BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS

IN THE MATTER OF:
JOYJEAN ARCEO,
Employee,

vs.

PORT AUTHORITY OF GUAM,
Management.

ADVERSE ACTION APPEAL
CASE NO.: 21-AA09D

DECISION AND JUDGMENT

INTRODUCTION

This matter came before the Civil Service Commission ("CSC") on Management's Motion to Dismiss on November 9, 2021, via Zoom. Employee JoyJean Arceo ("Employee") appeared with counsel, Attorney Jacqueline T. Terlaje. Both General Manager Rory J. Respicio, and Deputy General Manager of Administration and Finance Luis R. Baza, were present on behalf of the Port Authority of Guam ("Management"), and were represented by counsel, Attorney

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Christine K. Claveria. Commissioners present were Chairman Juan K. Calvo, Vice Chairman John A. Smith, Commissioner Priscilla T. Tuncap, Commissioner Anthony P. Benavente, and Commissioner Robert C. Taitano.

**JURISDICTION**

The jurisdiction of the Commission is based upon Title 4 Guam Code Annotated, § 4401, *et seq.*, and relevant portions of the Port Authority of Guam’s Personnel Rules and Regulations. Management’s Motion to Dismiss is made pursuant to Rule 9.5 of the CSC Rules of Procedure for Adverse Action Appeals.

**DISCUSSION**

Management moved to dismiss the Employee’s Notice of Adverse Action Appeal filed April 23, 2021, on the grounds that the CSC lacked jurisdiction pursuant to Title 4 GCA §§ 4403(b), as no final adverse action was issued to Employee, nor did Management take adverse action against Employee for which she has a right to appeal. The Employee opposed, arguing that the Employee’s temporary assignment to the Department of Administration’s Guam Services Agency (“GSA”) for training purposes constituted an unlawful removal, *de facto* demotion, and/or suspension from her position as the Port’s Procurement and Supply Manager and therefore, was an adverse action.

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On March 15, 2021, Management served Employee with a Notice of Proposed Adverse Action ("NPAA"). On April 5, 2021, instead of taking action on the NPAA, Management served Employee with a Letter of Reprimand. A Letter of Reprimand is not an adverse action and thus, adverse action procedures do not apply. Further, in Employee’s March 23, 2021, response to the NPAA, Employee’s counsel stated that Management failed to provide Employee with a reasonable opportunity to correct inadequate performance, including specific training to improve the level of job performance or correct unacceptable habits or practices. Thus, Management assigned Employee to GSA temporarily for training purposes with respect to Guam Procurement rules, regulations, policies and procedures.

Employee was neither suspended nor demoted. Employee did not suffer from a loss of pay. Neither was Employee ever terminated nor removed from her position as the Port’s Procurement and Supply Manager. Accordingly, Employee did not suffer from an adverse action within the meaning of Title 4 GCA § 4403(b). Finally, this matter is not reviewable as a personnel action pursuant to Title 4 GCA § 4403(d).

**DECISION AND JUDGMENT**

After deliberations, the Commission voted four (4) to one (1) (Commissioner Tuncap dissenting) in favor of Management’s Motion to Dismiss, finding that Management met its burden of proof that the CSC lacks jurisdiction to hear this
matter pursuant to Title 4 GCA § 4406 and CSC Rule 5 absent an adverse action. Accordingly, the CSC hereby GRANTS Management’s motion, and ORDERS the Employee’s Notice of Adverse Action DISMISSED.

SO ORDERED this 2nd of December, 2021.

JUAN K. CALVO
Chairman

JOHN SMITH
Vice Chairman

PRISCILLA T. TUNCAP
Commissioner

ANTHONY P. BENAVENTE
Commissioner

ROBERT C. TAITANO
Commissioner