



BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS



IN THE MATTER OF:

LYNDA B. AGUON,

Employee,

vs.

DEPARTMENT OF PARKS AND
RECREATION,

Management.

ADVERSE ACTION
CASE NO.: 19-AA02T

DECISION AND JUDGMENT

INTRODUCTION

The above captioned matter came before the Guam Civil Service Commission (CSC) January 14, 2020, to review the recommendations of the Administrative Law Judge (ALJ), Eric D. Miller. Employee, Lynda B. Aguon hereinafter (“Employee”) was employed by the Department of Parks and Recreation as the Guam Historic Preservation Officer for the Guam Historic Resources Division. On June 18, 2019, Employee was served with Final Notice of Adverse Action (FNAA) alleging numerous acts of insubordination, mistreatment of staff, misuse of official vehicle, and other bad behavior.

DECISION AND JUDGMENT

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1 **JURISDICTION**

2 The jurisdiction of the Guam Civil Service Commission is based upon the Organic Act of
3 Guam, and 4 GCA §4403 (b).

4 **BURDEN OF PROOF**

5 Following the ruling in *Port Authority of Guam v. Josette J. Javelosa*, 2018 Guam 9, the
6 Commission must make an initial determination as to the burden of proof on Management. By
7 Decision and Order dated October 3, 2019 the Commission found that Management's burden is the
8 clear and convincing evidence standard because the factual allegations do not correspond to
9 statutory prohibitions in the criminal code.

10 **FINDING OF FACT AND CONCLUSION OF LAW**

11 The ALJ found by clear and convincing evidence that Employee was insubordinate when
12 she advised her Director that he could not force her to comply with his order to review and address
13 emails from Administrative Assistant, Christine Olkeriil. The ALJ also found by clear and
14 convincing evidence that Employee was insubordinate when she violated a written order not to
15 discuss the investigation of complaints about her with other employees while the investigation was
16 in progress. Employee admitted to talking to employees, Michelle Yamasta and Barbara Lujan,
17 during the investigation. The ALJ found that none of the other allegations would justify
18 termination. The ALJ recommended that the adverse action be affirmed.

19 Present at the hearing for Management were Assistant Attorney General Donna Lawrence,
20 Assistant Attorney General Matthew Wolff, and Acting Director Richard Ybanez. Present for
21 Employee was John R. Bell, Esquire, and Employee. Commissioners present at the hearing were
22 Chairman Juan K. Calvo, Commissioner Priscilla T. Tuncap, Commissioner Emilia F. Rice, and
23 Commissioner Anthony P. Benavente.

24 **DECISION AND JUDGMENT**

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1 At the hearing, ALJ Miller read his written decision into the record. 4 GCA §4405 (c)(2)
2 provides that the Commission will have the authority to accept, modify, or reject the ALJ's decision
3 in whole or in part.


4 Chairman Calvo asked if the Commissioners wished to reject the ALJ's recommendations.
5 The vote was 4 to 0 opposing rejection.

6 The vote was 3 to 1 to modify the recommendation. (Commissioner Benavente
7 dissenting). The Commission voted 3 to 1 to accept the recommendation (Chairman Calvo
8 dissenting). Management has the burden of proof 4 GCA §4407. The affirmative vote of four (4)
9 members shall be required for any action of the Commission 4 GCA§4402. In this case
10 Management failed to get the affirmative vote of four (4) Commissioners to affirm the termination.
11 Employee prevails. The adverse action is revoked. The Employee shall be reinstated immediately
12 until such time as this decision is overturned by judicial review. 4 GCA §4406 (g). Employee is
13 awarded back pay, reasonable attorney fees and costs.

14 IT IS SO ADJUDGED on this 11th day of February, 2020.

15 
16 JUAN K. CALVO
Chairman

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16 JOHN SMITH
Vice Chairman

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18 PRISCILLA T. TUNCAP
Commissioner

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18 EMILIA F. RICE
Commissioner

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20 ANTHONY P. BENAVENTE
Commissioner