Speaker's Office <speaker@guamlegislature.org>

Fwd: Civil Service Commission Judgments

Office of Senator Shelton Guam Legislature <officeofsenatorshelton@guamlegislature.org> Mon, Jun 24, 2019 at 1:38 PM
To: Speaker's Office <speaker@guamlegislature.org>
Cc: Office of Senator Shelton Guam Legislature <officeofsenatorshelton@guamlegislature.org>

35 GL-19-0656
Speaker Tina Rose Muña Barnes
JUN 24 2019
Time 4:00 ( )AM (/)PM
Received By: Ellen

Good afternoon Speaker:

Forwarding for your information.

Regards.

Evelyn Claros
Administrative Officer

---------- Forwarded message ---------
From: **Susan Corbin** <susan.corbin@csc.guam.gov>
Date: Mon, Jun 24, 2019 at 1:31 PM
Subject: Civil Service Commission Judgments
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 April 4th and May 9th, 2019. This is mandated under 4 GCA, Section 4403. Thank you.

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

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Name
Title

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 Liheslaturan Guåhan

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Civil Service Commission Judgments-June-24-2019.pdf
256K

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0656

BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS

IN THE MATTER OF:

JOHN LEON GUERRERO,

Employee,

vs.

GUAM POWER AUTHORITY,

Management.

ADVERSE ACTION
APPEAL
CASE NO.: 16-AA23T

DECISION AND
ORDER

This matter came on for a hearing on the merits September 6, 2018. Present for the hearing was Graham Botha representing GPA. Employee was not present. Commissioner Baza asked if there was a good faith effort in contacting Employee. PMA Masnayon stated that there were several attempts made to contact Employee. Management moved to dismiss the appeal due to

Employee failing to appear. The Commission voted 5-0 to grant the motion to dismiss.

SO ADJUDGED THIS 4th **day of** April **, 2019.**

EDITH PANGELINAN
Chairperson

LOURDES HONGYEE
Vice-Chairperson

PRISCILLA T. TUNCAP
Commissioner

JOHN SMITH
Commissioner

(Absent)
CATHERINE GAYLE
Commissioner

LUIS R. BAZA
Commissioner

BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS

IN THE MATTER OF:	ADVERSE ACTION APPEAL CASE NO.: 17-AA03T
MARK C. CHARFAUROS, Employee, vs. GUAM POLICE DEPARTMENT, Management.	DECISION AND ORDER

This case came before the Civil Service Commission at its regularly scheduled meeting of March 19, 2019 and March 21, 2019, at the Civil Service Commission for a Hearing on the Merits. Mark C. Charfauros ("Employee") was present with his attorney F. Randall Cunliffe, Esquire. Present for the Guam Police Department ("GPD"), Management, was Acting Chief of Police Stephen C. Ignacio and its attorney, Assistant Attorney General David Rivera, Esquire.

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I.

JURISDICTION

The jurisdiction of the Civil Service Commission is based upon the Organic Act, 4 GCA §4401 *et.seq.*, and the Department of Administration's Personnel Rules and Regulations.

II.

ISSUE

Did Management meet its burden of proof on the merits by presenting clear and convincing evidence in support of its decision to terminate Employee?

III.

HOLDING

Yes, after considering the exhibits submitted, to include the entirety of Management's exhibits submitted to the Commission, the testimonies of former Chief of Police Joseph I. Cruz ("Chief Cruz"), the Employee, the Memorandums of Law submitted, and the oral arguments presented, the Commission, by a vote of 5-0, determined that Management had met its burden of proving the charges against the Employee and sustained the adverse action.

IV.

FINDINGS OF FACT

On December 24, 2016, Employee was involved in an incident between himself and uniformed police officers from the Agat Precinct Command who were investigating

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fireworks exploding over the village of Agat. The incident was recorded on the body cam of an officer present during the incident which appeared on the news. At the time of the incident Employee was the highest-ranking classified uniform employee of GPD holding the rank of Colonel, which rank Chief Joseph Cruz had promoted him to. Employee also held the title of Police Commander.

When the Chief viewed the video, he felt the conduct of Employee appeared very unprofessional and demeaning to the officer's present, and was not consistent with rules in place for how a senior officer handles a potential crime scene that he/she comes upon. For this reason, the Chief believed the incident needed to be investigated.

On December 27, 2016, at approximately 8:00 a.m., Employee met with Chief Cruz due to the incident between Employee and the Agat Precinct Command officers. At this meeting, Employee stated his intention to meet with the media because he wanted his side of the story to be heard. The Chief Cruz told Employee he could not "Gag" him while he was on leave but that if he spoke that it would be "on him" and could be used against him. Chief Cruz told Employee that before telling Employee that it would be okay for him to speak with the media that he needed to speak to the Department of Administration's ("DOA") Director for guidance. The same day as the meeting with Employee, Chief Cruz met with the DOA Director who told the Chief that the Employee should not speak to anyone about the investigation until it was over. Following the Chief Cruz's discussion with the DOA Director, Chief Cruz prepared a written notice which

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Chief Cruz signed placing Employee on administrative leave pending an administrative investigation. That notice was personally served on Employee later that same day at 4:15 p.m. The notice that Chief Cruz prepared and had served on Employee formally placing Employee on administrative leave further instructed the Employee to "refrain from making comments and remarks outside of the case investigation, until the investigation is completed." According to the testimony of Chief Cruz this notice served as the Chief's final decision following his discussion with DOA's Director. He further testified unequivocally that he never gave Employee permission to speak outside of the investigation. Employee did not contact Chief Cruz after receiving the written, signed notice.

The very next day after Employee was served the notice placing him on administrative leave he went to the press and gave interviews that appeared on television and print media about the matter under investigation. He still had not contacted Chief Cruz.

In December, 2016, administrative investigations had to be completed no later than sixty (60) days from date Management knew of or should have known of conduct in question. Any adverse action beyond the sixty-day limit was void by operation of law. Thus, the order of Chief Cruz to the Employee to refrain from making comments and remarks outside of the case investigation until the investigation was completed, was limited in duration to no more than sixty (60) days.

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Employee has raised the issue of whether the directive contained in the Notice of Administrative Leave was, in fact, an order, since it stated that Employee was advised to refrain from making comments and remarks outside of investigation until it was complete. Employee further noted that the language was "boiler-plate" language. Employee, however, admitted during testimony that administrative investigations are confidential. He further testified that this is a departmental rule and that only the Chief could give permission to speak outside of an investigation. Employee further admitted that if any officer under him had received the same notice, and still spoke out that he would hold them accountable. Based on this testimony and as a member of the department with many years of experience, and holding within the Department the highest classified uniformed officer's rank of Colonel, Employee clearly knew that the directive he received was an order from Chief Cruz.

Employee claimed that Chief Cruz gave him permission to speak to the press. According to Employee he was told by Chief Cruz that if he did not hear from him by 5:00 p.m. that it was "okay" to speak to the press. Chief Cruz denied that he gave Employee permission to speak with the press. During the meeting on December 27, 2016, Chief Cruz's statement to Employee that he could not "gag" him was not permission to speak, but simply a recognition that the Chief could not physically stop the Employee from speaking should he choose to do so. The fact that Chief Cruz further told Employee that if he did speak out that it "was on [Employee] and that it could be used against him," is further indication that permission was not given. Moreover, Chief Cruz

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told Employee that he would get back to him by 5:00 p.m. after speaking to the DOA Director. The Chief did, in fact, get back to Employee at 4:15 p.m. that same day when he had served on Employee the Notice of Administrative Leave containing the directive that Employee not speak outside of the investigation. This constituted the Chief Cruz's final decision in writing to Employee. Permission was clearly not given.

Employee has raised a First Amendment defense claiming to investigators that he needed to let the public know that officers were engaged in alleged wrongful acts. The investigators concluded that the officers were not engaged in wrongful acts. More importantly, not once during his testimony did the Employee state that it was his goal to report wrongful acts to the public. Rather, he testified that he needed to get out his side of the story and wished to clear the record. When questioned as to what he needed to clear up, Employee gave as reasons that it was reported that he was drunk and wished the public to know that he was not drunk, but suffered from Bell's Palsy. He further testified that it was reported that he was at the party where the fireworks investigation was occurring. He wanted the public to know that he was not at the party, but was called there. By his testimony it is clear that Employee acted out of his own self-interest and not out of any desire to advise the media of a matter of public concern.

Even if Employee was speaking out as a citizen on a matter of public concern, he may still face restrictions that are necessary for the employer to operate efficiently and effectively. See *Garcetti v. Ceballos*, 547 U.S. 410, 419 (2006). The restriction on speaking out was narrowly tailored and limited in time, and was necessary to insure a fair, unbiased administrative investigation.

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GPD has a legitimate interest in maintaining a fair and unbiased investigation. The order to not speak out during the investigation was limited in duration since any adverse action after sixty (60) days would be void as a matter of law. Employee jeopardized the ability of GPD to conduct a fair and unbiased investigation by speaking out in the public forum to the media prior to the completion of the investigation. Moreover, the Employee is the highest ranking classified uniformed officer in a paramilitary organization with a specified hierarchy of command. The act of insubordination by Employee could erode confidence in the command and cause lower ranked officers to question why they should follow the rules if their own manager does not follow the rules. Personnel who are managers at the highest level must walk a straight line and adhere to the rules and regulations of their departments. They must insure that they conduct themselves in a manner reflective of the rank they hold.

It is clear that Employee was not following the order given to him by Chief Cruz. Instead, Employee acted out of extreme self-interest and did what he wanted to do for his own personal reasons. There is no First Amendment violation.

For these reasons it is clear that Employee was insubordinate when he disobeyed Chief Cruz and that he failed to fulfill his duties based upon the Law Enforcement Code of Ethics and his Oath of Office.

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V.

CONCLUSION

By a vote of 5-0, the Commission sustained the adverse action on the termination against Employee.

SO ADJUDGED THIS 9th **day of** May **, 2019.**

LUIS R. BAZA
Chairperson

LOURDES HONGYEE
Vice-Chairperson

PRISCILLA T. TUNCAP
Commissioner

JOHN SMITH
Commissioner

CATHERINE GAYLE
Commissioner

BEFORE THE
GUAM CIVIL SERVICE COMMISSION

BOARD OF COMMISSIONERS

IN THE MATTER OF:

POLICE LIEUTENANT ANTHONY J. ARRIOLA;
POLICE OFFICER II BENJAMIN E. CRUZ;
POLICE OFFICER II BRIAN C. GUMATAOTAO;
POLICE OFFICER II RICK JASON N. LIZAMA;
POLICE OFFICER II TERRENCE T. WALKER;
POLICE OFFICER II MICHAEL J. WINN; and,
JASEN DODD,

Employee,

vs.

GUAM POLICE DEPARTMENT,

Management.

POST AUDIT CASES
NOs.: 18-PA06 and
18-PA07

AMENDED DECISION AND JUDGMENT

This matter came on to be heard the 28th day of February, 2019, for the presentation of the Post Audit Staff Investigation Report. Present for the hearing were Daniel Del Priore, representing 6 police officers and Jasen Dodd, Employees; Lt. Ronald Taitano representing the Guam Police Department (GPD) and Acting GPD Chief Steven Ignacio; Cynthia KM Camacho, Personnel Management Analyst II, and Roland P. Fejarang, Personnel Management Administrator.

Staff read the report into the record. Employee representative, Daniel Del Priore, moved to continue the matter to allow the 6 police officers to be interviewed by the Personnel Management Analyst. The Commission discussed the matter and decided further interviews were unnecessary and voted 6-0 to follow the recommendation of staff that GPD correctly hired the 6 USERRA employees to 1-Police Lieutenant (Anthony T. Arriola), and 5-Police Officer IIs (Benjamin E. Cruz; Brian C. Gumataotao; Rick Jason N. Lizama; Terrence T. Walker; Michael J. Winn; and, Jasen Dodd). GPD will need to correct PO#18-022 from the retroactive effective date of July 31, 2018 to the proper retroactive date of August 17, 2017 for the Police Lieutenant, and September 29, 2017 for the Police Officer IIs.

SO ADJUDGED THIS 9th **day of** May **2019.**

LUIS R. BAZA
Chairperson

LOURDES HONGYEE
Vice-Chairperson

PRISCILLA T. TUNCAP
Commissioner

JOHN SMITH
Commissioner

CATHERINE GAYLE
Commissioner