



STATE OF NEW JERSEY

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

In the Matter of Vanessa Bloor,
Department of Transportation

Request for Waiver of Repayment of
Salary Overpayment

CSC Docket No. 2019-1917

ISSUED: AUGUST 2, 2019 (HS)

Vanessa Bloor, a former Secretarial Assistant 2 (Non-Stenographic) with the Department of Transportation, 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, on January 1, 2016, the appellant's leave balances were credited as follows: 105 hours (15 days) of vacation leave; 105 hours (15 days) of sick leave; and 21 hours (three days) of administrative leave. By September 2016, the appellant had used all her vacation leave, all her sick leave and 20.5 hours of administrative leave. Between September 7, 2016 and November 4, 2016, the appellant was intermittently absent without pay for 16.6 days. Due to these intermittent absences without pay, the appellant's vacation and sick leave credits were each reduced by one-half of one month's entitlement, 4.4 hours, leaving the appellant with a combined negative balance for vacation and sick leave of 8.8 hours. *See N.J.A.C. 4A:6-1.5(c)*. The 8.8 hours of overdrawn leave time, amounting to \$254.76, were recouped from the appellant's November 18, 2016 paycheck. *See N.J.A.C. 4A:6-1.5(a)*. The appellant went on a leave of absence without pay, effective November 9, 2016, and resigned, effective November 3, 2017, without returning from the leave of absence. As a result of her leave of absence and eventual resignation, her leave balances for 2016 were reduced by 17.5 hours (two months) of vacation leave and 17.5 hours (two months) of sick leave, leaving her with negative balances in those amounts at her resignation. *See N.J.A.C. 4A:6-*

1.5(b).¹ In notices dated November 16, 2017, December 18, 2017 and January 29, 2018, the appointing authority notified the appellant that she had overdrawn her leave time for a total of \$793.58, for which she had to reimburse the State. In a letter dated January 15, 2019, the appointing authority advised the appellant that she could file an appeal with the Commission regarding the amount owed.

In her appeal to the Commission postmarked January 22, 2019, the appellant states that she is appealing the amount the appointing authority has taken from her and is continuing to attempt to recoup.

In response, the appointing authority indicates that it responded to additional inquiries from the appellant regarding the amount owed. In support, the appointing authority submits copies of correspondence, timesheets and leave balance sheets.

CONCLUSION

N.J.A.C. 4A:6-1.5 provides, in pertinent part:

- (a) Employees in State service are liable for vacation and sick leave days taken in excess of their entitlements.
- (b) 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.²
 - 1. An employee shall reimburse the appointing authority for paid working days used in excess of his or her prorated and accumulated entitlements.

* * *

¹ Although the appellant had half an hour of unused administrative leave remaining in 2016, this leave was forfeited at the end of the year and did not carry over into 2017. *See N.J.A.C.* 4A:6-1.9(e).

² Prior to July 1, 2019, *N.J.A.C.* 4A:6-1.5(b) provided that "an employee who is on the payroll for greater than 23 days shall earn a full month's allowance, and earn one-half month's allowance if he or she is on the payroll from the 9th through the 23rd day of the month." The outcome of this case is the same under either version of the regulation.

- (c) In State service, intermittent days off without pay other than voluntary furlough or furlough extension days shall be aggregated and considered as a continuous leave without pay for calculation of reduced vacation and sick leave credits. When intermittent days off without pay other than voluntary furlough or furlough extension days equal 11 working days, the employee's vacation and sick leave credit shall be reduced by one-half of one month's entitlement. Union leave days pursuant to a negotiated agreement shall not be included in such calculations.

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.

Initially, *N.J.A.C.* 4A:2-1.1(b) provides that unless a different time period is stated, an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation or action being appealed. This appeal includes a complaint regarding money that was recouped from the appellant's November 18, 2016 paycheck, yet the instant appeal was not filed until January 22, 2019, more than two years later. Thus, the appeal as it pertains to the money already recouped is untimely. Nevertheless, even assuming that part of the appeal is timely, the money was properly recouped for the reasons discussed below.

N.J.A.C. 4A:6-1.2(a)2 and *N.J.A.C.* 4A:6-1.3(a)2 provide that after the first year of employment, "at the beginning of each calendar year in anticipation of continued employment, employees shall be credited" with their vacation and sick leave allotments. As a result, on January 1, 2016, the appellant was provided with her vacation and sick leave allotments for the year, on the belief that she would continue her employment for the whole year. However, since the appellant was intermittently absent without pay for 16.6 days between September 7, 2016 and November 4, 2016, pursuant to *N.J.A.C.* 4A:6-1.5(c), her vacation and sick leave

credits were each reduced by one-half of one month's entitlement, 4.4 hours, leaving the appellant with a combined 8.8 hours of overdrawn vacation and sick leave since she had previously used all her vacation and sick leave. The 8.8 hours of overdrawn leave time, amounting to \$254.76, were properly recouped from the appellant's November 18, 2016 paycheck since she was "liable for vacation and sick leave days taken in excess of [her] entitlements." See *N.J.A.C.* 4A:6-1.5(a).

Additionally, since the appellant did not remain in pay status for the entirety of 2016, pursuant to *N.J.A.C.* 4A:6-1.5(b), her vacation and sick leave was properly prorated based on time earned. Specifically, because the appellant was on a leave of absence without pay from November 9, 2016 until her eventual resignation in November 2017, her vacation and sick leave entitlements for 2016 were each reduced by two months' entitlement, 17.5 hours, leaving the appellant with a combined 35 hours of overdrawn vacation and sick leave since, as already noted, she had used all her vacation and sick leave prior to her leave of absence without pay. Therefore, since the appellant used more vacation and sick leave than she had earned at the time she went on her leave of absence without pay, the appellant was correctly required to reimburse the appointing authority for the overdrawn leave pursuant to *N.J.A.C.* 4A:6-1.5. Moreover, as discussed below, the appellant is not eligible for a waiver of this repayment obligation.

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 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. In this case, none of the factors are satisfied: the appellant received multiple notices of the circumstances and amount of the overpayment; the overpayment did not result from any specific administrative error but rather resulted from the appellant's leave of absence without pay and the associated proration required by Civil Service regulations; and the appellant does not even assert that repayment would result in economic hardship.

ORDER

Therefore, it is ordered that this request for a waiver of the repayment of the salary overpayment by Vanessa Bloor, 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 31ST DAY OF JULY, 2019



Deirdré 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. Vanessa Bloor
Michele A. Shapiro
Kelly Glenn