



BEFORE THE  
GUAM CIVIL SERVICE COMMISSION  
BOARD OF COMMISSIONERS



IN THE MATTER OF:

ADVERSE ACTION APPEAL  
CASE NO. 16-AA02S

DARYL MOVIDA,

Employee,

DECISION AND JUDGMENT

vs.

*Office of Sarah Bana*  
**RECEIVED**

PORT AUTHORITY OF GUAM,

Management.

*a*      *8/5/16 2:05p*  
INITIAL      DATE

This matter came before the Civil Service Commission ("Commission") for Merit Hearings on May 12, May 17, and June 23, 2016, on Employee Daryl Movida's (hereinafter "Movida or Employee") appeal from his Final Notice of Adverse Action issued by Management, Port Authority of Guam (hereinafter "Management or PAG") on December 28, 2015. Present for Management was General Manager, Joanne Brown, and counsel of record, Michael F. Phillips, Esq., of The Law Offices of Phillips & Bordallo, P.C. Also present were Employee, Daryl Movida, and his representative of record, Daniel R. Del Priore.

I.  
JURISDICTION

The Commission has jurisdiction over this matter pursuant to the Organic Act of Guam, Title 4 of the Guam Code Annotated §4401, et seq., and the Port Authority of Guam's Personnel Rules and Regulations.

*33-16-1887*  
Office of the Speaker  
Judith T. Won Pat, Ed.D

**ORIGINAL**

Daryl Movida vs. PORT  
Adverse Action Case No.: 16-AA02S  
Decision and Judgment

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**II.  
ISSUE**

Did Management meet its burden of proof by clear and convincing evidence that its actions taken in suspending Movida for ten (10) days under the Notice of Final Adverse Action, issued and served on December 28, 2015, were correct?

**III.  
FINDINGS OF FACT**

1. On November 13, 2015, PAG Armed Security Guard, Daryl Movida, was assigned to Gulf 2 inbound (aka Gate House Inbound Gate) to inspect private trucking companies with valid TWIC ID; cargo bill of lading documents with mandatory stamps clearance from PAG and Guam Customs.

2. As the assigned Guard to sentry Gate 2, Movida had the responsibility to ensure that only authorized individuals access the proper gates for vehicle and pedestrian entrances.

3. Pursuant to 33 CFR 105.255 (a)(3) and (4), PAG employees, tenants, and PAG users are prohibited to enter or exit through container check point trouble lane gates without proper clearance or authority.

4. On November 13, 2015, Movida permitted PAG-owned golf cart operated by Byron Santos to exit the "Trucker Troubleshoot Exit Lane," and did so in violation of Section (a) (3) and (4) of the Security Measures for Access Control (33 CFR 105.255).

5. Movida further allowed Mr. Santos to re-enter PAG property, for a second time, through the designated "Trucker Troubleshoot Exit Lane" in violation of 33 CFR 105.255(a)(3) and (4).

6. On December 16 and 28, 2016, PAG served Movida with a Notice of Proposed Adverse Action, and a Final Notice of Adverse Action, respectively. The adverse action was taken in accordance with Chapter 11, Rule 11.303, governing Authorized Causes for Adverse Action, of alleged violations of the Personnel Rules and Regulations as shown below:

1 (B) REFUSAL OR FAILURE TO PERFORM PRESCRIBED DUTIES AND  
2 RESPONSIBILITIES;

3 (E) INSUBORDINATION;

4 (N) VIOLATION OF SAFETY RULES AND REGULATIONS.

5 7. As a result of Movida's actions, Management suspended Movida for ten (10) days from  
6 Tuesday, December 29, 2015 through Monday, January 11, 2016.

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8 **IV.  
HOLDING**

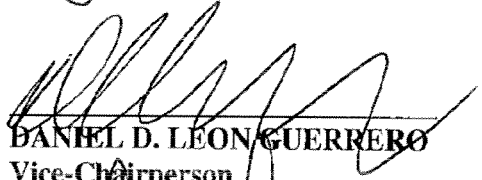
9 Management has proved by clear and convincing evidence that the Final Adverse Action issued  
10 on December 28, 2016, is appropriate and Employee's Appeal is hereby denied.


11  
12 **V.  
CONCLUSION**

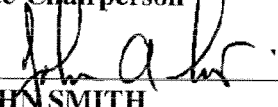
13 By a vote of 4-1, Management has proved by clear and convincing evidence that the Final  
14 Adverse Action is correct.


15 **SO ADJUDGED THIS** 4<sup>th</sup> **DAY OF** August, 2016, nunc pro tunc to June  
16 **30, 2016.**

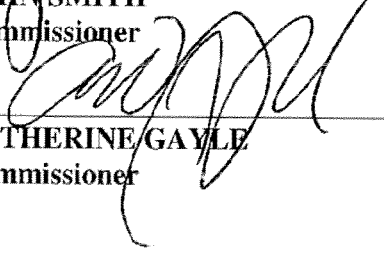
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18 **EDITH PANGELINAN**  
**Chairperson**

  
**DANIEL D. LEON GUERRERO**  
**Vice-Chairperson**

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20 **PRISCILLA T. TUNCA P**  
**Commissioner**

  
**JOHN SMITH**  
**Commissioner**

21   
22 **LOURDES HONGYEE**  
**Commissioner**

  
**CATHERINE GAYLE**  
**Commissioner**