



STATE OF NEW JERSEY

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

In the Matter of Vincent Antenucci,
Division of State Police, Department
of Law and Public Safety

Request for Waiver of Repayment of
Salary Overpayment

CSC Docket No. 2019-3633

ISSUED: DECEMBER 23, 2019 (HS)

Vincent Antenucci, a Sergeant, Field Operations with the 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, the appellant was appointed to the unclassified title of Trooper, effective August 5, 2005, at a salary of \$49,670.34 (salary range T17, step one). By July 28, 2012, the appellant's salary had increased to \$78,126.06 (salary range T17, step eight). Appointing authority records reflect that the appellant was thereafter appointed as follows:

EFFECTIVE DATE	TITLE (ALL UNCLASSIFIED)	SALARY RANGE	SALARY
August 11, 2012	Trooper 2	T18	\$87,913.02
February 7, 2015	Trooper 1	T19	\$90,949.44
June 11, 2016	Sergeant	N21	\$90,949.44
February 16, 2019	Sergeant, Field Operations	N21	\$105,264.94

On appeal to the Commission, the appellant recounts that he was advised on May 21, 2019 that he had been placed on the wrong salary step, step eight instead of step six, when he was appointed to the title of Trooper 2, effective August 11, 2012. The error compounded over the ensuing years, resulting in a salary overpayment of approximately \$29,000. The appellant states that he was again

placed on the wrong step at the time of his appointment to the title of Sergeant, effective June 11, 2016.

The appellant maintains that he meets the criteria for a waiver of repayment of a salary overpayment found in *N.J.A.C. 4A:3-4.21*. Specifically, he argues that he would have had a reasonable expectation of being unaware that the error was made because he was due for a salary advancement on August 11, 2012, and the advancement was approved by the appointing authority and this agency. The appellant also maintains that repayment would result in economic hardship in that his household already carries approximately \$25,000 in credit card debt and all discretionary income is used to pay down that debt. He has already incurred a home equity line of credit (HELOC) and personal loan in an attempt to mitigate expenses. The appellant asserts that if he were forced to take on another \$29,000 in debt, his household may not be able to timely pay bills and a bankruptcy filing may result. In support, the appellant submits his household monthly budget. According to the budget, his household earns \$9,730.10 in net income per month and incurs \$9,939.77 in expenses per month. The expenses consist of the following: \$2,052.41 for mortgage; \$600 for HELOC; \$275 for YMCA Before/After Care; \$716 for CYO Summer Camp; \$250 for tuition; \$391.23 for Electric/Gas; \$212.50 for cable television; \$337.09 for phones; \$635.54 for automobile payments; \$460 for automobile insurance; \$300 for personal loan; \$1,210 for credit card payments; \$200 for entertainment; and \$2,300 for various other living expenses.

In response, the appointing authority indicates its support for this appeal. The appointing authority states that as a result of a data entry mistake, the appellant was placed on step eight, rather than step six, when he was appointed to the title of Trooper 2 on August 11, 2012. It states that the error was recently noticed due to the fact that the State Troopers Fraternal Association (STFA) collective negotiations agreement (CNA) was ratified this year. The appointing authority explains that per the CNA, it is impossible for a Trooper to be appointed to Trooper 2 at step eight after seven years of service as a Trooper. Rather, such an individual is placed on step six.¹ The appointing authority agrees with the appellant's position that he was expecting a change in rank and salary step and had no reason to expect that the new salary would be incorrect. The appointing authority notes that when it realized a mistake was made, it corrected the mistake. The appellant's Personnel Management Information System record now reflects the following:

¹ It is noted that the prior STFA CNA contained the same provision.

EFFECTIVE DATE	TITLE (ALL UNCLASSIFIED)	SALARY RANGE	STEP	SALARY
August 11, 2012	Trooper 2	T18	6	\$81,840.18
February 7, 2015	Trooper 1	T19	7	\$88,822.20
June 11, 2016	Sergeant	N21	6	\$92,591.77
February 16, 2019	Sergeant, Field Operations	N21	8	\$102,321.38

The appointing authority notes that no repayment has yet been scheduled.

The Salary Schedules in effect at the time of the appellant's August 11, 2012 appointment to the title of Trooper 2 were, in part, as follows:²

	RANGE T17	RANGE T18
INCREMENT	\$2,896.02	\$3,036.42
STEP SIX	\$72,334.02	\$81,840.18
STEP SEVEN	\$75,230.04	\$84,876.60
STEP EIGHT	\$78,126.06	\$87,913.02
STEP NINE	\$81,022.08	\$90,949.44

CONCLUSION

N.J.A.C. 4A:3-4.21 provides, in pertinent part:

- (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*

² This information was gleaned from the Commission's Compensation Compendium, a publicly available document.

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.

The appellant requests a waiver of the salary overpayment since he claims that the circumstances of the overpayment were such that he was unaware of the overpayment and repayment would result in economic hardship to him. Moreover, he and the appointing authority note that the overpayment was the result of an administrative error. Although the record clearly shows that an administrative error resulted in the salary overpayment, the appellant cannot benefit from the error, as he was not entitled to the higher compensation, unless he can satisfy the other conditions presented above. *See e.g., Cipriano v. Department of Civil Service*, 151 *N.J. Super.* 86 (App. Div. 1977); *O'Malley v. Department of Energy*, 109 *N.J.* 309 (1987); *HIP of New Jersey v. New Jersey Department of Banking and Insurance*, 309 *N.J. Super.* 538 (App. Div. 1998) (No vested or other rights are accorded by an administrative error).

In this regard, the appellant claims that he was unaware of the overpayment since he was due for a salary advancement on August 11, 2012, the time of his appointment to the unclassified title of Trooper 2. The Commission is not persuaded. The administrative error made at that time was the appellant's placement on step eight, rather than step six, of salary range T18. This means that the appellant's salary had increased from \$78,126.06 to \$87,913.02, a jump of \$9,786.96, when it should only have increased \$3,714.12 to \$81,840.18. Given the amount of the erroneous salary increase, which was well above that contemplated by the appellant's CNA then in effect, the Commission cannot accept that it was reasonable for the appellant to be unaware and not question the increase he received, especially since he acknowledges that he knew the promotion was coming. The State compensation plan is public information, and there were important resources, including his own CNA, that the appellant could and should have consulted and that would have revealed the error.

Further, although the appellant asserts that repayment would result in economic hardship to him, he was promoted to the unclassified title of Sergeant, Field Operations, effective February 16, 2019, at a salary of \$102,321.38. His monthly budget includes expenses for at least two items, cable television and entertainment, that appear to be non-essential. Additionally, the appointing authority has not set any repayment schedule. Consequently, it cannot be demonstrated that, given the appellant's level of current compensation, the amount he would be required to pay per bi-weekly pay period would create a hardship to him. Therefore, based on the foregoing, the appointing authority and appellant are

encouraged to set a reasonable and, if necessary, lenient repayment schedule for him to repay the \$29,000.

ORDER

Therefore, it is ordered that this request for a waiver of the repayment of the salary overpayment by Vincent Antenucci 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 18TH DAY OF DECEMBER, 2019



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c. Vincent Antenucci
Jessica Chianese
Kelly Glenn
Records Center