



STATE OF NEW JERSEY

In the Matter of W.F., Ancora
Psychiatric Hospital, Department of
Health

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

CSC Docket No. 2022-495

Administrative Appeal

ISSUED: APRIL 11, 2022

W.F., a former Quality Assurance Coordinator with Ancora Psychiatric Hospital, Department of Health, appeals the denial of his request for Supplemental Compensation on Retirement (SCOR) pursuant to *N.J.A.C. 4A:6-3.1(b)1* and requests additional compensation for unused vacation days upon his May 1, 2021 retirement.

As background, the appointing authority served the appellant with a Preliminary Notice of Disciplinary Action (PNDA) that indefinitely suspended him without pay, effective September 5, 2019, pending disposition of a criminal complaint. The criminal complaint was disposed of in early 2021. On February 12, 2021, the appellant was served with another PNDA that specified the remaining charges against him and sought his removal.¹ Subsequently, the parties entered into a settlement agreement, which provided, in pertinent part:

In consideration of my . . . withdrawing my appeal and requests for a hearing, Releasees (Ancora) agree to not pursue the [PNDA] dated February 12, 2021. Releasees (Ancora) will not object to [W.F.]’s application to pensions for retirement dated May 1, 2021. If [W.F.]’s application for retirement is denied, then [W.F.] agree[s] to a General Resignation effective June 1, 2021 as a resolution of the disciplinary appeal and will not seek or accept employment at any time in the future

¹ Apparently, the appellant remained suspended.

with the Department of Health. Releasees will amend [W.F.]’s personnel records to conform to the terms of settlement. [W.F.] waives all claims against Releasee with regard to this matter, including any award of back pay, counsel fees, or other monetary relief.²

The appointing authority also issued the appellant a Final Notice of Disciplinary Action (FNDA) withdrawing the disciplinary charges and indicating, among other things, that “all time from 9/5/19 will be recorded as an approved leave of absence without pay.” The appellant’s application for retirement, effective May 1, 2021, was approved. The appointing authority forwarded a SCOR application for the appellant to this agency. This agency denied the application pursuant to *N.J.A.C. 4A:6-3.1(b)1*, which provides, in pertinent part, that employees who retire in lieu of removal shall not be eligible for SCOR. However, in June 2021, the appointing authority did remit a payment of \$891.90 for 14.5 hours of vacation leave, representing seven unused hours carried forward from 2020 and 7.5 hours earned for 2021, according to the Personnel Management Information System (PMIS).

On appeal to the Civil Service Commission (Commission), the appellant states that at the time his indefinite suspension commenced, his vacation leave balance totaled much more than 14.5 hours, but his time was taken away due to his being out on suspension. The appellant contends that this was unfair because delays in the court system stemming from the COVID-19 pandemic prevented his criminal complaint from being resolved sooner than it could have. The appellant argues that in light of pandemic-related delays, it is fair to “pause” the process where a State employee’s earned time is taken away, especially where the employee can do nothing to prevent it. On the denial of his SCOR, the appellant argues that the phrase “retirement in lieu of removal” does not appear in the FNDA. He also claims that the denial of SCOR is a violation of the settlement agreement, and he highlights the following language in the agreement:

Denial of Liability: Nothing contained in this Release is intended to be, or shall be construed to be, an admission that the Releasees have violated any federal, state, or local law, constitution, ordinance or regulation; or that they breached any contract; or that they committed any wrong whatsoever against [W.F.]. Releasees expressly deny the validity of [W.F.]’s disputed claims, and nothing contained herein may be used or viewed as an admission of liability. This Agreement shall not be admissible in any trial, hearing or litigation other than to recover for a breach of this Agreement, or to enforce its terms.

In response, the appointing authority indicates that the appellant had 246.9 hours (or 35.27 days) of vacation time on the books in 2019, but time was lost in 2020 and 2021. Concerning the SCOR issue, the appointing authority notes the PNDAs,

² It appears that the parties also intended for the agreement to remain confidential.

FNDA, and settlement agreement. In support, the appointing authority submits documentation from PMIS; records from the electronic Cost Accounting and Timesheet System (eCATS); and other documents. The eCATS records indicate the following:

- The appellant carried forward 123.9 hours of vacation leave from 2019 into 2020.
- After being credited with 175 hours (or 25 days) of vacation leave at the beginning of 2020 in anticipation of continued employment, *see N.J.A.C. 4A:6-1.2(a)*, the appellant's 2020 balance was reduced by 167.9 hours "because of too much unpaid leave," leaving the appellant with 7.1 hours of vacation leave earned for 2020 and carried forward to 2021.
- After being credited with 175 hours of vacation leave at the beginning of 2021, the appellant's 2021 balance was reduced by 167.7 hours, representing a reduction of 51.1 hours "because of too much unpaid leave" and a prorated reduction of 116.6 hours due to the appellant's retirement, leaving the appellant with 7.3 hours of vacation leave earned for 2021.³
- As noted earlier, the appointing authority issued the appellant an FNDA withdrawing its disciplinary charges against him and indicating, among other things, that "all time from 9/5/19 will be recorded as an approved leave of absence without pay."

CONCLUSION

Initially, with respect to the SCOR issue, *N.J.A.C. 4A:6-3.1* provides, in pertinent part:

(a) The following employees shall be eligible for supplemental compensation on retirement ("SCOR"):

1. State employees in the career service and employees in the senior executive service with underlying permanent career service status;

* * *

(b) Employees in the categories in (a) above shall be eligible for SCOR upon separation from employment based on retirement from a pension system administered by the State of New Jersey.

³ The vacation leave balances noted in the eCATS records are slightly different from the figures noted in PMIS.

1. Employees removed for cause after an opportunity for a hearing, who retire in lieu of removal, or who retire under circumstances which would warrant removal, shall not be eligible for SCOR . . .

The settlement agreement expressly provided that the appellant would either retire, effective May 1, 2021, or agree to a general resignation, effective June 1, 2021, in exchange for the appointing authority withdrawing the February 12, 2021 PNDA, which indicated it sought the appellant's removal. Although the appellant argues that the phrase "retirement in lieu of removal" does not appear in the FNDA that was issued, the Commission finds this argument meritless because it merely elevates form over substance. The facts on this issue are not disputed. The appellant was issued a PNDA, which sought his removal. As a result of settlement negotiations, the appellant agreed to resign or retire, and the appointing authority agreed to withdraw the pending discipline. Consequently, as his retirement, *in substance*, was in lieu of discipline, pursuant to *N.J.A.C.* 4A:6-3.1(b), he is not entitled to SCOR. Nothing in the settlement agreement permitted the appellant SCOR benefits to which he was not entitled under that regulation. *See In the Matter of Jefferson Nah* (CSC, decided August 1, 2018), *aff'd*, *In the Matter of Jefferson Nah, Office of the Public Defender*, Docket No. A-0356-18T1 (App. Div. December 27, 2019).

Turning to the vacation leave issue, the Commission must initially note that the appellant should not have been compensated for *any* unused vacation leave. In this regard, pursuant to *N.J.S.A.* 11A:6-2f and *N.J.A.C.* 4A:6-1.2(g), vacation leave not taken in a given year can only be carried over to the following year. *See In the Matter of John Raube, Senior Correction Officer, Department of Corrections*, Docket No. A-2208-02T1 (App. Div. March 30, 2004). Further, *N.J.A.C.* 4A:6-1.5(b) provides:

An employee who leaves State service or goes on a leave of absence without pay before the end of the calendar year shall have his or her leave prorated based on time earned, except that the leave of an employee on a voluntary furlough or furlough extension leave shall not be affected. An employee who is on the payroll for 23 days or more shall earn a full month's allowance, and earn one-half month's allowance if he or she is on the payroll for greater than 14 calendar days, but less than 23 calendar days in a month.

Thus, the appellant was appropriately not compensated upon his 2021 retirement for the 123.9 hours of vacation leave earned in 2019 because vacation leave cannot be carried over for more than one year. However, the appellant should not have earned any vacation leave for 2020 and 2021. Pursuant to the settlement agreement, the appellant was on a leave of absence without pay for the entirety of 2020 and 2021 up to his retirement. Thus, by operation of *N.J.A.C.* 4A:6-1.5(b), the appellant should not have earned any vacation leave for those years. While the eCATS records do show

prorations being made to account for the appellant's leave of absence without pay and retirement, the vacation leave balances were not sufficiently reduced to fully comply with the requirements of *N.J.A.C.* 4A:6-1.5(b). No vested or other rights are accorded by an administrative error. See *Cipriano v. Department of Civil Service*, 151 *N.J. Super.* 86 (App. Div. 1977); *O'Malley v. Department of Energy*, 109 *N.J.* 309 (1987); *HIP of New Jersey v. New Jersey Department of Banking and Insurance*, 309 *N.J. Super.* 538 (App. Div. 1998). Therefore, since the appellant was compensated for unused vacation leave that was not earned in the first place, he is required to reimburse the appointing authority for that time, see *N.J.A.C.* 4A:6-1.5, absent a waiver of such a salary overpayment pursuant to *N.J.A.C.* 4A:3-4.21.

While the appellant contends that there should have been a "pause" in the process by which his vacation leave was prorated, this argument overlooks that the accumulation of vacation leave is statutory and so cannot be relaxed by the Commission. In this regard, *N.J.S.A.* 11A:6-2f provides that vacation leave is earned on the basis of "service" and can be carried over to "the next succeeding year only." The appellant rendered no service from September 2019 through his retirement in 2021. Thus, the Commission cannot entertain the appellant's requested remedy.

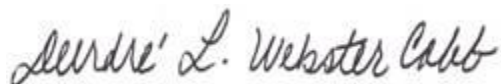
Finally, the Commission recommends that the Division of Agency Services review eCATS to ensure that vacation leave is being prorated fully consistent with the requirements of *N.J.A.C.* 4A:6-1.5(b).

ORDER

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 6TH DAY OF APRIL 2022



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