



STATE OF NEW JERSEY

In the Matter of Mohamed Conteh,
Trenton Psychiatric Hospital,
Department of Health

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

CSC Docket No. 2023-1991

Back Pay and Seniority

ISSUED: August 23, 2023 (SLK)

Mohamed Conteh requests that the Civil Service Commission (Commission) determine the back pay and seniority entitled to him in *In the Matter of Mohamed Conteh* (CSC, decided September 21, 2022).

By way of background, Conteh appealed his removal effective July 29, 2019, on charges related to his position as a Human Services Technician where it was alleged that he engaged in mental or physical abuse of a patient and conduct unbecoming a public employee arising out of a November 9, 2018, incident with a patient. While there were multiple charges against Conteh, in its decision, the Civil Service Commission (Commission) found that only one of the charges was sustained. Therefore, it modified his removal to a four-month suspension. Further, the Commission ordered that Conteh was to receive mitigated back pay, benefits, and seniority, pursuant to *N.J.A.C. 4A:2-2.10*, from four months after the first date of separation to the actual date of reinstatement. The appointing authority indicates that Conteh returned to work effective December 5, 2022.

In his request, Conteh asserts that he has not received any back pay, nor has he been able to keep his seniority. He presents that he has undergone all the training as ordered in the Commission’s decision. Conteh asserts that the loss of income and health insurance has caused financial hardship for his family and himself. He notes that he was not determined eligible for unemployment benefits in 2019 and 2020, which led to him obtaining another job.

In response, the appointing authority asserts that Conteh's back pay award was correctly determined pursuant to *N.J.A.C.* 4A:2-2.10. It presents that the total amount of money he would have been entitled to receive had he been employed during the time in question was factored against the total amount of money he earned from employment not previously held during this period. Specifically, the appointing authority provides that Conteh earned more from these employments, approximately \$144,837.67, then he would have been entitled to receive had he been employed with it, approximately \$144,234, during this time. It argues that Conteh is not entitled to additional compensation under *N.J.A.C.* 4A:2-2.10(d)3. The appointing authority attaches is calculations and Conteh's W2s to support its conclusion.

Concerning Conteh's seniority, the appointing authority indicates that personnel records currently reflect that he has had no separation or breaks in service since he was hired in 2008. Further, he was granted 160 hours of earned vacation time, which is the equivalent of 20 vacation days, which he would only receive if he had been employed over 12 years. Therefore, it asserts that he has received the proper benefit time allotment based on his seniority. The appointing authority states that as Conteh did not specifically state how his seniority has not been properly credited to him, it is unclear as to what seniority benefit that he claims he is not receiving.

In reply, Conteh submits his denial of unemployment benefits, his affidavit of mitigation of back pay award¹, and his 2017 through 2021 tax returns.

CONCLUSION

N.J.A.C. 4A:2-2.10(a) provides that where a disciplinary penalty has been reversed, the Commission shall award back pay, benefits, seniority or restitution of a fine. Such items may be awarded when a disciplinary penalty is modified.

N.J.A.C. 4A:2-2.10(d) provides that back pay shall include unpaid salary, including regular wages, overlap shift time, increments and across-the-board adjustments. Benefits shall include vacation and sick leave credits and additional amounts expended by the employee to maintain his or health insurance coverage during the period of improper suspension or removal.

N.J.A.C. 4A:2-2.10(d)1 provides that back pay shall not include such items as overtime pay, holiday premium pay and retroactive clothing, uniform or equipment allowances for period in which the employee was not working.

¹ Conteh indicates that prior to termination, he worked for Preferred Care at Mercer LLC (Preferred Care), and since termination, he had been employed by The Arc Mercer, Inc. and Wood Services, Inc.

N.J.A.C. 4A:2-2.10(d)2 provides that the award of back pay shall be reduced by the amount of taxes, social security payments, dues, pension payments, and any other sums normally withheld.

N.J.A.C. 4A:2-2.10(d)3 provides that where a removal or suspension has been reversed or modified, an indefinite suspension pending the disposition of criminal charges has been reversed, the award of back pay shall be reduced by the amount of money that was actually earned during the period of separation, including any unemployment insurance benefits received.

N.J.A.C. 4A:2-2.10(d)5 provides that an employee shall not be required to mitigate back pay for any period between the issue date of a Civil Service Commission decision reversing or modifying a removal or reversing an indefinite suspension and the date of actual reinstatement. The award of back pay for this time period shall be reduced only by the amount of money that was actually earned during that period, including any unemployment insurance benefits received.

N.J.A.C. 4A:2-2.10(d)7 provides that if an employee also held other employment at the time of the adverse action, the back pay award shall not be reduced by earnings from such other employment. However, if the employee increased his or her work hours at the other employment during the back pay, the back pay award shall be reduced by the earnings from such additional hours.

N.J.A.C. 4A:2-2.10(e) provides that unless otherwise ordered, an award of back pay, benefits and seniority shall be calculated from the effective date of the appointing authority's improper action to the date of the employee's actual reinstatement to the payroll.

In this matter, Conteh's four month's suspension began on July 29, 2019, and ended on November 29, 2019. Further, he was reinstated effective December 5, 2022. Therefore, Conteh's back pay award time was from November 30, 2019, to December 4, 2022. The appointing authority indicates that Conteh would have earned \$144,234 from it during the back pay award time. Conteh has not submitted any information to dispute this amount. On Conteh's affidavit of mitigation of back pay award, he indicated that at the time of the then-termination, he worked for Preferred Care. The appointing authority provides that Conteh indicated that he earned \$1,262.07 in 2019 from Preferred Care. Conteh has not disputed this amount.² The appointing authority presents that Conteh's other employment in 2020 through 2022 was

² Neither Conteh nor the appointing authority submitted his W2s for his employment with Preferred Care. The number of hours that Conteh worked for Preferred Care and his hourly rate or salary that he worked at the time of his removal has not been presented. As it is unclear when in 2019 he earned those monies, the Commission will not use those amounts as an offset for 2019.

\$52,998.73³ for Preferred Care, \$18,665.88 for The Arc Mercer, Inc.⁴, and \$126,170.84⁵ for Wood Services, Inc. Therefore, the record indicates that Conteh earned \$197,835.45 from other employment during the back pay award period. Additionally, this amount is to be reduced per year, by the amount he was earning from other employment at the time of his removal, \$1,262.07, which covers his Preferred Care earnings. Therefore, Conteh's net increase from the other employment he held at the time during the back pay award time was \$197,835.45, minus \$3,780.21, which equals \$194,049.24. Therefore, Conteh is not entitled to any back pay under *N.J.A.C.* 4A:2-2.10(d), as his net increase of money from other employment that was actually earned during the back pay award period, \$194,049.24, exceeds the amount of money he would have earned with the appointing authority during the back pay award period, \$144,234.

Concerning Conteh's request for seniority, the appointing authority indicates that his personnel record does not indicate any breaks in service, and he has been allocated full credit for vacation time based on his years of service. Conteh has not specifically indicated how he has not received his full credit for seniority. Therefore, there is nothing in the record to support his request in that regard.

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.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 23RD DAY OF AUGUST, 2023

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

³ For Preferred Care, Conteh earned \$8,672.50 in 2020, \$17,636.89 in 2021, and \$26,689.34 in 2022.

⁴ For The Arc Mercer, Inc., Conteh earned \$1,425.95 in 2020, \$3,283.93 in 2021, and \$13,956.95 in 2022.

⁵ For Wood Services, Inc. Conteh earned \$15,587.74 in 2020, \$55,427.33 in 2021, and \$55,155.77 in 2022.

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