



BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS



IN THE MATTER OF:

JOSEPH ANTHONY AGUON,

Employee,

vs.

GUAM WATERWORKS
AUTHORITY,

Management.

ADVERSE ACTION APPEAL
CASE NO.: 21-AA10T

DECISION AND JUDGMENT

I. INTRODUCTION

This matter came before the Civil Service Commission (CSC) for a merit hearing on September 8, and 9, 2022. Present for the hearing was the Employee, Joseph Aguon, and his Lay Representative, Robert Koss. Present for Management, was Guam Waterworks Authority (GWA) General Manager Miguel C. Bordallo, P.E., and GWA legal counsel Theresa G. Rojas, Esq. Present for the Civil Service

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1 Commission were the following four (4) Commissioners; Chairman Juan K. Calvo,
2 Vice Chairman Anthony Benavente, Commissioner John Smith, and Commissioner
3 Robert C. Taitano.¹

4 **II. JURISDICTION**

5 The jurisdiction of the Commission is based upon 4 G.C.A. §4401 et seq., and
6 relevant portions of the Guam Waterworks Authority Personnel Rules and
7 Regulations.

8 **III. ISSUE**

9 Did Management prove the allegations set forth in Employee's April 26, 2021,
10 Notice of Final Adverse Action by clear and convincing evidence and was the
11 appropriate level of discipline, resulting in the Employee's termination, sustained?

12 **IV. FINDINGS**

13 Upon hire as a Wastewater Maintenance Mechanic II, Employee acknowledged in
14 writing GWA's zero-tolerance Drug and Alcohol-Free Workplace Policy. The
15 policy and individual notices to Employee made clear that Employee's position as a
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17 ¹ Before the September 8, 2022, hearing began, Employee requested the recusal of Commissioner Tuncap, who was present,
18 raising a perceived conflict when the Commissioner was seen speaking with GWA's General Manager after a separate motion hearing
19 for this case had concluded on September 6. On the record, Commissioner Tuncap explained that the brief discussion was personal.
20 GWA's General Manager confirmed that he had no familial relations or other with Commissioner Tuncap and had only met
21 Commissioner Tuncap for the first time on September 6, 2022 and that the brief discussion was he had to listen to a concern regarding
service with Commissioner's water utility. Noting the potential for the appearance of impartiality the remaining Commissioners voted
4-0 to recuse Commissioner Tuncap from any further hearing in the above-referenced matter.

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1 Wastewater Maintenance Mechanic II was a test-designated position (“TDP”)
2 requiring Employee to undergo random drug tests. The policy and individual notices
3 further stated that refusal to participate in the random drug tests or failure to report
4 for testing would all be considered the equivalent of a confirmed positive test
5 subjecting Employee to termination and dismissal from GWA.

6 On March 18, 2021, Employee was selected for random drug testing and was
7 instructed to provide a urine sample at GWA’s Upper Tumon facility. The drug
8 testing was administered and controlled by GWA staff and Guam’s Department of
9 Administration (“DOA”) Recruitment and Drug Testing division. Lab Technicians
10 from Diagnostic Laboratory Services (“DLS”) were also on site to perform urine
11 sample collection.

12 At the merit hearing, DLS employee testimony confirmed that Employee
13 attempted to provide a urine specimen but spilled it. Thereafter, personnel from
14 DOA’s Recruitment and Drug Testing Division instituted “shy bladder protocols” as
15 a result of Employee’s failed attempt and spill extending the opportunity for
16 Employee to provide an additional urine sample. Pursuant to the adopted protocols,
17 Employee was given several bottles of water, not to exceed (40 oz) and sufficient
18 time of up to three hours to provide a second urine sample. DLS lab technician

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1 confirmed that a minimum of at least 30 milliliters was required from Employee to
2 provide a sufficient sample for review and explained that 30 milliliters was the same
3 measurement used in bottle caps of often purchased over the counter cold and flu
4 medicine.

5 During the hearing, DLS staff testified and provided records showing that
6 Employee's urine had spilled at 11:12 AM, and that two added attempts were made
7 at 11:55 AM, and 14:59 PM to collect the minimum 30 milliliters. The two
8 additional attempts were recorded as "QNS" or "quantity not insufficient" by DLS
9 staff and resulted in a decision to end Employee's drug test at 15:10 PM; almost four
10 (4) additional hours after Employee first spilled his specimen. All the information
11 above and testified to at hearing were written, recorded, and sent to DOA's Medical
12 Review Officer ("MRO"), a medical physician, for a test result determination. On,
13 April 2, 2021, GWA's General Manager received the MRO's determination of
14 Employee's March 18, 2021 random drug test, and the MRO determined
15 Employee's actions as a "refusal to test."

16 On the basis of the MRO's findings and pursuant to GWA's zero tolerance
17 policy strictly prohibiting the use of illegal drugs, Employee was served with a
18 proposed and final adverse action terminating Employee effective April 26, 2021.

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1 GWA confirmed through testimony that while the proposed adverse action
2 was pending Employee was served and given the opportunity to file an appeal using
3 DOA's Drug Test Result Appeal Form. At hearing, DOA and GWA personnel
4 confirmed that no appeal OR additional documentation was filed by Employee for
5 the MRO's additional review to contest or offer any explanation for the drug test
6 result findings as a "refusal to test."

7 After reviewing all documents submitted and hearing the testimony of the
8 witnesses as well as arguments from the parties, the Commission deliberated and
9 voted 4 to 0, concluding that Management met its burden of proof by clear and
10 convincing evidence when it terminated the Employee from his classified position
11 as a Wastewater Maintenance Mechanic II from GWA.

12 **V. CONCLUSION**

13 By a vote of 4 to 0, the appeal of the Employee, Joseph A. Aguon, is dismissed
14 with prejudice in its entirety on the grounds that management, GWA, has sustained
15 its burden of proof that Employee engaged in the acts as specified in the Final Notice
16 of Adverse Action in violation of GWA's zero tolerance drug and alcohol-free
17 workplace policy.

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1 The Employee has the right to appeal this decision of the Commission to the
2 Superior Court of Guam within thirty (30) days after judgment is entered, pursuant
3 to CSC Rule 11.7.8 and the rules and timeframes set forth under law.

4 **SO ORDERED this 24 day of January, 2023.**

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7 **JUAN K. CALVO**
Chairman



8 **ANTHONY P. BENAVENTE**
Vice Chairman

9 **PRISCILLA T. TUNCAP**
Commissioner

10 **JOHN SMITH**
Commissioner

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12 **ROBERT C. TAITANO**
Commissioner

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14 **FRANCISCO T. GUERRERO**
Commissioner

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