



BEFORE THE  
GUAM CIVIL SERVICE COMMISSION  
BOARD OF COMMISSIONERS



IN THE MATTER OF:

BETH PEREZ,

Employee,

vs.

DEPARTMENT OF EDUCATION,

Management.

ADVERSE ACTION APPEAL  
CASE NO. 14-AA04D

ORDER DENYING MOTION  
FOR RECONSIDERATION

On January 15, 2016, Employee filed a Motion for Reconsideration of the Commission's Decision and Judgment filed January 7, 2016, in the above referenced case. On January 22, 2016, the Department of Education (Management) filed its opposition and brief. Employee filed a reply brief on January 25, 2016, and the Motion for Reconsideration was heard by the Commission at its regular meeting on January 28, 2016 at 5:45pm.

I.

JURISDICTION

The Civil Service Commission has jurisdiction over Adverse Action Appeals of Classified Employee's pursuant to the Organic Act of Guam, Title 4 of the Guam Code Annotated §§ 4401, et seq., and the Department of Education's Personnel Rules and Regulations. The Commission's Jurisdiction to reconsider its decision is set forth in *Ricardo C. Blas vs. Guam Civil Service Commission*, and *Guam Customs & Quarantine Agency, Government of Guam*,

ORIGINAL

1 Supreme Court Case No. CVA98-028, 2000 Guam 12 and Adverse Action Rules of Procedure  
2 11.7.7.

3 **II.**

4 **BACKGROUND**

5 This matter came before the Civil Service Commission of Guam for hearing on the merits  
6 at its regularly scheduled meetings held on October 6, 8, 13, 15, 20, 21, and 22, 2015. On  
7 October 22, 2015 after hearing the arguments of the parties, testimony of all witnesses and  
8 review of all evidence presented in the case, the Commission deliberated and subsequently voted  
9 4 to 1 that management met its burden of proof by clear and convincing evidence that its action  
10 was proper to hold the school principal accountable for health and safety violations that were  
11 well within the employee's responsibility and means to address. The demotion of the employee  
12 to Assistant Principal was upheld. On January 7, 2016, the Commission signed its decision and  
13 Judgment for this matter.

14 On January 15, 2016, the employee filed a motion for reconsideration. Employee's  
15 motion was premised on three grounds;

16 1. That management improperly relied on the Guam Administrator Standards; 1  
17 GCA Subsection 715 (12)(g), ( i) and (l); and, because regulatory agency reports were not  
18 verified; and, that management did not properly investigate the allegations before bringing  
19 adverse action; and, that management improperly referenced the 2011 shutdown of Simon  
20 Sanchez during the hearing; and,

21 2. The Commission either misunderstood the facts or relied on facts that it should  
22 not have relied upon; and, management failed to prove the employee attended training; and, the  
23 contracted cleaning service should be held accountable not the Principal of the school; and, that  
24 the DOE Facilities and Maintenance Division should be held accountable and not the Principal of  
25 the school; and, that is was not the Principal's roles and responsibility to ensure a safe and clean  
school is maintained; and, that the Principal did not have adequate funding; and, that the

1 Superintendent should be held accountable and not the Principal; and, that the Commissioners  
2 engaged in improper deliberations.

3 3. The employee's motion for reconsideration also asserts that it was timely filed  
4 and that reconsideration would be reasonable on the basis set forth therein. Employee requested  
5 that the Commission reverse its decision.

6 4. Management opposed reconsideration and argued that Employee improperly  
7 relied on the Superior Court Rules of Evidence and rehashes the same arguments and citations  
8 previously presented and rejected at hearing by the Commission. Management asserted that a  
9 motion for reconsideration is not an opportunity to renew arguments considered and rejected by  
10 the Commission, nor is it an opportunity for a party to re-argue the case because it is dissatisfied  
11 with the original outcome. The Employee's motion for reconsideration does not pointedly and  
12 specifically indicate how the Commission has erred or address reasons to reconsider other than  
13 just rehashing old ground and that the Commission's original decision and judgment was proper  
14 and well within the Commission's jurisdiction and authority.

### 15 III.

#### 16 ANALYSIS

17 Employee made several arguments regarding the sufficiency of the evidence. In  
18 particular were the introduction of documents into evidence that were not supported by the  
19 testimony of those who wrote the documents, not signed in a particular place on the document,  
20 and so on. Employee appears, roughly, to argue that the documents submitted by Management  
21 do not conform to the Guam Rules of Evidence and that really only the Employee's testimony  
22 should be considered, as she was the only one to testify.

1 We note that 4 GCA § 4409 states: “The rules of the [Civil Service] Commission are  
2 subject to the Administrative Adjudication Law.” Chapter 9 of Title 5 of the GCA is the  
3 Administrative Adjudication Law. We observe that 5 GCA § 9226 states:

4 The hearing need not be conducted according to technical rules relating to  
5 evidence and witnesses. Any relevant evidence shall be admitted if it is the  
6 sort of evidence on which responsible persons are accustomed to rely in  
7 the conduct of serious affairs, regardless of the existence of any common  
8 law or statutory rule which might make improper the admission of such  
9 evidence over objection in civil actions. Hearsay evidence may be used for  
10 the purpose of supplementing or explaining any direct evidence but shall  
11 not be sufficient in itself to support a finding unless it would be admissible  
12 over objection in civil actions. The rules of privilege shall be effective to  
13 the same extent that they are now or hereafter may be recognized in civil  
14 actions, and irrelevant and unduly repetitious evidence shall be excluded.

15 In other words, this body does not follow the Guam Rules of Evidence; rather, we have a  
16 more informal, streamlined process that is more inclusive. While Employee’s objections would  
17 apply in a civil action in Superior Court, they have no basis under the Administrative  
18 Adjudication Law that we apply. Here, through more inclusive rules that allow, for example,  
19 hearsay evidence, it still took seven (7) nights of hearing. Applying strict rules of evidence  
20 would necessitate several more days of hearing, as the author of each document is called to  
21 testify to establish foundation, authenticity, and overcome hearsay objections. This appears to be  
22 what the Legislature intended: more efficient hearings.

23 The evidence of reports given by Management of the incident appears to be the kind of  
24 evidence a responsible person would rely upon. We have no reason whatsoever to believe that  
25 Management perfidiously submitted forged documents to frame the Employee in an effort to  
uphold her demotion. Furthermore, Employee had the opportunity to rebut the documents  
through the defense of her case; for example, she could have called as a witness one of the  
authors of the document to state that he did not actually author that document or that it had been  
altered. Employee declined to do so.

1 We further note that motions for reconsideration are generally based on special grounds,  
2 such as new material evidence just being made available, an intervening change in controlling  
3 law, or similar grounds that are not a rehashing of the merits hearing. In this instance, we were  
4 not persuaded that such special grounds existed. Therefore, the motion was denied.

5 IV.

6 **FINDINGS**

7 1. Employee's motion was timely made.

8 2. CSC has authority to reconsider its decision pursuant to *Ricardo C. Blas vs. Guam*  
9 *Civil Service Commission, and Guam Customs & Quarantine Agency, Government of Guam,*  
10 Supreme Court Case No. CVA98-028, 2000 Guam 12 and Adverse Action Rules of Procedure  
11 11.7.7.

12 3. Superior Court Rules of Evidence are not applicable to adverse action appeals  
13 before the Civil Service Commission.

14 4. The Commission rejects the employee's argument that it either misunderstood the  
15 facts or relied on facts it should not have relied upon when it is exceedingly evident that a great  
16 deal of time during the merit proceedings had been spent discussing each of those points.

17 5. Employee failed to demonstrate that the Commission acted in an arbitrary,  
18 capricious, or unreasonable manner, that the Board exceeded its jurisdiction that its decision was  
19 erroneous in law or the precise error the Board allegedly made.

20 6. The employee's motion for reconsideration does not put forward new facts and  
21 explain why she could not have put them before the Board at hearing; and further show how  
22 those facts would have changed the Board's original decision or explain in detail any exceptional  
23 circumstance which would warrant reconsideration.

V.


**CONCLUSION**


The Civil Service Commission, by a vote of 3-1, rules that the Employee did not meet her burden to show that there was any good cause for reconsideration. Employee's Motion for reconsideration is DENIED.

SO ADJUDGED THIS 14th day of April 2016.

  
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**EDITH PANGELINAN**  
Chairperson

Not present  
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**DANIEL D. LEON GUERRERO**  
Vice-Chairperson

  
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**PRISCILLA T. TUNCAP**  
Commissioner

  
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**JOHN SMITH**  
Commissioner

  
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**LOU HONGYEE**  
Commissioner

  
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**CATHERINE GAYLE**  
Commissioner