



In the Matter of Mack Ragsdale,
Atlantic City, Department of
Municipal Authority

CSC Docket No. 2025-1377

STATE OF NEW JERSEY

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

Back Pay and Enforcement

ISSUED: April 9, 2025 (SLK)

Mack Ragsdale, an Electronic Systems Technician 2 with the Atlantic City, Department of Municipal Utilities Authority (ACMUA), represented by David L. Tucker, President, Government Workers Union, requests back pay and reinstatement pursuant to *In the Matter of Mack Ragsdale* (CSC, decided November 6, 2024).

By way of background, on December 16, 2020, Ragsdale was issued two disciplinary memorandums immediately suspending him without pay. After a departmental hearing, Ragsdale received notice that he was removed, effective July 6, 2021. Ragsdale appealed his removal to the Civil Service Commission (Commission), and the matter was transmitted to the Office of Administrative Law as a contested case. In the Administrative Law Judge's (ALJ) initial decision, the ALJ recommended modifying the removal to a 10 working day suspension. However, in its November 6, 2024, decision, the Commission dismissed all charges and reversed the removal. Accordingly, the Commission ordered that Ragsdale be reinstated to his position with back pay, benefits, and seniority from the first date of separation without pay until the date of reinstatement.

In his request, Ragsdale presents that although the parties have had discussions, they have been unable to reach an agreement on the back pay. Further,

although he was placed back on the payroll, he indicates that the ACMUA has refused to return him to the workforce.

In reply, the ACMUA, represented by George F. Frino, Esq. and Mallory E. Garvin, Esq., asserts that it cannot determine Ragsdale's back pay award because he refuses to submit an affidavit of mitigation nor provide anything other than his 2022 and 2023 tax returns and what appears to be a record of pay from his employer in 2024. It emphasizes that it does not know who his employers are, what kind of positions he held, and what efforts he made to find new employment that were comparable to his current position. The ACMUA also states that it has been made aware of the possibility that he was paid "off-the-books" and thus that salary was not reported on tax forms or to the Internal Revenue Service.¹ It contends that Ragsdale could have found other employment to mitigate his loss of income from his December 16, 2020, suspension. However, the ACMUA provides that it appears that Ragsdale was unemployed for a year and then employed in a situation that was not comparable to his title or compensation with the ACMUA. Therefore, it argues that Ragsdale made minimal effort to mitigate his losses. Consequently, the ACMUA requests that the Commission consider both Ragsdale's failure to show any evidence of attempted mitigation in 2021 and his lack of effort to find comparable employment in 2022, 2023, and 2024.²

The ACMUA submits *O'Lone v. Dep't of Hum. Serv.*, 357 N.J. Super 170 (App. Div. 2003), regarding the "lowered sights" doctrine, where the Court found that if an employee is unable to secure comparable employment after a reasonable amount of time, then the employee may be required to expand the search such as enlarging the type of employment sought, expanding the geography, and/or lowering salary demands. Additionally, the ACMUA presents *In the Matter of William Able*, Docket Nos. A-5106-18 and A-5108-18 (App. Div., decided June 14, 2021), where an employee only applied to seven jobs in three years and the Court affirmed the Commission's determination to deny back pay as the employee did not make a reasonable attempt to mitigate the back pay award. The ACMUA notes that although the appointing authority in *Able* did not submit its own documentation regarding Able's job search, the Court found that it properly relied on evidence detailed in Able's mitigation affidavit to establish that he "did not make reasonable efforts to mitigate his losses" which satisfied its burden under *N.J.A.C. 4A:2-2.10(d)4v* to prove that Able did not make reasonable efforts to find suitable employment.

The ACMUA reiterates its argument that Ragsdale has not indicated what reasonable attempts he has made to find suitable employment. It presents that Ragsdale's tax returns indicate that he earned \$31,950 in 2022, \$40,022 in 2023, and

¹ As the ACMUA has presented no evidence to support this claim, it will not be addressed.

² The ACMUA also presents arguments regarding its position as to why Ragsdale should have been removed. However, as those arguments have already been rejected by the Commission, they will not be addressed in this matter.

\$36,209 from January 1, 2024, to October 31, 2024. However, the ACMUA states that it is unclear as to what was his actual employment. Further, it provides that although Ragsdale was employed in 2024, he did not provide his employment history for the entire year. Therefore, as Ragsdale has not provided any evidence concerning his search for a “comparable” job in his field or other jobs that would suffice under the lowered sights doctrine, it believes that he should not be awarded back pay. The ACMUA also notes that Ragsdale’s net salary with it during the separation period would have been \$272,397.44.

In response, Ragsdale states that during his suspension, he was either employed or received unemployment benefits. Concerning his unemployment, he presents that it was during the height of the COVID-19 pandemic, and the closure of many businesses made it difficult to find work. He asserts that he has exercised every opportunity to work and mitigate back pay. Ragsdale submits documentary proof to support his statements that in 2021, he earned \$36,874³ (\$1,177 from CVS + \$137 from 401 N. + \$35,560 in unemployment benefits); in 2022, he earned \$31,950 from Boardwalk 1000 (Hard Rock Casino); in 2023, he earned \$40,022 from Boardwalk 1000 (Hard Rock Casino); and in 2024, he earned \$35,213.68 from Boardwalk 1000 (Hard Rock Casino). Therefore, he indicates that he earned \$144,059.68 during the suspension. Additionally, he states that the ACMUA has informed him that it is in the process of outsourcing his position and eliminating his title from the ACMUA.

In reply, the ACMUA indicates that Ragsdale was required to submit an affidavit regarding his income and not a certification as he provided. Further, it states that Ragsdale’s documentary proof of his income is unreadable or otherwise not legible. The ACMUA notes that Ragsdale submitted a 1099-MISC which appears to indicate that he worked for Amazon, but the page was cut off. Moreover, it provides that Ragsdale’s 2022 and 2023 tax returns are not legible, thereby preventing an accurate assessment of his mitigation efforts. Therefore, the ACMUA argues that Ragsdale has not met the threshold to receive back pay, and his request should be denied.

In further response, Ragsdale submits an affidavit stating that he earned \$35,560 in 2021, \$31,949 in 2022, \$40,022 in 2023, and \$44,139 in 2024. He notes that his 2024 income includes income from the ACMUA, and he earned \$35,213.68 from non-ACMUA income in 2024.

In further reply, the ACMUA asserts that Ragsdale has continued to refuse to submit information providing the names of all jobs he sought during the period of his separation. It notes that Ragsdale has now submitted an “Affidavit of Income” which provides the income that he received during his separation from 2021 through 2024. However, the ACMUA argues that Ragsdale is also required to provide an affidavit that also provides information regarding his efforts to mitigate. It reiterates, *Able*,

³ Ragsdale’s statement did not total his 2021 income. However, when totaled, it equals \$36,874.

supra, where the employee only applied to seven jobs in three years during his separation. Notwithstanding that Able provided his annual income, the Court held that because he failed to seek comparable employment, it affirmed the Commission's finding that Able failed to seek suitable employment in accordance with *O'Lone, supra*. Further, while Able provided seven job applications, that was found to be woefully deficient to satisfy his duty to mitigate. Here, Ragsdale has provided no information whatsoever to demonstrate that he ever attempted to secure a job comparable to the duties and salary he performed at the ACMUA. Therefore, the ACMUA argues that there is no way of ascertaining whether Ragsdale was "underemployed" during his separation period, which is not suitable for employment for purposes of mitigation. Consequently, it believes that his request for back pay should be denied.

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)2 provides that the award of back pay shall be reduced by the amount of taxes, social security payments, dues, pension payment, and any other sums normally withheld.

N.J.A.C. 4A:2-2.10(d)3 provides 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, subject to any applicable limitations set for the in (d)4 below.

N.J.A.C. 4A:2-2.10(d)4 states where a removal or a suspension for more than 30 working days has been reversed or modified or an indefinite suspension pending the disposition of criminal charges has been reversed, and the employee has been unemployed or underemployed for all or a part of the period of separation, and the employee has failed to make reasonable efforts to find suitable employment during the period of separation, the employee shall not be eligible for back pay for any period during which the employee failed to make such reasonable efforts.

- i. "Underemployed" shall mean employment during a period of separation from the employee's public employment that does not constitute suitable employment.
- ii. "Reasonable efforts" may include, but not be limited to, reviewing classified advertisements in newspapers or trade publications;

reviewing Internet or on-line job listings or services; applying for suitable positions, attending job fairs, visiting employment agencies; networking with other people; and distributing resumes.

- iii. Suitable employment” or “suitable position” shall mean employment that is comparable to the employee’s permanent career service position with respect to job duties, responsibilities, functions, location, and salary.
- iv. The determination as to whether the employee has made reasonable efforts to find suitable employment shall be based upon the totality of the circumstances, including, but not limited to, the nature of the disciplinary action taken against the employee; the nature of the employee's public employment; the employee's skills, education, and experience; the job market; the existence of advertised, suitable employment opportunities; the manner in which the type of employment involved is commonly sought; and any other circumstances deemed relevant based upon the particular facts of the matter.
- v. The burden of proof shall be on the employer to establish that the employee has not made reasonable efforts to find suitable employment.

N.J.A.C. 4A:2-2.10(f) provides that when the Commission awards back pay and benefits, determination of the actual amounts shall be settled by the parties whenever possible.

N.J.A.C. 4A:2-2.10(g) provides that if a settlement on an amount cannot be reached, either party may request, in writing, Commission review of the outstanding issue. In a Commission review: (1) The appointing authority shall submit information on the salary the employee was earning at the time of the adverse action, plus increments and across-the-board adjustments that the employee would have received during the separation period; and (2) The employee shall submit an affidavit setting forth all income received during the separation.

In this matter, the record indicates that Ragsdale’s primary income in 2021 was via unemployment benefits (\$35,560). In this regard, there is a presumption that the receipt of unemployment benefits evidences that an employee sufficiently mitigated during the period of separation, since searching for employment is a condition to receiving such benefits. *N.J.S.A. 43:21-4(c)1* states that “an unemployed individual shall be eligible to receive [unemployment] benefits with respect to any week only if . . . The individual is able to work, and is available for work, and has demonstrated to be actively seeking work.” However, this presumption may be

rebutted where the appellant did not make a diligent effort to seek employment. *In the Matter of Donald Hicks*, Docket No. A-3568-03T5 (App. Div. September 6, 2005). See *In the Matter of Alphonso Hunt*. In this case, Ragsdale's affidavit did not address his mitigation efforts during the time he collected unemployment. Further, on appeal, he states that concerning his unemployment, it was during the height of the COVID-19 pandemic, and the closure of many businesses made it difficult to find work. However, even if comparable employment was not available during the height of the pandemic, Ragsdale could have searched for employment and sought work from employers that were hiring during the pandemic like Amazon, supermarkets, restaurants offering take-out and delivery, work at-home jobs, physical labor and/or other employment. See *In the Matter of Christopher Ferro*, Docket No. A-3160-21 (App. Div. July 8, 2024). The Commission emphasizes that Ragsdale was not required to actually find employment during this time but only required to demonstrate that he made reasonable efforts to find suitable employment. See *N.J.A.C. 4A:2-2.10(d)4*. However, as Ragsdale has not demonstrated that he made any effort during this time, and he has been given multiple opportunities in this matter to do so, the presumption regarding receipt of unemployment benefits has been rebutted and the Commission finds that Ragsdale is not entitled to any back pay during the time he collected unemployment benefits.

Concerning time during 2021 where Ragsdale did not collect unemployment, he indicates that he earned \$1,117 from CVS and \$137 from 401 N. There is no other information in the record about this employment. However, it is ACMUA's burden to demonstrate that Ragsdale did not make reasonable efforts to find suitable employment. See *N.J.A.C. 4A:2-2.10(d)4*. Further, *N.J.A.C. 4A:2-2.10(d)4ii* provides that "Reasonable efforts" may include, but not be limited to, reviewing classified advertisements in newspapers or trade publications; reviewing Internet or on-line job listings or services; applying for suitable positions, attending job fairs, visiting employment agencies; networking with other people; and distributing resumes. However, the ACMUA has not provided this type or other evidence that demonstrates that Ragsdale could have sought Electrical Technician work or other jobs that it deems more suitable than the work that he performed. Moreover, the ACMUA's failure to track such potential work during Ragsdale's separation or its inability to be able to go back and research such potential opportunities that were available at that time does not relieve it from its burden of proof. Therefore, the Commission finds that during any week where Ragsdale can demonstrate that he worked in 2021, he is entitled to mitigated back pay for that week. Moreover, this matter is distinguishable from *Able, supra*, as Able only collected unemployment during his separation period and did not work. Therefore, the Commission found that Able's seven applications in three years was insufficient to demonstrate that he made reasonable efforts to mitigate his employment. In this matter, Ragsdale earned some money in 2021 and over \$30,000 each year in 2022, 2023, and 2024. Accordingly, in this matter, the ACMUA cannot satisfy its burden of proof during the time Ragsdale worked by simply referring to Ragsdale's own statements or lack of action.

Regarding 2022, 2023, and 2024, the record indicates that while working for the Hard Rock Casino, Ragsdale earned \$31,950 in 2022⁴, \$40,022 in 2023, and \$35,21.68 in 2024. As previously stated, the ACMUA has not provided any information to support its position that Ragsdale did not make reasonable efforts to find suitable employment during this time. Therefore, as the ACMUA has not met its burden of proof during this time, the Commission finds that as Ragsdale did find employment during these periods, he is entitled to mitigated back pay from the time in 2022 he started working for the Hard Rock Casino. Further, pursuant to *N.J.A.C. 4A:2-2.10(d)*⁵, he is entitled to unmitigated back pay from November 6, 2024, to the date of his placement back on the payroll.

Pursuant to *N.J.A.C. 4A:2-2.10(f)*, the parties are directed to determine the actual back pay amounts in a manner consistent with this decision. It is noted that the amount shall be reduced by sums normally withheld. *See N.J.A.C. 4A:2-2.10(d)*². Additionally, consistent with the prior decision, the ACMUA is ordered to not only restore Ragsdale to the payroll, but it shall immediately reinstate him to his Electronic Systems Technician 2 position. While the Commission is aware that the ACMUA is appealing its prior decision, while every party who appeals to the Appellate Division believes that they have a clear likelihood of success on the merits and the ACMUA may disagree with the decision, the Commission explained why it reversed Ragsdale's removal and has already rejected the ACMUA's arguments in the prior decision. Therefore, absent a stay from the Appellate Division, there is no basis to not immediately reinstatement him in his position. *See In the Matter of Christopher D'Amico* (CSC, decided August 14, 2019). Referring to Ragsdale's claim that the ACMUA is planning on outsourcing his position and eliminating his title, if this is the case, the ACMUA can make such a request to this agency following the procedures as indicated under *N.J.A.C. 4A:8-1, et seq.* In the meantime, the ACMUA is ordered to immediately reinstate Ragsdale to his position.

ORDER

Therefore, the Civil Service Commission orders that Mack Ragsdale's requests for back pay and reinstatement are granted, in part, as stated herein. Within 30 days of the issuance of this decision, Ragsdale shall clarify to the appointing authority his income in 2021, 2022, 2023 and 2024 through November 6, 2024, in a manner consistent with this decision.

Pursuant to *N.J.A.C. 4A:2-2.10*, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay in a manner consistent with this decision. However, under no circumstances should Ragsdale's reinstatement, and not

⁴ Based on Ragsdale's lesser income from the Hard Rock Casino in 2022 as compared to 2023 and 2024, it appears that Ragsdale was not working for the Hard Rock Casino as of January 1, 2022. However, there is no information in the record regarding his actual start date.

just his restoration to payroll, be delayed pending resolution of any potential back pay dispute. Further, pursuant to *N.J.A.C. 4A:2-2.10(d)5*, he is entitled to unmitigated back pay from November 6, 2024, to the date of his placement back on the payroll.

Failure of the ACMUA to make a good faith effort to resolve any dispute as to the amount of back pay in a manner consistent with this decision may subject it to fines or other penalties pursuant to *N.J.A.C. 4A:10-2.1*.

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 9TH DAY OF APRIL, 2025



Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Mack Ragsdale
David L. Tucker
India Still
George F. Frino, Esq.
Mallory E. Garvin, Esq.
Division of Agency Services
Records Center