



STATE OF NEW JERSEY

In the Matter of Tashaya Porter,
Department of Labor and Workforce
Development

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

CSC Docket No. 2022-2512

Request for Waiver of Repayment of
Salary Overpayment

ISSUED: November 23, 2022 (HS)

Tashaya Porter, a Contract Administrator 2 with the Department of Labor and Workforce Development, requests a waiver of repayment of a salary overpayment pursuant to *N.J.S.A.* 11A:3-7, which provides that when an employee has erroneously received a salary overpayment, the Civil Service Commission (Commission) may waive repayment based on a review of the case.

As background, the appointing authority appointed the appellant to the title of Employment and Training Specialist 2 (\$78,967.17, step 10, salary range P21). Subsequently, the appellant filed a request for a classification review with the Division of Agency Services (Agency Services). Agency Services reviewed all documentation supplied and determined in December 2021 that the appropriate title for her position was Contract Administrator 2, effective retroactively to July 3, 2021 (\$86,446.41, step 6, salary range P26).

The appellant was notified that since her prior title was a “35” title, but her current title was an “NL” (non-limited) title, she was no longer entitled to overtime payments after July 2, 2021. In this regard, it is noted that employees in NL titles are not normally eligible for cash compensation for overtime. *See N.J.A.C.* 4A:3-5.3, 5.6, and 5.7. Therefore, the appellant was informed that she was required to repay \$25,567.89 in overtime payments made from July 3, 2021 to January 14, 2022.

On appeal to the Commission, the appellant states that during the relevant timeframe, she was reassigned to work on critical unemployment insurance matters

to meet unprecedented demand stemming from COVID-19 and thus would have earned special project rate (SPR) compensation had she been in the NL title during that time. *See N.J.A.C. 4A:3-5.7(e)*. The appellant maintains that she did not receive any guidance or assistance from management or her union advising that the Contract Administrator 2 title was typically overtime-ineligible. She adds that the repayment requirement will cause her economic hardship.

In response, the appointing authority states that the appellant continued to work cash overtime during the pendency of her classification review request but concedes that had she been in an NL workweek during the relevant timeframe, she would have been entitled to SPR compensation that was approved for the Division of Income Security. The appointing authority indicates that it has not established a repayment plan as it is awaiting the outcome of the instant appeal.

CONCLUSION

N.J.A.C. 4A:3-4.21 provides, in pertinent part:

- (a) The [Commission] may waive, in whole or in part, the repayment of an erroneous salary overpayment, or may adjust the repayment schedule based on consideration of the following factors:
 1. The circumstances and amount of the overpayment were such that an employee could reasonably have been unaware of the error;
 2. The overpayment resulted from a specific administrative error, and was not due to mere delay in processing a change in pay status;
 3. The terms of the repayment schedule would result in economic hardship to the employee.

It is well settled that all of the factors outlined in *N.J.A.C. 4A:3-4.21* must be satisfied to successfully obtain a waiver of the repayment obligation. Thus, in *In the Matter of Thomas Micai v. Commissioner of Department of Personnel, State of New Jersey*, Docket No. A-5053-91T5 (App. Div., July 15, 1993), the Superior Court of New Jersey, Appellate Division, affirmed the Commissioner of Personnel's decision to deny a request for waiver of repayment of salary overpayment, finding that, although the appellant had established that the overpayment was the result of an administrative error, he failed to show that enforcement of the repayment would create economic hardship.

The appellant requests a waiver of the salary overpayment since she claims that the circumstances of the overpayment were such that she was unaware of the overpayment and repayment would result in economic hardship to her. Even assuming, *arguendo*, that those factors are satisfied, the appellant has not shown that the salary overpayment resulted from a specific administrative error rather than a mere delay in processing a change in pay status. In this regard, it must be recognized that the overpayment was, in effect, the result of a delay in reclassifying the appellant's title to Contract Administrator 2. It is evident that the overpayment resulted from the effectuation of the reclassification of the appellant's position in accordance with Civil Service regulations. See *In the Matter of Michelle Mack* (CSC, decided May 9, 2019) (Appellant who received overtime compensation and then had her position reclassified retroactively to a title that did not permit overtime compensation was overpaid and not entitled to a waiver of repayment of salary overpayment). See also *In the Matter of John Rourke* (CSC, decided January 13, 2010), *aff'd on reconsideration* (CSC, decided July 13, 2011).

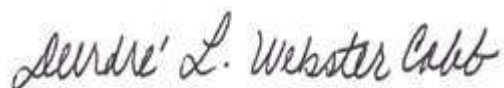
Nevertheless, in light of the parties' agreement that the appellant would have been entitled to SPR compensation had she been in an NL workweek during the relevant timeframe, she should be afforded some relief. Accordingly, the appointing authority shall deduct from the repayment amount any sums that the appellant would have earned in SPR compensation. If monies are still owed after such deduction, the appointing authority shall implement a repayment plan based upon the modified figure. The repayment schedule should be lenient if necessary.

ORDER

Therefore, it is ordered that this request for a waiver of the repayment of the salary overpayment by Tashaya Porter be granted in part as set forth in 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 23RD DAY OF NOVEMBER, 2022



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Tashaya Porter
Tennille McCoy
Chai Respes
Division of Agency Services
Records Center