

B-28



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Edward Hall,  
Department of Corrections

Request for Back Pay

CSC Docket No. 2015-92

**AUG 20 2015**

ISSUED: (SLD)

Edward Hall, a Senior Correction Officer with the Department of Corrections, represented by Colin M. Lynch, Esq., seeks resolution of a dispute concerning mitigated back pay.

As background, the appellant was indefinitely suspended from employment, effective July 28, 2012, due to pending criminal charges. The indictment against the appellant was dismissed by the Superior Court Law Division on April 18, 2013 and the appellant returned to work on June 30, 2013. The appellant submitted an Affidavit of Mitigation to the appointing authority. However, the appointing authority notified the appellant that he was not entitled to any back pay as he failed to provide any evidence that he attempted to mitigate by searching for a job.

The appellant appealed to the Civil Service Commission (Commission), asserting that he is entitled to back pay as the criminal charges against him were dismissed. Additionally, the appellant argues that, shortly after his return to work, he submitted an affidavit to the appointing authority; however, it was not until June 2014<sup>1</sup> that he received the appointing authority's March 19, 2014 denial of his request for backpay, benefits and seniority.

Moreover, the appellant notes that he is entitled to back pay in the amount of \$37,074.86, as calculated by the appointing authority. The appellant maintains

<sup>1</sup> The appellant submits military orders that he was out of State from March 22, 2014 to April 11, 2014.

that although he applied for unemployment benefits, his claim was denied due to the appointing authority classifying his alleged actions leading to his suspension as "gross negligence."

The appellant asserts that, pursuant to *N.J.A.C. 4A:2-2.10*, he made reasonable efforts to secure alternate employment. In this regard, he maintains that he reviewed the classified job listings in the *Star Ledger* weekly, reviewed on-line employment opportunities, undertook networking efforts, made other employment inquiries, including calling prospective employers, applied for the Civil Service law enforcement examination, and ultimately lowered his sights and applied for entry-level non-security work. For example, he notes that he contacted Corrections Corporation of America, a private prison and detainment company; Gateway Security, Newark; Soundwave Recording Studio and Soundwave Technology IT Consulting, owned by K.H.; and the ARC, where he had previously been employed. However, he was unable to obtain alternate employment due to the pending criminal charges; the difficult labor market at that time; his resume which consisted primarily of military,<sup>2</sup> law enforcement and security work; and the fact that he honestly stated that he was looking to return to the appointing authority. Moreover, he notes that all of the security contractors that were contacted either by himself or on his behalf indicated that a Security Officer Registration Act (SORA) certification was required. However, due to the pending criminal charges he was unable to receive the certificate.

In support, he submits notarized statements from K.H., the appellant's father, and A.H. and M.B., friends of the appellant. The appellant's father indicated that although he had contacts in the security field, all of the companies required SORA Certification, which the appellant was unable to obtain due to the pending criminal charges. The appellant's father also indicated that although the appellant would search weekly for employment in the classified ads of the *Star Ledger*, he was unsuccessful with obtaining employment. K.H. and A.H. indicated that the appellant had asked them for their help to locate employment. However, K.H. indicated that his business was too small to hire the appellant and none of the other local businesses he contacted would hire the appellant, and A.H. indicated that although he contacted at least three companies on the appellant's behalf, including Gateway Security, all said no due to pending criminal charges. M.B. indicated that as he was also looking for work, and the appellant's computer was not working, on several occasions the appellant would come over and they would search for work together on-line as they were applying for similar positions in the security field. M.B. noted that he had also helped the appellant to update his resume. However, M.B. noted that all of the positions he applied for specifically stated that an individual with pending criminal charges would not be eligible for employment. M.B. also noted that although he was able to secure employment, the appellant was unable to do so. The appellant also submits a sworn notarized

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<sup>2</sup> The record indicates that the appellant is currently in the U.S. Army Reserves.

statement from his mother, who is a manager of ARC, who indicates that although attempts were made to secure reemployment for the appellant with ARC, he was told that due to the nature of the charges that were pending against him, he could not be rehired.

The appellant also argues that reasonable efforts at mitigation have also been determined to include attempts at achieving self-employment. Accordingly, as a result of his failure to obtain alternate employment, he decided to work for himself and went to the Greater Newark Enterprises Corporation (GNEC), a non-profit organization which specialized in training individuals to become small business owners. After successful completion of the 11 week GNEC program, he started his own clothing business.<sup>3</sup> However, the business was ultimately unsuccessful as he never made more money than his startup costs. Finally, the appellant maintains that since he has established that he made reasonable attempts to mitigate his damages, the burden to prove that he did not now rests with the appointing authority.

In response, the appointing authority initially notes that the appellant's back pay amount is \$37,074.86 (241 days at the per diem rate of \$153.84).<sup>4</sup> Substantively, the appointing authority argues that pursuant to *N.J.A.C. 4A:2-2.10(d)4*, the appellant was required to make reasonable efforts to find suitable employment, which he failed to do. In this regard, the appointing authority asserts that with the appellant's affidavit of mitigation, he only presented an eight page printout from the internet site NJLawman.com, with listings for "police jobs" from February 2012 through April 2013. However, it asserts that the appellant failed to provide any detail as to which of the listed positions he may have applied. Additionally, the appointing authority asserts that the appellant did not establish any proof that he reviewed classified advertisements in newspapers or trade publications, on-line or any other services other than the production of a single printout. Moreover, it maintains that the appellant failed to establish any proof that he attended job fairs, visited employment agencies or distributed resumes. The appointing authority also asserts that pursuant to *N.J.A.C. 4A:2-2.10(d)4(ii)*, the appellant's "networking" and other activities described in the submitted notarized statements and affidavit, do not rise to the level of reasonable efforts. Accordingly, the appointing authority argues that it cannot expend public funds in a back pay award, where the individual in question did little or nothing to find employment.

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<sup>3</sup> The appellant submits copies of his December 12, 2012 certificate of completion from the Greater Newark Enterprises Corporation; a Certificate of Formation for the appellant's limited liability company; federal and State employer tax identification numbers under the name of the appellant's limited liability company; and a State Business Registration Certificate.

<sup>4</sup> The appointing authority noted that although the appellant served his Military Reserve Duty on August 12, 2012 and September 14 through 16, 2012, he was not entitled to any paid military leave since he was not a permanent employee. Agency records indicate that the appellant received a regular appointment to the title of Correction Officer Recruit, effective January 16, 2012.

## CONCLUSION

Pursuant to *N.J.A.C.* 4A:2-2.10(d), an award of back pay shall include unpaid salary, including regular wages, overlap shift time, increments and across-the-board adjustments. Benefits shall include vacation and sick leave credits and additional amounts expended by the employee to maintain health insurance coverage during the period of improper suspension or removal. *N.J.A.C.* 4A:2-2.10(d)1 provides that back pay shall not include items such as overtime pay and holiday premium pay. Further, *N.J.A.C.* 4A:2-2.10(d)4 states that where a removal or a suspension for more than 30 working days has been reversed or modified or an indefinite suspension pending the disposition of criminal charges has been reversed and the employee has been unemployed or underemployed for all or a part of the period of separation, and the employee has failed to make reasonable efforts to find suitable employment during the period of separation, the employee shall not be eligible for back pay for any period during which the employee failed to make such reasonable efforts. "Reasonable efforts" may include, but not be limited to, reviewing classified advertisements in newspapers or trade publications; reviewing Internet or on-line job listings or services; applying for suitable positions; attending job fairs; visiting employment agencies; networking with other people; and distributing resumes. The determination as to whether the employee has made reasonable efforts to find suitable employment shall be based upon the totality of the circumstances, including, but not limited to, the nature of the disciplinary action taken against the employee; the nature of the employee's public employment; the employee's skills, education, and experience; the job market; the existence of advertised, suitable employment opportunities; the manner in which the type of employment involved is commonly sought; and any other circumstances deemed relevant based upon the particular facts of the matter. The burden of proof shall be on the employer to establish that the employee has not made reasonable efforts to find suitable employment. See *N.J.A.C.* 4A:2-2.10(d)4, *et seq.*

Initially, there is no dispute in the record as to the calculations for what the appellant would have earned (a total of \$37,074.86). However, the appointing authority challenges the appellant's mitigation efforts. In this matter, the appellant has presented an affidavit and notarized statements detailing his and other individuals' attempts to secure him employment, which included reviewing classified advertisements in the *Star Ledger*, reviewing on-line job listings, applying for positions with new companies and companies he had previously been employed with, networking with other people and documentation concerning the creation of his limited liability corporation. Based on this information, the appellant has demonstrated that he made reasonable efforts to find suitable employment. Thus, the Commission does not find that the appointing authority has supported its burden of proof and established that appellant failed to make "reasonable efforts" to find suitable employment. In this regard, the appointing authority argues that the appellant's efforts, as detailed, and which included networking, did not rise to the

level of reasonable efforts. However, *N.J.A.C.* 4A:2-2.10(d)4(ii) specifies that "reasonable efforts" may include, but not be limited to, reviewing classified advertisements in newspapers or trade publications; reviewing Internet or on-line job listings or services; applying for suitable positions; attending job fairs; visiting employment agencies; *networking with other people*; and distributing resumes (emphasis added). Therefore, it is clear from a plain reading of *N.J.A.C.* 4A:2-2.10(d)4(ii), that networking may be considered an example of a reasonable effort. Additionally, *N.J.A.C.* 4A:2-2.10(d)4iv states that the determination as to whether the employee has made reasonable efforts to find suitable employment shall be based on the *totality of the circumstances*, including, but not limited to, the nature of the disciplinary action taken against the employee and the nature of the employee's public employment. In this regard, the appellant indicates, and the appointing authority does not dispute, that the pending criminal charges and the lack of a SORA certification impeded his attempts to secure alternate employment during his suspension. Given the indictment and the allegations against the appellant, it is highly doubtful that he could have successfully gained employment in a security position. Moreover, the appointing authority has failed to present any evidence of other positions that were available at the time the appellant was searching for employment, that he was qualified for. Accordingly, the appellant has established his entitlement to a back pay award in the gross amount of \$37,074.86.

### ORDER

Therefore, it is ordered that the appointing authority pay Edward Hall the gross amount of \$37,074.86 for back pay within 30 days of the issuance of this decision.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 19TH DAY OF AUGUST, 2015



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Chairperson

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and  
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