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8
9 **IN THE CIVIL SERVICE COMMISSION**
10 **GOVERNMENT OF GUAM**

11 IN THE MATTER OF:) ADVERSE ACTION APPEAL
12) NO. 13-AA03T
13 BERNADETTE STERNE MENO,)
14)
15 Employee,)
16)
17 vs.)
18)
19 PORT AUTHORITY OF GUAM,) **RESPONSE TO**
20) **RECOMMENDATIONS OF**
21) **ADMINISTRATIVE LAW JUDGE**
22) **ON MOTION TO VOID ADVERSE**
23) **ACTION BASED ON VIOLATION**
24) **OF THE SIXTY-DAY RULE**
25 Management.)

1 COMES NOW, the PORT AUTHORITY OF GUAM (the “Port” alternatively
2 “Management”) by and through its lay representative, Luis R. Baza, submits this response to
3 recommendations of the Administrative Law Judge on his motion to void based on the violation
4 of the sixty (60) day rule relative to Adverse Action No. 13-AA03T, in the matter of Bernadette
5 Stern Meno vs. Port Authority of Guam.

6 **BACKGROUND**

7 The employee in this matter is the Port’s Marketing Administrator. She was given a Final
8 Notice of Adverse Action (FNAA) on December 18, 2012, relative to the processing of a
9 fraudulent Workers Compensation Claim (WCC) based on a slip and fall on September 22,
10 2011.

11 On March 11, 2020, Administrative Law Judge (ALJ) Eric Miller issued his conclusion
12 recommending that the Commission:

1. Grant Employee's motion to void because the FNAA violated the 60-day rule ...
to revoke the Adverse Action;

2. The Employee be reinstated immediately until his decision is overturned by judicial review (4GCA §4406(g)); and

3. The Employee is awarded back pay, reasonable attorney fees, and costs.”

ALJ Miller, in his analysis to the Commission, determined based on “undisputed facts,” of when Management knew or should have known presents the following:

1. Management's exhibits include documents signed by several management personnel that established the critical moment when Management knew or should have known the Employee was processing a fraudulent WCC.

a. The code 45 leave signed by the General Manager (GM) of the Port Authority of Guam, and other management personnel signed their approval on September 10, 2012, and September 17, 2012. ALJ Miller argues that Management knew or should have known that there was no approved WCC at that time of approving the code 45 leave, places the number of days from when the FNAA was served on December 18, 2012, which was at 93-days and 100-days, respectively; and

b. ALJ Miller is appealing to the Commission to address its earlier decision in an order dated October 10, 2013, wherein the Commission “ruled to the contrary finding that the Employee failed to carry her burden on the 60-day rule violation”. ALJ Miller concluded that he is unable to make a recommendation to the Commission, in which he is not in agreement, and reminds the Commission of its “inherent authority to reconsider its prior decision before the matter is appealed to the Superior Court”.

ANALYSIS

The Port, in its SUPPLEMENTAL OBJECTIONS TO FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS AFTER HEARING ON MOTIONS; CHALLENGES TO

JURISDICTION in the matter of Francine Rocio vs. Port Authority of Guam, Adverse Action Appeal No. 12-AA29T-SP, filed on October 3, 2019, argued the Legal Authority to Challenge Jurisdiction.

Specifically, the Guam Supreme Court in 2018 on the (Guevara) case stated “While this court has never directly stated that the CSC is obligated to hear all challenges to its jurisdiction whenever such challenge is raised, we have repeatedly stated ... even in the context of agency administrative proceedings... that “the question of subject matter jurisdiction may be raised at any time.” Rojas I ¶ 21. The rules of the CSC specifically provide a mechanism by which “(a) any Commissioner may, at any time, raise issues not raised” by parties, including questions of subject matter jurisdiction. CSC AA R.9.1.1.

CONCLUSION

Given the interrelatedness of this case to the case as mentioned above (Adverse Action Appeal No. 12-AA29T-SP), and the Port’s pleadings thereof that the Commission must determine the issue of jurisdiction for this, or any case, to proceed accordingly.

As such, Management’s prayer is that the Commission disposes of ALJ Miller’s Recommendations of the Administrative Law Judge on Motion to Void Based on Violation of the Sixty (60) Day Rule, before addressing the merits of this case. For the record, as the Management’s lay representative for this case, I have studied this case and I am prepared to move forward to argue on the merits; however, it is prudent that ALJ Miller’s decision first to be adjudicated by the Commission. I am also of the opinion that in the interest of fairness and justice, which is the bedrock of this Commission’s foundation, the determination of jurisdiction is part and parcel to due process.

Therefore, Management respectfully request the Commission to decide on ALJ Miller’s Recommendations of Administrative Law Judge on Motion to Void Based on Violation pursuant to law with respect to the Sixty (60) Day Rule.

1 Respectfully submitted, this 20th day of March, 2020.

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3
4 By: 

5 LUIS R. BAZA

6 Representative for Management

7 The Port Authority of Guam