



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Thomas M. Jardine  
and Karriem Beyah,  
Department of Corrections

CSC Docket Nos. 2014-1810 and  
2014-1811

Administrative Appeals

ISSUED: AUG 15 2014 (DASV)

Thomas M. Jardine and Karriem Beyah, Senior Correction Officers with the Department of Corrections (DOC), represented by Colin M. Lynch, Esq., appeal the determination of the appointing authority which denied them an increase in their vacation leave. Since these matters involve similar issues, they have been consolidated.

By way of background, personnel records indicate that Jardine was appointed as a Correction Officer Recruit, effective November 25, 2002, and was then promoted to Senior Correction Officer on November 29, 2003. Additionally, Jardine was on leave and received "Workers' Compensation With Pension" benefits from January 24, 2013 through April 28, 2013. Beyah was appointed as a Senior Correction Officer effective September 12, 1998.<sup>1</sup> Beyah was on leave and received "Workers' Compensation With Pension" benefits from April 3, 2012 through March 19, 2013.<sup>2</sup> Both Jardine and Beyah are full-time employees.

<sup>1</sup> Beyah had been employed as a County Correction Officer from July 25, 1994 through September 11 1998 with Mercer County and transferred to the DOC on September 12, 1998. It does not appear that there was an agreement that Beyah would waive his accumulated seniority from Mercer County upon transferring to the DOC. There is also no record of Beyah taking issue with earlier increases of vacation leave, such as the allotment from 12 to 15 days and 15 to 20 days.

<sup>2</sup> Beyah states that he was on leave between March 23, 2012 and April 19, 2013. However, as listed above, personnel records verify different dates for the Workers' Compensation benefits.

On appeal, the appellants indicate that they have been denied their "full vacation leave" by the appointing authority, which has deemed their "Workers' Compensation leave" as not being "continuous service" for purposes of vacation leave entitlement. Jardine and Beyah submit certifications, stating that they were injured at work on April 24, 2012 and March 23, 2012, respectively. They further state that they would have had an increase in their vacation leave allotment on January 1, 2014, but the appointing authority determined that "paid" Workers' Compensation leave constitutes an unpaid leave of absence. Specifically, Jardine asserts that he was eligible for an increase of vacation days from 15 to 20 days, and Beyah contends that he should have received an increase from 20 to 25 vacation days. However, they were informed that they lacked sufficient years of service. Moreover, the appellants submit that no Civil Service rule suggests that Workers' Compensation leave should be deducted from years of service for purposes of vacation leave accrual. They argue that it would not be reasonable to consider such leave for a work-related injury as "unpaid" since they receive pay in the form of benefits. The appellants state that "[t]he mere fact that the State is self-funded and the pay does not come directly from the DOC, does not transform an otherwise paid leave into an unpaid leave," notwithstanding that Workers' Compensation leave is not listed as one of the unpaid leaves eligible for continuous service under *N.J.A.C. 4A:6-1.2(c)2*.

Additionally, the appellants contend that Workers' Compensation leave is not specifically listed as a leave without pay under *N.J.A.C. 4A:6-1.10* (Leave without pay: State service). They also argue that they would have been eligible for Sick Leave Injury (SLI) benefits, but for the fact that the SLI program had been discontinued for correction officers in June 2012.<sup>3</sup> The appellants underscore that receipt of SLI benefits was considered a leave with pay and would not have been a break in service. They maintain that there is no statutory or regulatory support that the repeal of the SLI program was intended to negatively affect correction officers' receipt of vacation leave. They also contend that Workers' Compensation leave has not affected their seniority in terms of anniversary date for pay increases, layoffs, job bidding, and pension purposes. Likewise, it should not affect their vacation leave entitlement. Accordingly, the appellants request that the Civil Service Commission (Commission) declare that Workers' Compensation leave does not constitute a break in continuous service for vacation leave entitlement and their accrued vacation leave allotment be available to them retroactively to January 1, 2014.

---

<sup>3</sup> With certain exceptions, a State employee who was disabled due to a work-related injury or illness was granted a leave of absence with pay under the SLI program. However, in accordance with P.L. 2010, c. 3, the SLI program expired for State employees pursuant to a specified schedule. See *N.J.A.C. 4A:6-1.6(a)*.

In response, the appointing authority maintains that the appellants' Workers' Compensation leave constitutes an unpaid leave of absence, and thus, it does not provide them with continuous service for vacation leave accrual. In that regard, it indicates that, according to *N.J.A.C. 4A:6-1.5(b)*, 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 pro-rated based on time earned, except that the leave of an employee on a voluntary furlough or furlough extension leave shall not be affected. Thus, since the appellants were on Workers' Compensation leave for a period of time in 2013, they did not earn time towards their vacation leave entitlement. The appointing authority indicates that the appellants were considered in "active service" for pension purposes and had their retirement deductions paid into their pension plan. However, the appellants were "maintained in non-pay status" in the DOC payroll system, and accordingly, did not earn leave balances.

In reply, the appellants contend that the issue in this case is not whether their vacation leave should be pro-rated based on a leave of absence. Moreover, they state that the fact that they are in "active service" for pension purposes is irrelevant. Rather, the issue to be resolved is whether they have been denied their statutory and regulatory allotment of vacation days "simply because, for a period of time, they were on Workers' Compensation leave." The appellants state that they are employed "in a highly dangerous occupation" and the Commission certainly would not have intended that such officers, who have been injured while on duty, be denied their vacation leave allotment.

### CONCLUSION

*N.J.A.C. 4A:6-1.2* provides in relevant part that:

(a) Full-time State employees in the career service shall be entitled to annual paid vacation leave, credited at the beginning of each calendar year in anticipation of continued employment, based on their years of continuous State full-time or part-time service in the career, senior executive or unclassified service. See (c) below for definition of continuous service.

\* \* \*

2. After the initial month of employment and up to the end of the first calendar year, employees shall receive one working day for each month of service. Thereafter, employees shall receive paid vacation leave as follows:

- i. From the beginning of the first full calendar year of employment and up to five years of continuous service, 12 working days;
- ii. After five years of continuous service and up to 12 years of continuous service, 15 working days;
- iii. After 12 years of continuous service and up to 20 years of continuous service, 20 working days;
- iv. Over 20 years of continuous service, 25 working days.

3. An increase in vacation leave shall be granted at the beginning of the calendar year in which the years of service requirement will be met.

\* \* \*

(c) Continuous service, for purposes of this section, shall mean employment for the same jurisdiction, or, if the requirements of *N.J.A.C. 4A:4-7.1A* are met, employment for different jurisdictions (except as provided in (d) below), without actual interruption due to resignation, retirement or removal.

\* \* \*

2. Periods of employment before and after a suspension or leave without pay shall be considered continuous service. However, the period of time on a suspension or leave without pay, except for military leave, furlough extension leave and voluntary furlough, shall not be included in calculating years of continuous service.

\* \* \*

(d) Continuous service, for purposes of this section, shall not mean employment for different jurisdictions in the case of an intergovernmental transfer pursuant to *N.J.A.C. 4A:4-7.1A* of a firefighter, or where a law enforcement officer, including a sheriff's officer and a county correction officer, has waived all accumulated seniority rights.

In the instant matter, the main issue to be resolved is whether leave for a job-related injury under the Workers' Compensation statute should be deducted from the calculation of "continuous service" for vacation leave accrual as set forth in *N.J.A.C. 4A:6-1.2(a)2*.<sup>4</sup> Initially, notwithstanding its expiration, the SLI program

---

<sup>4</sup> In this regard, the issue of pro-ration under *N.J.A.C. 4A:6-1.5(b)* is not germane and will not be discussed further.

was a distinct and limited program separate from Workers' Compensation in which eligibility was more narrowly construed. In *Morreale v. State of New Jersey, Civil Service Commission*, 166 N.J. Super. 536 (App. Div. 1979), cert. denied, 81 N.J. 275 (1979), the Court held that the Workers' Compensation and SLI statutes have wholly different ends and purposes and the differences warrant different rules of construction in their application. Thus, the application of Workers' Compensation for vacation leave entitlement purposes would not have changed regardless of the expiration of the SLI program. Furthermore, upon proposing to amend the rule governing SLI, N.J.A.C. 4A:6-1.6, the Commission stated that the elimination of the SLI program should not affect employee eligibility, as applicable, for Workers' Compensation and temporary disability benefits. See 43 N.J.R. 1933(a). Accordingly, the appellants' argument regarding the impact of the SLI program termination on vacation leave entitlement is not persuasive. In addition, there is no dispute that the appellants were not paid their salary during the time in question but received "Workers' Compensation With Pension." In that regard, the appointing authority made its pension contribution and the appellants also had their retirement deductions paid into their pension plan. See e.g., *James v. Board of Trustees of Public Employees' Retirement System*, 164 N.J. 396 (2000) (The Supreme Court determined that an employee who receives periodic Workers' Compensation benefits must have pension contributions made by his or her employer). Accordingly, for payroll accounting, the appellants were properly considered in "non-pay status." However, they must be retained on the payroll in "active service." See e.g., *James v. Board of Trustees*, supra at 410.

It is well established that employees who are receiving Workers' Compensation do not cease being employees regardless of whether they are deemed to be in "non-pay status." In *Darryl Beecham v. New Jersey Department of Transportation*, Docket No. A-2446-03T1 (App. Div. November 5, 2004), the court rejected the appellant's argument that the appointing authority lacked jurisdiction to serve him with disciplinary charges at a time when he was out of work and receiving checks from the Department of the Treasury for Workers' Compensation benefits. The court cited the Supreme Court in *James v. Board of Trustees*, supra at 410-412, where the Supreme Court held that an employee who receives a Workers' Compensation award remains an employee and the Workers' Compensation statute does not "insulate an employee from a valid termination for reasons unrelated either to his or her disabling condition or to whether the employee has filed for or is receiving Workers' Compensation benefits." Therefore, the Commission finds that it would be inconsistent for the appellants' service not to be deemed "continuous" during their receipt of Workers' Compensation benefits for the purposes of vacation leave entitlement, when the appointing authority is obligated to make pension contributions for that period of time and the time is considered in the calculation of retirement benefits. Additionally, this determination correlates with regulations governing other seniority-based programs. For instance, in a layoff situation, "[l]eaves without pay for the following purposes: military, educational,

gubernatorial appointment, unclassified appointment, personal sick, **disability**, family, furlough extension, and voluntary alternative to layoff” **shall not be deducted from seniority calculations**. [Emphasis added]. See *N.J.A.C.* 4A:8-2.4(d)3. Similarly, leaves without pay based on disability are also not deducted from seniority calculations for promotional examinations. See *N.J.A.C.* 4A:4-2.15(d)1ii. Moreover, *N.J.A.C.* 4A:3-4.6(a) states that “**except as provided in (b) below**, time spent by employees in non-pay status, including suspensions, shall not be included in total time of employment when calculating eligibility for annual increments.” [Emphasis added]. *N.J.A.C.* 4A:3-4.6(b)6 provides that **leave without pay while receiving Workers’ Compensation benefits shall not be deducted** from earned time for purposes of calculating anniversary dates. [Emphasis added].

Therefore, under these circumstances where the appellants clearly did not cease their employment, the appellants and the appointing authority continued to pay for their pension contributions, and other seniority-based programs do not require deductions to seniority calculations for leave without pay due to disability or during receipt of Workers’ Compensation benefits, the Commission determines that a leave of absence while an employee is receiving Workers’ Compensation benefits should not be deducted from an employee’s “continuous service” or seniority for the calculation of vacation leave accrual. Therefore, it is ordered that the appellants’ vacation leave balances be adjusted immediately based on their years of “continuous service” as determined herein. It is noted that there are no grounds to credit the appellants with the additional vacation days retroactively to January 1, 2014, as the appellants have not presented a sufficient basis to do so and vacation leave not taken in a given year may be carried over only to the following year. See *N.J.S.A.* 11A:6-2(f).

### ORDER

Therefore, it is ordered that these appeals be granted.

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

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 13<sup>TH</sup> DAY OF AUGUST, 2014

  
Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

c: Thomas M. Jardine  
Karriem Beyah  
Colin M. Lynch, Esq.  
Kathleen Asher, Esq.  
Kenneth Connolly  
Joseph Gambino

