



BEFORE THE  
GUAM CIVIL SERVICE COMMISSION  
BOARD OF COMMISSIONERS



IN THE MATTER OF:

FRANKLIN S. FEJARAN,

Employee,

vs.

GUAM POWER AUTHORITY,

Management.

ADVERSE ACTION APPEAL  
CASE NO.: 15-AA05T

DECISION AND ORDER

This case came before the Civil Service Commission ("CSC") at its regularly scheduled meeting on August 18, 2015, at 5:45 p.m., at its office located in Sinajana, Guam. Franklin Fejaran ("Employee") was present with his attorney, Daniel S. Somerfleck. Present for Management was Julie Quinata, and D. Graham Botha, GPA Legal Counsel, was present and represented Management.

I.  
ISSUE

Did Employee meet his burden of proof under CSC AAR 9 regarding his Motion to Revoke for Procedural Defect filed with the Civil Service Commission?

II.  
HOLDING

After considering the pleadings and the arguments of counsel, the CSC finds that Employee did not meet his burden of proof relating to his Motion to Revoke the adverse action for procedural

1 defect. The CSC finds that Management gave notice as required under 4 G.C.A. §4406, and that  
2 there were no procedural defects.

3 **III.**  
4 **JURISDICTION**

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

7 **IV.**  
8 **DISCUSSION**

9 Employee has cited *Guam Hous. Corp. v. Guam Civil Serv. Com'm* (Potter), 2015 Guam 22,  
10 where the Commission revoked an adverse action for failure to provide specific details in the notices.  
11 This case is distinguishable from *Potter* in many respects. First, in *Potter*, neither the NPAA nor the  
12 NFAA were sufficiently specific in detail. In this case, it is not disputed that GPA provided detailed  
13 facts in the NPAA. Second, in *Potter*, after receiving the vague NPAA, that Employee approached  
14 Management during the ten (10) day window to attempt to resolve the matter. A subsequent vague  
15 NFAA left Potter unable to determine which, if any, parts of his defense were accepted. Here,  
16 Fejaran did not mount any defense, oral or written, to the allegations in the NPAA; thus, it is  
17 reasonable to suggest that the detailed allegations in the NPAA did not spontaneously vary in the  
18 absence of a defense.

19 Perhaps most significant are the nature of the charges. In *Potter*, Employee was accused of  
20 sexual harassment: an allegation that can require more specific details. Who, where, when, and  
21 specifically what are more important questions, and saying, "On or about September 2010... you  
22 hugged her and touched her inappropriately," leaves a wide variety of factual scenarios. Particularly  
23 since a third party was involved, Management should more likely to be required to include specific  
24 allegations by the accuser for Employee to be able to intelligently respond in defense. As a rule of  
25 thumb, Management should not rely on "he knows what he did" approaches to NPAAs or NFAAs.

1 Yet, here, Fejaran simply stopped going to work. Not only did he stop showing up for work,  
2 he failed to communicate with his supervisors regarding the absences. Frankly, there are only so  
3 many ways to state that someone has stopped showing up for work. Absence from work is not an  
4 allegation that cries out for significant details. The NFAA states multiple times that Employee is  
5 being terminated for failure to show up for work and failure to communicate with supervisors.  
6 Certainly, it would have been more correct for GPA to have listed the specific dates they had in mind  
7 in the NFAA and draft the NFAA fully independent of the NPAA. Had there been different charges,  
8 it might have cost Management their adverse action; however, under the circumstances of this case, it  
9 appears permissible. It would be absurd to allow Employee to prevail in this motion because he  
10 missed so many consecutive days of work that he cannot tell which ones he was terminated for  
11 missing.

12  
13 **V.**  
**CONCLUSION**

14 By a vote of 6-1, the Commission denies Employee's Motion to Revoke the adverse action.  
15 Employee failed to meet his burden of proof. The matter shall proceed to a merit hearing.


16  
17 SO ADJUDGED THIS 3rd DAY OF November 2016.

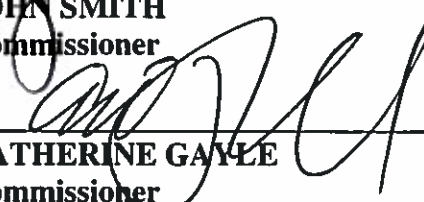
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