



STATE OF NEW JERSEY

In the Matter of Glenn Nolen,
Roselle, Department of Public Works

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

CSC Docket No. 2023-925

Request for Enforcement

ISSUED: May 3, 2023 (HS)

Glenn Nolen requests enforcement of the Civil Service Commission (Commission) decision rendered on May 18, 2022, which ordered that he be granted mitigated back pay, benefits, and seniority.

By way of background, the appointing authority issued a Final Notice of Disciplinary Action removing the petitioner on charges of conduct unbecoming a public employee, insubordination, and “threatening remarks.” Upon his appeal, the matter was transmitted to the Office of Administrative Law for a hearing. Following a hearing and the Commission’s *de novo* review, the charges of conduct unbecoming a public employee and insubordination were sustained, and the penalty was modified to a six working day suspension. The Commission ordered that the petitioner be reinstated and awarded mitigated back pay, benefits, and seniority from six working days after the first date of separation to the actual date of reinstatement. The record reflects that the petitioner was reinstated on June 8, 2022.

In his request, the petitioner states that he has not received his back pay or benefits, namely vacation days, sick days, “personal days,” and “floating holidays.”

In response, the appointing authority, represented by Raymond J. Stine, Esq., notes that the petitioner was being represented by Melvin M. Wright, Jr., Esq. and it has been working with Wright to obtain the necessary documentation for mitigation. Wright obtained W-2 forms and pay stubs from the petitioner through his last pay cycle in 2022 for another employer for purposes of mitigation. The appointing

authority forwarded the following “final breakdown” on gross back pay to Wright on October 26, 2022:

Lost Earnings	\$52,914.00
Less 2020 Earnings	\$1,040.00
Less 2021 Earnings	\$23,270.00
Less 2022 Earnings	\$6,435.00
Back Pay Due	\$22,169.00

According to the appointing authority, Wright agreed with the above assessment and advised that he explained the breakdown to the petitioner (on or about October 26, 2022, after the filing of the instant enforcement request). The appointing authority maintains that to its knowledge, the amount is not disputed and has been submitted for payment to the petitioner.

In reply, the petitioner counters that he never agreed to the above-described back pay breakdown and states that he advised the appointing authority that Wright was no longer representing him. The petitioner states that “[t]hey initially said approximately 54k and then the final number was 22k,” and there was no mention of the requested benefits. The petitioner notes that he would be “more comfortable” if the Commission performed the calculations and included all that he is due.

In reply, the appointing authority states that it had advised Wright that the petitioner would receive credit for the requested benefits through the personnel department, and those benefits are not part of back pay calculations. In support, the appointing authority provides a copy of the October 26, 2022 e-mail where the petitioner purported to advise it that Wright was no longer representing him. In the e-mail, the petitioner wrote, “Mr. Stine any email please forward to me please . . . Don’t forward . . . Wright [anymore] emails about case thank you...” On October 31, 2022, Wright, referencing the “Nolen Matter,” sent an e-mail to the appointing authority inquiring “when the Finance Department will be issuing the check.” The appointing authority also provides a copy of the documentation supporting its calculation of the back pay award.

In reply, the petitioner avers that the appointing authority still has not settled the matter of his requested benefits.

The record reflects that on or about November 18, 2022, the petitioner’s back pay award was deposited into his account. The petitioner states that he does not want this action to be interpreted to mean that he has accepted the appointing authority’s award until the Commission has concluded its review of this matter. According to the petitioner, the award remains untouched.

Additionally, the appointing authority later confirmed that it had fully credited the appellant as to all referenced benefits.

CONCLUSION

In its May 18, 2022 decision, the Commission ordered that the appellant receive mitigated back pay. The appointing authority indicates that it worked with Wright to obtain mitigation documentation and calculated a final breakdown for the appellant's back pay award on October 26, 2022. The appellant, in this petition, insists that he did not agree with the appointing authority's breakdown. However, his October 26, 2022 e-mail only directed the appointing authority not to forward Wright any e-mails about his case and that such e-mails should be sent to him directly. Moreover, in the instant petition, the petitioner does not actually articulate with specificity what was deficient with the appointing authority's breakdown. The petitioner merely offers a general statement that "[t]hey initially said approximately 54k and then the final number was 22k." This is not evidence of a deficiency as the petitioner seems to have overlooked that a back pay award, by rule, must be reduced by the amount of money that was actually earned during the period of separation. *See N.J.A.C. 4A:2-2.10(d)3*. The difference between the "initial" number and the "final" number, which the appellant suggests is suspect, is in fact legitimately explained by the appointing authority's application of the cited rule. Moreover, the record reflects that the petitioner was awarded his back pay on or about November 18, 2022. As such, the Commission concludes its review on the issue of the mitigated back pay granted in the prior decision and finds no reason to issue an order of enforcement on that issue.

The Commission also previously ordered that the petitioner be awarded benefits. Specifically, benefits shall include, in pertinent part, vacation and sick leave credits. *See N.J.A.C. 4A:2-2.10(d)*. As the record reflects that the appointing authority has provided the petitioner with his benefits, an order of enforcement on this issue is unnecessary as well.¹

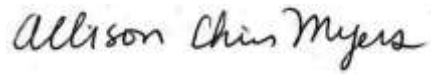
ORDER

Therefore, it is ordered that this request be denied.

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

¹ The Commission notes that the petitioner's enforcement request extended to "personal days" and "floating holidays." However, as such days are not contemplated by *N.J.A.C. 4A:2-2.10(d)*, the Commission would have lacked the authority to award them. Therefore, the petitioner would have had to pursue these benefits, if necessary, via an appropriate alternate mechanism, such as a collective negotiations agreement.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 3RD DAY OF MAY, 2023



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