



**BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS**



IN THE MATTER OF:

FRANK B. CRUZ,

Employee,

vs.

GUAM FIRE DEPARTMENT,

Management.

**ADVERSE ACTION APPEAL
CASE NO. 16-AA17S**

DECISION AND JUDGMENT

I.

INTRODUCTION

The Civil Service Commission met at its regularly scheduled time on February 21, 28, and March 2, 2017, at 5:45 p.m. Present for Employee was Daniel Del Priore of the Guam Federation of Teachers. Present for Management was Fire Chief Joey San Nicolas who also acted as representative. By a vote of 6-0 the Commission found that Management met its burden and upheld the ten (10) day suspension of Employee.

II.

FINDINGS OF FACT

1) On or about the morning of Friday, September 18, 2015, while off-duty and at home, Employee Frank B. Cruz was physically abusive to one of his daughters. The physical abuse was accompanied by verbal abuse as well

//

1 Employee has also argued that a suspension ultimately harms the children as well. The
2 gap in pay from the suspension only means that he does not have as much money to provide for
3 his family. While this might be an unfortunate side effect, the Guam Fire Department is limited
4 in its menu of disciplinary options available. It should be noted that an action such as a suspension
5 is not a retributivist punishment, but rather a corrective tool. It is designed to demonstrate to the
6 Employee that their behavior is unacceptable, and must not be repeated in the future.

7 During closing arguments, Employee strenuously argued that an employee cannot be
8 punished for off-duty conduct that took place in the privacy of their own home. We disagree.
9 First, it should be noted that while the physical acts might have taken place in the home while off-
10 duty, there were ripple effects outside the home. There were bruises that remained days later while
11 the child went to school. Employee's children discussed the incident with others. School
12 personnel in multiple schools became involved. A police investigation was launched.

13 As a result of the physical abuse, Employee was taken from his station. This left the station
14 dangerously undermanned. While the Employee argues that the police could have elected to
15 question him at a different time, it is reasonably foreseeable that physically abusing one's child
16 could result in a police investigation that interfered with your shift.

17 It is not correct that government employees cannot be disciplined for off-duty conduct that
18 takes place in their home. For example, in *Anderson v. State Personnel Bd.* (1987) 194 Cal. App.
19 3d 761, 722 [239 Cal. Rptr. 824], an off-duty highway patrol officer was terminated for bringing
20 "embarrassment and discredit to the law enforcement agency he served," when he indiscreetly
21 exposed himself in the window of his home in view of the neighbors. While the underlying
22 conduct here is very different, the point remains that off-duty conduct occurring in one's home can
23 be disciplined based on its effects.

24 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IV.
HOLDING

By a vote of 6-0 the Commission finds that Management met its burden of proof. The Employee's appeal is denied.

SO ADJUDGED THIS 22nd day of June 2017.



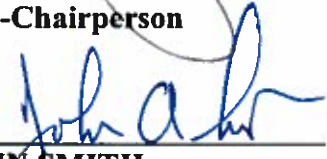
EDITH PANGELINAN
Chairperson



LOURDES HONGYEE
Vice-Chairperson



PRISCILLA T. TUNCAP
Commissioner



JOHN SMITH
Commissioner

Not Present

CATHERINE GAYLE
Commissioner

Not Present

MICHAEL G. TOPASNA
Commissioner