



BEFORE THE  
GUAM CIVIL SERVICE COMMISSION  
BOARD OF COMMISSIONERS



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<p>IN THE MATTER OF:</p> <p>LIBERTY PEREZ,</p> <p>Employee,</p> <p>vs.</p> <p>DEPARTMENT OF PUBLIC WORKS,</p> <p>Management.</p>	<p>ADVERSE ACTION APPEAL CASE NO.: 14-AA27T SP</p> <p>DECISION AND ORDER</p>
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This case came before the Civil Service Commission at its regularly scheduled meeting of January 15, 2019, the Civil Service Commission Conference Room, Bell Tower, Suite 201, 710 West Marine Corps Drive, Hagåtña, Guam, for a Hearing on the Merits. Liberty Perez (“Employee”) was present with her attorney William Gavras. Present for the Department of Public Works (“DPW”) Management was Acting Director Jessie Garcia and its attorney, Assistant Attorney General David Rivera.

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**DECISION AND ORDER**  
*Liberty Perez vs. Department of Public Works*  
Adverse Action Appeal Case No. 14-AA27T SP

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I.

**JURISDICTION**

The jurisdiction of the Civil Service Commission is based upon the Organic Act, 4 GCA §4401 *et.seq.*, and the Department of Administration's Personnel Rules and Regulations.

II.

**ISSUE**

Did Management meet its burden of proof on the merits by presenting clear and convincing evidence in support of its decision to terminate Employee.

III.

**HOLDING**

Yes, after considering the exhibits submitted, the testimonies of former Director Carl Dominguez and Employee, and the oral arguments presented, the Commission, by a vote of 4-0, determined that Management had met its burden of proving the charges against the Employee and sustains the adverse action.

IV.

**FINDINGS OF FACT**

This matter was originally dismissed by the Civil Service Commission ("Commission") On Employee's Motion to Dismiss. It was subsequently appealed to the Superior Court of Guam. The Superior Court of Guam vacated the dismissal and remanded the case back to the Commission. The Findings of Fact and Conclusions of Law of Superior Court of Guam Special Proceedings Case No. SP 0150-15, filed

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1 March 1, 2018, was adopted by the unanimous vote of the Commissioners as part of  
2 the record of this case.

3 Liberty Perez was an employee and engineering supervisor of the Department  
4 of Public Works (“DPW”) when, on August 12, 2014, she entered a plea of guilty in  
5 the Federal District Court of Guam before Magistrates Judge Joaquin Manibusan to  
6 the felony charge of Misprision of Felony. The offense that Employee plead guilty to  
7 relates to false claims for overtime by DPW workers who were under Employee’s  
8 supervision and paid for with federal funds with Employee’s knowledge and  
9 encouragement. Moreover, Employee failed to report the fraud to Management or to  
10 federal authorities. Employee’s plea of guilty was accepted by Chief Judge Francis  
11 Tydingco-Gatewood on August 27, 2014. Employee was convicted of the felony  
12 crime of Misprision of Felony on the date of August 27, 2014 upon the acceptance of  
13 the plea of guilty by Chief Judge Tydingco Gatewood.

14 These findings are supported by documentary evidence presented to the  
15 Commission which included Employee’s Plea Agreement, Magistrate Manibusan’s  
16 Report and Recommendation Concerning Plea of Guilty dated August 12, 2014,  
17 Chief Judge Tydingco-Gatewood’s Order Accepting Plea of Guilty and Adjudicating  
18 Guilt dated August 27, 2014, and Employee’s own statements during her testimony  
19 admitting that she was convicted of the Crime of Misprision of Felony. In addition,  
20 the Superior Court’s Findings of Fact and Conclusions of Law in SP 0150-15

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1 concluded that the date of Employee's conviction was the date the District Court of  
2 Guam accepted her plea of guilty on August 27, 2014.

3 In addition to Employee's conviction of a crime, Employee was also charged  
4 in the Final Notice of Adverse Action with failing to notify Management of her  
5 conviction within 72 hours of the conviction as required by Guam law.

6 4 GCA § 4202.1 requires that an employee in the classified service who is  
7 convicted of a crime in any court shall provide the head of the agency employing the  
8 employee with written notice of the conviction within seventy-two (72) hours of that  
9 conviction. The failure to provide the proper notice within 72 hours of conviction as  
10 required by 4 GCA § 4202.1 is grounds for a separate adverse action. 4 GCA §  
11 4202.2.

12 The Superior Court of Guam Findings of Fact and Conclusions of Law  
13 determined that Employee had until September 1, 2014 to notify Management of her  
14 conviction.

15 Employee failed to give the required written notice of her conviction to  
16 her agency head within the 72 hours mandated by Guam law. Employee had not  
17 given written notice of her conviction by September 1, 2014. This finding is supported  
18 by the testimony of the former Director of DPW who was the agency head of DPW  
19 when Employee was convicted. He testified that he did not receive any written notice  
20 from the employee until well after September 1, 2014. Employee stated during  
21 testimony that she had informed one of her supervisors of the charges against her.

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1 This does not satisfy the reporting requirement of providing written notice to the  
2 agency head following conviction as required by 4 GCA 4202.1. Employee failed to  
3 comply with the statutory requirements mandated by 4 GCA 4202.1 and 4202.2. This  
4 was also the conclusion of the Superior Court.

5 Timely Proposed Notice of Adverse Action and Final Notice of Adverse  
6 Action which notified employee that she was to be terminated was served upon  
7 Employee by Management as a result of Employee's conviction of a crime and her  
8 failure to notify her agency head within the required 72 hours. Adverse Action for  
9 these causes is authorized under the Department of Administration Personnel Rules  
10 and Regulations Rule 11.303(G) conviction for a crime, and 11.303(O) other  
11 misconduct not specifically listed (failure to report conviction). It is the finding of the  
12 Commission that Management has met its burden of proof on the merits through clear  
13 and convincing evidence and that the termination was warranted given the fact of the  
14 conviction, that Employee was a supervisor who is held to a higher standard conduct  
15 and failed to comply with that standard of conduct, and given that Employee has been  
16 subjected to progressive discipline since employee has a prior demotion and a prior  
17 suspension in her employment history. This finding is supported by records submitted  
18 in evidence from the Department of Administration memorializing the past demotion  
19 and suspension as well as Employee's admission during testimony that she had been  
20 previously demoted and suspended.

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