

BEFORE THE
GUAM CIVIL SERVICE COMMISSION



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IN THE MATTER OF:

JULIETTA QUINENE,

Employee,

vs.

**GUAM MEMORIAL HOSPITAL
AUTHORITY,**

Management.

**ADVERSE ACTION APPEAL
CASE NO. 09-AA40D**

DECISION AND JUDGMENT

2013 MAY 10 PM 12:29

THIS MATTER CAME before the Civil Service Commission (the "Commission") for a hearing on the merits on November 13 and 15 and December 11 and 13, 2012, and February 7, 21 and 26, 2013. Management Guam Memorial Hospital Authority ("GMHA") was represented by the law firm of Fisher & Associates through Minakshi V. Hemlani, Esq. Also present for Management was Hospital Administrator/CEO Joseph P. Verga. Employee Julietta Quinene ("Quinene") was present and represented by the law firm of Somerfleck & Associates through Daniel S. Somerfleck, Esq.

JURISDICTION

The Commission has jurisdiction over this appeal of an adverse action pursuant to the Organic Act of Guam, codified at 48 U.S.C. § 1428 *et seq.*, pursuant to 4 G.C.A. § 4406.

Office of the Legislative Secretary
 Senator Tina Rose Muffs Barnes
 Date 5-10-13
 Office of the Speaker
 Judith T. Won Pat, Esq.
 Date 5/10/13
 Time 11:00
 Received by Falko

*Julietta Quinene vs GMHA: Case No 09-AA40D
Decision and Judgment*

ORIGINAL

32-13-393

FINDINGS OF FACT

1 The following facts were demonstrated clearly and convincingly:

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- 3 1. Quinene was employed in the classified service with GMHA in the position of
- 4 Hospital Nurse Supervisor II, Pay Grade P, Step 7, \$71,636.00 per annum.
- 5 2. GMHA served Quinene with a Notice of Proposed Adverse Action on August 9,
- 6 2009. (*See* Management's Exhibit M8-M9.)
- 7 3. On August 31, 2009, Quinene met with then Hospital Administrator PeterJohn D.
- 8 Camacho, and also responded to the charges in writing. (*See* Management's Exhibit
- 9 M4-M7)
- 10 4. After considering Quinene's oral and written responses, GMHA issued a Final Notice
- 11 of Adverse Action on September 10, 2009, demoting Quinene to the position of Staff
- 12 Nurse II, Pay Grade M, Step 10, \$61,946.00 per annum.
- 13 5. Specifically, GMHA cited the following as its ground for adverse action:
- 14 Nature of Offense – Unexcused or unauthorized absence on one or more schedule
- 15 days of work or assigned overtime.
- 16 Conduct – Disobedience to constituted authorities, or deliberate refusal to carry out
- 17 any proper order from any supervisor having responsibility for the work of the
- 18 employee; insubordination.
- 19 Performance – Failure or delay in carrying out orders, work assignments or
- 20 instructions of superiors. (*See* Management's Exhibit M2.)
- 21 6. Quinene timely appealed the adverse action.
- 22 7. There are only eight (8) nursing supervisors at the Guam Memorial Hospital, and
- 23 employees holding the position of Hospital Nurse Supervisor II are held to a higher
- 24 standard because the absence of a nursing supervisor during any shift can adversely

1 affect GMHA patient safety and quality service.

- 2 8. GMHA's Policy Number 6301-I-D-11: Nursing Staff Planned/Vacation Leave Policy
3 states that leave time must be requested by an employee, and that said request may be
4 denied. (*See* Management's Exhibit M16-M20)
- 5 9. Quinene requested three (3) weeks of leave; however, after consideration of her
6 request and the operational requirements of the GMHA, Quinene was approved for
7 only two (2) weeks of leave.
- 8 10. After requested and clear communications from her supervisor that leave was only
9 approved for two (2) weeks, Quinene disobeyed her supervisor's instruction and
10 deliberately refused to return to work as scheduled.
- 11 11. Without authorization, Quinene took an additional week of leave time off.

12 DISCUSSION

13 By unanimous vote of 7-0, the Commission finds that GMHA satisfied its burden on the
14 merits by clear and convincing evidence. However, the Commission also finds that based on the
15 facts and circumstances of the case, Quinene's demotion should be modified. Thus, pursuant to
16 its authority under 4 G.C.A. § 4406 and by a vote of 5 to 2¹, the Commission modifies the
17 particular adverse action, and by further vote of 4 to 1², the modification shall be from a
18 demotion to Staff Nurse II, Pay Grade M, Step 10, \$61,946.00, to a demotion to Nurse Unit
19 Supervisor, Pay Grade N, Step 11, \$69,447.00. Such modification shall begin on the effective
20 date of the Final Notice of Adverse Action. Any back pay and/or benefits owed as a result of
21 this Decision are subject to offset by any amounts earned by Quinene during the pendency of this
22 adverse action. By this decision, Quinene is ordered to provide GMHA with copies of any such
23 earnings.


24 Also, by unanimous vote of 7 to 0, the Commission denies Quinene's motion for

attorney's fees because GMHA satisfied its burden on the merits.

CONCLUSION

By a vote of 5 to 2, and further vote of 4 to 1, the Commission modifies the adverse action from a demotion to Staff Nurse II, Pay Grade M, Step 10, \$61,946.00, to a demotion to Nurse Unit Supervisor, Pay Grade N, Step 11, \$69,447.00.

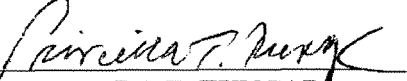
So ordered this 9th day of May, 2013 *nunc pro tunc to February 26, 2013.*



LUIS R. BAZA
Chairman

NOT Present


MANUEL R. PINAUI
Vice-Chairman



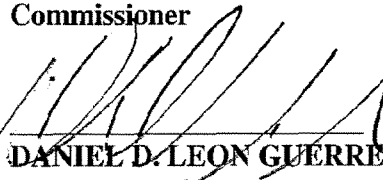
PRISCILLA T. TUNCAP
Commissioner

Not present

JOHN SMITH
Commissioner



LOURDES HONGYEE
Commissioner



DANIEL D. LEON GUERRERO
Commissioner



EDITH C. PANGELINAN
Commissioner

¹ Two members of the Commission voted in favor of upholding the adverse action without modification.

² Of the five members of the Commission who voted in favor of modification, one member voted for a pay grade and step lower than N-11.