



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

In the Matter of Lance Manocchio, Department of Labor and Workforce Development

Administrative Appeal

CSC Docket No. 2016-1065

ISSUED: NOV 15 2016 (SLD)

Lance Manocchio, a Principal Examiner, Unemployment Tax, with the Department of Labor and Workforce Development, appeals the adjustment of his leave allowances due to an unpaid leave of absence.

By way of background, in 2015, the appellant was entitled to 175 hours (7 hours multiplied by 25 days) of vacation leave and 105 hours (7 hours multiplied by 15 days) of sick leave, per year, which was credited on January 1, 2015. On May 18, 2015, the appellant went on an unpaid leave of absence, and he returned to work on June 14, 2015. As a result of his unpaid leave of absence, his leave allowances were reduced by 29.10 hours (4.16 days) of vacation leave and 17.5 hours (2.5 days) of sick leave. See N.J.A.C. 4A:6-1.5(b). In this regard it was determined that since the appellant was not on the payroll from the 9th through the 23rd day of the month, he was not entitled to any leave time for the month of May and June. See N.J.A.C. 4A:6-1.5(b).

On appeal, the appellant argues that the proration of his leave time was incorrectly calculated. In this regard, he asserts that the determination to deduct two months of earned benefit time is inconsistent with the rule for prorating leave time when on an intermittent leave pursuant to N.J.A.C. 4A:6-1.5(c), which provides that after 11 days of intermittent leave, an employee's vacation and sick leave credit is to be reduced by one-half of one month's entitlement. Therefore, the appellant maintains that since he was on an unpaid leave of absence from May 18, 2015 through June 14, 2015, for a total of 28 calendar days or 20 working days, his

leave entitlements should have only been reduced by, at most, one month's entitlement.

In response, the appointing authority reiterates that the appellant's leave allowances were correctly calculated pursuant to *N.J.A.C.* 4A:6-1.5(b).

CONCLUSION

N.J.A.C. 4A:6-1.5(b) provides that:

An employee who leaves State service or goes on a leave of absence without pay before the end of the calendar year shall have his or her leave prorated based on time earned, except that the leave of an employee on a voluntary furlough or furlough extension leave shall not be affected. An employee who is on the payroll for greater than 23 days shall earn a full month's allowance, and earn one-half month's allowance if he or she is on the payroll from the 9th through the 23rd day of the month.

Initially, it is noted that the appointing authority correctly calculated the proration of the appellant's leave time for May and June 2015. In this regard, the calculation of leave time while on an unpaid leave of absence is specifically set forth in *N.J.A.C.* 4A:6-1.5. Moreover, in *In the Matter of Janet McSloy* (CSC, decided May 26, 2010), the Civil Service Commission (Commission) noted that *N.J.A.C.* 4A:1-1.3 defined "days" as "calendar days unless otherwise specified." Therefore, the Commission found that the "9th" and "23rd" in the rule referred to actual dates of the month and not number of days worked and since McSloy was not in pay status from the 9th through the 23rd, a full month's leave allowance was properly deducted. The Commission also noted that even if the rule referred to the number of days worked, McSloy had only been in pay status for eight days during the month in question. Therefore, as the appellant was on an unpaid leave of absence from February 2 through March 15, 2015, she was not entitled to any leave time for the months of February and March as she was not in pay status from the 9th through the 23rd of either month.

However, in *In the Matter of David Berkley*, (CSC, decided May 1, 2013), the Commission relaxed the provisions of *N.J.A.C.* 4A:6-1.5(b), to provide an employee with a half month's allowance even though he was not in pay status from the 9th through the 23rd days of the month, as he was in pay status for 18 calendar days, which was more calendar days than the time period encompassed by the 9th through the 23rd days of the month. *See, also, In the Matter of Mildred Davis* (CSC, decided October 7, 2015). In the instant matter, the appellant similarly was in pay status for 17 calendar days in May and 16 calendar days in June, which are more calendar days than the 15 day time period encompassed by the 9th through the

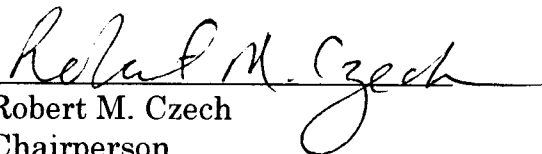
23rd days of that month. It seems patently unfair to penalize this employee by not providing him with any prorated leave time for May and June, despite working more days than are encompassed within the required dates, simply because the dates he worked were not within those required dates. *N.J.A.C. 4A:1-1.2(c)* provides that the Commission may relax a rule for good cause in a particular circumstance in order to effectuate the purposes of Title 11A, New Jersey Statutes. Under the particular circumstances presented, the Commission finds that good cause has been presented to relax the provisions of *N.J.A.C. 4A:6-1.5(b)* and credit the appellant with one-half month's allowance of sick and vacation leave time for both May and June 2015, that is, a total of one month's additional sick and vacation leave.

ORDER

Therefore, it is ordered that this appeal be granted in part.

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 10TH DAY OF NOVEMBER, 2016


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