



BEFORE THE
GUAM CIVIL SERVICE COMMISSION



IN THE MATTER OF:

FIDEL Q. MASGA,

Employee,

vs.

GUAM INTERNATIONAL
AIRPORT AUTHORITY,

Management.

ADVERSE ACTION APPEAL
CASE NO. 11-AA11D

DECISION AND JUDGMENT

THIS MATTER CAME before the Civil Service Commission ("Commission") on April 3, April 4 and May 10, 2012 on hearing of an appeal of adverse action (the "Hearing"). Present on behalf of the A.B. Won Pat International Airport Authority, Guam ("GIAA" or "Management") was GIAA legal counsel Janalynn Cruz Damian of Calvo Fisher & Jacob LLP. Present on behalf of employee Fidel Q. Masga ("Masga" or "Employee") was Attorney Daniel Somerfleck. The Commission renders the following Decision and Judgment in this matter.

I.

JURISDICTION AND STANDARD OF REVIEW

The Commission has jurisdiction over this matter pursuant to the Organic Act of Guam, 4 G.C.A. §§ 4403(b) and 4406, GIAA's Personnel Rules and Regulations ("PRR") § 11.312 and Civil Service Commission Rules of Procedure for Adverse Action Appeals Rule ("CSC AAR") 5.

ORIGINAL

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II.

FACTUAL BACKGROUND

A. December 29, 2010 Notice of Proposed Adverse Action

i. Violation of Division Directive AP-015-FY09

On December 29, 2010, GIAA issued a Notice of Proposed Adverse Action (“First NPAA”) to Masga. The First NPAA found that on November 13, 2010, a commingling event (the “Commingling Event”) occurred at the airport concourse during Shift I when Masga was the Officer-In-Charge (“OIC”). According to the First NPAA, this Commingling Event occurred when Airport Police Officer Beem, an officer under Masga’s supervision, “allowed [an arriving, non-TSA screened passenger] to crossover” the barrier which divides and separates arriving and departing passengers within the concourse. (See M1-2.) In doing so, Officer Beem allowed a non-sterile passenger to commingle with departing, TSA screened (and, thus, sterile) passengers. *See id.*

Because the Commingling Event occurred during a shift in which Masga was the OIC and thus was responsible for the performance of subordinate personnel, the First NPAA found that it appeared that Masga had violated Division Directive AP-015-FY09 (setting forth the “security measures...to ensure the...separation of sterile (departing TSA screened) as opposed to non-sterile (arriving non-TSA screened) passengers, inclusive of transit passengers arriving from foreign airports destined to connecting flights.”).

ii. Violation of Operations Directive No. AP-001-FY10

In addition to his failure to provide proper supervision of Officer Beem, the First NPAA found that Masga was not even present at his assigned post within the concourse when the Commingling Event occurred. According to the First NPAA, an administrative investigation “revealed that on the date and time of the [commingling] incident” Masga was not in the concourse but was “assisting other personnel with traffic and criminal cases.” (See M1-2.) According to the First NPAA, a “systems journal audit” for “the day of the [commingling] incident” corroborated the administrative investigation as it “revealed that your security badge access showed that the only time you entered the concourse was on the morning of the commingling incident which was about 8:22 a.m. and only after you were informed of the [commingling] incident.” *See id.*

1 As such, it appeared that Masga had violated Operations Directive No. AP-00-FY10.
2 (*See* M1-2 (“[o]n the morning of the [commingling] incident, you were not at your assigned post
3 as required by Operations Directive No. AP-001-FY10.”).)

4 The First NPAA stated further that “[a]nother systems journal audit was conducted for
5 the period of November 7-27, 2010, one week prior and one week after the [commingling]
6 incident, revealed that your presence in the concourse area during break peak times as stipulated
7 in GIAA’s Division Operations Directive No. AP-001-FY10 and Interim Concourse Security
8 Procedures, were very minimal.” (*See id.*) Thus, both the administrative investigation arising
9 from the Commingling Event and the systems journal audits conducted by GIAA appeared to
10 indicate that Masga violated AP-001-FY10 on at least several occasions.

11 **iii. Dishonest Claim**

12 In addition, the First NPAA also found that a statement (the “Dishonest Claim”) which
13 Masga made to GIAA management in order to excuse his absence from the concourse on the day
14 of the Commingling Event was, in fact, untrue. In particular, the First NPAA states that Masga
15 told GIAA management that he “had” obtained approval from Operations Shift Supervisor, Carl
16 Cruz, to monitor [his] shift via radio from [his] office” (rather than appear on the concourse in
17 person) on the day in which the Commingling Event occurred. (*See* M1-2.) The First NPAA
18 notes, however, that an administrative investigation revealed that the Shift Operations
19 Supervisor, Carl Cruz, did not approve any such request for the day of Commingling Event. (*Id.*)

20 **iv. Authorized Causes for Adverse Action**

21 The First NPAA found that Masga’s violation of Division Directive AP-015-FY09 and
22 Operations Directive No. AP-001-FY10 each constituted a “[r]efusal or failure to perform
23 prescribed duties and responsibilities” and thus established an apparent basis for adverse action
24 against Masga pursuant to Airport Personnel Rules and Regulations (“APRR”) Section 11.303O.
25 (*Id.*)

26 **B. January 6, 2011 Meeting**

27 On January 6, 2011, Executive Manager Mary C. Torres and Personnel Specialist IV
28 Virginia Molo met with Masga regarding the allegations contained in the First NPAA. At the
29 meeting, Ms. Torres explained the allegations to Masga, including the allegation that he had

1 failed to supervise the concourse area on November 13, 2010 when the Commingling Event
2 occurred. In response, Masga asserted that he had indeed been present at the concourse area
3 during the Commingling Event. (See M6-7.)

4 Ms. Torres, in turn, revealed to Masga that an audit of the security system which tracks
5 the movement of GIAA personnel through badge swipes indicated that Masga was not in the
6 concourse area at the time of the Commingling Event. (See *id.*) Ms. Torres revealed further that
7 the additional systems audits indicated that during the period of November 7 through November
8 27, 2010, Masga had spent minimal time within the concourse area and thus appeared to be in
9 violation of Division Directive AP-015-FY09 and Operations Directive No. AP-001-FY10. (*Id.*)
10 In response to the evidence presented by the system audits, Masga explained that he frequently
11 bypassed security check points that would otherwise read his security badge and instead entered
12 the concourse through an area designated for Customs and Quarantine personnel. (See M6-7.)

13 **C. January 25, 2011 Written Reprimand**

14 On January 25, 2011, GIAA issued a written reprimand (the "Reprimand") to Masga in
15 response to his violation of Division Directive AP-015-FY09 and Operations Directive No. AP-
16 001-FY10 and the Dishonest Claim. (See M3-5.) In spite of his claims that he bypassed the
17 security check points and thus entered the concourse undetected on the day of the Commingling
18 Event, the Reprimand noted that Masga nevertheless admitted in an additional statement that he
19 was "not on the concourse at the time of the [commingling] incident." (See *id.*) As such, the
20 Reprimand found that Masga had "failed to adhere to the directives noted on the NPAA [*i.e.*,
21 Division Directive AP-015-FY09 and Operations Directive No. AP-001-FY10]" and "[a]s a
22 result of your failure to perform your duties as the Supervisor in Charge, GIAA is now under
23 investigation and may be liable for a civil penalty of up to \$10,000.00 per incident." The
24 Reprimand further found that the Dishonest Claim which Masga made in order to excuse his
25 absence from the course on the day of the Commingling Event was indeed untrue and that "as an
Officer and Supervisor of over 20 years, your conduct is dishonest and unprofessional." (*Id.*)

26 **D. February 21, 2011 Notice of Proposed Adverse Action**

27 On February 21, 2011, GIAA issued a second Notice of Proposed Adverse Action
28 ("Second NPAA") to Masga. The Second NPAA stated that on "January 6, 2011, in your
29 meeting with [Mary Torres] and Ms. Virginia Molo, Personnel Specialist IV, to respond to a

1 Notice of Proposed Adverse Action (NPAA) [i.e., The First NPAA] issued to you, it appears that
2 you provided information to management of your failure to follow security policies and
3 procedures relating to the use of your issued SIDA badge and accessing restricted areas.” (See
M8-13 (emphasis added).)

4 In particular, the Second NPAA stated that on January 6, 2011 meeting, Masga revealed
5 to management that he, as a matter of general practice, “access[ed] the concourse through
6 ‘alternative routes’ which enable [him] to bypass the security check to include entering through
7 Customs and Quarantine area.” (See *id.*) According to the Second NPAA, Masga further
8 revealed that the “majority of times [Masga’s] access point [to the concourse] is through the
double doors located at the Customs and Quarantine area where arriving passengers exit.”

9 Based upon Masga’s revelation that he routinely bypassed security checkpoints and
10 entered restricted Custom and Quarantines areas, GIAA found that “it appears that [Masga was]
11 in violation of the Authority’s Personnel Rules and Regulations. “In particular, the Second
NPAA found that it appeared that Masga had violated:

- 12 a. Airport Security Program Part IV (relative to access to controlled areas)
13 and Airport Security Program Part II (relative to adherence to federal rules
and regulations by GIAA security badge holders)
- 14 b. 49 USC § 1540.105 (relative to circumvention of security systems, illegal
15 accessing of controlled areas and proper use of identification media)
- 16 c. APRR, Article XIII (relative to strict adherence to rules and regulations
17 promulgated by the FAA, GIAA and the Department of Public Safety).

18 On account of these apparent violations revealed to GIAA for the first time at the January
19 6, 2011 meeting, the Second NPAA found that Masga was likely subject to adverse action
pursuant to APRR Section 11.3030.

20 **E. March 3, 2011 Meeting**

21 On March 3, 2011, Ms. Torres and Personnel Specialist Vivian Aflague met with Masga
22 regarding the Second NPAA. At the meeting, Ms. Aflague reiterated to Masga that the Second
23 NPAA was issued not in response to the Commingling Event but on account of the information
24 that Masga revealed “in his response” to the First NPAA. (See M16.) Thereafter, Masga refused
to respond to Ms. Torres’ assertion that “[b]y your own admittance, it appears you violated the

1 security program.” That same day, Masga sent a response to the Second NPAA wherein he
2 stated that during “our meeting regards to my response to the [First NPAA] against me, I might
3 have mis-spoken during your inquiry of my whereabouts on the dates surrounding Nov. 7 and
4 26, 2010.” (M14-15.)

4 **F. March 4, 2011 Final Notice of Adverse Action**

5 On March 4, 2011, GIAA issued a Final Notice of Adverse Action (“FNAA”) to Masga.
6 The FNAA noted that the Second NPAA had been issued “based upon your admission during a
7 meeting held on January 6, 2011 attended by you, Ms. Virginia Molo, Personnel Specialist, IV,
8 and me, that you access the concourse through ‘alternative routes’ which enable you to bypass
9 the security check to include entering through Customs and Quarantine.” (See M17-22.) The
10 FNAA went on to note that “[y]our admission to repeatedly entering secured areas of the Airport
11 in an unauthorized manner is sufficient grounds to determine that you are indeed in breach of the
12 Authority’s security mandates.” (*Id.*)

13 As such, and because the evidence adduced in the course of investigating the claims
14 underlying the Second NPAA did not establish a basis for invalidating the findings in the Second
15 NPAA, the FNAA found Masga to be in violation of the security rules and regulations as
16 identically set forth in the Second NPAA. As a result of Masga’s violations, Management
17 informed of Masga that, effective March 5, 2011, Employee would be demoted to an Airport
18 Police Officer I position.

17 **G. Employee’s Appeal**

18 On March 23, 2011, Masga timely appealed his adverse action asserting that FNAA
19 untimely and thus any action brought by management in violation was barred and any decision
20 upon such actions void. (M23-24.) On May 19, 2011, Masga brought a motion to revoke in
21 which he argued that “GIAA failed to provide specific facts found in which this action is based”
22 and that the FNAA was untimely. (Employee Mot. Revoke for Procedural Defect filed May 19,
23 2011.) Management filed an opposition to the motion and the matter was heard on June 21,
24 2011. (See *Masga v. A.B. Won Pat Int’l Airport Auth.*, Adverse Action Appeal Case No. 11-
25 AA11D, (Decision and Order Jan. 17, 2012, *nunc pro tunc*, June 21, 2011.)) The Commission
found that the Second NPAA and FNAA was sufficiently detailed and timely. (*Id.*) After
denying Masga’s motion, the Commission set the mater to be heard on its merits.

1 (a) Upon the hearing of any adverse action appeal, the burden of proof shall be upon the
2 government to show clearly and convincingly that the action of the Branch, department,
3 agency or instrumentality was correct.

4 4 G.C.A. §4407(a).

5 Both Employee and GIAA have had an adequate opportunity to present their evidence
6 and to allow the Commission sufficient testimony upon which to weigh and render its decision.

7 The Commission finds that Employee's own admission to Ms. Torres on January 6, 2011
8 that he routinely bypassed security checkpoints, provides clear and convincing evidence that he
9 in fact did so. While it may be true that GIAA was unable to provide video footage or eye-
10 witness testimony of such breaches, Employee's admission is also corroborated by the swipe
11 system journal audits for the month of November 2011, lack of a timely retraction of his earlier
12 admission, and Airport Police Chief Robert Camacho's testimony that the manner by which
13 Employee described his breach of security is possible.

14 During Employee's January 6, 2011 meeting with Mary Torres and Ms. Molo present, he
15 admitted to accessing the airport concourse in willful breach of several GIAA regulations.
16 Employee does not dispute that the security breaches he admitted to and described in detail
17 during the January 6, 2011 meeting are serious violations of airport security protocols. Nor does
18 Employee contest that they are adequate grounds for demotion under GIAA's policies and
19 procedures.

20 However, in his testimony before the Commission on April 4, 2012, Employee indicated
21 that he "misspoke" when he told Ms. Torres on January 6, 2011 that he breached security
22 protocols, that in fact, he was able to access the concourse without swiping his badge but also
23 without breaching security protocols. Therefore, by Employee's own account, either he did in
24 fact repeatedly and willfully breach security at the airport, or, he provided false statements to Ms.
25 Torres, then GIAA's Executive Manager, that he did so.

His explanation for the inconsistency was that he felt pressured to give *some* kind of
response to Ms. Torres' repeated questioning regarding his whereabouts during the Commingling
Event. The Commission, as trier of fact, does not accept Employee's explanation truthful. It is
simply not credible that a twenty year veteran of the airport police, with extensive police training

1 including but not limited to conducting interrogations, would be coerced by Ms. Torres into
2 confessing to a security breach that he in fact did not commit.

3 While the swipe systems journal audit from November of 2011 does not in and of itself
4 conclusively prove that Employee in fact committed the security violations he admitted to in his
5 January 6, 2011 meeting with Ms. Torres, the audit showed that he was either repeatedly failing
6 in duty to man the concourse at the required times, or that he was willfully evading the required
7 swipe system checkpoints. This information corroborates his January 6, 2011 admission to Ms.
8 Torres.

9 Additionally, Chief Camacho's testimony that Employee's means of evading the airport
10 security systems is possible lends further credibility to the accuracy of Employee's original
11 admission. The Commission simply does not accept Employee's feeble attempt, almost a year
12 after the fact, to retract his January 6, 2011 admission to Ms. Torres that he willfully breached
13 GIAA's security protocols. Thus, we find that GIAA's decision to demote Employee was
14 proper.

15 V.

16 HOLDING

17 By a vote of 5-0, the Commission has determined that GIAA met its burden of proof
18 supporting its adverse action against Employee. Thus, GIAA's action in demoting Employee
19 was proper.

20 VI.

21 CONCLUSION

22 Based on the foregoing, GIAA has proven its allegations by clear and convincing
23 evidence. The Commission hereby sustains GIAA's adverse action against Employee.
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1 SO ORDERED THIS 13th DAY OF June 2013 as determined by a vote of
2 5-0 on May 10, 2012.

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5 **LUIS R. BAZA**
6 **Chairman**

7 NOT PRESENT

8 **PRISCILLA T. TUNCAP**
9 **Commissioner**

10 

11 **LOURDES HONGYEE**
12 **Commissioner**

13 
14 **EDITH C. PANGELINAN**
15 **Commissioner**

16 

17 **MANUEL R. PINAUIN**
18 **Vice-Chairman**

19 NOT PRESENT

20 **JOHN SMITH**
21 **Commissioner**

22 
23 **DANIEL D. LEON GUERRERO**
24 **Commissioner**