



STATE OF NEW JERSEY

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

In the Matter of K.N., Department of
Children and Families

Request for Rule Relaxation

CSC Docket No. 2019-1278

ISSUED: MAY 28, 2019

(ABR)

K.N., a Family Service Specialist Trainee with the Department of Children and Families (DCF), represented by Ken McNamara, President, CWA Local 1037, appeals the decision of the DCF, which denied her request to participate in the Donated Leave Program (DLP).

By way of background, the appellant was permanently appointed to her position as as a Family Service Specialist Trainee with the DCF, effective April 16, 2018. In October 2018, the appellant provided the appointing authority with documentation from her doctor which indicated that she had been diagnosed with a serious illness that would require one month of hospitalization for treatment and one to two months of recovery. On October 29, 2019, the appointing authority approved her use of personal sick leave with pay from November 19, 2018 to December 3, 2018 and of personal sick leave without pay from December 4, 2018 to March 4, 2019. The appointing authority denied her request to participate in the DLP because she did not meet the requirement set forth in *N.J.A.C. 4A:6-1.22(a)* that she possess one year of continuous State service in order to be eligible to receive donated sick or vacation time. It is noted that the appointing authority subsequently extended approval for the appellant's leave without pay through March 18, 2019 and that she returned to her position at the DCF, effective March 19, 2019.

On appeal, the appellant argues that special circumstances warrant relaxation of the one-year service requirement for the DLP set forth in *N.J.A.C. 4A:6-1.22(a)*. Specifically, she submits that she completed the Baccalaureate Child

Welfare Educational Program (BCWEP), an internship program with the appointing authority that paid her tuition for her senior year of college in exchange for a two-year post-graduation employment commitment and she states that she will be required to repay the State for the tuition she received if she does not complete a minimum of two years of employment with the appointing authority. She maintains that although she was five months shy of the continuous service requirement as of the effective date of her leave, she otherwise meets the requirements of the DLP. She also submits that she completed over 400 hours of unpaid field work with the BCWEP and asks that this work be considered as a basis to relax *N.J.A.C.* 4A:6-1.22(a). Finally, she maintains that she is dedicated to serving the appointing authority and that her need to use leave was unforeseen at the time she commenced her employment.

In response, the appointing authority states that it does not support relaxation of *N.J.A.C.* 4A:6-1.22(a) in the instant matter. In this regard, it states that the appellant returned to work, effective March 19, 2019, and that her leave of absence will not trigger an obligation to repay the tuition she received under the BCWEP. Rather, she will only be required to repay her tuition if she voluntarily terminates her employment with it before fulfilling a two-year work requirement.

CONCLUSION

N.J.A.C. 4A:6-1.22 (Donated Leave Program) states, in pertinent part, that a State employee who has completed at least one year of State service 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. *N.J.A.C.* 4A:1-1.2(c) provides that the Commission may relax a rule for good cause in a particular situation, on notice to affected parties, in order to effectuate the purposes of Title 11A, New Jersey Statutes.

In the instant matter, the appellant suffered from a catastrophic health condition which required her to exhaust the leave time she had accrued prior to her leave of absence and thereafter take approximately three and one-half months of personal sick leave without pay. The appointing authority correctly determined that the appellant did not meet the established criteria for participation in the DLP as her seven months of continuous State service between the April 16, 2018 effective date of her permanent appointment as a Family Service Specialist Trainee and the

November 19, 2018 effective date of her leave was less than the one year required under *N.J.A.C.* 4A:6-1.22(a)1. However, the Commission recognizes that the appellant returned to work, effective March 19, 2019 and it observes that if she had been able to complete an additional five months of continuous permanent service before her condition necessitated her leave of absence, she would have met the requirements of the DLP. The Commission notes that in limited circumstances the one-year continuous State service requirement of the DLP has been relaxed in order to allow employees to participate in the program. *See In the Matter of Barbara Hall* (Commissioner of Personnel, decided March 28, 2005) (Provisions of *N.J.A.C.* 4A:6-1.22(a)1 relaxed to permit an employee with less than one year of continuous State service to participate in the donated leave program). *See also, In the Matter of Jeffrey G. Demby* (Commissioner of Personnel, decided December 19, 2000) (One year of required service requirement relaxed to participate in donated leave program based on employee's serious medical condition). Furthermore, it is noted that prior to commencing her full-time employment, the appellant performed more than 400 hours of unpaid field work as part of her participation in the BCWEP. Therefore, based on the totality of the circumstances, good cause has been established to relax the provisions of *N.J.A.C.* 4A:6-1.22 to permit K.N. to receive donated leave retroactively from November 19, 2018 through March 18, 2019. In so doing, the remedy provided herein is limited to the facts of this case and may not be used as precedent in any other matter.

ORDER

Therefore, it is ordered that this appeal be granted and that K.N. be permitted to use donated leave retroactively from November 19, 2018 through March 18, 2019.

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 22ND DAY OF MAY, 2019



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