

December 18, 2012

Bernadette S. Meno
Port Marketing Administrator
Port Authority of Guam
Piti, Guam 96925



Dear Ms. Meno,

On December 5, 2012, you were served a letter informing you that a proposed adverse action was being sought against you which may result in disciplinary action in accordance with the Port Authority of Guam Personnel Rules and Regulations.

This action is taken in accordance with Chapter 11, Rule 11.303, governing Authorized Causes for Adverse Action, of the Personnel Rules and Regulations for the following violations:

Personnel Rules:

- Actual or attempted theft of government or Port Authority property or property of others.
- Disobedience to constituted authorities, or deliberate refusal to carry out any proper order from any supervisor having responsibility for the work of the employee; Insubordination.
- Falsification, misstatement, or concealment of material fact in connection with any official record.
- Covering up or attempting to conceal defective work; removing or destroying same without permission.

According to the facts surfaced during the investigation, provided to you in the attached reports, "The Reported Slip and Fall" and "Findings of Fact and Conclusions of Law":

You alleged that you slipped and fell, injuring yourself, on September 22, 2011. However, you did not seek leave for any reason until November 15, 2011 and only sought medical attention on your own nine months later.

Further, you willfully ignored the requirements that a government employee must fulfill in order to file a valid workers' compensation claim pursuant to 17 GAR §10107. In fact, you admittedly refused to be seen at GMH, as required. The Workers Compensation Commission maintains it has never been made aware of any claim for

medical treatment and that it has not been informed of any developments in this case since September of 2011.

You have made written representations to Port management regarding the extent and severity of your injury which are contradicted by the medical evidence in your own records. For example, you represented to management that your spine was "cracked and leaking fluid,"¹ that the surgeon would have to "go through my stomach and pull out the broken and cracked disc and then they will cut me open from the back and use a bone graft to merge the non-broken disks together,"² and insisted as recently as September 10, 2012 that you sustained a "broken disk."³

Yet the very specialist you asked to see described the injury to be a "small herniated disk."⁴ The MRI ordered by this specialist, revealed only a "mild disc bulge" with "moderate...disk disease," "relatively mild thoracolumbar scoliosis," with the radiology specialist recommending, "If patient's symptoms do not resolve with conservative therapy, therapeutic spinal injection can be completed."⁵

Your file indicates you have taken extensive leave periods for a variety of reasons, including prior to the injury for medical reasons, and then you claimed you slipped and fell in the bathroom and hurt your "legs, hips, back, and arm."⁶ No witnesses can even corroborate your claim that you indeed slipped and fell, causing your back injury. Your fraudulent concealment of the wrongful acts of yourself and others tolls the "60 day rule" under 4 GCA 4406.

Although your file indicates since July of 2011 you have taken over 125 days worth of annual leave, sick leave, and work injury leave based on unspecified "medical illness" notes from your doctor, approval from workmans' compensation is needed to credit you with uncharged leave on the basis of your alleged September 22, 2011 slip-and-fall. Your medical file reveals a host of preexisting medical conditions and ailments which could account for at least some of the symptoms and ailments which you attribute to the alleged slip-and-fall at the Port. You attempted to get, and did receive, code 45 leave for which you knew you were not authorized.

You have exaggerated your injuries, lied about what caused them, and manipulated the system in order to reap benefits for which you knew you were not

¹ See your July 10, 2012 e-mail

² See your August 11, 2012 e-mail

³ See your September 10, 2012 correspondence

⁴ See Dr. Hayashida's August 2, 2012 report

⁵ See August 28, 2012 MRI from Guam Radiology Consultants

⁶ See your September 22, 2011 e-mail to Mr. Roberto

lawfully entitled. When your Port-funded trip to Hawaii got cancelled, you bitterly lashed out at those trying to make things right. You refused to allow Dr. Taniguchi to examine you when the Port offered this as an opportunity to pursue your claim. You then showed up for work on November 14, 2012 without any sign of injury.

You conspired to commit theft, fraud, and to cover up actions relating to these and other prohibited acts. For your willful misrepresentations, illegal expenditures, and the following cover-up, you may be charged with the following misdemeanors: Official Misconduct, Unsworn Falsifications, and Obstructing Government Functions.⁷ 3rd degree felonies for which you could be charged include Forgery, Unlawful Influence, and Tampering With Public Records.⁸

You may be jointly civilly and personally liable for the illegal expenditures under 5 GCA § 7102, which requires that you exercise due "care, skill, prudence, and diligence...solely in the interest of the people of...Guam," or be personally liable for taxpayer actions to recover the expenditures for as long as 5 years.⁹

Your role in acquiring fully paid work injury leave, for which you have never been entitled under any statute, carries penalties of up to a \$100,000.00 fine and 3 years in prison under 22 GCA § 9104 (J)(3). This is in addition to the misdemeanor violation of making false or misleading statements in order to secure workers compensation benefits under 22 GCA 9132.

Related Criminal and Civil Liability:

4 GCA Public Officers & Employees

- o §3105 Officers of governing bodies may be liable for losses due to an exercise of due care.
- o §3106 Officers of local government bodies may be held personally liable for the negligent acts or omissions of employees under him if the officer failed to supervise such employee with due care.

9 GCA Criminal Statutes

- Workers Compensation 22 GCA § 9132: It is a misdemeanor to make any false or misleading statements for purposes of obtaining any benefits.

Chapter 46: Forgery, Fraudulent Practices & Telephone Records

§46.10 Forgery

- o Falsified writings, alterations, deceptions. Misdemeanor to 3rd degree felony.

⁷ See 9 GCA §§ 46.10, 46.25, 46.70, 49.90, 52.30, 55.10, and 55.45, respectively.

⁸ See 9 GCA §§ 46.10, 49.40, and 55.10, respectively.

⁹ Similar and overlapping statutes are 4 GCA §§ 3105, 3106, 14103, 14106, 14109, 14110, 14111, and 14115.

§ 46.25 Tampering With Records

- o Misdemeanor

§ 46.70 Misapplication of Entrusted Funds

- o Disposing of funds as a fiduciary; knows unlawful; misdemeanor

§ 49.40 Unlawful Influence

- o 3rd degree felony to exchange any benefit as consideration for improperly influencing or attempting to influence a public servant

§ 49.90 Official Misconduct

- o Misdemeanor if with the intent to benefit self or another, commits an unauthorized exercise of official function or fails to exercise official duty imposed or implied by position.

§ 52.30 Unsworn Falsifications

- o Misdemeanor if intending to mislead a public servants performing official functions with anyone's false or misleading statement or representation.

§ 55.10 Tampering with Public Records

- o 3rd degree felony if intent to defraud or injure; Misdemeanor otherwise if knowingly falsifying, misrepresenting, or hiding records.

§ 55.45 Obstructing Government Functions

- o Misdemeanor to intentionally obstruct any government duties or functions.

22 GCA 9104 (J)(3) Penalties

(3) Penalties. Any person, including an employee, employer, medical case manager, health care provider, vocational rehabilitation provider, or workers' compensation insurance carrier who, knowingly and with intent to defraud, makes a false statement or representation for the purpose of obtaining, affecting, or denying any benefit or payment under the provisions of this Chapter, either for her or himself or for any other person, *shall* forfeit all benefits or payments obtained as a result of the false statement or representation and all or a portion of any right to compensation under the provisions of this Chapter as determined by Director and:

(i) for fraud involving Ten Thousand Dollars (\$10,000) or more, be fined *not more than* One Hundred Thousand Dollars (\$100,000) or imprisoned *not more than* three (3) years, or both; and

(ii) for fraud involving *less than* Ten Thousand Dollars (\$10,000), be fined *not more than* Ten Thousand Dollars

- o (\$10,000) or imprisoned *not more than* two (2) years, or both.

Other Civil Liability

5 GCA § 7102. This statute establishes an appropriate standard of "care, skill, prudence, and diligence" when officers and employees of the government of Guam spend public money, cautioning all that they "shall discharge their duties with

respect to the management of public money solely in the interest of the people of the territory of Guam."

Please see the attached reports, "The Reported Slip and Fall" and "Findings of Fact and Conclusions of Law," detailing the events which led to this adverse action. These facts, collectively and individually, substantiate and justify this adverse action.

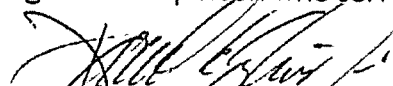
On December 14, 2012 you personally appeared before me, with your attorney, to respond to the alleged charges. Also present was Port co-counsel John R.B. Bell. At the end of this hearing, you were advised that I would review your response and documents provided.

After careful consideration of your responses to the charges outlined in your proposed adverse action, I have decided to take formal adverse action against you. **This letter serves as official notice of adverse action for termination, effective upon receipt of this final notice of adverse action.**

In accordance with Rules and Procedures for Adverse Action Appeals to the Civil Service Commission, an appeal to an adverse action must be filed in writing to the Civil Service Commission, during normal working hours, within twenty (20) calendar days of your receipt of this final notice of adverse action.

Sincerely,


Joanne M. Brown
General Manager, Acting

Signature of Employee Served:	Date/Time:
Bernadette S. Meno	
I hereby certify that the original notice was served to the employee on <u>12/18</u> , 2012	☐ Served Personally ☒ Copy left at last known address ☐ Registered mail
Print name of person who served notice PO2 DAVID B. ESPINOZA JR. PORT POLICE OFFICER II	Signature of person who served notice: 

cc: Personnel Jacket
Civil Service Commission

DOCUMENTS LEFT IN PACIFIC NEWS MALL BOX
AT RESIDENCE. 6:05 PM