



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Joseph Brennan,
Division of State Police

CSC Docket No. 2017-2030

Administrative Appeal

ISSUED: April 9, 2018 (SLD)

Joseph Brennan, a Lieutenant, Division of State Police, Department of Law and Public Safety, requests a waiver of repayment of a salary overpayment, pursuant to *N.J.S.A. 11A:3-7*, which provides that when an employee has erroneously received a salary overpayment, the Civil Service Commission (Commission) may waive repayment based on a review of the case.

By way of background, agency records indicate that Brennan was appointed to the unclassified title of Sergeant, effective September 27, 2008 at a salary of \$91,361.81. Thereafter, Brennan was appointed to the unclassified title of Sergeant First Class,¹ effective November 17, 2012 at a salary of \$105,743.22.² Brennan was appointed to the title of Lieutenant, effective September 16, 2017 at a salary of \$124,452.47.

In this matter, the appointing authority indicates that pursuant to a settlement agreement, Brennan was to be returned to the title of Sergeant, effective July 13, 2013 at a salary of \$98,386.06. As a result, it notes that Brennan was relieved of the duties of an “Acting” Sergeant First Class. However, it maintains that due to an administrative error on its part, Brennan continued to be compensated as an “Acting” Sergeant First Class from July 13, 2013 to May 28,

¹ Although the parties classify this appointment as “Acting” there is no such designation as an “acting” appointment under Civil Service rules. *See N.J.S.A. 11A:4-13 and N.J.A.C. 4A:4-1 et seq.*

² Agency records indicate that Brennan’s salary as a Sergeant First Class was effective: November 17, 2012, \$105,743.22; July 13, 2013, \$106,800.67; July 12, 2014, \$107,858.12; November 15, 2014, \$112,632.02; July 11, 2015, \$113,736.26; and July 9, 2016 \$114,840.50.

2016³ and was thus overpaid in the amount of \$34,373.13. The appointing authority maintains that due to the “nature of the error,” it had not initiated steps to recoup the salary overpayment. The appointing authority contends that it “accepts responsibility” for the “administrative error” and supports Brennan’s position that “any attempt to recoup payment would prove unjust and may cause unintended personal hardship.”

Brennan requests a waiver of the salary overpayment on the basis that he was “completely unaware” that he was overpaid, and that the overpayment was the result of an administrative error. Brennan argues that he has been, and continues to be, a dedicated employee. He maintains that when he first learned of the overpayment, his instinct was to repay the amount immediately. However, he contends that if he is forced to repay any amount, it will have a catastrophic effect on his family. Additionally, Brennan asserts that the salary error has created an “additional significant debt situation.” He notes that he did not enter into this situation willingly and it is causing his wife severe emotional stress and anxiety attempting to formulate a repayment plan that would allow them to keep their home. In particular, Brennan notes that his wife is a stay at home mother to their two children, and that they are just getting by with \$26 a month left over after all bills. He also contends that he was recently notified that his pension loan payments were incorrectly calculated, and thus, his monthly payment was increased by \$200. Brennan asserts that his children have several activities which have large expenses and they have “genetic orthodontic abnormalities” which require expensive dental procedures costing between \$3,000 and \$8,000 per child. For example, Irish dancing lessons for one of his children can be as much as \$300 a month and the required outfit costs over \$1,000, which will be needed shortly. Brennan asserts that his Family’s current monthly budget is as follows: \$4,396 take home pay, minus \$2,060 for housing, \$560 car insurance, \$250 for Electric and Water, \$200 medical and dental expenses and \$1,300 for debt payments (currently at \$16,000). Brennan notes that groceries, dining, travel and entertainment expenses are approximately \$1,400 and are placed on a credit card. Brennan explains that their \$500 month debt payment was offset by the overtime payments he received. However, since the nature of his assignment has changed, his overtime has decreased considerably and his overtime will eventually be eliminated. Consequently, he argues that any additional deductions from his take home pay would prevent his family from meeting their basic necessities.

Brennan further argues that the appointing authority has indicated that it was solely responsible for the error that resulted in the salary overpayment. Brennan also asserts that he was completely unaware of the salary overpayment. In this regard, he states that as his rank and responsibility increased over the

³ Brennan submits a State Police Superintendent’s Order dated May 18, 2016, which indicates that he was to be “transferred and promoted” effective May 28, 2016 to the title of “Detective” Sergeant First Class

years, his take-home pay decreased as evidenced by a review of his Earnings History on the My State New Jersey website. Brennan also contends that after the State discontinued issuing paper pay stubs and went to direct deposit, with a “virtual” pay stub available on the My State New Jersey Website, it became difficult to review his virtual stub due to the “pace of their lives.” Specifically, Brennan maintains that to view his pay stub “required a series of web portal log-in and link selections before one can analyze the complex system [sic] seemingly inconsistent deductions from month-to-month.” Therefore, he asserts that his wife, whose primary responsibility was their children, for budgeting purposes relied on the amount deposited into their back account.

Additionally, Brennan claims that since his take-home pay was “significantly reduced” upon his return to the title of Sergeant, he had no reason to believe that he was being overpaid. Brennan argues that he had been at the same pay scale since the end of 2012 and his net take home pay decreased at intervals during the three years of overpayment and continues to decrease. He claims that these salary reductions matched his reduction in title.⁴ In support, he submits portions of his Earnings History for 2012, 2013 and 2016. For example, the Earnings History indicates that for pay period 20 in 2012 and 2013, his Earnings History indicated the following: for the check dated September 28, 2012, his gross pay was \$4,309.04 and his net pay was \$2,587.94; and for the check dated September 27, 2013, his gross pay was \$4,574.41 and his net pay was \$2,272.53. For pay period 22 in 2016, Brennan’s check dated November 4, 2016, indicated gross pay of \$4,929.51 and net pay of \$2,198.60. He also notes that the sporadic checks he received for overtime confused matters. Brennan asserts that after his May 2016 appointment as a Sergeant First Class, his take home pay was less than he had previously made as a Sergeant, thereby confusing the situation.

CONCLUSION

N.J.A.C. 4A:3-4.21 Salary overpayments: State service, provides as follows:

- (a) The [Commission] may waive, in whole or in part, the repayment of an erroneous salary overpayment, or may adjust the repayment schedule based on consideration of the following factors:
 1. The circumstances and amount of the overpayment were such that an employee could reasonably have been unaware of the error;

⁴ He also claimed that at the end of 2012, his title was “Acting” Sergeant First Class, yet his net pay was only \$2,587.82, which was less than the “base pay net [of] \$2,587.82” for a Sergeant. The Earnings History indicates his gross pay was \$4,309.04.

2. The overpayment resulted from a specific administrative error, and was not due to mere delay in processing a change in pay status;
3. The terms of the repayment schedule would result in economic hardship to the employee.

It is well settled that **all** of the factors outlined in *N.J.A.C. 4A:3-4.21* must be satisfied to successfully obtain a waiver of the repayment obligation. Thus, in *In the Matter of Thomas Micai v. Commissioner of Department of Personnel, State of New Jersey*, Docket No. A-5053-91T5 (App. Div., July 15, 1993), the Superior Court of New Jersey, Appellate Division, affirmed the Commissioner of Personnel's decision to deny a request for waiver of repayment of salary overpayment, finding that, although the appellant had established that the overpayment was the result of an administrative error, he failed to show that enforcement of the repayment would create economic hardship.

Brennan requests a waiver of the salary overpayment since he claims that the circumstances of the overpayment were such that he was unaware of the overpayment. Moreover, he and the appointing authority note that the overpayment was the result of an, as yet unidentified, administrative error. Although the record clearly shows that an administrative error resulted in the salary overpayments, Brennan cannot benefit from the error, as he was not entitled to the higher compensation, unless he can satisfy the other conditions presented above. *See e.g., Cipriano v. Department of Civil Service*, 151 *N.J. Super.* 86 (App. Div. 1977); *O'Malley v. Department of Energy*, 109 *N.J.* 309 (1987); *HIP of New Jersey v. New Jersey Department of Banking and Insurance*, 309 *N.J. Super.* 538 (App. Div. 1998) (No vested or other rights are accorded by an administrative error).

In this regard, Brennan claims that he was unaware of the overpayment since he must access a "confusing" web application to review a "virtual stub" instead of a paper paycheck stub and/or his Earnings History. Instead, he merely relied on the amount deposited into his checking account to determine that he was receiving the correct salary. However, the Commission notes that the "virtual" pay stub provides the same information as the prior paper stubs and in the same format. Additionally, the Commission notes that on appeal, Brennan continually points to his Earnings History to demonstrate that his take home pay had decreased during the salary overpayment period. However, he fails to explain how he did not realize that his gross salary amount during all relevant periods continued to increase. Moreover, although Brennan asserts that he has had ongoing difficulty with understanding the information provided by the web application, he does not indicate that he attempted to seek clarity on the matter. Finally, the web-based system, contrary to Brennan's assertions, is not difficult to navigate or so complex that any State employee would have significant difficulty understanding it. Thus,

the Commission finds Brennan's indifference in ensuring he was paid properly in this matter was *not* reasonable.

Further, although Brennan and the appointing authority assert that any repayment amount would result in economic hardship to him. However, Brennan was promoted to the unclassified title of Lieutenant, effective September 16, 2017, with the salary of \$124,452.47. Additionally, the appointing authority has failed to set any repayment schedule. Consequently, it cannot be demonstrated that, given Brennan's level of current compensation, the amount he would be required to pay per bi-weekly pay period would create a hardship to him. Therefore, based on the foregoing, the appointing authority and Brennan are encouraged to set a reasonable repayment schedule for him to repay the \$34,373.13.

ORDER

Therefore, it is ordered that the request for a waiver of the repayment by Joseph Brennan be denied.

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 DAY OF , 2018



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