



STATE OF NEW JERSEY

In the Matter of Lorenzo Thompson

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2023-1603

Enforcement

ISSUED: June 7, 2023 (JET)

Lorenzo Thompson, a former¹ Laborer 1 with Hillside, requests enforcement of the Civil Service Commission (Commission) decision rendered on June 15, 2022 granting him mitigated back pay, benefits and seniority. *See In the Matter of Lorenzo Thompson, Hillside, Department of Public Works* (CSC, decided June 15, 2022).

By way of background, the petitioner was removed effective June 25, 2019 on charges of incompetency, inefficiency or failure to perform duties; insubordination; inability to perform duties; conduct unbecoming an employee; neglect of duty; and other sufficient cause. The petitioner filed a timely appeal which was transmitted to the Office of Administrative Law for a hearing as a contested case. In her March 30, 2022 decision, the Administrative Law Judge (ALJ) upheld the charges of conduct unbecoming an employee and other sufficient cause, but dismissed the remaining charges. The ALJ also noted that the petitioner’s prior disciplinary history included minor disciplinary actions. Upon its *de novo* review of the record, the Commission modified the removal to a six-month suspension, and ordered that Thompson be granted back pay, benefits and seniority from six months after the date following his separation from employment until the date of his actual reinstatement. The amount of back pay awarded was to be reduced and mitigated to the extent of any income

¹ Personnel records indicate the petitioner was subsequently removed from employment, effective October 18, 2022. It is noted that, although petitioner asserts this removal was inappropriate in this matter, there is no record that he timely appealed his removal to the Commission. *See N.J.A.C. 4A:1-1.2(c)*. However, the petitioner filed a lawsuit in Superior Court under the Law Against Discrimination. *See N.J.S.A. 10:5-1 to 10:5-49*. That case was dismissed on January 24, 2023.

earned or that could have been earned by the appellant during this period. It is noted that the petitioner was reinstated to employment, effective June 23, 2022.

In his January 17, 2023 petition, the petitioner asserts that he is owed additional compensation for three and one-half years of back pay for being unlawfully terminated by the appointing authority. In this regard, he contends that he is owed \$347,000, including \$300,000 due to discrimination; \$200,000 for wrongful termination; \$100,000 for harassment, and \$5,000 for unused sick leave. The petitioner states that his yearly salary was \$71,000 and he earned \$2,200 net pay per pay check, and he contends that he is owed three years of vacation pay totaling \$13,260; three years of holiday pay totaling \$13,260; and three years of personal pay totaling \$3,900. The petitioner states that he did not receive a retroactive check for increases under the relevant union contract in the amount of \$6,900. The petitioner contends that, although he received a check for \$47,219.14 in back pay from the appointing authority, that amount did not fully compensate him for three and one-half years of work. The petitioner provides documentation indicating that he received unemployment benefits in 2019 and in 2020. Moreover, the petitioner indicates that he does not understand how the appointing authority calculated the amount of back pay that was due.

In response, the appointing authority, represented by Stefani C. Schwartz, Esq., maintains that it already issued back pay to the petitioner in the amount of \$47,219.14, and as such, the petitioner is not entitled to any additional award of back pay. Specifically, the appointing authority explains that from December 25, 2019 to June 23, 2022, the petitioner's salary including all increases was \$163,652.85. The appointing authority contends that in 2020, the petitioner earned \$30,588 in unemployment benefits, and in 2021, he earned \$54,156 in unemployment benefits, which subtracted from \$163,652.85, totaled \$78,908.85. The appointing authority adds that, after subtracting taxes and withholdings, the amount due to petitioner was \$47,219.14.²

The appointing authority also contends that the petitioner's request is untimely, and as such, the Commission no longer has jurisdiction to address the request. The appointing authority states that the petitioner failed to inform the Commission within 60 days, or by August 20, 2022, that there was a dispute with respect to the back pay amount due. The appointing authority adds that, although the petitioner was required within 30 days to provide the appointing authority with proof of income earned and an affidavit of mitigation, he failed to do so. The appointing authority maintains that the petitioner sat on his rights with respect to his back pay, and he did not pursue this matter until 90 days after receipt of his back wages and benefits, and almost nine months after the Commission issued the June

² The appointing authority states that the appellant received the check for \$47,219.14, on December 19, 2022, which the appellant does not dispute in this matter.

15, 2022 decision. As such, the appointing authority maintains that the Commission does not retain jurisdiction in this matter.³

CONCLUSION

Pursuant to *N.J.A.C.* 4A:2-2.10(d), an award of back pay shall include unpaid salary, including regular wages, overlap shift time, increments and across-the-board adjustments. *N.J.A.C.* 4A:2-2.10(d)3 provides that an 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, subject to any applicable limitations set forth in (d)4.

In this matter, the appointing authority contends that the petitioner failed to timely provide an affidavit of mitigation and proof of income within 30 days as required. The appointing authority states that, although it did not receive such information other than the petitioner’s unemployment benefits, it nevertheless issued back pay to the petitioner in the amount of \$47,219.14. Although the petitioner states that he does not understand how the appointing authority calculated his back pay, he does not provide an affidavit of mitigation, nor proof of income in this matter to show that he is owed any additional amounts. Moreover, his requests for “compensation” in the form of payments due to alleged discrimination, harassment or wrongful termination are not properly before the Commission, as Civil Service law and rules only allows for compensatory, not punitive, remedies.

Based on the above information, the Commission finds that the appointing authority compensated the appellant based on the following calculations:

Gross Wages including all increases:	\$163,652.85
less Unemployment Wages:	\$ 30,588.00 (2020)
	\$ 54,156.00 (2021)
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Total Gross Back pay:	\$ 78,908.85
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Net Total, less taxes and withholdings:	\$ 47,219.14

Since the petitioner does not provide an affidavit of mitigation, or show proof of income that rebuts the appointing authority’s contentions, or show that he is entitled to a greater amount of back pay, he has not met his burden of proof in this matter.

With respect to the appellant’s request for additional leave and vacation time, he has not established his claim in this matter, and regardless, the Commission does not have jurisdiction over the appellant’s request for compensation for accrued sick

³ As the Commission is determining this matter on the merits, it need not address the appointing authority’s arguments regarding untimeliness.

and personal leave time. The Commission has no authority to review benefits provided by local jurisdictions and not specifically awarded by Civil Service law and rules. *See In the Matter of James Nance* (MSB, decided October 1, 2003). Rather, such issues should be reviewed either through the appointing authority's grievance process or through the appellant's collective negotiation agreement. *See In the Matter of Becky Candelora and Bernice Jones* (CSC, decided January 16, 2019). With respect to the appellant's request for reimbursement of contractual monies, such as clothing and uniform allowances, an award of back pay does not include retroactive clothing, uniform or equipment allowances for periods in which the appellant was not working. *See N.J.A.C. 4A:2-2.10(d)1*. Moreover, since he did not timely file an appeal of the October 2022 removal, he is not entitled to any additional relief. Accordingly, the appellant did not meet his burden of proof in this matter.

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 7TH DAY OF JUNE, 2023



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