

BEFORE THE  
GUAM CIVIL SERVICE COMMISSION  
BOARD OF COMMISSIONERS



IN THE MATTER OF:

FRANCINE ROCIO,

Employee,

vs.

PORT AUTHORITY OF GUAM,

Management.

ADVERSE ACTION ADDED  
CASE NO. 12-~~AA29T~~ <sup>32-13-984</sup> ~~of the speaker~~ <sup>Pat, Ed. D.</sup>

Date 11-18-13

Time 10:14 am

Received by [Signature]

Decision and Order [Signature]

Office of the Legislative Secretary  
Senator Tina Rose M. Barnes

Date 11-18-13

Time 9:55

Received by [Signature]

This matter came before the Civil Service Commission ("the Commission") on Employee Francine Rocio's ("Employee") Motion to Void and the Port Authority of Guam Management's ("Management") Request for Evidentiary Hearing during its regularly scheduled meeting on July 18, 2013. Present for Management were its General Manager Joanne Brown and counsels of record, Michael F. Phillips, Esq. and John R.B. Bell, Esq., of Phillips & Bordallo, P.C. Also, present were Employee and her counsel of record, Georgette Bello Concepcion, Esq., of the Law Office of Georgette Bello Concepcion, P.C.

I.  
ISSUES

- 1. Should the Commission grant Employee's Motion to Void?
- 2. Should the Commission grant Management's Request for an Evidentiary Hearing?

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**ORIGINAL**

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## II. HOLDING

1. Employee failed to show by a preponderance of the evidence that her motion should be granted. By a vote of 2-2, plus one abstention, Employee's Motion to Void fails.
2. An Evidentiary Hearing regarding Management's compliance with the 60-Day rule is unnecessary. Thus, Management's request is rendered moot and need not be heard.

## III. FACTS

Management terminated Employee on the basis of her role in an alleged conspiracy to fraudulently obtain workers compensation benefits for another employee. Employee's Motion to Void alleged Management violated the 60-Day rule under 4 GCA § 4406, claiming Management issued her adverse action more than 60 days after Management knew or should have know the facts or events which from the alleged basis for the action.

Specifically, Employee's motion contended Management "knew or should have known of the alleged illegal activity on or about October 18, 2012," yet did not issue the adverse action until December 18, 2012, 61 days later.

Management countered that it neither knew nor should have known of Employee's wrongful acts until on or after October 19, 2012, and thereby issued the adverse action within, at most, exactly 60 days. Management requested that, in the event the Commissioners were unconvinced Management complied with the 60-Day rule under 4 GCA § 4406, the Commissioners provide Management the opportunity to present evidence and testimony of 60-day compliance at an Evidentiary Hearing on the matter.

Employee opposed Management's request for an Evidentiary Hearing on the basis that, according to the motion submitted, the record before the Commission reflected that Management "knew or should have known of the alleged illegal activity on or about October 18, 2013."

**IV.  
JURISDICTION**

The jurisdiction of the Commission is based upon the Organic Act of Guam, 4 GCA § 4401 *et seq.*, and the Port Authority of Guam's Personnel Rules and Regulations.

**V.  
FINDINGS**

1. Based upon the documents and evidence submitted, Employee failed to carry her motion, as she was unable to meet her burden of proving Management knew or should have know of the facts or events forming the basis for the adverse action on or before October 18, 2012, more than 60 days before taking adverse action against Employee on December 18, 2012.
2. An Evidentiary Hearing with evidence and testimony regarding whether Management complied with the 60-Day rule under 4 GCA § 4406 is unnecessary because the Commission is moving forward to the merit hearing.

**VI.  
CONCLUSION**

By a vote of 2-2-1, the Employee failed to prove by a preponderance of the evidence that her Motion to Void is appropriate. The matter is now set for a hearing on the merits.

**SO ADJUDGED THIS** 14<sup>th</sup> **day of** NOVEMBER **2013** *nunc pro tunc* **to July 18, 2013.**

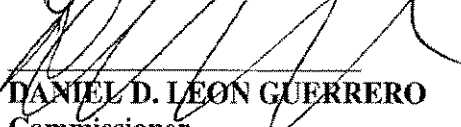
  
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**MANUEL R. PINAUIN**  
Chairman

*not present*  
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**EDITH BANGELINAN**  
Commissioner

*not present*  
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**PRISCILLA T. TUNCAP**  
Commissioner

  
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**JOHN SMITH**  
Commissioner

  
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**LOURDES HONGYEE**  
Commissioner

  
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**DANIEL D. LEON GUERRERO**  
Commissioner