



STATE OF NEW JERSEY

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

In the Matter of Lillian Davis,
Union County, Department of
Correctional Services

Request for Enforcement

CSC Docket No. 2020-2559

ISSUED: OCTOBER 2, 2020 (JET)

Lillian Davis requests enforcement of the attached settlement agreement which was acknowledged by the Civil Service Commission (Commission) at its March 12, 2020 meeting. *See In the Matter of Lillian Davis* (CSC, decided March 12, 2020).

As background, on August 17, 2018, Union County issued Davis a Final Notice of Disciplinary Action on January 11, 2019.¹ Davis appealed to the Commission and the matter was transmitted to the Office of Administrative Law as a contested case. Subsequently, the parties entered into a settlement agreement effective January 18, 2020, dismissing the charges and providing for Union and Hudson County to each pay \$5,129.60² “representing a total of fifty-six (56) days of back pay.” As noted above, by decision dated March 12, 2020, the Commission acknowledged the January 18, 2020 settlement agreement.

In her request, Davis asserts that Union County did not award her back pay pursuant to the settlement agreement and argues that her receipt of any unemployment benefits should not be considered.³

In response, the appointing authority, represented by Brian H. Hak, Esq., maintains that Davis is not entitled to the requested back pay amount of \$5,129.60. Specifically, the appointing authority asserts that Davis has already received the

¹ In relevant part, Davis was suspended on charges for 90 working days.

² At the time Davis was suspended from Union County, it stopped utilizing the juvenile detention facility where Davis was assigned. On January 30, 2019, an Intergovernmental Transfer was effectuated for Davis, and she was transferred to the Hudson County Juvenile Detention facility effective February 16, 2019.

³ Davis confirms that she received the amount owed to her from Hudson County.

amount pursuant to the settlement agreement, and as such, she is not owed any back pay. The appointing authority explains that the settlement sum represented 28 days of back pay. The appointing authority explains that Davis received unemployment benefits in the amount of \$7,563.81. As such, the appellant's receipt of unemployment benefits reduces the amount of back pay she is entitled to receive.⁴ The appointing authority states that it provided unemployment benefits directly to Davis, as it is self-insured to make such payments. The appointing authority submits a March 30, 2020 e-mail indicating that it notified Davis that she was not entitled to the requested amount indicated in the settlement agreement, as she failed to disclose her receipt of unemployment benefits at the time the settlement agreement was signed. The appointing authority also submits a chart illustrating the amounts that Davis received.

CONCLUSION

N.J.A.C. 4A:2-2.10(d)2 indicates that the award of back pay shall be reduced by the amount of taxes, social security payments, dues, pension payments, and any other sums normally withheld. Further, *N.J.A.C.* 4A:2-2.10(d)3 indicates, in pertinent part, that the 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.

In this matter, the record reflects that the Commission previously acknowledged the settlement agreement, which is undisputed. Union County argues that Davis is not entitled to the requested amount of \$5,129.60 as provided by the settlement agreement since she received more than that amount in unemployment benefits during the pertinent period of time. The Commission agrees. While Davis and Union County agreed to such an amount pursuant to the January 18, 2020 settlement agreement, the provisions of a settlement agreement acknowledged by the Commission are subject to Civil Service law and rules. In this regard, while the settlement agreement did not indicate that Davis has a burden to mitigate the award, to conclude otherwise would be to unjustly enrich Davis. Moreover, as Davis' award was specifically considered "back pay" it is subject to all pertinent Civil Service law and rules, such as *N.J.A.C.* 4A:2-2.10(d)3. In this regard, the Commission cannot allow an employee to receive an award of back pay that exceeds the amount of wages that would have been earned during the period of separation. Had the parties contemplated such an enhanced award, it would have had to have been identified as some other type of compensation, and not back pay.⁵ As such, her receipt of unemployment benefits is properly deducted from her back pay award, and thus, Davis is not entitled to any further compensation. Accordingly, the request for enforcement is denied.

⁴ The appointing authority claims that it overpaid the appellant \$3,172.93.

⁵ For example, the award could have been categorized as a "lump sum payment" not tied to wages.

ORDER

Therefore, it is ordered that this request 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 30TH DAY OF SEPTEMBER, 2020

Deirdre' L. Webster Cobb

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Chairperson
Civil Service Commission

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