

**From:** Speaker's Office <speaker@guamlegislature.org>  
**Sent:** Monday, August 3, 2020 4:55 PM  
**To:** Clerks Office  
**Cc:** Rennae Meno  
**Subject:** Messages and Communications CORRECTION Fwd: Civil Service Commission Judgment of July 30, 2020  
**Attachments:** CSC vs. Guam International Airport Authority [Rick T. Garcia]; CSC19-PA07.pdf; Email-CSC-Judgments for 07-30-20.pdf

Buenas and Hafa Adai Clerks,  
The Office of the Speaker is requesting that you replace Messages and Communications 35GI-20-2114 with Attached Document.  
Thank you and Have a Great Day.

07-31-20	3:04 PM	07-31-20	Judgments executed in its meeting of July 30, 2020.*	Civil Service Commission* Office of the Legislative Secretary	35GL-20-2114
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*Sinseru yan Minagåhet,*

**Office of the Speaker • Tina Rose Muña Barnes**  
Committee on Public Accountability, Human Resources & the Guam Buildup

35th Guam Legislature  
*I Mina'trentai Singko na Liheslaturan Guåhan*

Guam Congress Building | 163 Chalan Santo Papa | Hagatna, GU 96910  
T: (671) 477-2520/1  
[speaker@guamlegislature.org](mailto:speaker@guamlegislature.org)

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Gumai pribilehu yan konfedensia este siha na mensåhi. Solo espesiåtmente para hågu ma entensioña pat ma aturisa para unrisibi. Sen prubidu kumu ti un ma aturisa para manribisa, na'setbe, pat mandespåtcha. Yanggen lachi rinisibu-mu nu este na mensåhi, put fabot ago' guatu gi I numa'huyong gi as [speaker@guamlegislature.org](mailto:speaker@guamlegislature.org) yan despues destrosa todú siha I kopian mensåhi. Si Yu'os ma'åse'.

----- Forwarded message -----

From: **Office of Senator Shelton Guam Legislature** <[officeofsenatorshelton@guamlegislature.org](mailto:officeofsenatorshelton@guamlegislature.org)>

Date: Mon, Aug 3, 2020 at 10:31 AM

Subject: Fwd: Civil Service Commission Judgment of July 30, 2020

To: Speaker's Office <[speaker@guamlegislature.org](mailto:speaker@guamlegislature.org)>

Good morning Speaker Barnes:

Forwarding for your information.

Regards.

Evelyn Claros

Administrative Officer

----- Forwarded message -----

From: **Susan Corbin** <[susan.corbin@csc.guam.gov](mailto:susan.corbin@csc.guam.gov)>

Date: Mon, Aug 3, 2020 at 9:28 AM

Subject: Civil Service Commission Judgment of July 30, 2020

To: Office of Senator Shelton Guam Legislature <[officeofsenatorshelton@guamlegislature.org](mailto:officeofsenatorshelton@guamlegislature.org)>

*Hafa Adai Senator Shelton: Please find attached one additional judgment executed by the Civil Service Commission in its meeting of July 30 2020 listed herein. This is mandated under 4 GCA, Section 4403.*

*1) CSC vs. Guam International Airport Authority [Rick T. Garcia];  
CSC19-PA07*

*Thank you.*

*Si Yu'os Ma'ásé*

Susan Corbin

Legal Secretary

Civil Service Commission

Tel: 647-1855

--



*Si Yu'os Ma'åse,*

**Office of the People • Senator Amanda L. Shelton**

Legislative Secretary & Chairwoman of the Committee on Higher Education and the Advancement of Women, Youth, and Senior Citizens

35th Guam Legislature

*I Mina'trentai Singko na Libeslaturan Guåban*

Guam Congress Building

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T: (671) 989-2572/969-2574

[officeofsenatorshelton@guamlegislature.org](mailto:officeofsenatorshelton@guamlegislature.org)



**Fwd: Civil Service Commission Judgment of July 30, 2020**

Office of Senator Shelton Guam Legislature <officeofsenatorshelton@guamlegislature.org>  
To: Speaker's Office <speaker@guamlegislature.org>

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**Si Yu'os Ma'ásé**  
Susan Corbin  
Legal Secretary  
Civil Service Commission  
Tel: 647-1855



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**CSC vs. Guam International Airport Authority [Rick T. Garcia]; CSC19-PA07.pdf**  
98K

**From:** Speaker's Office <speaker@guamlegislature.org>  
**Sent:** Friday, July 31, 2020 4:47 PM  
**To:** Clerks Office  
**Cc:** Rennae Meno  
**Subject:** M&C Fwd: Civil Service Commission Judgments of July 31, 2020  
**Attachments:** Christopher Anderson; CSC19-GRE11.pdf; Johnny C. Toves; CSC17-AA16T.pdf; Karen Madlutk; CSC 19-AA03T.pdf; Email-CSC-Judgments of 07-31-20.pdf

07-31-20	3:04 PM	07-31-20	Judgments executed in its meeting of April 4, 2019.*	Civil Service Commission* Office of the Legislative Secretary	35GL-20-2114
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*Sinseru yan Minagâhet,*

**Office of the Speaker • Tina Rose Muña Barnes**  
Committee on Public Accountability, Human Resources & the  
Guam Buildup

35th Guam Legislature  
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Evelyn Claros  
Administrative Officer

----- Forwarded message -----

From: **Susan Corbin** <[susan.corbin@csc.guam.gov](mailto:susan.corbin@csc.guam.gov)>

Date: Fri, Jul 31, 2020 at 2:06 PM

Subject: Civil Service Commission Judgments of July 31, 2020

To: Office of Senator Shelton Guam Legislature <[officeofsenatorshelton@guamlegislature.org](mailto:officeofsenatorshelton@guamlegislature.org)>

*Hafa Adai Senator Shelton: Please find attached the judgments executed by the Civil Service Commission in its meeting of July 31, 2020 listed herein. This is mandated under 4 GCA, Section 4403.*

*1) Johnny C. Toves; CSC 17-AA16T*

*2) Christopher Anderson; CSC 19-GRE11*

*3) Karen Madlutk; CSC 19-AA03T*

*Thank you.*

*Si Yu'os Ma'ásé*

Susan Corbin

Legal Secretary

Civil Service Commission

Tel: 647-1855

--





**Fwd: Civil Service Commission Judgments of July 31, 2020**

1 message

Office of Senator Shelton Guam Legislature <officeofsenatorshelton@guamlegislature.org>  
To: Speaker's Office <speaker@guamlegislature.org>

Fri, Jul 31, 2020 at 3:03 PM

Good afternoon Speaker Barnes:

Forwarding for your information.

Regards.

Evelyn Claros  
Administrative Officer

35GL-20-2114  
Speaker Tina Rose Muña Barnes

JUL 31 2020  
Time 3:04 ( ) AM XPM  
Received By: Mañ

----- Forwarded message -----

From: **Susan Corbin** <susan.corbin@csc.guam.gov>  
Date: Fri, Jul 31, 2020 at 2:06 PM  
Subject: Civil Service Commission Judgments of July 31, 2020  
To: Office of Senator Shelton Guam Legislature <officeofsenatorshelton@guamlegislature.org>

*Hafa Adai Senator Shelton: Please find attached the judgments executed by the Civil Service Commission in its meeting of July 31, 2020 listed herein. This is mandated under 4 GCA, Section 4403.*

- 1) Johnny C. Toves; CSC 17-AA16T
- 2) Christopher Anderson; CSC 19-GRE11
- 3) Karen Madlutk; CSC 19-AA03T

*Thank you.*

**Si Yu'os Ma'ásé**  
Susan Corbin  
Legal Secretary  
Civil Service Commission  
Tel: 647-1855



*Si Yu'os Ma'ásé,*

**Office of the People • Senator Amanda L. Shelton**  
Legislative Secretary & Chairwoman of the Committee on Higher Education and the Advancement of Women, Youth, and Senior Citizens

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officeofsenatorshelton@guamlegislature.org

3 attachments

Christopher Anderson; CSC19-GRE11.pdf  
55K

Johnny C. Toves; CSC17-AA16T.pdf  
71K





**BEFORE THE  
GUAM CIVIL SERVICE COMMISSION  
BOARD OF COMMISSIONERS**



**IN THE MATTER OF:**

**CHRISTOPHER ANDERSON,**

**Employee,**

**vs.**

**DEPARTMENT OF EDUCATION,**

**Management.**

**GRIEVANCE ACTION  
CASE NO.: 19-GRE11**

**DECISION AND  
JUDGMENT**

**INTRODUCTION**

This matter came before the Civil Service Commission (CSC) on Management's Motion to Dismiss on March 3, 2020. Present for the hearing were the Employee, Christopher Anderson, and Deputy Superintendent, Zenaida Asuncion of the Department of Education (DOE) with her Lay Representative, Phyllis Blas. Commissioners present were Chairman Juan K. Calvo, Vice Chair John Smith, Commissioner Emilia Rice and Commissioner Anthony P. Benavente.

//

**DECISION AND JUDGMENT**

*Christopher Anderson vs. Department of Education*  
Grievance Appeal Case No.: 19-GRE11

1 **JURISDICTION**

2 The jurisdiction of the Commission is based upon the Organic Act of Guam  
3 §4401 et seq., Title 4 of the Guam Code Annotated, and relevant portions of the  
4 Government of Guam Personnel Rules and Regulations.

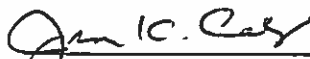
5 **DISCUSSION**


6 Management moved to dismiss the Grievance on the grounds that Employee  
7 dismissed the Grievance and then tried to refile it. DOE Personnel Rules and  
8 Regulations 909.406 provides, "An employee who has filed a grievance may  
9 terminate the grievance at any time." When Employee dismissed the Grievance, the  
10 Grievance was terminated and further appeals or resubmissions are outside the DOE  
11 Personal Rules and Regulations.

12 **CONCLUSION**

13 The Commission voted 4 to 0 in favor of Management's Motion to Dismiss.


14 **IT IS SO ADJUDGED** this 30<sup>th</sup> day of July, 2020.

  
\_\_\_\_\_  
**JUAN K. CALVO**  
Chairman

  
\_\_\_\_\_  
**JOHN SMITH**  
Vice Chairman

  
\_\_\_\_\_  
**PRISCILLA TUNCAP**  
Commissioner

  
\_\_\_\_\_  
**EMILIA F. RICE**  
Commissioner

  
\_\_\_\_\_  
**ANTHONY P. BENAVENTE**  
Commissioner



BEFORE THE  
 GUAM CIVIL SERVICE COMMISSION  
 BOARD OF COMMISSIONERS



ADVERSE ACTION APPEAL  
 CASE NO.: 19-AA03T

IN THE MATTER OF:  
 KAREN MADLUTK,  
 Employee,  
 vs.  
 DEPARTMENT OF PUBLIC WORKS,  
 Management.

**DECISION AND ORDER  
 ASSIGNING ADMINISTRATIVE  
 LAW JUDGE TO HEAR THE  
 MERITS OF THIS ACTION AND  
 ORDER VACATING ALL  
 CURRENTLY ASSIGNED  
 MERIT HEARING DATES**

This matter came before the Civil Service Commission (Commission) on January 21, 2020, June 18, 2020, July 7, 2020, and July 8, 2020, regarding the Administrative Law Judge’s recommendations dated December 31, 2019, and February 6, 2020.

Present at the hearings for Management was Assistant Attorney General Donna Lawrence and Director Vincent Arriola of the Department of Public Works (DPW). Employee was present and was represented by Guam Federation of Teachers (GFT) representative, Daniel Del Priore.

1 Commissioners present at the hearings were Chairman Juan K. Calvo, Vice  
2 Chairman John Smith, Commissioner Priscilla T. Tuncap, Commissioner Emilia F. Rice  
3 and Commissioner Anthony Benavente.

4 *Jurisdiction*

5 CSC has jurisdiction to hear adverse action appeals filed by classified employees  
6 under 4 GCA § 4403(b) involving suspensions, demotions and terminations of classified  
7 employees.

8 *Background/History*

9 On January 21, 2020, Administrative Law Judge (ALJ) Eric D. Miller read his  
10 December 31, 2019 recommendation into the record, and was available to answer  
11 questions by the Commissioners. This report consisted of fourteen (14) recommendations.

12 After concerns expressed at the hearing, ALJ Miller was ordered to submit an  
13 additional report based on the parties' motions that were not addressed in his report.

14 On June 18, 2020, ALJ Miller read his supplemental report dated February 6,  
15 2020, into the record and was available to answer questions from the Commissioners. This  
16 report consisted of five (5) recommendations.

17 On June 18, 2020, the Commissioners adopted all five (5) recommendations in the  
18 ALJ supplemental report dated February 6, 2020, and continued the hearing to July 7,  
19 2020, at 5:45 pm.

20 At the hearing on July 7, 2020, Management orally raised the issue of vacating the  
21 scheduled merit hearing dates of July 9, 2020 and July 14, 2020, due to stated health and  
22

23 **DECISION AND ORDER [Assigning ALJ]**  
24 *Karen Madlutk vs. Department of Public Works*  
Adverse Appeal Case No.: 19-AA03T

Page 2 of 4

1 safety concerns regarding potential witnesses. On July 7, 2020, the Commission  
2 continued the motion hearing to July 8, 2020.

3 Management filed and served its motions on July 8, 2020, with the Commission  
4 and GFT regarding its request to vacate the merit hearings for health and safety reasons in  
5 addition to its renewed motion request to have all of its exhibits admitted at a further  
6 motion or merit hearing and prior to the taking of any witness testimony.

7 *Ruling by Commissioners*

8 On July 8, 2020, by a vote of 5 to 0, the Commission accepted each of the ALJ's  
9 nineteen (19) recommendations in his two reports dated December 31, 2019 (14  
10 recommendations), and supplemental report dated February 6, 2020 (5 recommendations).  
11 These reports are attached hereto and incorporated by reference as if set forth in full  
12 herein.

13 By this Order, Civil Service Commission staff is ordered to remove the  
14 confidential Lynda Aguon complaint from all motion filings by GFT in this case including  
15 but not limited to, Employee's exhibit list.

16 GFT is also hereby admonished for filing a confidential document as stated in the  
17 attached recommendation on which this Order is based.

18 Management's request for a protective order is issued preventing any direct contact  
19 by GFT with DPW's Director as set forth more fully in the attached report.

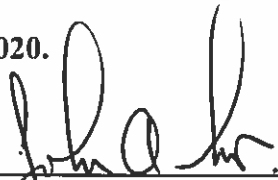
20 By a vote of 5 to 0, the Commission voted to have its Administrative Counsel, Eric  
21 D. Miller, be the Administrative Law Judge to hear all further motions in this case and to  
22

1 hear the merits of this case pursuant to CSC Adverse Action Rules 14 et. seq. (March 1,  
2 2020) and 4 GCA, § 4405(c)(1)(A)-(C).

3 The Commission hereby vacates the merit hearings scheduled on July 9, 2020, and  
4 July 14, 2020. A status conference will be set before the ALJ to hear and schedule any  
5 further motions and for the ALJ to hear the merits of this case pending final review and  
6 decision by the Commissioners as to the ALJ's findings and conclusions.

7 **SO ORDERED THIS 30th day of July, 2020.**

8   
9 **JUAN K. CALVO**  
Chairman

  
10 **JOHN SMITH**  
Vice-Chairman

11   
12 **PRISCILLA T. TUNCAP**  
Commissioner

  
13 **EMILIA F. RICE**  
Commissioner

14   
15 **ANTHONY P. BENAVENTE**  
Commissioner



LOURDES A. LEON GUERRERO  
Governor  
JOSHUA F. TENORIO  
Lieutenant Governor

**CIVIL SERVICE COMMISSION**  
*Kumision / Setbision Sibit*  
**GOVERNMENT OF GUAM**  
*I Gobietnon Guahan*

Bell Tower, Suite 201  
710 West Marine Corps Drive  
Hagatna, Guam 96910  
Tel: (671) 647-1855/1857 • Fax: (671) 647-1867  
Website: [csc.guam.gov](http://csc.guam.gov)



DANIEL D. LEON GUERRERO  
Executive Director

C.S.C. No.: 2019-056

December 31, 2019

Via Facsimile: [daniel@gtunion.com](mailto:daniel@gtunion.com)

Daniel Del Priore  
P.O. Box 2301  
Hagatna, Guam 96932

Via Facsimile: [dlawrence@guamag.org](mailto:dlawrence@guamag.org)

Donna Lawrence, Assistant Attorney General  
Office of the Attorney General  
590 S Marine Corps Drive  
ITC Building, Suite 802  
Tamuning, Guam 96912

Re: Karen Madlutk vs. Department of Public Works  
Civil Service Commission Case No.: 19-AA03T

Please find attached the Recommendations After Hearing on the Motions from Administrative Law Judge, Eric D. Miller, regarding the above matter. Upon service of the findings, the parties shall have ten (10) days to file a written objection with the Civil Service Commission. The Continued Hearing on the Merits is scheduled before the Civil Service Commission Board on Tuesday, January 14, 2020 at 5:45 p.m., at which time you will have the opportunity to be heard on the Recommendation. An official notice from the Commission will be issued for the Continued Hearing on the Merits.

*Senseramente,*

  
Eric D. Miller  
Administrative Law Judge  
Civil Service Commission

Attachment  
Daniel D. Leon Guerrero, Executive Director  
Civil Service Commission



**BEFORE THE  
GUAM CIVIL SERVICE COMMISSION  
ADMINISTRATIVE LAW JUDGE**



**IN THE MATTER OF:**

**KAREN MADLUTK,**

**Employee,**

**vs.**

**DEPARTMENT OF PUBLIC WORKS,**

**Management.**

**ADVERSE ACTION APPEAL  
CASE NO.: 19-AA03T**

**RECOMMENDATIONS AFTER  
HEARING ON THE MOTIONS**

This matter comes before the undersigned sitting as a duly-appointed Administrative Law Judge (ALJ) pursuant to 4 GCA §4405(c), and Rule 14 Civil Service Commission (hereinafter "Commission") Rules of Procedure for Adverse Action Appeals.

**BACKGROUND**

Employee, Karen Madlutk (hereinafter "Employee") was at all relevant times employed by Department of Public Works (hereinafter "DPW"). Employee was a school bus driver. August 2, 2019, Employee was served with a Final Notice of Adverse Action (FNAA) alleging that on May 21, 2019, Employee knowingly dropped two elementary students at the wrong bus stop. On December 17, 2019, the undersigned heard numerous motions of the parties. Present for the hearing were Employee, appearing with lay representative, Daniel Del Priore. Also present were Department of Public Works Director, Vincent Arriola, appearing with his counsel, Donna Lawrence, Assistant Attorney General.

**RECOMMENDATIONS AFTER  
HEARING ON THE MOTIONS**  
*Karen Madlutk vs. Department of Public Works*  
Adverse Action Appeal Case No.: 19-AA03T

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**RECOMMENDATIONS**

1. Employee moves to disqualify Assistant Attorney General Donna Lawrence (hereinafter "Lawrence") from representing DPW because Lawrence conducted the investigation and is now a witness so she cannot also be the attorney for DPW. Employee cites Guam Rules of Professional Conduct 3.7. which provides, "A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness."

In this case Lawrence is not a witness to the conduct which is the basis for the FNAA, but did question the Employee. All of the investigation interviews were recorded. Lawrence is not likely to be a necessary witness. If the Commission allows Employee to call Lawrence as a witness, the Commission should disqualify her from representing DPW. At this point it appears unlikely that Lawrence has any relevant testimony as to the merits of the case.

**MOTION DENIED UNTIL SUCH TIME AS THE COMMISSION ALLOWS  
ATTORNEY LAWRENCE TO BE CALLED AS A WITNESS**

2. Employee moves to dismiss because she was not given the right to have a Guam Federation Teacher (hereinafter "GFT") representative present during her interview/investigation.

Employee cites *NLRB vs. J. Weingarten*, 420 U.S. 251 (1975). In that case the Supreme Court found that refusing an employee the right to have a representative present during an investigation was an unfair labor practice in violation of the National Labor Relations Act (hereinafter "NLRA"). The problem is that the NLRA does not cover state and local government employees. Moreover, even if NLRA covered this employee, its violation would not necessarily void the adverse action.

//

//

**RECOMMENDATIONS AFTER  
HEARING ON THE MOTIONS**  
*Karen Madlutk vs. Department of Public Works*  
Adverse Action Appeal Case No.: 19-AA03T

1 Employee sites *Garrity vs. New Jersey*, 385 US 493 (1967). In that case the Supreme  
2 Court ruled that statements made by a government employee during an interrogation where the  
3 employee could be terminated for refusal to testify was an involuntary statement and not  
4 admissible in a subsequent criminal trial. Nothing in *Garrity* suggests that the employee could  
5 not be terminated for his statements. Employee's statements here may not be admissible in a  
6 subsequent criminal trial, but that is not the issue here.

7 Employee sites no statute, rule, or case law that the denial of representation to an  
8 employee at an internal investigation is grounds for voiding the adverse action. **MOTION**  
9 **DENIED.**

10 3. Employee moves to dismiss on the grounds that Employee was not advised of the  
11 charges against her citing Department of Administration Rules 11.306 and 11.307, which deal  
12 with the Notice of Proposed Adverse Action and Employee's answer respectively. Employee  
13 also complains she did not receive videos as requested before the interview. The investigation  
14 is what takes place before the NPPA and therefore Department of Administration Rules 11.306  
15 and 11.307 have no applicability as to how the investigation is conducted. Employee cites no  
16 authority for the right to be advised of charges during the investigation, nor to receive discovery  
17 before being investigated. **MOTION DENIED.**

18 4. Management seeks Protective Order against GFT contact with DPW Management.  
19 Once Employee's Representative is advised that Management's counsel is represented by  
20 counsel, Employee Representative should only be contacting the Director through counsel. The  
21 Assistant Attorney General in this case only represents the Agency in this matter not the  
22 individual employees of the Agency. The Agency Director serves as the head of the agency and  
23 therefore should not be contacted directly by Employee representatives. However, all the other  
24

1 employees of the Agency are not represented by counsel, and therefore may be contacted directly  
2 by the Employee Representative. **MOTION GRANTED AS TO AGENCY DIRECTOR.**

3 5. Management moves for a declaratory ruling under 5 GCA §9308 as to the validity of  
4 CSC rules not promulgated by Article 3 of the Administrative Adjudication Act. The issue of a  
5 declaratory ruling under §9308 is not mandatory and in this case not necessary to decide the  
6 issues of this case. The undersigned declines to issue a ruling. **MOTION DENIED.**

7 6. Management moves to have the right to call Employee as its first witness. The CSC  
8 has taken the position that the Employee shall be the last witness. This issue is pending in the  
9 Supreme Court of Guam. Pending the ruling of the Courts the CSC will continue to require that  
10 Employee be called last. **MOTION DENIED.**

11 7. Management moves to have no time limitations on testimony. The CSC reserves the  
12 right to control its docket, and prevent repetitive, and irrelevant testimony. **MOTION**  
13 **DENIED.**

14 8. Management requests that Case Management Statement, Paragraph 10, be  
15 invalidated. Although the Case Management Statement is not required by the Administrative  
16 Adjudication Law promulgated rule, it is an allowable procedure within the CSC's powers to  
17 conduct an efficient process for handling appeals. **MOTION DENIED.**

18 9. Management moves to request a ruling that Articles 1 and 2 of the Administrative  
19 Adjudication Law do not apply to CSC hearings. This ruling is not required to resolve this appeal  
20 and the undersigned will not make a ruling. **MOTION DENIED.**

21 10. Management moves that GFT be admonished, warned, or sanctioned for his improper  
22 conduct. Having ruled in favor of Management as to Motion #4 regarding contact with the  
23 Agency Director, the undersigned finds no further action is necessary. **MOTION DENIED.**

24  
25 **RECOMMENDATIONS AFTER**  
**HEARING ON THE MOTIONS**  
*Karen Madlutk vs. Department of Public Works*  
Adverse Action Appeal Case No.: 19-AA03T

Page 4 of 5

1 11. Management moves to strike, deny, and admonish GFT for filing of Second  
2 Discovery Request. In the absence of a motion by Employee to compel discovery, the  
3 undersigned will conclude that discovery is complete. **MOTION DENIED.**

4 12. Management moves for clarification as to filing of Discovery Requests with CSC.  
5 The undersigned finds clarification is unnecessary. **MOTION DENIED.**

6 13. Management moves for an inquiry or order to Employee as to when and how  
7 the May 16, 2019 complaint by Lynda Aguon was obtained etc. The requested inquiry or order  
8 will not help resolve the merits of this appeal, and the undersigned will therefore not respond.  
9 **MOTION DENIED.**

10 14. Management moves to strike exhibits which are letters of complaint against Attorney  
11 Lawrence. The complaint from Lynda Aguon to the Attorney General is a confidential personnel  
12 record and should be stricken. The complaint by Employee to the Attorney General is  
13 confidential once filed with the Attorney General's office, and not to be revealed to the general  
14 public. It does not need to be withheld, however, from its author who can publish it if she wishes  
15 and has done so herein. **MOTION GRANTED IN PART AND DENIED IN PART.**

16 **CONCLUSION**

17 The undersigned recommends that the Commission grant or deny these motions as  
18 indicated above. Respectfully submitted.

19 Dated this 30th day of December, 2019.

20   
21 ERIC D. MILLER  
22 Administrative Law Judge  
23 Civil Service Commission



**LOURDES A. LEON GUERRERO**  
Governor  
**JOSHUA F. TENORIO**  
Lieutenant Governor

**CIVIL SERVICE COMMISSION**  
*Kumision / Setbision Sibit*  
**GOVERNMENT OF GUAM**  
*I Gobietnon Guahan*

Bell Tower, Suite 201  
710 West Marine Corps Drive  
Hagatna, Guam 96910  
Tel: (671) 647-1855/1857 • Fax: (671) 647-1867  
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**DANIEL D. LEON GUERRERO**  
Executive Director

C.S.C. No.: 2020-012

February 6, 2020

Via Facsimile: [daniel@gtunion.com](mailto:daniel@gtunion.com)

Daniel Del Priore  
P.O. Box 2301  
Hagatna, Guam 96932

Via Facsimile: [dlawrence@guamag.org](mailto:dlawrence@guamag.org)

Donna Lawrence, Assistant Attorney General  
Office of the Attorney General  
590 S Marine Corps Drive  
ITC Building, Suite 802  
Tamuning, Guam 96912

Re: [Karen Madlutk vs. Department of Public Works](#)  
Civil Service Commission Case No.: 19-AA03T

Please find attached the Supplemental Recommendations After Hearing on the Motions from Administrative Law Judge, Eric D. Miller, regarding the above matter. Upon service of the findings, the parties shall have ten (10) days to file a written objection with the Civil Service Commission. The Continued Hearing on the Merits will be scheduled before the Commission, at which time you will have the opportunity to be heard on the Recommendation. An official notice from the Commission will be issued for the Continued Hearing on the Merits.

*Senseramente,*

Eric D. Miller  
Administrative Law Judge  
Civil Service Commission

Cc: Daniel D. Leon Guerrero, Executive Director  
Civil Service Commission



**BEFORE THE  
GUAM CIVIL SERVICE COMMISSION  
ADMINISTRATIVE LAW JUDGE**



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**IN THE MATTER OF:**

**KAREN MADLUTK,**

**Employee,**

**vs.**

**DEPARTMENT OF PUBLIC WORKS,**

**Management.**

**ADVERSE ACTION APPEAL  
CASE NO.: 19-AA03T**

**SUPPLEMENTAL  
RECOMMENDATIONS AFTER  
HEARING ON THE MOTIONS**

Both parties in this matter pointed out that the undersigned neglected to address some of the motions made in the first Recommendations filed December 30, 2019. The undersigned addresses the balance of the motions below.

1. Employee moved to dismiss the Adverse Action because the Final Notice of Adverse Action was lacking the specificity required of 4 GCA §4406(a) which requires that an Employee who is dismissed, " shall be given immediate notice of the action together with a specific statement of the charges upon which such action is based..."(emphasis added)

The Notice of Adverse Action shall state the specific facts found upon which such action is based. Department of Administration Personnel Rules and Regulations 11.311. *Guam Housing Corporation v. John E. Potter*, 2015 Guam 22.

**SUPPLEMENTAL RECOMMENDATIONS AFTER  
HEARING ON THE MOTIONS**  
*Karen Madlutk vs. Department of Public Works*  
Adverse Action Appeal Case No.: 19-AA03T

1 Due process requires that an employee have fair and reasonable notice of what conduct may  
2 subject him or her to an adverse action. *Perez v. Guam Department of Education*, 2018 Guam 25.

3 Page 6 of the FNNA states:

4 “Before you told the two female students to get off the bus at the Bamba bus stop on  
5 May 21, 2019, you were aware that the children were either on the wrong bus or had missed their  
6 bus stop. After speaking with the two students briefly, you asked the two females why they rode  
7 the wrong bus. You then informed the two female students to just get down and walk...”

8 This quote from the FNAA identifies with clear specificity the conduct for which Employee  
9 was being terminated. **MOTION DENIED.**

10 2. Management moved to have all of its exhibits admitted into evidence.

11 Employee had filed an objection to Management’s exhibits. CSC AAR#10.3 OBJECTION  
12 TO INCLUSION OF DOCUMENTS states:

13 “The opposing party may object to the inclusion of a document for a hearing on the  
14 merits...” “The objected document will be excluded from the packet and its submission will be  
15 decided during the hearing on the merits...”

16 This rule is clear and controlling; therefore, the documents in question will be excluded  
17 from the packet and its submission will be decided at the hearing on the merits. **MOTION**  
18 **DENIED.**

19 3. Management moved to deny the issuance of a subpoena to Assistant Attorney General  
20 (AAG) Lawrence, and to strike AAG Lawrence from the witness list. In this case, AAG Lawrence  
21 is not a witness to the conduct which is the basis for the FNAA, but did question the Employee. All  
22 of the investigation interviews were recorded. AAG Lawrence is not a necessary witness.  
23 **MOTION GRANTED.**

24 **SUPPLEMENTAL RECOMMENDATIONS AFTER**  
25 **HEARING ON THE MOTIONS**

*Karen Madlutk vs. Department of Public Works*  
Adverse Action Appeal Case No.: 19-AA03T

Page 2 of 3





BEFORE THE  
GUAM CIVIL SERVICE COMMISSION  
BOARD OF COMMISSIONERS



IN THE MATTER OF:

JOHNNY C. TOVES,

Employee,

vs.

DEPARTMENT OF PUBLIC  
WORKS,

Management.

ADVERSE ACTION  
CASE NO.: 17-AA16T

DECISION AND JUDGMENT

This matter came before the Civil Service Commission (CSC) on June 18, 2020, regarding Management's Motion to Dismiss Employee's Appeal for failure to prosecute his appeal and his failure to attend the motion hearing scheduled on June 18, 2020.

Present at the hearing for Management were Assistant Attorney General Donna Lawrence, and Director Vincent Arriola, Department of Public Works. Robert Koss was present on behalf of Employee, and communicated that he had lost contact with Employee since April, 2020. Employee was not present.

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DECISION AND JUDGMENT

*Johnny C. Toves vs. Department of Public Works*  
Adverse Action CSC Case No.: 17-A16T

Page 1 of 3

1 Commissioners present at the hearing were Chairman Juan K. Calvo, Vice Chairman  
2 John Smith, Commissioner Priscilla T. Tuncap, Commissioner Emilia Rice and Commissioner  
3 Andrew Benavente.

4 *Jurisdiction*

5 CSC has jurisdiction to hear adverse action appeals filed by classified employees under  
6 4 GCA § 4403-44 (b) involving suspensions, demotions, and terminations of classified  
7 employees.

8 *Background/Facts*

9 Management terminated Employee pursuant to a Notice of Final Adverse Action served  
10 on Employee. Employee filed an adverse action appeal with the Commission in 2017  
11 concerning his termination. Employee has failed to pursue his appeal. Employee failed to  
12 attend the scheduled motion hearing on June 18, 2020 before the Commission.

13 At the June 18, 2020, hearing, Employee's representative admitted he has lost contact  
14 with Employee since April, 2020.

15 *Ruling by Commissioners*

16 CSC AA Rule 9.6 allows the CSC to dismiss an appeal if the Employee is not present  
17 for a motion hearing. Employee was not present for the hearing and there was no reasonable  
18 excuse for his failure to attend the scheduled motion hearing.

19 Neither Employee nor his representative, Guam Federation of Teachers, filed a  
20 motion as required under CSC Adverse Action Rules (March 1, 2020) to allow the hearing to  
21 go forward in the absence of Employee.

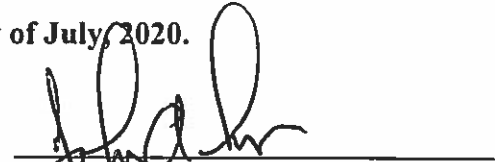
22  
23 **DECISION AND JUDGMENT**

24 *Johnny C. Toves vs. Department of Public Works*  
Adverse Action CSC Case No.: 17-A16T


1 After review of the file and hearing the arguments and information submitted as  
2 referenced above, the Commissioners voted 5 to 1 to dismiss Employee's adverse action appeal  
3 with prejudice. Chairman Calvo dissenting.

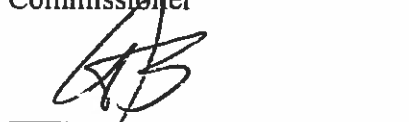
4 IT IS SO ADJUDGED on this 30<sup>th</sup> day of July, 2020.

5   
6 **JUAN K. CALVO**  
Chairman

  
7 **JOHN SMITH**  
Vice Chairman

8   
9 **PRISCILLA TUNCAP**  
Commissioner

  
10 **EMILIA F. RICE**  
Commissioner

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12 **ANTHONY P. BENAVENTE**  
Commissioner

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23 **DECISION AND JUDGMENT**

*Johnny C. Toves vs. Department of Public Works*  
24 Adverse Action CSC Case No.: 17-A16T

Page 3 of 3



**BEFORE THE  
GUAM CIVIL SERVICE COMMISSION  
BOARD OF COMMISSIONERS**



**IN THE MATTER OF:**

**CIVIL SERVICE COMMISSION,  
[RICK T. GARCIA]**

**Employee,**

**vs.**

**GUAM INTERNATIONAL  
AIRPORT AUTHORITY,**

**Management.**

**ADVERSE ACTION  
CASE NO.: 19-PA07**

**DECISION AND  
JUDGMENT**

**INTRODUCTION**

This matter came before the Guam Civil Services (CSC) for a Staff Investigative Report July 7, 2020. Present were Lay Representative, Daniel Del Priore for Employee; John Quinata, Executive Manager for Guam International Airport Authority (GIAA); Cynthia KM Camacho, Personnel Management Analyst II; and Roland P. Fejarang, Personnel Management Administrator. Employee was not present.

**DECISION AND JUDGMENT**

*Civil Service Commission [Rick T. Garcia] vs. Guam International Airport Authority  
Post Audit Case No.: 19-PA07*

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1 **JURISDICTION**

2 The jurisdiction of the Commission is based upon the Organic Act of  
3 Guam, §4401 et seq., 4GCA, 4403(d), and relevant portions of the Government  
4 of Guam Personnel Rule and Regulations.

5 **FINDINGS OF FACT**

6 The Commission hereby makes the following findings of fact:

7 Employee Rick T. Garcia filed a complaint with the CSC alleging that he  
8 was wrongfully passed over for the promotion of Airport police Supervisor  
9 (Lieutenant).

10 CSC staff investigated the selection process in this matter reviewing  
11 documents and interviewing GIAA staff.

12 CSC staff filed its investigative report.

13 GIAA has two sets of Personnel Rules (the old and the new). Under the  
14 old rule the number of applicants to be certified is five, under the new rule the  
15 number is eight. Airport Police are Law Enforcement (Hay Pay Plan) and cannot  
16 be treated as Certified Technical Position (CTP) under the new rule until GIAA  
17 profiles them in the Alan Searle methodology as CTP and moves them into the  
18 new rule (Alan Searle Pay Plan). Executive Manager Quinata testified at the  
19 hearing that Police Officers were in the “process” of being transitioned, but had  
20 not been transitioned yet to CTP. CSC staff takes the position that because Airport  
21 Police had not been transitioned, the old rule of 5 should apply to them.

22 **DECISION AND JUDGMENT**

Page 2 of 4

23 *Civil Service Commission [Rick T. Garcia] vs. Guam International Airport Authority*  
24 Post Audit Case No.: 19-PA07

1 The report found that Management certified six (6) applicants which  
2 exceeds the rule of five (5).

3 The sixth applicant that was certified was not selected for the position.  
4 Employee rated higher than the selectee on the certification.

5 The questionnaires used by management has no point system to determine  
6 the highest score on the interview.

7 The interview questionnaire was not signed or dated by the panel  
8 members to verify it is the actual interviewer's evaluation.

9 CSC staff recommended:

10 1. GIAA ensure compliance of Rule 4.410 (Rule of five (5)) on all  
11 future Law Enforcement certifications. Since the sixth applicant was not selected  
12 the error was harmless herein.

13 2. GIAA revise their interview questionnaire to reflect a number  
14 grading system and have all interviewers sign off on their questionnaire.

15 3. Staff recommends that the CSC Board find that the selection by  
16 GIAA for the Airport Police Supervisor position is in compliance with the merit  
17 system process despite the errors noted herein.

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23 **DECISION AND JUDGMENT**

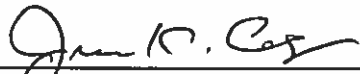
24 *Civil Service Commission [Rick T. Garcia] vs. Guam International Airport Authority*  
25 Post Audit Case No.: 19-PA07

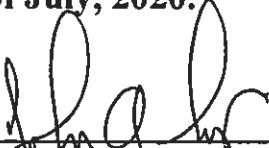
Page 3 of 4

1 **CONCLUSION**

2 **WHEREFORE**, following due deliberation, the Commission voted 5 to  
3 0 to adopt the staff's recommendations.


4 **IT IS SO ADJUDGED on this 30th day of July, 2020.**

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6   
7 **JUAN K. CALVO**  
Chairman

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9 **JOHN SMITH**  
Vice Chairman

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11 **PRISCILLA TUNCA**  
Commissioner

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13 **EMILIA F. RICE**  
Commissioner

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15 **ANTHONY P. BENAVENTE**  
16 Commissioner

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22 **DECISION AND JUDGMENT**

Page 4 of 4

23 *Civil Service Commission [Rick T. Garcia] vs. Guam International Airport Authority*  
24 Post Audit Case No.: 19-PA07