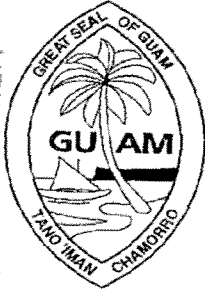


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**BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS**



33-16-1999

IN THE MATTER OF:

FRANKLIN B. CASTRO,

Employee,

vs.

DEPARTMENT OF PUBLIC WORKS,

Management.

**ADVERSE ACTION APPEAL
CASE NO.
0805-AA19 SP**

DECISION AND JUDGMENT

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

Date: 9/9/16
Time: 2:30 PM
Received By: [Signature]

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This matter came before the Civil Service Commission (the "Commission") on Employee's Motion to Void the Adverse Action for Procedural Defect at its regularly scheduled meeting on April 14, 2015 at its office at or about 5:45 p.m. Present for Management was Assistant Attorney General Ben Abrams, Esq. of the Office of the Attorney General; also present was the Employee, Franklin B. Castro, and his counsel of record, Daniel S. Somerfleck, Esq. of Somerfleck & Associates, PLLC.

**I.
FACTS**

1. On or about April 18, 2008 Employee was served a Final Notice of Adverse Action dismissing him effective on that date without specific reasons stated in that notice.

1999

ORIGINAL

1 181 S.E.2d 684; *Rapaport v. Civil Service Commission of State of California, et al.*, 134 Cal.App.
2 319, 25 P.2d 265; and *People Ex Rel. Miller v. Elmendorf*, 42 A.D. 306, 59 N.Y.S. 115.

3 Final Notice of Adverse Action issued to Employee lacked the requisite specificity. Guam
4 Personnel Rules and Regulations Section 11.311 provides:

5 An employee is entitled to written notice of the department's decision within 10 days after
6 receipt of the employee's answer to the charge(s). The decision shall be made by the
7 department/agency head and shall be delivered to the employee at, or before the time of action
8 will be made effective. The notice shall be in writing, be dated, state the specific facts found upon
9 which such action is based. There can be no finding that the Final Notice of Adverse Action
10 satisfied the specificity requirements.

11 Because the Notice of Final Adverse Action fails to provide the Employee notice of the
12 factual basis for the Final Adverse Action the adverse action must be voided.

13 WHEREFORE based upon a vote of 4-2 in favor of Employee's Motion, the Commission
14 enters the following Judgment:

15 a) That the Employee shall be immediately reinstated to his position with the
16 Department of Public Works.

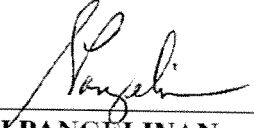
17 b) Employee shall receive back pay for all wages withheld from Employee during
18 the period from termination on April 18, 2008, until he is reinstated.

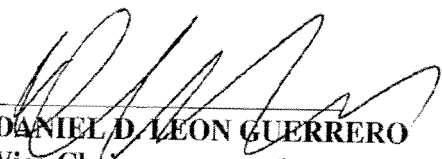
19 c) Employee shall be credited with all sick leave and annual leave that he would have
20 accrued during the period from termination on April 18, 2008, until he is reinstated.


21 d) Management shall deduct Employee's retirement contribution from his back pay
22 and then pay both Employee's and Management's contributions to the Government of Guam
23 Retirement Fund during the period from termination on April 18, 2008, until he is reinstated.

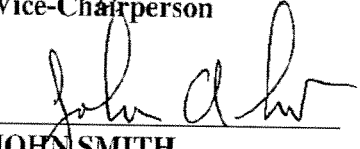
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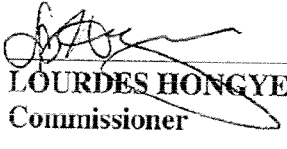
SO ADJUDGED this 8th day of September, 2016 as determined by votes taken on February 24, 2015


EDITH PANGELINAN
Chairperson


DANIEL D. LEON GUERRERO
Vice-Chairperson


PRISCILLA T. TUNCAP
Commissioner


JOHN SMITH
Commissioner


LOURDES HONGYEE
Commissioner

CATHERINE GAYLE
Commissioner