



**STATE OF NEW JERSEY**

In the Matter of Mark Smith,  
Department of the Health

CSC Docket No. 2023-1638

**FINAL ADMINISTRATIVE ACTION  
OF THE CHAIR/  
CHIEF EXECUTIVE OFFICER  
CIVIL SERVICE COMMISSION**

Request for Waiver of Repayment of  
Salary Overpayment

**ISSUED: July 10, 2023 (SLK)**

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The Department of Health (DOH), on behalf of its employee Mark Smith, 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, repayment may be waived based on a review of the case.

By way of background, Smith, a then Principal Clerk Typist (R12) submitted a classification appeal indicating that his position was more appropriately classified as a Secretarial Assistant 3, Non-Stenographic (A20). The Division of Agency Services (Agency Services) reviewed the written record, including noting that his supervisor, Program Manager or Division Director, and the Appointing Authority representative supported his request. In a May 12, 2022, letter, Agency Services determined that the appropriate classification of his position was Secretarial Assistant 3, Non-Stenographic (A20), effective January 29, 2022. Subsequently, Agency Services issued a January 27, 2023, corrected letter indicating that Smith's position should have been reclassified to Secretarial Assistant 1, Non-Stenographic (A15), effective January 29, 2022, and not Secretarial Assistant 3, Non-Stenographic (A20). It explained that the difference in the Secretarial Assistant title series is the reporting relationship and level of the supervisor. Therefore, since Smith was a Secretarial Assistant for a Program Manager, his position should be classified as a Secretarial Assistant 1. In the letter, Agency Services' indicated that the Secretarial Assistant, Non-Stenographic title series recently had been renumbered with titles designated with a "1" and have higher level titles ascend in order within the title series. Further,

the DOH's Secretarial Assistant Entitlement Plan had not been updated to reflect the recent renumbering that occurred for this title, which caused this administrative error.

In its request, the DOH asserts that the three criteria for a waiver of Smith's salary overpayment under *N.J.A.C. 4A:3-4.21* have been met.

Additionally, it is noted that on February 8, 2023, the DOH indicated that the amount of overpayment was \$4,765.30. However, due to administrative error, Smith's personnel record was not initially properly updated which caused him to continue to receive higher pay and the overpayment amount continued to grow. The Department of the Treasury has indicated that the appellant's salary has now been corrected, the amount of the overpayment is \$6,856.50, and the overpayment amount has stopped growing. This agency advised Smith and the DOH regarding the administrative error and his corrected salary and overpayment amount and gave them the opportunity to respond further based on the corrected information. The DOH responded by reiterating its belief that the criteria for a waiver for salary overpayment under *N.J.A.C. 4A:3-4.21* has been met.<sup>1</sup>

## CONCLUSION

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

- (a) The Civil Service 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;
  2. The overpayment resulted from a specific administrative error, and was not due to mere delay in processing a change in pay status;

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<sup>1</sup> It is noted that this agency advised Smith and the DOH in the acknowledgement for his appeal that if he is claiming economic hardship, he must submit specific evidence to substantiate the claim, such as an affidavit and/or relevant documentation regarding monthly income and expenses. Further, this agency advised in the acknowledgement letter that if a repayment plan had been implemented, that the parties were to submit the particulars of that plan, and if a repayment plan has not been established, that the DOH was requested to submit a proposed plan in reply to this appeal. However, although given this opportunity, Smith did not submit any evidence to substantiate his claim of economic hardship. Moreover, neither Smith nor the DOH indicated that a repayment plan had been implemented.

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.

In this matter, although the DOH argues that Smith should be held harmless from a salary overpayment action as the circumstances and amount of the overpayment were such that an employee could reasonably have been unaware of the error, positions in the Secretarial Assistant title series are classified based on the rank of the employee that the Secretarial Assistant supports. Smith knew that he was supporting a Program Manager and not one of the titles indicated in the job specification for the A20 level of pay. Employees are responsible for knowing the salaries of their positions. Therefore, Smith knew, or should have known, that he was being overpaid based on the rank of the employee he was supporting. Moreover, as Smith has not provided any evidence to support a claim of economic hardship, such as an affidavit and/or relevant documentation regarding monthly income and expenses, he also does not meet the third criteria. Accordingly, as both the first and third criteria have not been met under *N.J.A.C. 4A:3-4.21(a)*, the request is denied. However, the DOH is encouraged to set a reasonable repayment schedule to allow for the least economic impact on Smith.

### ORDER

Therefore, it is ordered that this request be denied.

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

DECISION RENDERED ON  
THE 3<sup>RD</sup> DAY OF JULY, 2023



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