



BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS



IN THE MATTER OF:

Arlean P. Kloppenberg,

Employee,

vs.

Department of Public Health and Social
Services,

Management.

ADVERSE ACTION APPEAL
CASE NO. 11-AA08T

DECISION & JUDGMENT

This case came before the Civil Service Commission at its regularly scheduled meetings on November 5, 7, 9, 12, 14, 16 and 19, 2013, December 17-19, 2013, January 16 and 22, 2014, and April 8, 10, and 15-16, 2014, at its office located in Sinajana, Guam.

Arlean Kloppenburg ("Employee") was present with her attorney Daniel Somerfleck of Somerfleck and Associates. Present for Management for the majority of the hearings was Director James Gillan. Deputy Director Leo Casil attended some of the meetings in the Director's absence. Donna Lawrence, Esq., from the Attorney General's Office, was present and represented Management at all hearings.

I.
ISSUE

Did Management meet its burden of proof of clear and convincing evidence that the action taken in the Notice of Final Adverse Action (i.e. termination of employee) was correct and appropriate?

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II.
HOLDING

After considering the documents submitted, the testimony of the witnesses, and all evidence provided, the Commission finds by a vote of 6-0 that Management met its burden of proof relating to Employee's termination and voted in favor of Management.

III.
FACTS

Management proved the following facts clearly and convincingly:

- 1) Margarita Gay told Employee to stop handling any financial transactions relating to Shriner's donations and to stop arranging medical travel.
- 2) It was not part of Employee's job duties as a PC III to arrange or advance medical travel nor was it part of her job duties to charge off island medical travel to Shriner's Hospital in Hawaii on her personal credit card.
- 3) Employee was served a Memorandum of Warning by Margarita Gay on February 26, 2010. (See Exhibits M-93-96).
- 4) Employee received one point for every dollar she charged on her Citibank personal credit cards.
- 5) Employee realized personal gain as a result of her financial transactions with the Overseas Chinese Association.

IV.
FINDINGS

- 1) The Civil Service Commissioners find that the Government met its burden of proof by clear and convincing evidence that the action taken by DPHSS in this case, resulting in the termination of Employee, was correct and appropriate.
- 2) Employee deliberately chose to disobey her immediate supervisor's warnings and order to stop these financial transactions. She was told to cease and desist, and she refused to do so after being orally warned on February 20, 2010, and then warned in her Memorandum of Warning she signed on February 26, 2010.
- 3) Management supported the charges of refusal to perform job duties, insubordination, discourteous treatment to the public or others, misuse of government property, and that she acted unethically and inappropriate. Employee violated the code of conduct by providing confidential information and by receiving personal gain.
- 4) The charges supported by clear and convincing evidence are sufficient to make Employee's dismissal from employment appropriate.

V.
JURISDICTION

The jurisdiction of the Civil Service Commission is based upon the Organic Act of Guam, 4 G.C.A. Section 4401 et.seq. and the personnel rules and regulations.

VI.
CONCLUSION

By a vote of 6-0, the Commission finds that Management met its burden of proof by clear and convincing evidence and that its action in terminating Employee pursuant to the Amended Notice of Final Adverse Action was appropriate.

So ordered and adjudged this 14th day of August, 2014.



LUIS R. BAZA
Chairman



PRISCILLA T. TUNCAP
Commissioner



LOURDES HONG YEE
Commissioner



EDITH C. PANGELINAN
Commissioner



MANUEL R. PINAIN
Vice-Chairman



JOHN SMITH
Commissioner



DANIEL D. LEON GUERRERO
Commissioner