



BEFORE THE  
GUAM CIVIL SERVICE COMMISSION  
BOARD OF COMMISSIONERS



IN THE MATTER OF:

RODNEY F. AKIMA,

Employees,

vs.

PORT AUTHORITY OF GUAM,

Management.

ADVERSE ACTION APPEAL  
14-AA14S

DECISION AND JUDGMENT

This matter came before the Civil Service Commission ("Commission") for Merit Hearings on January 6, 8, 13, 15 and 21, 2015, on Employee Rodney F. Akima's ("Akima") appeal from his Final Notice of Adverse Action issued by Management Port Authority of Guam ("Management"). Present for Management was General Manager, Joanne Brown, and counsel of record, Michael F. Phillips, Esq., of The Law Offices of Phillips & Bordallo, P.C. Also present were Employee, Rodney F. Akima, and his counsel of record, John C. Terlaje, Esq.

**I.**  
**JURISDICTION**

The Commission has jurisdiction over this matter pursuant to the Organic Act of Guam, Title 4 of the Guam Code Annotated §4401, *et seq.*, and the Port Authority of Guam's Personnel Rules and Regulations.

**ORIGINAL**

1 **II.**  
2 **ISSUE**

3 Did Management meet its burden of proof by clear and convincing evidence that its  
4 actions taken in suspending Akima for thirty (30) days under the Notice of Final Adverse Action  
5 were correct?

6 **III.**  
7 **FINDINGS OF FACT**

8 1. On April 17, 2014, Akima was served a Notice of Proposed Adverse Action. The  
9 action was taken in accordance with Chapter 11, Rule 11.303, governing Authorized Causes for  
10 Adverse Action, of alleged violations of the Personnel Rules and Regulations as shown below:

- 11 (B) Refusal or Failure to Perform Prescribed Duties and Responsibilities.
- 12 (J) Discourteous Treatment of the Public, Customers or Other Employees.
- 13 (Q) Threatening, Coercing, Harassing or Acts of Discrimination to Employees,  
14 Supervisor, Customers or Individuals, to include Sexual Harassment.

15 2. On March 13, 2014, at around 6:00 p.m. in the evening, Akima went to the  
16 Finance Department and confronted another Port employee, Ms. Miami Ulbenario, General  
17 Accounting Supervisor about Akima's payroll deduction for a uniform stipend in the amount of  
18 \$150.00. Ms. Ulbenario's significant other was present in the office. She was working late and  
19 preparing to leave when Officer Akima entered her small office.

20 3. Akima went into Ms. Ulbenario's office upset, voice-raised, armed and in full  
21 police gear confronting her about his payroll deduction. Ms. Ulbenario admitted to also raising  
22 her voice in response, and the conversation quickly became heated.

23 4. Akima further argued with Ms. Ulbenario about other issues he was having with  
24 payroll. Ulbenario, a smaller-framed person, maintains that she was intimidated by Akima's  
25 presence, demeanor, and that he was armed. Akima maintains that he was only in full gear  
because he was just arriving to begin his shift, not for the purpose of intimidation.

5. Soon after Akima appeared Ms. Ulbenario attempted to contact Port Police for

1 assistance. Ms. Ulbenario repeatedly tried calling the Port Police office although none of her  
2 calls were answered. Akima asked her at this point in time, "Are you trying to call the police?"  
3 Akima then added "Don't bother no one is going to answer your call." At the same time, Akima  
4 was receiving calls on his radio from fellow police officers which he continued to ignore.  
5 Although Akima maintains that he was merely informing Ulbenario that no one was present in  
6 the office to take her call, the situation created further fear for Ms. Ulbenario.

7 6. At one point during the confrontation with Ms. Ulbenario, Akima took a bladed  
8 stance with his right hand near his gun holster and left hand out towards Ms. Ulbenario  
9 intimidating her. Akima contends that it is part of training that during a heated confrontation for  
10 an officer to place his hand near his gun to maintain its security. Neither Ulbenario nor her  
11 significant other mentioned a touching of the gun in the reports they filled out immediately after  
12 the incident.

#### 13 IV. ANALYSIS

14 Officer Akima caused no physical harm and apparently never intended to do so. If one  
15 believes his testimony, he had no subjective intention to menace or intimidate Ulbenario  
16 whatsoever. His approaching Ulbenario in her office after hours donned in full officer gear, his  
17 mentioning that no one was in the office to take her call when she tried to call Port Police, and  
18 his placing of his hand near his gun may have all been innocently undertaken in his mind. Yet,  
19 we also look objectively at what impression one's actions might create in others, regardless of  
20 the inner intentions in one's heart. If the initial, animated approach towards Ulbenario was not in  
21 itself poor judgment, it was certainly poor judgment to persist in the conversation as things  
22 became heated instead of diffusing the situation by leaving her office, particularly when she tried  
23 to call Port Police. Armed officers should be aware of the nervousness their being armed might  
24 create in their coworkers, and we do not mind holding them to a higher standard.

V.  
CONCLUSION

By a vote of 5-1, Management proved by clear and convincing evidence that an Adverse Action is appropriate; however, the Commission does not believe these actions merit a thirty (30) day suspension. Pursuant to Rule 11.7.3 the Commission finds the punishment too severe and Management's action should be modified. Therefore, the Commission rules in favor of Management and adjusts the number of days of the Employee's suspension to ten (10) days.

SO ORDERED THIS 12<sup>th</sup> DAY OF November 2015, nec pro tunc January 21, 2015.



LUIS R. BAZA  
Chairman




DANIEL D. LEON GUERRERO  
Vice-Chairman



PRISCILLA T. TUNCAP  
Commissioner



JOHN SMITH  
Commissioner



LOURDES HONGYEE  
Commissioner



EDITH C. PANGELINAN  
Commissioner

Not present

CATHERINE GAYLE  
Commissioner