

B-16



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of P.B., Department of
Agriculture

Request for Rule Relaxation

CSC Docket No. 2018-670

ISSUED: SEP 21 2017 (HS/CSM)

The Department of Agriculture, on behalf of P.B., requests the relaxation of the provisions of *N.J.A.C.* 4A:6-1.22 so as to permit P.B. to donate more than 30 sick days to an individual who is participating in the donated leave program.

The individual is an approved recipient of donated leave currently participating in the program who began utilizing donated leave in July 2017 and has utilized 42 days of donated leave. He is currently on an approved leave of absence through December 23, 2017. However, the appointing authority indicates that it is currently unsure whether he will be able to return to work at the completion of this leave of absence.

P.B., who retired effective August 31, 2017, requests that he be permitted to donate 130 sick days to this recipient. The appointing authority also indicates that P.B. has previously donated 30 sick days to the individual in this case.

N.J.A.C. 4A:6-1.22 (Donated Leave Program) states, in pertinent part, that in State service, a leave donor may not donate more than 30 leave days to any one recipient, and that a leave donor shall have remaining at least 20 days of accrued sick leave if donating sick leave and at least 12 days of accrued vacation leave if donating vacation leave.

N.J.A.C. 4A:6-1.22(c) indicates that a State employee may request that the appointing authority approve his or her participation in the program, as a leave recipient or leave donor.

*N.J.A.C. 4A:6-1.22(d)*1 prohibits a leave recipient from receiving any donated leave days on a retroactive basis.

N.J.A.C. 4A:1-1.2(c) permits the Civil service Commission to relax these rules for good cause in a particular situation, in order to effectuate the purposes of Title 11A, New Jersey Statutes.

N.J.S.A. 11A:6-16, in conjunction with *N.J.S.A. 11A:6-19* provide, in pertinent part, that State employees shall be entitled upon retirement from a State-administered retirement system to receive a lump sum payment as supplemental compensation for each full day of accumulated sick leave which is credited on the effective date of retirement, but supplemental compensation shall not exceed \$15,000.00.

CONCLUSION

Initially, *N.J.A.C. 4A:6-1.22(d)* was amended effective June 21, 2010. See 42 *N.J.R. 12(a)*, 42 *N.J.R. 1166(a)*. Prior to the amendment, the rule allowed a donor to donate more than 10 days to any one recipient. However, given that the former Commissioner of Personnel (Commissioner), Merit System Board (Board) and then the Civil Service Commission (Commission) relaxed the rule by decision on numerous occasions to permit employees to donate more than the 10-day maximum, the Department of Corrections petitioned this agency to amend the rule to increase the maximum to 30 days to any one recipient. In proposing this increase, the Commission noted that the "amendments would provide a more realistic ceiling, based on several years of experience with the program, and thus reduce or eliminate the need for processing rule relaxation requests." Accordingly, the Commission adopted an amendment to *N.J.A.C. 4A:6-1.22(d)* and raised the ceiling to 30 from 10 on the number of days an employee could donate to anyone recipient.

One month prior to the effective date of amended for *N.J.A.C. 4A:6-1.22(d)*, the Legislature enacted *N.J.S.A. 11A:6-19.2*, placing a cap on payment for accumulated unused sick leave to employees of political subdivisions that adopted the provisions of Title 11A. See *P.L. 2010, c. 3, sec. 1*. The implementation of the cap on payments for accumulated unused sick leave in May 2010 finalized the Legislature's implementation of various recommendations of the Joint Legislative Committee on Public Employee Benefits Reform concerning benefits and certain terms and conditions of public office and employment that began in June 2007 when it first placed restrictions upon use of supplemental pay for accumulated unused sick leave in local service. See *P.L. 2007, c. 92, sec. 42*. Since June 2007, neither the Commission nor the prior Commissioner or Board have been presented with a request on behalf of a State retiree to donate earned sick leave in excess of the 30 days permitted by *N.J.A.C. 4A:6-1.22(d)*. Thus, while requests such as those in the

instant matter may have been considered in the past, the Commission must consider this case in light of the legislative and regulatory developments since 2007.

In this matter, the Department of Agriculture, on behalf of P.B., seeks approval to allow him to donate leave time well beyond the 30-day limit set forth in *N.J.A.C. 4A:6-1.22*. In other words, as P.B. has already donated the maximum 30 sick days to same individual, he seeks to donate a total of 160 sick days. It must be emphasized that upon an employee's retirement, regardless of the number of sick leave hours that he or she has accrued over a career, based on half of the employee's daily rate, the value of that time cannot exceed \$15,000. See *N.J.S.A. 11A:6-19*. Stated differently, a retired employee has no claim to any amount of accumulated sick leave in excess of \$15,000. With respect to P.B., according to agency records, upon his retirement, he had a sick leave balance of 1,471 hours, or, approximately 210 seven-hour workdays. However, an individual is only entitled by statute the value of sick leave not in excess of \$15,000. In this case, at half his daily rate, P.B. had approximately 73 days of sick leave at retirement. Therefore, as his sick leave accumulation statutorily became the equivalent of a maximum of \$15,000 upon his retirement, the Commission clearly lacks the authority to permit him to donate leave in excess of that amount.

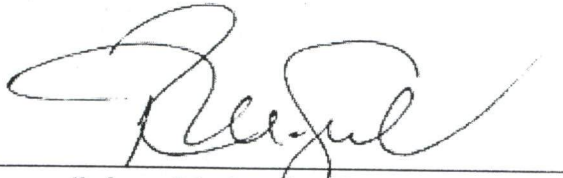
It is noted that the Department of Agriculture's request in this matter is dated August 30, 2017, one day prior to P.B.'s retirement. Nevertheless, approval was not granted prior to P.B.'s retirement and the rules prohibit receipt of donated sick days on a retroactive basis. As noted earlier, P.B. already donated the maximum permissible number of days in accordance with *N.J.A.C. 4A:6-1.22(d)*, while a State employee. The Department of Agriculture does not detail the good cause in support of the application for the donor, now a retiree, to exceed the regulatory limit by 130 days; nor does the Department explain how the purposes of Title 11A are effectuated by such a relaxation. The accumulation of sick leave is a generous benefit afforded to State employees to be used in those instances prescribed by *N.J.A.C. 4A:6-1.3(g)*. As is evident by the payout caps prescribed in Title 11A by the Legislature for sick leave accumulated by State employees, and its underscoring of these payout restrictions for sick leave accumulated by employees of local jurisdictions in 2007 and 2010, use and/or payout of accumulated sick leave is limited by strict statutory and regulatory mandates. In this regard, the Commission has already considered the public policy implication of increasing the number of days a donor may donate and concluded through regulatory action that the maximum should be increased to 30 days. In conjunction with the overall legislative intent of Title 11A not to provide enhanced benefits with respect to accumulated sick leave, the fact that P.B. was still an employee at the time he made his request does not provide a good cause basis to relax *N.J.A.C. 4A:6-1.22(d)*. Regardless of the timing, even assuming P.B. declined SCOR benefits, the Commission cannot permit P.B. to donate sick leave to which he is no longer entitled.

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 BY THE
CIVIL SERVICE COMMISSION ON
THE 20TH DAY OF SEPTEMBER, 2017

A handwritten signature in black ink, appearing to read 'R. Czedh', is written over a horizontal line.

Robert M. Czedh, Chairperson
Civil Service Commission

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