



STATE OF NEW JERSEY

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

In the Matter of Kathleen Hitchner,
Department of Environmental
Protection

Administrative Appeal

CSC Docket No. 2019-2141

ISSUED: JANUARY 16, 2020 (ABR)

Kathleen Hitchner, an Environmental Engineer 3 with the Department of Environmental Protection (DEP), represented by Laruen Young-Boukema, Executive Vice President, Communications Workers of America Local 1036, appeals the DEP’s determination that she was not entitled to holiday pay for the New Year’s Day holiday on January 1, 2019.

By way of background, the appellant is employed as an Environmental Engineer 3, which has a non-limited (NL) workweek. The appellant suffers from a serious chronic medical condition and is approved to take time off from work for her serious health condition under the Family Medical Leave Act (FMLA). The appellant is also approved for and participates in the DEP’s Alternative Workweek Program (AWP). Prior to New Year’s Day 2019, the appellant used approved unpaid FMLA leave time on Thursday, December 27, 2018 and Friday, December 28, 2019. The day immediately before the New Year’s Day 2019 holiday, Monday, December 31, 2018, was her AWP day. The appointing authority determined that pursuant to *N.J.A.C. 4A:6-2.4(d)*, the appellant was not entitled to holiday pay for January 1, 2019 because she was not in pay status immediately before the holiday.

On appeal to the Civil Service Commission (Commission), the appellant argues that the DEP is erroneously denying her pay for January 1, 2019. In this regard, she asserts that because Monday, December 31, 2018 was her approved day off under the AWP, she should have been considered in pay status on the day before the holiday for purposes of *N.J.A.C. 4A:6-2.4(d)*. In support, she asserts that all

other DEP employees who had their scheduled AWP day on December 31, 2018 received holiday pay for New Year's Day 2019.

In response, the appointing authority stands by its determination, asserting that because the appellant was not in pay status on her last scheduled workday before the holiday, Friday, December 28, 2018, she was not entitled to holiday pay for January 1, 2019. In this regard, it argues that an AWP day off does not equate to being in pay status. Rather, the appointing authority asserts that an AWP day is treated the same as a regular day off, such as a Saturday or Sunday. Furthermore, the appointing authority avers that it is not singling out the appellant. Instead, it asserts that other employees who had an AWP day off on Monday, December 31, 2018 were paid for the New Year's Day holiday because they were in pay status on their last workday before the holiday.

CONCLUSION

N.J.A.C. 4A:6-2.4(a) provides, in pertinent part, that holidays as authorized by law or Executive Order shall be allowed as days off with regular pay for full-time employees. *N.J.A.C.* 4A:6-2.4(d) provides, in pertinent part, that employees who are in pay status on the day immediately before an authorized holiday shall receive pay for the holiday.

In the instant matter, the appellant asserts that she was entitled to be paid for January 1, 2019 because her AWP day on December 31, 2018 meant that she was in pay status on the day before the New Year's Day holiday. However, the Commission finds that the appellant's AWP day did not place her in pay status in accordance with *N.J.A.C.* 4A:6-2.4(d). Rather, an AWP day is considered an authorized day off, similar to a Saturday or Sunday for employees whose schedule workdays are Monday through Friday. Consequently, the last scheduled workday for the appellant was Friday, December 28, 2018. On that date, she remained on an unpaid leave of absence. Accordingly, she was not in pay status for purposes of *N.J.A.C.* 4A:6-2.4(d). Therefore, the appointing authority properly determined that the appellant was not entitled to holiday pay for January 1, 2019.

CONCLUSION

Therefore, it is ordered that this appeal 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 15TH DAY OF JANUARY, 2020

Deirdre' L. Webster Cobb

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