



**STATE OF NEW JERSEY**

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

In the Matter of A.B., Department of  
Environmental Protection

Request for Rule Relaxation

CSC Docket No. 2018-674

**ISSUED: MAY 24, 2018**

**(ABR)**

A.B., a Resource Interpretive Specialist 2, Historic Resources with the Department of Environmental Protection (DEP), represented by Lauren Young-Boukema, Executive Vice President, CWA Local 1036, appeals the decision of the DEP, which denied her request to participate in the Donated Leave Program (DLP).

By way of background, in order to be eligible for donated leave, *N.J.A.C.* 4A:6-1.22(b)lii requires, in pertinent part, that the applicant have a period of disability of 60 or more working days. In the instant matter, the appellant provided the appointing authority with paperwork from her doctor which indicated that, upon her return from her leave, she needed to be allowed to use at least 11 hours of intermittent leave per week, so as to limit her work schedule to six hours per day, four days per week from August 14, 2017 to January 1, 2018. The appointing authority denied the appellant’s request, as it was one for intermittent leave.

On appeal, the appellant states that she had been diagnosed with a catastrophic medical condition and had been approved for continuous leave under the DLP from January 19, 2017 through June 6, 2017. She submits that she continued to utilize the DLP on an intermittent basis from June 7, 2017 to July 24, 2017, working three six-hour days, three days per week during that timeframe. She states that she thereafter requested to extend her intermittent leave because her physician determined that, as of July 25, 2017, she was not ready to return to work on a full-time basis. She argues that her request to extend her intermittent leave under the DLP should have been granted, as it was for a finite period of time that would have served to ease her transition back to working full-time and was

preceded by a continuous, prolonged absence due to a catastrophic condition. In support, she submits a letter from her physician detailing her condition and documentation of her participation in the DLP.

Despite an opportunity to do so, no response was submitted by the appointing authority.

## CONCLUSION

*N.J.A.C.* 4A:6-1.22 (Donated Leave Program) states, in pertinent part, that a State employee shall be eligible to receive donated sick or vacation leave if the employee suffers from a catastrophic health condition or injury. A catastrophic health condition or injury is defined as a life-threatening condition or combination of conditions *or* a period of disability required by an employee's mental or physical health or the health of the employee's fetus which requires the care of a physician who provides medical verification of the need for the employee's absence from work for 60 or more work days. *See N.J.A.C.* 4A:6-1.22(b)1. *N.J.A.C.* 4A:6-1.22(a)2 provides that an employee shall be eligible to receive donated leave time if the employee has exhausted all accrued sick, vacation and administrative leave, all sick leave injury benefits, if any, and all compensatory time off.

Initially, it is noted that *N.J.A.C.* 4A:6-1.22 does *not* provide for "intermittent" donated leave. Rather, the intent of the donated leave program since its inception in 1993 was to provide employees the opportunity to donate sick or vacation leave to other employees who are suffering from a catastrophic health condition or injury which is expected to *require a prolonged absence from work* and who had exhausted all of their accrued leave time. *See 24 N.J.R.* 3590. In other words, receipt of donated leave requires the employee's prolonged absence from work as a condition precedent to considering a request for donated leave.

The practice of permitting the *limited* use of "intermittent" donated leave evolved from those cases where an employee who required a prolonged absence from work due to a catastrophic health condition was returned to work and needed additional time to transition back into full-time work. For example, in *In the Matter of A.M.* (Commissioner of Personnel, decided September 17, 1998), an employee diagnosed with rectal cancer received donated leave because her condition required a prolonged absence from work in order to receive chemotherapy and radiation therapy, as well as to undergo two surgical procedures. The employee's condition progressed well and she was permitted to return to work. However, the employee's treating physician recommended that she work no more than four days per week in the coming few months due to her lower level of resistance and stamina. The former Commissioner of Personnel approved the request for an extension of her donated leave so she could take off one or two days per week for a period of two to three months to recuperate. Thus, the "intermittent" donated leave was only

approved for use *after* an employee returned from a prolonged absence from work and for limited timeframes.

In the instant matter, the appellant is requesting that she, an approved recipient of donated leave, be granted permission to receive and use additional days of donated leave for intermittent leave. The appellant's circumstances are similar to those in which the former Commissioner of Personnel and the Commission have permitted the limited use of intermittent donated leave, as the appellant's request covers a limited timeframe intended to ease her transition back to working full-time after a continuous, prolonged absence due to a catastrophic condition. Therefore, based on the particular circumstances presented, good cause has been established to relax the provisions of *N.J.A.C. 4A:6-1.22* to permit A.B. to receive additional donated leave days on an intermittent basis from August 14, 2017 through January 1, 2018.

### ORDER

Therefore, it is ordered that this appeal be granted and that A.B. be permitted to use donated leave retroactively from August 14, 2017 through January 1, 2018.

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 23<sup>RD</sup> DAY OF MAY, 2018




---

Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

c: A.B.  
Lauren Young-Boukema  
Deni Gaskill  
Kelly Glenn  
Records Center