daily Time Records of DENR lawyers in CSC RO VI.



Sampulna, Jim O.

Resolution No. 1900689 dated June 18, 2019



- **Validation also revealed that lawyers from said office do not use biometrics/bundy clock when they go out on official travels.**
- **The daily time records (DTR) of the respective lawyers show that they only indicate the Travel Order number corresponding to the date they were out of the office or on official travel.**
- **Also, they merely indicate as Official Business (OB) in their DTR in the event they go out of the office on short official trips or to attend in court hearings.**

Sampulna, Jim O.

Resolution No. 1900689 dated June 18, 2019



- **The Commission finds no cogent reason to permit the DENR RO VI lawyers from utilizing other means of recording their attendance especially when they are physically present in the office considering that it would not take too much of their time in using the bundy clock/biometrics.**
- **In the event that they are on official business, the non-use of bundy clock/biometrics are justified by the issuance of an Office/Travel Order.**

Sampulna, Jim O.

Resolution No. 1900689 dated June 18, 2019



The Commission underscores the need of monitoring the attendance because the DTR is not just a ceremonial requirement but also the basis of the payment of salary of an official or employee as enshrined in Section 94, Volume I, Title V, Chapter 1, Article 1 of P.D. 1445 otherwise known as the Government Accounting and Auditing Manual (GAAM) which provides that:

"The service must be actual and according to prescribed office or work hours, recorded on a time record, certified correct by the employee concerned and approved by his immediate superior."

Sampulna, Jim O.

Resolution No. 1900689 dated June 18, 2019



The exemption granted to the lawyers of the DENR Central Office is merely a privilege granted by the Commission which can be subject to review and scrutiny by the Commission in case the same is no longer necessary.

Uy, Fredinen J.

Decision No. 140118 dated February 20, 2014



- **Uy, Construction and Maintenance Man, Office of the City Engineer, City Government of La Carlota, Negros Occidental, filed a Petition for Review from the Decision of CSC RO VI, which affirmed the validity of the memorandum order of said city, dropping him from the rolls due to his continuous absence without leave (AWOL) for eight (8) months and twenty-one (21) days.**

Uy, Fredinen J.

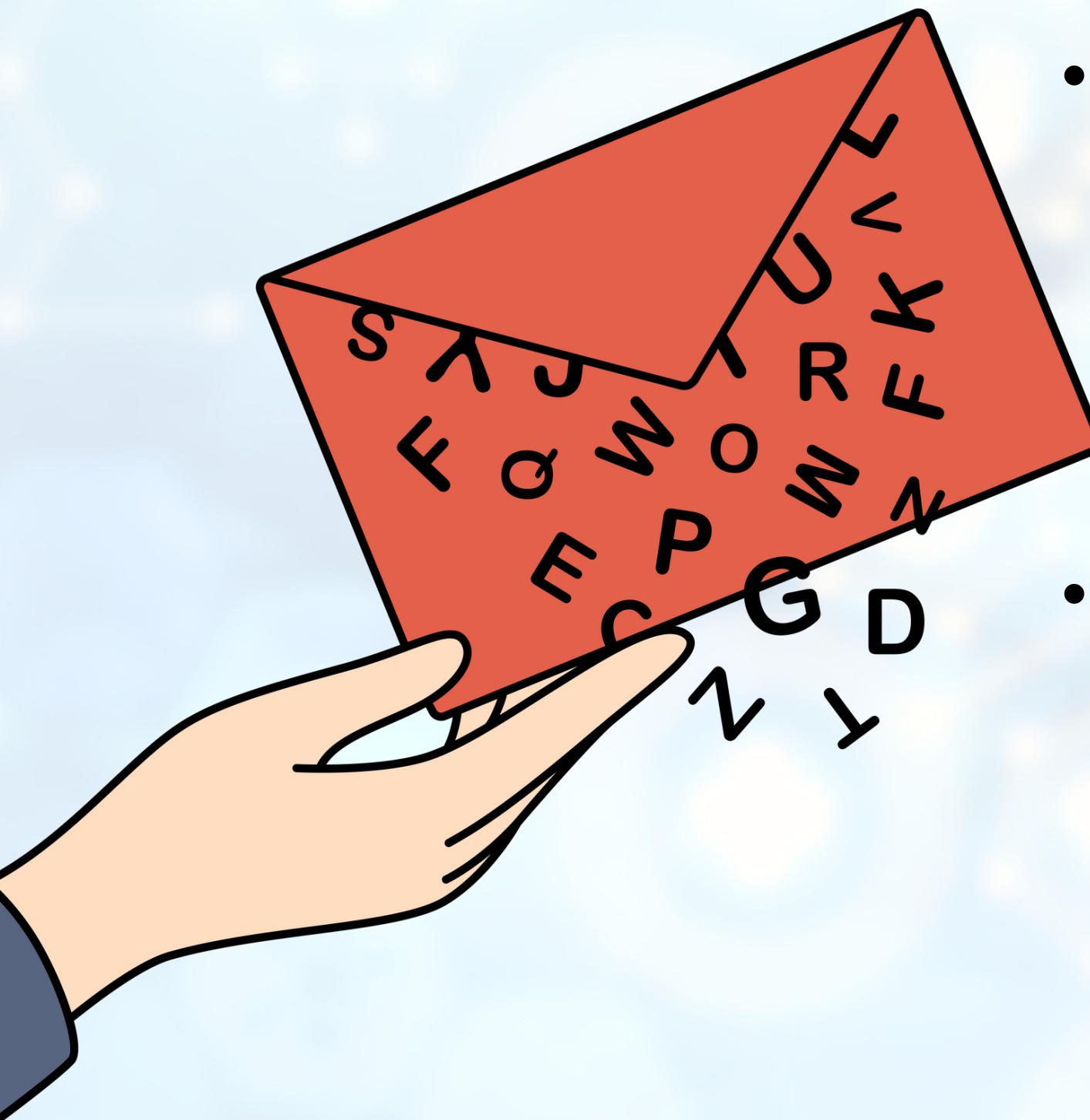
Decision No. 140118 dated February 20, 2014



- Uy filed a Motion for Reconsideration on said Decision, but the same was denied by CSC RO VI.
- Records show that Uy incurred continuous absences without approved leave for more than thirty (30) working days from December 1, 2011.
- On June 18, 2012, his Department Head, issued a Memorandum Order directing him to report within sixteen (16) hours to discuss matters pertaining to his attendance and his position.

Uy, Fredinen J.

Decision No. 140118 dated February 20, 2014



- **Another employee of the Office of the City Engineer was tasked to deliver said Memorandum Order to Uy at his known address. However, the younger brother of Uy said that the latter no longer lives there and his whereabouts is unknown.**
- **On September 19, 2012, his Department Head issued another Memorandum Order giving Uy until the first working hour of September 21, 2012 to report. This time, the employee tasked to deliver said Memorandum Order happened to chance upon Uy and he was able to personally give the same.**

Uy, Fredinen J.

Decision No. 140118 dated February 20, 2014



- **On October 22, 2012, the City Mayor issued a Memorandum Order dropping Uy from the rolls effective on the same date. At the time, Uy was on AWOL for eight (8) months and twenty-one (21) days.**
- **Aggrieved, Uy filed a complaint for illegal dismissal with damages before CSC RO VI.**

Uy, Fredinen J.

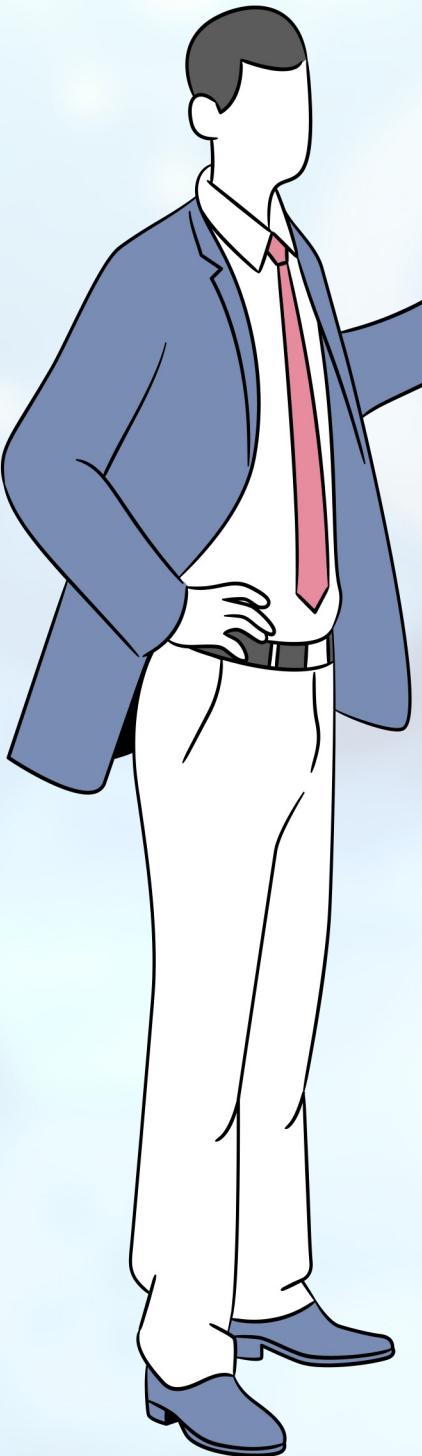
Decision No. 140118 dated February 20, 2014



**Whether or not CSC RO VI
erred in affirming the
validity of the order
dropping Uy from the rolls?**

Uy, Fredinen J.

Decision No. 140118 dated February 20, 2014



- The Commission affirmed the Decision of CSC RO VI.
- Based on records, Uy did not report for work beginning December 1, 2011 up to September 23, 2012.
- All throughout that period, he did not file for leave.

Uy, Fredinen J.

Decision No. 140118 dated February 20, 2014



- **It was only on September 24, 2012, when he reported to work that he submitted three (3) applications covering December 1 to 31, 2011 (vacation leave), January 2 to 23, 2012 (sick leave), and January 24 to September 23, 2012 (vacation leave).**
- **However, of these three, he only signed his application for leave for the month of December 2011. The other two do not contain his signature and that of his supervisor.**

Uy, Fredinen J.

Decision No. 140118 dated February 20, 2014

- **For the period January 2 to 23, 2012, Uy presented two medical certificates. One dated October 24, 2012 certifying that Uy was diagnosed with gastroesophageal reflux. The other was an undated medical certificate stating that the patient (whose name was not indicated) had acute gastritis.**



Uy, Fredinen J.

Decision No. 140118 dated February 20, 2014

- As of November 30, 2011, or before Uy stopped reporting to work, he only had 11.120 sick leave credits. Assuming that the reason for Uy's absences in December 2011 was due to sickness, he could have used his remaining sick leaves instead of applying for vacation leave. Also, he applied for vacation leave from January 24-September 23, 2012.



Uy, Fredinen J.

Decision No. 140118 dated February 20, 2014

- **The more logical assumption is that Uy did not apply for sick leave because he was not sick. If he was, he could have, at the very least, informed his supervisor or his mayor about his condition.**
- Rightly so, the Mayor did not approve his applications for leave. Instead, she issued a memorandum dropping him from the rolls as he was on AWOL for more than thirty (30) days as supported by evidence on record.



Uy, Fredinen J.

Decision No. 140118 dated February 20, 2014

The head of agency is not precluded from dropping an employee from the rolls even if said employee had returned to work as it will not erase the fact that he/she had been on continuous AWOL for more than 30 working days. Nor will the order of the immediate supervisor to report preclude the head of agency from issuing an order dropping from the rolls the employee who had gone on AWOL.



Thank you!