



BEFORE THE  
GUAM CIVIL SERVICE COMMISSION



IN THE MATTER OF:

JULIETTA QUINENE,

Employee,

vs.

GUAM MEMORIAL HOSPITAL  
AUTHORITY,

Management.

ADVERSE ACTION APPEAL  
CASE NO. 09-AA40D

DECISION AND JUDGMENT

THIS MATTER CAME before the Civil Service Commission (the "Commission") for a hearing on the merits on November 13 and 15 and December 11 and 13, 2012, and February 7, 21 and 26, 2013. Management Guam Memorial Hospital Authority ("GMHA") was represented by the law firm of Fisher & Associates through Minakshi V. Hemlani, Esq. Also present for Management was Hospital Administrator/CEO Joseph P. Verga. Employee Julietta Quinene ("Quinene") was present and represented by the law firm of Somerfleck & Associates through Daniel S. Somerfleck, Esq.

**JURISDICTION**

The Commission has jurisdiction over this appeal of an adverse action pursuant to the Organic Act of Guam, codified at 48 U.S.C. § 1428 *et seq.*, pursuant to 4 G.C.A. § 4406.

**ORIGINAL**

## FINDINGS OF FACT

The following facts were demonstrated clearly and convincingly:

1. Quinene was employed in the classified service with GMHA in the position of Hospital Nurse Supervisor II, Pay Grade P, Step 7, \$71,636.00 per annum.
2. GMHA served Quinene with a Notice of Proposed Adverse Action on August 9, 2009. (*See Management's Exhibit M8-M9.*)
3. On August 31, 2009, Quinene met with then Hospital Administrator PeterJohn D. Camacho, and also responded to the charges in writing. (*See Management's Exhibit M4-M7*)
4. After considering Quinene's oral and written responses, GMHA issued a Final Notice of Adverse Action on September 10, 2009, demoting Quinene to the position of Staff Nurse II, Pay Grade M, Step 10, \$61,946.00 per annum.
5. Specifically, GMHA cited the following as its ground for adverse action:
  - Nature of Offense – Unexcused or unauthorized absence on one or more schedule days of work or assigned overtime.
  - Conduct – Disobedience to constituted authorities, or deliberate refusal to carry out any proper order from any supervisor having responsibility for the work of the employee; insubordination.
  - Performance – Failure or delay in carrying out orders, work assignments or instructions of superiors. (*See Management's Exhibit M2.*)
6. Quinene timely appealed the adverse action.
7. There are only eight (8) nursing supervisors at the Guam Memorial Hospital, and employees holding the position of Hospital Nurse Supervisor II are held to a higher standard because the absence of a nursing supervisor during any shift can adversely

1 affect GMHA patient safety and quality service.

- 2 8. GMHA's Policy Number 6301-I-D-11: Nursing Staff Planned/Vacation Leave Policy  
3 states that leave time must be requested by an employee, and that said request may be  
4 denied. (See Management's Exhibit M16-M20)
- 5 9. Quinene requested three (3) weeks of leave; however, after consideration of her  
6 request and the operational requirements of the GMHA, Quinene was approved for  
7 only two (2) weeks of leave.
- 8 10. After requested and clear communications from her supervisor that leave was only  
9 approved for two (2) weeks, Quinene disobeyed her supervisor's instruction and  
10 deliberately refused to return to work as scheduled.
- 11 11. Without authorization, Quinene took an additional week of leave time off.

## 12 DISCUSSION

13 By unanimous vote of 7-0, the Commission finds that GMHA satisfied its burden on the  
14 merits by clear and convincing evidence. However, the Commission also finds that based on the  
15 facts and circumstances of the case, Quinene's demotion should be modified. Thus, pursuant to  
16 its authority under 4 G.C.A. § 4406 and by a vote of 5 to 2<sup>1</sup>, the Commission modifies the  
17 particular adverse action, and by further vote of 4 to 1<sup>2</sup>, the modification shall be from a  
18 demotion to Staff Nurse II, Pay Grade M, Step 10, \$61,946.00, to a demotion to Nurse Unit  
19 Supervisor, Pay Grade N, Step 11, \$69,447.00. Such modification shall begin on the effective  
20 date of the Final Notice of Adverse Action. Any back pay and/or benefits owed as a result of  
21 this Decision are subject to offset by any amounts earned by Quinene during the pendency of this  
22 adverse action. By this decision, Quinene is ordered to provide GMHA with copies of any such  
23 earnings.


24 Also, by unanimous vote of 7 to 0, the Commission denies Quinene's motion for

attorney's fees because GMHA satisfied its burden on the merits.

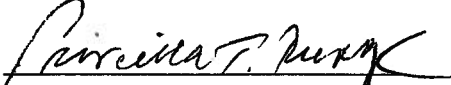
**CONCLUSION**

By a vote of 5 to 2, and further vote of 4 to 1, the Commission modifies the adverse action from a demotion to Staff Nurse II, Pay Grade M, Step 10, \$61,946.00, to a demotion to Nurse Unit Supervisor, Pay Grade N, Step 11, \$69,447.00.

So ordered this 9<sup>th</sup> day of May, 2013 *nunc pro tunc to February 26, 2013.*


  
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**LUIS R. BAZA**  
Chairman

*Not present*  
\_\_\_\_\_  
**MANUEL R. PINAUN**  
Vice-Chairman

  
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**PRISCILLA T. TUNCAP**  
Commissioner

*Not present*  
\_\_\_\_\_  
**JOHN SMITH**  
Commissioner

  
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**LOURDES HONGYEE**  
Commissioner

  
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**DANIEL D. LEON GUERRERO**  
Commissioner

  
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**EDITH C. PANGELINAN**  
Commissioner

<sup>1</sup> Two members of the Commission voted in favor of upholding the adverse action without modification.

<sup>2</sup> Of the five members of the Commission who voted in favor of modification, one member voted for a pay grade and step lower than N-11.



13-189

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[Proposed] DECISION & ORDER

THIS MATTER CAME before the Civil Service Commission (the "Commission") for a hearing on the merits on November 13 and 15 and December 11 and 13, 2012, and February 7, 21 and 26, 2013. Management Guam Memorial Hospital Authority ("GMHA") was represented by the law firm of Fisher & Associates through Minakshi V. Hemlani, Esq. Also present for Management was Hospital Administrator/CEO Joseph P. Verga. Employee Julietta Quinene ("Quinene") was present and represented by the law firm of Somerfleck & Associates through Daniel S. Somerfleck, Esq.

**JURISDICTION**

The Commission has jurisdiction over this appeal of an adverse action pursuant to the Organic Act of Guam, codified at 48 U.S.C. § 1428 *et seq.*, and pursuant to 4 G.C.A. § 4406.

**FINDINGS OF FACT**

The following facts were demonstrated clearly and convincingly:

1. Quinene was employed in the classified service with GMHA in the position of Hospital Nurse Supervisor II, Pay Grade P, Step 7, \$71,636.00 per annum.
2. GMHA served Quinene with a Notice of Proposed Adverse Action on August 19, 2009. (*See* Management's Exhibit M8-M9)

- 1 3. On August 31, 2009, Quinene met with then Hospital Administrator PeterJohn D. Camacho,  
2 and also responded to the charges in writing. (See Management's Exhibit M4-M7)
- 3 4. After considering Quinene's oral and written responses, GMHA issued a Final Notice of  
4 Adverse Action on September 10, 2009, demoting Quinene to the position of Staff Nurse II,  
5 Pay Grade M, Step 10, \$61,946.00 per annum. (See Management's Exhibit M1-M3)
- 6 5. Specifically, GMHA cited the following as its ground for adverse action:

7  
8 Nature of Offense – Unexcused or unauthorized absence on one or more schedule days of  
work or assigned overtime.

9  
10 Conduct – Disobedience to constituted authorities, or deliberate refusal to carry out any  
proper order from any supervisor having responsibility for the work of the employee;  
11 insubordination.

12  
13 Performance – Failure or delay in carrying out orders, work assignments or instructions  
of superiors.

14  
15 See Management's Exhibit M2.

- 16 6. Quinene timely appealed the adverse action.
- 17 7. There are only eight (8) nursing supervisors at the Guam Memorial Hospital, and employees  
18 holding the position of Hospital Nurse Supervisor II are held to a higher standard because the  
absence of a nursing supervisor during any shift can adversely affect GMHA patient safety  
and quality of service.
- 19 8. GMHA's Policy Number 6301-I-D-11: Nursing Staff Planned/Vacation Leave Policy states  
20 that leave time must be requested by an employee, and that said request may be denied. (See  
21 Management's Exhibit M16-M20)
- 22 9. Quinene requested three (3) weeks of leave; however, after consideration of her request and  
23 the operational requirements of the GMHA, Quinene was approved for only two (2) weeks of  
24 leave.
- 25 10. After repeated and clear communications from her supervisor that leave was only approved  
26 for two (2) weeks, Quinene disobeyed her supervisor's instruction and deliberately refused to  
27 return to work as scheduled.
- 28

1 11. Without authorization, Quinene took an additional week of leave time off.  
2

3 **DISCUSSION**

4 By unanimous vote of 7 to 0, the Commission finds that GMHA proved its burden on the  
5 merits by clear and convincing evidence. However, the Commission also finds that based on the  
6 facts and circumstances of the case, Quinene's demotion should be modified. Thus, pursuant to its  
7 authority under 4 G.C.A. § 4406 and by a vote of 5 to 2<sup>1</sup>, the Commission modifies the particular  
8 adverse action, and by further vote of 4 to 1<sup>2</sup>, the modification shall be from a demotion to Staff  
9 Nurse II, Pay Grade M, Step 10, \$61,946.00, to a demotion to Nurse Unit Supervisor, Pay Grade N,  
10 Step 11, \$69,447.00. Such modification shall begin on the effective date of the Final Notice of  
11 Adverse Action. Any back pay and/or benefits owed as a result of this Decision are subject to offset  
12 by any amounts earned by Quinene during the pendency of this adverse action. By this decision,  
13 Quinene is ordered to provide GMHA with copies of any such earnings.

14 Also by unanimous vote of 7 to 0, the Commission denies Quinene's motion for attorney's  
15 fees because GMH proved its burden on the merits.

16 **CONCLUSION**

17 By a vote of 5 to 2, and further vote of 4 to 1, the Commission modifies the adverse action  
18 from a demotion to Staff Nurse II, Pay Grade M, Step 10, \$61,946.00, to a demotion to Nurse Unit  
19 Supervisor, Pay Grade N, Step 11, \$69,447.00.

20 **SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2013 *nunc pro tunc to***  
21 ***February 26, 2013.***

22 \_\_\_\_\_  
23 LUIS R. BAZA  
24 Chairman

22 \_\_\_\_\_  
23 MANUEL R. PINAUN  
24 Vice-Chairman

25  
26 \_\_\_\_\_  
27 <sup>1</sup> Two members of the Commission voted in favor of upholding the adverse action without modification.

28 <sup>2</sup> Of the five members of the Commission who voted in favor of modification, one member voted for a pay grade and step lower than N-11.

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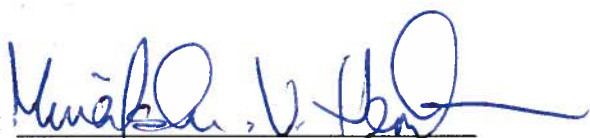
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PRISCILLA T. TUNCAP  
Commissioner

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JOHN SMITH  
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LOURDES HONGYEE  
Commissioner

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DANIEL D. LEON GUERRERO  
Commissioner

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EDITH C. PANGELINAN  
Commissioner

Submitted by:   
\_\_\_\_\_  
Minakshi V. Hemlani, Esq.

**FISHER & ASSOCIATES**  
Suite 101 De La Corte Building  
167 East Marine Corp. Drive  
Hagåtña, Guam 96910  
Telephone: (671) 472-1131  
Facsimile: (671) 472-2886