BEFORE THE GUAM CIVIL SERVICE COMMISSION

BOARD OF COMMISSIONERS

IN THE MATTER OF:

TONY CRUZ, Jr.,

Employee,

vs.

GUAM BEHAVIORAL HEALTH AND WELLNESS CENTER,

Management.

ADVERSE ACTION APPEAL CASE NO. 14-AA20D

DECISION AND ORDER

This matter came before the Civil Service Commission on April 21, 2015, for a hearing on the employee's Motion to Revoke the Adverse Action taken against him. Present were the employee and his counsel, Daniel Somerfleck; and Assistant Attorney General David J. Highsmith and the Director of the Guam Behavioral Health and Wellness Center, Mr. Rey Vega. The seven members of the Commission were also present: Chairperson Luis Baza; Vice-chairperson Manuel Pinauin; John Smith; Edith Pangelinan; Priscilla Tuncap; Lourdes Hongyee; and Danny Leon Guerrero. The Commission heard oral argument and then deliberated, denying the motion by a 4-3 vote:

1. On March 28, 2014, and for some time previously, the employee Tony S. Cruz, Jr., was a Psychiatric Social Worker II, employed by the Guam Behavioral Health and Wellness Center (GBHWC).

2. GBHWC is a party in an "Olmstead case" in the District Court of Guam, CV01-00041, also known as the Amended Permanent Injunction (API) case, in which the District Court monitors the treatment and facilities provided to adults on Guam by GBHWC.

3. On July 10, 2014, GBHWC management demoted the employee to Psychiatric Social Worker I by Adverse Action based on the following events involving an adult female outpatient.

4. The Amended Permanent Injunction requires that every complex case patient must undergo an annual Multi-Disciplinary Treatment Team (MDTT) meeting and be given a new Multi-Disciplinary Treatment Plan (MDTP) every year.

5. The patient was part of the target population for the API Case and was a "complex case", meaning that she suffered from serious medical and psychiatric problems and required at least two kinds of service from the GBHWC.

6. The patient's annual MDTT should have been performed on or before March 28, 2014, because her previous MDTT was performed on March 28, 2013.

7. As the lead provider, the employee was charged with ensuring that the MDTT be done timely.

8. The employee created an Individual Treatment Plan on January 29, 2014, but this was inadequate to meet the needs of this patient.

9. The employee did not schedule an MDTT despite reviewing the patient's chart on March 5, 2014 and meeting with her on March 21, 2014.

10. The employee told Ms. Nadine Cepeda, his immediate supervisor, in April 2014, that he had completed one hundred percent of his MDTT's. Ms. Cepeda relied on this statement by the employee.

11. The patient died on May 11, 2014. The Director ordered a review of her case in order to ensure that GBHWC had properly treated this patient.

12. Ms. Cepeda, on May 12, 2014, discovered that a timely MDTT was not held. This was the first time management had actual knowledge of the employee's mistake.

13. On May 13, 2014, in his statement to management, Mr. Cruz admitted the mistake.

14. The Director promptly served the Notice of Proposed Adverse Action on June 18, 2014. The demotion was completed by Final Notice of Adverse Action on July 10, 2014. Thus, the Adverse Action was completed fifty-nine days after the employee's misconduct was discovered.

15. The employee is barred by his own misrepresentation from asserting the sixty day rule. Limtiaco v. Guam Fire Department, 2007 Guam 10, ¶ 58.

16. Management did not violate Title 4 G.C.A. § 4406.

17. The Motion to Revoke is denied.

IT IS SO ORDERED THIS 7th DAY OF May 2015.

LUIS R. BAZA
Chairman

MANUEL R. PINAUIN
Vice-Chairman

PRISCILLA T. TUNCAP
Commissioner

JOHN SMITH
Commissioner

LOURDES HONGYEE
Commissioner

DANIEL D. LEON GUERRERO
Commissioner

EDITH C. PANGELINAN
Commissioner