



**CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS**



**BEFORE THE GUAM CIVIL SERVICE COMMISSION
GOVERNMENT OF GUAM**

IN THE MATTER OF:

JUAN P. SAN NICOLAS,

Employee,

vs.

GUAM FIRE DEPARTMENT,

Management.

**ADVERSE ACTION APPEAL
CASE NO.: 21-AA23T**

DECISION AND JUDGMENT

This matter came before the Civil Service Commission (“Commission”) for a Hearing on the Merits on the following dates: December 6, 2023, February 20, 2024, and February 22, 2024. The Guam Fire Department (“GFD”), was represented by Deputy Attorney General D. Graham Botha (“Management”). The Employee, JUAN P. SAN NICOLAS (“Employee”), was present and represented by attorney Jacqueline Taitano Terlaje. Based upon the evidence presented by the Parties, the Commission hereby finds by a vote of 4-to-0 in favor of Employee. The Commission for the reasons set forth herein hereby revokes the adverse action dated December 28, 2021, orders the immediate reinstatement of Employee, awards the Employee all compensation and other benefits which would have accrued to the Employee from December 28, 2021, and awards attorney’s fees.

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I. JURISDICTION

The jurisdiction of the Commission is based upon the Organic Act of Guam, § 4401 et. seq., Title 4 of the Guam Code Annotated, and relevant portions of the Government of Guam Personnel Rules and Regulations (hereinafter “Pers. Rules & Regs.”) applicable to GFD.

II. FINDINGS OF FACT

The Commission hereby makes the following findings of fact:

1. Employee, a Firefighter II with more than twenty-five years of service in the GFD, submitted a leave application for sick leave while he was on annual leave status.

2. Employee provided a physician’s certification of illness between September 30, 2020 through September 30, 2021. Management approved the sick leave application, and processed payroll for the time periods. Management had knowledge that Employee was in Oahu, Hawaii since April 2020.

3. Following the expiration of the sick leave period, September 30, 2021, Management attempted to discover what was happening with the Employee. Management had trouble getting information from Employee and Employee was given some misinformation from Management.

4. After several unsuccessful contact attempts Management issued written notice, on October 29, 2021, to the Employee that he was being charged with unauthorized leave between October 1, 2021 to October 29, 2021 because he failed to submit the necessary leave application and/or certifications justifying his absence from work.

5. On October 30, 2021, Employee responded and submitted his updated physician’s certification covering the period of “September 31, 2021 through March 31, 2022”. The physician certification appears to have a typographical error since there is no “September 31”.

1 In the words of Vice-Chairman Benevente “I look at what the department did and I commend
2 them for the amount of communication they attempted and the accommodations that they allowed the
3 employee, but for me they were not firm enough.”

4 The Commission finds that on December 28, 2021, Management subjected Employee to a
5 disciplinary action by dismissing Employee from GFD. Dismissal is defined as “The termination of
6 employee for any authorized cause of adverse action.” Rule 11.302(C.), Pers. Rules & Regs. Therefore,
7 the Commission revokes the termination of Employee on December 28, 2021. Personnel Rules and
8 Regulations, Appendix A, CSC-400 provides:

9 If the adverse action is revoked by the Commission, all compensation and other benefits
10 which would have accrued to the appellant from the effective date of the decision, shall be
11 restored to appellant.

12 The Commission finds that Employee is entitled to recovery and immediate restoration of all
13 compensation and benefits which would have accrued to him from December 28, 2021, including
14 immediate reinstatement to his full-time status.

15 V. CONCLUSION

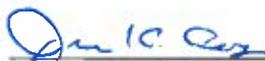
16 **WHEREFORE**, following due deliberation, based upon the determination of a majority vote by
17 the Commission, Four-to-Zero (4-to-0) in favor of the Employee, the Commission hereby orders the
18 following:

- 19 (i) Management failed to sustain its burden required by 4 G.C.A. § 4406(a) by clear
20 and convincing evidence that its termination of Employee was correct;
- 21 (ii) The December 28, 2021 personnel action terminating Employee, Juan P. San
22 Nicolas, Firefighter II from the Government of Guam classified service is hereby
23 revoked;
- 24

1 (iii) Management is hereby ordered to perform the following:

- 2 1. Employee shall be immediately reinstated pursuant to 4 G.C.A. §
3 4406(g);
- 4 2. Employee shall be provided a thirty (30) day time to relocate from
5 Hawaii to Guam from the date of Decision, February 22, 2024, without
6 penalty, and without pay or through utilizing annual leave;
- 7 3. The Commission finds that the Employee is awarded back pay for
8 wages and restoration of lost service credit and benefits withheld from
9 Employee from the period of December 28, 2021 to compliance with
10 this Decision;
- 11 4. The Commission finds that the Employee is the prevailing party and is
12 further awarded attorney's fees.

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14 **IT IS SO ADJUDGED on this 18th DAY OF April, 2024.**

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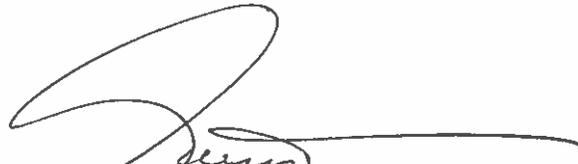
17 **JUAN K. CALVO**
18 **Chairperson**



19 **ANTHONY P. BENAVENTE**
20 **Vice-Chairperson**

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22 **ROBERT C. TAITANO**
23 **Commissioner**



24 **FRANCISCO T. GUERRERO**
25 **Commissioner**