

appellant asserts that under the case law, the purpose of a back pay award to a suspended officer after criminal charges are dismissed is to make that officer “whole.” He requests all back pay and any other economic benefits between the compensation he actually received going back to his reinstatement in September 2017 and what he was entitled to receive through the present time. The appellant states that this adjustment in placement on the salary guide and compensation would ensure that he is being compensated at the same annual rate as his fellow officers going forward and he did not suffer any loss in earnings as a result of the suspension he was forced to endure. He argues to hold otherwise will always keep him “behind” other officers with the same date of hire without the ability to “catch up.”

The appellant surmises that Corrections is asserting that its current placement on the salary guide is proper because, at the time he was suspended, he had not yet completed his one year working test period as a Correctional Police Officer and would be required to physically work the remainder of his working test period before his appointment to and/or obtaining the title of Senior Correctional Police Officer along with receiving the increments associated therewith. However, he argues that if Corrections’ position is accepted, he would be unfairly penalized due to unfounded allegations/charges against him.

In response, Corrections states that to be advanced from Correctional Police Officer to Senior Correctional Police Officer, one has to physically work for the one year working test period. It presents that when the appellant was suspended, he had only worked nine months and 16 days. Corrections states that the subject suspension without pay was required because the appellant received second degree criminal charges. It indicates that the criminal charges were ultimately dismissed and after a review of the matter, it did not pursue administrative charges. However, it believes that upon the appellant’s return on September 21, 2017, he was required to physically work the remaining two and one-half months prior to being promoted to Senior Correctional Police Officer. Corrections asserts that typically the only time one would see a retroactive appointment date or step placement would be when the Civil Service Commission (Commission) directs it do so and it states that this usually occurs because an employee’s hire date was delayed due to being dismissed from the Academy or military leave. Therefore, it believes that his salary step has been calculated correctly and he cannot receive “credit” for any of the time, or any time where he was not actually physically present on the job during the first year, except for authorized vacation, sick or administrative leave time.

CONCLUSION

N.J.A.C. 4A:2-2.10(c) provides, in pertinent part, where an employee has been suspended based on a pending criminal complaint or indictment, following disposition of the charges the employee shall receive back pay, benefits and seniority if the complaint or indictment is dismissed.

N.J.A.C. 4A:2-2.10(d) provides that back pay shall include unpaid salary, including regular wages, overlap shift time, increments and across-the-board adjustments. Benefits shall include vacation and sick leave credits and additional amounts expended by the employee to maintain his or her health insurance coverage during the period of suspension or removal.

In this matter, the personnel records indicate that on July 20, 2015, the appellant was appointed as a Correctional Police Officer Apprentice and on November 7, 2015, he received a regular appointment as a Correctional Police Officer. Therefore, his 12-month working test period would normally have been completed on November 6, 2016. *See N.J.A.C.* 4A:4-5.2. However, on or around August 22, 2016, after serving approximately nine and one-half months in his working test period, the appellant was indefinitely suspended without pay pending criminal charges. *See N.J.A.C.* 4A:2-2.4 and *N.J.A.C.* 4A:2-2.7. Further, on June 16, 2017, the pending criminal charges were dismissed. Additionally, after investigating the matter, Corrections chose not to issue administrative charges and the appellant was reinstated, effective September 21, 2017. However, although he received back pay for the time he was suspended, Corrections did not promote him to Senior Correctional Police Officer until December 9, 2017, which was when he completed the approximate two and one-half months that were remaining in his working test period. This has resulted in him being currently placed on Salary Step 4 with compensation associated with that step while other officers who had the same hiring date as him are now on Salary Step 5 with compensation associated with that step.

Corrections claims that it could not promote the appellant to Senior Corrections Officer until he physically completed the remainder of working test period. Therefore, it claims that his salary step placements and the salaries associated with those placements from the time of his reinstatement to the present have been properly calculated. However, the Commission finds Corrections argument as unpersuasive as the purpose of the back pay award under *N.J.A.C.* 4A:2-2.10 is to make one “whole” after a pending criminal matter is dismissed. In this matter, the record indicates that Corrections chose not to issue any administrative charges. Therefore, while the appellant did, indeed, need to physically complete his working test period prior to being promoted to Senior Correctional Police Officer, once successfully completed, the Commission finds that his appointment should have been retroactive to November 7, 2016, the date he would have been appointed as a Senior Correctional Police Officer if had not been suspended. Further, the Commission finds

that he should have received compensation based on Salary Step 1 for a Senior Correctional Police Officer, as well as seniority and other benefits starting retroactive to that date. Additionally, his subsequent salary step placements and compensation, seniority and other benefits should have been determined based on his being a Senior Correctional Police Officer as of November 7, 2016. To determine otherwise would not make him “whole” and his compensation, seniority, and other benefits would be unjustly diminished throughout his career.

ORDER

Therefore, it is ordered that the appellant’s request for an adjustment of his salary step and back pay, seniority and benefits is granted based on a retroactive appointment as a Senior Correctional Police Officer, effective November 7, 2016.

. 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 DECEMBER, 2021

Deirdre' L. Webster Cobb

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