



STATE OF NEW JERSEY

In the Matter of Quan Johnson,
Vineland Developmental Center,
Department of Human Services

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

CSC Docket No. 2023-2672

Back Pay

ISSUED: August 23, 2023 (SLK)

Quan Johnson, represented by Sean Thom, Staff Representative CWA Local 1040, requests that the Civil Service Commission (Commission) determine that his back pay award not be reduced by overtime pay that he earned during his separation period.

By way of background, Johnson, a Behavior Support Technician with the Vineland Developmental Center (VDC), was suspended indefinitely pending the outcome of criminal charges, effective May 31, 2019. Subsequently, the criminal charges were dismissed, and Johnson was reinstated, effective November 21, 2022. Thereafter, the VDC determined that Johnson was entitled to a net back pay award in the amount of \$39,789.93. Subsequently, Johnson filed a grievance asserting that he was entitled to a higher amount, which was denied. Thereafter, Johnson appealed the denial of his grievance to the Commission.

In his request, Johnson states that his salary at the time he was suspended was \$75,000, or approximately \$36 per hour based on a 40-hour work week. He presents that when he was first suspended, he filed for unemployment. Thereafter, he was able to find employment in a warehouse, Gorgo Pallets, where he earned \$14 per hour, until he found a position with the Center for Family Services, which paid \$18 per hour, which was the equivalent of \$37,440 on an annual basis or \$720 per week based on a 40-hour work week. Johnson presents that under *N.J.A.C. 4A:2-2.10(d)4iii*, the definition of suitable employment in determining whether one has

made sufficient mitigation efforts to be entitled to back pay award includes a position where the salary is comparable. While he notes that the VDC found his mitigation efforts sufficient and he was entitled to receive back pay, Johnson contends that during his suspension, he was unable to find employment with a comparable salary due to the pending charges. Therefore, due to the lower wage, in 2022, he worked significant amounts of overtime to try to bring his income up to an amount similar to what he earned at the VDC. Johnson asserts that if false charges were not levied against him, he would not have had to find a job that only paid a few dollars more than the minimum wage, which forced him to work a significant amount of overtime to even earn sufficient income. He argues that only his pay from the Center for Family Services based on a 40-hour work week should be used to reduce his back pay award and his overtime pay should not be used to lower the back pay award amount. He attaches documentation to demonstrate his income during the suspension period.

In response, the VDC presents that Johnson's net back pay award was \$39,789.93.¹ It highlights that under *N.J.A.C. 4A:2-2.10(d)3*, back pay shall be reduced by the amount of money actually earned during the period of separation, including any unemployment benefits received. Therefore, the VDC asserts that Johnson's argument that overtime pay should not reduce his back pay award is not supported by this rule. It notes that Johnson has not argued that it incorrectly calculated his back pay award.

CONCLUSION

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.

In this matter, the record indicates that the VDC calculated Johnson's back pay award based on *N.J.A.C. 4A:2-2.10(d)3*. Johnson does not argue that the VDC improperly calculated his back pay award based on this rule, rather, he argues that his overtime wages should not be used to reduce his back pay award. However, there is no basis under *N.J.A.C. 4A:2-2.10(d)3* or any other Civil Service law or rules to support his position. In this regard, the purpose of a back pay award is to make an employee whole, not to provide a windfall. By not including all monies earned, including his overtime, Johnson would receive more money than what his earnings at VDC would have totaled. Therefore, the Commission finds that the VDC properly calculated Johnson's net back pay award as \$39,789.93.

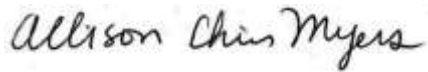
¹ The VDC indicates that Johnson's base wages during the period were \$248,896.61. It then subtracted his Center for Family Services wages (\$106,717.77), Gorgo Pallets wages (\$3,056.50), unemployment benefits (\$55,212) and deductions for State and federal taxes, social security, pension and other statutory deductions (\$42,825.99) during the period which equaled \$39,789.93.

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



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