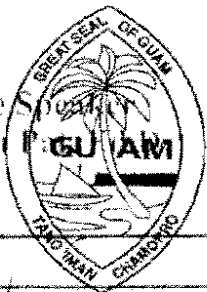


33-16-1240

Office of the  
Judith E. Wooten



BEFORE THE  
GUAM CIVIL SERVICE COMMISSION  
BOARD OF COMMISSIONERS



Date: 01-15-16

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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 ORDER

Office of the Civil Service Commission  
Seal of the Government of Guam  
Date: 1-15-16  
Time: 10:24 am  
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THIS MATTER CAME before the Civil Service Commission (the "Commission") for a motion hearing on November 10, 2015. Management Guam Memorial Hospital Authority ("GMHA") was represented by the law firm of Fisher & Associates through Minakshi V. Hemlani, Esq. Employee Julietta Quinene ("Quinene") was present and represented by the law firm of Somerfleck & Associates through Daniel S. Somerfleck, Esq.

PROCEDURAL BACKGROUND

On May 9, 2013, the Civil Service Commission (the "Commission") issued its Decision and Judgment in this matter, nunc pro tunc to February 26, 2013. The Commission determined by unanimous vote that the GMHA proved its burden on the merits by clear and convincing evidence<sup>1</sup>; however, it also determined by a majority vote that Employee's demotion should be modified 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. The modification was ordered to begin on the effective date of the Final Notice of Adverse Action, September 10, 2009.

<sup>1</sup> The Commission also denied Employee's motion for attorney's fees by unanimous vote because the GMHA proved its burden on the merits.

ORIGINAL

1 On Employee's request, a Notice of Status Call Conference was held on April 14, 2015,  
2 to discuss issues regarding back pay.

3 On August 4, 2015, GMHA filed a Submission of Accounting re Retroactive Pay stating  
4 that on July 2, 2013, it modified Employee's classification to Hospital Unit Supervisor, Pay  
5 Grade O, Step 9, \$70,597.00 – the closest position available at the hospital – because Pay Grade  
6 N does not exist at the GMHA. GMHA also submitted calculations from September 10, 2009 to  
7 January 25, 2010 showing that Employee owed the GMHA \$175.14. GMHA did not calculate  
8 back pay and benefits after January 25, 2010, because Employee voluntarily transferred  
employment to the Guam Department of Education ("GDOE") on that date.

9 On September 22, 2015, Employee filed her Motion for Back Pay arguing that the  
10 GMHA was responsible for back pay and benefits during the gap period of January 25, 2010, the  
11 date Employee voluntarily transferred from GMHA to GDOE, to February 26, 2013, the nunc  
pro tunc date to which Commission issued its Decision and Judgment on the merits<sup>2</sup>.

12 On October 13, 2015, GMHA filed its Opposition arguing that GMHA was not  
13 responsible for Employee's back pay and benefits after she voluntarily left its employ and the  
14 motion should be dismissed for lack of jurisdiction.

### 15 DISCUSSION

16 Civil Service Commission Resolution No. 2003-006 resolved that the Commission does  
17 not have the jurisdiction to determine the monetary compensation for an employee, and will  
18 instruct the employee or his/her representative to file a government claim for the amount that  
19 they consider due. This present motion before the Commission does not question the amount of  
20 monetary compensation due to the Employee but rather which government agency is responsible  
21 for Employee's back pay and benefits during the gap period of January 25, 2010 to February 26,  
2013.

22 Pursuant to CSC AA R. 11.7.5, a judgment is the final administrative adjudication of the  
23 Commission on a case present before the Commission. The Commission does not retain

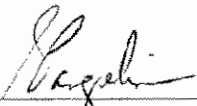
24 \_\_\_\_\_  
25 <sup>2</sup> The GDOE modified Employee's classification after the Commission issued its Decision & Judgment, but did not  
provide any back pay or benefits prior to that date.

1 jurisdiction of a case after issuing judgment except in situations where a party might file for  
 2 reconsideration pursuant to CSC AA R. 11.7.7. The Commission does not retain the jurisdiction  
 3 or authority to recall parties regarding enforcement of its decisions; it seeks enforcement of its  
 4 decisions by application to the Superior Court of Guam. See 4 G.C.A. § 4408.

5 In this case, the Commission issued its written Decision and Judgment on May 9, 2013.  
 6 In compliance with CSC AA R. 11.7.6, the GMHA took affirmative action to implement the  
 7 terms of the judgment within 30 days i.e., on July 2, 2013, the GMHA issued its Notification of  
 8 Personnel Action modifying Employee's demotion. Employee did not seek reconsideration of the  
 9 Commission's judgment to clarify which agency would be responsible for her back pay during  
 10 the gap period until April of 2015 – nearly two (2) years after the Commission's Decision and  
 11 Judgment was entered.

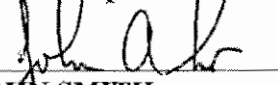
12 Therefore, by a majority vote of 5 to 1, the Commission dismisses Employee's motion for  
 13 lack of jurisdiction.

14 SO ORDERED THIS 14th DAY OF January, 201~~6~~<sup>5</sup> *nunc pro*  
*tunc to November 10, 2015.*

15   
 16 **EDITH PANGELINAN**  
 Chairperson

17 *not present*  
 18 **DANIEL D. LEON GUERRERO**  
 Vice-Chairperson

19   
 20 **PRISCILLA T. TUNCAP**  
 Commissioner

21   
 22 **JOHN SMITH**  
 Commissioner

23   
 24 **LOURDES HONGYEE**  
 Commissioner

25   
**CATHERINE GAYLE**  
 Commissioner