



BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS



IN THE MATTER OF:

JOCELYN LUBASAN,

Employee,

vs.

DEPARTMENT OF YOUTH
AFFAIRS,

Management.

ADVERSE ACTION APPEAL
CASE NO.: 20-AA11D

DECISION AND ORDER

This matter came before the Civil Service Commission (Commission) for a zoom motion hearing on September 7, 2021, at 9:00 a.m. at the Commission's regular scheduled meeting. Present for Management was Assistant Attorney General Donna Lawrence, and Director Melanie Brennan of the Department of Youth Affairs. Robert Koss was present on behalf of the Employee, who was also present for the motion hearing. Present for the

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1 Commission were Chairman Juan K. Calvo, Vice Chairman John Smith,
2 Commissioner Priscilla Tuncap, Commissioner Robert Taitano and
3 Commissioner Emilia Rice.

4 **Jurisdiction**

5 CSC has jurisdiction to hear adverse action appeals filed by classified
6 employees under 4 GCA, § 4403 (b) involving suspensions, demotions and
7 terminations of classified employees. The Commission has jurisdiction to
8 hear this adverse action appeal filed in November, 2020.

9 **Facts**

10 Employee was personally served with a Notice of Proposed Adverse
11 Action on October 9, 2020. Employee responded in writing to the Notice of
12 Proposed Adverse Action on October 15, 2020. Employee was demoted by
13 way of a Notice of Final Adverse Action on November 5, 2020.

14 Employee submitted an appeal to the Commission on or about
15 November 9, 2020. Attached to her appeal filing with CSC was the notice of
16 proposed and final adverse action. Employee attached to her appeal filing
17 with the Commission twelve (12) pages of a proposed adverse action and
18 eleven (11) pages of a final adverse action.

19
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1 Employee, through the Guam Federation of Teachers (“GFT”), filed
2 the appeal in November 2020, and thereafter, filed a motion to revoke for
3 procedural defect on May 12, 2021, claiming employee received *only three*
4 *pages* of a final adverse action. GFT attached only three (3) of the eleven
5 (11) pages of the final action to Employee’s motion to revoke.

6 Employee’s appeal filed with CSC does not indicate she received only
7 three (3) pages of a final adverse action that was devoid of any facts as she
8 alleged in her motion to revoke. Employee did not sign the motion to revoke
9 filed with CSC on May 12, 2021.

10 Management filed its opposition to Employee’s motion on May 28,
11 2021. Attached to Management’s opposition was a declaration by David
12 Afaisen attesting to personal service on Employee of a final adverse action
13 consisting of eleven (11) pages.

14 The motion hearing was heard on July 27, 2021, and thereafter reset to
15 September 7, 2021, at 9:00 a.m. due to Open Government Law violations
16 from the prior motion hearing.

17 Discussion

18 After receipt of GFT’s motion filing, and as indicated in
19 Management’s opposition and at the motion hearings, Management’s counsel

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1 went to view Employee's file at Civil Service Commission on May 27, 2021
2 to confirm Employee's filings. The Commission's file confirmed
3 Employee's filing of eleven (11) pages of the final adverse action with her
4 appeal. Management's counsel advised the Commission by way of an offer
5 of proof at the motion hearing that GFT emailed Management's counsel the
6 appeal it filed with CSC on Employee's behalf. The email from GFT to the
7 Commission consisted of a total of eleven (11) pages of the final adverse
8 action.

9 Employee was given reasonable notice of her conduct for which
10 adverse action was sought as required by *Perez v Civil Service Commission*
11 (*DOE*), 2018 Guam 25. Employee was aware of her conduct for which she
12 was charged on or about August 28, 2020, and provided a written response to
13 Management dated October 15, 2020, regarding her alleged misconduct
14 involving a minor. The adverse action also cited to her prior suspension,
15 prior letters of reprimand and her prior misconduct regarding minors under
16 her care.

17 **Burden of Proof**

18 The burden of proof as to pre-hearing motions is preponderance of the
19 evidence.

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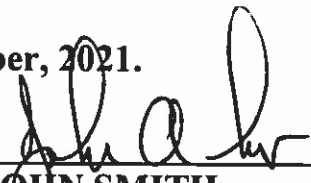
1 **Rulings by Commissioners**

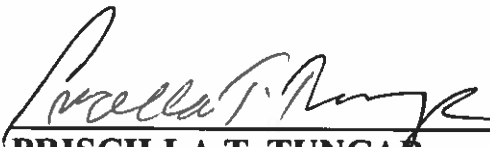
2 After reviewing the filings in this case, the record, and after hearing the
3 arguments of the parties and asking questions, the Commission voted 5 to 0
4 to deny Employee's motion to revoke for procedural defect. The
5 Commission determined Employee failed to meet her burden of proof.

6 Having failed to obtain four (4) affirmative votes in support of her motion
7 pursuant to 4 GCA § 4402, Employee's motion to void is denied.

8 **SO ORDERED** this 28th day of September, 2021.

9 
10 **JUAN K. CALVO**
Chairman


11 **JOHN SMITH**
Vice Chairman

12 
13 **PRISCILLA T. TUNCAP**
Commissioner


14 **EMILIA F. RICE**
Commissioner

15 (absent)
16 **ANTHONY P. BENAVENTE**
Commissioner

(absent)
17 **ROBERT C. TAITANO**
Commissioner

1 **THERESA G. ROJAS, ESQ.**
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10 *Counsel for the Guam Waterworks Authority*

11 **BEFORE THE GUAM CIVIL SERVICE COMMISSION**

12 IN THE MATTER OF) ADVERSE ACTION APPEAL
13 TYLER P. NANGAUTA,) CASE NO. 21-AA11S & 21-AA16T
14 Employee,)
15 vs.) **ENTRY OF APPEARANCE**
16 THE GUAM WATERWORKS AUTHORITY,)
17 Management.)

18 **COMES NOW, THERESA G. ROJAS**, the legal counsel for the Guam Waterworks
19 Authority, and hereby enters her appearance as attorney of record on behalf of Management of
20 the Guam Waterworks Authority ("GWA") in the above-captioned case. I further hereby request
21 that I am personally provided with all notices, correspondence and pleadings issued relative to
22 this matter, on behalf of GWA.
23

24
25 **DATED** this 30 th day of September, 2021.

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28 
29 **THERESA G. ROJAS**
30 GWA Legal Counsel
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