

\$94,632.26 (salary range K25, 6th step). Thereafter, by way of letter dated March 27, 2015, the Office of Management and Budget (OMB) notified the petitioner that he was in overpayment status in the amount of \$5,368.58. OMB indicated that the petitioner was required to participate in a salary repayment plan for 26 pay periods in order to repay the amount owed.

In his request for waiver of salary overpayment, the petitioner maintains that the salary overpayment occurred as a result of an administrative error. Specifically, the petitioner asserts that he could not have reasonably been expected to know that his advancement and increase in salary would result in the overpayment status. The petitioner adds that the appointing authority had several opportunities to properly re-calculate his salary during the 11 months he was in overpayment status. In addition, the petitioner states that he is experiencing a financial hardship. In this regard, between December 2014 and February 2015, he underwent a series of dental procedures that cost \$2,000 and his insurance provider only covered \$484 of the expense.³ Moreover, the petitioner explains that he is participating in a salary repayment program and \$150 per paycheck is scheduled to be deducted over a period of 26 weeks. The petitioner explains that, had he known that he would be required to repay the overpayment amount, he would not have undergone the dental procedure. As such, the petitioner requests that the amount of the salary overpayment be waived.

In response, the appointing authority asserts that the petitioner was appointed as a provisional Assistant District Parole Supervisor in March 2014, and he was permanently appointed from a promotional list to the title in February 2015. The appointing authority explains that the appellant's original salary level was correctly calculated based on a review of applicable civil service rules. Further, the original salary was approved by this agency and recorded in PMIS. The appointing authority adds that it was notified that the salaries for affected employees in the K bargaining unit, including the appellant's title, were adjusted with lower salary ranges as a result of collective bargaining negotiations. The appointing authority states that it was unaware it should refer to the Compensation Compendium to calculate the established salaries per the collective bargaining agreement. As such, the appellant's salary was properly re-calculated based on the information in the Compensation Compendium and the collective bargaining agreements with a lower rate. However, the salary adjustment resulted in the petitioner being in overpayment status. As such, he is required to repay the salary overpayment that he received over a period of 26 pay periods. Moreover, the appointing authority asserts that it is in support of the appellant's request to waive the salary overpayment since it occurred as a result of an administrative error.

³ The appellant notes that he also received assistance from the WageWorks program. He appears to argue that he is obligated to repay a portion of the sum in installments.

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;
 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.

N.J.A.C. 4A:3-4.9(a) provides that, unless a different salary adjustment is established in a *collective negotiations agreement*, the following provisions shall be applied when employees are appointed to a title with a higher class code, except that in no event shall such adjustment result in a higher salary than that provided for in this section (emphasis added). *N.J.A.C.* 4A:3-4.9(b) provides that employees who are appointed to a title with a higher class code shall receive a salary increase equal to at least one increment in the salary range of the former title plus the amount necessary to place them on the next higher step in the new range.

The petitioner's salary was calculated utilizing *N.J.A.C.* 4A:3-4.9(b) when he was provisionally appointed as an Assistant District Parole Supervisor. The collective bargaining agreement in effect for the title changed how promotional pay adjustments were to be calculated. The situation was not corrected until February 2015 when a new calculation of his salary was made based on *N.J.A.C.* 4A:3-4.9(a)

and provided for in the 2015 Compensation Compendium, Section 1, Attachment B, paragraph 8.

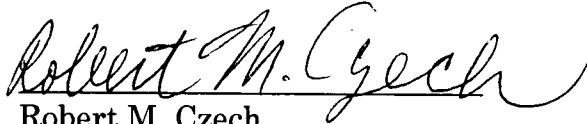
In the instant matter, the petitioner was unaware of the salary overpayment of \$5,368.58, notwithstanding the changes made by the collective bargaining agreement. Nonetheless, even assuming the petitioner was unaware of the salary overpayment, he has not shown that repayment, especially if based upon a reasonable repayment schedule, would result in economic hardship. Although the petitioner claims that the repayment of the overpayment amount would create a financial hardship, he has failed to present any substantive evidence to establish a claim of hardship. *See In the Matter of Yvette Waugh, et al. (Commissioner of Personnel, decided October 25, 1996)* (Lack of documentation in support of claimed economic hardships did not warrant waiver of salary overpayment for employees erroneously awarded salary at the fourth step of the salary range). However, the appointing authority initially calculated the petitioner's salary in March 2014 based on existing Civil Service rules, but the new salary regulations regarding how to calculate salaries for the impacted bargaining unit were not issued until December 17, 2014, almost 10 months after his provisional appointment. By applying the correct controlling salary regulation 10 months after his provisional appointment, it became clear that the petitioner was placed in overpayment status from March 8, 2014 through March 7, 2015. Although the petitioner received the benefit of the overpayments, based on the totality of the circumstances presented in this matter, and for equitable reasons, the Commission finds it is reasonable to reset the repayment dates. As such, the repayment amount will be re-calculated from December 27, 2014, the beginning of the pay period immediately after the Commission recorded the revised salary regulations, to March 7, 2015.

ORDER

Therefore, it is ordered that this request be granted in part and that the petitioner's repayment schedule be adjusted accordingly.

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 5th DAY OF NOVEMBER, 2015



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

Attachment

c: Thomas Hubbard
Lise-Kirsten Higgins
Kenneth Connolly
Joseph Gambino



State of New Jersey
NEW JERSEY STATE PAROLE BOARD

P. O. BOX 362
TRENTON, NEW JERSEY 08625
TELEPHONE NUMBER: (609) 292-4267

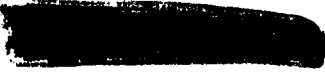
CHRIS CHRISTIE
GOVERNOR

KIM GUADAGNO
LT. GOVERNOR

JAMES T. DEGUSIS
CHAIRMAN

SAMUEL J. PLUMER, JR.
VICE CHAIRMAN

March 9, 2015

Thomas Hubbard


Dear Mr. Hubbard:

Congratulations! You have been promoted RAP (Regular Appointment, Promotional) from a Department of Personnel promotional certification to the title of Assistant District Parole Supervisor effective February 21, 2015, in District Office No. 19, Sex Offender Management Unit South at District Office No. 19, Galloway. Your salary will be \$94,632.26, the 6th step of range K25 and your anniversary date is pay period 7/2015.

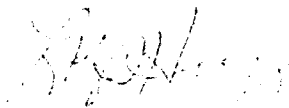
Please note that your salary was changed from \$102,206.40 to \$94,632.26 as a result of bargaining unit changes that only allow you to receive the new lower salary. This matter should be reviewed with your union representative should you have any questions or concerns after reading the bargaining unit agreement (union book) for your new title.

Please be advised that you will be required to serve a four month working test (probationary) period beginning on the date of your appointment. Upon successful completion of your working test period, the appointment will become permanent. We will forward the required probationary forms to your supervisor.

Please note that your bargaining unit has changed as a result of this promotion. Please contact June Fillmyer at (609) 292-3953 for the required card to be completed in order to effectuate this change in bargaining unit.

Please contact Mary Smith of my staff at (609) 633-9874 if you have any questions regarding this information.

Sincerely,



Kirsten S. Higgins, Chief
Personnel & Employment Unit

David Thomas, Executive Director
Leonard Ward, Division Director
Steven Tallard, SPD
Charles Macrejonis, Chief, Fiscal Unit
Etc.