Speaker's Office <speaker@guamlegislature.org>

**Messages & Communications Fwd: Civil Service Commission Judgments; Meeting of November 7, 2019**
1 message

**Speaker's Office** <speaker@guamlegislature.org> Fri, Nov 8, 2019 at 1:44 PM
To: Clerks Office <clerks@guamlegislature.org>
Cc: Rennae Meno <rennae@guamlegislature.org>
Bcc: Tina Muna Barnes <tinamunabarnes@gmail.com>

| | | | | | |
|---|---|---|---|---|---|
| 11-08-19 | 1:42 PM | 11-08-19 | Civil Service Commission Judgments; Meeting of November 7, 2019.* | Civil Service Commission | 35GL-19-1215 |

35GL-19-1215
Speaker Tina Rose Muña Barnes

NOV 0 8 2019
Time 1:42 ( )AM (X)PM
Received By

*Sinseru yan Minagâhet,*

**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

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Gumai pribilehu yan konfedensia este siha na mensâhi. Solo espesiâtmente para hágu ma entensioña pat ma aturisa para unrisibi. Sen prubidu kumu ti un ma aturisa para manribisa, na'setbe, pat mandespâtcha. Yanggen lachi rinisibu-mu nu este na mensâhi , put fabot ago' guatu gi I numa'huyong gi as speaker@guamlegislature.org yan despues destrosa todu siha I kopian mensâhi. Si Yu'os ma'âse'.

---------- Forwarded message ----------
From: **Office of Senator Shelton Guam Legislature** <officeofsenatorshelton@guamlegislature.org>
Date: Fri, Nov 8, 2019 at 1:23 PM
Subject: Fwd: Civil Service Commission Judgments; Meeting of November 7, 2019
To: Speaker's Office <speaker@guamlegislature.org>

Good afternoon Speaker Barnes:

Forwarding for your information.

Regards.

Evelyn Claros
Administrative Officer

2019 NOV -8 PM 1:40

---------- Forwarded message ---------
From: **Susan Corbin** <susan.corbin@csc.guam.gov>
Date: Fri, Nov 8, 2019 at 11:55 AM
Subject: Civil Service Commission Judgments; Meeting of November 7, 2019
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 November 7, 2019. This is mandated under 4 GCA, Section 4403. Thank you.*

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

–

*Si Yu'os Ma'âse,*

**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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**5 attachments**

- **CIVIL SERVICE COMMISSION vs. GVB; CSC15-PA-02 SP.pdf** 77K
- **MANUEL R. SANTOS JR. vs. GFD; CSC17-GRE27 & CSC18-GRE01.pdf** 48K
- **JESSE G. QUIDACHAY vs. DOC; CSC19-GRE08.pdf** 169K
- **FRANCINE ROCIO vs. PAG; CSC12-AA29T SP.pdf** 173K
- **FRANCES SUPERALES vs. DOE; CSC19-GRE09.pdf** 55K

1215

**BEFORE THE**
**GUAM CIVIL SERVICE COMMISSION**

**BOARD OF COMMISSIONERS**

**IN THE MATTER OF:**

**CIVIL SERVICE COMMISSION,**

**Employee,**

**vs.**

**GUAM VISITORS BUREAU,**

**Management.**

**POST AUDIT**
**CASE NO.: 15-PA-02 SP**

# DECISION AND JUDGMENT

## INTRODUCTION AND BACKGROUND

On July 27, 2015, Ms. Doris Brooks from the Office of the Public Auditor filed a complaint regarding Linek's (Linek) recruitment to the Accountant III position at the Guam Visitors Bureau (GVB) and requested the Civil Service Commission (CSC) Executive Director to review the matter.

September 1, 2015, CSC staff presented the CSC Staff Assessment Report for Post Audit Case No.: 15-PA-02, and by a vote of 7-0, the CSC accepted the staff's recommendation to move forward and conduct an investigation into the matter.

GVB challenged the CSC's jurisdiction and refused to cooperate with the investigation. CSC staff was therefore, unable to make any recommendations.

October 18, 2015, CSC provisionally voted to null and void the personnel action of Linek. January 14, 2016, CSC by a vote of 4-1 voted to null and void Linek's personnel action.

May 17, 2016, CSC filed a verified Application to Enforce of Decision. October 30, 2018, the Honorable Albert C. Lamorena, III remanded the case back to CSC for a full evidentiary hearing on the matter. With the GVB's cooperation, CSC staff investigated the matter and found Linek did not qualify for the position based on her previous work experience.

On May 28, 2019, CSC, by a 4 to 0 vote, provisionally nulled and voided the selection of employee, Linek, allowing Management ten (10) days to respond to the Post Audit Staff Report. Management filed a document on June 10, 2019 stating that they took no position on the Report. July 18, 2019, the Commission voted 5 to 0 to declare the position of Linek null and void. Commissioners present for this meeting were: Luis R. Baza, Priscilla T. Tuncap, John Smith, Catherine Gayle, and Juan K. Calvo.

## JURISDICTION

The jurisdiction of the Guam Civil Service Commission is based upon the Organic Act of Guam, and Title 4, Guam Code Annotated (GCA) §4403 (d).

> "(d) The Commission may investigate and set aside and declare null and void personnel action of an employee in the classified service if the Commission finds after conducting the necessary investigation that the personnel action was taken in violation of personnel laws and rules… "

## RELEVANT FACTS

Linek was hired by GVB December 29, 2015 to fill the Accountant III position. This position requires at least two-years experience as Accountant II or equivalent work. Linek's work experience does not meet that requirement.

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CSC staff also found that GVB violated numerous Department of Administration Personnel Rules and Regulations in Chapter 4, Filling Positions in the Government of Guam. Since Linek did not meet the minimum requirement of the position, a detailed recitation of these violations is not required here.

## ANALYSIS

One requirement for the position of Accountant III is, among other requirements, two-(2) years of experience as an Accountant II or equivalent work. CSC staff reported that GVB selected Linek for the position when her work experience was less than this requirement. GVB took no position on this report. Linek was, therefore, categorically ineligible for the position. The personnel action selecting her should be declared null and void.

## CONCLUSION

On July 18, 2019, after due deliberation, and in light of the fact that GVB took no position on the CSC Investigative Report, the CSC voted unanimously 5 to 0 to declare the personnel action selecting Lisa Linek to the position of Accountant III, null and void.

**IT IS SO ADJUDGED on this** 7th **day of** November, **2019.**

**LUIS R. BAZA**
Chairperson

**JUAN K. CALVO**
Vice-Chairperson

**PRISCILLA TUNCAP**
Commissioner

**JOHN SMITH**
Commissioner

(absent)
**CATHERINE GAYLE**
Commissioner

**EMILIA RICE**
Commissioner

# BEFORE THE
# GUAM CIVIL SERVICE COMMISSION

## BOARD OF COMMISSIONERS

**IN THE MATTER OF:**

**MANUEL R. SANTOS, JR.,**

**Employee,**

**vs.**

**GUAM FIRE DEPARTMENT,**

**Management.**

**GRIEVANCE APPEALS**
**CASE NOS.: 17-GRE27 and 18-GRE01**

## DECISION AND JUDGMENT

This matter came before the Civil Service Commission (Commission) September 5, 2019, on Management's motions to dismiss. Commissioners present were Chairman Luis R. Baza, Vice-Chairman Juan K. Calvo, Commissioner John Smith, and Commissioner Emilia F. Rice. Present for the Employee was Lay Representative Daniel Del Priore. Present for Management were Danny Taitano, and Joey San Nicolas.

In **17-GRE27,** Employee seeks credit for five (5) preference points for his military service. Management argues correctly that ratings by Department of Administration (DOA) are excluded from the grievance procedures by DOA Rules and Regulations 12.301.C.

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In **18-GRE01,** Employee grieves that he was interviewed but not accepted for the job. Management correctly argued that DOA Rules and Regulation 12.301 B. excludes "disqualification of an eligible," as a matter subject to the grievance procedures.

The Commission, by a vote of 4 to 0 granted Management's motions to dismiss for lack of jurisdiction in both cases.

**IT IS SO ADJUDGED on this** 7th **day of** November**, 2019.**

**LUIS R. BAZA**
Chairperson

**JUAN K. CALVO**
Vice-Chairperson

**PRISCILLA TUNCAP**
Commissioner

**JOHN SMITH**
Commissioner

(absent)
**CATHERINE GAYLE**
Commissioner

**EMILIA F. RICE**
Commissioner

# BEFORE THE
# GUAM CIVIL SERVICE COMMISSION

## BOARD OF COMMISSIONERS

**IN THE MATTER OF:**

**JESSE G. QUIDACHAY,**

**Employee,**

**vs.**

**DEPARTMENT OF CORRECTIONS,**

**Management.**

**GRIEVANCE APPEAL**
**CASE NO.: 19-GRE08**

**JUDGMENT OF DISMISSAL**

The Civil Service Commission hereby dismisses the above captioned case with prejudice pursuant to the signed Dismissal of Step 5 Grievance Review by the CSC, attached hereto.

**SO ADJUDGED THIS** 7th **day of** November **2019.**

**LUIS R. BAZA**
Chairperson

**JUAN K. CALVO**
Vice-Chairperson

**PRISCILLA T. TUNCAP**
Commissioner

**JOHN SMITH**
Commissioner

(absent)
**CATHERINE GAYLE**
Commissioner

**EMILIA F. RICE**
Commissioner

Robert E. Koss, Lay Representative
Guam Federation of Teachers
P.O. Box 2301
Hagatna, Guam 96910
Ph. (671) 735-4390 Fax (671) 734-8085
Email rkoss@gftunion.com

CIVIL SERVICE COMMISSION
RECEIVED
19-0851
OCT 04 2019
2:29 pm
GOVERNMENT OF GUAM

**BEFORE THE CIVIL SERVICE COMMISSION OF GUAM**

| | |
|---|---|
| **JESSE G. QUIDACHAY,**<br>**Employee,**<br>**vs.**<br>**DEPARTMENT OF CORRECTIONS,**<br>**Management.** | **GRIEVANCE APPEAL**<br>**CSC Case No: 19-GRE08**<br><br>**DISMISSAL OF STEP 5 GRIEVANCE REVIEW BY THE CSC** |

Comes now, JESSE G. QUIDACHAY, Employee in the above referenced matter hereby dismisses her step 5 grievance appeal pursuant to the favorable decision at step 4 of the grievance process. Specifically, employee is satisfied with the decision of the DOA step 4 grievance review board (attached) and therefore no longer seeks further adjudication of the matter at step 5 by the Civil Service Commission.

JESSE G. QUIDACHAY 10-03-2019
DATE



**ORIGINAL**

**GRIEVANCE REVIEW BOARD**
Department of Administration
Government of Guam
P.O. Box 884
Hagatna, Guam 96932

OCT 0 1 2019

**MEMORANDUM**

TO: Jesse G. Quidachay, Detention Facility Guard Leader
Director of Corrections
Department of Corrections

VIA: Director, Department of Administration

FROM: Chairperson, Grievance Review Board

SUBJECT: Employee Grievance Findings and Decision

The Grievance Review Board conducted a hearing Thursday, August 22, 2019 at the Department of Administration Training Room to hear the Detention Facility Guard Leader grievance appeal against the Department of Corrections.

Based on the facts and evidence presented during this hearing, please find attached the Grievance Review Board's Decision.

Rolando L. Delfin
Chairperson

Attachment

**GRIEVANCE REVIEW BOARD**
Department of Administration
Government of Guam
P.O. Box 884
Hagatna, Guam 96932

**MEMORANDUM**

**To:** Jesse G. Quidachay, Detention Facility Guard Leader
Director of Corrections
Department of Corrections

**Via:** Director, Department of Administration

**From:** Chairperson, Grievance Review Board

**Subject:** Grievance Review Board Decision-Step 4

In accordance with Step 4 of the Employee Grievance Procedures, the Grievance Review Board conducted a hearing Thursday, August 22, 2019 regarding a formal grievance appeal filed by Jesse G. Quidachay, Detention Facility Guard against the Director, Department of Corrections.

Pursuant to Step 4, the Director of Administration appointed the following members to the Grievance Review Board.

1. **Rolando Delfin, Conservation Officer I, Department of Agriculture**
2. **Linda Rodriguez, Human Resources Program Administrator, Department of Public Health and Social Services**
3. **Maria Uson, Accounting Technician II, Department of Administration**

Members of the Board elected, **Rolando Delfin** to serve as Chairperson.

Also present at the hearing were the Grievant, Jesse G. Quidachay, Detention Facility Guard Leader, Department of Corrections, and his representative Mr. Robert Koss, GFT, Respondent Ms. Samantha Brennan, Director of the Department of Corrections and Ms. Donna Lawrence, Representative for the Department of Corrections from the AG's office and Witness, Ms. Ovita Nauta, Administrative Services Officer, Department of Corrections.

The Grievant and Management were administered the oath and afforded an opportunity to present testimonies. Both parties were advised that only the testimonies for the issues accepted for processing at the Step 4 Employee Grievance Appeal hearing would be heard.

Respectively, the Board rendered its decision after its meeting. The Board acknowledged and addressed the following.

The following documents were submitted to the Board by the Grievant:

1. E1 – E2, Title 4GCA Public Officers & Employees, Chapter 4 Personnel Policy and Civil Service Commission
2. E3 – E4, Title 4GCA Public Officers & Employees, Chapter 6 Compensation of Public Employees
3. E5 – E6 DOA Personnel Rules and Regulations, Chapter 12, Grievance Procedures
4. E7 – E15 DOA Personnel Rules and Regulations, Chapter 6, Position Classification System & Compensation Plan
5. E16 – E19 DOA Personnel Rules and Regulations, Chapter 4
6. E20 – E25 Decision and Order Superior Court of Guam
7. E26 DOC Personnel Order FY 14-122
8. E27 Performance Evaluation Report
9. E28 – E29 Memo Captain Aguon
10. E30 Personnel Order FY16-100
11. E31 – E 33 DOA Notification of Personnel Action
12. E34 DOC Personnel Order FY 19-011
13. E35 – E 42 Memo Grievance Review Board
14. E43 DOC Personnel Order FY19-041

The following documents were submitted to the Board by the Respondent:

1. Office of the Attorney General, Grievance Step 4 Appeal
2. EX 1. DOC Memo HRD#19-369 (Quidachay)
3. EX 2, 4 GCA Public Officers & Employees CH. 4 Personnel Policy and the Civil Service Commission
4. EX 3, DOC Memo Response to Step 3
5. EX 4, DOA Notification of Personnel Action
6. EX 5, Calculator Days Between Dates
7. EX 6, CSC Letter of Appeal/Letter of Complaint dtd 5/8/19
8. EX 7, Chapter 12 Grievance Procedures
9. EX 8, Superior Court of Guam, Decision and Order Special proceedings Case No: SPOI132+18
10. EX 9, Office of the AG of Guam, Memo Ref: DOA 16-0388 Dtd, October 14, 2016

**ISSUES and FINDINGS:**

**Issue No. 1:**

The Grievant, Jesse G. Quidachay was detailed from Detention Facility Guard Leader to Corrections Officer Supervisor I and was not properly compensated for the detail appointment from September 29, 2016 to February 12, 2019.

**FINDINGS:**

1. Department Corrections had issued a Personnel Order (FY-16-100) on July 1, 2016 for Detail Appointment from Detention Facility Guard Leader to Correction Officer Supervisor I with an effective date of July 1, 2016.

2. On February 12, 2019, Acting Director, Doc Samantha J. Brennan had issued Personnel Order FY 19-011 terminating the detail of Corrections Officer Supervisor1.

3. Department of Administration Notification of Personnel Action was prepared on February 19, 2019 for Termination of Detail Appointment with the effective date of September 29, 2016 of the detail appointment.

Pursuant to the Department of Administration Personnel Rules and Regulations:

Chapter 6, Rule 6.008 Compensation Following a Detail Appointment

A. Employees serving a detail appointment, consistent with Rule 4.506 in excess of 30 consecutive days in a position having a higher pay grade than his regular position, shall receive a salary increase closest to and not less than a one-step increase in the current pay grade. Payment of the differential shall be deferred until the employee has served at least 30 consecutive days in a detail.

Title 4 Guam Code Annotated, Chapter 4 § 4117. Temporary Assignments

A. No employee shall be temporarily assigned or detailed to a position nor shall the employee assume the duties and responsibilities of a position other than the one to which he has been appointed for a period in excess of ninety (90) days unless the appointing authority obtains exemption upon written application to the Director of Administration, which exemption shall not extend beyond an additional (90) days.

**CONCLUSION:**

In our investigation into your grievance which we received on June 25, 2019, we have determined the following based on the review of all information and documents and testimonies presented during the hearing. We, the Board, have concluded that the Grievant, Jesse G. Quidachay is entitled to all compensation that he is seeking in this grievance.

**RECOMMENDATIONS:**

The Board finds that your Grievance regarding the issue listed above is hereby sustained based on the aforementioned findings herein by the Board.

Therefore, since the Board recommends the remedy sought by the Grievant be granted, we further recommend that the Director of Corrections, coordinate with the Department of Administration the appropriate procedures to compensate Jesse G. Quidachay for his detail compensation.

In closing, the members of this Grievance Review Board would like to express our gratitude to the Grievant, Jesse G. Quidachay and Ms. Samantha J. Brennan, Director of Corrections for allowing us to review, deliberate and provide our recommendation.

The Board adjourned on Thursday, August 22, 2019 at 10:25 a.m.

**Rolando Delfin**
Chairperson
Date: 9/27/19

**Linda Rodriguez**
Board Member
Date: 9/27/19

**Maria Uson**
Board Member
Date: 9/27/19

BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS

**ADVERSE ACTION APPEAL**
**CASE NO.: 12-AA29T SP**

**IN THE MATTER OF:**

**FRANCINE ROCIO,**

**Employee,**

**vs.**

**PORT AUTHORITY OF GUAM,**

**Management.**

# DECISION AND JUDGMENT

This matter came before the Commission October 10, 2019, for the Civil Service Commission (Commission) to hear the recommendations of the Administrative Law Judge (ALJ). Commissioners present were Chairman Luis R. Baza, Vice–Chairman Juan K. Calvo, Commissioner Priscilla T. Tuncap, Commissioner John Smith, and Commissioner Emilia F. Rice. Employee was present with her counsel, Terrence M. Brooks. Management was represented by Port General Manager, Rory Respicio, and Attorney Joseph McDonald.

Eric D. Miller, ALJ, read his recommendations to the Commission.

## PROCEDURAL BACKROUND

On March 24th, 2015, the Commission signed an Order that by a vote of 4 to 3 the Final Notice of Adverse Action (FNAA) in this case was procedurally defective for failing to be specific as required by Department of Administration Personnel Rules and Regulations (PPR) 11.311. The same Order found that Management failed to meet their burden of proof which was by clear and convincing evidence. Management appealed to the Superior Court of Guam on the issue of burden of proof only, ignoring the findings regarding the defective FNAA.

The case lingered in Superior Court waiting for the Supreme Court to rule on the related case of *Javelosa vs Port Authority,* 2018 Guam 9, which would address the same issue of burden of proof. The Supreme Court finally decided on the *Javelosa* ruling that pursuant to 4 GCA, § 4407(C), the Commission must make an initial determination as to whether the allegations would constitute a crime. If the Employee acts were a crime, the burden of proof is substantial evidence. If it is not a crime, the burden is Clear and Convincing evidence. After the ruling in *Javelosa*, the Superior Court remanded this case to the Commission to make the initial determination of Management's burden of proof. The Superior Court made no rulings reversing either of the two findings of the Commission. When the case came back before the Commission, Employee filed three motions to dismiss.

1. First, Employee moved to dismiss on the grounds that although, Management had appealed to the Superior Court on the issue of burden of proof, it did not appeal findings of the Commission that the FNAA was defective. Employee reasoned that

**issues not raised on appeal are waived**, and the decision of the Commission on this issue is final. The ALJ recommended that the Commission grant Employee's motion to dismiss.

2. Employee also moved to dismiss on the grounds that the FNAA violated the **60-day rule of 4 GCA, §4406.** Finding that Management knew or should have known on October 16, 2012, the alleged bad acts of the Employee because on that date Management received a detailed report from their attorneys describing the bad acts of Employee. Employee received her FNAA December 18, 2012, **63 days** after Management knew or should have known. The ALJ recommended that the Commission grant Employee's motion to dismiss.

3. Employee moved to dismiss asking the Commission to *sua sponte* find the FNAA as defective for lack of specificity required by Department of Administration Personnel Rules and Regulations (PRR) 11.306. The ALJ noted the FNAA includes vague accusations of conspiracy, disobedience, falsification, and conclusions as to violations of the criminal code, but **does not allege a specific act** done by Employee. The ALJ found the FNAA was not compliant with PRR 11.311, and recommended that the Commission grant Employee's motion to dismiss.

After reading his recommendations to the Commission, the ALJ was dismissed and the Commission began deliberations.

The Commission began the discussion by noting that the Superior Court of Guam had remanded the case back to the Commission to determine the correct burden of proof in accordance with ***Javelosa vs Port Authority of Guam,*** 2018 Guam 9. After discussion

the Commission voted 5 to 0 that **no crime** was alleged, and Management's burden of proof is therefore **clear and convincing**.

The Commission then discussed the recommendations of the ALJ and voted 5-0 to adopt the recommendations of the ALJ, a copy of which is attached hereto.

Pursuant to 4 GCA, §4406(e) the adverse action is revoked. Employee is awarded her back pay and benefits. Pursuant to 4 GCA §4406. 1. Employee is awarded reasonable attorney's fees and costs. Pursuant to 4 GCA, §4406(g), Employee is reinstated **immediately** pending Judicial Review.

**SO ORDERED THIS** 7th **DAY OF** November, **2019.**

**LUIS R. BAZA**
Chairperson

**JUAN K. CALVO**
Vice-Chairperson

**PRISCILLA T. TUNCAP**
Commissioner

**JOHN SMITH**
Commissioner

(absent)
**CATHERINE GAYLE**
Commissioner

**EMILIA F. RICE**
Commissioner

**BEFORE THE**
**GUAM CIVIL SERVICE COMMISSION**

**BOARD OF COMMISSIONERS**

| | |
|---|---|
| **IN THE MATTER OF:**<br><br>**FRANCINE ROCIO,**<br><br>**Employee,**<br><br>**vs.**<br><br>**PORT AUTHORITY OF GUAM,**<br><br>**Management.** | **ADVERSE ACTION APPEAL**<br>**CASE NO.: 12-AA29T SP**<br><br>**FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS AFTER HEARING ON MOTIONS** |

This matter comes before the undersigned sitting as a duly-appointed Administrative Law Judge (ALJ) pursuant to 4 G.C. A. 4405(c), upon a hearing on Motions of the above referenced adverse action appeal held August 27, 2019 . Management was represented by Attorney Joseph McDonald. Employee was represented by Georgette Bello Concepcion. Also present were the employee, Francine Rocio, and General Manager of the Port Authority of Guam, Rory Respicio.

The ALJ renders the following findings and conclusions:

1. The Civil Service Commission (Commission) has jurisdiction over this matter pursuant to the Organic Act of Guam, and 4 GCA § 4401, *et seq.*

2. Employee argues that Management failed to timely appeal the Commission's Judgment finding the Notice of Proposed Adverse Action (NPAA), and the Final Notice of Adverse Action (FNAA) were procedurally defective.

On March 24th, 2015, the Commission signed an order following multiple nights of hearings which held:

A. The Commission determined by a vote of 4 to 3 that the Notices of Proposed and Final Adverse Action were procedurally defective, and;

B. The Commission by a vote of 5 to 2 held Management had failed to meet its burden of proof.

4. Management appealed to the Superior Court on the issue of burden of proof but not on the issue of defective Notices. Moreover, Management's opening brief with the Superior Court of Guam is devoid of any argument regarding the findings that the FNAA was defective. The Superior Court remanded the case to the Commission to determine the burden of proof in accordance with the ruling of *Javelosa v. Port Authority of Guam 2018 Guam 9.*

5. Issues not raised on appeal are waived. The Commission's decision that the Notice of Final Adverse Action was defective is now final. **Employee's Motion to Dismiss is GRANTED.**

6. Employee also argues that the FNAA violates the 60-day Rule, 4 GCA §4406 failing to notify her of the adverse action within 60 days from when Management knew or should have known of the basis for such action. A review of the record confirms that Management knew or should have known on October 16, 2012, when it received a detailed report from their attorneys indicating the bad acts and conspiracies of a number of employees including the employee here. Employee Rocio was not served her FNAA until December 18, 2012, 63 days after Management knew or should have known. The Final

Notice of Adverse Action was not timely filed and the Adverse Action is, therefore, void. **Employee's Motion to Dismiss is GRANTED.**

7. Employee moves the Commission to *sua sponte* find that the FNNA was defective for lack of specificity required by Department of Administration, Personnel Rules and Regulations (PRR) 11.306. The FNAA must state specifically and in detail the reasons for adverse action. Here the FNAA includes vague accusations of conspiracy, disobedience, falsification and conclusions as to violations of the criminal code, but does not allege a specific act done by Employee and therefore, the FNNA is not compliant with PRR 11.306. **Employee's Motion to dismiss is GRANTED.**

## RECOMMENDATION

The ALJ recommends that the Commission grant Employee's three Motions to dismiss.

Submitted this 20th day of September 2019.

Eric D. Miller
Administrative Law Judge

# BEFORE THE
# GUAM CIVIL SERVICE COMMISSION

## BOARD OF COMMISSIONERS

**IN THE MATTER OF:**

**FRANCES SUPERALES,**

**Employee,**

**vs.**

**DEPARTMENT OF EDUCATION,**

**Management.**

**GRIEVANCE APPEAL**
**CASE NO.: 19-GRE09**

## DECISION AND JUDGMENT

This matter came before the Civil Service Commission (Commission) October 3, 2019, on Management's motion to dismiss. Commissioners present were Chairman Luis R. Baza, Vice-Chairman Juan K. Calvo, Commissioner Priscilla T. Tuncap, Commissioner John Smith, and Commissioner Emilia F. Rice. Appearing for Management, Guam Department of Education (GDOE) was Phyllis Blas. Daniel Del Priore, Lay Representative, appeared for the Employee who was not present.

Management moved to dismiss the grievance on the grounds that Employee failed to file her grievance appeals in a timely manner at Steps II, III, and IV of the Grievance Procedure. Management notes that GDOE Rules and Regulations 909.406 states that late filings will

terminate the grievance. Lay Representative, Del Priore argued that Employee had no trained professional to help her process her grievance, and although she missed deadlines she filed her documents within a reasonable time and this matter should be heard on its merits.

The Commission questioned Management about what training it provided to employees regarding the grievance process. Management responded that it does provide some training events, but attendance is voluntary. After reviewing all the arguments, the Commission decided it must follow the Rules and Regulations of the Department of Education. Rule 909.406 is unforgiving, late filings terminate a grievance. The Commission, therefore, voted 5 to 0 that it must **GRANT** Management's motion to dismiss.

**IT IS SO ADJUDGED on this** 7th **day of** November, **2019.**

**LUIS R. BAZA**
Chairperson

**JUAN K. CALVO**
Vice-Chairperson

**PRISCILLA TUNCAP**
Commissioner

**JOHN SMITH**
Commissioner

(absent)
**CATHERINE GAYLE**
Commissioner

**EMILIA F. RICE**
Commissioner