



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of James Lemieux,
Trenton Psychiatric Hospital

CSC Docket No. 2018-977

Request for Enforcement

ISSUED: April 9, 2018 (SLD)

James Lemieux, represented by Mario A. Iavicoli, Esq., petitions the Civil Service Commission (Commission) for enforcement of the attached decision rendered on June 5, 2013, wherein the Commission acknowledged a settlement agreement.

By way of background, Lemieux, a former Business Manager 1,¹ received a Final Notice of Disciplinary Action (FNDA), resigning him not in good standing, on charges. Lemieux appealed his resignation not in good standing and the matter was transmitted to the Office of Administrative Law as a contested case. Thereafter, the parties entered into a settlement agreement, which provided, in pertinent part that Lemieux was to resign in good standing, effective April 30, 2013; and he was entitled to 268.09 days of back pay, beginning on May 13, 2011 and that from the completion of the back pay to his resignation in good standing, he was to be recorded as on a "medical leave without pay" for one year, and the remainder of the time on a leave of absence without pay. The settlement also provided:

E. Appellant waives all other claims against Respondent Appointing Authority with regard to this matter, including any award of back pay, counsel fees or other monetary relief, except as may otherwise be provided herein.

¹ Agency records indicate that Lemieux received a regular appointment to the title of Business Manager 1, from the PS9991K eligible list for that title, effective June 19, 2000.

In his petition, Lemieux asserts that he is entitled to additional monies. Specifically, he contends that he was improperly denied his management raises from 2010 through May 1, 2013, thereby resulting in a \$34,010.23 shortfall in his back pay award. Specifically, he asserts that during his “absence”² from work, the majority of management employees received a five percent raise, except for two who received six percent. Therefore, he maintains that he should have also received a five percent increase upon his return plus a “compression adjustment” in the amount of \$2,000, which would have increased his salary to \$93,999.05. However, upon his return, his salary was only \$87,618.14, thus resulting in him receiving \$6,380.91 per year less than he was entitled to receive.

Additionally, Lemieux asserts that the Supplemental Compensation on Retirement (SCOR) payment he received was incorrect. In this regard he notes that he received an “approximately \$3,500” SCOR payment. However, he argues that he should have received the maximum allowed, \$15,000. Lemieux maintains that he “believes he had 85 days” of sick leave when he retired.³ Therefore, using the salary he should have received (\$93,999.05), he would be entitled to \$15,000. Accordingly, he requests that \$11,500, the difference between what he received and what he should have received, be remitted immediately.

Moreover, Lemieux argues that he is also entitled to the \$17,940 that the appointing authority reimbursed the Department of Labor and Workforce Development for unemployment benefits he received. Specifically, he argues that as the settlement agreement clearly indicates that he was not fully compensated for his lost earnings, the reimbursement amount was wrongfully withheld.

Finally, Lemieux argues that he is also entitled to \$38,273.03 for reimbursement for medical bills and insurance premiums. It is noted that Lemieux provides no other information with regard to this claim.

Despite an opportunity to do so, the appointing authority has not submitted a response.

² Agency records indicate that Lemieux was removed from employment, effective December 14, 2006. He appealed his removal, and pursuant to a settlement agreement, was reinstated. In *In the Matter of James Lemieux* (CSC, decided January 27, 2010), the Commission acknowledged the settlement, which in pertinent part, reinstated him and provided that he was owed \$200,000 for back pay. The settlement also provided that “there will be no mitigation relative to the aforementioned back pay award, as parties agreed the amount of the award represents fully mitigated back pay.” It further provided that the appellant was responsible for his pension contributions and other customary payroll deductions.

³ Agency records indicate that Lemieux’s net SCOR payment was \$4,489.99, or 26.75 days multiplied by \$335.70 daily per diem rate (\$87,618.14 divided by 261 work days) divided by two. See *N.J.A.C. 4A:6-3.3(a)*.

CONCLUSION

The Commission acknowledges settlement agreements to allow for the resolution of matters properly before it. The Commission also reviews settlement agreements to ensure compliance with Civil Service law and rules. If a term of the agreement is later violated by either party, the Commission has jurisdiction to enforce the term. *See e.g., In the Matter of Donald Hickerson* (MSB, decided September 10, 2002). *See also, In the Matter of Police Officer and Superior Officer, Essex County* (1991 Layoffs), Docket No. A-5755-94T5 (App. Div. April 22, 1996).

In the instant matter, Lemieux argues that upon his reinstatement in 2010, pursuant to an earlier settlement agreement, his salary was improperly calculated. Specifically, he maintains that he should have received a five percent increase and a \$2,000 compression remedy. Initially, the Commission notes that it appears that the appellant is referring to the Management Salary Program, which provided for both performance based management salary increases, up to a maximum of six percent, and compression remedies, up to a maximum of \$2,000. *N.J.A.C. 4A:2-1.1(b)* provides that an appeal to the Commission must be filed within 20 days after either an appellant has notice or should reasonably have known of the decision, situation or action being appealed. Therefore, any claim concerning Lemieux's salary calculation upon his return to work in 2010 is untimely. Moreover, even if his claim was timely filed, under the Management Salary Program, the percentage of an increase to an individual's salary was at the discretion of the appointing authority. Therefore, the Commission does not have the jurisdiction to review this claim. *See In the Matter of Keith D. Arch*, Docket No. A-5289-04T3 (App. Div. July 18, 2006) (No basis to reconstruct appellant's salary record from 1995 through 2004 for a retroactive salary adjustment to correct a purported administrative error in calculating his salary since there was only speculation and no actual way of knowing, in fact, what increases he would have received in any related management salary or compression relief programs during the interval of time in question and since all such adjustments are discretionary in nature).

With regard to Lemieux's assertion that his SCOR payment was calculated incorrectly, he claims that he "believed" that at the time of his retirement he had 85 days of sick leave. However, other than his mere assertion that he was entitled to additional days, he has presented no evidence that his SCOR payment was incorrectly calculated. In this regard, *N.J.A.C. 4A:6-3.3(a)* provides that, upon retirement, an employee is entitled to SCOR to be "computed at the rate of one-half the employee's daily rate of pay for each day of earned and unused accumulated sick leave at the effective date of retirement." Agency records indicate that Lemieux's net score payment was \$4,489.99, or 26.75 days multiplied by \$335.70 daily per diem rate (\$87,618.14 divided by 261 work days) divided by two.

Furthermore, Lemieux' asserts that the appointing authority should not have reimbursed the Department of Labor and Workforce Development for the \$17,940 in unemployment benefits he received since the settlement agreement made it clear that he was not fully compensated for his lost earnings. However, the Commission notes that it does not have jurisdiction in this matter to determine the amount of back pay owed to him as that issue was based on the settlement agreement. Regardless, if the Commission did have the jurisdiction to review the amount received by Lemieux, *N.J.A.C. 4A:2-2.10(d)3* states that an award of back pay shall be reduced by the amount of money that was actually earned during the period of separation, including any unemployment insurance benefits received. Consequently, the \$17,940 in unemployment benefits would be required to be deducted.

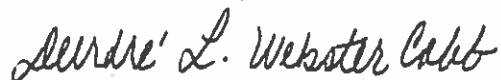
Finally, Lemieux contends that he is entitled to \$38,273.03 for reimbursement for medical bills and insurance premiums. However, the settlement does not specifically provide for any payment of medical bills and insurance premiums. Moreover, the settlement specifically provides that Lemieux waives all claims to "any award of back pay, counsel fees or other monetary relief," except as provided be the settlement. Furthermore, Lemieux fails to provide any documentation relative to this issue. Accordingly, Lemieux has not met his burden of proof in this matter.

ORDER

Therefore, it is ordered that the petition 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



Deirdre L. Webster Cobb
Acting Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: James Lemieux
Mario Iavicoli, Esq.
Robin Murr
Peter H. Jenkins, DAG
Kelly Glenn
Records Unit



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NOS. CSV 11740-11
AND CSV 01153-12 (CONSOLIDATED)
AGENCY DKT. NOS. 2012-803 AND
2012-2159

**IN THE MATTER OF JAMES LEMIEUX,
AND DEPARTMENT OF HUMAN
SERVICES, TRENTON PSYCHIATRIC
HOSPITAL.**

Mario A. Iavicoli, Esq., for petitioner

**Peter H. Jenkins, Deputy Attorney General, for respondent (Jeffrey Chiesa,
Attorney General of New Jersey)**

Record Closed: April 18, 2013

Decided: April 18, 2013

BEFORE SUSAN M. SCAROLA, ALJ:

This matter concerns James Lemieux petitioner resignation not in good standing on May 13, 2011. Upon receipt of the appellant's hearing request, the matter was transmitted to the Office of Administrative Law for determination as a contested case on September 28, 2011, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14-1 to -13.

The parties agreed to a settlement of all issues in dispute and have prepared a settlement agreement, which is attached and fully incorporated herein.

I have reviewed the record and terms of settlement and I **FIND**:

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures.
2. The settlement fully disposes of all issues in controversy.

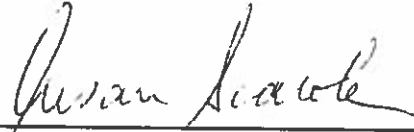
I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law. It is **ORDERED** that the parties comply with the settlement terms and that these proceedings be concluded.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

April 18, 2013

DATE



SUSAN M. SCAROLA, ALJ

Date Received at Agency:

Date Mailed to Parties:

4/22/13

mel

OAL DKT. NO. CSV 11740-2011; CSV 01153-2012

OAL DKT. NO. CSV 11740-2011;
CSV 01153-2012
AGENCY DKT. NO. 2012-803;
2012-2159
SETTLEMENT AGREEMENT

**IN THE MATTER OF
JAMES LEMIEUX
AND
TRENTON PSYCHIATRIC HOSPITAL,
DEPARTMENT OF HUMAN SERVICES**

The parties in this appeal have voluntarily resolved all disputed matters and enter into the following settlement, which fully disposes of all issues in controversy between them.

A. The Final Notice of Disciplinary Action dated August 23, 2011 contained the following charges and proposed discipline:

- | <u>Charge</u> | <u>Discipline</u> | <u>Dates Effective</u> |
|---|-------------------|------------------------|
| 1. <u>N.J.A.C.</u> 4A:2-6.2(b) Any employee who is absent from duty for five or more consecutive business days without the approval of his or her supervisor shall be considered to have abandoned his or her position and shall be recorded as a resignation not in good standing (1 count) – Resignation not in good standing effective May 13, 2011. | | |
| 2. <u>N.J.A.C.</u> 4A:2-2.3(a)6 Conduct unbecoming a public employee (1 count) – Resignation not in good standing effective May 13, 2011. | | |
| 3. <u>N.J.A.C.</u> 4A:2-2.3(a)11 Other sufficient cause (1 count) – Resignation not in good standing effective May 13, 2011. | | |

OAL DKT. NO. CSV 11740-2011; CSV 01153-2012

The Final Notice of Disciplinary Action dated January 19, 2012 contained the following charges and proposed discipline:

<u>Charge</u>	<u>Discipline</u>	<u>Dates Effective</u>
1. <u>N.J.A.C. 4A:2-2.3(a)6</u> Conduct unbecoming a public employee (1 count) – 120 day suspension.		
2. <u>N.J.A.C. 4A:2-2.3(a)11</u> Other sufficient cause (1 count) – 120 day suspension.		
3. Administrative Order 4:08 CB Falsification: intentional misstatement of material fact in connection with work or in any record or report (1 count) – 120 day suspension.		

B. The Appellant James Lemieux withdraws his appeal and request for a hearing, and the Respondent Appointing Authority Department of Human Services agrees that the following results will occur with regard to each charge:

<u>Charge</u>	<u>Disposition</u>
All charges in "A" withdrawn.	

C. The parties have agreed to the following:

1. The total number of days of suspended pay, the Respondent has imposed on Appellant to date is as follows: N/A.
2. The total number of days of back pay, if any, to be paid by the Appointing Authority to the Appellant is as follows: 268.09 days beginning May 13, 2011.
3. Any other days from the time of last suspension day until reinstatement shall be treated as follows: N/A.
4. Appellant will resign with a Resignation in Good Standing effective April 30, 2013. Appellant agrees not to seek or accept future employment with the Department of Human Services or any of its subsidiaries.
5. Any days from the completion of back pay to the effective date of resignation shall be treated as follows: one year shall be recorded as approved medical leave without pay; any other days shall be recorded as approved leave of absence without pay.

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D. The Department of Human Services (Respondent) shall amend Appellant's personnel records to conform to the terms of the settlement. All internal records of the Department of Human Services will be kept intact. Nothing herein shall preclude the Department from releasing information on this matter to anyone who has a release executed by appellant or as consistent with the law. Any information regarding the underlying charges will be provided to the Public Employees Retirement System pursuant to N.J.S.A. 43:1-3.3 as amended effective April 14, 2007.

E. Appellant waives all other claims against Respondent Appointing Authority with regard to this matter, including any award of back pay, counsel fees or other monetary relief, except as may otherwise be provided herein.

F. Except for the assessment of James Lemieux's disciplinary record in any subsequent personnel disciplinary hearing, nothing in this agreement shall be deemed to be an admission of liability on behalf of either party. This agreement shall not constitute a precedent in matters involving other employees.

G. Appellant waives all claims, suits or actions, whether known, unknown, vested or contingent, civil, criminal or administrative, in law or equity against the State of New Jersey, the New Jersey Department of Human Services, their employees, agents, or assigns, including but not limited to those which have been or could have been made or prosecuted on account of any conduct of any party occurring at any time with respect to the events, information or disputes giving rise to this action up to the date of this agreement, including, but not limited to, all claims under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans with Disabilities Act, the Family Leave Act, the Family and Medical Leave Act, the New Jersey Law Against Discrimination, the Equal Pay Act, the Conscientious Employee Protection Act, the Age Discrimination in Employment Act, Title 11A - the Civil Service Act, the Older Workers Benefits Protection Act, the Occupational Safety and Health Act, the Public Employee Occupational Safety and Health Act, the New Jersey Smoking Act, New Jersey wages and hours law, public works statutes, unemployment compensation laws, disability benefits laws, the United States Constitution, the New Jersey Constitution, any workers compensation or common law claims and any contract express or implied. This waiver includes all claims involving any continuing effects of actions or practices which arose

OAL DKT. NO. CSV 11740-2011; CSV 01153-2012

prior to the date of this Settlement Agreement and bars the use in any way of any past action or practice in any subsequent claims, except pending workers compensation claims.

H. The parties agree that if any portion of this Settlement Agreement is deemed unenforceable, the remainder of this Settlement Agreement shall be fully enforceable. Any decision issued by the Division of Pensions regarding Appellant's pension status shall not alter Appellant's effective date of resignation.

I. The parties waive the right to file exceptions and cross exceptions with respect to this matter.

J. This agreement will become effective only if approved by the CIVIL SERVICE COMMISSION. Any disapproval by the CIVIL SERVICE COMMISSION shall not interfere with the rights of either party to pursue the matter further.

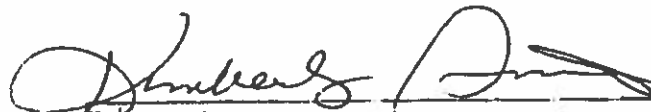
4/7/13
DATE


James Lemieux, Appellant

4/15/13
DATE


ON BEHALF OF Appellant

4/18/13
DATE


Respondent

4/18/13
DATE


ON BEHALF OF Respondent

OAL DKT. NO. CSV 11740-2011; CSV 01153-2012

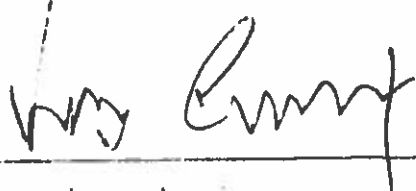
CERTIFICATION

I, James Lemieux, being the moving party in this matter, hereby certify that I have reviewed this Settlement Agreement and fully understand its meaning and terms. I acknowledge my understanding and verify my acceptance of the terms of this Settlement Agreement. I acknowledge that my representative questioned my understanding, verified my acceptance of the terms of this Settlement Agreement, and answered all my questions regarding this settlement to my satisfaction. I am satisfied with my representation and I enter into this Settlement Agreement voluntarily.

I also understand that if this Settlement Agreement is approved by the **CIVIL SERVICE COMMISSION**, my claim against the Respondent will terminate

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

4/7/13
DATE


James Lemieux