



**STATE OF NEW JERSEY**

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

In the Matter of Abraham Estavillo,  
Department of Transportation

CSC Docket No. 2021-980

Administrative Appeal

**ISSUED: MAY 24, 2021 (HS)**

Abraham Estavillo, a former Principal Engineer, Electrical with the Department of Transportation (DOT), requests that the provisions of *N.J.A.C. 4A:6-3.4(a)*, which govern the time period in which employees must file an application for Supplemental Compensation on Retirement (SCOR), be relaxed to permit him to submit a late application for SCOR benefits.

As background, the appellant retired from State service, effective May 31, 2019. The DOT sent the appellant a letter dated June 17, 2019 enclosing a SCOR application, which the appellant was to sign, date, and return. The letter also advised the appellant that he could “defer” his SCOR payment into the following calendar year by including a written request with the SCOR application. However, a SCOR application for the appellant was not forwarded to this agency by the appointing authority within one year of his retirement date. Specifically, the application, which sought a \$15,000.00 SCOR payment, was forwarded in December 2020 but returned by the Division of Agency Services as untimely.<sup>1</sup>

On appeal to the Civil Service Commission (Commission), the appellant states that in July 2019, he returned to the DOT the SCOR application, which he signed July 11, 2019, and a letter dated July 12, 2019 requesting that payment be deferred to the next calendar year. The appellant assumed that the DOT received these

<sup>1</sup> The Division of Agency Services also indicated that section 11 of the application, concerning the “Total Average Annual Compensation,” was incorrect and noted its correction on the returned application. No party objects to the correction in this matter.

documents and that no further action on his part was required. The appellant recounts that thereafter, he waited for the year 2020 to come and expected a check to arrive anytime. The appellant presumed that because of the COVID-19 pandemic, there could have been delays in government actions. When November 2020 came with no check, the appellant followed up on his request by resubmitting his application and deferment letter. The appellant indicates that he added the following postscript to the deferment letter: “Most likely, the response to [this] request is delayed due to COVID-19 pandemic.” The appellant surmises that his original application and deferment letter may have been lost in the mail, or they may have been set aside, misplaced, or forgotten. In support, the appellant submits, among other things, copies of his SCOR application and deferment letter.

In response, the DOT states that it has no record of receiving the appellant’s July 2019 SCOR application and deferment letter and that it only received these documents in December 2020, at which time it promptly forwarded the SCOR application to this agency for processing. However, the DOT indicates that it finds the appellant’s accounting of events and explanation reasonable and will not dispute his receiving his SCOR payment.

In further support of his appeal, the appellant submits an affidavit in which he attests to the following: he received the SCOR application on July 11, 2019 and completed and signed the application immediately; on July 12, 2019, he wrote a deferment letter in which he requested that his SCOR payment be deferred into calendar year 2020; and after making duplicate copies of the application and deferment letter, he mailed the originals to the DOT sometime in July 2019.

## CONCLUSION

*N.J.A.C.* 4A:6-3.3(a) provides that, upon retirement, an employee is entitled to SCOR to be “computed at the rate of one-half the employee’s daily rate of pay for each day of earned and unused accumulated sick leave at the effective date of retirement.” The maximum amount of SCOR for any employee, however, is \$15,000.00. *See N.J.S.A.* 11A:6-19. *N.J.A.C.* 4A:6-3.4(a) provides that an employee may file an application for SCOR within one year of the effective date of retirement. *N.J.A.C.* 4A:6-3.4(c) provides that after receipt of the notice of retirement approval and SCOR application, the appointing authority shall forward to this agency within 45 days: (1) a personnel action request certifying the number of days of earned and unused accumulated sick leave and the amount of SCOR to be paid; (2) a copy of the notice of retirement approval; and (3) completed SCOR application form. *N.J.A.C.* 4A:1- 1.2(c) provides that a rule may be relaxed for good cause.

In this matter, the appellant retired from State service, effective May 31, 2019, but the SCOR application was not forwarded to this agency until December 2020, outside the one-year time period established by *N.J.A.C.* 4A:6-3.4(a). The appellant

has, however, submitted an affidavit in which he attests that he mailed a completed and signed SCOR application to the DOT sometime in July 2019. Generally, the Commission is willing to accept that if an individual is prepared to make a statement under oath, understanding all its implications and consequences, then the statement may properly be credited. The Commission will thus, in this particular case, accept that the appellant mailed the application to the DOT sometime in July 2019. Had that mailing been received by the DOT, it could then have timely acted upon it. However, for reasons unknown, the DOT never received the mailing. In such a situation, the former employee should not be penalized with a diminution of a monetary entitlement. Accordingly, it is appropriate to relax the provisions of *N.J.A.C.* 4A:6-3.4(a) to permit the appellant to apply for SCOR. The decision to provide this relief is based on the specific facts presented and should not be used as precedent for any other matter.

A final comment is warranted concerning the DOT's apparent practice of advising retirees that they may "defer" their SCOR payments into the next calendar year by making a written request. Although both a former employee and an appointing authority should be aware of the rules governing SCOR and time periods noted therein, it is the appointing authority's responsibility to properly and promptly provide for the processing of appropriate documentation to effectuate SCOR payments. The Commission must emphasize that pursuant to *N.J.A.C.* 4A:6-3.4(c), once an appointing authority receives the notice of retirement approval and SCOR application, the appointing authority *shall* forward to this agency *within 45 days* the documents specified in the rule. *See also, N.J.S.A.* 11A:6-20. As such, notwithstanding the DOT's desire to accommodate employees' requests that payment be "deferred," the DOT must also ensure that it is adhering to all timeframes found in the rules governing SCOR.

### **ORDER**

Therefore, it is ordered that this request be granted, the provisions of *N.J.A.C.* 4A:6-3.4(a) be relaxed, and Abraham Estavillo's SCOR application be processed.

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 19<sup>TH</sup> DAY OF MAY, 2021

*Deirdre' L. Webster Cobb*

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Deirdré L. Webster Cobb  
Chairperson  
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