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.
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 Peter John 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
affect GMHA patient safety and quality service.

8. GMHA’s Policy Number 6301-I-D-11: Nursing Staff Planned/Vacation Leave Policy states that leave time must be requested by an employee, and that said request may be denied. (See Management’s Exhibit M16-M20)

9. Quinenene requested three (3) weeks of leave; however, after consideration of her request and the operational requirements of the GMHA, Quinene was approved for only two (2) weeks of leave.

10. After requested and clear communications from her supervisor that leave was only approved for two (2) weeks, Quinene disobeyed her supervisor’s instruction and deliberately refused to return to work as scheduled.

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

DISCUSSION

By unanimous vote of 7-0, the Commission finds that GMHA satisfied its burden on the merits by clear and convincing evidence. However, the Commission also finds that based on the facts and circumstances of the case, Quinene’s demotion should be modified. Thus, pursuant to its authority under 4 G.C.A. § 4406 and by a vote of 5 to 2\(^1\), the Commission modifies the particular adverse action, and by further vote of 4 to 1\(^2\), the modification shall be 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. Such modification shall begin on the effective date of the Final Notice of Adverse Action. Any back pay and/or benefits owed as a result of this Decision are subject to offset by any amounts earned by Quinene during the pendency of this adverse action. By this decision, Quinene is ordered to provide GMHA with copies of any such earnings.

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 4th day of May, 2013 nunc pro tunc to February 26, 2013.

___________________
Luis R. Baza
Chairman

___________________
Manuel R. Pinauin
Vice-Chairman

___________________
Priscilla T. Tuncap
Commissioner

___________________
John Smith
Commissioner

___________________
Lourdes Hongyee
Commissioner

___________________
Edith C. Pangelinan
Commissioner

1 Two members of the Commission voted in favor of upholding the adverse action without modification.

2 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.
BEFORE THE GUAM CIVIL SERVICE COMMISSION

BOARD OF COMMISSIONERS

IN THE MATTER OF:

JULIETTE QUINENE,

Employee,

vs.

GUAM MEMORIAL HOSPITAL AUTHORITY,

Management.

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CASE NO. 09-AA40D

[Proposed] DECISION & ORDER

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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

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)
3. On August 31, 2009, Quinene met with then Hospital Administrator Peter John 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. (See Management’s Exhibit M1-M3)

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 affect GMHA patient safety and quality of service.

8. GMHA’s Policy Number 6301-I-D-11: Nursing Staff Planned/Vacation Leave Policy states that leave time must be requested by an employee, and that said request may be denied. (See Management’s Exhibit M16-M20)

9. Quinene requested three (3) weeks of leave; however, after consideration of her request and the operational requirements of the GMHA, Quinene was approved for only two (2) weeks of leave.

10. After repeated and clear communications from her supervisor that leave was only approved for two (2) weeks, Quinene disobeyed her supervisor’s instruction and deliberately refused to return to work as scheduled.
11. Without authorization, Quinene took an additional week of leave time off.

**DISCUSSION**

By unanimous vote of 7 to 0, the Commission finds that GMHA proved its burden on the merits by clear and convincing evidence. However, the Commission also finds that based on the facts and circumstances of the case, Quinene’s demotion should be modified. Thus, pursuant to its authority under 4 G.C.A. § 4406 and by a vote of 5 to 2\(^1\), the Commission modifies the particular adverse action, and by further vote of 4 to 1\(^2\), the modification shall be 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. Such modification shall begin on the effective date of the Final Notice of Adverse Action. Any back pay and/or benefits owed as a result of this Decision are subject to offset by any amounts earned by Quinene during the pendency of this adverse action. By this decision, Quinene is ordered to provide GMHA with copies of any such earnings.

Also by unanimous vote of 7 to 0, the Commission denies Quinene’s motion for attorney’s fees because GMH proved 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 __________ DAY OF __________, 2013 nunc pro tunc to**

*February 26, 2013.*

**Chairman**

LUIS R. BAZA

**Vice-Chairman**

MANUEL R. PINAUN

\(^1\) Two members of the Commission voted in favor of upholding the adverse action without modification.

\(^2\) 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.
Submitted by: ______________
Minakshi V. Hemlani, Esq.

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