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5 **BEFORE THE**
6 **GUAM CIVIL SERVICE COMMISSION**
7 **BOARD OF COMMISSIONERS**

8 **IN THE MATTER OF:**

9 **CHRISTOPHER M. SANTOS,**

10 **Employee,**

11 **vs.**

12 **DEPARTMENT OF CORRECTIONS,**

13 **Management.**

ADVERSE ACTION
APPEAL CASE
NO.: 20-AA13T

DECISION AND
ORDER

14 **INTRODUCTION**

15 This matter came before the Commission on February 24, 2022, to
16 hear Management's Motion to Determine the Burden of Proof as Substantial
17 Evidence. Employee did not file any opposition to this motion at any time
18 prior to or as of the motion hearing.

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1 Present at the motion hearing on February 24, 2022, was Chairman
2 Juan K. Calvo, Vice Chairman John Smith, Commissioner Priscilla T.
3 Tuncap, Commissioner Anthony P. Benavente, and Commissioner Robert
4 Taitano. Employee was present and was represented by Robert Koss of the
5 Guam Federation of Teachers. Department of Corrections (DOC) Deputy
6 Director Robert Camacho was present and represented by AAG Donna
7 Lawrence.

8 ***Facts/Background***

9 Employee was personally served with a Notice of Final Adverse
10 Action on December 14, 2020 which set forth charges against him, among
11 others, that he committed; promoted prison contraband and official
12 misconduct, in addition to violating DOC rules, policies and Executive
13 orders on or about September 19, 2020.

14 On or about September 19, 2020, Employee's bag was subject to an
15 unannounced administrative search. In that search, five (5) cans of
16 Copenhagen chewing tobacco were found in his bag along with other

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1 unauthorized food items he indicated he was bringing in for prisoners
2 without going through proper channels. Bringing in these items violates
3 DOC policies, orders and Guam law as set forth in Management's adverse
4 actions and its motion filing.

5 Management's proposed and final adverse actions found that
6 Employee possessed and brought tobacco onto the grounds of a detention
7 facility or attempted to bring these items into a detention facility for his
8 personal use and that of prisoners. DOC is a smoke-free and tobacco-free
9 facility. In his internal affair' interview which is set forth in the adverse
10 action documents, Employee admitted to knowing his conduct was not
11 authorized and that it was wrong.

12 As set forth in the proposed and final adverse actions, Employee's
13 conduct was unauthorized. Among other violations, he was charged with
14 violating Department of Administration Personnel Rules (11.402, Conduct
15 (A) Criminal/Dishonest and notoriously disgraceful conduct), Executive
16 Orders 2007-18 (Government of Guam Executive Branch Tobacco Free
17 Workplace Environmental Departmental Policy), 88-19, Guam civil statute
18 10 GCA, Chapter 90 (Natasha Protection Act), General Orders 20000-01

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1 (Inmate/Detainee; Outgoing/Incoming of Authorized Items) and 2003-01
2 (DOC), and Guam's criminal statutes, 9 GCA, §49.90 (official misconduct)
3 and 9 GCA, §58.60 (promoting prison contraband).

4 ***Ruling as to Burden of Proof***

5 After reviewing Management's motion, including all attachments,
6 and after listening to the arguments of the parties, the Commissioners found
7 by a vote of 5 to 0 that the burden of proof at a future merit hearing shall be
8 substantial evidence relating to Employee's conduct on or about September
9 19, 2020.

10 The lower burden of proof of substantial evidence is warranted by 4
11 GCA, §4407 (c), the *Port Authority v Civil Service Commission (Javelosa)*,
12 2018 Guam 9 decision (attached to Management's motion), and by the facts
13 and charges set forth in Management's Notice of Proposed and Final
14 Adverse Actions attached to Management's motion filing on January 5,
15 2022, including but not limited to, the potential criminal conduct and
16 charges set forth in those actions; 9 GCA, §58.60 (promoting prison
17 contraband) and 9 GCA, §49.90 (official misconduct). As indicated by
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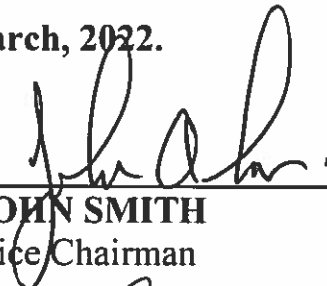
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1 training provided to the Commissioners and as set forth in *Javelosa*, the
2 Commission finds that no criminal charges are required to be filed against
3 an employee for the lower burden of proof to apply.

4 **SO ORDERED** this 15th day of March, 2022.

5 (ABSENT)
6 **JUAN K. CALVO**
Chairman


7 **JOHN SMITH**
Vice Chairman

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9 **PRISCILLA TUNCAP**
Commissioner


10 **ANTHONY P. BENAVENTE**
Commissioner

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12 **ROBERT C. TAITANO**
Commissioner