



STATE OF NEW JERSEY

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

In the Matter of D.R., Department of
Law and Public Safety

Administrative Appeal

CSC Docket No. 2020-1010

ISSUED: November 22, 2019 (SLD)

D.R., a former¹ Forensic Scientist 3, Division of State Police, Department of Law and Public Safety, 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, the Civil Service Commission (Commission) may waive repayment based on a review of the case.

By way of background, D.R. was entitled to 140 hours (7 hours multiplied by 20 days) of vacation leave and 105 hours (7 hours multiplied by 15 days) of sick leave per year, which was credited on January 1, 2019. D.R. went out on an unpaid leave of absence on August 19, 2019. As a result of his unpaid leave of absence, his leave allowances were reduced by 58.3 hours (8.3 days) of vacation leave and 43.75 hours (6.25 days) of sick leave. *See N.J.A.C.* 4A:6-1.5(b). Specifically, he was not credited with any leave time for August through the remainder of the year as he died on August 28, 2019. Thereafter, D.R.'s widow was notified that she owed the State \$2,504.05 in full by December 10, 2019, as her husband had overdrawn his leave entitlements by 10.25 hours of sick leave and 33.5 hours of vacation leave.

In her request, D.R.'s widow requests that the overpayment amount be waived as her husband was the sole financial provider of their family, which includes three children under the age of 10, with the youngest only two months old at the time of her husband's death. D.R.'s widow maintains that D.R. had given his all for his 17 years of employment with the State. She notes that he had never

¹ D.R. committed suicide on August 28, 2019. This request is made by D.R.'s widow.

before been in unpaid status, and when he could no longer work, he contacted his Supervisor to explain about his failing health. Although the Supervisor attempted to get D.R. into the donated leave program, she was told that an employee was not eligible to collect from the sick bank “until he was out of work for 60 days.” D.R.’s widow maintains that if he had been allowed to apply for donated leave, there would not have been an overpayment situation. She notes that although D.R. had every intention to return to work when he was able, the day after his doctor stopped all of his medication, he committed suicide. She also maintains that, after D.R.’s death, his Supervisor again requested that staff be allowed to use their vacation time to resolve the debt owed by D.R., but was told it was not possible. D.R.’s widow argues that it would be cruel and unreasonable to determine that D.R. was aware of the overpayment amount. Finally, she reiterates that it would be a hardship for her to have to pay back the amount as she is unemployed, and needs what monies she currently has to find housing for herself and three children. The Director of the New Jersey State Police Office of Forensic Sciences submits a letter in support of the waiver request.

In response, the appointing authority notes that D.R. had contacted it and stated he needed a medical leave of absence, effective August 19, 2019. It maintains that it informed D.R. that he was to provide it with medical documentation, no later than August 30, 2019, which he failed to do prior to his death on August 28, 2019. Moreover, the appointing authority argues that employees must meet specific criteria in order to be eligible for the Donated Leave Program. *See N.J.A.C. 4A:6-1.22.* However, since D.R. failed to provide any medical documentation prior to his death, it was unable to review his case for eligibility for the Donated Leave Program. In support, it submits, in pertinent part, an August 22, 2019 letter in which the appointing authority provided copies of the medical documentation forms that he needed to complete. The letter further noted that the leave of absence may qualify under the Family Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA) and/or the New Jersey Law Against Discrimination (NJLAD). The appointing authority also submits an August 22, 2019 email from the Time and Leave Management Unit, in response to D.R.’s Supervisor’s question as to whether he would be eligible to be put on the list for donated time. Specifically, the email indicated that “[e]mployees have to be out beyond 60 days to be eligible for review.”

Additionally, the appointing authority asserts that it prorated D.R.’s time as of August 19, 2019, which revealed that his leave time balances were already negative 16.25 hours of sick leave and negative 33.8 hours of vacation leave (a total of 7.15 days). Therefore, pursuant to *N.J.A.C. 4A:6-1.5(b)*, as he was not on the payroll for at least 14 days in August it did not credit him for time accrued that month.

CONCLUSION

Initially, the appointing authority asserts that it prorated D.R.'s time as of August 19, 2019, which revealed that as of that date his leave time balances were already negative 16.25 hours of sick leave and negative 33.8 hours of vacation leave (a total of 7.15 days). In this matter, D.R. went on an unpaid leave, effective August 19, 2019. Although the appointing authority correctly prorated his leave time, effective August 18, 2019, it incorrectly deducted a full month of leave time for August from his leave balances. In this regard, *N.J.A.C.* 4A:6-1.5(b) provides that:

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 prorated based on time earned, except that the leave of an employee on a voluntary furlough or furlough extension leave shall not be affected. An employee who is on the payroll for 23 days or more shall earn a full month's allowance, and earn one-half month's allowance if he or she is on the payroll for greater than 14 calendar days, but less than 23 calendar days in a month.

1. An employee shall reimburse the appointing authority for paid working days used in excess of his or her prorated and accumulated entitlements.
2. An employee who returns to work from a leave of absence shall not be credited with paid vacation or sick leave until the amount of leave used in excess of the prorated entitlement has been reimbursed.

Therefore, as D.R. was on the payroll on August 18, 2019, which was greater than 14 calendar days, but less than 23 calendar days for the month, he was entitled to a half-month allotment of leave time for August. Although after proration of his time, D.R. would have already used time in excess of his prorated entitlement, *N.J.A.C.* 4A:6-1.5(b)1 provides that the amount used in excess is merely to be reimbursed. Consequently, it was not appropriate to consider D.R. to not be in pay status for at least 14 days in August, simply because he was overdrawn after his time was prorated on August 19, 2019. While this would lead to a lesser amount of overpayment, as this request is being granted, it is unnecessary to calculate the correct amount.

Additionally, the appointing authority maintains that as D.R. had failed to provide it with medical documentation prior to his death, it was unable to review his case for eligibility for the Donated Leave Program. However, the Commission is troubled by the apparent incorrect information regarding the Donated Leave Program that was provided to D.R.'s Supervisor by the Time and Leave

Management Unit. In this regard, the August 22, 2019 email from the Time and Leave Management Unit stated that “[e]mployees have to be out beyond 60 days to be eligible for review” for the Donated Leave Program. However, that is not correct. *N.J.A.C.* 4A:6-1.22 requires, in pertinent part, that to be eligible, an employee must suffer from a catastrophic health condition or injury, defined as either a life-threatening condition or combination of conditions; or a period of disability required by his or her mental or physical health which requires the care of a physician who provides a medical verification of the need for the employee's absence from work for 60 or more work days. However, there is nothing in *N.J.A.C.* 4A:6-1.22 which requires that an employee be absent from work “*beyond 60 days to be eligible for review.*” Rather, it merely requires that a physician provide medical verification of the *need* for the employee's absence from work for 60 or more work days.

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.

D.R.’s widow has requested a waiver of repayment of the salary overpayment as a result of the use of excess vacation and sick leave allotments because D.R. passed away and did not return to work. The record demonstrates that based on equitable considerations, the foregoing errors by the appointing authority and the support from the Director of the New Jersey State Police Office of Forensic Sciences, the particular circumstances of the instant matter warrant granting the requested relief.² Accordingly, based on the record presented, a sufficient basis exists to grant a waiver of the repayment at issue pursuant to *N.J.A.C.* 4A:3-4.21. See *In the Matter of Fay Catando* (Commissioner of Personnel, decided April 5, 2006); and *In the Matter of Daniel Watson* (Commissioner of Personnel, decided February 14, 2002).


² It is noted that such relief would appear to be warranted even if the provisions of *N.J.A.C.* 4A:3-4.21 are strictly applied. In this regard, it is clear that (a)1 and (a)2 are not applicable to this situation and based on the circumstances presented by D.R.’s widow, (a)3 can be considered satisfied.

ORDER

Therefore, it is ordered that this request for a waiver of the repayment of the overpayment be granted.

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 19TH DAY OF NOVEMBER, 2019



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