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DANIEL D. LEON GUERRERO
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C.S.C. No.: 2019-055

December 31, 2019

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Re: Lynda B. Aguon vs. Department of Parks and Recreation
Civil Service Commission Case No.: 19-AA02T

Please find attached the Findings of Fact, Conclusions of Law, and Recommendations After Hearings on the Merit from Administrative Law Judge, Eric D. Miller, regarding the above matter. Upon service of the findings, the parties shall have ten (10) days to file a written objection with the Civil Service Commission. The Continued Hearing on the Merits is scheduled before the Civil Service Commission Board on Tuesday, January 14, 2020 at 5:45 p.m., at which time you will have the opportunity to be heard on the Recommendations. An official notice from the Commission will be issued for the Continued Hearing on the Merits.

Senseramente,


Eric D. Miller
Administrative Law Judge
Civil Service Commission

Attachment
Daniel D. Leon Guerrero, Executive Director
Civil Service Commission

The Law Office of
John Richard Bordallo Bell
Date: 12/31/19
Time: 9:38 AM
Received By: JTB



**BEFORE THE
GUAM CIVIL SERVICE COMMISSION
ADMINISTRATIVE LAW JUDGE**



IN THE MATTER OF:

LYNDA B. AGUON,

Employee,

vs.

**DEPARTMENT OF PARKS AND
RECREATION,**

Management.

**ADVERSE ACTION APPEAL
CASE NO.: 19-AA02T**

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
RECOMMENDATIONS AFTER
HEARING ON THE MERITS**

This matter comes before the undersigned sitting as a duly-appointed Administrative Law Judge pursuant to 4 GCA §4405(c), and Rule 14 of Civil Service Commission Rules of Procedure for Adverse Action Appeals.

BACKGROUND

Employee, Lynda B. Aguon, (hereinafter "Employee") was at all relevant times employed by Department of Parks and Recreation as the Senior Preservation Officer for the Guam Historic Resources Division. On June 18, 2019, Employee was served with Final Notice of Adverse Action (FNAA) alleging numerous acts of insubordination, mistreatment of staff and other bad behavior.

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**RECOMMENDATIONS FOLLOWING
HEARING ON THE MERITS**

*Lynda B. Aguon vs. Department of Parks and Recreation
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1 **BURDEN OF PROOF**

2 Following the ruling in *Port Authority of Guam v. Josette J. Javelosa* 2018 Guam 9, the
3 Civil Service Commission (CSC) must make a threshold determination whether the factual
4 allegations correspond to statutory prohibitions in the criminal code. If so, the CSC shall
5 determine the matter based upon substantial evidence that the Employee committed the acts
6 charged in 4 GCA §4407(c). If the allegations of the Employee would not constitute a crime if
7 proved in court, the clear and convincing standard of Section 4407(a) applies. The Commission,
8 on September 19, 2019, found the allegation of unauthorized use of a motor vehicle (using the
9 official vehicle to go to lunch) does not constitute a crime, and therefore, the burden of proof as
10 to this allegation is clear and convincing evidence. All of the other numerous allegations relate
11 to insubordination, mistreatment of staff, and other bad behavior, none of which rises to the level
12 of criminal activity, and therefore, the burden as to all allegations in the FNAA is the clear and
13 convincing standard.

14 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

15 The undersigned heard testimony of numerous witnesses and reviewed relevant
16 documents in the record. Employee was present and represented by Attorney John B. Bell.
17 Employer was present and represented by Director Richard Ibanez, Deputy Director Victor
18 Villagomez, and Assistant Attorneys General Donna Lawrence, and Matthew Wolff. The
19 FNAA contains so many allegations that it will be helpful to organize them into three (3)
20 categories:

- 21 1. Allegations of Mistreatment of staff,
- 22 2. Other bad behavior, and,
- 23 3. Allegations of insubordination.

24 **RECOMMENDATIONS FOLLOWING
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25 *Lynda B. Aguon vs. Department of Parks and Recreation*
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1 Yamasta (ultimately the responsibility of Employee), and Employee may have assumed that
2 Michelle Yamasta was maintaining a log book. The vehicle was mostly used by Michelle
3 Yamasta, not Employee.

4 10. Employee is accused of directing the driver of the car to enter the exit of the parking
5 lot at the Paseo Loop road. Management is innocent of having any sense of proportion in its
6 allegations against Employee here. Entering the exit may be unwise, but clearly not the proper
7 substance of an adverse action.

8 11. Employee is accused of lying about having a staff meeting regarding the use of the
9 official vehicle. She did meet with Michelle Yamasta, and directed her to get a log for the
10 vehicle, but did not meet with all the staff regarding the issue. This is different from having a
11 staff meeting with all the staff, but it is not clear that Employee was intentionally lying about the
12 matter. This allegation does not justify an adverse action.

13 12. Employee is accused of misuse of the official vehicle by directing Michelle Yamasta
14 to use it to deliver Employee's grievance. Management argues that Employee's grievance is a
15 personal matter and not official Government business. The undersigned disagrees. Employee
16 was exercising her rights under the Personnel Rules and Regulations which is clearly a
17 government matter.

18 13. Employee is accused of telling staff on May 14 or 15, 2019, that Management is
19 trying to get rid of Employee and Mr. John Mark Joseph. This statement whether true or false
20 is not sufficient grounds for an adverse action.

21 14. Employee is accused of filing a grievance against the Deputy Director for detailing
22 Ian Catling to the Director's office. Management argues that this was not the basis of the adverse
23 action. The allegation, however appears in the FNNA and must be considered. Obviously,

24 **RECOMMENDATIONS FOLLOWING
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1 Employee cannot be terminated for following the Personnel Rules and Regulations to resolve
2 her employment issues.

3 3. INSUBORDINATION

4 15. The undersigned finds that Employee refused to meet with the Park Ranger to receive
5 a letter from the Director and later accepted it writing on the document "advised not to read".
6 This is an act of insubordination, but too minor an infraction to support an adverse action by
7 itself.

8 16. The undersigned finds that on May 9, 2019, Employee received a letter from the
9 Director ordering her to view and address personally documents generated by Administrative
10 Assistant, Christine Olkeriil. This letter advised Employee that non-compliance would result in
11 disciplinary action. Employee, by letter dated May 10, 2019, responded, "You cannot force me
12 to comply with your "order." Employee in response, sites her health issues, and Christine
13 Olkeriil's constant complaining, accusations, and orders. On its face, the order appears to be
14 quite reasonable and clearly identifies the consequence of non-compliance. Nothing in the
15 testimony of Employee or other witnesses supports Employee's defense of health issues, nor the
16 accusations about Christine Olkeriil's constant complaining etc.

17 This refusal to comply with a legitimate order, in writing, is serious insubordination
18 which supports a final adverse action of termination.

19 17. Employee was ordered not to discuss the investigation of complaints about her with
20 other employees while the investigation was in progress. Employee signed a statement
21 acknowledging this order. Employee admitted to talking to two employees, Michelle Yamasta
22 and Barbara Lujan, about the investigation during the investigation in direct violation of
23

24 **RECOMMENDATIONS FOLLOWING HEARING ON THE MERITS**

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1 Employer's written order. This is a serious offense and supports the adverse action of
2 termination.

3 **CONCLUSION**

4 Management proved by clear and convincing evidence the allegations number 16 and 17
5 that Employee was insubordinate in refusing in her May 10, 2019 letter to follow the Director's
6 orders, and by violating a written gag order while her investigation was on-going. These orders
7 were in writing and appear to be reasonable. The intentional violation of these two orders is
8 severe enough to justify the personnel action of termination.

9 Allegation number 4 asking Mr. Joseph to drop his complaint against her was serious
10 enough to justify a twenty-day (20) Suspension.

11 Allegation number 5 requesting the termination of Ian Catling in retaliation for his
12 complaint would support a twenty-day (20) suspension, not a termination.

13 None of the other allegations would be cause for termination.

14 The undersigned respectfully recommends that the allegations numbered 16 and 17
15 herein were proved by clear and convincing evidence, and for that reason the adverse action be
16 **AFFIRMED.**

17 Dated this 30 day of December, 2019.

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19 
20 ERIC D. MILLER
21 Administrative Law Judge
22 Civil Service Commission