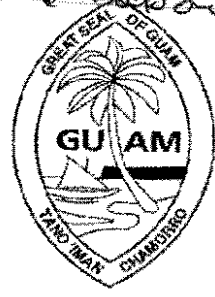


Date: 11-8-13  
Time: 10:25 am  
Received by: G. Duenas

32-13-968



BEFORE THE  
GUAM CIVIL SERVICE COMMISSION

Office of the Speaker  
Judith T. Wron Pat, Ed. D.

Date: 11/8/2013  
Time: 2:40 pm  
Received by: [Signature]



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IN THE MATTER OF:

GREGORY G. DUENAS,

Employee,

vs.

DEPARTMENT OF PUBLIC  
WORKS,

Management.

ADVERSE ACTION APPEAL  
CASE NO. 12-AA03S

DECISION AND JUDGMENT

11-8-13  
10:25 am  
2:40 pm

This case came before the Civil Service Commission at its regularly scheduled meetings on September 24, 2013, and September 26, 2013, at Suite 6A, Phase II, Sinajana Complex, 777 Route 4, Sinajana, GU 96910. The Employee and his lay representative, Flora Duenas, were present. Present for Department of Public Works Management were Director Carl Dominguez and Assistant Attorney General Donna Lawrence.

I.  
JURISDICTION

The jurisdiction of the Civil Service Commission is based upon the Organic Act of Guam, 4 G.C.A. Section 4401 et. seq., and the personnel rules and regulations.

II.  
ISSUE

Did Management prove the allegations against Employee in the Notice of Proposed and Final Adverse Actions by clear and convincing evidence such that the Civil Service Commission upholds Employee's three day suspension issued by Management?

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ORIGINAL

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### III. HOLDING

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Yes. By a vote of 6-0, the Commission finds that Management met its burden of proof relating to the action taken against Employee.

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### IV. FINDINGS OF FACT

The following facts were proven clearly and convincingly:

- a) Employee was hired as a bus driver at DPW on or about September 2006.
- b) Employee was driving a DPW school bus on January 11, 2012, when the DPW school bus he was driving struck a 2008 Ford Escape driven by its owner, Mrs. Justina Scherer, on Pale San Vitores Road in Tamuning, Guam.
- c) At the time of the collision, Mrs. Scherer was traveling in the inner lane on Pale San Vitores Road, and the school bus was traveling on the outer lane. The collision occurred behind the yield sign on Pale San Vitores Road prior to the vehicles entering the traffic circle.
- d) Guam Police Department Officer Guevara concluded on January 11, 2012, in GPD Report No. 2012-1211, after interviewing the school bus driver and all witnesses, which the school bus encroached on the inner lane of travel driven by Justina Scherer and struck her vehicle.
- e) At the time of the collision, forty (40) students were on the bus.
- f) The bus driver, despite hearing beeping and gesturing by at least one person in a vehicle near the bus, admittedly failed to stop the bus. The bus driver did not stop the bus and/or speak with anyone from the 2008 Ford Escape until after he arrived at the bus stop located on Vivian Way in Jonestown. At this bus stop, the driver of the 2008 Ford Escape, Mrs. Justina Scherer, informed the bus driver that he hit her vehicle. The bus driver called his supervisor who subsequently ensured contact with GPD and DPW dispatch.
- g) Only seven (7) students were checked by the medics, despite a DPW protocol that all students in an accident must be checked by the medics. The bus driver was aware of this policy yet failed to follow this policy.
- h) As a result of the bus' collision with the vehicle, property damage was sustained to the right side of the vehicle. Employee personally observed the property damage to the 2008 Ford Escape while at the Jonestown bus stop. A government claim was submitted to the Government of Guam by Mrs. Scherer under the Government Claims Act, which was accepted and paid to Mrs. Scherer by the Government of Guam as a result of the bus driver's negligent conduct.
- i) Although indicating in his incident report that he committed no improper action, Employee finally admitted during testimony that he was to blame for the collision with the 2008 Ford Escape.
- j) The bus driver gave conflicting testimony as to whether or not he had seen the 2008 Ford Escape prior to speaking with driver at the Jonestown bus stop after the collision had occurred.
- k) Both the driver/owner of the 2008 Ford Escape, and her front seat passenger, Mrs. Bertha Marion, provided credible testimony that the school bus driver encroached

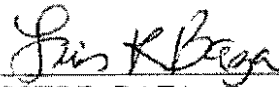
1 into the lane of the 2008 Ford Escape and caused the collision to the 2008 Ford  
 2 Escape. These witnesses indicated Mrs. Scherer was not at fault for the collision, and  
 3 that her vehicle remained in her lane of travel at all times prior to and at the time of  
 4 the collision caused by the school bus. Furthermore, Mrs. Scherer had to follow the  
 5 school bus to its next bus stop, because the bus driver failed to stop after the collision  
 6 and after she beeped her horn.

- 7 l) The Commission finds that Employee is at fault for the accident on January 11, 2012.  
 8 As a bus driver, he is responsible for the vehicle he is driving and the safe  
 9 transportation of students. He is required to be attentive to the road and follow the  
 10 rules of the road. Employee was also responsible for ensuring the children did not get  
 11 off the bus prior to being checked by the medics, yet he failed to ensure this was  
 12 done.
- 13 m) The Commission finds that Employee failed to prove by convincing evidence his  
 14 allegation that DPW is also responsible for the accident because of failure to replace a  
 15 yield sign. Employee admits that he did not complain of the yield sign prior to the  
 16 collision on January 11, 2012. Employee failed to mention this concern at any time  
 17 prior to the merit hearings in this case. No reference to this sign or any alleged fault  
 18 by DPW was made by the employee in his incident report, to the GPD officer at the  
 19 sign, in employee's answer to the Notice of Proposed Adverse Action, or his appeal  
 20 to the CSC.
- 21 n) The Commission also notes the Employee has received progressive discipline in the  
 22 past for failure to follow DPW policies and procedures.


23 **V.**  
 24 **CONCLUSION**

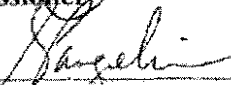
25 Based upon the documents filed herein and the testimony of the witnesses, the  
 Commission upholds Management's adverse action taken against Employee by a vote of 6-0.


So adjudged this 7<sup>th</sup> day of November, 2013 as determined by a vote of 6-0 on September 26, 2013.

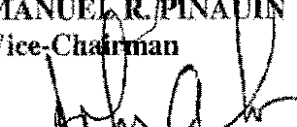
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 28 **LUIS R. BAZA**  
 29 **Chairman**

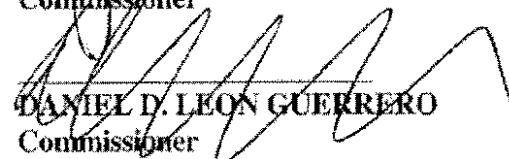
30 NOT Present  
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 32 **PRISCILLA T. TUNCAP**  
 33 **Commissioner**

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 36 **LOURDES HONGYEE**  
 37 **Commissioner**

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 40 **EDITH C. PANGELINAN**  
 41 **Commissioner**

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 44 **MANUEL R. PINAUIN**  
 45 **Vice-Chairman**

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 48 **JOHN SMITH**  
 49 **Commissioner**

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 52 **DANIEL D. LEON GUERRERO**  
 53 **Commissioner**