

In the Matter of David Berkley, Department of Labor and Workforce Development
CSC Docket No. 2012-3327
(Civil Service Commission, decided May 1, 2013)

David Berkley, a former Claims Adjudicator, Disability Determinations, with the Department of the Labor and Workforce Development (DOL), appeals the adjustment of his leave allowances due to his resignation.

By way of background, on January 1, 2012, Berkley's leave balances were credited, in relevant part, as follows: 105 hours of sick time plus 6.25 hours carried forward for a total of 111.25 hours; and 84 hours of vacation time plus 27 hours carried forward for a total of 111 hours. Thereafter, Berkley used 47.5 hours of sick time, 59.5 hours of vacation time and 19.5 hours of administrative leave. On May 8, 2012 Berkley submitted his resignation, effective May 18, 2012. As a result of his resignation, his leave balances were prorated to 70 hours of sick time and 56 hours of vacation leave, leaving him with negative balances of 6.25 hours of sick leave and 4.5 hours of vacation leave. In this regard, it was determined that since Berkley was not on the payroll from the 9th through the 23rd day of the month, he was not entitled to any leave time for the month of May. *See N.J.A.C. 4A:6-1.5(b).*

On appeal, Berkley argues that the proration of his leave time was incorrectly calculated. In this regard, Berkley asserts that the appointing authority incorrectly deducted a full month's worth of leave accrual for May, instead of a half month's worth that should have been deducted pursuant to *N.J.A.C. 4A:6-1.5(b)*. Berkley argues that interpreting *N.J.A.C. 4A:6-1.5(b)* to require an employee to be on the payroll from the 9th through the 23rd day penalizes employees like himself, who worked more days than if he had only worked from the 9th through the 23rd day of the month. In this regard, he notes that there are only 14 calendar days and 12 workdays between the 9th and 23rd day of the month. However, he worked 18 calendar days and 14 workdays from May 1st through May 18th, yet received no prorated time for May since he was not on the payroll from the 9th through the 23rd day of the month. The appellant argues that it is unfair to penalize him for working more days during the month than the required days, simply because the days he worked did not fall between the 9th and 23rd day of the month.

Additionally, the appellant argues that the appointing authority's interpretation is illogical, especially when read in conjunction with *N.J.A.C. 4A:6-1.2(a)* and *N.J.A.C. 4A:6-1.3(a)*, which provide how employees earn leave time upon appointment. In this regard, the appellant notes that *N.J.A.C. 4A:6-1.2(a)* and *N.J.A.C. 4A:6-1.3(a)* use virtually the same language as *N.J.A.C. 4A:6-1.5(b)*. Finally, Berkley maintains that he, and all other employee similarly situated, should be entitled to a restoration of any leave time that was incorrectly deducted.

In response, the appointing authority reiterates that Berkley's leave allowances were correctly calculated based on June 21, 2011 advice received from this agency. Specifically, it supplies a June 21, 2011 memorandum indicating that *N.J.A.C. 4A:6-1.5(b)* was to be strictly interpreted and therefore, the 9th through the 23rd referred to actual dates, and not the number of days worked. However, the advice also noted that the other part of the rule which indicated that an individual who worked greater than 23 days in the month would be entitled to a full month's worth of leave time, did not require that the 23 days be served consecutively.

CONCLUSION

N.J.A.C. 4A:6-1.5(b) provides that:

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 greater than 23 days shall earn a full month's allowance, and earn one-half month's allowance if he or she is on the payroll from the 9th through the 23rd day of the month.

In the instant matter, Berkley initially argues that it is unfair that he was not credited with any leave time for May since he was not in pay status from the 9th through the 23rd day of the month, despite having worked more days (14 work days, 18 calendar days) than encompassed in that time period (12 work days, 14 calendar days). Moreover, Berkley maintains that the interpretation of *N.J.A.C. 4A:6-1.5(b)* is not consistent with the interpretations of *N.J.A.C. 4A:6-1.2(a)* and *N.J.A.C. 4A:6-1.3(a)*, the sections for prorating time upon an initial appointment. For example, *N.J.A.C. 4A:6-1.2(a)* provides that new employees shall only receive one working day for the initial month of employment if they begin work on the 1st through the 8th day of the calendar month, and one-half working day if they begin on the 9th through the 23rd day of the month. In *In the Matter of Janet McSloy* (CSC, decided May 26, 2010), the Civil Service Commission (Commission) noted that *N.J.A.C. 4A:1-1.3* defined "days" as "calendar days unless otherwise specified." Therefore, the Commission found that the "9th" and "23rd" in the rule referred to actual dates of the month and not number of days worked and since McSloy was not in pay status from the 9th through the 23rd, a full month's leave allowance was properly deducted. The Commission also noted that even if the rule referred to the number of days worked, McSloy had only been in pay status for eight days during the month in question.

In the instant matter, Berkley was in pay status for 18 calendar days, which are more calendar days than the time period encompassed by the 9th through the

23rd days of the month. It seems patently unfair to penalize this employee by not providing him with any prorated leave time for May, despite working more days than are encompassed within the required dates, simply because the dates he worked were not within those required dates. Moreover, *N.J.A.C.* 4A:6-1.5(b) also provides that an employee who works more than 23 days earns a full month's allotment of leave time. In the June 21, 2011 memoranda from this agency, it was noted that as long as an employee worked greater than 23 days in the month, the employee would be entitled to a full month's worth of leave time, even if those 23 days were not served consecutively. *N.J.A.C.* 4A:1-1.2(c) provides that the Commission may relax a rule for good cause in a particular circumstance in order to effectuate the purposes of Title 11A, New Jersey Statutes. Under the particular circumstances presented, the Commission finds that good cause has been presented to relax the provisions of *N.J.A.C.* 4A:6-1.5(b) and credit Berkley with one-half month's allowance of sick and vacation leave time. The crediting of 4.38 hours of sick leave and 3.5 hours of vacation leave would still leave the appellant with negative balances of 1.87 hours of sick leave and 1.5 hours of vacation leave.

One matter warrants additional comment. The wording of *N.J.A.C.* 4A:6-1.5(b) may lead to illogical results, as evidenced by the instant matter. Therefore, it is recommended that *N.J.A.C.* 4A:6-1.5(b) be reviewed by the Division of Compensation and Personnel Management and for it to recommend the appropriate changes to the Commission.

ORDER

Therefore, it is ordered that this appeal be granted.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.