



STATE OF NEW JERSEY

In the Matter of Anji Albis,  
Ocean County Board of Social  
Services

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

CSC Docket No. 2019-2547

Enforcement

**ISSUED:** May 1, 2020 (JET)

Anji Albis, a Human Services Specialist 1 with the Ocean County Board of Social Services, requests enforcement of the attached decision *In the Matter of Anji Albis* (CSC, decided January 16, 2019), which granted her back pay, benefits and seniority pursuant to *N.J.A.C. 4A:2-2.10*.

By way of background, the appellant was removed from her position at Ocean County Board of Social Services, effective December 29, 2017. Upon the appellant's appeal and following the hearing at the Office of Administrative Law (OAL), the Administrative Law Judge (ALJ) recommended dismissing the charges and restoring the appellant to her position. Upon its review, the Civil Service Commission (Commission) adopted the ALJ's recommendation, reinstated the appellant, and awarded back pay, benefits, and seniority in accordance with *N.J.A.C. 4A:2-2.10*. By letter dated February 1, 2019, the appointing authority notified the appellant that she was returned to her position effective January 31 2019, and she maintained seniority from her original date of appointment.

In her request to the Commission, Albis asserts, among other things, that she submitted documentation to the appointing authority regarding her mitigation efforts, including e-mails that she received from NJ.com and Horizon BCBS. Albis adds that she accepted the only position that was offered to her after her December 29, 2017 termination. Albis explains that, although there were several social worker positions advertised, she was not qualified for those positions because she is not a certified and licensed social worker and does not possess a Master's degree. Albis maintains that the position she ultimately obtained was through networking

where her duties included working with developmentally disabled children, and she only worked a limited number of hours at that job. In this regard, she explains that work was sometimes cancelled and she was required to work during school hours. Albis asserts that she diligently looked for employment using internet search engines when she was not at work. Additionally, Albis requests \$24,444.32 in back pay. In this regard, Albis contends that she is entitled to receive the same amount of leave and vacation time as provided by the appointing authority's 2018 "Time and Leave Work Up" form, including four personal days which amounts to \$10,748.40. Albis adds that her 2019 salary was \$74,451.42, and she returned to work on January 31, 2019. Albis explains that she earned \$282.50 per day which totals \$8,475.16, and she contends that she is entitled to \$7,847.12 for 28 hours of combined 28 hours of personal, vacation, and sick time. Moreover, she explains that her 2018 and 2019 healthcare costs were \$7,847.12, and as such, she is entitled to \$57,503.78 in back pay. In support, she submits a 2018 1099-misc form indicating that she earned \$7,165.

It is noted that, while Albis submits several advertisements from NJ.com for positions that she could have applied, based on a review of such information, it appears that she only applied for three positions. In this regard, on February 6, 2018, she submitted an application for Market Retention Coordinator, on February 14, 2018, submitted applications for Clinical Care Coordinator and for MLTSS Care Specialist 3. She did not provide any other information with respect to other jobs to which she may have applied.

In response, the appointing authority, represented by Barbara A. O'Connell, Esq., asserts that Albis also failed to disclose that, per a June 5, 2018 letter from the ALJ who granted a continuance from the initial hearing dates of June 12 and June 13, 2018, to after Labor Day 2018, her back pay award must be reduced by the delay of the proceedings as Albis was responsible for causing the delay. In this regard, the appointing authority states that delay lasted 14 weeks and one day. The appointing authority contends that the OAL hearing was ultimately held on September 19, 2018, and the ALJ's decision indicated that the back pay award would not include the period between June 12, 2018 and September 19, 2018. The appointing authority explains that Albis' 2018 annual salary was \$71,659.92, her weekly salary was \$1,378, and her daily salary was \$275.60. As such, the appointing authority asserts that Albis' salary should be reduced by \$19,291 (\$1,378 x 14 weeks) which would result in \$52,092.92 prior to considering her mitigation efforts. The appointing authority adds that Albis received \$15,483 in unemployment compensation and \$7,165 in income while employed at Creative Health Care in 2018. As such, the appointing authority contends that the back pay award should be further reduced by \$22,648 (\$52,092.92 - \$15,483 - \$7,165), which would result in a back pay award of \$29,444.32.

Additionally, the appointing authority maintains that Albis has not provided a sufficient amount of documentation to substantiate her claims. In this regard, the appointing authority contends that Albis did not provide any documentation in support of her mitigation efforts. Further, the appointing authority states that, at the time Albis was terminated, there were low unemployment rates, and a review of Indeed.com showed 372 jobs for which Albis may have applied. The appointing authority adds that Albis earned \$7,165 in the 13 months after her termination, and as such, it does not appear that she made reasonable efforts to find employment after her separation from employment.

Additionally, with respect to Albis' claims pertaining to her medical insurance, the appointing authority asserts that the affidavit she submitted with respect to that matter is vague and contradicts the previous documentation that was submitted in support of her initial appeal. In this regard, Albis indicated that the total cost for her husband's health insurance was \$4,167.64, and in support, she provides documentation to show that the year-to-date medical premium payment was \$3,037.34, \$984.14 for dental coverage, and \$146.16 for vision coverage. However, the appointing authority explains that documentation from her husband's health insurance plan shows that 2018 out-of-pocket costs were \$2,552.77, which is consistent with the information in Albis' affidavit. As such, the appointing authority maintains that the total for health insurance costs is \$6,720.41. The appointing authority adds that, had Albis remained employed in her position at the appointing authority, she would have contributed a total of \$7,280.41 for her 2018 health insurance benefits including costs for the deductible and co-pay amounts for physician visits. As such, the appointing authority contends that it was \$530 less expensive for Albis to pay for her husband's plan than to continue to pay premiums for the appointing authority's health insurance plan. Further, the appointing authority asserts that Albis' request for vacation and personal days is unwarranted, as she was issued a check totaling the gross amount of \$448.02 in vacation pay. It maintains that Albis did not work in 2018 and, as a such, she is not entitled to any vacation time for that year, and regardless, the appointing authority's policy is that any accrued vacation time in excess of 40 hours that is not used within a calendar year is forfeited. The appointing authority adds that, since Albis was on leave in 2018, any award of back pay would make her whole with respect to the vacation and personal days. Moreover, the appointing authority asserts that Albis in her second affidavit does not oppose the ALJ's recommendation to prohibit an award of back pay from June 12, 2018 through September 19, 2018, as a result of the hearing adjournment.

In support, the appointing authority submits alternate health insurance expense documentation to show that, had Albis been enrolled in such an alternate plan, such expenses would have been less than what the appellant would have paid for the appointing authority's health insurance plan.

In response, Albis asserts that in 2019 she was paid an additional \$2,020 while employed at Creative Healthcare Services, and as such, she states that the total amount of mitigated back pay should be reduced to \$55,483.78. In support, she submits a copy of the 2019 1099-misc form issued from Creative Healthcare Services.

In response, the appointing authority asserts that Albis only provides a list of various job searches that she performed over the internet, which is not enough to substantiate her mitigation claims. The appointing authority adds that it appears that Albis only submitted two job applications that only resulted in one interview and she did not obtain a position. Further, the appointing authority states that Albis did not provide any documentation to show when she worked at Creative Healthcare Services, nor any information to confirm how much she earned per hour or per diem. It adds that Albis possesses 17 years of social work experience and it is unreasonable that she only earned \$7,165 in a 13 month period. Moreover, the appointing authority asserts that Albis should have obtained employment in an alternate field or even below her qualifications if she was unable to find employment as a social worker from January 2018 through January 2019.

The appointing authority states that Albis' contention that she only earned \$7,165 in 2018 does not make sense and it is now clear that she earned \$2,020 from Creative Health Care Services in 2019. The appointing authority explains that, since Albis was able to earn \$2020 in one month in 2019, such information shows that her potential annual income at that time could have been \$24,240. It adds that such a potential earning amount makes more sense than the \$7,165 total income that she claimed to earn in 2018. As such, the appointing authority maintains that Albis did not properly mitigate her wage loss in 2018. The appointing authority contends that the Commission should use the \$24,240 figure rather than the \$7,165 amount of actual earnings to determine that the proper amount of back pay award is \$12,369.

In response, Albis asserts that she did not earn \$2,020 in January 2019, and as such, the appointing authority's presumption that her income was \$24,240 is incorrect. Albis explains that the 2019 1099-misc form is reflective of hours she worked from November 2018 through January 2019. In support, Albis submits timesheets that she submitted to Creative Health Services to show that she earned \$2,020.

In response, the appointing authority asserts that the 1099 submitted by Albis indicates that it is for miscellaneous income earned in 2019, and such information is not reflective of the time listed on the timesheets she submitted in November and December 2018. The appointing authority adds that Albis' timesheet for January 2019 shows that she worked 34 hours, which establishes that

she was only working part-time at that time. As such, the appointing authority maintains that Albis failed to properly mitigate her wage loss.

## CONCLUSION

Pursuant to *N.J.A.C.* 4A:2-2.10(d), an award of back pay shall include unpaid salary, including regular wages, overlap shift time, increments and across-the-board adjustments. *N.J.A.C.* 4A:2-2.10(d)3 provides that an award of back pay shall be reduced by the amount of money that was actually earned during the period of separation, including any unemployment insurance benefits received, subject to any applicable limitations set forth in (d)4. Benefits shall also include vacation and sick leave credits and additional amounts expended by the employee to maintain health insurance coverage during the period of improper separation or removal. *N.J.S.A.* 11A:6-3(e) and *N.J.A.C.* 4A:6-1.2(f) provide that vacation leave not taken in a given year because of business demands shall accumulate and be granted the next succeeding year only. *N.J.A.C.* 4A:2-2.10(d)3 provides that an award of back pay shall be reduced by the amount of money which was actually earned or could have been earned during separation. *N.J.A.C.* 4A:2-2.10(e) states in pertinent part that, unless otherwise ordered, seniority shall be calculated from the effective date of the appointing authority's improper action to the date of the employee's actual reinstatement to the payroll. *N.J.A.C.* 4A:2-2.10(d)4 provides that the award of back pay is subject to reduction by any period of delay of the appeal proceedings caused on behalf of the employee.

Further, *N.J.A.C.* 4A:2-2.10(d)4 states that where a removal or a suspension for more than 30 working days has been reversed or modified and the employee has been unemployed or underemployed for all or a part of the period of separation, and the employee has failed to make reasonable efforts to find suitable employment during the period of separation, the employee shall not be eligible for back pay for any period during which the employee failed to make such reasonable efforts. "Reasonable efforts" may include, but not be limited to, reviewing classified advertisements in newspapers or trade publications; reviewing Internet or on-line job listings or services; applying for suitable positions; attending job fairs; visiting employment agencies; networking with other people; and distributing resumes. The determination as to whether the employee has made reasonable efforts to find suitable employment shall be based upon the totality of the circumstances, including, but not limited to, the nature of the disciplinary action taken against the employee; the nature of the employee's public employment; the employee's skills, education, and experience; the job market; the existence of advertised, suitable employment opportunities; the manner in which the type of employment involved is commonly sought; and any other circumstances deemed relevant based upon the particular facts of the matter. The burden of proof shall be on the employer to establish that the employee has not made reasonable efforts to find suitable employment. *See N.J.A.C.* 4A:2-2.10(d)4, *et seq.*

In this matter, the appointing authority argues that Albis is not entitled to back pay since she failed to properly mitigate and seek additional employment, and that the back pay award should be reduced due to delays she caused regarding the hearing. The record reflects that the Albis' hearing was initially scheduled in June 2018, and in response to Albis' request, the ALJ's June 5, 2018 letter granted a request for a continuance from June 13, 2018 through September 19, 2018. The ALJ also indicated that an award of back pay should be reduced for that timeframe as the delay was caused by Albis. *N.J.A.C. 4A:2-2.10(d)4* permits the reduction of a back pay award for any period of delay in the appeal proceedings caused by the employee. It would be unfair to hold the appointing authority responsible for the delay in this matter. Since records reflect that the ALJ clearly notified Albis that the continuance would result in a reduction of back pay, and since Albis caused the delay, she is not entitled to back pay for that timeframe, June 13, 2018 through September 19, 2018, and as such, \$19,567.60, the amount of compensation she would have earned during the 14 weeks and one day of the adjournment, will be subtracted from the total amount of the back pay award.

With respect to the appointing authority's argument that Albis did not properly mitigate, the Commission disagrees. Although the appointing authority questions Albis' mitigation efforts, Albis provides documentation to show that she searched internet websites and ultimately obtained alternate employment. Although the appointing authority argues that, other than the position she obtained, Albis potentially could have obtained additional employment elsewhere, it does not provide any substantive documentation in support that such jobs were available and that Albis could have obtained such positions during her separation. The record reflects that Albis obtained substitute employment and, as such, she clearly made efforts to mitigate. The record reflects a 2018 1099-misc form indicating that she received \$7,165 and a 2019 1099-misc form indicating that she received \$2,020. However, on appeal, Albis explains that the 2019 1099-misc form was issued for work she performed while she was still separated from employment from November 2018 through January 2019. Therefore, both the 2018 and the 2019 1099-misc forms must be considered as income for the purposes of deciding this matter. The appointing authority's arguments pertaining to what Albis potentially could have earned do not have an outcome on the back pay award in this matter and are misplaced.

Additionally, the record confirms that Albis collected unemployment benefits during a portion of her separation. The receipt of unemployment benefits constitutes evidence that an individual sufficiently mitigated during that time period, since searching for employment is a condition for receipt of such benefits. *See, e.g., In the Matter of Obianuju Okosa, Union County* (MSB, decided October 1, 2003). As such, the record establishes that Albis properly mitigated in this matter.

Additionally, Albis' receipt of \$15,483 in unemployment benefits during the period of separation is considered income for the purposes of mitigation. *See e.g., In the Matter of William Carroll* (MSB, decided November 8, 2001); *In the Matter James Nance* (MSB, decided October 1, 2003). Therefore, her receipt of unemployment benefits will be subtracted from the total amount of the back pay award.

With respect to Albis' request for reimbursement of health insurance premiums her husband paid for his insurance during the period of separation, she is not entitled to such compensation. *N.J.A.C.* 4A:2-2.10(d) provides for reimbursement of payments made to maintain the employee's health insurance coverage. Albis has not submitted any proof of amounts she incurred to maintain health insurance coverage, and pursuant to the above noted rule, reimbursement of premiums paid by her husband is not permitted pursuant to the aforementioned rule. *See also, Okosa, supra.* Therefore, she is not entitled to be reimbursed for such expenses during the period of her separation from employment.

With respect to her leave benefits, Albis is not entitled to her request for reimbursement of personal days, as the Commission has no jurisdiction to review benefits provided by the local jurisdiction and not specifically awarded by Title 11A of the New Jersey Statutes Annotated. With respect to any sick leave due to Albis, she should receive any unused sick days up to and following the date of her suspension to the time she was returned to employment, as sick leave can accumulate from year to year without limit. *See N.J.S.A.* 11A:6-5 and *N.J.A.C.* 4A:6-1.3. Thus, she should receive 15 sick days for 2018. However, she is not entitled to be paid for any sick leave for the period of her separation. With respect to Albis' request for vacation leave, such leave can only be carried over to the following year. *See N.J.S.A.* 11A:6-3(e) and *N.J.A.C.* 4A:6-1.2(f). As to vacation leave for 2017 and 2018, Albis would only be entitled to have vacation leave for 2018 be credited or carried over and added to her leave entitlements since she returned to work in 2019. Regardless, the appointing authority states on appeal that it already issued a check to the appellant for vacation pay.

Based on the Commission's review of the figures provided in this matter, Albis' gross back pay amount is as follows:


2018 Salary:	\$71,660
Subtract days case was delayed by appellant:	-\$19,568
Subtract unemployment compensation:	-\$15,483
Subtract actual income: (\$7,165 + \$2,020)	-\$9,185
Total back pay award:	<hr/> \$ 27,424

**ORDER**

Therefore, it is ordered that Albis be awarded \$27,424 in gross back pay for the time frame noted and benefits as specified above within 30 days of the issuance of this decision.

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 29<sup>TH</sup> DAY OF APRIL , 2020



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Deirdré L. Webster Cobb  
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