



**STATE OF NEW JERSEY**

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

In the Matter of Sean McManus,  
Department of Environmental  
Protection

Request for Reconsideration

CSC Docket No. 2020-2671

**ISSUED: NOVEMBER 6, 2020 (HS)**

Sean McManus, a Conservation Officer 3 with the Department of Environmental Protection (DEP), represented by David Beckett, Esq., requests reconsideration of the final decision rendered on April 15, 2020, which upheld the denial of his grievance concerning the rate of cash overtime compensation for emergency-related work. A copy of that decision is attached hereto and incorporated herein.

As background, DEP, on or about May 23, 2019, declared an exceptional emergency for the period June 1, 2019 through August 31, 2019 for the provision of law enforcement support by employees serving in the titles of Conservation Officer 2 (salary range K21) and Conservation Officer 3 (salary range FA19). These are non-exempt, non-limited titles (NE), meaning that they have irregular or variable work hours and are subject to the provisions of the Fair Labor Standards Act. *See N.J.A.C. 4A:3-5.2.* The appellant was one of several employees approved for emergency-related work. Pursuant to *N.J.A.C. 4A:3-5.7(d)*, the employees were deemed to have a 40-hour workweek for purposes of determining the rate of cash overtime compensation for the emergency-related work. The appellant filed a grievance, claiming that the determination of the rate should have been based on a 35-hour workweek as that was his workweek. DEP maintained that it followed this agency's guidelines. Following a departmental grievance hearing, the Hearing Officer denied the grievance, finding that since DEP was only compelled to compensate NE employees for overtime after 40 hours had been worked, it was appropriate that the rate be based on a 40-hour workweek. The petitioner appealed to the Civil Service Commission (Commission), which upheld the denial of his grievance.

In his request for reconsideration, the petitioner argues that the prior decision is undermined by new evidence showing that the underpayment of overtime continued beyond August 31, 2019. Specifically, the petitioner notes that the overtime rate at which he is paid is based upon a 40-hour workweek even outside the circumstances of an emergency declaration. In the petitioner's view, the factual premise of an emergency declaration collapses because the new information shows that the underpayment is not due to an emergency-related work exemption but is the way DEP does business and denies overtime. The petitioner also argues that a clear material error has occurred. Specifically, the petitioner reiterates that the State is now a covered employer under the Wage and Hour statutes, *see N.J.S.A. 34:11-56a1(g)*, and highlights that *N.J.S.A. 34:11-56a4* regulates both minimum wage and overtime pay for employees as it states that "[a]n employer shall also pay each employee not less than 1 1/2 times such employee's regular hourly rate for each hour of working time in excess of 40 hours in any week."

DEP, though provided with the opportunity to do so, did not submit any additional information.

## CONCLUSION

*N.J.A.C. 4A:2-1.6(b)* sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding. A review of the record reveals that reconsideration is not justified.

The petitioner again draws attention to *N.J.S.A. 34:11-56a4*. However, any reference to overtime in that statute does not present a basis to reconsider the prior decision. In this regard, *N.J.S.A. 11A:6-24* provides:

State employees in the career, senior executive and unclassified services in titles or circumstances designated by the Civil Service Commission shall be eligible for overtime compensation and holiday pay. Overtime compensation and holiday pay shall be either cash compensation at a rate representing 1 1/2 times the employee's hourly rate of base salary or compensatory time off at a rate of 1 1/2 hours for each hour worked beyond the regular workweek, at the discretion of the department head, with the approval of the commission.

The commission shall adopt rules for the implementation of hours of work, overtime compensation and holiday pay programs, which shall include but need not be limited to application and eligibility procedures.

As noted in the prior decision, there is a distinction made in Civil Service rules between a 35-hour fixed workweek and a non-limited workweek. Job titles which meet all of the following criteria are assigned a fixed workweek of either 35 or 40 hours: (1) the work schedule is consistently regular, amenable to administrative control and determined by the direction of a supervisor rather than by the nature of the service and employees have minimal discretion over their work schedule; (2) the hours of work conform to a standard pattern of work time for the typical work location; (3) employees normally work under direct supervision within a formal work program in a State office, location or place of business with minimal field work without direct supervision; and (4) an appointing authority can certify with assurance when an employee performs work beyond the normal workweek. *N.J.A.C.* 4A:6-2.2(a). Non-limited titles are those titles having irregular or variable work hours, with NE titles being those non-limited titles that are subject to the provisions of the Fair Labor Standards Act. *N.J.A.C.* 4A:6-2.3(b).

Covered employees (35, 40, or NE titles) are compensated for overtime work either in cash payment or compensatory time off at the discretion of the department head with the approval of this agency for time worked in excess of 40 hours. *N.J.A.C.* 4A:3-5.5(b)1. Cash compensation for overtime work is at the rate of one and one-half times the regular rate. *N.J.A.C.* 4A:3-5.5(b)2. "Regular rate" means the hourly proration of the employee's annual base salary plus the fair market value of goods and facilities received as part of the wages. *N.J.A.C.* 4A:3-5.2. Employees in NE titles are deemed to have a 40-hour workweek for determining the hourly proration. *Id.* *N.J.A.C.* 4A:3-5.7(d)1i provides that when an agency head declares an exceptional emergency involving a critical service disruption that poses a danger to health or safety, the agency head may authorize cash overtime compensation for non-limited employees in titles with established salary ranges below range 32 performing emergency-related work. For these circumstances, employees in non-limited titles shall be deemed to have a 40-hour workweek.

The definition section of the job specification for Conservation Officer 3, the petitioner's title, states:

Under general supervision of a Conservation Officer 1, or other supervisory official, as a sworn law enforcement officer, in the Division of Fish, Game, and Wildlife, Department of Environmental Protection, enforces all of the laws of the State of New Jersey and Federal Government enacted for the protection and management of fish and wildlife resources and other related environmental enforcement activities to protect the natural resources and the health of the public

within the State in accordance with Titles 23, 39, 50, 58, 2C-Code of Criminal Justice and the Administrative Code *N.J.A.C. 7:25 et. seq.*, executes all processes issued for the violation of these laws, serves subpoenas issued for the examination, investigation or trial of all offenses against these laws, conducts environmental inspections and investigations and collects field information to determine compliance with the appropriate environmental laws and regulations; exercises all the powers and duties conferred by law while conducting regular duties; educates and informs the public regarding the rules, laws, procedures and management practices regarding the recreational and commercial uses of fish, game and wildlife to ensure the protection of the environment; provides security services for the waters, land, flora and fauna under the guidelines for Homeland Security; does related work.

The title of Conservation Officer 3 is designated NE, not 35-hour fixed. As Civil Service rules make clear, an NE workweek is not strictly equivalent to a 35-hour fixed workweek. For example, as noted in the prior decision, NE titles are compensated one salary range higher than 35-hour fixed workweek titles in recognition of the fact that non-limited titles do not have a fixed workweek. *See N.J.A.C. 4A:3-4.2(b)*. An employee in an NE title is deemed to have a 40-hour workweek for purposes of determining the cash compensation for overtime work. *N.J.A.C. 4A:3-5.5(b)2 and N.J.A.C. 4A:3-5.2*. An employee in a non-limited title with an established salary range below range 32 is also deemed to have a 40-hour workweek for purposes of determining the cash overtime compensation for emergency-related work. *N.J.A.C. 4A:3-5.7(d)1i*. As such, the petitioner was not undercompensated for overtime work performed during or after the exceptional emergency declaration. The Commission does not understand the Wage and Hour statutes cited by the petitioner as invalidating the framework concerning hours of work and overtime compensation under Civil Service law and rules or its application to the petitioner. Accordingly, the petitioner has not met the standard for reconsideration as he has not shown that a clear material error has occurred or presented new information that would change the outcome of this case.<sup>1</sup>

## ORDER

Therefore, it is ordered that this request for reconsideration be denied.

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

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<sup>1</sup> Nevertheless, the petitioner may seek a job reevaluation pursuant to *N.J.A.C. 4A:3-4.3* if he believes that the workweek designation for his title should be changed.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 4<sup>TH</sup> DAY OF NOVEMBER 2020

*Deirdre L. Webster Cobb*

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Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

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and  
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Attachment

- c. Sean McManus  
David Beckett, Esq.  
Robin Liebeskind  
Division of Agency Services  
Records Center



**STATE OF NEW JERSEY**

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

In the Matter of Sean McManus,  
Department of Environmental  
Protection

Grievance Appeal

CSC Docket No. 2020-835

**ISSUED:      APRIL 17, 2020      (HS)**

Sean McManus, a Conservation Officer 3 with the Department of Environmental Protection (DEP), represented by David Beckett, Esq., appeals the denial of his grievance concerning the rate of cash overtime compensation for emergency-related work.

By way of background, DEP, on or about May 23, 2019, declared an exceptional emergency for the period June 1, 2019 through August 31, 2019 for the provision of law enforcement support by employees serving in the titles of Conservation Officer 2 (salary range K21) and Conservation Officer 3 (salary range FA19).<sup>1</sup> These are non-exempt, non-limited titles (NE), meaning that they have irregular or variable work hours and are subject to the provisions of the Fair Labor Standards Act. *See N.J.A.C. 4A:3-5.2.* The appellant was one of several employees approved for emergency-related work. Pursuant to *N.J.A.C. 4A:3-5.7(d)*, the employees were deemed to have a 40-hour workweek for purposes of determining the rate of cash overtime compensation for the emergency-related work. The appellant filed a grievance, claiming that the determination of the rate should have been based on a 35-hour workweek as that was his workweek. DEP maintained that it followed this agency's guidelines. Following a departmental grievance hearing, the Hearing Officer denied the grievance, finding that since DEP was only compelled to compensate NE employees for overtime after 40 hours had been worked, it was appropriate that the rate be based on a 40-hour workweek.

<sup>1</sup> The appellant's salary has been \$90,390.09 (salary range FA19, step 10) since July 2018.

On appeal to the Civil Service Commission (Commission), the appellant contends that *N.J.A.C.* 4A:3-5.7(d) is void in light of P.L. 2019, c. 32, which increased the minimum wage and amended *N.J.S.A.* 34:11-56a1(g) to include the State as a covered employer under the Wage and Hour laws. The appellant maintains that the amendment requires all employers to pay overtime at a rate that is one and one-half times the employee's regular rate, which, he maintains, must be based upon a 35-hour workweek in this case. He requests that the Commission reverse the Hearing Officer's decision and revise its own regulations to conform to the applicable law.

In response, DEP notes that Conservation Officers are eligible for overtime at their "regular rate" after accruing 40 hours per week. In support, DEP points to *N.J.A.C.* 4A:3-5.2, which defines "[r]egular rate," in pertinent part, as "the hourly proration of the employee's annual base salary" and provides that "[e]mployees in covered non-limited titles (NE) shall be deemed to have a 40-hour workweek for determining the hourly proration." Thus, DEP maintains that it is following Civil Service regulations.

In reply, the appellant reiterates that the rate of cash overtime compensation should have been based upon a 35-hour workweek and notes that *N.J.S.A.* 34:11-56a4 requires that the payment of overtimes rates be based upon the regular hours worked each week.

## CONCLUSION

*N.J.A.C.* 4A:2-3.7(f)1 provides that in grievance matters, the employee shall have the burden of proof. *N.J.A.C.* 4A:2-3.7(b) provides that grievances may be appealed to the Commission. The regulation further provides:

1. The Commission shall review the appeal on a written record or such other proceeding as the Commission directs and render the final administrative decision.
2. Grievance appeals must present issues of general applicability in the interpretation of law, rule, or policy. If such issues or evidence are not fully presented, the appeal may be dismissed without further review of the merits of the appeal and the Commission's decision will be a final administrative decision.

This standard is in keeping with the established grievance and minor disciplinary procedure policy that such actions should terminate at the departmental level. Moreover, in considering grievance actions, the Commission generally defers to the judgment of the appointing authority as the responsibility for the development and implementation of performance standards, policies and procedures is entrusted by

statute to the appointing authority. Generally, the Commission will not disturb appointing authority determinations in grievance proceedings unless there is substantial credible evidence that such determinations were motivated by invidious discrimination considerations, such as age, race or gender bias, or were in conflict with Civil Service regulations.

*N.J.A.C.* 4A:3-5.7(d)1i provides that when an agency head declares an exceptional emergency involving a critical service disruption that poses a danger to health or safety, the agency head may authorize cash overtime compensation for non-limited employees in titles with established salary ranges below range 32 performing emergency-related work. For these circumstances, employees in non-limited titles shall be deemed to have a 40-hour workweek.

In this matter, the issue is actually not whether DEP followed Civil Service regulations, namely *N.J.A.C.* 4A:3-5.7(d)1i. It undoubtedly did. Rather, the issue is the appellant's claim that the regulation itself is void when set against certain statutory provisions outside the Civil Service Act, namely *N.J.S.A.* 34:11-56a1(g) and *N.J.S.A.* 34:11-56a4. The Commission does have the right and duty to interpret and apply statutes, including those outside the Civil Service Act, to resolve the dispute before it. *See Matter of Allen*, 262 *N.J. Super.* 438, 444 (App. Div. 1993); *In the Matter of Edison Cerezo, Police Officer, West New York*, Docket No. A-4533-02T3 (App. Div. October 15, 2004); *John Kowaluk v. Township of Middletown*, Docket No. A-4866-02T1 (App. Div., August 6, 2004); *In the Matter of Michael Giannetta* (MSB, decided May 23, 2000). *Compare, In the Matter of Sybil Finney, Judiciary, Vicinage 8, Middlesex County* (MSB, decided March 24, 2004) (It was determined that no jurisdiction existed to review a Judiciary employee's claim that the denial of a reasonable accommodation request violated the ADA, where the appeal was based *exclusively* upon an alleged ADA violation). However, it will only do so where such statutes implicate Civil Service law and regulations.

Upon review, the Commission here does not find the appellant's argument persuasive. While it is true that *N.J.S.A.* 34:11-56a1(g) defines "[e]mployer" to include the State, it must be noted that it is a definition relative to *minimum wages*. *N.J.S.A.* 34:11-56a4 similarly concerns the *minimum wage rate*. As the appellant clearly is not a minimum wage employee, his reliance on these statutory provisions is inapposite. Moreover, from a workweek perspective, titles designated as NE and titles designated as 35-hour fixed are not strictly equivalent, as, it appears, the appellant would have it. For example, NE titles are compensated one salary range higher than 35-hour fixed workweek titles in recognition of the fact that non-limited titles do not have a fixed workweek. *See N.J.A.C.* 4A:3-4.9(g). Thus, the appellant's apparent effort to equate a non-limited workweek designation with a fixed 35-hour workweek is not persuasive. Further, employees in NE titles are only eligible for cash overtime compensation for time worked in excess of 40 hours per week. Thus, it is appropriate that the rate of cash compensation for emergency-related work



performed by such employees on an overtime basis be based on a 40-hour workweek. The appellant has not cited to any specific prohibition on such practice. Accordingly, there is no basis to disturb the Hearing Officer's decision or find that the Commission's regulations are void.

**ORDER**

Therefore, it is ordered that this appeal 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 15<sup>TH</sup> DAY OF APRIL, 2020



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Chairperson  
Civil Service Commission

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