



BEFORE THE  
GUAM CIVIL SERVICE COMMISSION  
BOARD OF COMMISSIONERS



IN THE MATTER OF:

LINDA PALACIOS,

Employee,

vs.

DEPARTMENT OF REVENUE & TAXATION,

Management.

ADVERSE ACTION APPEAL  
CASE NO.: 15-AA21T

DECISION AND  
JUDGMENT

Appeal on this matter came before the Civil Service Commission for a Hearing on the Merits on Employee’s Adverse Action at its regularly scheduled meetings on March 14, 16, 21, 23, and April 4, 2017 at its office. Present was the Employee and her counsel of record, Daniel S. Somerfleck, Esq. of Somerfleck & Associates, PLLC. Present for Management was Director John P. Camacho, Deputy Director Marie Benito of the Department of Revenue & Taxation, and their legal counsel, Assistant Attorneys General Shannon Taitano, and Debra Lefing of the Office of the Attorney General.

I.

JURISDICTION

The jurisdiction of the Civil Service Commission is based upon the Organic Act of Guam, 4 G.C.A., §§ 4401 *et seq.*, and the relevant Personnel Rules and Regulations.

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1 II.

2 **HOLDING**

3 By a vote 4-2 in favor of Employee, Management did not prove its burden of proof that  
4 the termination of the Employee was proper. Since Management must have four affirmative  
5 votes, the Adverse Action fails.

6 III.

7 **FACTS**

8 1) On the morning of September 8, 2015, Driver's License Supervisor Jesse Salas  
9 received what was initially alleged to be an anonymous telephone call regarding potential  
10 improprieties regarding the processing and issuing of the Guam Driver's License to Justin Robert  
11 W. Cruz.

12 2) Upon investigation, Management alleged that Employee's user-ID was the last  
13 transaction entered into the Guam Driver's License System on July 14, 2015. The data entered  
14 purportedly reflected Michigan as a previous licensing jurisdiction with a motorcycle  
15 endorsement. It was also determined that the original application and supporting documents  
16 including the Michigan Driver's License were missing in the batch processed on July 14, 2015.  
17 It was further determined from the Michigan Secretary of State that they have no matching data  
18 on file for Justin Robert W. Cruz, and the license presented at the time of application is more  
19 than likely fraudulent.

20 3) On Friday, October 9, 2015, Employee met with Driver's License Supervisor  
21 Jesse Salas, and Administrator Marie Flores. At that meeting even upon presentation of Mr.  
22 Justin Robert W. Cruz's photo, Employee could not recall helping him. During that same  
23 meeting, Employee was asked whether there may be other transactions that are questionable and  
24

1 Employee allegedly admitted to processing out-of-state applicants, and not securing their out-of-  
2 state drivers' licenses to the application. Employee reportedly explained that there are some  
3 customers that beg to keep their licenses.

4 4) On October 12, 2015, Management issued a Notice of Proposed Adverse Action  
5 and on October 23, 2015, Management issued its Notice of Final Adverse Action terminating the  
6 Employee from her position at the Department of Revenue & Taxation.

7 5) Prior to the commencement of the Merit Hearing, the parties filed Witness Lists  
8 and Exhibit Lists. Employee's counsel filed written objection to the inclusion of what he opined  
9 to be irrelevant documentary evidence included in Management's Exhibit List.

10 6) Witnesses called by Management included Maria Flores, Administrator of the  
11 Motor Vehicle Branch of the Department of Revenue & Taxation, Jesse Salas, Supervisor  
12 Driver's License Branch Department of Revenue & Taxation, and Leonard Aguon formerly of  
13 the Guam Police Department, and currently a Deputy Marshal for the Superior Court of Guam.

14 7) Based upon the testimony of Ms. Flores and Mr. Salas the following additional  
15 facts were presented:

16 a. That the Employee began working for the Department of Revenue &  
17 Taxation over eight (8) years prior to this adverse action and had no prior disciplinary actions

18 b. That Management had not received an anonymous telephone call as  
19 alleged in the Notice of Proposed Adverse Action, and the Notice of Final Adverse Action, but  
20 instead had received a telephone call from within the Department of Revenue & Taxation from  
21 Jerome Aguon of the Criminal Investigation Branch of the Department of Revenue & Taxation.

22 c. That the Department of Revenue & Taxation does not have a process to  
23 review applications for out-of-state licenses because of staff shortages.

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1 d. That Management's Exhibit M-2 which purported to be driver's license  
2 transactions processed by Employee's access number DRV 78 does not support Management's  
3 contention that the Employee processed Mr. Justin Cruz's driver's license, nor Management's  
4 contention that only the Employee had access, via access number DRV 78, as at least one (1)  
5 transaction occurred after Employee was terminated.

6 e. That Management had in place, contrary to Department of Administration  
7 Personnel Policies and Procedures requiring progressive discipline, a zero tolerance policy  
8 regarding Employee's infractions.

9 8) The Commission upon determining that Leonard Aguon had no relevant  
10 testimony, as he had not had contact with the Employee until after the Notice of Proposed  
11 Adverse Action had been issued, and his first contact with the Employee was on the day the  
12 Final Notice of Adverse Action was issued, did not receive his testimony.

#### 13 IV.

#### 14 DISCUSSION

15 There are two components to the adverse action. The first is that Employee issued a  
16 license to Justin Cruz improperly on July 14, 2015. Specifically, that Mr. Cruz did not possess a  
17 valid out-of-state license, but purportedly secured a Guam license from Employee regardless on  
18 the basis of possessing one. The second allegation is that Employee had, on occasion, permitted  
19 out-of-state applicants to retain their licenses while they waited to receive their Guam license.  
20 The dates which Employee is supposed to have done this are unknown.

21 This case raises potential issues with the "60 day rule" from 4 GCA § 4406:

22 In no event may an employee in the classified service be given  
23 notice and statement of the charges required by this Section after  
24 the sixtieth (60th) day after management knew *or should have known* the facts or events which form the alleged basis for such

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1 action. Any action brought by management in violation of this  
2 Section is barred and any decision based upon such action is void.

3 (emphasis added). It should be noted that it appears that Management has virtually no  
4 mechanism in place to check on the work of those who issue drivers licenses. While  
5 Management is entitled to place some trust in their Employees, it would seem that there should  
6 be some system in place when dealing with a matter as important as state-issued IDs. If there is  
7 no way to automate the process of oversight, something like quarterly random spot-checks would  
8 seem at least a minimal step.

9 This is applicable to the allegation that Employee, at some points during her eight (8)  
10 year career, may have allowed out-of-state applicants to retain their licenses. There's no  
11 evidence of when that may have occurred. If they happened five (5) years ago, for example, it  
12 would be a violation of the sixty (60) day rule to discipline Employee for them now, as  
13 Management should have known of them sooner. There's no evidence Employee took active  
14 steps at concealment which would prolong the sixty (60) days; in fact, Management alleges that  
15 when asked about it she freely admitted it. Even if it were established that Employee had  
16 allowed an out-of-state applicant to retain her license in the sixty (60) days prior, it is  
17 questionable whether immediate termination was the appropriate discipline.

18 As to the matter of the license for Mr. Cruz, there is a question as to when Management  
19 became aware of the Employee's alleged actions. The subterfuge of reporting an anonymous  
20 call that was actually from someone known within the Department raises that question.  
21 Management did not establish the date that they actually knew of the allegation.

22 A more important problem with Management's case revolves around Exhibit M-2,  
23 introduced by Management as evidence showing transactions using the Employee's user-ID in  
24

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1 the system. First, Exhibit M-2 does not actually show a Michigan license transaction occurring  
2 on July 14, 2015. This omission raises extreme doubt about the Employee's culpability, since  
3 Management introduced into evidence a document that shows that the transaction alleged did not  
4 occur. Second, Exhibit M-2 shows at least one (1) transaction occurring *after the date that*  
5 *Employee was terminated*. If the user-ID in question was exclusively used by Employee and not  
6 reused, this would be impossible. At the very least, someone else in the Department must have  
7 used Employee's user-ID on at least one (1) occasion. Since the alleged use of the user-ID by  
8 Employee was the basis of Management's case against Employee, these two facts cast  
9 overwhelming doubt on the Employee's culpability for the issuance of the license to Mr. Cruz.

10 Therefore, Management failed to meet its burden of proof. The adverse action appeal of  
11 the Employee is granted.

12 **V.**

13 **JUDGMENT**

14 It is the judgment of the Civil Service Commission as follows:

15 1) That adverse action against Employee is hereby void, and she shall be returned to  
16 the position she held prior to the termination.

17 2) All documents related to, or reflecting the adverse action shall be expunged from  
18 Employee's personnel file.

19 3) Employee shall receive back pay for all wages withheld from Employee during  
20 the period of termination.

21 4) Employee shall be credited with all sick leave, and annual leave that she would  
22 have accrued during the period of termination.

23 5) Management shall deduct Employee's retirement contribution from her back pay,  
24

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1 and then pay both Employee's and Management's contributions to the Government of Guam  
2 Retirement Fund.

3 6) That Management shall contribute Management's contribution to the Government  
4 of Guam Retirement Fund equal to that which would have been paid since Employee's  
5 termination.

6 7) Attorney Daniel S. Somerfleck shall be paid reasonable attorney's fees and costs  
7 by Management directly to the office of Somerfleck & Associates, PLLC.

8 SO ADJUDGED THIS 15<sup>th</sup> day of MAY 2017.

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10   
11 **EDITH PANGELINAN**  
12 **Chairperson**

Not Present  
13 **LOURDES HONGYEE**  
14 **Vice-Chairperson**

15   
16 **PRISCILLA T. TUNCA**  
17 **Commissioner**

  
18 **JOHN SMITH**  
19 **Commissioner**

20 Not Present  
21 **CATHERINE GAYLE**  
22 **Commissioner**

  
23 **MICHAEL G. TOPASNA**  
24 **Commissioner**

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