



BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS



IN THE MATTER OF:

MICHAEL P. QUINATA,

Employee,

vs.

DEPARTMENT OF CORRECTIONS,

Management.

ADVERSE ACTION APPEAL
CASE NO. 14-AA08T

DECISION AND JUDGMENT

The above captioned case came before the Civil Service Commission for Hearing on the Merits on February 2, 9, and 10, 2016, at its office located at Suite 6A, Phase II, Sinajana Complex, 777 Route 4, Sinajana, GU 96910.

The Employee was present with counsel, Mr. Jeffrey Moots, Esq. Management was represented by Assistant Attorney General Monty R. May.

I.

ISSUES

The issues in the case were as follows:

1. Did the Employee fail to perform his duties and responsibilities?
2. Was the Employee insubordinate?
3. Did the Employee committed misconduct not specifically listed?
4. What is the appropriate sanction if any or all of the charges are sustained?

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2 **II.**
3 **FINDINGS OF FACT**

4 1. On the morning of January 31, 2014, the Employee, then employed with the Department
5 of Corrections as Chief Parole Officer, drove an official vehicle of the Department to the Barrigada
6 residence of a parolee, left it and its key in the possession of the parolee, and returned to work.

7 2. The Employee and the parolee, who had a business license for detailing cars, had an
8 agreement that the parolee would detail the vehicle in exchange for credit hours towards his
9 community service obligation.

10 3. The Employee did not inform the Director of the Department of Corrections or the
11 parolee's assigned parole officer of his intention to place the vehicle with the parolee, and the
12 Director did not know of its placement until an anonymous caller reported that the vehicle was at
13 the residence of the parolee.

14 4. The Director would not have approved the placement if he had been informed and
15 disapproved the Employee's decision to place the vehicle with the parolee. Upon learning of its
16 location, the Director ordered its return to the Department.

17 5. On the same day, at the direction of the Director, the head of the Internal Affairs Division
18 of the Department delivered a letter in an envelope to the Employee placing him upon paid
19 administrative leave for 20 days and, among other orders, it ordered the Employee to have no
20 contact with the parolee. The testimonies of the IA Officer and the Employee were contradictory:
21 the latter testified that he orally informed the Employee of the order against contact; the Employee
22 testified that he was orally informed that he was on administrative leave, effective immediately,
23 but not informed at the time of the receipt of the sealed letter to stay away from the parolee.

1 6. Having received the envelope, on the same afternoon the Employee did contact the parolee
2 about the disposition of the official vehicle. He testified that he did not read the letter and did not
3 learn its content until two days after its receipt.

4 7. The heads of executive line agencies have ultimate control over the uses of official agency
5 vehicles, but may delegate their authority to division heads

6 8. Prior to the incident of January 31, 2014 the Director never expressly or by implication
7 gave authority to the Employee to place the vehicle with a parolee for purpose of cleaning it: with
8 regard to cleaning it was his expectation that departmental vehicles, if cleaned by inmates or
9 parolees, would only be done under continuous supervision of correction officers or parole
10 officers.

11 9. The Employee committed misconduct and irresponsible conduct in that he placed an
12 official vehicle and its key with a parolee without first informing the Director of his intent to do
13 so and then without thereafter maintaining continual supervision over the vehicle. The Employee
14 had no independent authority to place the vehicle in the unsupervised possession of the parolee.

15 10. The Employee committed insubordination in that he did make contact with the parolee
16 despite the written order to not make contact with the parolee.

17 11. The only prior disciplinary action against the Employee was a five-day suspension in 2005
18 for an act of insubordination.

19 12. Because the prior disciplinary action of suspension was more than ten years ago and of
20 short duration and his long service record has been rated from satisfactory to outstanding, the
21 termination should be modified to a lesser sanction.

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III.
ANALYSIS

Employee argued that his decision to take the vehicle to a parolee was motivated by the good intention of attempting to help a parolee get on his feet in a legitimate business. It was unconventional and potentially risky to the property and reputation of the Department to undertake this action, but Employee developed innovative methods over the years. He argued that he was careful in his dealings to avoid the appearance of intimidating a parolee to do work for the Department. Employee also argued that prior Directors had known about similar actions, he had been doing these types of dealings with parolees for years, no harm had ever resulted, and that the reporting of his actions under these circumstances had the feel of a kind of “sting” organized by co-workers that might dislike him.

Even if we granted the above, the Employee still showed poor judgment in not communicating with his current Director. Assuming it was the case that prior Directors had been tolerant or even encouraging of this kind of undertaking, if an action is unconventional and potentially risky to the property and reputation of the Department, the Employee should apprise a new Director of his unusual methods. Some Directors might be more risk-averse than others, and had the Director been apprised, Employee could have tried to persuade the Director of the reasons for it.

Here, the Employee chose to continue his avant-garde, even if well-intentioned, operation. Employee might be Chief Parole Officer, but he does not have absolute discretion in all matters under his control with callous disregard for the opinion of the Director, particularly where there is the potential for damage and embarrassment to the Department. Although termination may be too harsh under the circumstances, Employee deserves some negative consequence for not clearing unconventional methods with his new Director.

CONCLUSION

Under all the facts and circumstances, by a vote of 5 ayes and no nays the Commission finds that termination for the aforesaid misconduct and insubordination is not appropriate discipline. By a vote of 5 ayes and no nays the Commission modifies the disciplinary action from a termination to demotion in the form of a two-step reduction in pay. The Employee is reinstated to the position of Chief Parole Officer, effective March 31, 2014, but with a two-step reduction in salary, from PL 4-16 to PL 4-14.


So Ordered this 14th day of April, 2016.



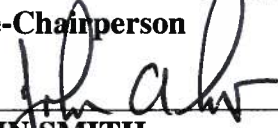
EDITH PANGELINAN
Chairperson

Not present

DANIEL LEON GUERRERO
Vice-Chairperson



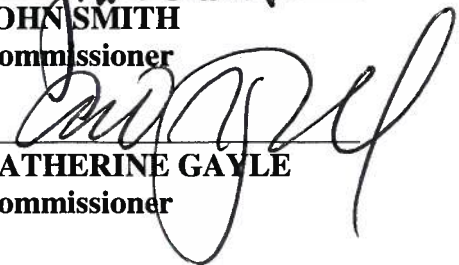
PRISCILLA T. TUNCAF
Commissioner



JOHN SMITH
Commissioner



LOURDES HONGYEE
Commissioner



CATHERINE GAYLE
Commissioner