

BEFORE THE
GUAM CIVIL SERVICE COMMISSION



IN THE MATTER OF:

JOAQUIN OOKA CRUZ JR.,

Employee,

vs.

DEPARTMENT OF CORRECTIONS,

Management.

ADVERSE ACTION APPEAL
CASE NO. 11-AA34T

DECISION AND JUDGMENT

This case came before the Civil Service Commission for hearing on the merits at its regularly scheduled meetings on April 30, May 2, May 7, May 9, May 16, May 23 and December 12, 2013, at its office located in Sinajana, Guam. Joaquin Ooka Cruz Jr. ("Cruz") was present with his attorney, Curtis Van de Veld. Present for Department of Corrections Management ("Management") were Director Jose San Agustin and Assistant Attorney General Donna Lawrence.

I. 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 Department of Administration's Personnel Rules and Regulations.

II. ISSUE PRESENTED

Was the Final Adverse Action of termination correct?

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III. HOLDING

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

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IV. FACTS

Management proved the following facts clearly and convincingly:

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1) A random drug test was conducted by the Department of Administration officials at the Department of Corrections' facility in Mangilao on September 13, 2011.

2) Cruz was selected to be tested as part of the random drug testing and was drug tested on September 13, 2011, as part of the random drug test.

3) Cruz's identity was verified by the Department of Corrections, and Cruz signed in on the random drug testing sheet at the Department of Corrections on September 13, 2011.

4) Cruz personally provided his urine sample to Rosezette Santos with Diagnostic Laboratory Services ("DLS"), on September 13, 2011, while at the Department of Corrections.

5) Cruz initialed the label on his urine specimen and signed the Drug Testing Custody and Control Form after reading Step 5 and ensuring that the information was accurate. *See also* M-58.

6) After providing his urine sample to Rosezette Santos, Cruz was not further concerned with the handling of his urine sample. Specifically, Cruz stated the handling of his sample after he gave it to the lab collector did not raise red flags for him. Cruz did not have any personal knowledge of any mishandling of his urine sample.

7) Rosezette Santos testified regarding the drug collection process at the Department of Corrections and the chain of custody and procedures taken to ensure the proper handling and custody of employee's urine sample. The samples are kept refrigerated until sent overnight to the toxicology lab in Hawaii where they are tested. Michael Schniep also testified regarding the

1 drug collection process, the confidentiality of drug free workplace records, and the process by
2 which the drug test results are provided by DLS to the Medical Review Officer, then to the
3 Department of Administration and then to the agency who employs the person who tested
4 positive.

5 8) Carl Linden prepared a declaration regarding ~~the~~ Cruz's positive drug test for
6 methamphetamine and amphetamine. Attached to Linden's declaration were the complete
7 litigation package, including the specimen external custody and control form, the LIS specimen
8 record, the DLS lab report, the internal chain of custody form and pertinent tab label, the
9 laboratory worklist, the screening aliquot chain of custody, the enzyme immunoassay screening
10 results, controls and instrument maintenance log, Amphetamine GC/MS confirmation records
11 (including internal chain of custody, patient worklist, instrument autotune record, GC/MS
12 maintenance log, Amphetamine/Methamphetamine GC/MS calibration and control data and
13 patient GC/MS date), the positive certification review form, and the long term storage specimen
14 storage custody copy. *See* M-67 through M-105.

15 9) Cruz's urine sample went through an initial screening and then a confirmatory
16 screening. The certifying scientist that certified the positive drug test result for
17 methamphetamine and amphetamine was David Hoffman. *See* M-104.

18 10) The DLS report showed a positive test result for methamphetamine and amphetamine.
19 *See* M-72.

20 11) The GC/MS confirmation records of Cruz's urine sample showed a confirmed
21 Amphetamine level of 1716 ng/ml. The cut-off level for this confirmatory testing is 500 ng/ml.
22 *See* M-68, M-72, M-100, and M-104.

23 12) The GC/MS confirmation records of Cruz's urine sample showed a confirmed
24 Methamphetamine level of 8339 ng/ml. The cut-off level for this confirmatory testing is 500
25 ng/ml. *See* M-68, M-72, M-101, and M-104.

1 13) Cruz's laboratory results were provided directly by DLS to the Medical Review
2 Officer, Aurelio Espinola, M.D.

3 14) Dr. Espinola attempted to contact Cruz regarding the positive drug test result
4 several times over a period of at least two days. He left at least two messages for Cruz on the
5 telephone number provided by Cruz on the Drug Testing Custody and Control Form. Cruz failed
6 to return the calls and messages left by Dr. Espinola.

7 15) On September 20, 2011, Dr. Espinola certified the positive drug test result and also
8 signed the Medical Review Officer report. *See* M-64 and M-66. Dr. Espinola provided the results
9 only to the Department of Administration.

10 16) Dr. Espinola testified that Vicodin, Percocet, Tylenol 3 and gout medications would
11 not cause a positive test result for amphetamine and methamphetamine. If anything, these
12 medications would cause a person to test positive for opiates. Cruz's drug test results did not
13 show a positive result for opiates.

14 17) Dr. Espinola further testified that there was no medical justification for ^{Cruz} ~~Employee's~~
15 positive drug test results, and further that in his medical opinion, Cruz used or ingested
16 methamphetamine at some point. Dr. Espinola testified that if a person is using
17 methamphetamine, the laboratory result would show a positive test for amphetamine and
18 methamphetamine.

19 18) The Department of Administration notified the Department of Corrections in writing
20 of Cruz's drug test results in its letter dated September 30, 2011. Melva Limo received this letter
21 on behalf of the Director's office on October 4, 2011.

22 19) The Department of Corrections notified Cruz that he tested positive for illegal drugs
23 in its letter dated October 10, 2011. Cruz testified he received this letter from the Director on
24 October 11, 2011.

1 20) Cruz did not request a re-test of his original urine sample at any time despite
2 notification to him by the Department of Corrections that he could request a re-test of the
3 original urine sample.

4 21) Cruz was interviewed by Internal Affairs on October 21, 2011, and October 26, 2011.
5 Cruz told Internal Affairs he had spoken with Dr. Espinola regarding the drug test results and
6 that Dr. Espinola told Cruz to provide a list of his medications and he should be cleared. Cruz
7 admitted to Internal Affairs he was taking Vicodin, Percocet and Tylenol 3 on September 13,
8 2011, and the week of the drug test. Cruz provided Internal Affairs only with prescriptions
9 showing his gout medications and not for Vicodin, Percocet and Tylenol 3. Cruz provided
10 Internal Affairs with doctor's notes from his physician taking him off work for periods of time
11 but only for dates after his drug test.

12 22) Cruz failed to provide to Internal Affairs and/or to this Commission proof of any
13 valid prescriptions for Vicodin, Percocet or Tylenol 3, existing prior to the drug test on
14 September 13, 2011.

15 23) Cruz testified that he did not speak with Dr. Espinola. Nor did he provide any
16 documents to Dr. Espinola.¹

17 24) Cruz received the Notice of Proposed Adverse Action on October 31, 2011.

18 25) Cruz responded orally to Director San Agustin relating to the Notice of Proposed
19 Adverse Action on November 10, 2011.

20 26) Cruz received the Notice of Final Adverse Action on November 16, 2011.

21 27) Cruz filed his appeal on November 17, 2011.

22 Cruz failed to provide any medical or other justification or credible evidence for his
23 positive drug test results for methamphetamine and amphetamine. Cruz made inconsistent and
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25 ¹ Cruz further objected at the merit hearing to allow the production of documents and/or testimony by his medical
doctors who were subpoenaed by Management to appear and to produce medical records.

1 conflicting statements to the Commission and to Internal Affairs about Communications he had
2 with Dr. Espinola and other matters and the Commission weighed his credibility accordingly.


3 **V. CONCLUSION**

4 By a vote of 6-0, the Commission finds that Management met its burden of proof and
5 that its action in terminating Cruz pursuant to the Notice of Final Adverse Action was
6 correct.

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8 SO ORDERED THIS 13th DAY OF February 2014 as determined by a vote of
9 6-0 on December 12, 2013.

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11 **LUIS R. BAZA**
12 **Chairman**

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11 **MANUEL R. PINAUIN**
12 **Vice-Chairman**

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13 **PRISCILLA T. TUNCAP**
14 **Commissioner**

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13 **JOHN SMITH**
14 **Commissioner**

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15 **LOURDES HONGYEE**
16 **Commissioner**

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15 **DANIEL D. LEON GUERRERO**
16 **Commissioner**

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17 **EDITH C. PANGELINAN**
18 **Commissioner**