

In the Matter of Tinishia Williams, Department of Human Services
CSC Docket No. 2014-1970
(Civil Service Commission, decided June 18, 2014)

Tinishia Williams, a Practical Nurse at Ancora Psychiatric Hospital, Department of Human Services, appeals the failure to pay her overtime pay for work on a holiday.

By way of background, the appellant is employed in a seven day coverage facility and her title is classified as a fixed workweek title having a 40 hour workweek (40). The appellant worked on two State holidays, both of which were her regular workdays: November 11, 2013, Veterans Day, and November 28, 2013, Thanksgiving Day. However, she was not in pay status on the day immediately preceding the holidays. On the dates in question, the appellant's daily base pay was \$209.07 and her overtime compensation hourly rate was \$39.97. The appellant received \$351.74 for November 11, 2013 (8.8 hours multiplied by \$39.97) and \$319.76 for November 28, 2013 (8 hours multiplied by \$39.97).

On appeal to the Civil Service Commission (Commission), the appellant argues that she is entitled to both her base pay and overtime compensation (at the rate of one and one-half times her hourly rate) for the hours she worked on the holidays, regardless of her pay status on the days immediately preceding the holidays.

In response, the appointing authority asserts that the appellant was properly compensated for the two holidays in question. Specifically, it asserts that pursuant to *N.J.A.C. 4A:6-2.4(d)*, the appellant was not entitled to any "holiday pay," or her base pay of \$209.07, since she was not in pay status on the days immediately preceding the holidays. The appointing authority explains that "holiday pay" is compensation at straight time for the holiday, for which the workweek requirement in *N.J.A.C. 4A:6-2.4(d)* must be met. However, the appointing authority asserts that pursuant to *N.J.A.C. 4A:3-5.8*, the appellant was not required to meet any workweek requirement for the "overtime pay" for each holiday she worked. Therefore, the appellant was compensated in the amounts of \$351.74 for November 11, 2013 (8.8 hours multiplied by \$39.97) and \$319.76 for November 28, 2013 (8 hours multiplied by \$39.97) for the actual hours she worked. Finally, the appointing authority indicates that if the appellant had been in pay status on the day immediately preceding the holidays, she would have been entitled to an additional \$209.07 in "holiday pay" for each holiday.

CONCLUSION

Initially, the appointing authority argues that pursuant to *N.J.A.C.* 4A:6-2.4(d), the appellant was not entitled to “holiday pay” for the hours she worked since she was not in pay status on the days immediately preceding the holidays. However, *N.J.A.C.* 4A:6-2.4(d) does not apply to the instant matter since the appellant was employed in a seven-day coverage facility. Rather, the appellant’s situation is governed by *N.J.A.C.* 4A:3-5.8, which provides, in part, that:

- (a) Full-time and part-time employees in fixed workweek titles¹ shall be entitled to overtime compensation² in addition to their regular rate of compensation for all work performed on a holiday, except as provided in (d) below, even if they are not in pay status for a full workweek.
- (b) Employees in non-limited titles are not entitled to overtime compensation for work performed on a holiday, except as provided in *N.J.A.C.* 4A:3-5.6. However, those in titles below that of agency head may, at the discretion of the appointing authority, be granted comparable time off to a maximum of hour for hour for such work in addition to their regular rate of compensation.
- (c) The following shall govern overtime compensation for full-time and part-time employees in fixed workweek titles who are employed in a seven day coverage operation:
 1. If a holiday occurs on a regular workday of an employee, the employee is entitled to overtime compensation for all work performed on that holiday in addition to the regular rate of compensation.
 2. If a holiday occurs on a regular day off, an employee shall be given an additional day off in the same workweek. If, as a result of an emergency,

¹ *N.J.A.C.* 4A:3-5.2, defines “fixed workweek title” as a title specified in the State Compensation Plan as having a 35 hour (35, 3E) or 40 hour (40, 4E) workweek. See *N.J.A.C.* 4A:6-2.2.

² *N.J.A.C.* 4A:3-5.2 defines “overtime compensation” as cash overtime compensation or compensatory time off as permitted. *N.J.S.A.* 11A:6-24 provides that overtime compensation and holiday pay shall be either cash compensation at a rate representing one and one-half times the employee’s hourly rate of base salary or compensatory time off at a rate of one and one-half hours for each hour worked beyond the regular workweek, at the discretion of the department head, with the approval of the Commission.

the employee is required to work on the additional day, he or she shall be entitled to overtime compensation for all work performed on the additional day.

3. If a holiday occurs on a regular workday of an employee and the employee does not report for duty, he or she shall not be eligible for overtime compensation or an alternate day off for that holiday.

(d) A part-time or full-time employee in a fixed workweek title, in conjunction with his or her appointing authority, may agree to work on a holiday in exchange for a specified day of personal preference off. If the employee is required to work on the specified personal preference day, she or he shall be entitled to overtime compensation for all hours worked on the personal preference day as if that day were the holiday.

* * *

Since the appellant is employed in a seven-day coverage situation, and was required to work on the holidays, she was “entitled to overtime compensation for all work performed on that holiday in addition to the regular rate of compensation.” *See N.J.A.C. 4A:3-5.8(c)1*. There is no requirement in *N.J.A.C. 4A:3-5.8(c)*, that an employee be in pay status the day immediately preceding the holiday in order to receive both overtime compensation for all work performed on that holiday and her regular rate of compensation. The only requirement is that the employee appears for and performs work on the holiday. Consequently, since the appellant worked both holidays, she was entitled to overtime compensation at the rate of one and one-half hours, for all hours worked on the holidays in question, in addition to her regular rate of pay for each day (8 hours at her regular rate for each day).

ORDER

Therefore, it is ordered that this appeal be granted and the appellant is entitled to 16 hours of pay at her regular rate for November 11 and 28, 2013.

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